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Individualism, Human Rights, and Modernisation: The Case of Japan

by

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ABSTRACT
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Although the forces of modernisation place transformational pressures on all aspects of societies, their impact varies across the different dimensions of culture. Above all, traditional cultures of collectivism, which are dominant in the non-Western world, tend to be persistent against the challenges of external forces, preventing the requisite ideological westernisation or individualisation of societies. In the meantime, modernisation destroys the traditional communal protection systems of human dignity, creating the necessity for human rights to function in order to safeguard workers against the forces of capitalism. However, the permeating culture of collectivism engenders intolerance among people towards individualistic attitudes of rights claims. As a result, some non-Western societies today are caught in a deep dilemma of having a collectivist culture which is incompatible with human rights practice on one hand and an industrialised capitalist society which is in line for individualism and human rights practice on the other.

Investigating this contemporary dilemma and its consequences, the recognition of which is necessary if we aim to move towards better human rights practice, is the primary purpose of the thesis. The first part of the thesis investigates the phenomena of individualism, industrialisation, and human rights, principally focusing on their origins, conceptions, and interrelationships. The latter part of the thesis provides a case study of Japanese society focusing on violation of workers' rights commonly taking place in Japanese enterprises. Japan was the first non-Western country to become fully modernised with a successful capitalist economy, and yet, its traditional value of collectivism has persisted particularly in the form of the company-family ideology. Therefore, the case study provides a fertile ground on which to investigate the efficacy of human rights implementation in the absence of a fully enrooted concept of individualism, as well as further elucidating the dilemma modernisation poses for non-Western societies.

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Introduction

Transformational Forces of Modernisation and Non-Western Societies

The development of global capitalist markets, alongside increasingly integrated communication and transportation systems – which comprise the central features of contemporary globalization¹ – have been obscuring the boundaries between the West and non-West by narrowing cultural as well as physical distances between countries. The contemporary picture is that of non-Western countries rapidly following the path of Western modernisation: where modernisation may be defined as changes in societies generated by an inflow of modern knowledge and technologies. The forces of modernisation place transformational pressures on societies by bringing in new technologies, economic systems, social forms, ideas, ideologies, and behavioural patterns. These forces of modernisation and their effects may be summarised as follows.

First of all, the forces of modernisation introduce new technologies and capitalism into a society triggering industrialisation. Secondly, the forces of modernisation stimulate westernisation of social systems. Thirdly, modernisation promotes an inflow of ideas and ideologies which have the propensity to contribute towards a society's ideological westernisation. Finally, it is conceivable that forces of modernisation could generate transformational pressures which may result in the individualisation of people's behavioural patterns. The cumulative impact of these various forces is to compel non-Western societies to adopt Western norms and practice which would result in the westernisation of their culture.

However, the degree of transformation that these forces bring about among societies varies widely because of their cultural diversity. If we take the degree of individualisation of societies as one example, the outcome differs even among societies with similar philosophical backgrounds and comparable levels of technological and economic development. According to the analysis of Geert Hofstede, who gave 50 countries and 3 regions “an individualism index

¹ David Held and Anthony McGrew define that “[g]lobalization refers to a historical process which transforms the spatial organization of social relations and transactions, generating transcontinental or interregional networks of interaction and the exercise of power.” (David Held and Anthony McGrew, “Introduction,” David Held and Anthony McGrew, eds., *Governing Globalization: Power, Authority and Global Governance* (Cambridge: Polity Press, 2002), pp. 1-2.) However, they warn that globalization “should not be read as prefiguring the emergence of a harmonious world society or as a universal process of global integration in which there is a growing convergence of cultures and civilizations.” Because “a substantial proportion of the world's population is largely excluded from the benefits of globalization, it is a deeply divisive and, consequently, vigorously contested process.” (David Held and Anthony McGrew, *Globalization/Anti-Globalization* (Cambridge: Polity Press, 2002), p. 1.)

score which was low for collectivist and high for individualist societies,” the individualism index scores of Japan, Singapore, South Korea and Taiwan, for instance, range from 46 to 17 despite the fact these countries are located in a region which has a strong Confucian cultural influence and are all technologically and economically developed. Among the 53 countries and regions of Hofstede’s analysis, Japan ranks 22-23, Singapore 39-41, South Korea 43, and Taiwan 44.² This does not necessarily prove that Japanese society is much more individualistic than that of South Korea or Taiwan, but it certainly indicates the existence of variation in the degree of individualism among these societies.

Furthermore, the transformative impact of modernisation varies across the different dimensions of culture. While some elements of culture are fairly open to change along the lines indicated by Western models and experiences of modernisation, other cultural elements are relatively persistent. For instance, according to Harry Triandis “culture” – “the human-made part of the environment” – comprises objective and subjective aspects. The “objective elements” such as “tools, roads, and appliances” are relatively open to the effects of modernisation, whereas the subjective dimension, which “has elements that predict social behavior” such as “categories, associations, beliefs, attitudes, norms, roles, and values,”³ tends to be more persistent. Accordingly, the impact of modernisation on non-Western societies is complex and differentiated, and hence requires further exploration.

The first two categories of forces mentioned earlier, namely, inflows of new technologies, capitalism and Western social systems, impact on what Triandis calls “objective elements” of culture and bring about physical transformations within a society. The development of technologies and capitalist markets triggers industrialisation which engenders high social and geographical mobility, urbanisation, the formation of a large number of nuclear families and wage-labourers, alongside the erosion of traditional peasant community systems and extended families. The forces of modernisation also transform social systems. They break down the dominant power of king or feudal rule and introduce the rule of law, the modern state system, and other political systems of Western origin, such as parliamentary and the election systems. These physical transformations are measurable and can take place in a relatively short period of time when stimulated by external forces, as is shown in the contemporary world in which many countries are experiencing industrialisation and social reforms. They are trying to “catch up”

² Geert Hofstede, *Cultures and Organizations: Software of the Mind – International Cooperation and its Importance for Survival* (London: Harper Collins Business, 1991), pp. 51-54.

³ Harry C. Triandis, “Cross-cultural Industrial and Organizational Psychology,” Harry C. Triandis, Marvin D. Dunnette, and Leaetta M. Hough, eds., *Handbook of Industrial and Organizational Psychology* (Palo Alto, California: Consulting Psychologists Press, 1994), p. 111.

with the West and other developed countries and are rapidly undergoing transformations of their cultures in terms of its objective elements.

However, these physical transformations do not necessarily accompany psychological or mental transformations, which affect what Triandis calls the “subjective elements” of culture in society. The last two categories of forces mentioned earlier, namely, transformational pressures towards ideological westernisation and the individualisation of people’s behavioural patterns, affect the “subjective elements” of culture. The introduction of new technologies and social systems accompany an inflow of ideas and ideologies, such as liberty, rights, individualism, and democracy, whose enrooting in society indicates the ideological westernisation of local cultures. These ideas and ideologies, alongside other factors such as capitalism and modern social systems, encourage the permeation of individualism in a society and discourage collectivistic behavioural patterns which currently dominate non-Western societies. They emphasise the individual as the principal author of legitimate action and require tolerance towards other people’s individualistic behaviours, which ultimately demands people in non-Western societies to renounce their traditional ways of thinking. However, unlike objective elements, which have been showing rapid transformations in many parts of the world, subjective elements of culture tend to be persistent against the challenges of external forces, and consequently, inflows of new ideas and ideologies often fail to bring about the requisite ideological westernisation or individualisation of society. In fact, most non-Western societies today remain collectivistic, and the cultural differences between the West and non-West are often attributed to their different positions in relation to individualism and collectivism.

Individualism and collectivism are opposed concepts in their very origins: each forming the antonym of the other. As Harry Triandis asserts, the term “collectivism” was created in reaction to individualistic ideas: “In the eighteenth century the individualistic ideas of the American Revolution (all men are created equal, pursuit of happiness) and the French Revolution (liberty, equality) provoked reactions that were termed *collectivism*.”⁴ Triandis also points out that the doctrine of collectivism always developed in conjunction with the notion of individualism. For example, “[t]he individualism of John Locke was countered by the collectivism of Jean-Jacques Rousseau, who in his *Social Contract* argued that the individual is free only by submitting to the general will.”⁵ Also, in economics, laissez-faire individualism, such as that of Adam Smith in *The Wealth of Nations*, “contrasted with the Marxist collectivist

⁴ Harry C. Triandis, *Individualism & Collectivism* (Boulder: Westview Press, 1995), p. 19 (Emphasis original).

⁵ *Ibid.*

advocacy that the government should own the means of production.”⁶ In politics, according to Triandis, a contrast exists between individualism represented by capitalism, which embraced “as little government as possible,” and the collectivism of fascism “where the leader embodied the will of the nation and all had to submit to that will.”⁷

As for definitions of the terms, Triandis provides a preliminary explication of individualism and collectivism in relation to the prevailing social patterns associated with each of these norms:

Collectivism may be initially defined as a social pattern consisting of closely linked individuals who see themselves as parts of one or more collectives (family, co-workers, tribe, nation); are primarily motivated by the norms of, and duties imposed by, those collectives; are willing to give priority to the goals of these collectives over their own personal goals; and emphasize their connectedness to members of these collectives. A preliminary definition of *individualism* is a social pattern that consists of loosely linked individuals who view themselves as independent of collectives; are primarily motivated by their own preferences, needs, rights, and the contracts they have established with others; give priority to their personal goals over the goals of others; and emphasize rational analyses of the advantages and disadvantages to associating with others.⁸

The notions of “individualism” and “collectivism” are frequently explained as patterns of relationships between individuals and collectives, especially in reference to the forms of societies. Like Triandis, Geert Hofstede also links these two notions with two different types of societies and explains that in individualist societies, “the interests of the individual prevail over the interests of the group,” while in collectivist societies, “the interest of the group prevails over the interest of the individual.” Moreover, in referring to collectivism, he is talking not about the “power of the state over the individual,” but about the “*power of the group*.”⁹

Hofstede points out that the “first group in our lives is always the family,” and expounds that in collectivist societies the most likely family structure is the “extended family,” where children grow up to identify themselves as part of a “we” group (or ingroup) as opposed to “they” groups. One “owes lifelong loyalty to one’s ingroup” which is “the only secure protection one has against the hardships of life,” and “breaking this loyalty is one of the worst things a person can do.” Between the person and the ingroup there is, practically and psychologically, “a dependence relationship.” On the other hand, the type of the family permeating in individualist societies is the “nuclear family.” In this type of society, people identify

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*, p. 2 (Emphasis original).

⁹ Hofstede, op. cit., p. 50 (Emphasis original).

themselves as “I” in distinction from other people’s “T”s. People are classified not “according to their group membership but to individual characteristics,” and they are not “supposed to be dependent on a group” either “practically” or “psychologically”.¹⁰

However, these definitions of individualism and collectivism cannot be used to draw a clear line dividing the world neatly into individualist and collective societies. As the individualism index scores of 53 countries and regions are scattered across a range between 91 (USA) and 6 (Guatemala) in Hofstede’s analysis, there is no pure collectivist society or pure individualist society. In fact, “‘pure’ collectivism and individualism are quite undesirable social patterns, and what is needed is a mixture of the two.”¹¹ Each society should and does have elements of both individualism and collectivism, and it is the balance of the two that determines whether the society is to be categorised as individualist or collectivist. Moreover, the balance of individualism and collectivism within a society changes along with the broader transformations of the society, and therefore, a society mainly dominated by collectivism may become increasingly individualistic. Nevertheless, it is important to note that in terms of the individualist-collectivist orientation, the shift is envisioned as unidirectional, from collectivism to individualism, since “modernization corresponds to individualization.”¹² At the moment, the type of societies that is dominant in this world is that of collectivism. Individualist societies that prevail in the West are the exception in comparison to the numerous collectivist societies that prevail in the rest of the world. In other words, for the vast majority of people in this world, collectivism is the principal norm, while individualism is the norm for only a minority of people.

According to the theory regarding modernisation, individualism should become increasingly prevalent as the forces of modernisation sweep throughout the world. Since the forces of modernisation, as well as bringing about industrialisation in many parts of the world, also work on the “subjective elements” of culture, modernisation should accompany ideological westernisation and the individualisation of people’s behavioural patterns. In fact, modernisation has been destroying rural communities and extended families, which are the central tenets of a collectivist society, while causing urbanisation and creating a large number of wage-labourers who live in a nuclear family form. In theory this should trigger individualisation within a society. Collectivism should not be able to persist once people start leaving their native communities to become wage-labourers in large cities, since collectivism “pertains to *societies in which people from birth onwards are integrated into strong, cohesive*

¹⁰ *Ibid.*, pp. 50-51.

¹¹ Triandis, *Individualism & Collectivism*, op. cit., p. 20.

¹² Hofstede, op. cit., p. 74.

ingroups, which throughout people's lifetime continue to protect them in exchange for unquestioning loyalty."¹³ Instead, individualism should start growing as people's ties with their communities loosen and they begin living in the nuclear families. As Hofstede states individualism pertains to "*societies in which the ties between individuals are loose: everyone is expected to look after himself or herself and his or her immediate family.*"¹⁴ Besides the loosening of ties between individuals, the spread of capitalism is also supposed to engender the establishment of individual, private property right including one's own labour: hence Max Weber includes "free labour" in his checklists of the preconditions of capitalism.¹⁵ Under a capitalist economy, people should become able to buy and sell their own and each other's labour power in pursue of individual profit, which should reinforce the permeation of individualism in society.

However, as stated earlier, the reality does not always follow theory. Unlike "objective elements" of culture, whose changes are observable and relatively easy to be promoted by external forces, "subjective elements" such as "categories, associations, beliefs, attitudes, norms, roles, and values" along with individualism and collectivism, are more persistent. These subjective elements that partly determine people's behavioural patterns are not only connected to the physical or economic conditions of the society but are deeply enrooted in people's mentality. Therefore, people tend to resist transformations in these elements of their cultures. Moreover, people often consider their subjective beliefs to be superior to those of other cultures and often attribute other societies' problems to their inferior or mistaken cultural and ideational beliefs. For instance, in individualistic societies people consider individualism "superior to other forms of mental software." Hofstede notes, "[m]ost Americans feel that individualism is good, and at the root of their country's greatness." However, in collectivistic societies, individualism is often associated with selfishness and therefore generally disapproved of. Chairman Mao Tse Tung of China is a salient political figure who "identified individualism as evil." Mao argued that individualism and liberalism were causes of "selfishness and aversion to discipline," which "led people to placing personal interests above those of the group."¹⁶

As a consequence of such beliefs, in collectivist societies people are often intolerant towards individualistic behaviours, which in turn hinders the individualisation of people's behavioural patterns and promotes resistance against the transformational pressures which the contemporary world-wide phenomenon of modernisation generates. As a result, some societies in the

¹³ *Ibid.*, p. 51 (Emphasis original).

¹⁴ *Ibid.* (Emphasis original).

¹⁵ Alan Macfarlane, *The Culture of Capitalism* (Oxford: Basil Blackwell, 1987), pp. 223, 226.

¹⁶ Hofstede, *op. cit.*, p. 71.

contemporary world remain collectivistic even after having the objective elements of their cultures fully modernised. The perpetuation of subjective collectivistic elements alongside the transformation of objective conditions in the polity, economy and society inline with individualism creates deep tensions within societies. Thus, the dilemma within formerly collectivist societies is intimately related to the differentiated rates of transformation in the objective and subjective elements within any culture.

The primary purpose of this thesis is to examine this contradiction in collectivist societies and its consequences. Towards that end, the thesis mainly focuses on the interrelated phenomena of industrialisation, human rights, and the individualisation of society, all of which emerged in the modernisation processes of English society. This is not to say that the arrival of a new industrial age alone suddenly brought about cultural transformations in Western society. Although industrialisation, which is a physical transformation of a society, occurred in a relatively short period of time in England, individualisation of the society, which required transformation of subjective elements of the culture, happened over a much longer period of time. In fact, as will be examined in this thesis, by the beginning of industrialisation English society had already experienced transformations in the physical social systems over a period of five centuries, which provided the necessary conditions for the emergence of the individualisation of society.

The development of the idea of human rights can be related to ideas circulating around the time of the Magna Carta or even earlier. Although the understanding of rights in the medieval period was far from being the rights of every human being, some elements of contemporary human rights were certainly present. Indeed, the history of the idea of human rights is that of conceptual expansion. From starting as the privileges of certain groups of people, the application of rights has kept expanding its bounds until human rights are finally defined as “the equal and inalienable rights of all members of the human family.”¹⁷ The process of this conceptual expansion will be examined later but in general this thesis uses the definition and contents of contemporary human rights norms as contained in the United Nations Universal Declaration of Human Rights and the two international covenants (on civil and political rights and on economic, social and cultural rights) as well as other references to human rights made by organs of the United Nations, such as the ILO conventions. This is not because the UN articulation of human rights is deemed to be exhaustive or uncontested but rather because the UN human rights instruments claim the largest number of signatories and hence are arguably more widely recognised than other interpretations of human rights in the contemporary world.

¹⁷ Preamble of the United Nations Universal Declaration of Human Rights.

This thesis mainly focuses on workers' rights, and it could be argued, therefore, that the examination ignores the wider picture of human rights, especially in terms of the case study, which closely examines the working conditions in Japanese enterprises. However, it should be noted how the workers movement played a key role in realising the inalienable attribution of rights to all individuals in English society. Moreover, in assessing the human rights practice in modernised societies, an examination of the situation surrounding workers' rights is crucial, considering the ratio of people involved in wage-labour, including the dependent families of employees and the amount of time people spend on work. Besides, compared with those in the West, workers' rights in a number of non-Western societies, especially those in the Far East, cover a far larger criteria of human rights, potentially incorporating social, economic, and political rights in view of the far more dependent relationship between workers and companies. Therefore, taking up the plight of workers' rights in these societies should help elucidate the wider issues surrounding human rights more generally.

Before briefly summarising each chapter, it needs to be noted that the capitalism developed in the English Industrial Revolution is different from the capitalism of the present day, whose world-wide expansion and development has been the central feature of contemporary globalization. To begin with, there are a number of disagreements over the definition of "capitalism". Some, like Adam Smith, find the origin of capitalism in "a voluntary outgrowth of a natural tendency of people to engage in mutually beneficial trades."¹⁸ Similarly, Max Weber defines capitalistic activities as actions taken in pursuit of profit through exchange.¹⁹ If we apply these two definitions to human history, it can be argued that capitalism has existed at any given place and time. Distinct from definitions that find the origin of capitalism in the human activities of trade or exchange, others define capitalism with reference to more specific factors, such as "the relation between wage labour and capital."²⁰ Karl Marx, for instance, "attributed the rise of capitalism to violent acts that expropriated the land and other property of the great mass of the population,"²¹ which gave birth to the mass of wage labourers who were required to sell their labour power to earn their survival. For Marx, the most significant effects of capitalism were the emergence of exploitative capital with the concentration of the means of production in the hands of capitalists, the emergence of the working class as the organisation of labourers, and the relationship between these two classes.

¹⁸ Michael Perelman, "The History of Capitalism," Alfredo Saad-Filho, ed., *Anti-Capitalism: A Marxist Introduction* (London: Pluto Press, 2003), pp. 120-21.

¹⁹ Anthony Giddens, *The Nation-State and Violence* (Cambridge: Polity Press, 1985), p. 126.

²⁰ *Ibid.*, p. 119.

²¹ *Ibid.*, p. 121.

Anthony Giddens points out that modern capitalism differs from the pre-existing profit making activities of exchange or trade in various ways. He defines modern capitalism as something that involves the following; 1) “[r]ational capitalistic enterprises with fixed capital;” 2) the “existence of a mass of free wage-labour;” 3) the “formation of clearly designated and co-ordinated tasks in the business organization;” 4) the “connecting of individual capitalistic enterprises within a market economy;” and 5) the “provision for the wants of the whole of the population predominantly by means of capitalist production.”²² Using this definition, Giddens places the origin of capitalism in Europe some four centuries ago.²³ Max Weber, who locates the origin of capitalism earlier in more basic human activities of exchange for mutual benefits, had a different definition for the capitalism of his age. He states in his *General Economic History*, first published in 1923, that the “present-day capitalism” involves 1) “the appropriation of all physical means of production;” 2) “freedom of the market;” 3) “rational technology;” 4) “calculable law;” and 5) “free labour.”²⁴ These different definitions of capitalism make it clear that there is no one definite definition of capitalism, but the definition of capitalism alters with time and surrounding conditions.

While the definition of capitalism may alter over the course of time, the driving forces of capitalists as profit pursuers, which are “the imperatives” to “accumulate relentlessly and constantly maximise their profits,”²⁵ remain constant across the various definitions. Moreover, because capitalists “generally need no direct control of coercive military or political force to exploit their workers,”²⁶ and also because “the economic hegemony of capital can extend far beyond the limits of direct political domination,”²⁷ capitalists were able to expand their profit pursuant activities beyond the nation state as soon as the physical conditions (such as the development of transportation and communication systems) made it possible, bringing about the development of the global market and hence globalization. As a result, capitalism in the 21st century has significantly different characteristics from the capitalism defined by Adam Smith, Max Weber, Karl Marx, or Anthony Giddens, or from the forms of capitalism practised in the Industrial Revolution or even of the early and mid 20th century. The capitalist economic activities currently taking place in the 21st century mainly in the Western world as well as in

²² *Ibid.*, pp. 126-28.

²³ *Ibid.*, p. 133.

²⁴ Max Weber, *General Economic History* (New York: Collier Books, 1961), pp. 208-9, quoted in Tom Bottomore, *Theories of Modern Capitalism* (London: Unwin Hyman, 1985), pp. 23-24.

²⁵ Ellen Meiksins Wood, “Globalisation and the State: Where is the power of Capital?” Saad-Filho, ed., *op. cit.*, p. 132.

²⁶ *Ibid.*, p. 127.

²⁷ *Ibid.*, p. 128.

some other parts of the world, which experienced modernisation earlier, are now in the post modernisation phase, in which a large part of their capitalist economic activities does not involve the means of production or labour power but mainly consists of dealing with knowledge, high-technology, and investment. A great deal of national income in these states comes from organising other countries' industries, or managing global finance, rather than simply from their own industries. Hence, capitalism of the present day is dominated by the financial markets as opposed to activity in the productive economy which characterised capitalism in its early stages.

Therefore, when the term "capitalism" is brought up in the discussion of this thesis, its definition depends on the stage and phase of economic development of the society in question. To begin with, the discussion of this thesis finds the origin of capitalism in the Industrial Revolution in England and defines the capitalism of that time as a form of economic system in which capitalists, who own the resources of production, buy labour force from labourers, who do not own any means of production except for their own labour power. In this economic system, capitalists use the labour power and their resources to manufacture commodities, and gain profit from the difference between the value gained by selling the product and the value paid in order to manufacture the product. Therefore, when capitalism is discussed in relation to its development in England or its introduction to Japan, it refers to the form of system which predominantly involves productive industries. However, when capitalism is referred to, for example, in the discussion concerning contemporary Japanese society, the economic system involves finance to a much greater degree.

Structure of the thesis

The structure of this thesis is as follows. The first three chapters investigate the phenomena of individualism, industrialisation, and human rights, principally focusing on their origins, conceptions, and interrelationships. Chapter one asks: When did English society become one in which individuals considered themselves as supreme and put their own interests before those of society? The investigation begins by looking into the origin of the individualistic way of thinking, which supported the individualisation of English society as a philosophical background. The chapter proceeds to outline the physical transformations of English society caused by industrialisation and its effect on individualisation. In England, the idea of human rights developed in response to the necessity to protect people against the forces of industrialisation, especially against the threats created by the emergence of a capitalist market economy. The attribution of rights won through workers movements against exploitation provided individuals the means to put their own interests before those of groups, shifting the society towards being predominantly individualistic.

Chapter two studies the consequent dilemmas that the interrelationships among individualism, human rights, and industrialisation create in the contemporary world. As modernisation becomes a world-wide phenomenon, the interrelations among these three concepts offer both possibilities for, and limitations to, widening the applicability of human rights beyond the Western world. In regard to the interrelationship between human rights and industrialisation, rapidly expanding industrialisation has created the exploitative conditions necessitating human rights claims in many parts of the world. At the same time, with regard to the interrelationship between human rights and individualism, the dominant tradition of collectivism in non-Western societies has been hampering the functioning of human rights practice. These possibilities and limitations of human rights implementation in non-Western societies, originating from the expansion of modernisation and the persistence of collectivist culture, create dilemmas in a society having both a strong necessity for, and difficulty in implementing, human rights. Whilst investigating this dilemma in non-Western societies, the chapter also examines the claims which deny the very cause of the dilemma, that is, the necessary connection between human rights norm and individualism. These claims assert the applicability or existence of human rights norms in traditional cultures of the non-Western world: hence Yougindra Khushalani claims that the “concept of human rights can be traced to the origin of the human race itself” and that “[a]ll societies have human rights notions.”²⁸

Chapter three investigates the conceptual expansion of human rights which has been taking place in response to the demands for the wider application of human rights norms. As the issue (or just the term) of human rights becomes increasingly invoked in the international arena, demands for the conceptual expansion of human rights have been actively voiced from the non-Western countries, where a large diversity of cultures and traditions exist. They argue that their own cultures and values should also be considered and reflected in the conceptualisation of human rights. Some conceptual expansion is, indeed, constantly necessary for the adaptation of human rights norms to an ever-changing world. Making some additions to the concept may also work to reduce the difficulties non-Western societies face in promoting human rights practice in their countries. However, the unlimited expansion of the concept of human rights ultimately damages the virtue of the norm. Certain restrictions are necessary, especially in areas related to collectivism and collective human rights. Although there may be collective human rights, not all group rights are human rights: this chapter explores where to draw the line.

²⁸ Yougindra Khushalani, “Human Rights in Asia and Africa,” *Human Rights Law Journal* Vol. 4, No. 4 (1983), p. 404.

The latter four chapters of the thesis provide a case study on Japanese society. Japan was the first non-Western country to become fully modernised with a successful capitalist economy, and yet, its traditional value of collectivism has persisted. Therefore, the case study provides a fertile ground on which to investigate the efficacy of human rights implementation in the absence of a fully enrooted concept of individualism, as well as further elucidating the dilemma modernisation poses for non-Western societies. Chapter four begins by looking at the historical background of Japanese group-oriented culture and examines the Japanese traditional village system which fostered community-centred values and the philosophical basis which sustained and consolidated the collectivist culture, namely, Shinto, Confucianism, and Buddhism.

Chapter five follows the modernisation of Japanese society and studies how collectivism persisted in the society preventing the permeation of individualism and further investigates how the movements of trade unionism and human rights failed in the process. Japan's modernisation began when the country opened itself to the West at the end of the 19th century. It broke down the traditional community system which provided essential social securities, and led people to seek substitute communities, which they found in companies that provided them with secure life-long employment and social welfare. People began to show companies the same kind of loyalty with which they previously held for traditional communities. By winning the workers' loyalty through modernisation, Japanese companies gained enormous power over the workers to the extent that they could withhold various rights from their employees. Through this analysis of Japanese modernisation, some comparisons are made with the experience of English society in order to study why individualism permeated in one society and failed to do so in another.

Chapter six illustrates the enterprise system of contemporary Japanese society. Despite the technological advancement and successful capitalist economy, the Japanese enterprise system remains solidly collectivistic, and it is often pointed out that Japanese companies resemble big families. When a person enters a company, he/she is trained to be a proper member of the company, where they most likely stay until retirement. Systems of lifetime employment, seniority wage, and various fringe benefits commonly employed by companies have deepened the dependence of workers to the company and consequently prevented the development of class consciousness among workers. An active movement of free trade union formation beyond the company boundaries never developed in Japan, hence the majority of union members in Japan today are members of enterprise unions that have several weaknesses in respect of protecting workers' rights. In the meantime, the overall consciousness of Japanese

workers about their rights remains low.

Chapter seven examines the consequences of having an advanced industrialised society and highly developed capitalist economy co-existent alongside deeply embedded, permeating, group-oriented values of collectivist culture. Since workers' loyalty does not change the nature of companies in the capitalist market as profit-pursuers, Japanese workers' low awareness about their rights has provided Japanese companies great opportunities to enlarge their profits by ignoring several employee rights. The pervasive practice of unpaid overtime and low uptake of paid annual holidays, which ignore the internationally recognised rights to rest, leisure, and limitation of working hours, are some examples of workers' rights violations commonly taking place among Japanese enterprises. The chapter tries to find out the mechanisms that encourage Japanese workers to devote themselves so completely to companies to the extent that they sometimes work themselves to death, while allowing their workers' rights to be ignored. The persistence of collectivism with a duty and group-oriented societal mentality, which restricts the effective functioning of human rights in the protection of human dignity, is found to be the key. Once a society is modernised the effective implementation of human rights becomes necessary but ultimately unobtainable in the absence of enrooted individualism. Thus, the violation of workers' rights in Japan embodies the dilemma of a society having advanced industrial capitalism in the absence of a real sense of individualism.

In the course of the discussion outlined above, this thesis points out the difficulties of diffusing individualism and implementing human rights in non-Western societies. However, this cannot justify the neglect of human rights or poor human rights records in these societies. Instead, the aim of the discussion is to investigate the cause of difficulties these non-Western societies experience in implementing human rights. Moreover, when the lack of human rights practice in Japanese society is pointed out in the thesis, some statements may seem to resemble the description of fascism. Nevertheless, none of the descriptions are intended to suggest the similarity. While the lack of human rights in fascist practice is caused by authoritarian suppression over the people, lack of human rights protection in the case of Japanese society engenders from its prevailing culture of collectivism. In the human rights discourse, there seems to be a tendency to regard having relatively well developed legislation for human rights protection as evidence of a good human rights record in a country. However, besides social systems, such as legislation, the pervading culture in the society plays an important role in the effective implementation of human rights. The permeating culture in a society – especially that of collectivism – can be a large obstacle for the effective implementation of human rights in a modernised society that requires human rights to function in order to safeguard workers

against the forces of capitalism. Having a collectivist culture, on one hand, and an industrialised capitalist society, on the other, creates a dilemma in a society, which needs to be recognised if we are to aim to move towards better human rights practices in these societies.

Chapter One

The Individualisation of Society and its Interrelation with Industrialisation and Human Rights

Looking back at human history, all societies, Western and non-Western alike, were originally collectivistic. As Marc Block points out, “Early societies were made up of groups rather than individuals. A man on his own counted for very little.”¹ Marx also observes the collectivistic relationship between individuals and communities in ancient times:

The further back we trace the course of history, the more does the individual, and accordingly also the producing individual, appear to be dependent and to belong to a larger whole. At first, the individual in a still quite natural manner is part of the family and of the tribe which evolves from the family; later he is part of a community, of one of the different forms of the community which arise from the conflict and the merging of tribes.²

To the world dominated by collectivism, however, individualism emerged at a certain point of the history, although there is no agreement on when the transformation occurred. Nevertheless, in examining the dilemma created within formerly collectivist societies by introduction of social conditions inline with individualism, which is the primary purpose of this thesis, it is indispensable to first investigate the origin of individualism and specify the social conditions surrounding the emergence.

For that reason, this chapter examines when and how individualisation of society first occurred. The argument suggests that individualism, the idea of human rights, and industrialisation all emerged first in England in relation to one another. The idea of human rights arose in response to the demand to protect people against the forces of industrialisation, and the attribution of rights to individuals completed the individualisation of a society for the first time in human history. In the course of the discussion, this chapter first examines the origin of the individualistic way of thinking, followed by the outline of the physical transformations of English society, caused by industrialisation accompanying the emergence of capitalism, a mass of wage-labourers, the labour movement, and human rights, which altogether resulted in the individualisation of the society.

¹ Marc Bloch, *French Rural History: An Essay on its Basic Characteristics*, trans. J. Sondheimer (London: Routledge & Kegan Paul, 1966), p. 150.

² Karl Marx, *A Contribution to the Critique of Political Economy*, trans. S. W. Ryazanskaya (London: Lawrence & Wishart, 1971), p. 189.

The origin of the individualistic way of thinking

Individualistic ways of thinking, in which the needs of each individual come before the good of the community, society, or state as a whole, and which provide the origin for the idea of individualism, can be traced far back in the history of Western philosophies and religions. If we look at early human civilisations, the first hint of individualistic thinking appears in Greek philosophy. Ralph Ketcham suggests that Greeks “made profound and creative departures from ancient custom wherein ‘most primitive peoples had little consciousness of themselves as individuals apart from the tribe’.”³ Of the Greek philosophers, the Sophists of the 5th century BC were among the first to be somewhat individualistic. They claimed no norms of proper behaviour and argued that it was up to the individual to decide what was good and right. They also held that the goal was teaching their pupils’ “individual success,” which is “a key idea of individualism.”⁴ However, the Sophists met powerful opposition from other philosophers, such as Socrates, Plato, and Aristotle, whose theories subordinated the good of individuals to that of their city-states (*polis*). Although citizens of the *polis* enjoyed such norms as equal freedom of speech and equality before the law, individuals were identified only as citizens of the community or *polis*, and the *polis* was regarded as being of absolute importance. In this sense, Plato’s *Republic* and Aristotle’s *Politics* are certainly collectivistic. Therefore, although some emphasis on individual choice and personal responsibility can be observed in Greek culture, it “lacked (indeed repudiated) any model of the *autonomous* (independent, socially disconnected, self-willed) individual.”⁵

Since an adequate formation of individualism cannot be found in classical philosophy, we shall now turn to the history of religion, for, as Louis Dumont points out, “religion influences the whole of society and has a direct connection with human behaviour.”⁶ Dumont asserts that the seed of individualism was born with the emergence of Christianity and developed along with religion. He views the issue of the origin of individualism as a question of how a new pattern of thinking, which contradicted the existing common values, was able to be born from a holistic society, in which the society as a whole was considered to bear the utmost importance. Dumont finds the answer to this question in the religious hermits, who he calls the “individuals-outside-society.” Dumont suggests that if individualism was born from traditional

³ Ralph Ketcham, *Individualism and Public Life: A Modern Dilemma* (New York: Basil Blackwell, 1987), p. 34, with a citation from Herbert Muller, *The Individual in a Revolutionary World* (Toronto, 1964), p. 8.

⁴ Harry C. Triandis, *Individualism & Collectivism* (Boulder: Westview Press, 1995), p. 20 (Emphasis original).

⁵ Ketcham, op. cit., p. 37 (Emphasis original).

⁶ Translated from Louis Dumont, *Kojinshugi Ronkou [Essays on Individualism]*, trans. from French to Japanese, Kouzou Watanabe and Fusakazu Asano (Tokyo: Gensousha, 1993), p. 40.

holistic society, it probably had to emerge as something that both supplemented and confronted society, i.e. as in the case of the “individuals-outside-society.” The original Christian doctrine stressed the importance of one’s individual belief and one’s relation with God, and Dumont contends that those followers of early Christianity were “individuals-outside-society.” They left secular society in pursuit of their beliefs, and therefore, were individuals who put utmost importance to their concerns without a need to consider the interest of society. They existed outside of society in a way that was incompatible with the secular world.⁷

The view that finds the source of Western individualism in Christianity is widely shared among social scientists and historians. Emile Durkheim claims that individualistic ethics derived from Christian morality. “The originality of Christianity,” he writes, “consisted precisely in a remarkable development of the individualistic spirit.”⁸ In *The Discovery of the Individual 1050-1200*, Colin Morris also asserts that “the Western view of the value of the individual owes a great deal to Christianity” and that a “sense of individual identity and value is implicit in belief in a God who has called each man by name.”⁹ Morris finds “confidence in the individual’s value,” in the Christian tradition of “the belief in his continued life after death.” He compares this with the Asiatic and Eastern tradition of believing in reincarnation: “Belief in reincarnation virtually excludes individuality in the Western sense, for each person is but a manifestation of the life within him, which will be reborn, after his apparent death, in another form.”¹⁰ Similarly, Ketcham points out the emphasis Christianity places on the salvation of the individual soul and asserts that “the Christian gospel declared the unique and inviolable worth of every person in the sight of God.”¹¹ Ketcham further comments that Jesus of Nazareth taught people to give priority to their “individual soul-searching and righteousness” over politics and to limit their political life in order to follow the “supreme standard, divine will and law.” The communities and institutions of faith and piety “could not be political and public” but “rather had to be private and in some way volitional and inward-turning.”¹²

The teaching of Jesus of Nazareth that tells people to keep away from politics in order to concentrate on their piety was strictly followed by his early followers who were what Dumont calls “individuals-outside-society.” However, the situation altered considerably as the Church began to wield significant power over states and became increasingly involved in politics. As

⁷ *Ibid.*, pp. 39-84.

⁸ Emile Durkheim, “Individualism and the Intellectuals” (1898), *Emile Durkheim: On Morality and Society*, ed. R. Bellah (Chicago: University of Chicago Press, 1973), p. 52.

⁹ Colin Morris, *The Discovery of the Individual 1050-1200* (New York: Harper & Row, 1972), p. 10.

¹⁰ *Ibid.*, pp. 2-3.

¹¹ Ketcham, *op. cit.*, p. 37.

¹² *Ibid.*, pp. 38-39.

Dumont points out, the first move of this kind was made in the early fourth century when Constantine the Great converted to Christianity. This conversion of the emperor reduced the distance between the state and the Christian church. Four centuries later, Dumont argues, a further drastic move was made by the Pope, who cut off relations with the Byzantine Empire and declared that the church from then on governed the world (Western Europe). Thereafter, according to Dumont, Christian individuals merged into secular society to be “individuals-inside-society.”¹³ Through these piecemeal changes of the position of Christianity, the nature of the religion itself also altered from the one that first emerged from holistic society in the form of religious hermits independent of any secular world. As Christianity gained a powerful position in the secular world, the communities and institutions of faith and piety became highly hierarchical and reflected a strong sense of membership and belonging. Those “individuals-inside-society” no longer reflected the sense that the individuals came before the interests of the whole community. Instead, the Church placed importance on the whole above individuals, and as Steven Lukes asserts, Catholics had a “view of a relation between God and the whole of mankind, and of the collectivity of the Church as the mediator of redemption.”¹⁴ Catholicism had become highly collectivistic.

However, a strong reaction arose in response to the collectivistic conduct of the Catholic Church, as Reformation movements swept through Europe. Luther advocated the doctrine of “justification by faith alone” and asserted that the individual should commune directly with God, not through the mediation of any institutions. The movement led to the rise of Protestantism and, specifically, Calvinism, which stressed the importance of individual achievement and taught followers to concentrate on the salvation of their own souls. It was through this highly individualistic doctrine of Calvinism that the “idea of the individual’s supreme worth under the sovereign will of God” was affirmed.¹⁵ Max Weber explains how “the Puritan divines brought about a profound depersonalization of family and neighbourhood life when they demanded that a man be sober in his love for his next of kin and his associates so as not to jeopardize the work of his ‘calling’.” According to Weber, the Puritan movement reduced the sense of belonging, and the “emotional detachment within the community also reduced the social distance between its members and the strangers beyond the ‘gate’.”¹⁶ Weber further asserts that the Reformation provided the basis for some countries’ individualistic national characters:

¹³ Dumont, op. cit., pp. 39-84.

¹⁴ Steven Lukes, *Individualism* (Oxford: Basil Blackwell, 1973), p. 95.

¹⁵ *Ibid.*, p. 45.

¹⁶ Reinhard Bendix, *Max Weber: An Intellectual Portrait* (Berkeley: University of California Press, 1960), pp. 70-71.

In its extreme inhumanity this doctrine must above all have had one consequence for the life of a generation which surrendered to its magnificent consistency. That was a feeling of unprecedented inner loneliness of the single individual. In what was for the man of the age of the Reformation the most important thing in life, his eternal salvation, he was forced to follow his path alone to meet a destiny which had been decreed for him from eternity. . . . this inner isolation of the individual . . . forms one of the roots of that disillusioned and pessimistically inclined individualism which can even to-day be identified in the national characters and the institutions of the peoples with a Puritan past.¹⁷

Thus, the philosophical background for individualism in the West developed along with the history of Christianity: as Troeltsch claims, “the really permanent attainment of individualism was due to a religious and not a secular movement, to the Reformation and not the Renaissance.”¹⁸ Nevertheless, it was not this philosophical background alone that brought about the individualisation of the society. In order for a society to become one in which individuals are considered to have precedence over the good of community or state as a whole, other factors are also necessary, to which this discussion now turns.

The individualisation of a society

It is widely agreed that English society was the first society to become individualistic. However, there is no generally agreed view on the moment or cause of the individualisation. Some set the origin of individualism in English society around the 16th century or later, while others find it much earlier. The question to be asked is: When did English society become a society in which people with their inalienable rights put their own needs before those of the society and what caused the transfer? First of all, the following discussion shall study the assertions which claim that the individualisation of English society occurred much earlier than the 16th century. Among those who see the origin of English society’s individualisation further back in history, Macfarlane presents a prominent voice. He claims that modern individualism had existed in English society as early as the 13th century. The evidence he provides for his argument is especially significant because it explains why England was first to be industrialised and individualised.

In his discussion, Macfarlane notes the institution of primogeniture, which was introduced into England at the time of the Norman Conquest and was firmly rooted in the society by the 13th century. He points out that this system, in which only the first-born male inherited the estate

¹⁷ Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, trans. Talcott Parsons (London: Unwin University Books, 1965), pp. 104-5.

¹⁸ E. Troeltsch, *The Social Teaching of the Christian Churches* (New York, 1931), Vol. I, p. 328, cited in Lukes, op. cit., p. 94.

by law, created many social conditions whose cumulative effect helped differentiate England widely from Continental Europe and the rest of the world. Macfarlane argues that, as one effect of the system of primogeniture in England from as early as the 13th century the principal social unit was a nuclear family. Children, other than the eldest son, had to leave the family sooner or later, and most people did not stay in the community (parish) where they were born. There was little attachment between people and the land. Most importantly the institution of primogeniture created individual property rights, which were totally absent in a classical peasant society. According to Macfarlane, individual ownership in England made selling land easier, and there was an active land market by the 13th century.¹⁹ In a peasant society the land is co-owned by a family or a group who live together and work together on the land. In these societies, where the bond between people and land is strong, it is quite rare, or even unthinkable, to sell the land. People remain in the village community for their entire lives and work to gain from the land. Consequently, there is no wage-labour involved. To the contrary, Macfarlane argues, in England many people were detached from the land and worked for wages as servants or labourers. Macfarlane contends that “probably over half the adult male inhabitants of England in the thirteenth century . . . owned no land, but were servants or labourers.” He summarises the uniqueness of England as follows:

It is arguable that the presence of cash, towns and markets, trade and the other factors . . . already separated England in the thirteenth century from other rural societies. England may have been rural and ultimately dependent on agriculture, but strangely it was almost certainly not a subsistence society where land and its ownership was the only means of wealth.²⁰

As Macfarlane points out, there were ways open for people, especially for those sons who did not inherit any property, to work hard, climb up the social hierarchy, and become affluent.

Macfarlane asserts that he “could describe thirteenth-century England as a capitalist-market economy without factories” and that this assertion carries implications concerning “the origin of modern individualism” because it can no longer be explained “in terms of either Protestantism, population change, the development of a market economy at the end of the middle ages, or the other factors.” He claims that individualism “predates sixteenth-century changes and can be said to shape them all.” According to Macfarlane, individualism can only be explained by tracing its origins back “even further than” the 13th century. He suggests that “since at least the thirteenth century England has been a country where the individual has been more important

¹⁹ Alan Macfarlane, *The Origins of English Individualism: The Family, Property and Social Transition* (Oxford: Basil Blackwell, 1978), p. 123.

²⁰ *Ibid.*

than the group and the hierarchy of ranks has not been closed.”²¹ Macfarlane concludes that “the majority of ordinary people in England from at least the thirteenth century were rampant individualists” who were “ego-centred in kinship and social life,”²² and that the origin of English individualism can be found at least in the 13th century or rather “from time immemorial.”²³

However, as Macfarlane himself points out, those individualistic features of thirteenth-century English society to which he refers, such as the existence of individual property rights, nuclear families, high geographical and social mobility, wage labour and developed towns and markets, were, in the case of England, causal conditions for society to become industrialised and not evidence of the society’s being individualistic. (This can be confusing since in the contemporary world, those individualistic features mentioned above generally occur as the consequences of industrialisation.) Indeed, hardly any evidence has been provided that suggests English society was individualistic before its industrialisation, i.e. that people considered themselves to be of supreme value and made decisions according to their own, rather than society’s wider interests. Even if a society is not a traditional peasant society, it does not necessarily mean that the society is individualistic, as is evident in the contemporary world. Following industrialisation the societies of some Asian countries are no longer peasant societies but still highly collectivistic.

A large majority of the English population were peasants before the Industrial Revolution. Although servanthood or wage-labour were quite common, many of the people in these occupations went back to farming after marriage or having accumulated enough money to purchase land. Despite the existence of some individualistic conditions, most people in England before the Industrial Revolution worked on land and belonged to one community or another. Consequently, English society in the Middle Ages still showed various collectivistic characters that are common in peasant societies. For example, Macfarlane, citing R. H. Hilton, explains that in late fourteenth century England, “[v]illages were little closed worlds, ‘jealous of the intrusion of strangers within the boundaries of concern’ of what was still an ‘interlocked community’.”²⁴ This exclusiveness of the community is a collectivistic society’s feature, which can be observed in many non-Western societies today. Summarising Donald Coleman’s analysis of sixteenth century England, Macfarlane describes it was “a society in which the small

²¹ *Ibid.*, pp. 196-97.

²² *Ibid.*, p. 163.

²³ *Ibid.*, p. 170.

²⁴ *Ibid.*, p. 55, with a citation from R. H. Hilton, *The English Peasantry in the Later Middle Ages* (Oxford, 1975), pp. 28-9, 56, 54.

local unit was important and custom was king, though all this was beginning to break up under the impact of trade, bullion, intellectual innovations and other factors.”²⁵

A similar view is presented in Walter Ullmann’s *The Individual and Society in the Middle Ages*. Ullmann articulates a theory which argues that in the Middle Ages, “the individual did not exist for his own sake, but for the sake of the whole society.” The individual was “wholly submerged in society for the sake of the well-being of society itself,” and “his interests could easily be sacrificed at the alter of the public good, at the alter of society itself.”²⁶ The common thread linking these various assertions together is that English society had a collectivist character until at least the 16th century. As pointed out by Macfarlane, English society had physical features indicative of individualistic society, such as individual property rights, nuclear families, high geographical and social mobility, wage-labour, and developed town and market, from as early as the 13th century. However, these features were causal conditions for English society to become industrialised and not the evidence of its being individualistic. The individualisation of English society did not occur until the era of the Industrial Revolution, when industrialisation brought about further changes to the society.

The Industrial Revolution and urbanisation

A change to the social structure occurred in rural districts prior to the Industrial Revolution. The enclosure of land was common from the 1760s onwards, and seven million acres of land was enclosed by yeomen or wealthier farmers in the period between 1760 and 1815. Before this agrarian revolution, tenant farmers had cultivated open fields and grazed cows and sheep on common land, but following the enclosures these lands were surrounded with boundaries and converted into the private property of wealthier people. Tenant farmers lost what little property they had and, being deprived of the access to the means of production, they had little choice but to become wage-labourers. They either moved into the towns to become a factory worker or emigrated to one of the English colonies. The agrarian revolution converted a large number of peasants into unpropertied wage-labourers and consequently supplied the work-force necessary for the Industrial Revolution.²⁷

²⁵ *Ibid.*, p. 57, referring to D. C. Coleman, *The Economy of England 1450-1750* (Oxford: Oxford University Press, 1977).

²⁶ Walter Ullmann, *The Individual and Society in the Middle Ages* (London: Methuen & Co Ltd, 1967), pp. 42, 36.

²⁷ Kazumi Kenmochi, *Igisu Sangyokakumeishi no Tabi [Traveling the History of the Industrial Revolution of England]* (Tokyo: Nohon Hyouron-sha, 1993), pp. 237, 239, 243.

Masaomi Nagata, ed., *Sangyokakumei to Roudousha [The Industrial Revolution and Labourers]* (Kyoto: Mineruva-shobou, 1985), pp. 25, 26, 32.

England's experience of industrialisation in the late 18th century came before any other country in the world. The introduction of new machinery and large-scale production shifted the base of the English economy from agriculture to commercial industry. The invention of the steam engine by Watt in 1782 was especially significant, for it meant it was no longer necessary to build factories by the water.²⁸ Consequently, a large number of factories accumulated in cities and towns, mainly in the Midlands and the north. Combined with the large number of unpropertied wage-labourers, this resulted in rapid urbanisation of English society. The number of towns in England and Wales with over 20,000 habitants jumped up from 15 in 1801 to 63 in 1851.²⁹ By 1861 over half of the entire population lived in town, and by the end of the 19th century, the proportion reached almost 80 percent.³⁰ The Industrial Revolution detached people from rural agricultural communities and transformed them into individual wage-labourers.

The emergence of the capitalist economy and autonomous individuals

Along with enclosure and industrialisation, the emergence of the capitalist economy was another factor which promoted the individualisation of English society. Capitalism promotes the individualisation of society by destroying communities through the commodification of land and human labour power. The emergence of the capitalist economy accompanies the development of individual, private property. Property which used to be communally owned in "earlier social formations," such as common land or family land, becomes "fully owned by the individual." This individualisation of property ownership also applies to one's own labour force which is "the ultimate 'property' of an individual."³¹ Indeed for Max Weber "free labour force," liberated from communal constraints, is one of the necessary preconditions of capitalism.³² With emergence of a capitalist economy, people leave communities and develop into modern, private individuals. They no longer have obligations to communities and, instead, their "obligation to self and one's immediate family" becomes stronger: "The ideal capitalist, then, is an individualized, private, autonomous creature."³³ Yash Ghai also views the dynamics of the market economy through the notion of commodification of land and labour,

²⁸ Eric Hopkins, *Industrialisation and Society: A Social History 1830-1951* (London: Routledge, 2000), pp. 2,4.

²⁹ Besides the concentration of population into towns, the increase of the number of large towns also owes to the rapid growth of the population in England. From 1751 to 1861 the population of England and Wales increased from 6.5 million to 20.1 million, partly because of the Irish immigrants.

³⁰ Patrick O'Brien, and Roland Quinault, *The Industrial Revolution and British Society* (Cambridge: Cambridge University Press, 1993), p. 232.

³¹ Alan Macfarlane, *The Culture of Capitalism* (Oxford: Basil Blackwell, 1987), p. 223.

³² *Ibid.*, pp. 224, 226.

³³ Rhoda E. Howard, "Dignity, Community, and Human Rights," Abdullahi A. An-Na'im, ed., *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (Philadelphia: University of Pennsylvania Press, 1992), pp. 92-93.

asserting that the commodification in the developing market economy of the West “represented a shift from the community to the individual.”³⁴

However, serious consequences accompany the individualisation of society. Karl Polanyi points out in his *The Great Transformation* that “[t]o separate labor from other activities of life and to subject it to the laws of the market was to annihilate all organic forms of existence and to replace them by a different type of organization, an atomistic and individualistic one.”³⁵ According to Polanyi, detaching people from communal safeguards and isolating them from social relationships is dangerous because as a rule a human being is “submerged in his social relationships.” This is illustrated if we consider the case of a tribal society in which people intrinsically act not in pursuit of their individual interests but with the purpose of securing their position in the community. This is because in pre-modern, traditional types of society, one’s survival is guaranteed only as a member of a community, and if the community itself dies out, people have no means to survive. The collective survival of the community is, therefore, paramount, and it is expected that the collective interest is put before individual interests.³⁶ In fact, “[t]he individualistic savage collecting food and hunting on his own or for his family has never existed.”³⁷ In pre-modern societies, people secured their survival by safeguarding their positions in community through submerging their individualities and prioritising communal interests.

However, in the last decade of eighteenth century England, for the first time in human history, individual human beings became self-regulating, individualised units without communal safeguards to protect their lives.³⁸ Gaston Rimlinger summarises these transformations:

The structural transformation called industrialization was a fundamental cause of insecurity in that it shifted production from the self-employed household to wage employment in the factory or shop. The extended household was a production unit with its own internal distribution and mutual protection arrangement. The nuclear family – wage dependent, geographically mobile, and urbanized – could not provide the same protection, especially for its older or disabled members who could not be fitted into the industrial production process.³⁹

³⁴ Yash Ghai, “Rights, Social Justice, and Globalization in East Asia,” Joanne R. Bauer, and Daniel A. Bell, eds., *The East Asian Challenge for Human Rights* (Cambridge: Cambridge University Press, 1999), pp. 243-48.

³⁵ Karl Polanyi, *The Great Transformation* (Boston: Beacon Press, 1957), p. 163.

³⁶ *Ibid.*, p. 46.

³⁷ *Ibid.*, p. 53.

³⁸ *Ibid.*, p. 70.

³⁹ Gaston V. Rimlinger, “Capitalism and Human Rights,” *Daedalus* 112 (Fall 1983), pp. 53-54.

There was nothing there to save “the common people of England from the impact of the Industrial Revolution.”⁴⁰ Polanyi contends that “no society could stand the effects of such a system of crude fictions even for the shortest stretch of time unless its human and natural substance as well as its business organization was protected against the ravages of this satanic mill.”⁴¹

The systemic exploitation of labourers by capitalists

Indeed, a massive and systemic exploitation of workers took place in England during the Industrial Revolution. Individualised property ownership concentrated land in the hands of a few, leaving many people permanently landless. Those who lost their income guarantees from land crowded into big cities as employees of factories which, unlike the communities connected by land or clan, had no obligations towards the workers’ well-beings. Workers who needed to earn money for their survival had no means to protect themselves against the enormous power the capitalist market economy cast over them. The powerlessness of wage-labourers gave capitalists an opportunity to amass profit through labour exploitation. Factory owners took full advantage of the situation and made their employees work excessive hours in inhumane conditions with little pay.

Among the numerous cases reported, the following example of a 17-year-old boy gives some hint of the severity of the working conditions of this time. The boy was a labourer in a cotton mill, which opened in 1825, and worked 120 hours a week. His work started at 6 o’clock Monday morning and went on until 11 o’clock Tuesday night, resumed at 6 o’clock Wednesday morning, and did not stop until 11 o’clock Thursday night. He went back to work at 6 o’clock Friday morning and worked until 7 or 8 o’clock Saturday night. Throughout this long hours of work, he had to keep his eyes on a moving machine, even during his meals. At the end, he fell asleep while standing and sustained injuries by falling into the moving machine.⁴²

Frederick Engels provides comment and criticism of the long working hours during the Industrial Revolution, basing his arguments on the report by the Factories’ Inquiry Commission of 1833:

But even this long working-day failed to satisfy the greed of the capitalists. . . . Hence the manufacturers introduced the shameful system of night-work. Some of them employed two sets of operatives, each numerous enough to fill the whole mill, and

⁴⁰ Polanyi, op. cit., p. 76.

⁴¹ *Ibid.*, p. 73.

⁴² Masaji Arai, Hoshimi Uchida, and Kin-ichirou Toba, eds., *Sangyoukakumei wo Ikita Hitobito [People Who Lived through the Industrial Revolution]* (Tokyo: Yuhikaku, 1981), pp. 151-52.

let one set work the twelve hours of the day, and the other the twelve hours of the night. . . . Other manufacturers were yet more barbarous, requiring many hands to work thirty to forty hours at a stretch, several times a week, letting them get a couple of hours sleep only, because the night-shift was not complete, but calculated to replace a part of the operatives only.⁴³

Engels further points out that this routine of overwork seriously injured the health of workers and that many factory workers suffered from “[i]rritation of the whole nervous system, with general lassitude and enfeeblement of the entire frame.”⁴⁴ Factory owners’ neglect of workers’ safety also resulted in a large number of workers’ accidents. In fact, so many workers were involved in accidents that Engels described being in the city of Manchester as “like living in the midst of an army just returned from a campaign.”⁴⁵ Regardless of the seriousness of injury, workers normally received no compensation, for “what becomes of the operative afterwards, in case he cannot work” was “no concern of the employer.”⁴⁶

Despite such harsh treatment, workers could not expect any help from the government which had adopted a laissez-faire approach since the mid 18th century when the industrial policy of protecting wage-earners was abandoned. In the 16th century, it was the policy of Parliament to provide legislation, such as the Statute of Artificers of 1563,⁴⁷ to protect wage-labourers. Then wage-labourers considered the government as an institution to protect their interests. However, in the wake of the Industrial Revolution, Parliament gave in to the power of capitalists, who had become the dominant actors in the government, and headed “straight for *laissez-faire*,”⁴⁸ under which no authoritative intervention to stop the exploitation of the weak by the stronger and wealthier could be expected. With the dominance of laissez-faire and social indifference towards the exploitation of workers, labourers needed to gain power to be heard and protect themselves. The endeavour of labourers to gain power ultimately took the form of a struggle of the working class against the capitalists and, as will be observed in the following section, went through various stages until the working class finally obtained an effective method of claiming their rights by forming trade unions.

⁴³ Frederick Engels, *The Condition of the Working Class in England* (Chicago: Academy Chicago Publishers, 1994), pp. 179-80.

⁴⁴ *Ibid.*, p. 180.

⁴⁵ *Ibid.*, p. 192.

⁴⁶ *Ibid.*, p. 193.

⁴⁷ The prescription of this Statute was one distinct example of the government’s efforts to stabilise the Standard of Life of wage-earners and “securing to all wage-earners a ‘convenient’ livelihood.” It stated the necessity of apprenticeship, regulated the length of its term, and the number of apprentices to be taken by each employer. (Sidney and Beatrice Webb, *The History of Trade Unionism* (Clifton, New Jersey: Augustus M. Kelley Publishers, 1973), pp. 48-49.)

⁴⁸ Webbs, op. cit., pp. 51, 56 (Emphasis original).

Labourers' fights for power

Initially, labour protests were limited to individual actions. After the outbreak of industrialisation, labourers' dissatisfaction was manifested in an increase of crime:

The earliest, crudest, and least fruitful form of this rebellion was that of crime. The working-man lived in poverty and want, and saw that others were better off than he. It was not clear to his mind why he, who did more for society than the rich idler, should be the one to suffer under these conditions. Want conquered his inherited respect for the sacredness of property, and he stole. We have seen how crime increased with the extension of manufacture; how the yearly number of arrests bore a constant relation to the number of bales of cotton annually consumed.⁴⁹

However, these individual actions of resistance were ineffective and did not obtain any power for the working class to protest against the exploitation of the capitalists: "The criminal could protest against the existing order of society only single [sic], as one individual; the whole might of society was brought to bear upon each criminal, and crushed him with its immense superiority."⁵⁰

After the failure of individual actions, labourers began collective action to further their common interests. They first tried machine-wrecking (Luddite Movement), which, again, did not help them gain any power, for the movement was isolated, restricted to certain locations, and directed against only one feature of the overall problem they faced. When "the momentary end was attained, the whole weight of social power fell upon the unprotected evil-doers and punished them to its heart's content, while the machinery was introduced none the less."⁵¹ Subsequently labourers began to act through trade unions, although the process of their becoming an effective movement of opposition was "a long series of defeats of the working-men, interrupted by a few isolated victories."⁵²

Trade unionism

Engels describes the nature of trade unionists as follows:

[T]he state of the case is such that whatever goes into the pockets of the manufacturers comes of necessity out of those of the worker. So that even if the working-men did not know that the Unions hold the emulation of their masters in the reduction of wages, at least in a measure, in check, they would still stand by the Unions, simply to the injury of their enemies, the manufacturers. In war the injury of one party is the

⁴⁹ Engels, op. cit., p. 240.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, p. 241.

⁵² *Ibid.*, p. 243.

benefit of the other, and since the working-men are on a war-footing towards their employers, they do merely what the great potentates do when they get into a quarrel.⁵³

In the age before the formation of trade unions, wage-labourers had their interests protected by joining guilds, with certain guarantees also coming from Parliamentary legislation. However, with the decline of the guild system, skilled craftsmen began meeting in local pubs in order to protect “their status and standard of living” in the changing environment of the early 18th century.⁵⁴ In the mid 18th century Parliament, which had adopted the doctrine of laissez-faire economics, repealed the legislative protection of skilled craftsmen, increasing the necessity of trade unions as the tool to “wring from their employers better wages and shorter hours of labour.”⁵⁵ Consequently, unions began to exist in most of the skilled trades, providing exclusive and solid unities for mutual help and protection. Trade unionism further developed in England during the Industrial Revolution, which replaced masters and apprentices with capitalists and labourers. In the process of industrialisation, work that used to be done by hand was carried out by machines, and apprentices and craftsmen lost their once held prospects of one day becoming an employer. They were now permanent wage-labourers and sought the means to maintain their status and standard of living by forming trade unions.

Despite their origin as organisations of skilled craftsmen, trade union formation eventually extended to incorporate unskilled factory labourers, and towards the end of the 18th century the growth of trade unionism increased the number of strike activities. However, this was not welcomed by the governing authorities. Alarmed by the revolutions overseas, the British governing class met the demands of the capitalist class for more discipline over the workers, which resulted in the adoption of the Combination Acts of 1799 and 1800. These Acts extended the ban on forming associations from particular trades, and their infringement was punished with severe penalties including imprisonment. Francis Place illustrates the misery that these regulations cast over the textile workers at this time:

The sufferings of persons employed in the cotton manufacture were beyond credibility: they were drawn into combinations, betrayed, prosecuted, convicted, sentenced, and monstrously severe punishments inflicted on them: they were reduced to and kept in the most wretched state of existence.⁵⁶

In response to the hostile environment, the union movement went underground and increased its violent activities. This strong resistance from the labourers forced the governing class to

⁵³ *Ibid.*, pp. 248-49.

⁵⁴ Henry Pelling, *A History of British Trade Unionism* (Middlesex: Penguin Books, 1963), p. 24.

⁵⁵ Webb, *op. cit.*, p. 44.

⁵⁶ Cited in Webb, *op. cit.*, p. 86, from Francis Place.

reconsider the effect of the legislation concluding that the law “tended to aggravate ill-feeling between masters and workmen without effectively suppressing combination.”⁵⁷ Following this conclusion, the bill to repeal the Combination Laws passed through Parliament in 1824, and in 1825 trade unions were legalised, giving working-men the right to free association and collective bargaining. Hence, the whole class of labourers obtained some power to be heard for the first time.

However, this was not the end of the labour struggle against the capitalists. Workers’ rights and activities were still strictly limited by legal restrictions, such as the law enacted in 1825, which outlawed any agitation intended to lead workers to strike or join a union. The trade union activities were restricted to the negotiation of wage agreements. Unions had to struggle for another half a century before laws to restrict their activities were totally repealed in 1875. Following the legalisation of a wide range of union activities, labourers soon recognised that in order to be more effective it was necessary to form larger associations beyond individual trades, and the movement towards a national organisation and federal body of trade unions emerged. Alongside this nation-wide movement, demands for political power also emerged among labourers, which ultimately resulted in the Labour Party obtaining Parliamentary representatives in the early 20th century. Thereafter, the labour movement slowly worked to improve working conditions and raise the workers’ standard of living.

The idea of human rights

Throughout this long struggle of labourers to gain improvements in working conditions and standards of living, the movement was sustained by the philosophy that each person had a natural right to freedom and equality, i.e., the idea of human rights. Prior to the Industrial Revolution, the idea of human rights arose in England in response to the new forces of the state-system and capitalism, which created a modern society at the beginning of the 17th century. In English society before that time, much emphasis had been placed on one’s duties to society, the lord, the King, the Church and God. Rights belonged to those in power, and there existed neither the practice nor the concept of human rights. However, towards the end of the Middle Ages, the power of the aristocracy began to decline. The feudal system slowly began to break up, and power was eventually centralised into the hands of the king, marking the birth of the modern state and states system, and the beginning of the modern era.

At around the same time, the capitalist market economy emerged, and a new industrial class, the bourgeoisie, came to hold power in society. In the beginning, the bourgeoisie supported the

⁵⁷ Pelling, op. cit., p. 30.

king for their own benefits. However, as the power of the state grew stronger, the bourgeoisie started to demand more power, free from the influence of the king and state, and “[s]uch demands eventually took the form of arguments for the universal natural rights and equality of all people.”⁵⁸ Jack Donnelly explains that because the status of the bourgeoisie was not defined by birth as it was in the case of the king and aristocracy, the bourgeoisie needed guarantees to secure their own position and rights, and “[t]hus human rights came to be articulated primarily as claims of any individual against the state.”⁵⁹ Furthermore, the ideas of natural rights and equality had their conceptual foundation in the ideas of John Locke, who established the liberal tradition of human rights and included property as a right. Locke offered the essence of the liberal approach by advocating a commitment to equality, autonomy, and natural rights in his *Two Treaties of Government* (1689). He argued that each person had natural rights to freedom and equality, shifting the emphasis from natural law, which places more importance on duties, towards natural rights.

Although the idea of human beings as bearers of natural rights was first taken up by the bourgeoisie, it gradually became the basis of the claims made by the working class movement; the other new class created by the emerging capitalist economy. As explained earlier, commoditised land created many landless people who crowded into big cities as wage-labourers and formed the working class. Detached from rural communities, these wage-labourers urgently needed a new safeguard to replace their traditional communal protection, and, in response to such demands, human rights eventually emerged as their new safeguard against the power of the capitalists. The threat that capitalist markets cast over workers promoted the development of these rights to function as protection for the workers, thereby suggesting that “rights directed toward social justice and democracy have been secured through a struggle against capitalism.”⁶⁰ With rise of state power and capitalist economy, and the destruction of the traditional protective mechanisms of the community, the necessity for rights emerged and increased, shifting the location of importance from social obligations and duties towards individuals as rights bearers.

The completion of individualisation of English society

It was the restless struggle of the working class through the workers’ movement that realised the inalienable attribution of rights to every individual. As a result of the class struggle, trade unionism permeated English society, marking labour acquisition of the means to pursue their

⁵⁸ Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 1989), p. 70.

⁵⁹ *Ibid.*

⁶⁰ Ghai, op. cit., p. 247.

rights in order to secure their interests against those who threaten them. For the first time in human history, rights were attributed to individuals enabling them to put their own needs before those of society. English society became a society in which people put their own needs before those of the society as a whole in making decisions. Hereafter, English society not only had the physical features of individualistic societies, such as the nuclear family, wage labour, and high geographical and social mobility, but also fulfilled the view that in individualist societies, “the interests of the individual prevail over the interests of the group.”⁶¹ The eventual acquisition of rights by workers in the Industrial Revolution thus marked the completion of English society’s individualisation.

At first glance there seems an apparent contradiction in this narrative, in that it suggests the individualisation of society was ultimately made possible through the development of the trade union movement; a collective bargaining organisation, the principal purpose of which is to represent labour as a class or collective. However, one needs to be careful not to confuse collective bargaining with representing the interests of a collective – a confusion upon which the apparent contradiction is based. Although trade unions are organs for collective bargaining, they are not organs of collectivism: “On the whole, in spite of certain opposing tendencies trade unionism is to be regarded rather as an expanded form of individualism than any thorough collectivism.”⁶² Unlike the collectivist communities in traditional societies, whose principal concern was the interest of the society as a whole, rather than its individual members, the principal purpose of trades unions is to protect the individual interests of its members in relation to their employers. Workers act collectively simply because of the negotiating advantages it provides them, thereby contributing towards greater power-parity in their relations with their employers. Individual workers join trade unions to further their individual interests, and the interest of a trade union is a sum of the individual members’ interests. There is, therefore, no contradiction in the workers’ acquisition of individual rights, which marked the individualisation of English society, and their pursuit through collective means.⁶³

The view that the individualisation of society occurred only after the 18th century onwards in association with industrialisation is not an isolated one. For instance, Marx argues that the absorption of individuals into a larger whole ceased only in “the eighteenth century,” when “the various forms of the social texture confront[ed] the individual as merely [the] means towards his

⁶¹ Geert Hofstede, *Cultures and Organizations: Software of the Mind – Intercultural Cooperation and its Importance for Survival* (London: Harper Collins Business, 1991), p. 50.

⁶² Ernest Aves, in Charles Booth, and Ernest Aves, *Life and Labour of the People in London*, second series, volume V, quoted in Robert Currie, *Industrial Politics* (Oxford: Clarendon Press, 1979), p. 26.

⁶³ This argument is to be distinguished from the argument of collective human rights, which is discussed in chapter three.

private ends, as external necessity.”⁶⁴ David Riesman also claims that in “western history the Middle Ages can be considered a period in which the majority were tradition-directed,” and that changes occurring through “the Renaissance, the Reformation, the Counter-Reformation, the Industrial Revolution, and the political revolutions of the seventeenth, eighteenth, and nineteenth centuries” have “cut us off pretty decisively from the family- and clan-oriented traditional ways of life in which mankind has existed throughout most of history.” He explains that “the greatest social and characterological shift of recent centuries did indeed come when men were driven out of the primary ties that bound them to the western medieval version of tradition-directed society.”⁶⁵ It was through a long struggle in the age of industrialisation that people in English society became individuals with inalienable rights, and for the first time were able to put their own needs before those of society.

History of the term's usage

The history of the usage of the term, “individualism”, also sustains the view which finds the origin of individualist society after the 18th century. In fact, if the absence of the language required to express a concept is an indication of the absence of the concept itself, then there existed no notion of individualism before the early 19th century. As Alexis de Tocqueville remarks, “That word ‘individualism’, which we have coined for our own requirements, was unknown to our ancestors, for the good reason that in their days every individual necessarily belonged to a group and no one could regard himself as an isolated unit.”⁶⁶ The term “individualism” was first used in 1820s France as “*individualisme*”. The notion was, in general, given negative appraisals by the early 19th century French thinkers including de Maistre, the first person known to have used the word. He spoke of “this deep and frightening division of minds, this infinite fragmentation of all doctrines, political protestantism carried to the most absolute individualism.”⁶⁷ These thinkers regarded individualism as a synonym for egoism and as a menace to the interests of society or to the social order. In 1829, F. de Lamennais wrote, “*Individualism* . . . destroys the very idea of obedience and of duty, thereby destroying both power and law; and what then remains but a terrifying confusion of interests, passions and diverse opinions?”⁶⁸ Similarly, L. Venillot commented in 1843: “The evil which plagues France is not unknown; everyone agrees in giving it the same name: *individualism*. . . . All

⁶⁴ Marx, op. cit., p. 189.

⁶⁵ David Riesman, et al., *The Lonely Crowd: A Study of the Changing American Character* (New Haven: Yale University Press, 1961), pp. 6, 12-13.

⁶⁶ Alexis de Tocqueville, *The Ancien Regime and the French Revolution*, trans. Stuart Gilbert (Manchester: C. Nicholls & Company Ltd, 1976), pp. 120-21.

⁶⁷ “Extrait d’une conversation,” *Oeuvres complètes* Vol. XIV, p. 286, cited in Lukes, op. cit., p. 4.

⁶⁸ F. de Lamennais, *Dea Progrès de la révolution et de la guerre contre l’église* (1829) Ch. I, *Oeuvres complètes* (Paris, 1836-37) Vol. IX, pp. 17-18, quoted in Lukes, op. cit., p. 6 (Emphasis original).

for each, each for all, that is society; each for himself, and thus each against all, that is individualism.”⁶⁹

Among these French intellectuals, however, de Tocqueville provided a different approach to the word. He made a distinction between egoism and individualism, saying that selfishness is a “passionate and exaggerated love of self” which “originates in blind instinct” and “blights the germ of all virtues,” while individualism is “a mature and calm feeling.” For de Tocqueville one of the largest differences between selfishness and individualism is in the different influences they have on the relations between a person and society. Selfishness “leads a man to connect everything with himself and to prefer himself to everything in the world,” while individualism detaches each member of the community from “the mass of his fellows.” Individualism disposes a man to form “a little circle of his own” which consists of his family and his friends, and lets him “willingly leave society at large to itself.”⁷⁰

De Tocqueville also refers to the connection between the development of individualism and the emergence of democracy. Whereas “selfishness is a vice as old as the world,” individualism is a new norm developed along with the emergence of democracy and spreads “in the same ratio as the equality of condition.” He explains that the age of equality gave birth to individualism:

[I]n ages of equality every man seeks for his opinions within himself; I am now to show how it is that in the same ages all his feelings are turned towards himself alone. *Individualism* is a novel expression, to which a novel idea has given birth. Our fathers were only acquainted with *égoïsme* (selfishness).⁷¹

He points out that while selfishness “does not belong to one form of society more than to another,” individualism is “of democratic origin” and spreads as the idea of equality permeates a society.

It was in the translation of de Tocqueville’s *De la Démocratie en Amérique* [*Democracy in America*] that the term “individualism” first appeared in English in 1840. The translator, Henry Reeve, noted that the word would sound very strange as English, but as no equivalent expression existed in the language, he would use it as it was.⁷² In terms of the usage of the

⁶⁹ L. Veuillot, “Lettre à M. Villemain” (August 1843), *Mélanges religieux, historiques, politiques et littéraires* (1842-56), (Paris, 1856-60), 1ère série, Vol. I, pp. 132-33, quoted in Lukes, op. cit., p. 9 (Emphasis original).

⁷⁰ Alexis de Tocqueville, *Democracy in America*, Vol. II (1835), trans. Henry Reeve (New York: Vintage Books, 1945), p. 104.

⁷¹ *Ibid.* (Emphasis original).

⁷² Honma, intro., *Individualism, Old and New, Liberalism and Social Action, Freedom and Culture*, by

word in late 19th century England, individualism was mainly used in reference to English liberalism in contrast with “socialism”, “communism”, and especially “collectivism”.⁷³ The fact that the term “individualism” was absent in English until the 19th century indicates that individualism did not underpin the norms in English society before that time. It was only after the physical transformation of English society caused by industrialisation, accompanying the emergence of capitalism, labour movement, and idea of human rights, that English society for the first time in human history became individualistic.

The individualisation of societies today (Conclusion)

This chapter has investigated the origin of individualism as a way of thinking, and as a norm of society. The question asked was: When did English society become one in which individuals were able to put their own needs before those of society in making decisions? Despite the existence of physical features indicative of individualistic societies, such as individual property rights, nuclear families, high geographical and social mobility, wage-labour, and developed towns and markets as early as the 13th century, English society continued to show collectivistic characteristics with the customs and well-being of group or society taking precedence over the interests of individual persons until at least the 16th century. When the Industrial Revolution brought about rapid urbanisation, however, people became detached from rural communities which had provided the principal underpinning of collectivist characteristics in English society. People who no longer belonged to rural communities faced severe exploitation by emerging capitalists. They urgently needed to secure means to protect themselves against the overwhelming power of the capitalists and their effort to do so eventually took the form of class struggle. The restless fight of labourers which achieved the formation of the trade unions and secured political power realised the inalienable attribution of rights to individual workers, which for the first time in history equipped English people to put their own individual interests before those of the group, society, or state, marking the individualisation of the society.

Thus, the individualisation of a society first occurred in England in the Industrial Revolution, and eventually the rest of the Western societies followed the path, some of which, such as the United States, are today arguably more individualistic than England. However, it is not possible to draw parallels between the experience of English society and contemporary industrialising non-Western countries. When England began to industrialise, it had already experienced ideational and material conditions conducive to the individualisation of society. The institution of primogeniture, in existence at least as early as the 13th century, created those

John Dewey, trans. Norio Akashi (Tokyo: Kenkyu-sha, 1975), p. 19.

⁷³ Lukes, op. cit., p. 34.

physical conditions such as nuclear families, great geographical and social mobility, wage-labour, and the development of towns and markets. The philosophical basis for individualism was also present from the Reformation, a period which introduced “individuals-inside-society.” By the time industrialisation began, English society had already experienced transformations which provided the necessary conditions for the emergence of individualisation of society over a period of at least six to seven hundred years, and the full individualisation of society via the attribution of inalienable rights to individuals took two hundred years to be realised.

Unlike this gradual process of change in English society, today modernisation has occurred in many non-Western societies over very short time periods. Despite the large difference in historical backgrounds, especially in terms of religion and forms of societies which shape people’s social perceptions, systems of Western societies and new technologies have been projected onto non-Western traditional societies without allowing sufficient time for them to prepare for the huge transformation. However, as Macfarlane points out, when the attempted speed of change is too swift, “the trauma and difficulties” that modernisation causes to a society “will not only be very different but probably far more intense.”⁷⁴ He argues the necessity for considering the possible difficulties which may be caused by modernisation:

[I]f such countries absorb any form of western industrial technology, they are not merely incorporating a physical or economic product, but a vast set of individualistic attitudes and rights, family structure and patterns of geographical and social mobility which are very old, very durable, and highly idiosyncratic. They therefore need to consider whether the costs in terms of the loneliness, insecurity and family tensions which are associated with the English structure outweigh the economic benefits.⁷⁵

By following Western modernisation, a society also adopts such factors as the nuclear family, wage-labour, and urbanisation, which are incompatible with the long-cherished collectivistic form of society. Moreover, once a society embarks on the road to modernisation, there is no turning back, as Durkheim asserts:

For in order to halt its [individualism’s] advance it would be necessary to prevent men from differentiating themselves more and more from each other, to equalize their personalities, to lead them back to the old conformism of former times, to contain, as a result, the tendency for societies to become always more extended and more centralized, and to place an obstacle in the way of the unceasing progress of the division of labor. Such an enterprise, whether desirable or not, infinitely exceeds all human capability.⁷⁶

⁷⁴ Macfarlane, *The Origin*, op. cit., p. 202.

⁷⁵ *Ibid.*

⁷⁶ Durkheim, op. cit., p. 52.

Adopting a Western system and realising industrialisation may be accomplished within a relatively short period of time. The newly adopted institutions will destroy the old community system that used to provide people with social security, thereby generating the need for people to quickly adopt individualistic attitudes in order to protect themselves by claiming their rights. However, an individualistic way of thinking and behaving cannot be acquired as quickly as technology. While the rapid transformation of social systems creates a necessity for human rights to function, the long tradition of collectivism in the non-Western world prevents the smooth implementation of human rights in societies. This phenomenon, which many newly-modernised or modernising societies in the contemporary non-Western world have experienced, will be examined in order to consider the possibilities and limitations of expanding human rights in the next chapter.

Chapter Two

The Possibilities and Limitations of Human Rights' Expansion

The experience of English society demonstrates that the notion of human rights is deeply related to the phenomenon of industrialisation and the individualisation of society. The development of the idea and practice of human rights in England corresponded to the social changes which accompanied industrialisation. When English people became able to protect their interests by claiming their rights, English society became individualistic, for the first time. As modernisation becomes a world-wide phenomenon, generating industrialisation in many parts of the world, this interrelation between human rights, industrialisation, and individualism gives rise to a dilemma in non-Western, newly modernised or modernising societies by creating both possibilities and limitations in relation to the wider applicability of the idea of human rights beyond the Western world. A focus on the interrelation between human rights and industrialisation emphasises human rights as an effective mechanism to protect against the threats created by modernisation. Accordingly, this analytical lens suggests that the contemporary world-wide phenomenon of modernisation requires a requisite expansion of human rights implementation into the non-Western world. It indicates that people in many non-Western societies are today in a position where they need human rights to function as a new safeguard to replace their traditional communal protection systems. On the other hand, a focus on the interrelationship between human rights and individualism emphasises human rights as rights to be claimed to protect individual interests against those of groups. It highlights the restrictions that collectivistic cultures – which are still dominant in contemporary non-Western societies – place on the ability of human rights to function as people's safeguard against the forces of modernisation.

As well as pursuing the above argument, this chapter also examines those claims which cast doubt on the interrelationship between human rights and individualism. Included here are claims of the existence of human rights norms in non-Western collectivistic traditions or claims for the group-oriented approach to human rights. The purpose of these investigations is to understand more fully the dilemma many non-Western societies face today as a result of co-existing but contradictory possibilities and limitations facing the wider applicability of the idea of human rights beyond the Western world.

Human rights as one approach to human dignity

Before looking at the possibilities and limitations facing the wider applicability of human rights, some conceptual clarifications are necessary. First of all, it is important to note that human rights and human dignity are two separate notions and that human rights represents only one way of several possible approaches to the realisation of human dignity.¹ Protecting one's human dignity means protecting what makes one's life just and worthwhile. Because the pursuit of human dignity is similar to pursuing human happiness, and because in any culture human happiness lies in similar norms such as love, security, and escape from starvation, the realisation of human dignity involves these values whatever the form of society, although their specific interpretation may differ according to cultures, values and traditions. Protecting human dignity is, in general, one of the main concerns of any society, and there are various approaches towards its realisation including non-human rights approaches. R. Panikkar asserts that to "assume that without the explicit recognition of Human Rights life would be chaotic and have no meaning" is nonsense. "The problem is," according to Panikkar, "that we tend to identify the limits of our own vision with the human horizon."² He further points out: "Human Rights are one window through which one particular culture envisages a just human order for its individuals. But those who live in that culture do not see the window."³

A Japanese scholar, Yasuaki Oonuma, makes a similar set of claims. Oonuma maintains that the material and mental fulfilment of people's needs have been pursued in all civilisations, but that human rights are only one of many means to realise this end and not the end itself.⁴ In civilisations of the non-Western world, thoughts and systems for the fulfilment of material well-being and the welfare of societal members have never taken the form of human rights.⁵ The idea of human rights as inalienable rights to which everyone has equal and unconditional access is therefore completely foreign to people in traditional societies.

Traditional societies

Traditional societies are defined as "communal, status-based societies governed according to

¹ Harold Jacobson defines that human dignity "involves the guarantee of physical security and the satisfaction of basic material needs, as well as the provision, through a system of governance, of opportunities for the full realization of one's potential." (Harold K. Jacobson, "The Global System and the Realization of Human Dignity and Justice," *International Studies Quarterly*, Vol. 26, No. 3 (September 1982), p. 316.)

² R. Panikkar, "Is the Notion of Human Rights a Western Concept?" *Diogenes* CXX (1982), p. 87.

³ *Ibid.*, p. 78.

⁴ Yasuaki Oonuma, *Jinken, Kokka, Bunmei: Fuhenshugiteki Jinkenkan kara Bunsaiteki Jinkenkan he [Human Rights, Nation-state, and Civilisation: From Universal Human Rights to Intercivilisational Human Rights]* (Tokyo: Chikuma-shobou, 1998), p. 294.

⁵ *Ibid.*, p. 150.

principles and practices held to be fixed by tradition.”⁶ Most traditional societies are ethnically homogeneous and mainly agricultural. In those societies, a person is an integral part of a greater whole with obligations and duties to the community. Although most people have at least some kinds of rights and privileges, these rights and privileges are given only on condition that they fulfil their social roles and duties commensurate to their age, sex, and social hierarchy. As long as a person fulfils his/her role and duties as a societal member, the community will in turn provide the necessary support. Henry Shue points out that “the institutionalization of subsistence rights is in no way tied to some utopian future ‘advanced’ society. On the contrary, the real question is whether modern nations can be as humane as, in *this* regard, many traditional villages are.”⁷

In traditional Confucian societies, for example, each member secured his/her dignity by being an integral part of the whole community: “For Confucianism, the individual found dignity not in self-expression but in fulfilling the will of Heaven; not in individualism but in membership in family, clan, community; not in equality but in mutual respect within an hierarchi[c]al order.”⁸ Fulfilling one’s duty as a member of community is, in Confucian teachings, the key to a life with dignity and the only way of securing one’s place in society:

Among all the specific virtues conceived by the Confucians there is none which does not also take the form of a duty, since it is this sense of the harmonization of parts within a whole which preempts virtue as a duty. . . .

When the duties attached to virtues are performed, one naturally receives a place of dignity and respectability in society. . . . This means that the duty conception of virtues serves to protect the individual in society and community.⁹

The approach to human dignity in Confucian society was, and still is, quite remote from that envisaged by a human rights culture. As Venkat Iyer comments, in Asia it is commonly believed “that the excessive individualism of the West has little or no relevance to their needs, and that the traditional values of Eastern societies, which emphasise public duty over individual rights, have served them far better.”¹⁰ In Asian and also in other non-Western societies,

⁶ Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 1989), p. 75.

⁷ Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton: Princeton University Press, 1980), pp. 28-29.

⁸ Louis Henkin, “Epilogue: Confucianism, Human Rights, and ‘Cultural Relativism’,” Wm. Theodore de Bary, and Tu Weiming, eds., *Confucianism and Human Rights* (New York: Columbia University Press, 1998), pp. 311-12.

⁹ Chung-ying Cheng, “Transforming Confucian Virtues into Human Rights: A Study of Human Agency and Potency in Confucian Ethics,” De Bary, and Weiming, eds., op. cit., pp. 145-46.

¹⁰ Venkat Iyer, “Asian Values and Human Rights,” Venkat Iyer, ed., *Democracy, Human Rights and the Rule of Law: Essays in Honour of Nani Palkhivala* (New Delhi: Butterworths, 2000), p. 156.

precedence is put on community and duty over individuals' rights claims. Buultjens notes that in India, the "caste system produced group solidarity and collective group obligations."¹¹ In Indian society, the protection of human dignity is given to the people in return for their fulfilment of duties, and Buultjens states according to Hindu perceptions, "rights bring obligations, and the failure to perform obligations can reduce or deprive an individual of his or her rights – a theme that is antithetical to the Western view of the unalienable and inherent rights of each person."¹²

As for Islamic society, James Piscatori argues men "are to become slaves of Allah," and the "rights of man" are not inherent to his existence but are given only to Muslims who obey the government. Piscatori explains: "Men's due is not universally the same or automatically owed, but it is variable according to religious belief and dependent on good behaviour."¹³ Also, according to Legesse, most of traditional African societies share the principle of distributive justice, which ensures that the individual remains an integral part of the society. Individuals have secure places as members of a community and are quite "reluctant to celebrate individual achievement."¹⁴ Moreover, the emphasis put on duties in African societies is reflected in the text of the African Charter on Human and Peoples' Rights. The preamble of the Charter states that "the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone," and its Chapter II (Article 27, 28, and 29) is entirely devoted to the statements on duties, emphasising every individual's duty to his family, fellow beings, society, state, and other communities.

Although distinguishing these societies by calling them Indian, Islamic or African is an oversimplification of matters since each of them consists of many different ethnic groups, traditions and cultures, these brief examinations still help to indicate that the vast majority of the non-Western world traditionally retain their own approaches to human dignity, which are incompatible with the Western human rights approach.

Claims of the existence of human rights norms in non-Western traditions

Notwithstanding this incompatibility, however, a number of scholars and politicians claim that human rights norms have always existed in various non-Western cultural traditions. For example, scholars often compare certain virtues of Confucianism with that of human rights in

¹¹ Ralph Buultjens, "Human Rights in Indian Political Culture," Kenneth W. Thompson, ed., *The Moral Imperatives of Human Rights: A World Survey* (Washington DC: University Press of America, 1980), p. 113.

¹² *Ibid.*

¹³ James P. Piscatori, "Human Rights in Islamic Political Culture," Thompson, ed., op. cit., p. 142.

¹⁴ Asmarom Legesse, "Human Rights in African Political Culture," Thompson, ed., op. cit., p. 128.

order to argue that the same ideas exist in these two very different traditions. In her article “Human Rights: A Valid Chinese Concept?” Julia Ching “quite confidently” concludes that human rights are a valid Chinese conception, as “[s]upport for certain human rights concepts can be found in the writings of leading Confucian thinkers, early and late.” She also states that “the observance of democratic practices and human rights is not incompatible with, and can be beneficially adapted to, Confucian traditions.”¹⁵ However, in the same article, she notes that the “Chinese language does not have an exact equivalent for the word ‘rights’.” Ching explains: “Literally, ‘human rights’ is translated as *renquan*, ‘human power,’ one reason why the struggle for human rights has been understood by the Communist state as a fight for political power, and therefore, a threat to the establishment.”¹⁶ In order to translate Western ideas, it was necessary to coin new words for these radically new concepts, including “rights” and “freedom”, as Ching herself admits: “The concept of freedom as a *right*, such as the right to freedom of thought and religion, to freedom of speech and assembly, was never clearly articulated until modern times, and then under Western influence.”¹⁷

One question arises here: Where no words existed to express the concepts how can one say that the concepts themselves existed in the tradition? When these translations were transferred from China to Japan in the latter part of the nineteenth century, Yukichi Fukuzawa, the person who first introduced these new words and ideas, clearly declared that words are simply symbols of existing concepts. Therefore, it is only natural that where there is no notion, there is no idiom to express it.¹⁸ Claims such as “[s]upport for certain human rights concepts can be found in the writings of leading Confucian thinkers” appear rather weak in light of the insights offered by adopting such a position.

Still, some scholars deny the incompatibility between these two traditions and try to find similarities between human rights ideas and Confucianism. Thus, whilst maintaining that “the Confucians did not talk about ‘human rights’,” Wejen Chang points out that they “maintained that people should treat each other as fellow human beings and help one another to live a good, human way of life,” and that in a Confucian utopia, “everyone has a proper share of this world’s wealth and treats his fellow humans with respect and love.” From these assertions he concludes that “Confucian norms could promote all types of human rights.”¹⁹ His position is that “the two approaches are not mutually exclusive but can be complimentary.” He explains

¹⁵ Julia Ching, “Human Rights: A Valid Chinese Concept?” De Bary, and Weiming, eds., op. cit., p. 79.

¹⁶ *Ibid.*, pp. 70-71.

¹⁷ *Ibid.*, p. 73 (Emphasis original).

¹⁸ Masanao Kano, *Fukuzawa Yukichi* (Tokyo: Shimizu-shoin, 1992), p. 53.

¹⁹ Wejen Chang, “Confucian Theory of Norms and Human Rights,” De Bary, and Weiming, eds., op. cit., p. 133.

how this can be so:

[P]eople can first learn the Confucian norms and become compassionate and respectful toward one another and then be assured that they have certain “rights” which they can, when necessary, assert and defend. People would then have the benefits of both approaches but the problems of neither. Thus I would recommend this two-step approach to both those who live in the Confucian tradition and those who are more accustomed to the Western idea of “human rights,” hoping that the combined wisdom of the East and the West could enable us to better achieve our common objective.²⁰

Moreover, Chang is not the only one to suggest the potential benefit of combining Confucian norms with Western orientated human rights. Chung-ying Cheng talks about “transforming Confucian virtues into human rights” and asserts: “In my view, for modern Chinese, the point would be how to preserve the Confucian virtues, while at the same time extrapolating from them an ethics of rights for modern society.”²¹

Since both Confucianism and human rights (along with numerous other traditions in different cultures) are norms to pursue human dignity, it is not surprising that we can find common themes such as love, security, and life with dignity. However, human rights and Confucianism are two very different traditions, one with strong emphasis on rights, and the other with a duty-oriented approach: “The traditional Chinese culture cherishes many of the same values as those in the post-enlightenment West, but does not express these in rights language.”²² In Confucianism, one’s identity occurs in his/her relations to others, and one is expected to behave in accordance with the obligations which arise from one’s social relations, as Rosemont concludes:

So finally I come to the conceptual framework of Confucianism, wherein rights-talk was not spoken, and within which I am not a free, autonomous individual. I am a son, husband, father, grandfather, neighbor, colleague, student, teacher, citizen, friend. I have a very large number of relational obligations and responsibilities, which severely constrain what I do. . . . And my individuality, if anyone wishes to keep the concept, will come from the specific actions I take in meeting my relational responsibilities.²³

In Confucian culture, one exists only in these social relationships, and securing a place in the community is one’s primary concern. Preservation of harmony and concern for the community

²⁰ *Ibid.*, p. 134.

²¹ Cheng, *op. cit.*, p. 147.

²² Jeremy T. Paltiel, “Confucianism Contested: Human Rights and the Chinese Tradition in Contemporary Chinese Political Discourse,” De Bary, and Weiming, eds., *op. cit.*, p. 271.

²³ Henry Rosemont Jr., “Human Rights: A Bill of Worries,” De Bary, and Weiming, eds., *op. cit.*, pp. 63-64.

as a whole come before one's individual interests. Cheng explains the relation between self and society in the Confucian society in the following terms:

As the collective experience of society and community has overwhelmed individual experience, the reality of individual life has been dominated by concerns about the preserving of human relationships so as to secure one's place in society and community. . . . Consequently, the primary or immediate consciousness of a human person has been one's power or ability to develop family and community order and harmony as a base for developing oneself as an individual. . . . For virtue to be virtue is to fit the individual into the social whole, to be achieved by cultivation and transformation of oneself. Virtue is precisely the power of self-cultivation and self-transformation toward the goal of social and even political integration.²⁴

Within this same discussion Cheng also argues that because society itself bears duties of virtues to its individual members then, in turn, each member may expect the society to fulfil these duties for him/her. In so doing Cheng suggests that Confucian conceptions of duties can be interpreted as bestowing individual rights.²⁵ However, the claims that an individual is a bearer of human rights and a community has a set of duties to individuals in society are of a very different order. For an individual to be a bearer of human rights means that he/she can claim this right when their enjoyment of the right is hindered. On the other hand, for a society to have duties to the individual does not imply any active involvement of the individual in making the rights claim. In the Confucian norms, people can expect the society to fulfil its duties, but this never means that it is acceptable for each member of the society to demand the society meet their individual expectations if it should fail to do so. Such behaviour is considered to be out of place and a danger to the social order, maintenance of which is so highly regarded in Confucianism.

Claims as to the existence of human rights norms can be found in reference to other cultural traditions. For instance, John M. Peek finds a strong connection between Buddhism and human rights and states that "the concepts of popular sovereignty and human rights have deep roots in Japanese culture."²⁶ He bases his argument in Buddhist virtues such as freedom, equality, and the denial of discrimination. He also points out that the pursuit of religion in Buddhism is quite individualistic and declares: "as long as Buddhism continues to be a vibrant part of Japanese culture, Japanese society will never wander far from the recognition that compassion; self-enlightenment; and effective protection of fundamental social, economic, and

²⁴ Cheng, op. cit., p. 145.

²⁵ *Ibid.*, p. 146.

²⁶ John M. Peek, "Buddhism, Human Rights and the Japanese State," *Human Rights Quarterly*, Vol. 17 (1995), p. 527.

political rights are corequisites.”²⁷ However, his argument is an oversimplification of one culture. First of all, the ultimate goal of Buddhism is selflessness or the extinction of the self for the compassion of others. Stressing individualism in Buddhism is, therefore, focusing only on one aspect of the religion while ignoring a central goal. Secondly, he underestimates the influence of Confucianism and Shinto in Japanese culture. By focusing on only one stage of Japan’s long history he misinterprets the significance and concept of Shinto, while also misunderstanding some other crucial factors, which altogether have contributed to the preservation of collectivistic attitudes within Japanese society.

In Japanese society, as well as other Asian societies with strong Confucian influences, social order was historically pursued through hierarchical social relations with mutual obligations, and not through equality or rights concepts:

There was no explicit concept of human rights in East Asian culture before the reception of Western political ideas at the end of the nineteenth century. Confucianism, for example, laid the foundations of ethics in certain social relations and the mutual obligations that were inherent in them. The official ideologies of Tokugawa Japan and Yi dynasty Korea associated inequality with order and equality with chaos. There were no theoretical limits to the authority of the state.²⁸

The final tradition considered in this section is Islam. Some scholars assert that the basic concept of human rights has long existed in Islamic law. Yougindra Khushalani goes as far as to argue that contemporary human rights doctrines “merely give recognition to 1400-year-old Islamic ideas.”²⁹ However, Khushalani’s argument proceeds to make the contradictory claim that human rights in Islam exist only in the form of human obligations whereas Western conceptions of human rights require both obligations and rights. In Islam, rights belong to God, and individuals can possess these rights only when they fulfil obligations and meet certain conditions, such as mature age, good behaviour, and most importantly, Moslem faith. Those who do not fulfil these conditions, therefore, have no legitimate rights: as such they are privileges rather than rights. As has been emphasised in previous discussions, rights given under only certain conditions are not human rights.

The crucial point here is, as Piscatori points out: “[T]hese differences do not make Islam inferior or out of touch with the modern world. To the contrary, they remind us that there are

²⁷ *Ibid.*, p. 540.

²⁸ Michael Freeman, “Human Rights: Asia and the West,” James T. H. Tang, ed., *Human Rights and International Relations in the Asia-Pacific Region* (London: Pinter, 1995), p. 15.

²⁹ Yougindra Khushalani, “Human Rights in Asia and Africa,” *Human Rights Law Journal*, Vol. 4, No. 4 (1983), p. 409.

multiple valid approaches to the realization of man's dignity."³⁰ Human rights are but one of the various possible approaches to human happiness or human dignity. Therefore, returning to Confucianism, in this sense it too is arguably a universal norm:

[T]he language of Confucian discourse is rich and varied, . . . I can . . . fully express my moral sentiments without ever invoking the language of human rights.

Perhaps, then – and this is my concluding plea – we should study Confucianism as a genuine alternative to modern Western theories of rights, rather than merely as a potentially early version of them. When it is remembered that three-quarters of the world's peoples have, and continue to define themselves in terms of kinship and community rather than as rights-bearers, we may come to entertain seriously the possibility that if the search for universal moral and political principles is a worthwhile endeavor, we might find more of a philosophical grounding for those principles and beliefs in the writings of Confucius and Mengzi than those of John Locke, Adam Smith, and their successors.³¹

Confucianism should properly be considered as an alternative and not simply a supplement to the human rights tradition. Whether or not it can effectively function as an alternative to human rights in the contemporary world is a different matter though, which requires further consideration. As explained earlier, capitalist markets detach people from the traditional protective communities. Once industrial capitalism sweeps into a society, traditional communal approach to human dignity, such as Confucianism, lessen in validity, while the necessity of the human rights approach, in turn, increases. Therefore, as non-Western societies become modernised the necessity of human rights implementation extends beyond the West.

The necessity for the extension of human rights implementation

Although it would be inappropriate to assume that human rights are simply superior to all other normative systems and therefore conclude that they should be applied to all societies both in the East and the West, it is also inappropriate to dismiss the need for human rights simply because of existing cultural difference between the Western and non-Western worlds. Once the capitalist market and industrial development destroys traditional systems of communal protection, human dignity requires alternative systems of protection. The experience of the West indicates that human rights are the best existing candidate to safeguard people's dignity living in industrial capitalist economies. As expressed by Donnelly, "[h]uman rights are the best – I would suggest the only effective – political device yet devised by human ingenuity to protect individual dignity against the standard threats of modern society."³²

³⁰ Piscatori, op. cit., pp. 143-44, 158.

³¹ Rosemont, op. cit., p. 64.

³² Donnelly, *Universal Human Rights*, op. cit., p. 65.

Rejecting the application of human rights on the grounds that the idea is of Western origin and therefore alien to local cultural traditions whilst adopting a Western orientated capitalist market economy reveals an unconvincing argument which leaves people unprotected in the new type of society. As Panikkar maintains, although introducing human rights before modernisation of a society is not only meaningless but could be criticised as cultural imperialism, “a technological civilization without Human Rights amounts to the most inhuman situation imaginable.”³³ Neil Stammers also points out that traditionally people may not have needed human rights, but that modernisation brings the necessity for their application beyond cultural boundaries:

[T]he globalizing dynamics of political and economic power have created powerful tendencies towards universalization and homogenization. So, even if it were true that peoples of particular cultures did not need human rights before, a good case might be made to suggest that they certainly need them now!³⁴

Yasuaki Oonuma claims that we should adopt human rights because the human race has not found a more effective way to protect individuals against the power of modern nation-states.³⁵ He argues that it is an unforgivable act to adopt the modern nation-state system and reject human rights, since to do so condemns individuals, who used to be afforded security from traditional communal mechanisms, without protection against the potential abuses of the enormous power of the state. Anyone wanting to argue for the inapplicability of human rights to an individual society has to provide a convincing argument that the alternative social system is able to effectively protect individuals against the threats of modern socio-economic developments.³⁶ Human rights may not be the perfect protection for human dignity, but as John Rawls points out: “The only thing that permits us to acquiesce in an erroneous theory is the lack of a better one.”³⁷ Human rights are the best system for modern societies that human beings have so far conceived of. Therefore, as Michael Freeman suggests, the question should not be whether the idea of human rights fits to the local cultural tradition but should be “whether it is useful and morally acceptable now.”³⁸

Using the metaphor previously used by Robert Thurman, Jack Donnelly suggests how the applicability of human rights widened. Donnelly argues that traditional African and Asian societies did not have seatbelts (human rights) simply because they did not have cars (modern

³³ Panikkar, op. cit., p. 101.

³⁴ Neil Stammers, “Social Movements and the Social Construction of Human Rights,” *Human Rights Quarterly* Vol. 21 (1999), p. 993.

³⁵ Oonuma, op. cit., p. 295.

³⁶ *Ibid.*, pp. 237, 297.

³⁷ John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1971), p. 4.

³⁸ Freeman, op. cit., p. 15.

forces). Cars originally came to exist only in the West, where they were running “out of control and wreaking havoc on society.” In order to improve the situation, Westerners invented not only seatbelts but traffic safety laws, driver’s licenses, better cars, and so on, in order to manage cars in society more safely and effectively. Eventually cars started running on the streets in other parts of the world, and they “brought with them the need for seatbelts and all the rest.” Today, cars, or the forces of modernisation such as the capitalist market economy and modern nation-states, have already “in most places significantly separated the individual from the small, supportive traditional community” creating the need for human rights, and this, according to Donnelly, indicates “the near universal contemporary relevance of human rights.”³⁹ As long as there are traditional societies on this earth, human rights will not gain complete universality, but the contemporary world-wide phenomenon of modernisation with growth of an increasingly global capitalist economy provides for the wider applicability of human rights throughout the world.

The difficulties of claiming rights in duty-oriented societies

However, expanding the necessity for human rights implementation does not automatically mean human rights are easily applied in all diverse cultural settings. Human rights’ strong connection with individualism creates difficulties for their implementation in societies where the emphasis has always been put on people’s duties to their community. It is imperative to stress the difference between the rights-oriented society and the duty-oriented society. For human rights to be effectively implemented, it is indispensable that the society is rights-oriented; one in which invoking rights does not require that the person occupies a certain social status or fulfils any other condition. An individual’s access to human rights has to be unconditional: “Human rights are those held simply by virtue of being a person. To have a human right one need not be or do anything special, other than be born a human being.”⁴⁰ Maurice Cranston similarly states: “A human right is something that everybody has. They are not rights a man [sic] acquires by doing certain work, enacting a certain role, or discharging certain duties; they belong to him [sic] simply because he [sic] is a human being.”⁴¹ Therefore, as Rhoda Howard remarks, in human rights discussion it is important that “the concept of human rights demands equal treatment for all, regardless of whether they fulfill expected obligations to the community.”⁴²

³⁹ Donnelly, *Universal Human Rights*, op. cit., pp. 59, 64.

⁴⁰ Jack Donnelly, *The Concept of Human Rights* (London: Routledge, 1989), p. 8.

⁴¹ Maurice Cranston, “Are There Any Human Rights?” *Daedalus* (Fall 1983), p. 11.

⁴² Rhoda E. Howard, *Human Rights and the Search for Community* (Boulder: Westview Press, 1995), p. 1.

It is true that the “complete fulfillment of each kind of right involves the performance of multiple kinds of duties.”⁴³ However, in this case, the complete fulfillment of A’s (human) rights involves the performance of multiple kinds of duties by B, and it is never that in order for A to obtain (human) rights involves the performance of duties by A: “[A] man’s rights normally correspond to the duties of others towards him.”⁴⁴ In rights-oriented societies, one can claim their rights even if he/she does not fulfil their social duties. They may be punished for not fulfilling their duties, but this does not negate their individual rights, although the full sets of rights available to them may be restricted by judicial decisions.

In sharp contrast, in traditional duty-oriented societies, a person’s rights always depend on their fulfilment of social duties which accompanies their position in society. For example, according to a Thai historian, Thanet Apornsuwan, in traditional Thai culture “[t]here were only concepts of rights relative to a person’s sociopolitical status, not rights as universal claims for each individual as a human being.”⁴⁵ Although some rights may have existed in traditional communities, they have existed as quite different notions to human rights. The idea of all people having equal access to inalienable rights regardless of their social status or fulfilment of social obligations is an alien concept in duty-oriented societies. In the traditions of Confucianism and many other non-Western cultures, one can expect the community to fulfil its obligations to an individual only when he/she fulfils their duties as a member of the society.

Moreover, in duty-oriented societies, even if the community fails to fulfil its obligations to provide security despite the fulfilment of one’s individual duties, it would be deemed out of place if one demanded the community meet their expectations. Demanding to have one’s individual interests met is regarded as unacceptable behaviour in group-oriented societies:

The concept of human rights is not universal in origin, however; and it cannot be located in most societies. The human being – free and equal to all others regardless of status or achievement, and permitted to make individualist claims against state, community, and family – is unthinkable in many societies, however much he or she may be in dire need of rights in the modern world.⁴⁶

⁴³ Shue, op. cit., p. 52.

⁴⁴ D. D. Raphael, “The Liberal Western Tradition of Human Rights,” *International Social Science Journal* Vol. 18 No. 1 (1966), p. 23.

⁴⁵ Suwanna Satha-Anand, “Looking to Buddhism to Turn Back Prostitution in Thailand,” Joanne R. Bauer, and Daniel A. Bell, eds., *The East Asian Challenge for Human Rights* (Cambridge: Cambridge University Press, 1999), p. 197.

⁴⁶ Rhoda E. Howard, “Dignity, Community, and Human Rights,” Abdullahi Ahmed An-Na’im, ed., *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (Philadelphia: University of Pennsylvania Press, 1992), pp. 99-100.

In collectivistic cultures the maintenance of social harmony occupies the top priority, and accordingly culture tends to restrict individual rights demands, whereas what makes having rights effective is that they enable a person to effectively press their individual demands. Henry Shue maintains: “A moral right provides (1) the rational basis for a justified demand (2) that the actual enjoyment of a substance be (3) socially guaranteed against standard threats.”⁴⁷ As a result, “people not only may, but ought to, insist,” and it is “only because rights may lead to demands and not something weaker that having rights is tied as closely as it is to human dignity.”⁴⁸ He supports this position by citing Joel Feinberg: “Rights are not mere gifts or favors, motivated by love or pity, for which gratitude is the sole fitting response. A right is something that can be demanded or insisted upon without embarrassment or shame.”⁴⁹ As Shue points out, “it is essential to a right that it is a demand upon others.”⁵⁰ For human rights to be effective in protecting people’s human dignity, people need to be in position to be able to claim them freely against others in society. There can, therefore, be no effective implementation of human rights in traditional collectivistic societies where such behaviour is not considered to be acceptable.

The claims of a group-oriented approach to human rights

The different features of rights-oriented and duty-oriented societies outlined above imply that human rights cannot be implemented through social obligations with a group-oriented approach. Instead, human rights implementation has always to be rights-oriented. If one imposes the human rights tradition on duty-oriented societies regardless of their incompatibility, a likely occurrence is for human rights to be made contingent on the fulfilment of social duties. In such a context human rights are no longer human rights, and as Yash Ghai points out herein lies the problem in Asia where the “protection of human rights is therefore pursued through the group.”⁵¹ According to Ghai, the inadequate group-oriented approach to human rights means that people in Asia do not have a chance to appeal as individuals to the court of law when their rights are violated. The attachment of obligations to the condition of an individual’s rights enjoyment has allowed opportunities for the systemic exploitation to take place. According to Ghai, this occurs openly in East Asia where despite their rapid industrialisation after the Second World War, the markets “did not generate a notion of rights” but created “predatory practices entailing gross exploitation of labor, resources, and the environment.”⁵²

⁴⁷ Shue, op. cit., p. 13.

⁴⁸ *Ibid.*, p. 14.

⁴⁹ Quoted in Shue, op. cit., p. 15, from Joel Feinberg, *Social Philosophy* (Englewood Cliffs: Prentice-Hall, Inc., 1973), pp. 58-59.

⁵⁰ Shue, op. cit., p. 16.

⁵¹ Yash Ghai, “Asian Perspectives on Human Rights,” Tang, ed., op. cit., p. 65.

⁵² Yash Ghai, “Rights, Social Justice, and Globalization in East Asia,” Bauer, and Bell, eds., op. cit., p.

A number of Asian governments claim they adhere to a duty-oriented approach to human rights, under the banner of “Asian Values” or “the different approach to human rights.” Mely Caballero-Anthony points out that for many Southeast Asian governments, “the different approach to the implementation of human rights within the region is not considered as incorrect.”⁵³ At the Vienna World Conference on Human Rights of 1993, Liu Huaqiu, the Chinese delegate stated: “The right of each country to formulate its own policies on human rights protection in light of its own conditions should also be respected and guaranteed.”⁵⁴ He further asserted that in human rights practice the fulfilment of obligation should be stressed, and individual interests should never come before those of the state and society:

The rights and obligations of a citizen are indivisible. While enjoying his legitimate rights and freedom, a citizen must fulfil his social responsibilities and obligations. . . . Nobody shall place his own rights and interests above those of the state and society, nor should he be allowed to impair those of others and the general public. . . . Moreover, to maintain social stability and ensure the basic human rights to citizens do not contradict each other.⁵⁵

Similarly, U Ohn Gyaw, the delegate of the Union of Myanmar, emphasised at the Conference that Myanmar, amongst other countries, has its own cultural tradition in human rights discourse which stresses duties and obligations that take meaning only in specific social relations:

In our own Myanmar culture, there are precepts about the duties and obligations of the wise ruler to his subjects, parents to their offspring, husband to wife, and vice versa. I believe therefore that even as we seek universality of human rights, our diversity in historical, cultural and religious backgrounds must never be minimized or forgotten.⁵⁶

Ali Alatas, the delegate of the Republic of Indonesia, denied the possibility of conducting an individualistic approach to human rights in Indonesia as well as in other developing countries. He suggested that rights should be practiced in such a way that causes no damage to the interests of the communities, societies, or nations:

Indeed, . . . we in Indonesia, and perhaps throughout the developing world as well, do not and cannot maintain a purely individualistic approach toward human rights for we cannot

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⁵³ Mely Caballero-Anthony, “Human Rights, Economic Change and Political Development: A Southeast Asian Perspective,” Tang, ed., op. cit., p. 47.

⁵⁴ “Statements by Representatives of Asian Governments at the Vienna World Conference on Human Rights” (Appendix III), Tang, ed., op. cit., p. 216.

⁵⁵ *Ibid.*, p. 215.

⁵⁶ *Ibid.*, p. 223.

disregard the interests of our societies and nations. We hold that . . . his or her existence, rights and duties, can only become meaningful within the social context of the community and where, in the words of Article 29 of the Declaration of Human Rights, the free and full development of his or her personality becomes possible.⁵⁷

Meanwhile, the delegate of Malaysia, Datuk Abdullah Haji Ahmad Badawi, referred to the “collective pursuit of human rights” while criticising the attempts “to link development assistance to the observance of human rights.” He argued that such attempts “only undermine our collective commitment to and pursuit of human rights.”⁵⁸

Wong Kan Seng, the Minister for Foreign Affairs of the Republic of Singapore, strongly criticised the practice of excessively claiming one’s individual rights, and asserted that individual rights must be practiced through community, and balanced with the fulfilment of duties:

There is already evidence that at some stage an excessive emphasis on individual rights becomes counterproductive.

Life in any society necessarily entails constraints. The exercise of rights must be balanced with the shouldering of responsibility. To claim absolute freedom for the individual is to become less a human being with rights than an animal, subject only to the law of the jungle.

Development and good government require a balance between the rights of the individual and those of the community to which every individual must belong, and through which individuals must realize their rights.

He claimed that each country is at a different stage of history in terms of developing this balance between the rights of the individual and those of the community, and therefore, each country should be left free to find its own way.⁵⁹

Throughout these statements, the tendency for the delegates of the states which are subject to more intense international criticism for their human rights violations to put more stress on the importance of social harmony or obligations and maintain the legitimacy of their own collective approaches to human rights is detectable. This correlation suggests the inappropriateness of claiming a collective approach to human rights and the danger of condoning such propositions. It is true that the notion of individualism is foreign to most of non-Western traditions, and that people in non-Western countries tend to feel uncomfortable with the individualistic element within the human rights norm, as Virginia Leary mentions:

⁵⁷ *Ibid.*, pp. 231-32.

⁵⁸ *Ibid.*, p. 235.

⁵⁹ *Ibid.*, p. 246.

Certain elements of the concept [of human rights] in that [the Western liberal] tradition – particularly the emphasis on individualism, the lack of emphasis on the role of the individual within the community, and the neglect of duties as correlatives of rights – have led to the contention that the concept of human rights is alien to non-Western cultures.⁶⁰

However, in order for human rights to be fully implemented, and for the people to be under proper protection in contemporary modernised societies, society has to be tolerant towards individuals claiming their rights. Effective human rights practices can never be achieved when the emphasis remains on the harmony of the society and one's obligations to it, rather than on the individual as a bearer of inalienable rights. Ultimately, the traditional duty-oriented practices and the effective implementation of human rights are incompatible.

Notwithstanding this incompatibility, there are still scholars who maintain the applicability of human rights to collectivistic cultures. For example, Peter Jones argues that “[t]he supposition that a doctrine of human rights must ignore or devalue the communal aspects of people's lives, is therefore mistaken.”⁶¹ Jones asserts that human rights theories do not impose a certain form of life on a people, as “merely vesting rights in human individuals is not the same as compelling them to live individualist forms of life.”⁶² Certainly, it may be true that the imposition of individualism does not form the basis of human rights norms, and claims as to the superiority of individualist cultures over communitarian ones may not be the intension of the majority of those who try to promote human rights practices in non-Western, group-oriented societies. However, the problem remains that human rights do not function within community and duty-oriented cultures. Human rights implementation has always to be rights-oriented and cannot be carried out through social obligations with a group-oriented approach. Therefore, whether one intends it or not, the promotion of human rights practices requires that the collectivistic aspects of a society's cultural tradition are diminished whilst individualism is promoted.

The dilemmas and possibilities facing newly modernised societies (Conclusion)

This chapter aimed at exploring the possible causes of the dilemmas contemporary newly modernising societies face by looking at the possibilities and limitations of widening applicability of the ideas of human rights beyond the cultural boundary of the West. Human

⁶⁰ Virginia A Leary, “The Asian Region and the International Human Rights Movement,” Claude E. Welch, Jr., and Virginia A. Leary, eds., *Asian Perspectives on Human Rights* (Boulder: Westview Press, 1990), p. 23.

⁶¹ Peter Jones, “Individuals, Communities and Human Rights,” *Review of International Studies*, Vol. 26 (2000), p. 214.

⁶² *Ibid.*, p. 204.

rights are neither the best nor the only solution to protecting human dignity. Rather they constitute but one of several possible approaches to the protection of human dignity that the human race has so far envisioned. The vast majority of the non-Western world has their own traditional approaches to human dignity, which are quite incompatible with the human rights approach. However, the contemporary world-wide expansion of the forces of modernisation has created needs for human rights implementation in many non-Western societies. Once the forces of modernisation destroy community and duty-oriented protection systems of human dignity, which have traditionally existed in these societies, needs emerge for the employment of alternative systems. Of these, the human rights approach is the most highly developed to date protection of human dignity against the threats generated by a capitalist economy.

However, there is a large obstacle to the smooth introduction of the human rights approach into non-Western societies. Unlike technologies or other physical transformations of society, psychological aspects of culture are relatively persistent against the transformational forces of modernisation, which often fails to bring about the individualisation of a society. Because of the incompatibility of human rights practices with cultures of collectivism, the persistency of collectivism creates a deep dilemma in newly developed or currently developing non-Western societies; the urgent needs for the implementation of human rights on one hand and people's intolerance towards other person's individualistic behaviour of claiming rights on the other. While human rights practice requires a society to adapt individualism as the norm, collectivism continues to persist in the cultural traditions of many non-Western societies. In fact, the persistence of collectivism in these non-Western societies is so firm that the permeation of individualism, which is necessary for effective human rights implementation in these societies, seems very unlikely.

Nevertheless, this does not mean that cultural transformations do not occur in non-Western societies: otherwise there would be no possibility that human rights practices would ever function outside of the boundaries of the West. History reveals that the process of implementing human rights into the West was anything but smooth. In England neither industrialisation nor the existence of the idea of people as inalienable rights bearers actually made human rights function in society. The break-down of the protection system of community did not automatically bring about individualistic attitudes. As Vincent states: "Human rights did not just happen, they had to be invented; and their proponents had constantly to defend them against the view that they were chimerical."⁶³ Even in England, where the

⁶³ R. J. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986), p. 19.

norm of human rights originated and was first put into practice, industrialisation initially led to the deprivations, and the people subsequently had to fight against the extant social values and traditions for several hundred of years before finally being able to freely claim their rights. In fact, it was only in the 20th century that human rights became equal and inalienable rights that function for the protection of every human being in society in any real sense. Therefore, there is no good reason to believe that non-Western societies are not currently going through the same kind of process, even if their experiences are not completely parallel to that of the West. If this is the case, then the experiences of collectivist cultures restricting the smooth implementation of human rights in many non-Western societies do not necessarily rebut the possibility that in time human rights may become established in these societies.

Thomas M. Frank writes that the experiences of England and America “suffice to undermine any unsupported claims that tolerant liberalism is an inherent characteristic of Western society that cannot be replicated elsewhere.” In fact, a “gradual and uneven progression toward toleration appears to have occurred in Britain . . . over a period of 450 years.”⁶⁴ Moreover, Michael Freeman points out that there is a similarity between the experience of the West and that of Asia: “As the introduction of the concept seems alien to Asian culture and unwelcome to Asian élites, so it was in the West. The Eastern and Western time-frames are different, but the political process of claiming human rights is rather similar.”⁶⁵ Jack Donnelly also argues that “the underlying concerns and needs in the area of human dignity are . . . largely the same today in the Third World as they were one, two, or three centuries ago in such countries as Belgium, England, France, or the United States.”⁶⁶

Of course, the pace of contemporary modernisation is so rapid that the problems people currently face in these newly modernised societies are immensely intense, and they cannot be expected to endure centuries of exploitation before experiencing the benefits of effectively functioning human rights. As many developing countries still expect modernisation, the smoother adoption of human rights is keenly anticipated. In the pursuit of human rights practices in these newly developing countries, some further re-conceptualisation of the current understanding of human rights may be required in order to facilitate its wider and smoother applicability across the various diverse cultures of the non-Western world. Nevertheless, in the attempt to expand the applicability of human rights, certain cautions are required, as the careless introduction of new conceptions into the norms of human rights may damage their functioning

⁶⁴ Thomas M. Frank, “Is Personal Freedom a Western Value?,” *The American Journal of International Law*, Vol. 91 (1997), pp. 619, 622.

⁶⁵ Freeman, op. cit., p. 18.

⁶⁶ Donnelly, *Universal Human Rights*, op. cit., p. 60.

in relation to protecting an individual persons' dignity against social threats of modernisation. Among various factors, the relation between the conceptual expansion of human rights and pervasive cultures of collectivism in non-Western societies is the area in which special caution is required, as is discussed in the next chapter.

Chapter Three

The Conceptual Expansion of Human Rights and Collective Human Rights

As a result of the rapid and increasingly globalised processes of modernisation, many countries are experiencing dramatic social changes, including the destruction of rural communities and the migration of people into big cities. Detached from their traditional communities, people who now depend on wage labour for their survival urgently need human rights to safeguard their human dignity. Human rights, which are of Western origin, need to be effectively implemented in non-Western societies whose cultures and traditions are widely different from those of the West. It is these differences in cultures which are likely to raise difficulties for the introduction of human rights. Although the forces of modernisation introduce common institutions, such as the state-system and capitalist economy, to non-Western countries, they do not eliminate the cultural differences between the West and the non-West. Therefore, when trying to introduce the concept of human rights into non-Western societies, the dominant conceptions of the idea are frequently challenged by local cultures. Whilst it is certainly important that non-Western societies make some changes to their traditions in order to facilitate the effective functioning of human rights in their society, there must also be some changes made on the side of the human rights tradition so that the concept has a wider applicability across different value systems and traditions.

At the same time, widening the human rights concept cannot be carried out in an uncontrolled way, as the unlimited introduction of new conceptions to the norm will ultimately lead to the elimination of the very virtue of human rights. In order to retain the benefit of human rights as the most effective protection of people's human dignity against the threats of modernisation, some restrictions have to be put on its conceptual expansion, especially in areas related to collectivism and collective human rights. Recently, the name of collective human rights has been actively voiced by governments of developing countries, but in many cases, it is used to justify their suppression of people. To eliminate these abuses in the name of human rights, it has to be made clear that although there are collective human rights, not all group rights are necessarily human rights. A clear demarcation has to be made.

In an endeavour to specify where the line should be drawn, and thus the necessary limitations to the conceptual expansion of human rights, this chapter starts with looking at the history of the continuous expansion of the concept of human rights; how it developed from an idea of the

privileges of certain groups of people to its contemporary notion as the inalienable rights of every human being. The chapter then examines the different discussions on the direction the future conceptual expansion of human rights should take. In the course of the discussion, the violators and duty-bearers of human rights will be identified in order to help distinguish collective human rights from other group rights.

Concept and conception

First of all, a distinction between concept and conception needs to be made. A concept is a general framework of an idea that implies the possibility of different substantial specifications, while conceptions are the very specifications of the idea. A concept allows different conceptions. In his *Taking Rights Seriously*, Ronald Dworkin explains it by referring to “fairness”:

When I appeal to the concept of fairness I appeal to what fairness means, and I give my views on that issue no special standing. When I lay down a conception of fairness, I lay down what I mean by fairness, and my view is therefore the heart of the matter. When I appeal to fairness I pose a moral issue; when I lay down my conception of fairness I try to answer it.¹

Therefore, the concept of “human rights” also allows different conceptions or specifications of the idea. Furthermore, as Foucault argues, this leads to political struggles over the “truth” of competing conceptions, just as human rights are to be simultaneously understood in philosophical, legal, and political frameworks,² as well as in terms of “a set of ideas associated with notions of freedom *and* a set of ideas that reflects relations of power and cultural dominance.”³

The history of the conceptual expansion of human rights

In the history of the development of the idea of human rights, individual rights existed for a long period of time largely as the privileges of certain groups of people. The applicability of rights depended on conditions such as wealth, race, gender, religion, and social status. The Magna Carta of 1215, which is often referred to as the first human rights document, only applied to the aristocracy, feudal lords, and Church, and similar qualifications applied to the Habeas Corpus Act of 1679 and the English Bill of Rights of 1689. Even the French and American Declarations, which are widely considered to be the origins of current human rights

¹ Ronald Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977), p. 135.

² Tony Evans, “Identity and the Hegemony of Universal Human Rights,” a paper presented at Conference, “Identity and Human Rights,” in Qom, Iran, 14-15 May 2005, p. 7.

³ *Ibid.*, p. 15 (Emphasis original).

ideas, did not establish inalienable rights of every human being. The United States Declaration of Independence of 1776, declared: “that all men are created equal; that they are endowed by their Creator with certain unalienable rights.”⁴ Nevertheless, these inalienable rights did not apply to black slaves, native Americans, or women. The French Declaration of the Rights of Man and Citizen of 1789 decreed: “Men are born and remain free and equal in rights,”⁵ and excluded the poor, women, non-whites, religious minorities, and other minorities such as homosexuals and disabled persons. The fact that massive, systemic violations of human rights were committed against many peoples, such as native Americans and Australians, enslaved Africans, and colonial peoples after the two declarations were written clearly indicates that non-white people of non-European origin were not included in what the two declarations called “men”.

The discriminatory exclusion and marginalisation of certain groups slowly disappeared. Over time one excluded group after another claimed their rights, and the application of rights constantly expanded until at last the United Nations Universal Declaration of Human Rights of 1948 included all members of the human family “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁶ However, the adoption of the U.N. Declaration did not mark the full development of the conceptualisation of human rights. Even after the adoption of the Declaration, the list of human rights recognised by the U.N. kept continuously being modified and expanded.

The U.N. Universal Declaration, which is the starting point of the contemporary human rights movement, closely followed the phrasing of the French Declaration:

The framers of the UN declaration of 1948 closely followed the model established by the French Declaration of the Rights of Man and Citizen of 1789, while substituting “human” for the more ambiguous “man” throughout. Article 1 of the French declaration of 1789 decreed, for instance, that “Men are born and remain free and equal in rights,” virtually the identical language of the first article of the 1948 declaration.⁷

⁴ “We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness.” (Micheline R. Ishay, ed., *The Human Rights Reader: Major Political Writings, Essays, Speeches and Documents from the Bible to the Present* (New York: Routledge, 1997), p. 127.)

⁵ Ishay, ed., op. cit., p. 138.

⁶ Henry J. Steiner, and Philip Alston, *International Human Rights in Context: Law, Politics, Morals* (Oxford: Clarendon Press, 1996), p. 1156.

⁷ Lynn Hunt, ed., trans., and intro., *The French Revolution and Human Rights: A Brief Documentary History* (Boston: Bedford Books of St. Martin’s Press, 1996), p. 3.

The first article of the 1948 declaration states: “All human beings are born free and equal in dignity and rights.”

The Universal Declaration was drafted mainly by representatives of the U.S. and Western Europe, and hence reflected the liberal tradition of the West. The rest of the world was not given much opportunity to influence the contents of the text. This is not surprising when it is considered that only eleven African and Asian countries were among the founding members of the U.N., with seven more joining over the next ten years.⁸ Since then, an increasing number of non-Western states have joined the U.N., and accordingly, different expectations in relation to the idea of human rights have emerged. In response to these new expectations, especially those held by developing countries, new conceptions have been incorporated into the concept of human rights, and as a result, the concept has been extended to contain different types of rights, including economic and social rights (inscribed in the International Covenant on Economic, Social and Cultural Rights) and rights to self-determination (inscribed in the first articles of the two International Covenants) alongside the liberal rights which found the original text of the Declaration.

The future conceptualisation of human rights

Thus, the concept of human rights has continuously incorporated more people and included more rights, and new conceptions are still expected to be added to the concept as the forces of modernisation continue to spread around the world. Moreover, it is important that future conceptualisations of human rights takes into account the differences between existing cultural traditions. As the necessity of human rights implementation extends beyond the West in conjunction with the spread of industrialisation and capitalist markets, human rights norms also need to gain acceptance in non-Western societies, which contain 80 % of the world's population. However, this cannot be realised if societies, especially those in the West, refuse to re-examine and re-specify the concept of human rights, or if non-Western societies refuse to make any changes to their traditions in order to facilitate adaptation to and implementation of human rights in the society. Mutual concessions are vital for the wider application of human rights. As Field and Narr suggest, in order for the human rights movements to succeed, a “mediation between the universal and the specific is required,” and “human rights must be context-sensitive.”⁹

Abdullahi An-Na'im also highlights the importance of the “cultural mediation” approach and

⁸ Abdullahi A. An-Na'im, “Islam, Islamic Law and the Dilemma of Cultural Legitimacy for Universal Human Rights,” Claude E. Welch, Jr., and Virginia A. Leary, eds., *Asian Perspectives on Human Rights* (Boulder: Westview Press, 1990), pp. 35, 51.

⁹ A. Belden Fields, and Wolf-Dieter Narr, “Human Rights as a Holistic Concept,” *Human Rights Quarterly*, Vol. 14 (1992), p. 20.

argues that it is the only way for achieving the “genuine and lasting universality of human rights.”¹⁰ He maintains that in terms of adapting human rights, developed countries should not expect changes only from non-Western societies, but they should also re-evaluate their own cultural traditions. Human rights norms must be exposed to new ideas and influences: “The process of definition, formulation and implementation of universal human rights must be genuinely universal and not merely Western in orientation and techniques.”¹¹ He points out that we often underestimate the “impact of culture on human behavior,” for “it is so powerful and deeply embedded in our self-identity and consciousness.” According to An-Na’im, people tend to accept normative propositions when they feel that the proposition can be approved by their own cultures. Therefore, it is important that we have a high level of knowledge about local culture in order to achieve “an adequate level of legitimacy *within* each tradition” as well as “*cross-cultural* legitimacy, so that peoples of diverse cultural traditions can agree on the meaning, scope, and methods of implementing these rights.”¹² Although he is aware of the profound difficulties and unlikelihood of achieving a world-wide agreement on a single conceptualisation of human rights, he believes that significant agreements can be achieved through dialogue. An-Na’im suggests that “we should supplement the existing standards and continue to develop them through the genuine participation of the widest possible range of cultural traditions.”¹³

Somewhat differently from claims which emphasise mutual concessions, voices demanding that the West show more understanding towards non-Western cultures in human rights talks are especially strong among Asian countries. The Bangkok Declaration of 1993 maintains the importance of recognising that “while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds.”¹⁴ Many scholars, especially in Asia, assert that some conceptual changes have to be made to the idea of human rights norms in order to achieve their successful incorporation into non-Western cultures. A Japanese scholar, Yasuaki Oonuma, for

¹⁰ Abdullahi A. An-Na’im, “The Cultural Mediation of Human Rights: The Al-Arqam Case in Malaysia,” Joanne R. Bauer, and Daniel A. Bell, eds., *The East Asian Challenge for Human Rights* (Cambridge: Cambridge University Press, 1999), p. 168.

¹¹ An-Na’im, “Islam, Islamic Law and the Dilemma,” op. cit., p. 49.

¹² Abdullahi A. An-Na’im, “Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment,” Abdullahi A. An-Na’im, ed., *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (Philadelphia: University of Pennsylvania Press, 1992), pp. 21, 23, 26 (Emphasis original).

¹³ An-Na’im, “Islam, Islamic Law and the Dilemma,” op. cit., p. 36.

¹⁴ “Bangkok Declaration” (Appendix I), James T. H. Tang, ed., *Human Rights and International Relations in the Asia-Pacific Region* (London: Pinter, 1995), p. 205.

instance, points out that the idea of human rights today needs to undergo certain conceptual changes, just as Christianity went through alternations as it expanded from its birth place in Palestine into Europe, North America, Central and South America, Korea, and so on, and as Buddhism has transformed as it has expanded from India into various countries in Asia.¹⁵ Oonuma claims that we have to free ourselves from unconscious premises, meaning that we need to break away from the Western-centric way of thinking and start constructing useful conceptions of human rights.¹⁶

Increasingly, demands are articulated for Asian contributions towards a better conceptualisation of universal human rights. As Yu Feng points out, “more and more people have come to the realization that Asian traditional values may contribute to the enrichment and improvement of a universal concept of ‘human rights’ whose current interpretation is still primarily set in Western terms.”¹⁷ James Tang contends that we need to develop an Asian approach to human rights protection, which “requires the refinement of conceptual understanding of human rights in the Asian context and greater expertise in measuring human rights standards as well as formulating better indicators.”¹⁸

Uncritically accepting different cultural interpretations of human rights raises problems though. The idea that it is possible to reformulate human rights norms to suit all different cultural traditions is appealing. However, by stretching the concept to fit such a variety of cultures – Confucian, Buddhist, Islamic and so forth – ultimately means that the concept itself loses its original normative purchase. It is true that it would be much easier if the concept of human rights could be expanded to include all types of cultural approaches to the idea, and it is certainly important that the concept of human rights is expanded to achieve wider applicability amongst different cultural traditions. However, there are certain aspects of human rights which cannot be altered without profoundly undermining the significance of the notion. One such aspect involves the incorporation of collective human rights. There are collective human rights, but not all group rights are human rights. Before considering this matter further, it is necessary to specify potential violators and duty-bearers of human rights, for such clarifications help identify which group rights are human rights and which are not.

¹⁵ Oonuma, op. cit., p. 290.

¹⁶ *Ibid.*, pp. 336-37.

¹⁷ Yu Feng, “Might and Right: The ‘Yellow Emperor’ Tradition as Compared with Confucianism,” Wm. Theodore de Bary, and Tu Weiming, eds., *Confucianism and Human Rights* (New York: Columbia University Press, 1998), p. 154.

¹⁸ James T. H. Tang, “Towards an Alternative Approach to International Human Rights Protection in the Asia-Pacific Region,” Tang, ed., op. cit., p. 199.

Potential violators of human rights

Principally, the powerful have the propensity to violate human rights. Power is a relative concept which is born in social relations.¹⁹ In a relationship between two bodies, if one is weaker, the other is stronger, but the same body which is stronger in one relation may be the weaker one in relation to another body. In this sense, the same group of people can simultaneously be both victims and violators of human rights. Understanding the significance of power as a factor in the idea of human rights is important, as “ideas and practices with respect to human rights can only be understood once their relation to particular forms and dimensions of power is fully grasped.”²⁰ Rights are claimed in order to give some power to the weak. Alexis de Tocqueville points out that a right “places the one who claims it on the same level as the one who grants it.”²¹ Rights are “a weapon of the weak against the strong,”²² and it is “one of the chief purposes” of rights to “provide some minimal protection against utter helplessness to those too weak to protect themselves.”²³ Rights, especially basic rights, are, according to Henry Shue, “a restraint upon economic and political forces that would otherwise be too strong to be resisted.”²⁴ Shue asserts that “[b]asic rights are an attempt to give to the powerless a veto over some of the forces that would otherwise harm them the most.”²⁵

Indeed, the history of the development of human rights has been of a constant fight by people in weaker positions to limit the dominant power of the time: “[T]he socio-historical development of human rights were constructed and articulated, in the first instance, in the context of social movements seeking to challenge extant relations and structures of power.”²⁶ Therefore, “it might be accurate to see the socio-historical development of ideas of human rights emerging as social movements identified, recognized, and sought to challenge particular forms of power.”²⁷ The American and French Declarations, which are regarded as the origins of contemporary

¹⁹ According to Neil Stammers, “we need to see power as being held, developed, and exercised consciously by individual or collective social actors, but also recognize that it manifests itself structurally through the patterning of social systems regardless of consciousness or intent. Furthermore, power is always and necessarily embedded in a network of concrete social relations.” (Neil Stammers, “Social Movements and the Social Construction of Human Rights,” *Human Rights Quarterly*, Vol. 21 (1999), p. 983.)

²⁰ Neil Stammers, “A Critique of Social Approaches to Human Rights,” *Human Rights Quarterly*, Vol. 17 (1995), p. 488.

²¹ Cited in R. J. Vincent, *Human Rights and International Relations* (Cambridge; Cambridge University Press, 1986), p. 17, from Alexis de Tocqueville, originally quoted in Minogue, “Natural Rights, Ideology and the Game of Life,” p. 34.

²² Vincent, op. cit., p. 17.

²³ Henry Shue, *Basic Rights: Subsistence, Affluence, and U. S. Foreign Policy* (Princeton: Princeton University Press, 1980), p. 18.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Stammers, “Social Movements,” op. cit., p. 986.

²⁷ *Ibid.*, p. 989.

human rights norms, were also created in struggles against the dominant powers of the time. Whilst the Declaration of Independence fought colonial domination, the Declaration of the Rights of Man and Citizen was articulated against the dominant power of the monarchy.

The emergence of the capitalist economy in 18th and 19th century England produced a new vulnerable group in society – labourers. As mentioned earlier, towards the end of the 18th century, the newly emerged class of labourers in England were routinely exploited by those who had economic power, primarily the factory owners. In response the labourers started social movements, chiefly by forming trade unions, and eventually won legally protected rights as well as political power, contributing to the formation of contemporary workers' rights:

The idea that claims for economic and social rights were constructed in the context of the emerging socialist and workers' movements of the nineteenth century also appears uncontroversial. The unfettered accumulation of private property and the unbridled exercise of economic power led these movements to challenge the fundamental power relations of capitalist society.²⁸

Heiner Bielefeldt also points out that human rights developed as challenges to the dominant power of the time: “[I]t seems more appropriate to view human rights as operating in response to concrete experiences of injustice in the modern world, such as political oppression by an absolutistic state, exploitation of workers in the market economy, colonialism, and imperialism.”²⁹ Similarly, Yash Ghai suggests that: “Human rights in the West have responded to the configurations of power and economic relationships as they have evolved over a long period.”³⁰ Violations of human rights have always been committed by the stronger against the weaker, and the idea of human rights was invented as the means to challenge power relationships and limit the power of the stronger. The power relationships are “central” to an “understanding of what human rights are about.”³¹

Shifts in power-relations

Who, then, actually holds the power to violate human rights? When the idea of human rights first emerged, the state was considered to be the main power-holder, and the aim of human rights was to limit the power of the state. According to Stammers, “historically, there was no private realm which could be shown to precede or be superior to the public realm.”³² In feudal

²⁸ *Ibid.*, pp. 988-89.

²⁹ Heiner Bielefeldt, “Muslim Voices in the Human Rights Debate,” *Human Rights Quarterly*, Vol. 17 (1995), p. 590.

³⁰ Yash Ghai, “Asian Perspectives on Human Rights,” Tong, ed., op. cit., p. 64.

³¹ Neil Stammers, “Human Rights and Power,” *Political Studies*, XLI (1993), p. 72.

³² *Ibid.*, p. 74.

society, it was “the absolutist state which was the locus of power,” and “while the sort of power relations that were challenged were those of the existing political, religious and economic order, what was in practice challenged by the early rights theorists was the nature of existing *state power*.”³³ Jack Donnelly also explains that human rights norms first came about with the aim of protecting individuals (the weak) against the state (the powerful): “[H]uman rights came to be articulated primarily as claims of any individual against the state.”³⁴ Donnelly points out that it is human rights that shape “the relationship between the (new, modern) individual and the (new, modern) state, a relationship based on the *prima facie* priority of the individual over the state in those areas protected by human rights.”³⁵

However, the situation changed when the capitalist economy emerged: “Modern markets also created a whole new range of threats to human dignity and thus were one of the principal sources of the need and demand for human rights.”³⁶ As modernisation proceeded, power was acquired by the economically successful, and increasingly the (private) economic sector of society, rather than the (public) organs of the state, became the main violators of people’s human rights:

If the absolutist states of the seventeenth and eighteenth centuries provided a clear basis from which to see the dangers in, and challenge the legitimacy of, state power, then the systematic exploitation and degradation of the working class in nineteenth century capitalism made it patently clear to many that state power was not the only problem.³⁷

The growth in the power of the economic sectors created a new realm of potential human rights violators.

Violators of human rights today

In spite of this diversification of power-holding forces in society, there still remains a tendency to consider the nation-state as the principal threat to human rights. For example, Jack Donnelly names the state as the contemporary chief violator of human rights, although he also recognises the power of the private realm as a problem: “The problem we face is . . . that states regularly and systematically violate internationally recognized human rights.”³⁸ Similarly, Abdullahi An-Na’im claims that violations of human rights are always committed by

³³ *Ibid.*, p. 73 (Emphasis original).

³⁴ Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 1989), p. 70.

³⁵ *Ibid.*

³⁶ *Ibid.*, p. 64.

³⁷ Stammers, “Human Rights and Power,” *op. cit.*, p. 75.

³⁸ Donnelly, *op. cit.*, p. 160.

the state:

Human rights are always violated or respected at the local and immediate level by official decisions and action impacting on individuals or groups. Whether it is a matter of freedom from arbitrary detention without charge or trial, freedom from torture, freedom of expression or association, right to education, right to health care, or any other human right, it is always the result of deliberate action or omission by officials of the state.³⁹

These authors' neglect of the increasing diversity of human rights violators limits their overall appreciation of the manifestations of human rights abuses. Modernisation, which today is a world-wide phenomenon, often accompanies the systemic exploitations of workers. In most of developed countries, especially in the West where modernisation first occurred, workers are relatively well protected against deprivations and enjoy well-established workers' rights. However, in the vast majority of countries in the world, economic sectors amass profits through worker exploitation. Therefore, if we ignore the private realm's role as a violator of human rights by focusing only upon the state, then one of the most widespread threats to human rights will be overlooked and left unchallenged. Stammers criticises the state-centric analysis of human rights as problematically "indicative of a top-down way of thinking about human rights" with the state at the top and human beings at the bottom.⁴⁰

Although contradicting his own state-centrist argument cited above, in his earlier work An-Na'im also maintains the importance of recognising various factors and forces as causes of human rights violations:

An intelligent strategy to protect and promote human rights must address the underlying causes of violations of these rights. These violations are caused by a wide and complex variety of factors and forces, including economic conditions, structural social factors, and political expediency. For the most part, however, human rights violations are due to human action or inaction – they occur because individual persons act or fail to act in certain ways. They can be the overlapping and interacting, intended or unintended, consequences of action. People may be driven by selfish motives of greed for wealth and power, or by a misguided perception of the public good.⁴¹

An-Na'im's argument is particularly noteworthy in the respect that he recognises human inaction as well as action along with unintended as well as intended consequences of action as causes of human rights violations. Moreover, in terms of inaction as the cause of human rights violations, it may be useful to distinguish between civil and political rights as "negative" rights

³⁹ An-Na'im, "The Cultural Mediation of Human Rights," op. cit., p. 148.

⁴⁰ Stammers, "A Critique," op. cit., pp. 506-7.

⁴¹ An-Na'im, "Toward a Cross-Cultural Approach," op. cit., p. 19.

and economic and social rights as “positive” rights. According to this distinction, “negative rights require people to refrain from doing anything that impairs the freedoms of others, while positive rights require others to provide the material means of life to those unable to provide for themselves – at a minimum, food, clean water, shelter and clothing.”⁴² This means that in respect of negative rights, the violation of rights occurs as a result of action that “impairs the freedoms of others” to fulfil their needs for themselves. Conversely, the violation of positive rights does not necessarily involve action. Instead, absence of action can itself lead to the violation of an individual’s rights.

Despite an increased acknowledgement of the importance of unintended human rights violations – especially in relation to the consequences of the expansion of the global economy – it remains the case that the dominant position tends to assume that human rights violations are committed principally as a result of the conscious intentions of other actors. Tony Evans provides a critique of this position:

[I]nvestigations into the causes of human rights violations seldom go beyond the assumption that all violations can be explained by reference to the wilful acts of evil, brutal, despotic and cruel individuals, excluding the possibility, for example, that the principles of international politics, the rules that govern world trade or the principles of the global economic order itself may also lead to human rights violations.⁴³

In fact, many of the human rights violations committed by powerful economic actors in the contemporary world are not necessarily conscious acts. Moreover, the state compounds these violations by not intervening, that is, through its inaction. In this respect, Yash Ghai refers to the violations of human rights resulting from corporations in contemporary East Asia, with support from (non-intervening) state authorities. According to Ghai, while the market economy does not promote equality or rights, governments consider rights as a potential obstacle to their “economic and political agenda.”⁴⁴ Consequently, Ghai contends, promotion of human rights has been discouraged by governments. In the meantime, transnational and large national corporations have been increasing their power and influence, especially in East Asia: “As the power of many states declines and that of corporations rises, the capacity of the latter to violate the rights of others, or to create conditions in which rights become harder to exercise or protect, has increased vastly.”⁴⁵ Therefore, assuming public authorities to be the only violators of human rights, which is, according to Ghai, the approach often taken by

⁴² Tony Evans, *The Politics of Human Rights: A Global Perspective* (London: Pluto Press, 2001), p. 62.

⁴³ *Ibid.*, p. 31.

⁴⁴ Yash Ghai, “Rights, Social Justice, and Globalization in East Asia,” Bauer, and Bell, eds., op. cit., p. 259.

⁴⁵ *Ibid.*, p. 260.

international and national human rights regimes, seriously limits one's understanding of the situation surrounding the issues of human rights.⁴⁶

Acknowledging the existence of various factors when analysing potential violators of human rights is especially important in the contemporary world, where economic activities are carried out on a world-wide scale, and deprivations increasingly occur beyond the state boundaries. In the contemporary globalised world, developed countries are making profits by sacrificing the interests of the people in less developed countries. Wealthier states taking advantage of weaker states may seem nothing new, when reflecting on Western colonisation of large swathes of the world. However, colonisation was carried out by states' governments backed up with strong military forces. In the contemporary world, economic entities such as multinational or transnational corporations play a large role in the exploitation normally without depending on any military forces but only with silent approval from states. This change in the role of actors in the international arena makes it even more important to acknowledge that economic actors are possible violators of people's human rights alongside states: "The need to see this alternative picture is made all the more urgent by the current pace of the processes of globalization, which appear to be significantly transforming the capacities of many social and political institutions, including the nation-state."⁴⁷ Today, it takes more than government actions to protect human rights. Non-state actors who are potential violators of human rights, therefore, also need to bear their obligations to respect human rights of others.

The duty-bearers of human rights

Who, then, actually are the duty-bearers? When the state was the sole power-holder and therefore the only violator of human rights, and thus protecting civil and political rights was the central concern in maintaining human rights, the demands for protecting human rights were made mainly against the state. For example, when John Locke's arguments concerning man's natural rights to freedom and equality was first taken up by the bourgeoisie and used against the power of the king, it was used to demand that the state fulfil its duty to respect individuals' natural rights. However, as the private sector became a more prominent potential violator of human rights, the issue became more complicated. The rights which required protecting diversified, and demands for social and economic rights, such as better working conditions, freedom of association, and better social welfare, emerged besides the original demands for political rights, such as popular suffrage. These social and economic rights were originally observed through legislation, such as the Ten Hour's Bill, which restricted the daily hours of

⁴⁶ *Ibid.*

⁴⁷ Stammers, "Social Movements," op. cit., p. 981.

work for women and young persons to ten hours (58 hours a week) in 1848 in England. Therefore, the principal actor, who was capable of affecting the conditions surrounding social and economic rights, remained the state. However, in contemporary times, private economic forces have grown so strong that the power of the nation-state alone is often inadequate or inappropriate to protect people against the power of economic actors. As Tony Evans argues, “the image of the state as the central actor engaged in all aspects of international political life, and the primary defender of universal human rights, cannot be sustained.”⁴⁸

If regarding the state alone as the principal influential actor for the protection of social and economic rights is insufficient, then the question rises as to who else should bear the duty. Henry Shue asserts that every basic right correlates to at least one of the three types of duties, which are “duties to avoid depriving,” “duties to protect from deprivation,” and “duties to aid the deprived.”⁴⁹ The first type of duties, “duties to avoid depriving,” should reside with whoever has the potential to deprive others of their rights: “No individual or institution, including corporations, may ignore the universal duty to avoid depriving persons of their basic rights.” This includes a duty to refrain from impeding others’ actions, which are “taken to fulfill any kind of duty correlative to a basic right.”⁵⁰ Duties of this first type apply to the individual, corporations, or the state within the domestic, international, and transnational spheres. Therefore, they are universal. As Evans contends, “claims for universal human rights are not claims made against the state but against all people and societies.”⁵¹

In the case of Shue’s second type of duties, “duties to protect from deprivation,” it is necessary to distinguish between domestic cases and cases beyond state boundaries. Within the domestic realm, this type of duty falls principally upon the government, for the “emergence of universal human rights placed conditions of legitimacy upon all states in the form of universally recognized duties to guarantee the rights of their citizens.”⁵² Although the effect of legislation is restricted by the scope of the law, a government in a constitutional state is in a position to set regulations which place limits on the power of the power-holders and prevent them from depriving others through their actions. Individuals or other institutions within a state also have responsibilities to fulfil in relation to these duties. They have a duty to refrain from hindering the actions of the government to protect people from deprivation.⁵³ Furthermore, when a

⁴⁸ Evans, *The Politics*, op. cit., p. 66.

⁴⁹ Shue, op. cit., p. 52.

⁵⁰ *Ibid.*, p. 170.

⁵¹ Tony Evans, “Universal Human Rights: Imposing Values,” Caroline Thomas, and Peter Wilkin, eds., *Globalisation and the South* (Palgrave USA, 2003), p. 92.

⁵² *Ibid.*, pp. 91-92.

⁵³ Shue, op. cit., p. 171.

government overlooks some deprivations, these individuals and institutions are required to put pressure on the government to take action against those who are perpetrating the deprivation.

In those cases beyond the state boundaries, such as those involving transnational corporations, the identity of the duty-bearer is less clear. Transnational corporations in the contemporary globalising world are, in most cases, more powerful than many national governments, and the significant power gained by transnational actors limits the influence of state power. Evans points out that “the policies, actions, decisions and authority of transnational organizations and corporations weaken the state’s ability” to fulfil its “obligation to protect the human rights of its citizens.”⁵⁴ Nevertheless, as Shue notes, at present there is no organisation which can effectively control and prevent transnational corporations from depriving those in weaker positions.⁵⁵ This is a significant lacuna in the contemporary globalising economy, which needs urgent attention if rights are to be taken seriously. Still, it may be argued that we all have an obligation to promote “duties to protect from deprivation” and should put pressure on transnational corporations to stop depriving people of less wealthy countries of their human rights.

The third and final type of duties, “duties to aid the deprived,” would fall on to everyone who is able to help others in one way or another, both domestically and beyond the state boundaries. Those who are responding to this type of duty most actively may be the people taking actions independently of any profit-making bodies, such as NGO members. However, the duty-bearers of this type of duty are not limited to individual actors. Wealthier states have duties to provide for less wealthy states and for people living in poverty. Actors of the economic sector are also not free from the duties to aid the deprived. Since the increasing number of corporations are benefiting from the structural deprivation of the world, these economic actors’ responsibility to aid the deprived is growing. Furthermore, duty of this type also accompanies each person’s obligations not to obstruct the actions of aid conducted by others. Hence, this type of duty falls on everyone universally.

Despite the universality of duty-bearers, the level of duties allocated to each actor differs according to the degree of power they hold: “[P]otentially at least, a calibration of duties could be made by taking correlative power into account, in the sense that the level of a social actor’s duties could be related proportionally to its degree of power.”⁵⁶ If this is the case, then the current social system should assign a high level of duties to the world-wide economic sector.

⁵⁴ Evans, *The Politics*, op. cit., p. 83.

⁵⁵ *Ibid.*, p. 170.

⁵⁶ Stammers, “A Critique,” op. cit., p. 501.

The imperative to allocate a high level of duties to economic actors according to their degree of power is even greater today because the growth of global economic entities such as multinational and transnational corporations increase the likelihood of labourer exploitation beyond the boundaries of the nation-state. As Shue points out, the “two most powerful forms of organization in the world today are national governments and transnational corporations.”⁵⁷

However, as mentioned earlier, no singular state today holds the power to stop the deprivations caused by multinational and transnational corporations. Moreover, it is doubtful that wealthier states even wish to stop the economic deprivation of people in other countries, bearing in mind that the economic success of their own people is sustained by such deprivation: “[I]n terms of the hierarchy of power between states in the international order, can we realistically expect the most powerful states to eschew their own interests for the benefit of peoples living in the most powerless states?”⁵⁸ In fact, as Evans points out, it is almost a “common sense” that “states are inclined to overlook human rights issues in favour of economic interests” in their endeavour to maximise the state’s economic growth and development.⁵⁹

Compounding the situation of the deprived members of societies in the least powerful countries is the fact that key elites in these states perceive that their interests are promoted by their countries incorporation into the global capitalist economy. With economic growth being the “supreme objective” of the government and its elite members, “the State does not feel responsible” for its citizens’ “rights and well-being.”⁶⁰ The expansion of global economy “brings further distortion” to this already indifferent attitude of state: “The legitimacy of the developmentalist State is strengthened by the developmentalist global (i.e. transnational) economy.”⁶¹ As a result, many less developed states get themselves involved in what Evans calls a “Dutch auction,” in which “countries bid against each other to offer the lowest levels of environmental, labour and human rights regulation, in the hope of attracting TNC [transnational corporation] investment.”⁶² Evans points out that the effect of the “Dutch auction” is most strongly felt in the countries with a rapid economic growth, where “the price for maintaining a semblance of economic independence is the acceptance of risk,” especially in the area

⁵⁷ Shue, *op. cit.*, p. 170.

⁵⁸ Stammers, “A Critique,” *op. cit.*, p. 505.

⁵⁹ Evans, *The Politics*, *op. cit.*, p. 69.

⁶⁰ Kinhide Mushakoji, “From a Region of National Security States to a Region of Human Security Societies: From a Japanese Perspective,” Anselmo Lee Seong-hoon, ed., *The New World Order and Human Rights in the Post-Cold War Era: National Security vs. Human Security* (Seoul: Academy House, 1996), p. 39.

⁶¹ *Ibid.*

⁶² Evans, *The Politics*, *op. cit.*, p. 67.

concerning conditions of labour.⁶³

With such indifference among states towards avoiding or stopping economic deprivation, which is taking place both inside and outside of their territories, the case for allocating more duties to the stronger economic actors according to the degree of their power is increasingly convincing. Although economic actors are probably as disinterested as the states in carrying out their duties, such neglect does not make their duties any less. Allocating a high level of duties to economic sectors could help to constrain the power of exploitative economic forces and reduce deprivation: as Stammers suggests: “A concept of human rights that requires economic actors to respect human rights would legitimize action against actors who do not do so and creates a general challenge to the legitimacy of the unconstrained exercise of economic power in the private realm.”⁶⁴ The question of how to actually make these actors stop their exploitative actions, and fulfil their duties to respect people’s human rights, remains to be answered.

In summary, violations of human rights are committed by actors – individuals, groups, and states, domestically, internationally and transnationally alike – who have more power in relation to another actor. Accordingly, although everyone bears duties to protect human rights, powerful actors bear more duties accordingly to the degree of their power. Limiting the power of the powerful by putting them under obligations to respect the human rights of people and peoples in weaker positions is the aim of human rights regime. Human rights should be practiced in order to “challenge rather than sustain existing relations of power.”⁶⁵ Understanding the significance of this power relation in relation to human rights is also indispensable in dealing with the issue of collective rights, which is discussed in the following section.

Are there any collective human rights?

Some scholars argue that there are no collective human rights. Jack Donnelly, for instance, clearly denies the possibility of collective rights being human rights: “Any rights that might arise from solidarity would not be *human* rights. . . . The idea of *collective human* rights represents a major and at best confusing conceptual deviation. Groups, including nations, can and do hold a variety of rights. But these are not *human* rights.”⁶⁶ Donnelly defines group rights “merely as the rights of individuals acting as members of social groups.”⁶⁷ In similar

⁶³ *Ibid.*, p. 68.

⁶⁴ Stammers, “A Critique,” op. cit., p. 503.

⁶⁵ *Ibid.*, p. 507.

⁶⁶ Donnelly, *Universal Human Rights*, op. cit., pp. 144-45 (Emphasis original).

⁶⁷ *Ibid.*, p. 147.

terms, Rhoda Howard also denies collective rights' being human rights:

[T]he claim for collective rights is a claim for something very different from human rights; it is a claim that reasserts the value of the traditional community over the individual. . . . Collective or community rights imply permissible inegalitarian ranking of members in the interests of preservation or "tradition".⁶⁸

Howard further points out the latent danger of recognising collective rights: "Collective rights can become exclusivist rights. They establish communities and define – on bases [sic] other than universalist citizenship – who is or is not a member of them."⁶⁹

When the idea of human rights first appeared in the West, the discourse exclusively focused on individual rights – trying to free individuals from the power of the state – and collective rights were not addressed. Reflecting this Western liberal tradition, the majority of rights listed in the United Nations Universal Declaration of Human Rights could be categorised as individual rights. However, as an increasing number of states from different cultural traditions joined the U.N. (and therefore were considered to have adopted the Universal Declaration), an increasing number of voices demanded a wider conceptualisation of human rights which included collective human rights. In response to such demands, an increasing number of collective rights have been recognised as human rights. Thus, it was only recently that collective rights were recognised as human rights.

Although some scholars view collective human rights as a potentially dangerous idea, they are necessary in some instances because, as Peter Jones maintains, "there are some rights that individuals can possess as groups and *only* as groups."⁷⁰ When an individual member's claim is not sufficient to make his/her interest a right, but the combined claims of all individual members of the group provide sufficient grounding for a right, "the group as whole [sic] possesses a right that none of its members possesses individually."⁷¹ Jones claims: "If some of the things that matter fundamentally to all human beings are collective goods to which they can hold only joint claims, I see no reason why we should not think of these as human rights."⁷² As examples of such group rights, Jones names "the right of the members of a religious group not to have their sacred sites desecrated" and "the right of those belonging to a linguistic group to conduct their lives using their native language" in "legislative and court proceedings, tax

⁶⁸ Rhoda E. Howard, "Dignity, Community, and Human Rights," An-Na'im, ed., op. cit., p. 83.

⁶⁹ *Ibid.*, p. 97.

⁷⁰ Peter Jones, "Individuals, Communities and Human Rights," *Review of International Studies*, Vol. 26 (2000), p. 203 (Emphasis original).

⁷¹ *Ibid.*, p. 212.

⁷² *Ibid.*, p. 214.

forms, public signage, and the like.”⁷³ Among internationally recognised collective human rights are peoples’ rights to self-determination, which both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights articulate in their first articles.

Caution required

Nevertheless, the further conceptual expansion of human rights towards including more collective rights requires caution, for allowing the unlimited extension of the concept will ultimately lead to the concept’s distortion beyond recognition. Although there are collective human rights, not all group rights can be categorised as human rights. Collective human rights require selective and cautious applications. Fields and Narr note: “Although collectivities should have a right to cultural expression and recognition, not all of their claims are valid. Claims must be assessed by taking into account the human rights of all of the people involved in the context of inter-ethnic tensions.”⁷⁴ As examples of invalid claims of collective human rights, Fields and Narr enumerate the cases of the Nazis and of the North Americans of European heritage, who determined their national destiny by sacrificing the Jews and Native Americans respectively. They point out: “[A]ll have claimed their absolute rights to engage in such behavior by designating anyone not sharing their characteristics as the enemy. The core values of human rights entail a tolerance of difference which collectivities, particularly national and ethnic groups, often find difficult to accept.”⁷⁵

Field and Narr suggest it must be remembered that human rights were invented as the means to give power to the people in weaker positions to challenge the dominant power. Without this aspect of human rights being correctly understood, they warn that the name and concept of human rights will be misused:

If people are not aware of the historical and contextual nature of human rights and not aware that human rights become realized only by the struggles of real people experiencing real instances of domination, then human rights are all too easily used as symbolic legitimizers for instruments of that very domination.⁷⁶

Remembering this original aim of human rights invention, which was to give means to people in weaker position to protect themselves against the dominant power, is especially significant in dealing with the contemporary world where dominant economic powers are benefiting from

⁷³ *Ibid.*, pp. 211-12.

⁷⁴ Fields, and Narr, op. cit., p. 6.

⁷⁵ *Ibid.*, p 7.

⁷⁶ *Ibid.*, p. 5.

liberal rights, which focuses on rights of small group of people to invest, make profit, and exploit. For the remaining majority in the world who are powerless in poverty, these rights turn out to be the freedom to be exploited and starve: “For many people living in the South, international human rights are understood increasingly as a set of values that support the expansion of global capital, exploitation and control.”⁷⁷ Moreover, in the countries where the majority of people are in a position to be exploited in the current structure of the global economy, the minority groups of elites often claim that it is necessary to sustain the existing policies by referring to the country’s collective rights to development. However, their policies often ignore the rights of people suffering severe living and working conditions in these countries.

False claims of collective human rights

In fact, some governments find collective human rights a convenient justification for their actions when they face international criticism for violating the rights of their own citizens. For instance, several governments of Asian countries press claims regarding their nation’s economic and development rights to justify alleged human rights abuses. Their claims rest on the argument that the advancement of the whole nation should take precedence over the interests of specific individuals and that rights claims must be balanced with commensurate obligations in the name of social harmony. By demanding their rights to self-determination they reject outside interference in their domestic affairs and argue that the tendency of advanced industrial states’ to link developmental assistance aid to their human rights record violates their right to self-determination.

The logic adopted by these Asian governments is that once their right to development is met, then the fulfilment of the remaining human rights will follow. They argue that the implementation of human rights should be left wholly in the hands of the domestic government, and it should be up to the government to decide which rights come first and how they are practiced. This standpoint of some governments in Asia is reflected in the Bangkok Declaration of 1993, which states that the signatories “[r]ecognize further that States have the primary responsibility for the promotion and protection of human rights through appropriate infrastructure and mechanisms, and also recognize that remedies must be sought and provided primarily through such mechanisms and procedures.”⁷⁸ Again, at the Vienna World Conference on Human Rights in 1993, which followed the Bangkok Conference, many delegations of Asian countries presented similar views.

⁷⁷ Evans, “Universal Human Rights,” *op. cit.*, p. 92.

⁷⁸ “Bankok Declaration” (Appendix I), Tang, *ed.*, *op. cit.*, p. 205.

The Minister for Foreign Affairs of the Republic of Singapore, Wong Kan Seng, set out the position of Singapore, which puts economic rights before the democratisation of the country. He argued that in the West democratisation followed economic development, and accordingly newly developing countries should also be given sufficient time to develop their economies before turning to democratisation:

So full democracy was only established in Britain in 1948, 733 years after Magna Carta, and in the United States in 1965, 189 years after Independence. In France, liberté, fraternité and égalité in 1788 did not succeed as a democracy until this century.

The U.S.A., Britain and France took 200 years or more to evolve into full democracies. Can we therefore expect the citizens of the many newly independent countries of this century to acquire the same rights as those enjoyed by the developed nations when they lack the economic, educational and social pre-conditions to exercise such rights fully?⁷⁹

Wong Kan Seng maintained that Singapore would give precedence to the economic development of the country over people's human rights, stating: "Human rights will not be accepted if they are perceived as an obstacle to progress." He also referred to "the rights of the community" and claimed: "In the early phase of a country's development, too much stress on individual rights over the rights of the community will retard progress."⁸⁰

Singapore's position was shared by many Asian countries at the conference. For example, Liu Huaqiu, the head of the Chinese delegation, argued that they should be allowed to prioritise economic development:

The argument that human rights is the precondition for development is unfounded. When poverty and lack of adequate food and clothing are commonplace and people's basic needs are not guaranteed, priority should be given to economic development. Otherwise, human rights are completely out of the question.⁸¹

He continued by criticising the critical stance taken by some states towards others' human rights record and for imposing behaviours of accusing other countries of violating human rights or imposing "the human rights criteria of one's own country or region on other countries or regions." He claimed that such behaviour was "tantamount to an infringement upon the sovereignty of other countries and interference in the latter's internal affairs, which could result

⁷⁹ "Statements by Representatives of Asian Governments at the Vienna World Conference on Human Rights" (Appendix III), Tang, ed., op. cit., pp. 244-45.

⁸⁰ *Ibid.*, pp. 245-46.

⁸¹ *Ibid.*, pp. 214-15.

in political instability and social unrest in other countries.” The Chinese delegate to the conference emphasised that the “right of developing countries to development should be respected and guaranteed.”⁸²

The statement of Ali Alatas, the Minister for Foreign Affairs, and the head of the delegation of the Republic of Indonesia, went even further. After calling for the recognition of cultural diversity in dealing with human rights issues, denouncing the “accusations or preaching self-righteous sermons to one another” and “linking questions of human rights to economic and development cooperation,” he emphasised the importance of balancing rights and obligations in the human rights practice and protecting “the rights of the community as a whole”⁸³:

It is clear, therefore, that implementation of human rights implies the existence of a balanced relationship between individual human rights and the obligations of individuals toward their community. Without such a balance, the rights of the community as a whole can be denied, which can lead to instability and even anarchy, especially in developing countries. In Indonesia, as in many other developing countries, the rights of the individual are balanced by the rights of the community, in other words, balanced by the obligation equally to respect the rights of others, the rights of the society and the rights of the nation. Indonesian culture as well as its ancient well-developed customary laws have traditionally put high priority on the rights and interests of the society or nation, without however in any way minimizing or ignoring the rights and interests of individuals and groups.⁸⁴

The crux of his argument was that the “expression and implementation” of human rights “in the national context should remain the competence and responsibility of each government,” and therefore that other states should leave Indonesia alone to pursue its human rights practice in its own manner and approach.⁸⁵

To cite just a few more examples, the Minister of Foreign Affairs of Malaysia, Datuk Abdullah Haji Ahmad Badawi, maintained that “the right to development is a fundamental and inalienable human right.” He criticised the attempts to link developmental assistance to the human rights issue. In a similar fashion to other Asian delegates, he condemned the current debates on human rights of being the “manifest emphasis on individual rights at the expense of the rights of the community,” and called it a “conceptual lacuna.” The Minister argued: “The rights of the individual are certainly not in splendid isolation from those of the community. Excessive individual freedom leads to a decay in moral values and weakens the whole social fabric of

⁸² *Ibid.*, pp. 215-16.

⁸³ *Ibid.*, pp. 228-32.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

nations.”⁸⁶ The Minister for Foreign Affairs and the chairman of the delegation of the Union of Myanmar, U Ohn Gyaw, also denounced any “attempt to link developmental assistance with human rights,” pointing out that “poverty is a major obstacle preventing the full enjoyment of human rights.”⁸⁷ Similar lines were taken by the delegates of the Philippines and Thailand.

As these statements make clear, with the exception of some Asian governments, such as that of Japan, which expressed views somewhat closer to the position of Western states,⁸⁸ the majority of delegates from Asian countries stressed their rights to development and maintained the precedence of these state rights over the rights of individual citizens. Moreover, there seems to exist a strong tendency for countries which are heavily accused of violating the human rights of their own citizens to put more emphasis on their rights to self-determination and development, apparently with the aim of countering international criticisms. Julia Ching points out that individual rights are largely sacrificed by the Chinese government who emphasise the importance of collective rights:

There are those who say that for China, collective rights are more important than individual rights. This has also been the argument of the Communist government, . . . However, what is implied is often that individuals should be sacrificed when necessary for the collectivity, and that those in power should decide what is good for that collectivity. The record of the Communist government speaks for itself in this regard. While it claims to have fought for the people’s economic and social rights, the price it has exacted is far too great for the limited progress made to date.⁸⁹

While claiming the importance of collective rights, the Chinese government wholly sacrifices its citizens’ civil and political rights as well as their social and economic rights. A. V. Kozyrev, the delegate of the Russian Federation to the Vienna Conference warned of the destructive risk of putting the economic rights of the state before the civil and political rights of people noting Russia’s “own experience proves that in countries where freedom is traded for bread both are deprived eventually.” Kozyrev argued that “when violation of individual rights and freedoms is involved,” claims for non-interference are unacceptable.⁹⁰

Some states with collective, community-oriented cultures would find it convenient if they could

⁸⁶ *Ibid.*, pp. 235-36.

⁸⁷ *Ibid.*, p. 224.

⁸⁸ Nobuo Matsunaga, the representative of Japan, stated: “Human rights are universal values common to all mankind” and “should never be sacrificed to development.” He also claimed: “Japan believes that development assistance should also contribute to promotion of the rights of individuals,” successively suggesting that the assistance should be linked to human rights performance. (*Ibid.*, p. 217-18.)

⁸⁹ Julia Ching, “Human Rights: A Valid Chinese Concept?” De Bary, and Weiming, eds., op. cit., p. 79.

⁹⁰ “Statements by Representatives,” Tang, ed., op. cit., p. 225.

extend the concept of human rights in an unlimited way and include all kinds of collective rights. In that way, they could achieve good records of human rights practices without changing any aspects of their societies, including human rights violations. Indeed, unlimited conceptual extension would not only damage the efficacy of the norm but would also lead to the acceleration of systemic human rights violations. In order to avoid such situation, certain limitations must be placed on the conceptual extension of human rights, particularly in the area where collective rights are concerned. Some collective rights are human rights, but some are not. The distinction has to be made carefully and clearly.

The definition of collective human rights

Accordingly, it is necessary to clarify which rights are collective human rights. There are three factors which are significant in their definition. First of all, in order for a collective right to be a human right, it has to be a claim by the weak against the strong: any claims which try to benefit the strong at the sacrifice of the interests of the weak are false. Examined in this light, the statements of the delegates of the Asian states at the Vienna Conference cited earlier cannot be recognised as claims of human rights, for what they argued was the importance of the rights of society as a whole over those of individual citizens. Although it is not necessarily the case that individuals always hold less power than society, it is the more likely case than the other way around: it certainly is in the case of the Asian states noted earlier. Moreover, judged in accordance with this defining factor of power relations, the cultural rights of a minority group can be categorised as human rights, provided that the minority group holds less power than the majority of the society. However, not all the cultural rights of minority groups can be defined as human rights. There are factors other than relative power positions which have to be taken into account when identifying collective human rights.

The second condition which must be satisfied for a collective right to be a human right is that the claim has to be made by a set of individuals who share a particular interest and not simply by a group that automatically includes people whose interests may be diminished by the implementation of the right. Peter Jones states that “the right of a group will still be a right grounded in the standing of the individuals who make it up.”⁹¹ According to his explanation, if what identifies the group is only a shared interest, the group thus represents the interests of individual members, and therefore, the rights claimed by the group may be categorised as human rights. If, however, the identity of the group rests on a shared culture or history, and the group considers itself to be an entity of moral standing upon which their capacity to hold rights is grounded, then, the group is a single entity, and the rights they claim are something that Jones

⁹¹ Jones, “Individuals, Communities and Human Rights,” *op. cit.*, p. 203.

calls “corporate rights” as distinct from human rights.⁹² This definition is especially useful in examining the validity of claims to rights of self-determination. Jones argues: “If we claim that the right is held by a people understood only as a politically defined unit of population, the right has as good a claim as any to be a collective human right.” However, if it is “the shared identity of its members” that forms the self-determining unit, representing their claim as a human right is quite problematic.⁹³ Thus, in distinguishing collective human rights from other group rights, examining the nature of the group which claims the right is important.

Thirdly, studying the aim of the right is also important in identifying collective human rights. A collective right can be a human right if the aim of the right is to protect the members of the group against those outside, but not if the purpose of claiming the right is to restrict the individual rights of the members within the group. As Jones explains, in respect to “corporate rights,” which cannot be human rights, “a group can hold rights against, or powers over, individuals within its own ranks.”⁹⁴ On the other hand, what he calls “collective rights,” which can be identified as human rights, “must be rights directed ‘outward’ at other individuals or groups of individuals rather than ‘inward’ to the right holders themselves.” “Collective rights” cannot be threats to the individual members of the group, since they “will not entitle the group to tyrannize its own members.”⁹⁵ For rights to be identified as rights to self-determination as inscribed in the two International Covenants of the United Nations, for example, they have to be claimed against “outsiders”, and never against the members of the group which is making the rights claim.

Will Kymlicka also stresses the importance of identifying the target against which a group makes its rights claims. He divides claims made by ethnic or national groups into two types: “The first involves the claim of a group against its own members; the second involves the claim of a group against the larger society.” He calls the first type of claims “internal restrictions” and the second “external protections,” although “[b]oth of these get labelled as ‘collective rights’.”⁹⁶ Kymlicka disputes the claim that “internal restrictions can and do exist in culturally homogeneous countries” which carry “the danger of individual oppression” as they tend to limit the rights of the members of the group. Furthermore, he argues that external protections “can only arise in multinational or polyethnic states” and may help the state “fully respect the civil

⁹² *Ibid.*, p. 213, and Peter Jones, “Human Rights, Group Rights, and Peoples’ Rights,” *Human Rights Quarterly*, Vol. 21 (1999), p. 88.

⁹³ Jones, “Human Rights, Group Rights, and Peoples’ Rights,” *op. cit.*, p. 101.

⁹⁴ *Ibid.*, p. 94.

⁹⁵ *Ibid.*, pp. 88-89, 94-95.

⁹⁶ Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995), p. 35.

and political rights of their own members.”⁹⁷ When we refer to a collective right of a group, we need to examine if the claim constitutes an “internal restriction” of its members or an “external protection” against outsiders. The latter type of claims can be viewed as collective human rights, while bestowing the former these plates is highly problematic.

Human rights and individualism (Conclusion)

In summary, as human rights become an increasingly global issue, and trespassed the boundary of the West, many non-Western countries with group-oriented cultures have claimed various group rights, including collective human rights to development, some of which cannot be identified as claims of human rights. For a group right to be a human right, the right has to fulfil all of the following conditions; 1) that the claim is made to protect the weak against the strong; 2) that the claim is made by a set of individuals who share an interest, and not by a group defined as a single entity; and 3) that the aim of the claim is to protect the members of the group against outsiders and not to restrict the rights of the internal members. Any claim which does not fulfil all of these conditions cannot be categorised as a human right. Today the idea of human rights is confronted with the need to expand its concept as an increasing number of countries with various cultural traditions join the human rights culture as a result of the modernisation of their societies. However, certain restrictions must be imposed on the conceptual extension of human rights, especially in regard to collective human rights. If the unlimited expansion of the concept of human rights is permitted and any kind of group rights are included, then the very virtue of human rights will be forsaken in false claims made in its name.

The caution required in the attempt to extend the concept of human rights to include some group rights underscores the importance of the interrelation between human rights and individualism. The experience of English society suggests that the significance of human rights norms lies in their ability to protect individual people who are detached from collective communal protections as a consequence of modernisation. Although the history of human rights has been that of its continuous conceptual expansion, which began as the rights of privileged elites and is now understood as inalienable rights for all, further conceptual expansion must be carried out with caution in order to avoid damaging the essence of the concept. The aim of human rights always has to be providing the means to promote the interests of individuals by empowering those in weaker positions to challenge the dominant powers.

Furthermore, because of the interrelationship between human rights and individualism, the

⁹⁷ *Ibid.*, pp. 36-38.

implementation of human rights requires pervasive individualism in society. As mentioned earlier, human rights do not function effectively as a protection of individual human dignity in collectivistic societies because of the restrictions placed upon the pursuit of individual interests over and above group interests. Instead, people in collectivistic societies are ready to bear duties to the group and sacrifice their interests for the sake of the group, offering capitalists a greater opportunity to make profits by ignoring the rights of their employees. The lack of individualism in the capitalist economy inevitably leads to the exploitation of workers, as the following case study on Japanese society will illustrate. Japan was the first non-Western country to become fully modernised and develop a successful capitalist economy, and yet, its traditional value system of group-orientation has persisted. Looking at the case of Japan offers the opportunity to observe the consequences of developing an advanced industrial-capitalist economy in the absence of an individualised society. Specifically, it provides evidence concerning the inefficiency in human rights functioning as protection of people's human dignity when there is no permeation of individualism in society.

Chapter Four

The Historical Background of Japanese Group-Oriented Culture

The Japanese tradition of stressing the importance of group duties rather than individual rights can be traced back to the long-standing practice of rice cultivation as well as the influence of some faiths and religions. The importance of controlling land and water usage for cultivating rice brought about a unique village system where group-oriented values were the central norm, while the collectivistic values emphasised in faiths and religions such as Shinto, Confucianism and Buddhism formed the philosophical background of Japanese group-oriented culture. In order to further examine this background to Japanese collectivistic culture, this chapter first looks at the traditional village system which, as the central form of Japanese communities, constituted the basis of Japanese behavioural patterns. The discussion continues by identifying the legacy of the collectivist characteristics of people's behaviours fostered in the traditional village system found in contemporary Japanese society. The chapter then turns to the religious thoughts which sustained and reinforced the group-oriented values of the community system. It is imperative to note that the purpose of this discussion is not to explain every community custom or every aspect of each religious thought. Instead, the aim of the discussion is to establish the physical and philosophical sources of contemporary Japanese group-oriented culture. Therefore, the discussion of the various customs and beliefs is restricted to that necessary to establish the connection between each system or faith and the group-oriented value of Japanese society.

The traditional village system

Until the end of the 19th century Japan was an agricultural country with about 84 percent of population being peasants.¹ Although feudal culture was emphasised by the new government after the change of regime in the mid 19th century in order to unite Japanese people under the emperor, the culture dominated Japan by number for centuries and founded a large part of characteristics of contemporary Japanese people is the culture of peasantry in rural villages. At the beginning of the 19th century there were more than 70,000 *mura* – natural villages² – in Japan and one village consisted of 50 to 100 families. A village was a community sharing a common fate in various aspects. In the Edo era (1603-1867), the village was considered a single unit for the purpose of the collection of the land tax. In order to carry out this

¹ The ruling class of warriors consisted about 7 % of the population.

² Natural villages need to be distinguished from the villages administratively formed by the government in 1888.

responsibility shared by all villagers the village was divided into various groups – the smallest one being a unit of five families. Because one family's failure in the exercise led to the other four families' bearing the punitive consequences, they watched each other's movements very closely. This system of shared responsibility strengthened the unity of villagers and their group-oriented mentality.³

Villages also had communal forests and fields which required the provision of communal labour from each village family. The profits generated by these common properties were used for common purposes and mutual aid. Communal labour was also required for securing irrigation water. The main agricultural production in Japan was rice, and securing water was a great concern for all peasants since the excessive land cultivation had created a chronic water shortage. This water shortage engendered tensions between villages located next to each other or along the same waterway. One village's water extraction meant that the next village went short of water. This tension among different villages also strengthened the unity within one village. Villagers had a strong sense of belonging and loyalty to the community. The village boundary was the end of their world and beyond lived potential enemies. People placed deities at village borders to protect their village from trespassing evil spirits or strangers: indeed the village had a guardian deity to which villagers made only joint wishes for the whole community thereby strengthening their unity under the deity.⁴

As this discussion has already alluded, the family was a very important unit in the village community. In traditional Japanese villages, the constituents of community were not individuals but families. A family in the village community was more than a group of people related by blood. It consisted of land, a house as a dwelling, property, and people living in the house including servants if there were any. The family was led by a patriarch whose decision was absolute, although the patriarchal authority in a peasant family was not as strong as in a family of the warrior class.⁵ The continuation of the family unit was in itself ultimately more important than any individual member of the family, and in this regard individual member's preferences were easily ignored and their personality subsumed for the sake of the family itself.⁶ Thus, family came before individual members, and, in turn, the village community as a whole came before the member families. In addition, whilst land belonged to a family (not to any individual member nor to the patriarchy), it too ultimately belonged to the village community.

³ Hirofumi Tsuboi, et al., *Mura to Murabito: Kyoudoutai no Seikatsu to Girei [Village and Villagers: Life and Ritual of Community]* (Tokyo: Shougakkan, 1984).

⁴ *Ibid.*

⁵ There are also some scholars who suggest that patriarchy practically did not exist in peasant families.

⁶ Tadashi Fukutake, *Nihon Shakai no Kouzou [The Structure of Japanese Society]* (Tokyo: Tokyo University Press, 1981), p. 27.

It was possible that the land changed owners but that would happen always within the village. Thus, unlike in England where there was an active land market already in the 13th century,⁷ land in Japan was not the property of free individuals.⁸

Village regulations and punishment

In traditional villages each villager was expected to strictly follow the village regulations in order to keep harmony and order within the community. When rules were transgressed, village punishment was given both to the perpetrator and their family. The most severe punishment was banishment from the village, but the most common village punishment was social ostracism. A family would get ostracised in the village when a member of the family provoked other villagers' antipathy by acting in a self-righteous or individualistic way at communal occasions though there were also rare cases of punishing criminal acts. What dictated the decisions within the village was not individual opinion but the holistic value of the village community.⁹ Therefore, behaviour which disturbed the order of village life or damaged communal values deserved to be punished. Since the village was an exclusively closed world, being ostracised was a severe punishment. An ostracised family was allowed to re-enter the village community only when their public apology was accepted by villagers after a certain period of time. There were also other punishments such as a fine and public apology.¹⁰

The specific contents of these punishments and regulations varied between the villages. Each village had its own rules which villagers were expected to follow closely. However, once a person left the village, he/she was no longer required to follow the village rules: What a villager did outside of the village was not a concern of the village. What was important was that a person obeyed the rule of the group within the group. Except for the prohibition of the criminal acts regulated by the nation-wide legislation established in the Edo era (1603-1867), there was no universal standard outside the village boundaries to determine the behaviour of individual persons.¹¹ This forms a striking contrast with many European peasantry villages where Christianity provided people a universalised value system regarding how to behave.

⁷ Alan Macfarlane, *The Origins of English Individualism: The Family, Property and Social Transition* (Oxford: Basil Blackwell, 1978), p. 123. See the section on "the individualisation of a society" in chapter one.

⁸ Tsuboi, et al., op. cit.

Shirou Morita, *Nihon no Mura [Japanese Villages]* (Tokyo: Asahi Shinbun-sha, 1978).

⁹ Hiroyuki Araki, *Nihon-jin no Koudou Youshiki [The Behavioural Pattern of Japanese People]* (Tokyo: Koudan-sha, 1973), p. 21.

¹⁰ Toshimi Takeuchi, "Mura no Okite to Jiyu [The Rules and Liberty in Village]," Tsuboi, et al., op. cit., pp. 270-75.

¹¹ *Ibid.*

Village meetings

In the traditional Japanese village system decisions concerning the village were made at village meetings regularly held two or three times a year. Extra meetings were also called as the occasion demanded. Patriarchs of all village families were expected to attend these meetings. These meetings were vital occasions for upholding the unity of village by offering the opportunity to reduce tensions within the village and prevent the future occurrence of conflicts. One significant feature of these village meetings was that they aimed at making decisions with unanimity, although some scholars suggest majority rule was also employed:

It is most important that a meeting should reach a unanimous conclusion; it should leave no one frustrated or dissatisfied, for this weakens village or group unity and solidarity. The undercurrent of feeling is: 'After all we are in the same boat, and we should live peacefully without leaving anyone behind as a straggler.' In order to reach unanimity, they do not care how long it takes – whatever time and trouble they may have in its procedure, all should reach a final consensus.¹²

The way they reached unanimity is also noteworthy. Debates principally comprised a series of monologues. When there was a conflict of interests among villagers over an issue at a meeting, each participant would state his (participants were male) own opinion in turn without engaging with the other's argument.¹³ After several rounds of this process the meeting would draw closer to a unanimous conclusion:

The process of discussion is not necessarily logical. They talk about this and that, often with much indulgence towards the individual feelings at stake. A meeting may take a recess when it comes to a deadlock, and will be resumed later in a fresh mood. In the course of time dissension decreases, and consent increases. When it reaches a stage where support comes from about 70 per cent of the members it is a sign of almost reaching a consensus. In the final stage the minority makes a concession, saying that 'I will join, since all of you have agreed. Though I dissent in this particular issue, by all means I am ready to co-operate with you, and at any rate I have been able to say all that I wanted to say.'¹⁴

Beneath this ostensible series of monologues, dialogue was taking place between members. By listening to others' opinions, members would make some adjustment to their opinions tending towards convergence of opinions. The conclusion reached in this way did not leave any members entirely unsatisfied.¹⁵

¹² Chie Nakane, *Japanese Society* (London: Weidenfeld and Nicolson, 1970), p. 145.

¹³ This lack of dialogue is observed in other countries. In East Timor, for instance, people at local villages employ monologue processes. An international NGO has been trying to teach the East Timorese to engage an open dialogue believing that its absence is a fundamental cause of conflict.

¹⁴ Nakane, *op. cit.*, p. 145.

¹⁵ Osamu Nakano, "Nihongata Soshiki niokeru Communication to Ishi Kettei [Communication and

The culture of village communities

In view of the efforts made to avoid confrontation within the village, a person with an uncooperative personality was especially disliked. A folklorist, Kazuo Katsurai, lists the characteristics despised in village communities as talkative, quarrelsome, alcoholic, desirous beyond one's place, fast living, greedy, aggressive, keen on speculation, a grumbler, a liar, and someone who makes a living out of land leasing or makes money out of mediation. Preferred and expected characteristics then must have been quiet, uncompetitive, honest, ordinary, diligent, someone who knows one's place and who does not complain. In a community where everyone shared the same fate and harmony was valued, an ordinary and modest person was preferred over a person with a strong personality.¹⁶ People were expected to know their own places and to diligently fulfil their duties to the village such as working on communal land and water irrigation facilities. As long as they behaved as good villagers giving precedence to the interests of the village over their personal desires, their places were secured in the community which, in turn, gave them support both emotionally and materially.¹⁷

These patterns of behaviour that prioritised the community above the individual were actively inculcated. The traditional village communities also developed a certain pattern of behaviour among the villagers. Fukutake explains that in village communities parents taught children to follow a morality formed by custom rather than to make autonomous judgement. Children learned to keep their own places in a group, respect harmony, and refrain from becoming self-assertive. Their selves were developed only within their places and never beyond. There was a clear "precedence of custom" and "obedience to authority," while there was little development of independent autonomy within individuals. Villagers who were thus brought up to value harmony always tried to adjust their behaviours to the majority. In village communities, reproving the majority or remonstrating with one's superior was answered with antipathy or isolation from others as an enemy to the harmony and order. People consequently avoided taking actions which may result in isolating them from the community. Complying with the community custom and obeying the authority, on the contrary, provided safety.¹⁸

Decision-making at Japanese-style Organisation],” Eshun Hamaguchi, and Shunpei Kumon, eds., *Nihonteki Shudanshugi [Japanese Collectivism]* (Tokyo: Yuhikaku, 1982), pp. 148-50.

¹⁶ Araki, op. cit., pp. 41-42.

¹⁷ Each village had a financial system of mutual aid. For instance, income from communal land was reserved and occasionally lent to the destitute members at a very low rate of interest. (Takeuchi, op. cit., pp. 283, 286.)

¹⁸ Fukutake, op. cit., pp. 40-43.

The legacy of village communities in contemporary Japanese society

As observed above, traditional Japanese village communities provided the soil for the cultivation of the group-oriented characteristics of Japanese culture with the collectivistic habits of placing group interests before those of individuals. Sharing responsibilities, valuing harmony and unity within groups while fostering hostility against outside groups of the same kind, maintaining customs and rules within the group while disregarding values outside the group, discouraging the development of autonomy within each person while encouraging members to always base their standards of behaviours on the surrounding situation, and promoting family-centricism with strong patriarchal authority: these were the characteristics which defined the traditional Japanese village.

These collectivist characteristics still resonate in contemporary Japanese society despite the fact that most of the traditional village communities have disappeared as a result of the modernisation of the country since the late 19th century. When traditional village communities were destroyed by modernisation, the culture of village communities was transposed into the company system (see chapter five). As a result, in Japanese post-modernised society the legacy of the collectivist group-oriented culture fostered in village communities can still be observed in the company system: where responsibilities are shared, autonomous individualistic behaviours are discouraged and obedience to group custom and authority is strongly encouraged, maintenance of harmony within the group is valued as of utmost importance, and strong sectionalism is promoted with hostilities against other groups of the same kind carefully nurtured (see chapter six).

Because the core values of traditional village communities was preserved and transformed into the Japanese company system, the preferred characteristics of employees in contemporary Japanese companies are similar to those in the traditional villages. When companies take on new employees, they look for obedient persons who will know their place and diligently fulfil their duties (see also the section on “vocational training and the creation of company persons” in chapter six). Desirable employees are those who will devote themselves to the company and will not disturb the harmony of the group with individualistic behaviour such as making personal complaints in public. Japanese employees are expected to accept that the interests of the company as a whole must come before those of individual employees, and, therefore, that they are not in a position to complain or demand that their working conditions comply with the standards set by outsiders, such as internationally recognised workers’ rights or those regulated under national legislation. Similar to the cases of village morality, in the contemporary Japanese company system group morality or rules take precedence over universal values. This

tendency to disregard universal values has resulted in the neglect of various internationally recognised workers' rights (see chapter seven).

Furthermore, the tradition of family-centricism, with patriarchal authorities in traditional villages, was transferred to the "enterprise-family" idealism and prevented English-type industrial relations from developing in Japan. The traditional village system of pre-modern Japan was utilised for the establishment of contemporary pervading company-absolutism, which has been giving companies opportunities to profit by violating various workers' rights. The details and circumstances of how the transformation took place are given in chapter five. Their legacy and influence in contemporary Japan is subsequently examined in chapter six, and their consequences are investigated in chapter seven. However, before proceeding with the details and circumstances of the social transformation, it is necessary to examine the philosophical background which strengthened the collectivist characteristics of the culture fostered in Japanese traditional villages. Whilst cultivated in village communities, the community-oriented culture among Japanese people, which puts utmost importance on keeping harmony within the group, was sustained and reinforced by religious thoughts. Among the faiths that were influential, especially important ones were Shinto, which developed within Japanese village communities, and Confucianism and Buddhism, which despite their foreign origins became thoughts that consolidated collectivistic values in Japan.

Religion and Japanese people

Results of various investigations suggest that the majority of Japanese people consider themselves as non-religious. Toshimaro Ama points out that in most surveys, approximately 70 percent of people answer that they have no religious faith. Nonetheless, about 75 percent of these same people comment that being religious-minded is very important. This means more than half of the entire Japanese people have no religious faith but consider being religious important. What this contradictory result indicates, according to the analysis of Ama, is that when Japanese people say they are not religious, in most cases what they mean is they do not belong to any particular religious sects rather than that they are atheists.¹⁹

Indeed, many Japanese people are quite religious in their acts. A large number of people participate in various religious rites in their everyday lives. Many visit Shinto shrines or Buddhist temples on New Year's Day to pray for happiness and good fortune in the coming year. They also attend a variety of festivals or rites hosted by shrines throughout the year. At the

¹⁹ Toshimaro Ama, *Nihonjin wa Naze Mushukyouanoka [Why Are Japanese People Non-Religious?]* (Tokyo: Chikuma-shobou, 1996), p. 8.

event of death, most people conduct funerals under Buddhist auspices. They build tombs in the graveyard of temples and hold Buddhist memorial rites on special anniversaries of the deaths. Japanese people participate in religious activities no less than any other people in the world. What is unique here is that most of the people are taking part in these religious events without clear intention of engaging in religious activities. Religions have so profoundly penetrated in people's lives in Japanese society to the extent that people no longer think about the religious significance of the events. Japanese culture is, in fact, deeply imbued with religious thoughts especially of Shinto, Confucianism, and Buddhism.²⁰

Shinto

Shinto is an indigenous religion of Japan, which has existed from the outset and throughout the development of the country. The religion originated as animism with nature worship, divination, shamanism, and ancestor worship. Shinto embraces a wide range of beliefs and rituals, but at the centre of the religion has always been the worship of beauty and the power of nature, which is often expressed through festivals and rites organised in community. Shinto is a religion which has developed in the daily life of communities and has its roots deeply entrenched in the Japanese cultural and spiritual climate. The nature worship of Shinto is expressed in the worship of "*kami*" (divine figures), which is often translated as God, gods, spirits, or deities. Ancient Japanese people saw spiritual forces in many objects or phenomena surrounding human lives, such as rain, thunder, the sun, mountains, lakes, certain animals, and trees, and called the spiritual forces within these objects *kami*. Human beings also became *kami* after their deaths by being revered by their families as ancestral spirits. Although *kami* usually guard and bless people, they may also get angry and bring misfortunes, which made it even more important to perform rites and festivals for *kami*.²¹

Shinto is a polytheistic religion which has as many as *yaoyorozu-no* (八百万, "eight million" which means "so many" in Japanese) *kami*. Unlike monotheism, which worships one absolute god and therefore allows only one conception of the absolute truth, polytheism like Shinto does not carry one absolute truth but allows the existence of plural values. The plural existence of *kami* also allows each community to have *kami* of their own. Since ancient Japan, each local

²⁰ *Ibid.*

Noboru Kajimura, *Nihonjin no Shinkou [The Belief of the Japanese]* (Tokyo: Chuoukouron-sha, 1988).

H. Neill McFarland, "Religion in Contemporary Japanese Society," *Video Letter from Japan: Choices for Men Approaching Sixty*, Asia Society (1991):

<<http://www.askasia.org/frclasrm/readings/r000118.htm>>.

²¹ Sachiya Hiro, *Bukkyou to Shintou [Buddhism and Shinto]* (Tokyo: Shinchou-sha, 1987).

village community or kin community has developed its own *kami* (one or more) as the guardian of the entire community. As noted above, the socio-economic relations constituted by the cultivation of rice ensured a very tightly-knit community. This shaped the performance of religious rites and festivals at which people of the village normally made only wishes for the common happiness of the entire village. Accordingly, *kami* are solidly localised existences, deified as guardians to protect their local communities and habitants and, as such, reinforce the community-centred socio-economic relations.²²

Despite their localised development, most *kami* did not develop into figures with strong or unique characteristics different to one another according to the climate of the land or people. Among the “eight million,” there are only a limited number of *kami* that have strong personalities or show impressive patterns of behaviour. Except for those who are described in *Kojiki* (Record of Ancient Matters, compiled in 712) and *Nihonshoki* (Chronicles of Japan, compiled in 720), *kami* of local communities normally lack individuality such that they are not given any definition to their features such as looks, ages, or personality. They have never claimed individuality against the community but instead have been deeply imbued within the communal society. Tetsuo Yamamori claims that this absence of individuality in *kami* is especially noticeable in contemporary Japanese society where there is increasingly a conflict of values between developing individualism and the community.²³

The ethics of religions like Shinto have been deeply related to the values of the local communities within which they are practiced. Like many other indigenous religions, Shinto has no founder, never had any holy scriptures, doctrine, or standardised code of morality. Without these standardisations, the ethical conceptions of Shinto were normally formed according to the prevalent values of each community and for the benefit and harmony of the entire group. Consequently, the commandments of Shinto have always been coterminous with the secular rules of the community, such as the sin of damaging shrines or divine objects, murdering or injuring others, theft, incest, and poisoning. Shinto is a religion which has developed in local communities according to their framework customs and values.²⁴

After Japan opened the country to the Western world in 1868, the new government of Japan declared Shinto was the national religion and that the emperor was a living *kami*. The intended

²² Shinto Online Network Association, “The Jinja Shinto (The Shrine Shinto): The Concept of Kami,” *Jinja to Shinto [Shrine and Shinto]*: <<http://www.jinja.or.jp/english/s-4c.html>>.

²³ Tetsuo Yamaori, *Kami to Hotoke [Kami and Buddha]* (Tokyo: Koudan-sha, 1983), pp. 27-34.

²⁴ Shinto Online Network Association, “The Jinja Shinto (The Shrine Shinto): Sins and the Concept of Shinto Ethics,” *Jinja to Shinto [Shrine and Shinto]*: <<http://www.jinja.or.jp/english/s-4h.html>>.

purpose of the declaration was to subject the population to the direct rule of the emperor and thereby improve the effectiveness of the governance of the country.²⁵ This position of Shinto as the national religion lasted until the country's defeat in the Second World War when the emperor was declared to be a human being. The position of Shinto in society as well as the religion itself has changed throughout the history of Japan, and contemporary Shinto is very different from its original form that had animism in its centre. However, fundamentally Shinto has always been a religion of the local community which has sustained and reinforced the group-oriented mentality of the Japanese people.²⁶

The multiple value system of Shinto and its legacy

Among the many features of Shinto, this discussion particularly focuses on its multiple value system. Shinto has always placed value on the prosperous and harmonious continuity of the community. Its morality has been based upon the benefit to the group, and the multi-value orientation of Shinto allowed each community to form its own Shinto ethics and morality according to their local customs and values. This indicates that the morality of group A could have been different from that of group B. In such cases, persons were expected to follow the morality or custom of the community within which they were residing or visiting and disregard those outside of the community: as the Japanese saying goes, “When you enter a village, obey the village.” As briefly explained in the section on “village regulations and punishment,” the important thing was that a person obeyed the rule of the group when within the group.

This habit of putting the morality and rule of the group of belonging before that of the outside group has consistently set the standard of people's behaviour in Japan. For example, in a small fishing village in rural Japan – which is a rare case of a traditional village community surviving the process of modernisation – there is a local rule that when a task requires the participation of many villagers, every villager has to offer help and no one is allowed to go fishing or kelp gathering until the matter is solved. No villager would break this rule, while, on the other hand, some villagers do break rules outside of their community such as the prohibition on drunk driving, which is not fully incorporated in their system of traditional community rules. Ultimately, the communal rules seem to bear larger importance for the villagers than do the rules prescribed by national legislation.²⁷

²⁵ To justify this move, they referred to the old myth of Japan written in *Kojiki* (Record of Ancient Matters, compiled in 712) and *Nihonshoki* (Chronicles of Japan, compiled in 720), which state that the emperor is the descendant of one *kami*, *Amaterasu Oomikami*, and that only the descendents of this *kami* can rule Japan.

²⁶ “Shintou [Shinto]”: <<http://www.miyagawa.com/syuha/syu/sinto.html>>.

²⁷ Aiko Satou, *Hiataru no Isu [A Chair in the Sun]* (Tokyo: Kadokawa-shoten, 1987).

Similar ethics can be found in contemporary Japanese companies. As stated earlier in the section on “the legacy of village communities in contemporary Japanese society,” there are certain similarities between the collectivist characteristics of the Japanese traditional village system and contemporary company system. As each village determined its own rules of morality and governance according to the customs and values of the community, each Japanese company today determines its own ethics, which employees are expected to follow. Similarly, in most of Japanese enterprises today, as was the case in the village communities, the prosperity of the company as a whole comes before the interests of the individual members of the company in the formation of working ethics. When ethics determined outside of the company conflict with the ethics within the company – and therefore conflict with the interests of the company as a whole – employees are expected to give precedence to the company and protect the profits of the company.

This may help to explain why employees and employers in Japanese companies ignore national legislation regarding issues such as working hours and overtime payment, and similar international rules which were established in order to protect employees against the power of capitalists. Shinto, the earliest indigenous Japanese religion, had multiple value systems which strengthened the collectivistic characteristics of the traditional village communities by allowing them to form their own Shinto ethics according to the interests of the community as a whole. The influence of this multiple value system fostered in traditional village communities continues to be observed today in the company system of Japan. The legacy of Shinto as a strongly community-oriented religion which puts its value on the prosperous continuity of the community as a whole exists in Japanese society today, contributing towards the philosophical wellspring of the culture.

Confucianism and its dimension of ethical philosophy

When Confucius (551 - 479 BC) founded Confucianism, it was not his intention to create a new religion. He simply tried to interpret the already existing religion of shamanism and systemise it into a body of theory. Nobuyuki Kaji conceives that Confucianism is probably the only theory in the world which is based on shamanism and has a political theory.²⁸ Confucius believed that in traditional rituals one could find the ethical core of society. Because of this background Confucianism has two dimensions; ethical philosophy and the religion. The ethical teaching side of Confucianism is mainly concerned with good conduct and proper social

²⁸ Nobuyuki Kaji, *Jyukyoku towa Nanika [What is Confucianism?]* (Tokyo: Chuoukouron-sha, 1990), p.53.

relationships. Harmony in human relationship is especially important in order to bring order to society and peace to the empire:

[O]ne side of Confucianism was the affirmation of accepted values and norms of behavior in primary social institutions and basic human relationships. All human relationships involved a set of defined roles and mutual obligations; each participant should understand and conform to his/her proper role. Starting from individual and family, people acting rightly could reform and perfect the society.²⁹

In bringing harmony to human relationships, the keynote is “*jen*”, which is the source of all virtues in Confucianism. Confucius defined *jen* as “to love others.” He taught “not to do what you do not want others to do to you” and “to do what you would like others to do to you.”

In the teachings of Confucianism, the importance of duty is emphasised as the principal concern in human relationships. Starting from the duty as a son or daughter in the family to respect parents, one has various roles in society and duties to fulfil. Confucius also believed that stability of society and nation would be obtained through “a two-way flow of duties”; people’s duty to contribute to the state and the government’s duty to provide people with care and welfare.³⁰

Another factor stressed in Confucianism is morality. Morality in Confucianism is determined by the custom and mores of the community. Indeed, following the custom and manners of the community is strongly encouraged as morality itself. According to the explanation of Kaji, it is because of the importance placed on traditional rituals of community that the persons who are considered to be saints or sages, i.e., the ideal human beings in Confucianism, are in general experts of communal rituals. They are regarded as the supreme embodiments of the morality of the community. Kaji claims that in Confucianism, “governing by morality” means to have people copy the behaviours of sages under their guidance.³¹ Confucius also advocated people should be governed by morality rather than by law. He asserted, “if people were governed by law and punishment, they would start looking for a legal loophole and lose their sense of shame, but if people were governed by morality and courtesy, they would learn to have sense of shame and stop being dishonest.”³²

²⁹ Judith A. Berling, “Confucianism”: <<http://www.askasia.org/frclasrm/readings/r000004.htm>>.

³⁰ “Individual Wills First – The Real Success behind the Asian Tigers”: <<http://www.jyanet.com/cap/0613feo.htm>>.

³¹ Kaji, op. cit., pp. 101-102.

³² Translated from, Sachiya Hiro, *Bukkyou to Jukyoku [Buddhism and Confucianism]* (Tokyo: Shinchou-sha, 1999), p. 21.

Some point to these community-oriented values of Confucianism as the explanation for the economic rise of East Asia, claiming, “‘Confucian ethics,’ stressing the claims of the community over the individual, are the key.”³³ Lee Kuan Yew, Singapore’s former prime minister, stated how Confucian ethics helped the rapid transformation of their society: “A Confucianist view of order between subject and rule – this helps in the rapid transformation of society . . . in other words, you fit yourself into society – the exact opposite of the American rights of the individual.”³⁴ The community-oriented ethics of Confucianism also have strong influences on how enterprises are run in the region. In Asian businesses, the ideal of “a company as one big family” is often promoted. Companies which pursue the ideal provide security to the members of the company, and employees are expected to work for “the good of the company” in return. Because employees are family members of the company, it is the duty of companies to secure their places at work. As a result, companies in East Asia often employ lifetime employment policies.³⁵ The influence of the ethical philosophy of Confucianism, which is duty-oriented and community-oriented emphasising the harmony of human relationships, can be widely found in East Asian countries today.

The religious dimension of Confucianism

It is controversial whether Confucianism is properly a religion. Confucianism has no priesthood or any particular divine figures. Confucius is honoured as a supreme sage, but he is not worshiped as a personal god. When the evident influence of Confucianism in contemporary East Asian societies is considered, Confucianism seems to be less a religion and more an ethical philosophy. However, being developed from traditional religion, Confucianism has many religious elements, though today they are often unnoticed as Confucian influence. In talking about the religiousness of Confucianism, Kaji defines religion as “something which explains death and after death.” He argues that if the explanation about the issue of death is taken away from religion (whichever religion), ethical morality is nearly the only thing that remains. Conversely, according to Kaji, if ethical morality is taken away from a religion, only death – the issue of death – remains.³⁶

Confucius did not talk about the heaven, but he inherited the view of life and death from the traditional religion and embodied it into a theory. Confucius taught that after one dies, he/she can live on in the continuity of lives of their descendants. In the traditional religion before

³³ “Confucianism: New Fashion for Old Wisdom,” *The Economist* (21 January 1995): <<http://www.china-net.org/CCF95/ccf9502-3.html>>.

³⁴ *Ibid.*

³⁵ “Individual Wills First,” op. cit.

³⁶ Kaji, op. cit., pp. 33-34.

Confucianism, the family of a dead person kept the skull and had shamanist rituals to call the spirit of the dead into the skull. People carried out these rituals mainly for spirits of family ancestors. Based on this traditional ritual, Confucius established a body of theory whose keynote is “*xiao*”, often translated as “filial piety”. Although *xiao* is normally used in regard to one’s relationship with their parents as “deference to them,” *xiao* in Confucianism has wider connotation and includes ancestors-descendants relationships. *Xiao* in Confucianism includes 1) ancestor worship (past), 2) reverence for parents (present), and 3) to have descendants (future). If one reveres parents, worships ancestors and has children, then the children will have more descendants who in turn will worship their ancestors. In this way one can live forever in the continuity of lives of descendants. The religious dimension of Confucianism thus emphasises the importance of continuity of family and as such it is highly family-centred.³⁷

Confucianism in Japan

Confucianism was officially introduced into Japan from Korea in 405 AD, when a Korean scholar invited by the Japanese emperor came with Confucian classics.³⁸ Confucianism founded its roots in Japanese society as an ethical philosophy mainly concerning good conducts and proper social relationships. Although its religious dimension was also introduced, it mainly came in as a part of Buddhism which incorporated some religious elements of Confucianism when it passed through China before entering Japan. The ethical teachings of Confucianism were especially welcomed by Japanese warriors (samurais) for their suitability to warrior spirit or code of morality. Throughout the eras of the warrior regimes (1192-1867), Confucianism formed the core of morality and moral education. In educating young warriors, special emphasis was put on the value of “*chung*”, “loyalty to one’s superiors,” as the highest virtue, rather than *xiao*, filial piety.³⁹

One distinctive feature of Confucian education is denial of creativity. The objective of learning is to be erudite and never to develop the capacity for creativity. In Confucianism, understanding the words of saints or sages in the classics, committing them to memory, and reciting them are right conduct, while showing one’s creative individuality is discouraged. Only by mastering the words of classics, one can become a sage. Confucianism does not appreciate the idealism of showing individuality.⁴⁰ Being the core philosophy for education at the top of Japanese hierarchy for as long as seven centuries, these Confucian ethics on education

³⁷ *Ibid.*

³⁸ According to *Nihonshoki* ([*Chronicle of Japan*], 720) and *Kojiki* ([*Record of Ancient Matters*], 712).

³⁹ McFarland, op. cit.

Hiro, [*Buddhism and Confucianism*], op. cit.

⁴⁰ Kaji, op. cit., pp. 236-37.

have left a strong legacy in the contemporary Japanese education. Instead of developing their creativity, Japanese children are encouraged to learn by rote, and maintaining harmonious human relationships is stressed in the moral education. There is, as a result, a consequent lack of creativity and individuality among Japanese students, which is often pointed out as a shortcoming of the Japanese education today.⁴¹

In Confucianism, fitting oneself into the existing society is valued above showing individuality in the society. This under-valuation of creativity and individuality as well as other features of Confucian ethics were compatible with the existing collectivist culture of Japan cultivated in traditional Japanese villages and did not deny or contradict any elements of Shinto ethics fostered within these same communities. For instance, just like in the traditional village system, in Confucian ethical philosophy the importance of duty and harmony is emphasised in human relationships, and communal continuity is so highly valued that morality is determined by customs and mores of community. The religious aspect of Confucianism which emphasises *xiao*, filial piety, was also in line with the importance of family within the context of Japanese collectivist culture. As a result, Confucianism did not cause any major conflict with the existing social morality or religion in Japan even after it ceased being the exclusive ethical philosophy of the warrior class and became popularised through the nationalist policy of the Meiji government (1868-1912).

Confucianism in contemporary Japan

Among the features of Confucian teachings, its family-centricism together with the teachings of filial piety, loyalty to one's superior, and obedience require further attention in view of their relevance for understanding the company-absolutism of contemporary Japan. As mentioned earlier, Confucian ethics were mainly learned among the warrior class, and the majority of Japanese people were rarely exposed to its influence until the end of the age of the warrior regime. However, when the new government of Meiji was established (in 1868), it utilised the Confucian virtues of loyalty, obedience, and filial piety in order to promote the policy of building a strong nation with the living *kami* – the emperor – at its centre. The kind patriarchal mercy of the emperor was emphasised, and children were taught to be loyal and obedient to the emperor and to answer to the emperor's mercy with filial piety. This policy of building a strong nation, utilising Confucian ethics as well as the name of *kami* from Shinto, was carried out under the “family-state” ideology (see also the section on “the family-state ideology” in

⁴¹ See also the section on “the forced voluntary volition of workers” in chapter seven (Yoshitaka Oohira, “‘Kakoikomi’ to ‘Seoikomi’ [‘Enclosure’ and ‘Shouldering’],” *Kougyou Keiei Kenkyu* [Study on Industrial Management], No. 10 (1996): 41-45).

chapter five and the section on “familism” in chapter six), and Confucian ethics were taught in this form to all children of Japan through moral education in schools.

Concurrently with the nationalist policy, the “family-centricism” cultivated in traditional village communities was also utilised by capitalists to establish the ideology of the “enterprise-family.” The top elites of large enterprises in the Meiji era (1868-1912) together with the Meiji government advocated this ideology of the “enterprise-family” in order to hamper the growth of a horizontal labour market and the English-type of labour-management relations which showed some sign of development at the end of the 19th century (see also the sections on “the enterprise-family” and “the emergence and decline of workers’ movement” in chapter five). Unlike the “family-state” ideology of the nationalist policy, the ideology of the “enterprise-family”, which successfully subsumed the movement of trade unionism in Japan, survived the nation’s defeat in World War II and embraced the people who had received their school education in the pre-war period with Confucian virtues of loyalty and obedience (see also the section on “the democratisation of Japan” in chapter five).

When the nationalist policy was abolished at the end of the war, the ideology of the “family-state”, sustained by Confucian virtues, had already permeated through the nation. Having lost their status as loyal children of the emperor, these people who required new places of belonging were ready to become loyal members of enterprise-families, providing them with the assured security of life-time employment and social welfare (see the sections on “trade unionism after World War II” and “the democratisation of Japan” in chapter five). Although it remained mainly limited to the ethical teachings of the warrior class for the majority of its history in Japan, Confucianism played an important role in forming contemporary company-absolutism, which has been hampering the effective implementation of workers’ rights in Japan as is examined in chapter six and seven. The religious elements of Confucianism which emphasises filial piety in the family, along with its ethical philosophy which stresses the importance of duty and harmony in human relationships, worked to reinforce the value of community and duty-orientation of Japanese culture and partially formed the sources of company-absolutism in contemporary Japan.

Buddhism

Buddhism was founded in India in the 6th century BC by Siddhartha Gautama, later known as the Buddha, the enlightened one. Siddhartha Gautama was born as a son of a rich ruler around the border area between India and Nepal. In spite of his high social position and economic condition, he felt that human life was full of suffering, for all must face aging, illness, and death.

At the age of 29, he determined to search for an answer to these sufferings and left his family to go into a religious training of an extreme asceticism. After 6 years, however, he realised that asceticism was not the right way and promoted the Middle Way, rejecting both extreme mortification and extreme hedonism. He practiced this Middle Way, meditated, and attained spiritual enlightenment at the age of 35. In so doing he became the enlightened one, the Buddha, and taught others how to attain this spiritual enlightenment and become a Buddha also. Buddhism is, therefore, the teachings about how to become *a* Buddha, as well as the teachings of *the* Buddha.⁴²

The central doctrines of the teachings of the Buddha include the Four Noble Truths and the Eight-Fold Path. The first Noble Truth of the four is the truth about human suffering, that the life we normally live is full of suffering. The second Noble Truth is the truth about the causes of suffering. He taught that our suffering is caused by cravings and insatiable desires. The third Noble Truth is the truth about the extinction of the causes of suffering. Our suffering will cease when we stop wanting and relinquish our attachments to secular objects. The fourth Noble Truth is the truth about the method. It teaches how to control our desires and bring suffering to an end. The Eight-Fold Path (Right Views, Right Intention, Right Speech, Right Action, Right Livelihood/Occupation, Right Endeavour, Right Mindfulness, and Right Concentration) is provided in this fourth truth. If one follows this path within the Middle Way, he/she can achieve “the highest destiny of the human spirit,” Nirvana, and escape from the suffering of life and the circle of reincarnation.⁴³

The Buddha taught people to go through this process of reaching Nirvana by working out their own salvation with diligence. This, however, requires a large commitment which can be overwhelming for many laymen. A solution to this difficulty was provided when the teachings of the Buddha branched off into two main streams several centuries after his death. One branch of Mahayana (A Large Vehicle) Buddhism aimed to help all living things attain enlightenment. The other branch is critically referred to as Hinayana (A Small Vehicle) Buddhism for aiming only to liberate themselves.

⁴² “Fundamental Buddhism Explained Summary”:
<<http://www.fundamentalbuddhism.com/buddhism.htm>>.

⁴³ Meredith Sprunger, “An Introduction to Buddhism,” *The Urantia Book Fellowship*:
<http://www.ubfellowship.org/archive/readers/601_buddhism.htm>.

Lisa F. Vail, “The Origins of Buddhism,” *Focus on Asian Studies*. Vol. II, No. 1. Asia Society. Fall 1982: <<http://www.askasia.org/frclasrm/readings/r000007.htm>>.

Gradually, Buddhism spread into various countries in Asia across the sea or along land routes. Across the sea, the teachings reached Southeast Asian countries, such as Sri Lanka, Burma, Thailand, Cambodia, and Indonesia. The form of Buddhism that took this route was Hinayana (A Small Vehicle) Buddhism, which did not undergo major changes while spreading into different countries. By contrast, as Buddhism spread along the land routes into Northeast Asian countries, such as China, Mongolia, Korea, and Japan, it underwent some profound changes. It was Mahayana (A Large Vehicle) Buddhism that spread along these land routes, and as the teachings entered different countries, they adapted to local customs by assimilating some elements of the local cultures. As a result, in Northeast Asian countries Buddhism developed into different forms and eventually grew into numerous sects. It was the tolerance and flexibility of Buddhist teachings that made these changes possible. Not having one absolute god, Buddhism advocates no rites, no ceremonies, no sacrifices, nor mortification. No form of coercion plays any part in Buddhism, and consequently, Buddhism did not provoke any crucial fights with other religions and belief systems it encountered. Instead, it co-existed with local cultures, in some cases, making some adjustments to its teachings.⁴⁴

Buddhism in Japan

The official introduction of Buddhism to Japan is recorded in *Nihonshoki* (Chronicle of Japan, 720). According to the record, the emperor of the Korean kingdom of Paikche sent envoys with the Buddhist scriptures, a stature of the Buddha, and Buddhist altar fittings as presents for the Japanese emperor in 552 AD.⁴⁵ A discussion was held in the court whether or not Japan should accept this foreign religion. Although one group insisted that Japan already had its own *kami* of the indigenous religion and as such that there was no need to take in foreign faiths, the emperor took the decision to experimentally accept the new religion into the country.⁴⁶ Thereafter, Buddhism developed in the country into a unique Japanese form.

The most significant features of Japanese Buddhism, which are different from the original, are the elements of ancestor worship and universal salvation. Before coming into Japan, Buddhism went through Central Asia, China, and Korea. When Buddhism entered Japan, the religion had already undergone a substantial change, particularly in China. Because the religion went through further substantial changes after entering Japan, Japanese Buddhism

⁴⁴ Sprunger, op. cit.
Vail, op. cit.

Lionel Landry, "The Migrations of Buddhism," *Focus on Asian Studies*. Vol. II, No. 1, Asia Society (Fall 1982): <<http://www.askasia.org/frclasrm/readings/r000008.htm>>.

⁴⁵ Some scholars argue that this took place in 538 AD.

⁴⁶ Sachiya Hiro, *Bukkyou to Kirisutokyoku [Buddhism and Christianity]* (Tokyo: Shinchou-sha, 1986), pp. 35-37.

became something different from the original Indian Buddhism in two ways.⁴⁷ From its entry to China around the 1st century AD, Buddhism was exposed to the influence of Confucianism, which had already percolated through the society in the seven centuries since its foundation. In particular, it adopted the Confucian notion of ancestor worship into its central doctrine. Originally, Buddhism showed no interest in mortuary ceremonies. The original Buddhism taught that a dead person would be reborn to this world after 49 days of their death. In that case, there is no point worshipping their spirit after that period of time, for he/she has already returned somewhere to this world. Its encounter with the culture of ancestor worship in Chinese society, however, led Buddhism to assimilate this element by adding to the Buddhist classics an episode of the Buddha teaching the importance of *xiao*, filial piety, and ancestor worship. “After all, Buddhism could not deny the religious aspect of Confucianism.”⁴⁸

Consequently, ancestor worship with customs of various mortuary ceremonies was already an important element of Buddhism when it was introduced into Japan and was welcomed by Japanese people. It fitted with the custom of ancestor worship of the indigenous religion, Shinto, and also provided the means to calm down the spirits of the dead for the people who believed and feared that the dead persons could bring misfortunes or take divine vengeance to the living ones. The Confucian aspect of Buddhism as the mortuary agent has been actively developed in Japan to the extent that today it is nearly the main role of Buddhism in the society:

In responding to a direct question about religious interests, a Japanese will often reply: “My family is Buddhist.” Although seemingly noncommittal, this response suggests that the individual has no well-defined religious interests but that his or her family has for generations been associated with a particular Buddhist denomination or temple. Funerals of family members, therefore, are conducted under Buddhist auspices, and thereafter Buddhist memorial rites are held on specified anniversaries of their deaths.⁴⁹

Thus, the death of a person, which was a personal, individualised matter in the original form of Buddhism, subsequently developed into a family-oriented issue in China and in Japan.

As mentioned earlier, Mahayana (A Large Vehicle) Buddhism was adopted in Japan, which aims to help all living people attain enlightenment rather than only seeking individual liberation⁵⁰ Initially, Japanese Buddhism started as a religion for the ruling nobles and its elite supporters.

⁴⁷ Musashi Tachikawa, *Nihonbukkyou no Shisou [The Thoughts of Japanese Buddhism]* (Tokyo: Koudan-sha, 1995), p. 10.

⁴⁸ Translated from, Kaji, op. cit., pp. 221-22.

⁴⁹ McFarland, op. cit.

⁵⁰ A similar idea of individual self-discipline was introduced to Japan by Zen sect at the end of the 12th century gaining followers particularly in the warrior class, but it did not gain wide support in society at large.

Common people did not understand its complex theories. However, around the 12th century, a newly founded sect of Jodo (pure land) introduced a simple theory of universal salvation. It taught that if a person prayed for salvation to Amida Buddha reciting “Namu Amida Butsu (I embrace Amida Buddha),” he/she would be taken to a heavenly place, Jodo (pure land), after death. This way, one could base his/her salvation completely on somebody else’s (of Amida Buddha) power. Until that time, Japanese people did not have any clear vision of the world after death, since Shinto does not have an idea of heaven. People had thought the dead would go to the mountains and become *kami*, but feared of what would happen to them there. The teachings of Buddhism about universal salvation were an ideal solution for the release of their fear. For this reason, the teaching of universal salvation attracted Japanese people and helped Buddhism to become widely spread in the society. Buddhism, which was originally a religion which required diligent training of the mind became a religion that saves everyone simply through prayers in Japan.⁵¹

Despite the fact that Buddhism was introduced into Japan where there had already been the indigenous religion of Shinto, it found a way to co-exist with the local religion after a few relatively minor conflicts. Among the several factors which contributed to this harmonious co-existence of the two religions, one of the most significant elements was Buddhism’s tolerance which derived from its absence of one absolute god. After entering Japan, Buddhism showed flexibility in respecting already existing beliefs, and accepted Japanese *kami* as the guardian deities of Buddhism.⁵² Another significant factor was Shinto’s multi-value orientation which stemmed from its polytheism. As they would worship numerous *kami* and find divinity in anything extraordinary in Shinto, Japanese people showed no reluctance to accept Buddha as another divine figure.⁵³ In general, the multi-value orientation in Japanese culture has made Japan a good recipient of foreign influences. Tetsuo Yamaori claims that generally, in the thoughts or cultures with a good function of sending out, strong principles or fundamental rules are held up in front. By contrast, as Yamaori points out, in the thoughts or cultures with a good function of receiving from others, plural values or a multi-centred worldview seem to be preferred.⁵⁴ With the help of these factors, Buddhism infiltrated Japanese society without major conflicts with the local culture.

⁵¹ Hiro, [*Buddhism and Shinto*], op. cit.

⁵² Shoukou Watanabe, *Nihon no Bukkyou [Japanese Buddhism]* (Tokyo: Iwanami-shoten, 1958), p. 122.

⁵³ There was also a theory put forward that *kami* were embodiments of Buddha or Buddhist saints, which later led to Shinto’s reassertion that Buddha was an embodiment of *kami*.

⁵⁴ Tetsuo Yamaori, *Bukkyou towa Nanika [What is Buddhism?]* (Tokyo: Chuoukouron-sha, 1993), pp. 139-40.

Buddhism's role as the mortuary agent, which was a Confucian influence Buddhism incorporated when its corpus in China, also provided Japanese people with the means to practice the Confucian teaching of filial piety to ancestors. Consequently, Buddhism in Japanese culture fortified the family-centricism, which, as examined in the section on "Confucianism in contemporary Japan," formed the sources of company-absolutism of contemporary Japanese society. As with the ethics of Shinto and Confucianism, the Buddhist teachings that became popular among the people in Japan had no elements which would cause friction with the collectivist culture. Long before entering Japan, the Buddhist stream of Mahayana which came to Japan had dropped the original Buddhist requirement of individual diligence apart from the secular world for attaining salvation. Moreover, after entering Japan, Buddhism transformed into a religion in which people could altogether depend on the mercy and power of Amida Buddha for their salvation. Buddhism in Japan became a family-oriented religion of ancestor worship with the idea of group salvation and infiltrated Japanese culture thereby sustaining its multiple value system and group-oriented collectivism.

"Japanism" (Conclusion)

In human civilisations, there are always religions at the base of people's lives. Religions contribute to people's understanding of the world and influence their behaviours and thoughts through forming social and moral norms and beliefs. In studying a culture, therefore, looking at the religious beliefs of a society is indispensable. While most Westerners have only one religious belief, Japanese people comfortably take part in rites or ceremonies of various religions – mainly of Shinto, Buddhism, or Confucianism. Unlike Christianity, which took over the local religions as it spread into various places in the world, Buddhism and Confucianism in Japan found a way to co-exist in harmony with the indigenous religion of Shinto. In their history of co-existence, these three religions have influenced each other, and in some respects infiltrated into each other, as seen in the theory that views *kami* as the embodiment of Buddha.⁵⁵ In the Edo era, moreover, Shinto was interpreted using the philosophy of Confucianism. As a result, today it is sometimes difficult to tell which religion's influence certain customs are under. The three religions simultaneously form the philosophical background of contemporary Japanese culture, sustaining its community, duty, and family-orientation.

⁵⁵ Paul Watt, "Shinto & Buddhism: Wellsprings of Japanese Spirituality," *Focus on Asian Studies*, Vol. II, No. 1, Asia Society, Fall 1982: <<http://www.askasia.org/frclasrm/readings/r000009.htm>>.

Furthermore, a historian Masahide Otou advocates that Shinto and Buddhism together formed a “national religion” of Japan.⁵⁶ A somewhat similar claim is put forward in *Nihonjin to Yudayajin [The Japanese and the Jews]*. The writer, Isaiah Ben-Dasan, argues that the Japanese are the followers of a religion, “Japanism”. He suggests that, just as Judaism exists, the religion of “Japanism” certainly exists⁵⁷ and explains the relaxed attitude of Japanese people towards religions with this idea of “Japanism”:

In Japan it is not surprising to hear a couple say, “Which style of wedding shall we have? Shinto style is nice, but Christian style is also good.” Surely this is all right, for either way is of “Japanist” style. . . . Even if one woman who got baptised and graduated from a mission school gets married in Shinto style and her funeral is conducted in Buddhism, nobody would consider it especially strange. If one thinks this is not religiously clean, that person is wrong. The Japanese are truly religiously clean people. Behaviours as above show that, at least in their everyday lives, that is, at the bottom of their hearts, all Japanese are the followers of “Japanism”. They would say, “In any case, we are all Japanese (the followers of “Japanism”).”⁵⁸

Of course, Japanese people are not consciously aware of “Japanism” as a religion, but according to Ben-Dasan this unawareness itself is the proof of the strength of the religion. He claims that the religion “Japanism” is the strongest religion in the world because it has completely penetrated the society to the extent that the followers themselves are not aware of its existence. Ben-Dasan further argues that missionaries who think it is possible to convert the followers of “Japanism” to other religions are insane. In Japan, Christian missionaries recovered their freedom to evangelise in the 19th century. However, the number of Christian followers in Japan today is only one percent of the population and does not seem to be growing much. Ben-Dasan asserts that the inability to develop converts to Christianity in Japan can be attributed to their incorrect presumption that the Japanese are a people without any strong religious faiths.⁵⁹

As shown, Shinto, Confucianism and Buddhism are deeply imbued in Japanese society and together form a firm philosophical background of Japanese collectivist culture. Shinto and Confucianism have, from their origins, been distinctly community and duty-oriented, and Buddhism, which originally required diligent training of the individual’s mind, had been transformed into a religion of family ancestor worship and group salvation by the time it became popular among Japanese people. The wellsprings of Japanese group-oriented

⁵⁶ Yamaori, *[What is Buddhism?]*, op. cit., p. 153.

⁵⁷ Isaiah Ben-Dasan, *Nihonjin to Yudayajin [The Japanese and the Jews]* (Tokyo: Kadokawa-shoten, 1971), p. 117.

⁵⁸ Translated from, *Ibid.*, pp. 125-27.

⁵⁹ *Ibid.*, p. 119.

mentality are evident in these religions, which fortified the community-centred culture fostered in the traditional village system. In fact, the group-oriented culture formed with these physical and philosophical conditions was so profoundly enrooted in the society that the radical social changes caused by the modernisation of the country from the 19th century failed to bring about individualisation within the strongly collectivistic society. As is examined in the following chapter, the inflow of technologies and capitalism towards the end of the 19th century triggered industrialisation and westernisation of social systems in Japan. However, the transformational pressures generated by the inflow of ideas and ideologies of Western origins never caused substantial changes to Japanese people's group-oriented mentality. The forces of modernisation did not engender ideological westernisation or individualisation of people's behavioural patterns in Japanese society.

Chapter Five

The Modernisation of Japan

Modernisation was suddenly brought to Japan by the West when Japan was forced to open the country to the rest of the world in the middle of the 19th century, after two and a half centuries of the isolationist policy. Hereafter, modernisation proceeded in great haste, and just as in the West, it brought about substantial changes to society. Among the changes engendered by modernisation one of the most significant was the emergence of social and geographical mobility in Japanese society. The industrialisation triggered by the inflow of technologies and a capitalist market economy produced a boost in manufacturing which provided opportunities for people in rural areas to move to urban areas and get jobs in factories. As a result, an increasing number of people became wage-labourers living in cities within nuclear families.

As observed in chapter one, in England where industrialisation first occurred, these physical transformations of the society led to the emergence of a workers' movement, the gradual acquisition of workers' rights, and ultimately the individualisation of society. In England, industrialisation engendered the necessary conditions to ensure the protection of wage-labourers against exploitation by capitalists, which in turn developed the idea of human rights whose attribution to individuals provided the means for people to put their interests before those of community or group and shifted the society towards being predominantly individualistic. In Japan, too, when industrialisation, triggered by modernisation, brought about social changes and produced a large number of wage-labourers, there was some sign of the development of the union movement and workers' acquisition of rights. The introduction of Western ideas, especially those of human rights, also generated demands for individual human rights. However, both movements ultimately failed, and the full development of free trade unionism never took place in Japan.

Unlike the case of England, the forces of modernisation in Japan failed to bring about the attribution of rights to all individuals or the individualisation of the society. Although legislative attribution of human rights to all individual Japanese nationals eventually took place after World War II, it did not lead to the development of free trade unions as the effective means to protect workers' rights in the capitalist economy. In the meantime, Japanese people continued to adopt group-oriented patterns of behaviour, and the fundamental character of Japanese society remained intact. Chie Nakane, a Japanese sociologist, claims that although

industrialisation “produces a new type of organization” in a society which may have a similar “formal structure” to the one in modern Western societies, the “informal structure” of society may not follow the same path and may withstand the great impact of industrialisation.¹ In fact, in the case of Japan, the traditional social structure seems to have been even fortified in some areas, such as that of labour relations, through and after industrialisation. As Andrew Gordon points out: “Japanese labor relations resembled those of the West more at the outset, in the nineteenth century, than today.”²

The following discussion investigates this argument of Gordon and examines how Japanese social features, especially that of collectivism, maintained its continuity despite the social changes caused by modernisation. To this end, this chapter outlines the modernisation of Japan. It focuses on the changes surrounding labour, starting from the emergence of social and geographical mobility, which allowed peasants in rural communities to become wage-labourers in cities. The discussion considers the characteristics of wage-labourers in the early stages of Japanese industrialisation and continues by demonstrating how those labourers who were supposed to be able to freely sell their labour power in the capitalist market economy became company-bounded. The examination reveals how Japanese industrialisation failed to produce an active free trade union movement in the society and how the inflow of Western ideas and ideologies ultimately failed to take root, allowing the traditional values of group-oriented collectivism to persist.

The emergence of social and geographical mobility

In the Edo era (1603-1867), the regime of the Tokugawa Shogunate set a hierarchy of social castes according to occupation, in which more than 80 percent of the population belonged to the peasant class.³ Because the regime prohibited movement between different social statuses, and strictly controlled geographical movement, most peasants spent their entire lives in the villages where they were born. They lived as a part of their family which, in turn, was a part of a village community, fulfilling their roles and duties.⁴ The Meiji Government (1868-1912), ruled by the emperor, abolished the social hierarchy of the old regime⁵ and, at the same time,

¹ Chie Nakane, *Japanese Society* (London: Weidenfeld and Nicolson, 1970), p.8.

² Andrew Gordon, *The Evolution of Labor Relations in Japan: Heavy Industry, 1853-1955* (Cambridge (Massachusetts): Harvard University Press, 1988), p. 5.

³ The top of this social hierarchy was dominated by the samurai warriors who accounted for less than 7 % of the population, followed by peasants, artisans, merchants, and finally those groups of people with professions that were considered impure. (Washington State University, World Civilizations: An Internet Classroom and Anthology, “Tokugawa Japan (1603-1868)”:

< <http://www.wsu.edu:8080/~dee/TOKJAPAN/TOKJAPAN.HTM>>.)

⁴ See chapter four.

⁵ The abolition of the system of social hierarchy was carried out through a series of legislative acts.

strengthened the custom of primogeniture by setting it in the civil code.⁶ These policies of the new regime provided the basis for the social and geographical movement of the population. Second or third sons of peasant families were provided with opportunity and reason to leave their villages to pursue earning a living elsewhere, as a consequence encouraging the industrial growth.

Whilst propelling industrialisation, the prime objective of Meiji Japan was strengthening the country both economically and militarily. After opening the country to the West, it became obvious that while it had isolated itself from the world, Japan had been technologically outperformed by the West. The recognition of this gap made the Meiji government determined to develop the economy and industry, and by the early 1880s the government had begun to invest heavily in building the economic foundation of the country. Japan's industrial economy started to show a rapid growth by the turn of the century with its manufacturing rising 2.5 times between 1895 and 1915.⁷ This industrial boost provided job opportunities at factories and stimulated a population movement from the agricultural land to the industrial cities.

Nevertheless, these movements did not lead to a rapid overturn of the rural community system nor to the erosion of the ties between most of the population and their rural communities as is often presumed. Although the population living in urban areas increased from a rate of 10 percent around 1870 to about 25 percent in 1925, the actual number of the population living in rural areas itself did not change very much. Instead, the growth in the urban population was met by the growth in the rural communities. Even in around 1940, when the population living in urban areas approached 40 percent, 80 percent of the Japanese population were born in rural communities.⁸ Moreover, many of the people who lived and worked in urban areas "maintained ties with native villages as places to return to in case they lost their jobs or retired."⁹

Beginning with the abolition of feudal system which repealed the samurai warrior class, the legislation of 1870, which proclaimed that "from now on, the common people are permitted to use surnames," repealed the social hierarchy of the four classes above the classes of the untouchable. Subsequently in 1871, it was proclaimed that "the names of *eata*, *hinin* (names of groups ranked as untouchables) are hereby to be abolished and their social statuses and occupations are both to be treated equal to those of the common people," though this never eliminated the social discrimination against people who belonged to the untouchable classes during the Edo era, which still remains a social issue in Japan today.

⁶ The civil code of Meiji stipulated that at the retirement or death of the patriarch, the headship of the family would be transferred to the first son of the family and the family property would be inherited alongside the headship.

⁷ Andrew Gordon, *A Modern History of Japan: From Tokugawa Times to the Present* (New York: Oxford University Press, 2003), p. 96.

⁸ Tadashi Fukutake, *Nihon Shakai no Kouzou [The Structure of Japanese Society]* (Tokyo: Tokyo University Press, 1981), p. 32.

⁹ Takeshi Ishida, *Japanese Political Culture: Change and Continuity* (New Brunswick: Transaction

In the meantime, the number of wage-labourers showed only a slow increase. According to the national statistics, even in 1930 more than 60 years after the Meiji Restoration, the rate of growth of wage-labourers in the working population was limited to 10 percent.¹⁰ Besides, the majority of the wage-earners in the early stages of the industrialisation were young women in the textile industry who considered their jobs at factories to be temporary and worked only until they married.¹¹ Despite the rapid growth of the industrial economy, social and geographical mobility amongst the population did not accelerate until after 1930. In the meanwhile, the traditional culture of the rural community continued to dominate society and by the time the increase of wage-labourers finally began to accelerate in the 1930s,¹² the community-oriented culture had already been adopted by the capitalists into their employment system. The culture of the “family company” with loyal and stable workers was promoted by the capitalists in order to prevent the adoption of Western type labour-management relations in the Japanese factories. The following argument investigates how capitalists managed to establish the culture of the “company as one big family” as the central ideology of labour-management relations in Japan.

The early Japanese wage-labourers

The wage-workers at the beginning of the Meiji era (1868-1912), who accounted for a very small part of the population, moved from job to job. The expectations of life-time employment and loyalty to the employer, which are central to the contemporary Japanese employment system, were never the norm for wage-labourers at that time. The high mobility of wage-workers was inherited from the customs of artisans before Meiji. In the Edo era (1603-1867), artisans, who had completed their apprenticeship of about 10 years under one master, became journeymen and moved from master to master enhancing both their skills and wages. Moving was central to their careers, and they continued to do so even after their employers changed from masters to the factory owners. In 1905 a government survey reported that over 50 percent of machine operators changed factories within a year.¹³ The turnover rate became even higher when there was a shortage of industrial workers due to the war-time economic growth:

Books, 1983), p. 11.

¹⁰ Fukutake, op. cit., p. 19.

¹¹ Japan's industrialisation was led by the textile industry. According to government statistics, in 1911 out of nearly 800,000 factory and mine workers, about 475,000 worked in textile mills, and more than four fifths of them were women. (Gordon, *A Modern History*, op. cit., p. 100.)

¹² By 1940 the rate of wage-labourers in the working population had increased to more than 40 %, and the population in urban areas had become 38 %. (Fukutake, op. cit., pp. 20-21.)

¹³ Shizuo Matsushima, “Labour Management Relations in Japan,” Paul Halmos, ed., *Japanese Sociological Studies* (Keele: University of Keele, 1966), p.77.

Frequent job-switching was reported nationwide. Yearly turnover rates of around 75 percent were the norm in most industries during World War I. A survey carried out in Kyoto revealed that yearly turnover among the city's 1,200 to 1,700 machine-industry workers ranged from 82 to 87 percent per year in 1916 and 1917, and the Factory Inspection Report for 1919 found the nationwide machine industry separation rate to be exactly 75 percent.¹⁴

Following the artisan tradition, the wages of workers in the Meiji industrialisation was determined according to the workers' skills and, as a consequence of the high mobility of workers in pursuit of better offers, wages were kept relatively high. The high mobility of workers persisted until around 1920 and, as a result, created an "open, horizontal labor markets according to occupation." Until the early 1920s, "Japan's wage system closely resembled the Western model."¹⁵

The characteristics of wage-workers at the beginning of the Meiji era were indeed quite distinct from those of contemporary Japanese company workers. Since workers of early Meiji switched jobs at will, they normally developed no emotional attachment to the company they worked for and showed no respect for the rules of the factory. There were, for example, "workers who, having registered in the morning, slip out of the factory and take advantage of the crush at the gates at lunchtime to slip back in and sign off."¹⁶ The lack of diligence shown by workers during the early period of industrialisation is striking when compared to the working attitude of contemporary Japanese wage-earners. Contemporary Japanese workers' disciplined and loyal attitude, then, does not derive from tradition as is often believed. In fact, traditional Japanese wage-earners were a small group of people who were outside of the Japanese community and duty-oriented culture. They were "assertive participants in the factory" who "possessed sufficient organization and autonomy to help shape the labor relationship." They determined their actions "in pursuit of their own interests" just as English workers had learned to do, and their assertive activity "limited the choices available to management."¹⁷ Indeed, wage-workers were difficult to manage. In the eyes of the employers, the workers' high mobility and lack of discipline were central to the labour problem, and they desired to find a way to bring workers under company control.

¹⁴ Gordon, *The Evolution*, op. cit., p. 87.

¹⁵ K. Okochi, B. Karsh, and S. B. Levine, "The Japanese Industrial Relations System: A Summary," Kazuo Okochi, Bernard Karsh, and Solomon B. Levine, eds., *Workers and Employers in Japan: The Japanese Employment Relations System* (Tokyo: University of Tokyo Press, 1973), pp. 487-88.

¹⁶ Cited in Gordon, *The Evolution*, op. cit., p. 28, from Ronald Dore, *British Factory Japanese Factory*, which also cites from Sumiya, *Chinroudoushi Ron [The History of Wage-Labour]*, pp. 234-35.

¹⁷ Gordon, *The Evolution*, op. cit., p. 6.

Stabilising labourers

In an attempt to gain control over the workers, companies began to make various alternations to their employment system. To start with, they abolished the indirect employment system. At the beginning of the period of industrialisation, until at least the beginning of the 20th century, employers relied on foremen to supervise the independent-minded workers, but then the company decided to become the direct employer of the workers. At around the same time, new machines started to replace the primitive technology, changing the type of workers needed. Instead of all-around skilled workers, specific new skills to operate new machines came into demand. In order to meet this demand, large enterprises began to recruit unskilled labourers immediately upon their graduation from school and trained each of them in a specific skill area according to the company's need.¹⁸ This training system contributed largely to the stabilisation of the labourer market by creating "single-skill operatives" with "nontransferable skills."¹⁹

Because regular employees gained skills after joining a company, their skill-level was considered to progress with their length of service and so too did their wages. Most employees joined the company at a similar age and stayed there until retirement, and, therefore, their wages more or less increased in accordance with their age.²⁰ Although the old artisan type of workers still continued to be the majority through 1920s and 1930s, this new recruitment method began to grow after the war and eventually became the dominant method.²¹ With this gradual permeation of new recruitment method, the systems of lifetime employment and the seniority wage also took root, suppressing the mobility of the workers altogether.

In order to reinforce the immobility of the workers, larger enterprises introduced various welfare and fringe benefits such as a large sum at retirement allowance, semi-annual seasonal bonuses, housing provision, and work welfare facilities. Before the introduction of these benefits, they were provided for workers by their native villages where they returned in case of unemployment or sickness. As the needs of the workers were met by these villages, the government never developed a sufficient publicly funded social welfare system comprising unemployment benefits, pensions, health support, and so forth. The government of the time even formulated a policy of sending unemployed workers back to their home villages.²² However, the rural village communities lost their function as a safeguard for urban workers as industrialisation proceeded and the ties between workers and rural communities eventually began to fade away. The

¹⁸ K. Okochi, et al., op. cit., p. 489.

¹⁹ *Ibid.*, p. 490.

²⁰ *Ibid.*

²¹ Gordon, *The Evolution*, op. cit., p. 395.

²² Ishida, op. cit., p. 11.

agricultural crisis of the 1930s decreased the ability of the rural community to take back urban workers, who were, until then, just “working away from home,”²³ and further contributed to the erosion of this refuge. It was at this point when workers were isolated without a safe place of refuge, that companies began to provide welfare systems:

[L]arge enterprises and local or national government emphasize fringe benefits and welfare facilities for employees in an attempt to promote villagelike [sic] familialism in industry, and many workers respond affirmatively to this kind of management policy. This “artificial” paternalism in industry is analogous to the paternalism of the household system in farming villages.²⁴

The anxiety of workers consequently decreased in parallel to their growing dependency on companies. The employers thereby successfully transformed the workers’ ties with rural communities and replaced them with dependencies on the company.

The “enterprise-family”

The welfare system thus employed by Japanese companies to increase the dependency of workers also functioned as the material basis for the establishment of the new ideology of the “enterprise-family.” The top elites of large enterprises, together with the government, advocated this ideology in order to avoid the development of confrontational, English-type, labour-management relations in Japan. Because “a premodern consciousness of paternalism” cultivated in rural communities strongly remained among the industrial workers,²⁵ employees readily accepted the new ideology of “enterprise-family” which closely followed the long cherished principles of Japanese paternalist tradition. The “enterprise-family” ideology gave a sense of security to workers who had lost their ties with the rural communities and helped reduce a sense of anxiety. Together with company welfare systems, it encouraged workers to become both materially and emotionally dependent on companies. The relation between management and workers that developed in Japanese society was, therefore, not one based on civil contract but, rather, an emotional contract such as that which ties father to son. There could be no conflict of interests between management and workers as they were all members of one big family. New graduates joined a company family and stayed there until their retirement. In the meantime, the horizontal labour market no longer had a place in Japanese society especially in respect of the workers of large enterprises.

²³ Ishida, op. cit., p. 105.

²⁴ Hisashi Kawada, “Workers and Their Organizations,” Okochi, et al. eds., op. cit., p. 219.

²⁵ *Ibid.*, p. 218.

In spite of the emergence of social and geographical mobility, nuclear families, urbanisation, and wage-labours, Japanese society remained intact and the tradition of community-oriented collectivism was perpetuated in a new institution – the company. In the case of England, industrialisation created many vulnerable individuals who suffered exploitation by capitalists and in response gradually won their fight to claim rights. In Japan, too, vulnerable individuals, detached from the security of their rural communities, did emerge, but they were adopted into the new community of the corporate enterprise, leaving no space for the development of autonomous individuals with rights to claim against a group or society as a whole.

The emergence and decline of workers' movement

The failure to establish horizontal labour markets also resulted in the failure to develop horizontal labour unions. As examined in chapter one, in England, inhumane conditions of labour during the Industrial Revolution gave birth to the labour movement. By adapting the skilled craftsmen's mutual help system, English wage-labourers formed trade unions and fought for better working conditions. When the difference of the power between capitalists and labourers made exploitation inevitable, labourers fought back with the power of numbers. In Japan, too, capitalists exploited workers, and a few social reformers, with knowledge of the labour movement in the West, set up and led Japanese unions in the last years of the 19th century. Before the permeation of the lifetime employment system, many of the early labour unions were horizontal unions with highly mobile workers organised either by occupation or by region. The members of these unions were "primarily strikers, demonstrators, or the 'flying columns' of proletarian political parties."²⁶ Nevertheless, the development of trade unionism in Japan did not follow the English experience, and half a century later, it had been subsumed by the ideology of "enterprise-family."

To begin with, those who suffered the most inhumane labour conditions during the Japanese industrialisation were female textile workers whose number was reported to account for about 50 percent of the factory workers in 1911. They worked twelve to fourteen hours a day in extremely poor conditions, lived in company dormitories that were locked at night to prevent any escape, and earned only half of the average wage of male workers.²⁷ However, this did not lead to the development of any kind of labour organisation, and many women responded to the poor conditions by running away. In fact, so many women ran away that their annual rates of

²⁶ Okochi, et al., op. cit., p. 494.

²⁷ Gordon, *A Modern History*, op. cit., p. 100.

turnover often exceeded 100 percent.²⁸ For them working in the industry was a temporary arrangement anyway.

Male workers during the early stage of industrialisation would respond to unsatisfactory labour conditions by switching jobs. Their turnover was, as mentioned earlier, also quite high, and this hampered the development of a union movement because of “fluctuating membership rolls, unsteady payment of dues, and ineffective mutual aid.”²⁹ Although the introduction of the labour movement – mainly by those returned from America – led to the formation of some industry unions among skilled male workers, and the number of labour disputes increased during 1897 and 1898, the upsurge in union activity quickly started to decline in 1899.³⁰ The final blow to this already fragile movement came in 1900 when the Public Order Police Law suppressed the labour movement.³¹ From here on, until the end of World War II, any temporary increase in the union movement was soon averted by government intervention.³² While unions had no legal protection, joining a trade union was a dangerous act, and “the number organized never exceeded 8 percent of the labor force even at the height of such activities.”³³

Factory in-house councils

In the meantime, while suppressing the union movement, the government and employers concurrently encouraged the formation of in-house councils. These councils started as mutual help groups of workers within some large factories around the end of the Meiji period (-1912) but were later utilised by the employers to counteract the union movement and encourage harmony within the company. The aim of factory in-house councils was to establish cooperative labour-management relations by ensuring the exchange of views and information between employers and employees alongside of the provision of some welfare facilities and

²⁸ *Ibid.*, p. 102.

²⁹ Gordon, *The Evolution*, op. cit., p. 47.

³⁰ The Machine Operators' Union was formed in 1897, and the Railwaymen's Union and the Printers' Union in 1898. The number of labour disputes increased from 32 cases in 1897 to 43 cases in 1898. (Matsushima, op. cit., p. 78.) However, by 1899, even the “active membership in the most successful group, the Ironworkers Union, had already dwindled from its height of 3,000 in 1898 to about 1,000.” (Gordon, *The Evolution*, op. cit., p. 47.)

³¹ This law provided a punishment of one to six months' imprisonment or a penalty of fines for those who demanded negotiations with employers or incited others to join a union or go on strike.

³² For instance, when union membership doubled from 125,000 in 1923 to 254,000 in 1925 during the recession which followed the post-war boom, the government enacted the Maintenance of the Public Order Act laying down penalties of up to ten years' imprisonment for anyone participated in organised or individual acts aiming at the reformation of the state structure or the abolition of the system of private ownership.

³³ Hiroshi Hazama, “Historical Changes in the Life Style of Industrial Workers,” Hugh Patrick, ed., *Japanese Industrialization and Its Social Consequences* (Berkeley: University of California Press, 1976), p. 39.

fringe benefits. In 1918 the government started to officially encourage the formation of such councils, and in the following year, Kyochokai, an incorporated foundation for eliminating labour-management tension and promoting cooperation and harmony, was established with the support of top bureaucrats and politicians. Consequently, the in-house councils soon came to have nearly 100 percent participation by regular employees.

The intervention by the government against the union movement intensified when military authority became dominant. In the later 1930s, the government ordered each factory and enterprise to set up Sangyo Hokokukai, the Association for Service to the State through Industry, with a purpose of promoting cooperation between labour and management in all plants and achieving higher productivity for winning the war. All workers including managers of plants were obliged to join in-house organisations, while labour unions were strictly forbidden. As a result, from 1939 to 1945 no autonomous unions existed in Japan, whilst every plant came to have an in-house organisation whose membership comprised all of the workers. The government also strongly discouraged workers' changing factories, arguing they would best serve the nation by concentrating on serving one factory. Workers were to devote themselves to the company and dedicate the lives of their entire family on the company's well-being and survival. The company was, after all, "one big family."

Trade unionism after World War II

A sudden and complete change of policy in respect of the labour movement occurred with Japan's surrender to the Allied Forces, which was followed by the 7-year-long occupation of the country (1945-1952). Demilitarisation and democratisation of Japan were the main objectives of the Occupation Forces, and they encouraged the growth of democratic unionism and the swift establishment of unions. In 1946 the right to organise, to collectively bargain, and to strike was entrenched in Article 28 of the new constitution.³⁴ With legal protection, the number of trade unions in Japan increased rapidly, and by the end of that year, the rate of organised workers had already reached 41.5 percent, with nearly 5 million members and 17,266 unions. Such quick organisation was possible largely because most of the unions were enterprise based, inheriting the war-time practice of the in-house councils.³⁵ This was also a rational choice for workers since, in the period of starvation and job scarcity following the end of the war, their primary concern was securing their current jobs and the survival of their company. Hence, after World War II, enterprise unions accounted for almost 90 percent of total union membership.

³⁴ See Appendix 6, "The Constitution of Japan (1946)."

³⁵ For further details and explanation about enterprise unions, see the section on "trade unions in Japan" in chapter six.

The strong legislative support for the labour movement also changed the balance of power within the company.³⁶ It allowed unions to gain a much stronger position, and as a result, in the post-war period it became a common practice for the unionists to vigorously confront the management when company decisions were disadvantageous to workers:

Business leaders had no choice in the immediate postwar years of 1945-47 but to give way to this powerful labor movement. They conceded large wage increases in collective bargaining. They concluded thousands of contracts that gave real power to new labor-management councils including union representatives. In the face of strikes, despite dire business circumstances, some of the nation's leading employers revoked plans to dismiss workers.³⁷

Along with the trade unions, the Socialist and Communist Parties started to grow with support from unionists. However, this was not welcomed by the occupation authorities who had no intentions of encouraging political unionism in Japan. Indeed, in the face of the Cold War, they had shifted their focus from democratising Japan to making it a bulwark against communism. In July 1948 General MacArthur sent a letter to the Japanese government to announce this new policy, thereby initiating the attempt to stop communist expansion. Thereafter, political unionism became legally restricted,³⁸ and a government ordinance removed the right to collective bargaining and striking from public-sector workers.³⁹ The public-sector labour unions, which had led the union movement in post-war Japan, were forced to retreat, and the revision of the Trade Union Law to prohibit most forms of company financial aid to unions⁴⁰ also weakened the private-sector unions. Further damage to the unionist movement was inflicted in 1950 when the Japanese government and the occupying authorities launched the “Red Purge” and expelled those who were thought to be Communist Party members or

³⁶ A Law of 1945 also gave unions the right to use company facilities – “office space, use of the check-off for union dues, etc. – to which no British government has ever contemplated giving statutory support,” and in 1947 the Labour Standards Law provided the maximum working hours, minimum holidays, overtime provisions, etc., “which were more generous than in any other capitalist country.” (Ronald Dore, *British Factory Japanese Factory: The Origins of National Diversity in Industrial Relations* (Berkeley: University of California Press, 1973), p. 116.)

³⁷ Gordon, *A Modern History*, op. cit., p. 235.

³⁸ Article 2 of the Trade Union Law stipulates that those organisations “whose objects are principally political or social movements” cannot be recognised as trade unions. (Appendix 8, “Trade Union Law (1949).”)

³⁹ Government Ordinance 201 stipulates that public-sector workers “do not possess the right to collective bargaining” and declares that “all the procedures of mediation, intervention, or arbitration which are currently taking place and concern public organisations shall be called off.” Thereafter, to date, public-sector workers’ right to collective bargaining and striking remains restricted.

⁴⁰ Article 2 of the Trade Union Law to date stipulates that those organisations “which receive the employer's financial support in defraying the organizations’ operational expenditures” cannot be recognised as trade unions. (Appendix 8, “Trade Union Law (1949).”)

sympathisers from their jobs and union activities. In the meantime, many vigorous union leaders were evicted and their positions were taken on by more cooperative leaders who would establish peaceful labour-management relations.

This policy shift and series of legal amendments made by the Japanese government with the occupation authorities significantly discouraged union movement and helped industrial managers to wrest back power over their employees. Industrial managers “renegotiated the early postwar labor contracts, destroyed many confrontation-minded unions, and made significant adjustments in wage and job policies.”⁴¹ The weakening of the trade unions was reflected in their declining membership. After the proportion of organised workers reached its peak of 55.8 percent in 1949 with more than 6.5 million union members and 34,688 unions, it quickly declined to 46.2 percent in the following year and to 32.1 percent 10 years later. Thereafter, the rate of organised workers steadily declined and fell below 20 percent in 2003.⁴² The suppression from above to restrict the power of unionism was also a blow to the effort to form powerful industrial federations as well as to build a strongly unified national labour movement. Although a few free industrial federations appeared in 1946 and 1947, they quickly declined, and consequently, the industrial federations in Japan became merely loose federations of enterprise unions of different industries.

In Japan, the rise of trade unionism, which was instigated by the rise of industrialisation, went into a long and steady decline under the sustained suppression by the government. Although a sudden turn of fortune was brought about by the American occupation authorities and workers’ rights were granted from above, unionism was soon weakened again by the very same authorities which had empowered it. English workers built effective trade unions through a constant struggle to gain their rights little by little. Japanese workers, on the other hand, experienced cycles of trade union expansion and suppression, and ultimately ended up with steady enterprise unions which do not provide effective protection for individual workers’ interests against the company’s pursuit for profits.⁴³ In Japan, what was consistently created was faithful and diligent workers who were totally dependent on the company.

The immobile workers’ loyalty committed to the family company, which was stressed as an ideology during the war, became even more widely permeated through society after the war. Despite their fluctuating fortunes in the post-war period, unions managed to secure lifetime

⁴¹ Gordon, *The Evolution*, op. cit., p. 337.

⁴² 19.6% in 2003 and 19.2 % in 2004. (The Ministry of Health, Labour and Welfare: <<http://www.dbtk.mhlw.go.jp/toukei/kouhyo/data-rou11/jikei/jikeiretu-01.xls>>.)

⁴³ See also the section on “trade unions in Japan” in chapter six.

employment. As explained earlier in this section, during the short period following the end of the war, unions temporarily gained a power advantage over management, when their primary concern was to secure jobs. Predicting strong resistance from unions, Japanese companies began to refrain from dismissing workers despite considerable expense in difficult times.⁴⁴ Legislative protection of employees' job security enacted in the immediate post-war period also made it more difficult for management to fire workers at will.⁴⁵ Although the majority of the agreements secured by unions during this short period were quickly withdrawn by management during the subsequent decline of the union power, the legislation which protected workers from dismissal remained in place and contributed to the maintenance of the lifetime employment system.

Akio Morita, one of the two founders of Sony, points out in his autobiographical work, *Made in Japan*, that company managers soon realised that continuous employment could also work to the benefit of employers as well as of employees: "The laws made it difficult legally, and expensive, to fire anybody, but that didn't seem like such a bad idea, since workers were badly in need of work, and struggling businesses needed employees who would remain loyal."⁴⁶ Stabilising workers within companies was always the aim of Japanese capitalists since the beginning of industrialisation, and therefore, there was little reason for companies to try and diminish the system of lifetime employment which had a potential for working in favour of the management side.

In fact, one of the crucial factors which hampered the growth of the English model trade unionism in Japan after the war may have been this antecedent permeation of lifetime employment practices. In England, following the Industrial Revolution, it was commonplace for workers to routinely change jobs. Accordingly, trade union membership provided an important mechanism through which to maintain and improve wage levels. However, since Japanese workers enjoyed guarantees of lifetime employment, they had very little incentive to encourage and participate in effective trade unions. As Dore points out: "The electrician in one firm who does not expect to be in the labour market again, has no great interest in the wages paid to electricians in other firms."⁴⁷

⁴⁴ *Ibid.*, pp. 394-95.

⁴⁵ See, for instance, Article 19, Article 20, and paragraph 2 of Article 104 of the Labour Standards Law in Appendix 7, "Labour Standards Law (Abstract) (1947)."

⁴⁶ Akio Morita, with Edwin M. Reingold, and Mitsuko Shimomura, *Made in Japan: Akio Morita and Sony* (London: Fontana Paperbacks, 1987), p. 137.

⁴⁷ Dore, *op. cit.*, p. 415.

In addition to the development of the lifetime employment system, the fact that many large companies developed their own welfare systems with fringe benefits further diminished the reasons for employees to join free trade unions beyond the company boundaries. The welfare and fringe benefit system was employed by companies in order to diminish workers' mobility (see the section on "stabilising labourers"). Companies began to provide a wide range of fringe benefits mainly by raising the proportion of benefits within workers' wages while suppressing their basic pay. Consequently, workers' dependency on the company has extended to include their private lives as well. As Morita maintains, "the Japanese company has become very much a social security organization."⁴⁸ This has limited Japanese workers' scope to their own companies, diminishing any incentive to join free trade unions beyond the company.

The systems of lifetime employment and welfare provision, along with fringe benefits and the ideology of the "enterprise-family" emphasised by the state especially during the war, formed the family-like characteristics of industrial relations in Japanese enterprises, "leaving the unions no scope for controlling the labour market and acting as employment agencies."⁴⁹ As Matsushima argues, industrial or draft unions thus had little basis for development in Japan, which consequently led to the enclosure of the union movement "within each firm as enterprise unions."⁵⁰ Although the introduction of Western modernisation dramatically transformed the profoundly peasant and feudal social systems in a short period of time, the Japanese culture of family and community centricism persisted. It formed family-like industrial relations, which have "parallels with Japan's preindustrial social organization"⁵¹ with workers bearing a strong sense of loyalty towards a company and companies adopting a strong paternal role over employees.

As observed above, the introduction of a labour movement did generate some efforts towards the formation of free trade unions whose purpose of organisation was purely to protect and promote the rights of individual members, at the very beginning of industrialisation. However, the movement was overtaken by the formation of enterprise unions whose aim inevitably included promoting company profits, from which workers were supposed to get their shares. In labour-capital relations in Japan, trade unions, which are the very organs of protecting individual rights, have been dominated by persistent collectivism, whose consequences are, as will be examined later in chapter seven, violations of workers' rights.

⁴⁸ Morita, op. cit., p. 138.

⁴⁹ Matsushima, op. cit., p. 81.

⁵⁰ *Ibid.*

⁵¹ James C. Abegglen, *The Japanese Factory: Aspects of Its Social Organization* (Bombay: Asia Publishing House, 1958), p. 97.

The introduction of Western ideas

Thus far, this chapter has investigated how the transformational forces of modernisation, including the introduction of new technologies and a capitalist market economy which triggered industrialisation and other changes such as social and geographical mobility and increases in the number of wage-labourers, failed to generate a right-oriented workers' ethics in Japanese society. The following discussion examines the impact that the inflow of new ideas had on Japanese society and its culture, especially with regard to the inflow of the idea of human rights introduced into the traditionally collectivist society at the end of the 19th century. During its two-and-a-half-century-period of isolation from the rest of the world, Japanese society had cultivated and strengthened its own community-oriented culture, with very limited foreign contact. Concepts, which were incompatible with the duty and community-oriented culture, such as society, individual, right and liberty, had no chance of penetrating the society. Accordingly, the concept of the individual as a counterpart to the society, the concept of human rights as rights that individual human beings possess from birth, and the concept of liberal rights were all absent. When Japan opened the country to the West, however, these concepts streamed into the society. The works of Samuel Smile, John Stuart Mill, Jean-Jacques Rousseau, and Herbert Spencer were translated and read by enthusiastic intellectuals.

Among the intellectuals of the Meiji period the most influential one was Yukichi Fukuzawa. In his *Gakumon no Susume*, [*An Encouragement of Learning*] (1872-1876), Fukuzawa advocated that all human beings were born equal and that what differentiated them later was how much the person learned. He stressed the importance of freedom, equality and the spirit of independence. The works of Fukuzawa were widely read among Japanese people of the Meiji era that it is estimated that *Gakumon no Susume* was read at least partly by one out of every 160 persons in the 1870s,⁵² and several million copies of his many writings were sold between the 1860s and 1890s.⁵³

Problematic terminology and national policy

It was also mainly Fukuzawa that, with other intellectuals, coined the Japanese words for "individual", "liberty", and "right". However, the Japanese translations of these words carried some possibilities of causing misunderstanding of these concepts among the people. The Japanese translation of the term of "liberty", "*jiyu*", for instance, originally connoted "selfishness". Although Fukuzawa, who introduced the concept of liberty to a large readership,

⁵² Janet A. Walker, *The Japanese Novel of the Meiji Period and the Ideal of Individualism* (Princeton: Princeton University Press, 1979), p. 18.

⁵³ Gordon, *A Modern History*, op. cit., p. 80.

warned that “*jiyu*” in Western thoughts did not mean selfishness, the word “liberty” tended to be understood by Japanese people as a term with a somewhat pejorative meaning. Similarly, the translation of “right” was also problematic. Whereas “*kenri*” is the word used for the translation, “*ken*” carries the meaning of “power” or “authority” and “*ri*” means “profit”. Thus, the Japanese word for “right” indicates the profit of authority. Some intellectuals were aware of the dangers that misunderstanding this translation could cause and tried to replace the term, but “*kenri*” had been settled as the translation. This was partly because when the term “right” first appeared in front of the Japanese intellectuals, it appeared as a legal term in international law being used “in connection with the rights of a state in international relations and only rarely applied to the rights of individuals.”⁵⁴ The connotation of “authority profit” was, in that case, not far from the original meaning of “right”.

The fact that the term “*minken*” (people’s rights) was used for the human rights movement also contributed to the confusion. In the late 1870s, some intellectuals led a movement for the enhancement of liberty and human rights against the power of the government. The movement was called *jiyu minkin undo* (the Movement for Freedom and People’s Rights) and reached its height in the early 1880s. However, using the word “*minken*” (people’s rights) for human rights created the danger of human rights being “understood as the right of a group of people who were fighting against the Meiji oligarchy rather than the rights of individuals.”⁵⁵ This ease of connecting right with power and human rights with people’s rights worked in favour of the authority of the Meiji government when they began to perceive a threat from the feverish movement for freedom and people’s rights. By relating human rights with “a collectivity rather than individuals,” the government successfully absorbed the human rights movement of “*minken* (people’s rights)” into “the advocates of *kokken* (a state’s right *vis-à-vis* foreign powers)”⁵⁶ which emphasised the necessity of enriching, and militarily strengthening, the nation as a whole in order to protect the nation against the increasing imperialist activity of Western nations in the 1880s and 1890s. This absorption of the human rights movement into the state’s right movement was justified with “the argument that in order to promote the welfare of the people it was necessary to make the state strong in its competition with Western powers.”⁵⁷

Thereafter, the sanctity of the emperor was emphasised, and certain rights were given to the people as mercy under the condition that they fulfil their duty and, most importantly, that they

⁵⁴ Ishida, op. cit., p. 71.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*, p. 72.

⁵⁷ *Ibid.*

worship the emperor as a living god. The Constitution of the Empire of Japan (1889) declared in its preamble to “respect and protect the security of the rights and of the property of Our people, and to secure to them the complete enjoyment of the same, within the extent of the provisions of the present Constitution and of the law.”⁵⁸ The constitution accordingly guaranteed freedom of religious belief (Article 28) and the liberty of speech, writing, publication, public meetings and associations (Article 29), but such freedom was given only as long as it “shall not affect the exercises of the powers appertaining to the Emperor, in times of war or in cases of a national emergency.” (Article 31)⁵⁹

Since people had never come to have a full understanding of human rights as inalienable individual rights, the idea that people ought to be protected and given certain rights by the emperor when they fulfil their duties as his subjects was accepted without much difficulty, and hence, absorbed the movement for human rights. Even Fukuzawa, who had written “in general, rights are something the heaven has given to the people that cannot be deprived by anyone,”⁶⁰ eventually leaned towards advocating the necessity of building a strong Japan with the emperor in order to compete with Western imperialism after 1880, and by “the mid-1890s the enthusiasm for human rights of the 1880s had turned into a chauvinistic fervor that centered around the creation of a militarily strong, imperialist Japan.”⁶¹

The family-state ideology

In order to promote the policy of building a strong nation with the emphasis on the sanctity of the emperor, the government took up the tradition of familism and transformed it into the “family-state” ideology. By integrating the tradition of “subordination of branch families to the main family,” the government promoted the idea of the imperial family being “the main family of the entire Japanese people” and the whole nation being “an extended family.”⁶² Under this ideology, Japanese people were encouraged to identify themselves as members of the family-state and to have deep appreciation of the patriarchal mercy of the emperor.

In order to root this ideology of the family-state in the society, the government promoted Confucian virtues of loyalty, obedience, and filial piety in the moral education of schools. Moral education was listed as the most important subject of elementary school education, and it was established by the Imperial Rescript on Education promulgated in the name of the emperor

⁵⁸ Appendix 3, “The Constitution of the Empire of Japan (1889).”

⁵⁹ *Ibid.*

⁶⁰ Translated from Yukichi Fukuzawa, *Gakumon no Susume [An Encouragement of Learning]* (Tokyo: Iwanami-shoten, 1942), pp. 21-26.

⁶¹ Walker, op. cit., p. 25.

⁶² Ishida, op. cit., p. 5.

in 1890.⁶³ The Rescript begins by glorifying the imperial ancestors and emphasising national unity: “Our Imperial Ancestors have founded Our Empire on a basis broad and everlasting and have deeply and firmly implanted virtue; Our subjects ever united in loyalty and filial piety have from generation to generation illustrated the beauty thereof.”⁶⁴ After stressing the importance of having filial relations to one’s parents and of maintaining harmony with people around, the Rescript also teaches children to devote themselves to the state: “should emergency arise, offer yourselves courageously to the State; and thus guard and maintain the prosperity of Our Imperial Throne coeval with heaven and earth.”⁶⁵ It emphasises that by following the virtues listed in the Rescript, children are also protecting their traditions: “So shall ye not only be Our good and faithful subjects, but render illustrious the best traditions of your forefathers.”⁶⁶ This Rescript had been held sacred and was enshrined as the spiritual pillar of education and of national morality under the war.

In moral education, children were also taught about the kind parental love of the emperor towards his subjects. A textbook stated: “The Emperor’s restless care for his subjects is of a father towards his children. We shall never fail to adore the Emperor and love him as we love our fathers.”⁶⁷ Because filial piety to parents is the basic teaching of Confucian virtue and also because family and community had always been given the utmost importance in Japanese tradition, such moral teaching was accepted by people without strong resistance. As the enrolment rate at elementary school in Japan reached nearly 100 percent by the end of the 1920s, this moral education provided a firm foundation for patriotism and national conformity and contributed to the creation of imperial Japan as a single family, which was further enhanced as the nation went into the Second World War.

The democratisation of Japan

A sudden overturn of the ideology of the family-state was brought about when the Japanese government signed the Potsdam Declaration at its surrender to the Allied Nations in 1945. The Declaration stated: “The Japanese Government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people. Freedom of speech, of religion, and of thought, as well as respect for the fundamental human rights shall be established.”⁶⁸ The Constitution of Japan was enacted in the following year under the

⁶³ Takeyoshi Kawashima, *Nihon Shakai no Kazokuteki Kousei [The Family-like Structure of Japanese Society]* (Tokyo: Iwanami-shoten, 2000).

⁶⁴ Appendix 4, “Imperial Rescript on Education of the Emperor Meiji (1890).”

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ Translated from a citation in Kawashima, op. cit., p. 168.

⁶⁸ Appendix 5, “Potsdam Declaration (1945),” Article 10.

occupation authorities, and fundamental human rights were guaranteed under its Article 11: “The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolable rights.”⁶⁹ The Constitution further ensures the inviolability of human rights under Article 97: “The fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of man to be free; they have survived the many exacting tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolate.”⁷⁰ Under the new constitution, the emperor became only the symbol of the state, and sovereignty was given to the people. The democratisation of Japan did not happen as a result of an incremental struggle by the people but was suddenly given from above with guaranteed human rights.

However, thinking democratically did not happen overnight. The people who had always secured their existence through belonging to a community did not suddenly become individuals, determined to protect themselves by claiming the inalienable rights guaranteed to them. On the contrary, the tradition of community-oriented collectivism had steadily been enrooted in the modernised Japanese society through the government’s policy during the war. People who grew up being taught the Confucian virtues of family and national loyalty were more ready than ever to be loyal members of a community, and although Japan’s defeat in the war made the state no longer their family, and the emperor no longer their father, Japanese people still had an opportunity to relate to an enterprise-family, which would take them as lifetime members. Before people acquired a full understanding of the meaning of being individuals bearing human rights, they committed themselves to the company where the long lasting tradition of duty-oriented collectivism had persisted and been consolidated through the war.

Conclusion

After noting the close relation between the “[d]ifferences in the role of the individual in the Western and Japanese factory” and the “differences between the two cultural backgrounds,”⁷¹ James C. Abegglen attributes the success of Japanese industrialisation to “the fact that, far from undergoing a total revolution in social structure or social relationships, the hard core of Japan’s system of social relationships remained intact, allowing an orderly transition to industrialization continuous with her earlier social forms.”⁷² Abegglen concludes his study on the Japanese factory by suggesting that the introduction of industrialisation into a non-Western society like

⁶⁹ Appendix 6, “The Constitution of Japan (1946).”

⁷⁰ *Ibid.*

⁷¹ Abegglen, *op. cit.*, p. 97.

⁷² *Ibid.*, pp. 99-100.

that of Japan, which historically has different experiences from the West and “has a markedly different social system,” does not necessarily bring about westernisation of the society. Instead, it “makes necessary the fitting of the industrial mechanism to the earlier social system.”⁷³

In fact, as examined above, the modernisation of Japan did not destroy the tradition of collectivism but merely changed the location of people’s belonging; from rural communities to the state along with the company, and then, to the company alone after the war. At the beginning of Japan’s modernisation, the emergence of a large number of wage-labourers seemed to generate the development of a horizontal labour market and free trade unions, and the introduction of the idea of human rights did engender the movement towards this ideal. However, these movements were all suppressed by the government policy to create a single family state, and as a result, workers became immobile members of the company, and the people became loyal subjects of the state. Consequently, rights-oriented workers’ ethics never took root in Japan. Unlike the experience of England, the modernisation of Japan did not generate individualism, while, just like many currently developing countries, people’s human rights were completely subordinated to the nation’s endeavour to catch up with the West. The traditional value of Japanese collectivism fortified under the nationalist policy also survived the democratisation of Japan after the war. The legislative attribution of fundamental human rights to all Japanese nationals did not popularise the habit of claiming their inalienable rights among the people. While the forces of modernisation such as the inflow of technologies and capitalism triggered industrialisation and other social changes towards westernisation in Japan, the inflow of ideas and ideologies did not contribute towards an ideological westernisation of the culture. In Japan, the forces of modernisation did not bring about the individualisation of people’s behavioural patterns.

⁷³ *Ibid.*, p. 104.

Chapter Six

The Collectivistic Enterprise System of Contemporary Japanese Society

The previous chapter's examination indicates that the modernisation of a society does not necessarily bring about individualisation of the society. The dominant powers of tradition may exceed the forces of modernisation and prevent the emergence of independent, rights-oriented individuals. Indeed, despite its extensive modernisation achievement, Japanese society never became individualistic. Japanese people remain highly group-centred and tend to find security only when they belong to a group. In Japanese society, as in other collectivist societies, group interests supersede individual interests as society is not "a body that is formed by the will of and for the sake of individuals"¹ but a body formed for a sake of the collective as a whole. Moreover, as Mikio Sumiya claims, because individuals form part of group without being autonomous individuals with rights, "the function and status of individuals in society and in a group are not clearly distinguished."²

This phenomenon of Japanese group centrism is especially overt in companies, where the lack of individualism distinguishes them from companies in Western countries. James Abegglen notes that companies in the West "depends heavily" on individualities in terms of the assignment of responsibility, incentives of programs, the evaluation of employees, and determination of rewards. In Japanese enterprises, on the other hand, collectivity comes to the fore in each aspect. Responsibilities are assigned to groups, incentives derive from aiming at better assessment of the group, and "the motivating of energies appears to depend on the individual's loyalty and identification with the group and with his superior."³ This company centrism was the product of Japanese modernisation. As examined in chapter five, through modernisation what actually occurred in Japanese society was merely a change in the unit of collectivism, first from villages to the state, and then to companies. Because of the similarities between the traditional village system and company system, it was not difficult for Japanese workers to transfer their loyalties from the traditional communities to the modern company. The practice of regarding companies as family-type communities has ever since persisted and occupied industrial relations in Japan to date. As a result, present day Japanese workers

¹ Mikio Sumiya, "Contemporary Arrangements: An Overview," Kazuo Okochi, et al., eds., *Workers and Employers in Japan: The Japanese Employment Relations System* (Tokyo: University of Tokyo Press, 1973), p. 62.

² *Ibid.*

³ James C. Abegglen, *The Japanese Factory: Aspects of Its Social Organization* (Bombay: Asia Publishing House, 1958), p. 104.

consider companies as their secure places of belonging whose prosperity ought to come before their individual interests.

In order to carry out a closer examination of these characteristics of Japanese workers and the social and industrial systems which sustain the collectivist features of Japanese industrial relations, this chapter first considers the relations between the familism tradition and contemporary company-absolutism, followed by observations in respect of the dominant company systems of lifetime employment, new graduate recruitment, vocational training, seniority wage, and fringe benefits. The chapter then investigates the impact of these systems on workers' dependence and devotion to companies. The company-centred characteristics of Japanese workers and society have resulted in the lack of workers' rights consciousness as well as their low interest in establishing active free trade union movements, which will also be examined into details in the chapter.

Familism

Just as the emperor was regarded as father of the family-state under the nationalist policy before and during World War II,⁴ so too present day Japanese employer-employee relations resemble the father and child relation in the traditional Japanese family. The company plays the role of the traditional house-hold whose prosperity took precedence over the well-being of each member of the family, and the head of the company plays the role of patriarch who used to have absolute authority over other family members.⁵ Consequently, as Robert Cole argues, in Japanese companies, "the household-kinship terminology, as legitimating ideology, reinforces the hierarchical relationship of management in a superior and the workers in an inferior status."⁶ The family system, along with the traditional village system, were central factors which formed the characteristics of Japanese society until the end of the world war,⁷ and it continues to have strong influence, especially through the ideology of the company as one big family, which leads to company absolutism.⁸

⁴ See the section on "the family-state ideology" in chapter five.

⁵ See the section on "the traditional village system" in chapter four.

⁶ Robert E. Cole, *Japanese Blue Collar: The Changing Tradition* (Berkeley: University of California Press, 1971), p. 172.

⁷ After the World War II, traditional patriarchy was legally abandoned by the new constitution which stated the essential equality of the sexes in matrimony as well as other democratic norms. Article 24 of the Constitution of Japan states: "(1) Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis. (2) With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes." (Appendix 6, "The Constitution of Japan (1946).")

⁸ See the section on "the enterprise-family" in chapter five.

As well as patriarchy, the traditional Japanese family system was featured by familism in which the family as a whole was regarded as more important than the individual family members. In familism, each member of a family was expected to behave in accordance with his/her hierarchical order within the family. They were not allowed to have any wishes which may threaten the family or disturb the family name. Absolute obedience to the head of a family and devotion to parents – “filial piety” – was encouraged in order to maintain harmony in the family.⁹ These ideologies of familism and filial piety were largely based on Confucian ethics which formed the philosophical basis of the warrior class’s code of conduct, where absolute obedience to the lord sustained the feudal system.¹⁰ Before the Meiji Restoration (1868), familism was dominant mainly among the warrior class and wealthy merchants as the legitimate ideology to rule their family lives.

When the warrior class lost its ruling position, the Meiji government decided to use the ideologies of familism and filial piety to stabilise the new state of Japan. After its establishment, the Meiji government faced several revolts of peasants and descendents of warriors. The expansion of the Movement for Freedom and People’s Rights since 1880 was especially felt as a growing threat to the government. In order to minimise such a threat, the Meiji government adopted various policies, among which was an application of Confucian familism to education.¹¹ The government promoted the Confucian virtues of loyalty, obedience and filial piety and enrooted the ideology of the family-state in society.¹² With the enrolment rate of the elementary school reaching nearly 100 percent by the end of the 1920s, patriarchy and familism, which used to be the ideologies of the warrior class, became the dominant ideologies throughout the society. The Confucian virtues of loyalty, obedience, and filial piety have maintained their influence over people’s mind-sets in Japanese society even after fundamental reforms of the Japanese educational system in the post-war period and can be observed today especially in “company-absolutism” which took over national absolutism of the pre-war era.¹³ The ideal of familism, which largely contributed to the establishment of company-absolutism, was reinforced by various systems in Japanese companies such as lifetime employment, seniority wage, and others including fringe benefits.

⁹ Tadashi Fukutake, *Nihon Shakai no Kouzou [The Structure of Japanese Society]* (Tokyo: Tokyo University Press, 1981), p. 39.

¹⁰ See the section on “Confucianism in Japan” in chapter four.

¹¹ Takeyoshi Kawashima, *Nihon Shakai no Kazokuteki Kousei [The Family-like Structure of Japanese Society]* (Tokyo: Iwanami-shoten, 2000), pp. 157-58.

¹² See also the sections on “Confucianism in contemporary Japan” in chapter four and “the family-state ideology” in chapter five.

¹³ See the section on “the democratisation of Japan” in chapter five.

The lifetime employment system

Among the various features of Japanese companies, lifetime employment works to strengthen workers' attachment and devotion to companies by narrowing down their possibilities of changing companies. According to a survey presented in 1993, more than 80 percent of all companies run a lifetime employment system regardless of occupational category.¹⁴ Ronald Dore pointed out in his work of 1973 that dismissals had been kept low in Japanese companies: "Dismissals, for example, are extremely rare. Fifty-seven persons out of 85,000 employees in the course of a year is a small proportion, a tribute to the care taken in selection procedures, and also to the 'totalitarian' nature of the workshop atmosphere."¹⁵ Akio Morita of Sony recalls in his autobiographical work how he was surprised to find out that "in Western countries, management lays off workers when a recession sets in."¹⁶ He states that the finding was "a shock because in Japan we just do not do that unless we have been brought to the direst point."¹⁷ Morita further maintains that he does not see "anything good in laying off people." It is his belief that if "management takes the risk and responsibility of hiring personnel, then it is management's ongoing responsibility to keep them employed."¹⁸ Because of the scarcity of lay-offs being made redundant is often considered to be an indication of one's incompetence. It damages one's career record and impedes one's future employment prospects. Efforts are therefore made by employees as well as employers to avoid such situations, which has made the relationship between the two parties more than "a function of the economic convenience."¹⁹ Workers rarely change companies to pursue better positions, and in return the company attempts to retain their employees even during economic down-turns.

Although the long-lasting recession since early 1990s is making dismissals of workers much more common than before, companies still try to avoid dismissing employees by making any necessary adjustments by laying off temporary employees first. Employees are also trying to hold on to their current jobs harder than ever since the prospect of finding new work is becoming increasingly difficult. In 2001 the population of regular workers who left jobs in companies with 30 employees or more within the previous year was limited to 1.53 percent.²⁰

¹⁴ Presented by Japan Research Organisation of Labour in 1993: <http://www.jil.go.jp/statis/doko/h1006/1006.htm>.

¹⁵ Ronald Dore, *British Factory Japanese Factory: The Origins of National Diversity in Industrial Relations* (Berkeley: University of California Press, 1973), p. 186.

¹⁶ Akio Morita, with Edwin M. Reingold, and Mitsuko Shimomura, *Made in Japan: Akio Morita and Sony* (London: Fontana Paperbacks, 1987), p. 152.

¹⁷ *Ibid.*

¹⁸ *Ibid.*, p. 153.

¹⁹ Abegglen, op. cit., p. 12.

²⁰ A survey by the Ministry of Health, Labour and Welfare:

The Labour Force Survey of 2003 also shows that among all the workers who changed jobs within the previous year, only a-third of them did so in order to look for jobs with better working conditions. The others left jobs for reasons such as company bankruptcy, dismissal, and retirement. Workers try to stay at a company to avoid potential damages that changing jobs may cause. The stability of lifetime employment works to further the impression that the company is a place which provides workers with permanent security, leading Morita to call it “very much a social security organization.”²¹

New employees as new members of a family

Under the lifetime employment system, when workers newly graduated from school enter a Japanese company, whether they are blue-collar or white-collar, they consider themselves as becoming permanent members of the firm where they will probably spend their entire career. The company will not dismiss its employees unless under “the most extreme circumstances,”²² and employees will not leave the company for better positions elsewhere. Employees are members of the company “in a way resembling that in which persons are members of families, fraternal organizations, and other intimate and personal groups in the United States.”²³ Entering a company in Japan is, indeed, similar to becoming a family member. Referring to the case of Hitachi, Ronald Dore states that the process of recruitment, which involves “the handing over by a group (school, family) to another group (the firm) of one of its members,” is “much as a traditional marriage involves the transfer of a girl from one family to another.”²⁴ Chie Nakane also argues that a new employee is “received by the company in much the same spirit as if he were a newly born family member, a newly adopted son-in-law or a bride come into the husband’s household.”²⁵

Morita explains how Sony tries to promote this Japanese company culture among its foreign employees beyond the cultural boundary:

We have a policy that wherever we are in the world we deal with our employees as members of the Sony family, as valued colleagues, and that is why even before we opened our U.K. factory, we brought management people, including engineers, to Tokyo and let them work with us and trained them and treated them just like members of our family, all of whom wear the same jackets and eat in our one-class cafeteria.²⁶

<<http://www.mhlw.go.jp/toukei/itiran/roudou/monthly/13-1p/13c06p.html>>.

²¹ Morita, op. cit., p. 138.

²² Abegglen, op. cit., p. 8.

²³ *Ibid.*

²⁴ Dore, *British Factory*, op. cit., p. 72.

²⁵ Chie Nakane, *Japanese Society* (London: Weidenfeld and Nicolson, 1970), p. 14.

²⁶ Morita, op. cit., p. 143.

Morita explains the purpose of this training course was to let them know that “people should not be treated differently.”²⁷ To that end, the company did not give a private office to any executives while encouraging the management staff to mix with other employees and share the facilities. Morita maintains treating employees as family members gives them a source of motivation to contribute to the company as a whole: “To motivate people, you must bring them into the family and treat them like respected members of it.”²⁸

Because companies are recruiting workers as permanent members of the company family, they place more importance on the workers’ potential qualities than already developed skills during the selection process, as Abegglen points out: “Recruitment into the productive group is based on personal qualities without reference to a particular work task or set of skills. Selection is based primarily on the individual’s education, character, and general background.”²⁹ Dore also explains that when companies recruit new employees, they are acquiring “not a skill but a lifetime’s work”³⁰ including the employees’ potentials for the future development. Among various qualities, education is regarded especially important as an indication of one’s potential, and accordingly, it determines one’s starting salaries at a firm.

Vocational training and the creation of company persons

Besides education, personality is also a key factor for evaluating and selecting workers. Under the lifetime employment system, companies recruit new school graduates once a year and train them into faithful, devoted, and obedient workers useful for the company.³¹ For that reason, a cooperative personality, which is easy to train, and will not disturb the harmony of the workplace is preferred. Because people join companies immediately after graduating from educational institutions, new employees usually “have neither the occupational knowledge necessary for a job nor any occupational experience,”³² except for the minority cases of specialists such as engineers. For that reason, large and medium sized companies normally provide new employees with an induction course for a few months which will be followed by longer term training over several years within the enterprise. Through training, new employees learn not only the basic skills necessary for their work in the firm: cultivating each

²⁷ *Ibid.*

²⁸ *Ibid.*, p. 138.

²⁹ Abegglen, *op. cit.*, p. 94.

³⁰ Dore, *British Factory*, *op. cit.*, p. 111.

³¹ In a survey presented by the Ministry of Health, Labour and Welfare in 2003, 75.6 % of companies answered they considered the capacity-building as the company’s responsibility while 21.1 % answered it was individual worker’s responsibility. (<<http://www.mhlw.go.jp/houdou/2003/06/h0613-4.html>>.)

³² Masumi Tsuda, “Personnel Administration at the Industrial Plant Level,” Okochi, et al., eds., *op. cit.*, p. 406.

worker's loyalty towards the company is valued, and accordingly, workers are "morally" trained. This is based on the pervading belief in Japan that "individual moral and mental attitudes have an important bearing on productive power."³³ The moral attitudes of each employee are in fact regarded so important that, as Nakane points out, if an employee is considered to have a "way of thought" and "moral attitudes" which "do not accord with the company's ideal," then, "the company does not hesitate to dismiss him" regardless that the employee may be an excellent technician.³⁴

Companies put especial importance on initial stages of the vocational training in the first few months which "includes a good deal of general instruction in the nature of the firm's business, as well as a good deal of morale building, loyalty building and general spiritual integration."³⁵ It is a "process of character building and attitude formation"³⁶ which transforms new workers into members of the company. Initial training is designed to build workers' loyalty towards the company at very early stages of their careers and implant "company absolutism" in them so that they become "good company persons."³⁷ Ronald Dore illustrates how Hitachi tries to create good Hitachi persons through its initial training course for new recruits, which is officially described to be "designed 'to enable new graduates to grasp the history of the company and of its separate establishments; further it seeks to develop within them the spirit and attitudes appropriate to Hitachi men, and . . . to promote the development of character and of their general education.'"³⁸ Through the vocational training course which is concerned "particularly with the related process of being socialized into the Hitachi community,"³⁹ the new recruits develop their identification as Hitachi persons early after their entrance into the company.

After finishing the initial training course, new recruits go through frequent rotations around the company for the first few years. Companies consider that working at various sections and branches within a company gives workers better general knowledge of the company and help them become good company persons. In this way, Japanese companies cultivate generalists rather than specialists, which prevents workers from developing particular skills that are transferable to other companies as the knowledge of a good generalist developed in Company A

³³ Nakane, op. cit., p. 16.

³⁴ *Ibid.*

³⁵ Ronald P. Dore, and Mari Sako, *How the Japanese Learn to Work* (London: Routledge, 1989), p. 87.

³⁶ Dore, *British Factory*, op. cit., p. 51.

³⁷ According to the definition put forward by Koji Morioka, company persons are those who consider joining in the promotion competition as the way of self-realisation and work so hard believing that without them the system would fail to operate. (Koji Morioka, *Kigyō Chūshin Shakai no Jikan Kōzō* [*The Time Structure of a Company-Centred Society*] (Tokyo: Aoki-shoten, 1995), p. 51.)

³⁸ Dore, *British Factory*, op. cit., p. 50.

³⁹ *Ibid.*

is often only applicable to Company A. Except for the minority cases of those who have joined companies with already developed vocational skills or knowledge in specific fields, the majority of employees of Japanese large and medium sized enterprises are trained into loyal company persons with non-transferable generalist skills.

Morita mentions that at Sony, they occasionally even make scientists participate in sales for certain period of time in order to give them some experience and knowledge of the competitive business the company lives in. Sony's training program for new recruits, who join the company "fresh out of university," includes a course "where nontechnical persons undergo a month of training at a factory and technical persons work as salespeople in a Sony shop or department store, selling our products."⁴⁰ Although in Sony and other companies technical persons would most likely go back to the section of product development or others where they stay as specialists, the majority of employees who are mostly nontechnical workers keep being rotated in different sections within the company and eventually become company persons who are generalists of that particular company.

The seniority wage system

Another factor which makes changing jobs disadvantageous to workers and therefore promotes lifetime employment is the seniority wage system. As stated above, regular workers are expected to enter a company without any occupational skills. They build their knowledge as generalists of a company by moving among different sections and branches of the company. Therefore, workers are not expected to develop occupational skills that can be an index of their abilities. Instead, a worker's achievement is considered to accord to his/her length of service to a particular company. In Japanese companies, one's wage basically goes up every year in a steady way from the starting salary which is determined by the worker's educational background: "Indeed, the entire salary is largely based on the employee's educational status on entering the company and the length of time he has served."⁴¹

This means that if a worker changes companies, he/she has to restart building their length of service at a new company. Occupational experience at the previous company tends to be discounted in such cases, and as a result, a midterm employee's starting salary at a new company is often lower than that of the employees of the same job with the same background conditions. According to the Labour Force Survey of 2001, among those who changed jobs within the previous year, 43.4 percent experienced income decrease while 28.3 percent had their

⁴⁰ Morita, op. cit., pp. 185-86.

⁴¹ Abegglen, op. cit., p. 39.

salary raised.⁴² The ratio of income decrease goes up as age of employee rises. Changing jobs also tends to make the worker's promotion slower and reduces the amount of retirement allowance which in substantial amount sustains the lives of the worker and the family after retirement.

On the other hand, this system of seniority wage gives an enormous sense of security to most of workers. Under the lifetime employment system, the chance of being dismissed is much lower than in companies of other countries. Therefore, unless an employee quits their job, his/her work is secured with an assured steady increase of wage. Many workers seem to prefer having this security, which makes their life-planning easier, to receiving a wage based on the evaluation of their ability, which can be much more obscure and unreliable. Morita makes this point as follows: "Japanese workers seem to feel better about themselves if they get raises as they age, on an expectable curve."⁴³ He offers one episode at Sony when it was necessary to recruit laboratory researchers as an example. Because the researchers were entering the company with higher education and older age than their normal employees, Sony decided to offer them higher, American-level salaries, with short-term renewable contracts. However, being asked their preferences, all of the researchers chose to follow the seniority wage system on non-contract basis, which offered much lower wages to start but had yearly increases thereafter. Over the short-term high reward system, everyone chose the Japanese system which promises employees "long-range security" in return for staying in the same company until retirement. The seniority wage system builds employees' attachment to a company while enhancing the barrier to job-changes.

Fringe benefits

Besides the seniority wage system, what solidifies the lifetime employment system even further is the fact that workers get various advantages by staying at the same company. Just as traditional villages did to their members, companies provide security to regular employees. They extend their concern for the workers to their private lives including their families. Okochi, Karsh and Levine argue in their summary of the Japanese industrial relations system: "The wide range of company activities suggests that enterprises are not only economic institutions pursuing profit but are also social security institutions caring for the life of each employee."⁴⁴ The extension of care to each regular employee's private life and family takes

⁴² The Statistics Bureau of the Ministry of Internal Affairs and Communications:
<<http://www.stat.go.jp/data/routoku/sokuhou/1308/1.htm>>.

⁴³ Morita, op. cit., p. 187.

⁴⁴ K. Okochi, B. Karsh, and S. B. Levine, "The Japanese Industrial Relations System: A Summary," Okochi, et al., eds., op. cit., p. 502.

the form of fringe benefits with “a variety of welfare facilities and special allowances such as housing, recreation, cultural facilities, medical care, semi-annual seasonal bonuses, and retirement allowances and pensions based on age and length of service.”⁴⁵

The amount of benefit a regular employee receives is in proportion with their length of service and the size of company, and many large enterprises “provide substantial discounts in house rent, utility charges, commodities, lunches, haircuts, movies, and so forth.”⁴⁶ These fringe benefits increase the degree of workers’ dependency to companies by making their family lives “only an extension of the work place,” encouraging “worker loyalty to the enterprise.”⁴⁷ While the Japanese government was slow in establishing a sufficient social welfare system for the people, these benefits provided by enterprises have been playing an important role in securing the lives of employees and their families.⁴⁸ Although most companies provide a wide range of fringe benefits simply by raising the benefits as a proportion of an employees’ wage while suppressing the base pay, Japanese employees feel that they gain great economic and social security by being a permanent member of an enterprise.

Devoted employees and the companies

A company’s extension of care to each employee’s private life requires the full participation of the worker to the enterprise business. When a Japanese person joins a company, his/her private self as well as public self is expected to submit to the enterprise. The result of a survey carried out four times between 1953 and 1968 indicates the existence of preferences among Japanese employees for the company to penetrate their private lives. In the survey on Japanese “national character,” the following question was asked: “Imagine you worked in a firm where there were two section chiefs different in the ways described on that card. Which of the two would you prefer to work under?” Choice A was “a man who would never try to get extra work out of you to the extent of breaking the rules, but at the same time would never look after you in matters which had nothing to do with the work.” Choice B was “a man who might occasionally make extra work demands, even in breach of the rules, but on the other hand would always look after you, even in matters outside of work.” In answering this question, “consistently, over fifteen years, 12-14% have chosen A and 82-5% have chosen B.”⁴⁹ This

⁴⁵ Hisashi Kawada, “Workers and Their Organizations,” Okochi, et al., eds., op. cit., pp. 223-24.

⁴⁶ *Ibid.*, p. 224.

⁴⁷ *Ibid.*

⁴⁸ In 1983-1984, the Japanese government spent 11.3 % of Japan’s GDP on social security while the U.K. spent 23.8 %, France spent 29.0 %, and Sweden spent 32.8 %. The amount spent on each Japanese national’s social security during that year was two-thirds of that spent on a U.K. citizen and a-third of that spent on a Swedish citizen. (Fukutake, op. cit., p. 183.)

⁴⁹ Dore, *British Factory*, op. cit., p. 237.

result indicates that Japanese workers are ready to let the company interfere in their private lives.

In fact, Japanese workers, whether they would like to or not, often give priority to their work over their private and family lives. As Ronald Dore points out, although Japanese companies show a concern for both the public and private lives of their employees, if there is a conflict of interest, they expect their employees' "subordination of the family role." As the result of the following survey suggests, it is a common practice among Japanese workers to give a top priority to the work related affairs. Answering a survey presented in 1993 by the Federation of Economic Organisations, 81.1 percent replied that if company affairs run counter to their family concerns, they would give priority to the company.⁵⁰ Dore compares this attitude of Japanese workers with the British system which "sharply separates the man's role as employee from his role as husband and father, and the firm disclaims responsibility for, or jurisdiction over, the latter." In contrast to the British practice, in Japan, the "fact that a man had planned to take his children for an outing would be seen as a rather 'selfish' reason for trying to avoid overtime work on a Sunday if an order had to be finished."⁵¹

Morita of Sony also affirms the expectation of Japanese companies for their workers' complete devotion to the company. He points out the problem of an employee who works only for money's sake is that he (Morita refers to his employee or any other worker only as "he" and never adds "or she") tends to forget that "he is expected to work for the group entity," and that such an "attitude of working for himself and his family to the exclusion of the goals of his coworkers and the company" is "self-centered attitude" and "not healthy."⁵² Japanese employees are always expected to work in a group for the sake of the group and the company. Such an expectation is so common and strong that employees cannot escape from feeling the stated and unstated pressures. Consequently, many Japanese workers express their willingness and readiness to devote themselves to their company. In a survey carried out in 1992 by the Prime Minister's Office, 87.6 percent of the workers sampled answered that they would like to devote themselves to the company.⁵³

This devoted attitude of Japanese workers corresponds to the attitude of traditional villagers where "the husband's *obligations* to the wide community – village or retainer band – were

⁵⁰ Sakumoto, op. cit., p. 201.

⁵¹ Dore, *British Factory*, op. cit., p. 210.

⁵² Morita, op. cit., 189.

⁵³ Tomokazu Sakumoto, *Nihonteki Keiei to Karo Syndrome [Japanese Style Management and the Overwork Syndrome]* (Tokyo: Chuoukeizai-sha, 1997), p. 127.

expected to take precedence over his *sentiments vis-à-vis* his family members.”⁵⁴ Dore illustrates how people subordinated their family to the community as a whole in traditional Japanese villages:

If his son stole a neighbour's carrots, breaking village rules, he might have to disown him, conquering natural affection. If, when his turn came to provide the *sake* rice-wine for the boozy (all-male) parties which followed village meetings, he could only manage to do so at the expense of the family budget, then his wife and children went without their weekly treat of a slice of dried fish and were not expected to complain.⁵⁵

In Japanese society, the wider group or community interests have always taken precedence over individual family matters. Before modernisation people gave priority to village communities, and since modernisation, to enterprises. Geert Hofstede identifies this tendency of putting the company needs before individual interests as one of the features of collectivist societies. Whereas in an individualist culture, employees are “expected to act according to their own interest, and work should be organized in such a way that this self-interest and the employer's interest coincide,” in a collectivist culture, “an employer never hires just an individual, but a person who belongs to an ingroup. The employee will act according to the interest of this ingroup, which may not always coincide with his or her individual interest: self-effacement in the interest of the ingroup belongs to the normal expectations in such a society.”⁵⁶ In collectivism, groups always take precedence over individuals. Individuals put their needs behind those of group believing that they will get their share of personal benefits as long as they fulfil their duties within the group.

Moreover, the tendency to prioritise company affairs over personal matters is being reinforced in Japanese society as the recession continues. When asked the question, in a 1991 survey, “Suppose you have a date but your boss asks you to work overtime, what would you do?” 62.3 percent of new company-employees sampled answered that they would cancel the date and work, and in 1998 the figure increased to around 75 percent. As recession continues, workers are feeling increasingly insecure about their occupations. Consequently, they feel the necessity to hold on to their current jobs more acutely and are becoming even more subordinate to the company.⁵⁷

⁵⁴ Dore, *British Factory*, op. cit., p. 283 (Emphasis original).

⁵⁵ *Ibid.*

⁵⁶ Geert Hofstede, *Cultures and Organizations: Software of the Mind – Intercultural Cooperation and Its Importance for Survival* (London: Harper Collins Business, 1991), pp. 63-64.

⁵⁷ Hiroshi Kawahito, “Han-Risutora Sengen: Gekizou suru Jisatsu Hassei wo Soshi suru tameni [Declaration of Anti-Restructuring: For Stopping the Upsurge of Suicides],” Gendai Journalism Kenkyukai, ed., *Nippon no Tenkan – 21seiki wo maeni Konokuni wa Dokoni Mukaunoka* [Japan's

The extended company care in employees' private lives and employees' reciprocal obedience to the authority of company has made Japanese companies family-like places of paternalism. The family-like feature, sustained by the systems of lifetime employment, seniority wage, and various fringe benefits provided by companies, gives Japanese companies unique characteristics which accord to the explanation put forward by Takeyoshi Kawashima. Kawashima points out that Japanese people have always only been able to constitute human relationships in family-like forms. They desire either to rule others with paternalistic authority or to be ruled by such authority. This tendency, Kawashima argues, has shaped relationships beyond the real family in particular ways. Among them are; 1) dominance by authority and absolute obedience to authorities; 2) lack of individual actions and a consequent lack of an individual sense of responsibility; 3) existence of social norms to prevent autonomous opinions which may disturb harmony in a group; 4) strong sectionalism.⁵⁸

These features noted by Kawashima were all present at the traditional village communities where obedience to village custom and rules were strongly encouraged, autonomous individualistic behaviours were disliked and discouraged, responsibilities were shared among villagers, harmony, order, and the holistic value of the village community was valued as of utmost importance, and there were tensions between neighbouring villages (see chapter four). Moreover, the same features listed can be currently observed in Japanese companies. In terms of employees' obedience to company authority, references have been already made. Therefore, the following discussions examine the location of responsibilities, discouragement of autonomous opinions, and the existence of sectionalism in Japanese workplaces.

The lack of individual responsibilities

In the first instance, the location of responsibilities is connected to the lack of individualism in Japanese workplaces. In Japanese companies, work and responsibilities are assigned to groups rather than individuals. Morita expresses the distaste held in Japanese workplaces for pinning down the responsible person for any mistake: "[W]e think it is unwise and unnecessary to define individual responsibility too clearly, because everyone is taught to act like a family member ready to do what is necessary. If something goes wrong it is considered bad taste for management to inquire who made the mistake."⁵⁹ While Western workers are expected to fulfil only his/her individual responsibilities at enterprises, Japanese workers are expected to

Conversion – Before the 21st Century, Where Is This Country Heading for?] (Tokyo: Mainichi Shinbun-sha, 2000), pp. 192-94.

⁵⁸ Kawashima, op. cit., pp. 18-22.

⁵⁹ Morita, op. cit., p. 149.

contribute to the fulfilment of collective responsibilities of the group. The way assessment is made also reflects this location of responsibilities. In Japanese enterprises, what is evaluated by the top management is the performance or achievement of groups, and the work of the individual is assessed within the group in terms of how much contribution he/she made to the group's tasks. Under this practice, one's failure to contribute to a group's work means more work is allotted to other workers in the group, and when one worker causes trouble, other workers of the group have to cover. Workers therefore develop a strong sense of responsibility towards the group as a whole.

This practice of group responsibility is, according to Harry Triandis, typical to the collectivist culture: "In collectivist cultures the collective is responsible for the wrongdoing of one of its members," whereas "in individualist cultures, it is solely the individual who is responsible." Triandis further points out that this responsibility-sharing practice can also be observed in pre-modern Japan: "During the Tokugawa period in Japan, if an individual behaved inappropriately and his ingroup did not punish him, the whole ingroup bore the consequences."⁶⁰ Moreover, the lack of individual responsibilities also constitutes one of the contemporary causes for overworking Japanese employees. Because the work quota in Japanese enterprises is given to a group, and because one's work responsibilities are not made clear, an individual employee's work load continues to increase as long as there is work located to the section. Employees, with a strong sense of responsibility to the group, normally respond to this situation by taking on as much work as they possibly can.

Discouragement of autonomous opinions

Secondly, autonomous opinions are seriously discouraged in Japanese workplaces. In the moral education of the Meiji, children's absolute obedience to parents was stressed.⁶¹ In contemporary companies, too, employees are expected and trained to be obedient to companies and are not allowed to express opinions beyond their position in group, especially against their superiors. Employees in junior positions therefore always pay special attention to avoid causing any confrontation with their superiors. When their opinions do not accord to those of their superiors, employees in junior positions would choose to maintain the harmony by refraining from expressing their own opinions. Nakane points out that hurting the feelings of a superior "could involve the risk of being cast out from the group as an undesirable member."⁶²

⁶⁰ Harry C. Triandis, *Individualism & Collectivism* (Boulder: Westview Press, 1995), p. 78.

⁶¹ Kawashima, op. cit., p. 167.

⁶² Nakane, op. cit., p. 35.

Employees are also careful not to disturb the harmony and order of the group, for “once a man has been labelled as one whose opinions run contrary to those of the group, he will find himself opposed on any issue and ruled out by majority opinion.”⁶³ Employees have to refrain from giving opinions which may disturb harmony or hierarchy of the office. Otherwise, workers cannot expect any promotion or even a stable career in the company: “If they display attitudes or behavior that deviates from the expectations of their superiors, they will not reach even the bottom rungs on the promotional ladder.”⁶⁴ In Japanese companies, where the hierarchy is clear, it is not acceptable for the lower positioned person to disobey a higher positioned person even if they may have good reasons to do so. This is similar to the situation in traditional villages, especially in the sense that one’s security in a group depends on his/her refraining from overt autonomous behaviour. Nakane points to the similarities between a Japanese workplace and a traditional rural village community in the sense that a person gains security by always adjusting oneself “to group demands and accept[ing] the group consensus, even though it might seem unreasonable both in content and method of presentation.”⁶⁵ Opposing the group consensus, Nakane points out, would expose the person to the risk of “being cast out from the group” regardless of the legitimacy of the person’s opinion. A person’s “security is maintained at the expense of” his/her “individual autonomy.”⁶⁶

Furthermore, this type of discouragement of autonomous opinions is something commonly observed in collectivist cultures where maintenance of concordance among members of group bears the utmost importance. Geert Hofstede points out how autonomous opinions are regarded in different cultures. In the individualist culture, “children are expected and encouraged to develop opinions of their own.”⁶⁷ In collectivist cultures, on the other hand, children are always taught to refer to the opinion of the group:

In the collectivist family children learn to take their bearings from others when it comes to opinions. ‘Personal opinions’ do not exist: they are predetermined by the group. If a new issue comes up on which there is no established group opinion, some kind of family conference is necessary before an opinion can be given. A child who repeatedly voices opinions deviating from what is collectively felt is considered to have a bad character.⁶⁸

⁶³ *Ibid.*

⁶⁴ Cole, op. cit., p. 102.

⁶⁵ Nakane, op. cit., p. 122.

⁶⁶ *Ibid.*

⁶⁷ Hofstede, op. cit., p. 59.

⁶⁸ *Ibid.*

In collectivist cultures, maintaining harmony within a group is valued so highly that the development of individual, autonomous opinions, which may disturb the concordance of the group, is seriously discouraged through childhood, school education, and at the workplaces. In Japanese enterprises what matters is not what's correct in reference to universal morality but is what maintains the harmony of the group. Consequently, employees are also not allowed to criticise their companies in public. Under Japanese company-absolutism, freedom of speech barely exists.⁶⁹

Sectionalism (pseudo-individualism)

Lastly, there is strong sectionalism in Japanese workplaces, which is often referred to as one of the sources of Japan's economic success. Yasusuke Murakami explains the connection between Japan's economic success and the strong sectionalism with the phrase, "pseudo-individualism". According to Murakami, the pervasion of family-type collectivism among Japanese companies has created "pseudo-individualism" in which the principal actor is not the individual as in ordinary individualism but instead is a group, such as a work-section in the company, behaving in an individualistic way. In pseudo-individualism, tense competitions occur between groups of the same kind.⁷⁰ In fact in Japanese society, the groups who are opposed to each other are not capitalists (managers) and labourers but are section A and section B with similar functions of work.

This pseudo-individualism may explain the success of Japan in regard to its advance in hi-tech products. With the influence of Confucianism, education in Japanese schools has always discouraged the cultivation of creativity in individual students. When these students finish school education and join companies, they are then trained into obedient company persons who maintain the harmony within the group by suppressing their individuality and autonomy. Hence, Japanese people seem to have little chance to develop their individuality at any stage in their lives. Since creativity normally would not be fostered where individuality is suppressed, this does not explain the creativity which has sustained the success of Japanese companies in providing new hi-tech and other manufacturing products into the world market. However, in Japanese companies the creativity, which has sustained the constant development of new products, does not belong to individuals. Instead, the creative processes are institutionalised.

⁶⁹ Hiroshi Okumura, *Kaisha Hon-i-shugi wa Kuzureruka [Will Company-Absolutism Collapse?]* (Tokyo: Iwanami-shoten, 1992), pp. 83-85.

⁷⁰ Yasusuke Murakami, *Sangyou Shakai no Byouri [Pathology of Industrial Society]* (Tokyo: Chuoukouron-sha, 1975), pp. 193-95.

When Japanese company managers decide that the company should develop a certain kind of new product, they organise a project team within the company. Each chosen member of the team then works hard for the innovation of the product, and when the task is accomplished, reward is given to the group as a whole. Accordingly, the copyright of the new innovation almost automatically belongs to the company. It is a common practice in Japanese companies that the inventor receives small sum of money (normally several hundred pounds or so) from the company as an award for the invention.⁷¹ In Japanese companies, achievements mostly belong to groups, and new innovations entirely belong to the company. The inter-group rivalry generated as part of the innovation process drives the development of the new product as each group are encouraged to excel the achievements of their rivals. It is a feature of pseudo-individualism that when a group acts like an individual, especially in competition with other groups, a group behaves in even more individualistic way than an individual person in an individualist society would. Therefore, there is no contradiction between the fact that groups within Japanese companies express strong creative abilities and that Japanese society is highly collectivistic.

Besides the fact that a group as one unit tend to behave in an individualistic way especially in competition with other groups of similar kind, another feature of “pseudo-individualism” is that individuals representing a group also behave in an individualistic way, and they strongly claim their group’s rights against interests of the other groups. This is especially true with a person representing a company. In general, Japanese employees’ concern is not with their personal position to other workers of the same occupation but to their company and its “ranking order among institutions,”⁷² as, especially in regard to the employees of larger enterprises, a worker’s social status tends to accord to the social position of the company he/she belongs to. Nakane explains: “Even typists and drivers take a pride in belonging to a company with a high ranking,

⁷¹ In 2005 a settlement was made at Japanese court. A man who invented the blue-colour diode sued the company he belonged to at the time of the invention. The invention is used today for various purposes, such as traffic lights, all over the world, bringing in an enormous amount of profits. However, since the entire copyright of the blue-colour diode belonged to the company, the inventor received no share of the profits. The inventor sued the company to demand his share of 80 billion yen (about 400 million pounds), but he had to settle for 800 million yen (4 million pounds). After the settlement, the Japanese inventor who now lives and works in the U.S. encouraged all talented Japanese young people to move and work in the U.S. where their abilities would be rewarded in a fair way. At the same time, he recommended those who were not talented to stay in Japan. Being asked their opinions on the case, many Japanese company employees mentioned the necessity of considering the fact that the company paid the necessary expenses for the invention and took the surrounding risk. They also claimed that it was important to consider the support and contribution the inventor’s co-workers must have made to the achievement.

⁷² Nakane, *op. cit.*, p. 92.

for they are able to feel superior to typists and drivers employed by lesser-ranked companies, even though they receive the same pay.”⁷³

Tadashi Fukutake explains why a Japanese person who behaves in a collectivist way inside of a group behaves in an individualistic manner once he/she is outside the group by referring to Japanese people’s tendency of having double standards in matters of morality. According to Fukutake, a Japanese person’s morality inside of a group does not apply once he/she is outside of the group. When they are facing people outside of their group, they no longer need to behave according to the norms of the group. It may even be the case that to behave in a way which would be unacceptable in a group actually works for the benefit of the group when applied outside. For this reason, entrapping someone of a different group for the benefit of one’s own group can be considered as the embodiment of one’s loyalty towards the group.⁷⁴ This existence of double morality standards among Japanese people is nothing new. As explained in the section which referred to Japanese villages, in Japan each village traditionally had its own morality which was different from the morality of the neighbouring village. Once a person was outside of a village, he/she no longer needed to follow the rules of the village. When one entered a village, on the other hand, he/she had to follow the rules of that village. Inhabitants of neighbouring villages were basically strangers and would speak out to each other without being afraid of confrontations when they were representing the interests of their own villages. However, when they were inside of their villages, they would do best to avoid any kind of confrontations and put the interests of the community before those of their own.⁷⁵

The same can be said about contemporary Japanese company workers. One may find it surprising to see a Japanese person, who one would expect to be cooperative, be quite outspoken and take an unyielding stand over a business matter when he/she is representing a company. Nevertheless, no matter how much individualistic their behaviour seems to be outside of a group, they behave in a collectivistic, duty-oriented way inside their own group, putting the interests of the group before those of their own and strictly obeying the rules of the group. In pseudo-individualism, individuals only make claims for their group, and once they no longer represent a group, they tend to lose their basis for their claims. Although Japanese people may seem to be individualistic when they represent companies, it remains pseudo-individualism.⁷⁶ They continue highly collectivistic within their workplaces putting interests of section before those of their own.

⁷³ *Ibid.*

⁷⁴ Fukutake, op. cit., p. 53.

⁷⁵ See also chapter four.

⁷⁶ Murakami, op. cit., p. 194.

According to Harry Triandis, this pattern of behaviour is quite common in collectivist cultures where people “act like individualists, maximizing their benefits and outcomes, in most situations where they deal with outgroups.”⁷⁷ Triandis further asserts that “once the relationship is clearly hostile, as occurs when the other group is clearly an outgroup, collectivists tend to be more outspoken than individualists . . . and more likely to commit atrocities.”⁷⁸ The fact that Japanese workers often act in an individualist way outside of their work-groups, especially when representing their companies, is, then, not an indication of individualism but an indication that they are firmly collectivists.

Rights in Japanese workplaces

As repeatedly mentioned, maintenance of harmony within a group is highly valued in Japanese culture, but the harmony which is valued in the society is, as defined by the Meiji government, “not cooperation between independent, equal individuals coming from their rational senses, but is great harmony kept by people staying within their own places and fulfilling their own duties in order to maintain the whole.”⁷⁹ In order to keep this harmony in workplaces, Japanese workers are expected to follow group morality rather than universal morality, for the latter may contradict to the interests of the group and may disturb harmony within the group. Emphasising the type of harmony defined above, values such as individual rights are hard to enact, since for rights to be effective, people’s belief in the correctness and righteousness of the universal norms alongside of their determination to claim them against others are necessary.

Under Confucian teaching, a child having rights against his/her parents is unthinkable or even outrageous. Father-children relationship consists of father’s ruling with authority and children’s absolute obedience with duties.⁸⁰ Similarly, in Japanese companies where familism prevails, the idea of employees (children) having rights against the company (parent) is also unthinkable. In Japan, moral norms and social rules tend to be formed within groups. There are many patterns of behaviour which are legal but morally unacceptable within a group, and claiming rights against the group is one of them. As a result, although the level of legal protection for workers’ rights in Japan is not much lower than that in many Western countries,

⁷⁷ Triandis, op. cit., p. xiv.

⁷⁸ *Ibid.*, p. 77.

⁷⁹ *Kokutai no Hongi [Real Significance of State Structure]*, cited in Kawashima, op. cit., p. 199.

Real Significance of State Structure was published by the Ministry of Education in 1937 for the purpose of educating Japanese nationals. It taught the dignity of the state and legitimacy of the Emperor’s ruling by referring to Japanese myths, requiring people’s absolute obedience to the Emperor. It also denounced socialism, communism, democracy, individualism and liberalism.

⁸⁰ Kawashima, op. cit., p. 10.

Japanese people's determination to make their working conditions conform to law is much weaker compared to that in the West, which has resulted in much poorer working conditions for Japanese workers as will be examined later in the next chapter. Legally, Japanese workers were given rights to organise, bargain collectively, and carry on other collective actions when the current constitution was established under the Occupation Forces.⁸¹ Other workers' rights are also provided for in laws such as the Labour Standards Law,⁸² which was enacted under the guidance of the Occupation and "established standards for wages, hours, rest, and other working conditions, fulfilling the constitutional stipulation."⁸³ The standards specified in this law are, "on the whole, up to international levels."⁸⁴ However, "a law of this nature cannot be made effective merely by promulgation,"⁸⁵ when people's determination to implement these laws is missing.

In England, labourers fought for, and acquired, their workers' rights because without these rights, they were exploited by employers. In Japan, rights were given to workers from above, but people are unable to claim these rights because of various social pressures coming from their group memberships. The absence of right-claims by Japanese workers, however, is not an indication of the absence of exploitation by Japanese companies. The family-like characteristics of Japanese workplaces do not change companies' motives as profit-pursuers or employees being vulnerable individuals. In any capitalist economy, including that of Japan, workers are individuals vulnerable against power of capitalists. When those vulnerable individuals are, like Japanese workers, obedient, willing to sacrifice their interests for those of groups, and unwilling to claim rights to protect themselves against the power of capitalists, it gives great opportunities to companies to generate profit by exploiting their workers at will. The prevailing collectivism in Japanese society has left workers vulnerable by preventing the implementation of their rights.

Trade unions in Japan

As well as acquiring rights, English workers also formed free trade unions in order to protect themselves against the power of capitalists. However, free trade unionism never developed in Japan. As explained in the previous chapter, the workers' movement which emerged at the beginning of industrialisation was soon suppressed by the ideology of "enterprise-family". Free trade unions were replaced by the system of in-house councils which persisted and

⁸¹ Article 28 of the Constitution of Japan states, "The right of workers to organize and to bargain and act collectively is guaranteed." (Appendix 6, "The Constitution of Japan (1946).")

⁸² See Appendix 7, "Labour Standards Law (Abstract) (1947)."

⁸³ Toru Ariizumi, "The Legal Framework: Past and Present," Okochi, et al., eds., op. cit., p. 109.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

pervaded amongst Japanese companies in the form of enterprise unions after the war. With the permeation of the life-time employment system, a free labour market never grew in Japan and consequently free trade unionism has never had the basis on which to develop. Similar to the case of workers' rights implementation, the development of free trade unionism in Japan has also been prevented by the family-like features in workplaces. In contemporary Japan, as a result, "more than 90 percent of all labor unions" are "organized on an enterprise basis," which makes the enterprise union "an outstanding feature of the Japanese labor movement."⁸⁶ However, the function of enterprise unions can never be the same as that of free trade unions. As a means of protecting workers' rights, the enterprise union has several weaknesses because of its system and structure.

Firstly, the fact that the majority of Japanese enterprise unions are under "union shop" clauses has weakened the function of unions to protect workers' rights.⁸⁷ Under the union shop system, employees automatically become members of a union upon their entrance to the company, and their sense of identity tends to be low. The union shop system has also attenuated the already scarce class feeling of Japanese society.⁸⁸ Under the union shop clauses, all regular employees of a company are automatically included in the membership of one enterprise union. As a result, blue-collar workers become members of the same trade union as white-collar workers who are candidates as future managers of the company. Regular workers are therefore not conditioned to see divisions or clashes of interests between different occupational categories. This union shop system has reduced the class feeling between blue-collar workers and white-collar workers including managers within a company close to zero. Consequently, employees' sense of enterprise membership becomes much stronger while their sense of union membership or loyalty to the union has little chance to develop. Moreover, in union shop system employees automatically lose their membership in the enterprise union once they leave their jobs. Thus, once workers are dismissed, they cannot seek for support from the union. The majority of enterprise unions in Japan have a union shop clause, and hence, do not provide employees' protection against actions such as unfair dismissals.

Secondly, enterprise unions are weak in protecting the rights of certain groups of workers because their membership is in general limited to "regular" employees. Temporary and

⁸⁶ Kawada, *op. cit.*, p. 233.

⁸⁷ "While 'closed shop' clauses are not found in collective agreements in Japan because there are few craft unions, 'union shop' clauses are very popular and are found in nearly 80 percent of all collective agreements." (Ariizumi, *op. cit.*, p. 118.)

⁸⁸ In a survey conducted in 1985 by the Prime Minister's Office on "the life of the people," 87 % answered they considered themselves to be the middle class (upper-middle; 6 %, middle-middle; 52 %, lower-middle 29 %) while 0.2 % replied they belonged to the upper-class and 9 % to the lower class.

subcontract workers are not entitled to join the enterprise unions. In 2003, of about 53 million employed workers, about 13.5 million were temporary or subcontract employees. The ratio of non-regular workers goes up to nearly 50 percent (about 10 million out of about 21.5 million workers) when only female workers are concerned.⁸⁹ In addition, these non-regular workers are not entitled to any of the fringe benefits or other social securities companies provide to their regular workers, and their working conditions are consequently much lower than those of regular workers. However, because trade unionism is not a commonly discussed topic among Japanese people, there is generally little movement among non-regular workers either to join union outside the company or organise one of their own. As a result, the organisation rate of part-time employees in 2003 was limited to 3.0 percent.⁹⁰ Thus, the system of Japanese enterprise unions greatly restricts employees' opportunities to enjoy rights of collective bargaining especially those whose working conditions are particularly low.

Thirdly, the fact that enterprise union officials are selected from regular employees of the company, and who may leave the union to become managers of the company within a few years, has weakened the union's will to fight against company management decisions. Employers, trying to keep the union movement within the company, "resent any outsider sent from the higher organization to represent the enterprise union at the bargaining table."⁹¹ Managers also participate in the selection of union leaders to make sure that "persons suitable from the company's stand point are nominated," and they direct "all of the workers to vote for these individuals."⁹² Ronald Dore conducted an interview which illustrated how company influenced the election of union officials so that only their chosen candidate would stand up for each position, and how the union accepted this interference from the company management:

--- Are people ever not put forward because of the Company's objections.

--- Oh, yes. Sometimes it's because he's indispensable in the job he's in; sometimes there's no particular problem as far as the job is concerned but he's – well, ideologically speaking, his approach to things – the company will say: We see a bit of a problem there, and in the end the union has to give up the idea. It's understandable, really, that the company should look at a man and add up the pluses and minuses, and if the balance is on the minus side they shouldn't want him to be an official.

--- But he could still stand as a candidate for election?

--- Yes, but he wouldn't get elected. Nobody has got that much *personal* organized support.

--- No, I mean that the union could still officially sponsor him as a candidate.

⁸⁹ The Labour Force Survey in 2003 by the Statistics Bureau of the Ministry of Internal Affairs and Communications: <<http://www.stat.go.jp/data/roudou/index.htm>>.

⁹⁰ Based on a survey presented by the Ministry of Health, Labour and Welfare: <<http://www.mhlw.go.jp/toukei/itiran/roudou/roushi/kiso/03/kekka.html>>.

⁹¹ Ariizumi, op. cit., p. 119.

⁹² Tsuda, op. cit., p. 426.

--- Mm. But it wouldn't, you see.⁹³

In the end, only candidates chosen or approved by the company stand as union officials, whose number often equals the number of positions available. Union officials thus chosen normally withdraw from the position after two to four years, and most of them would, immediately or within a few years, get positions of company managers and represent the interests of the company management.⁹⁴ This system discourages the continuation of experienced leaders in the union movement. The situation where today's union leaders may be tomorrow's managers requires that tensions between management and union do not grow high. The system of union leader elections in Japanese enterprise union thus limits the efficiency of union movement and weakens the union's will to fight against management.

The union-management cooperation policy

In Japanese enterprises, employees do not necessarily consider their interests to be opposed to those of management. On the contrary, with the Japanese lifetime employment system and the ideology of enterprise-family, employees often regard the interests of the two sides as compatible or identifiable. They believe the improvement of their lives can be achieved only through stability and development of the company and therefore believe that they and the management share the same fate. Akio Morita of Sony encourages this family-like relationship between managers and employees by calling it a "healthy relationship":

The most important mission for a Japanese manager is to develop a healthy relationship with his employees, to create a familylike [sic] feeling within the corporation, a feeling that employees and managers share the same fate. Those companies that are most successful in Japan are those that have managed to create a shared sense of fate among all employees, what Americans call labor and management, and the shareholders.⁹⁵

Managers and employees within a Japanese company in fact do share the same fate in the sense that they share the same salary increases. Unlike British managers who fear large wage increases for regular workers signify a reduction of the budget for their own benefits, Japanese managers' salaries automatically increase according to the percentage of wage increase negotiated by the enterprise union and managers. Therefore, especially in terms of wage increases, the interests of union and managers tend to coincide.

⁹³ Dore, *British Factory*, op. cit., p. 172 (Emphasis original).

⁹⁴ Takeshi Inagami, "Seijuku Shakai to Union Identity: Chousa Kekka no Gaiyou [A Mature Society and Union Identity: A Summary of Investigation Results]," Takeshi Inagami, ed., *Seijuku Shakai no nakano Kigyoubetsu Kumiai [Enterprise Unions in a Mature Society]* (Tokyo: Nihon Roudou Kenkyu Kikou, 1995), pp. 16, 24.

⁹⁵ Morita, op. cit., p. 130.

Moreover, under the enterprise union system whose memberships consist of employees of one company only, it is inevitable that the union-management relation in that company becomes cooperative. When the negotiation takes place within one company, union members always have a sense that their wage increases may weaken the company in commercial competition with other companies and tend to hold back their demands for improved working conditions. The enterprise union's determination to fight becomes even weaker under conditions of recession when the company's loss of competitiveness may directly lead to its collapse and workers' unemployment. Union officials under such circumstances have no choice but to comply with the decisions of the management and accept even some deterioration in employees' working conditions when the change is allegedly for the survival of the company. In fact, under the long recession of recent years in Japan, employees' compliance to management decisions has escalated, and evidence can be observed in the decline of the number of industrial actions from 8,435 in 1975 to 884 in 2001.⁹⁶ The number of days lost for industrial disputes in Japan in 2000 was 35,050 days (decreased to 12,262 days in 2002) while in the U.S. it was 20,419,400 days in the same year and 498,800 days in the U.K.⁹⁷

Employers, on the other hand, make every effort to maintain the union's cooperation with company policies by extending their communication to union officials. Prior to formal meetings, for instance, managers hold informal contacts with the union at various levels of the enterprise hierarchy and exchange information and opinions with the officials:

Whereas in British factories the rule that union representatives should not meet management without a witness is often broken, in Japan it does not exist. Personnel officers sometimes invite union leaders for golf or for a boozy evening party at a Japanese-style restaurant. The reverse also happens with the union leaders playing host – but rather less often. (One estimate put company expenditure on such affairs at about double union expenditure.)⁹⁸

Managers tend to reveal confidential information of company management to union officials and ask for cooperation. It is also not rare for the company to form company management strategy taking account of the voices of union leaders, who may also become managers in a few years.⁹⁹

⁹⁶ The Statistical Survey on Industrial Dispute by the Ministry of Health, Labour and Welfare: <<http://www.mhlw.go.jp>>.

⁹⁷ The figures on Japan is based on the Statistical Survey on Industrial Disputes by the Ministry of Health, Labour and Welfare, and other figures are based on *Yearbook of Labour Statistics* of the ILO.

⁹⁸ Dore, *British Factory*, op. cit., pp. 172-73.

⁹⁹ Inagami, op. cit., p.10.

Industrial-wide and nation-wide movements

Under such cooperative union-management relations, the confrontation which may exist between managers and workers is similar to a family dispute and never develops into a problem to be recognised in wider society. The demands or issues unions put forward tend to stay within the company and never reach the industrial or national level. As a result, employees of one company do not have a chance to develop fellow feelings with employees of other companies. Considering that the “need to act collectively reflects the inherent inequality of power between the owner or manager of capital and the individual worker,”¹⁰⁰ the inability to extend fellowship beyond the company boundary seriously limits the ability of unions to fight against the power of capitalists. In order to overcome these limitations and build a stronger union movement, the permeation of free trade unionism, comprising developed industrial unions and a national federation structure, is necessary. Although many industrial unions do exist in Japan, they are simply collective organisations of enterprise unions where the unions of large companies play larger roles. They are in general “loosely organized,” and their “policies and activities are often dominated by the powerful member unions.”¹⁰¹

Similar to the case of industrial unions, National Federations in Japan, too, are mostly federations of enterprise unions. There are noticeably two main national federations (centres) in Japan, which are the Japanese Trade Union Confederation (JTUC – RENGO) and National Confederation of Trade Unions (Zenroren). They were both established on 21 November 1989 with very different policies. The core principle of RENGO is labour-management cooperation. It is deeply related to the ruling Liberal Democratic Party, and its policy of minimising industrial disputes has been welcomed by the capitalists. Zenroren, on the other hand, was established in order to confront the cooperative policy of RENGO. The policy of Zenroren is to fight against capitalists for the protection of workers’ rights and therefore not welcomed by either capitalists or the government. The ratio of Zenroren member as a proportion of total union membership in Japan is, however, limited to 9.4 percent (993,000 persons) while RENGO occupies 64.6 percent (6,807,000 persons) of all union members (as of 2003).¹⁰² Also, RENGO is the only affiliate of the International Confederation of Free Trade Unions (ICFTU) among Japanese unions. As a result, ICFTU does not seem to recognise Japanese union-management cooperation policies as a problematic issue. Instead, their criticism

¹⁰⁰ Sumner M. Rosen, “Protecting Labor Rights in Market Economies,” *Human Rights Quarterly* 14 (1992), p. 374.

¹⁰¹ Kawada, op. cit., p. 238.

¹⁰² Summary of Statistical Results (2003) by the Ministry of Health, Labour and Welfare: <<http://www.mhlw.go.jp/toukei/itiran/roudou/roushi/kiso/03/kekka.html>>.

concentrates on the restriction the Japanese government has been placing on public sector employees' right to bargain collectively¹⁰³ although some references are occasionally made to other issues such as that of discrimination against female workers. The problems of Japanese employees' working extremely long hours and having little power against decisions of management do not seem to be internationally recognised by ICFTU, probably reflecting the fact that RENGO does not put much emphasis on these issues.¹⁰⁴ RENGO is, after all, only a federation of enterprise unions who can join or leave the federation at will, taking all their members with them.¹⁰⁵

Since 1955 in Japan there has been an annual event of joint struggle held by industries in every spring, which is called Shunto, the Spring Labour Offensive. After the war, employees realised the difficulty of winning wage raises through their enterprise union's negotiations with the management of the company and formed a joint struggle for a uniform wage increase by industries. With the prospect that the industry-wide, uniformly set wage increase would not affect the competing ability of the company within the industry, companies accepted the demand relatively easily, and the Spring Labour Offensive had remarkable results in the early 1970s winning up to 32.9 percent of raises. However, some influential enterprise unions started to turn towards a cooperative approach in 1975, and since then the Spring Labour Offensive has gradually lost its influence. Subsequently, the Spring Labour Offensive has become nothing but collective bodies of enterprise unions divided by industries, which presents a uniformed minimum standard wage increase demand and arranged schedule for action. The actual negotiation of wage increase is largely carried out between union and management within each enterprise. In Japan, although there are some industrial unions and national federations, industrial relations and labour movements are dominated by enterprise unionism.

Decreasing interests towards unionism in Japan

As long as there is an inherent inequality of power between the employer and employees, workers' rights cannot be protected with an enterprise union, which tends to fall into a capital-labour cooperation policy in which unions only comply with management decisions. In

¹⁰³ With the National Public Service Law and the Local Public Service Law, which were established in 1948 as a result of Red Purge carried out under SCAP in order to prevent the expansion of communism, basic trade union rights of public sector employees have been heavily restricted in Japan. (See Chapter 5)

¹⁰⁴ See, for instance, "Japan: Annual Survey of Violations of Trade Union Rights (2003)," on the website of ICFTU: <<http://www.icftu.org>>, which, after lengthy criticism on restrictions affecting public sector employees' trade union rights, states that trade union rights in the private sector in Japan "have generally been well respected by employers."

¹⁰⁵ Seiji Ujihara, "Iwayuru 'Kigyobetsu Kumiai' no Shomondai [Problems of So-called 'Enterprise Unions']," Nihon Roudou Kenkyu Kikou, ed., *Roudou Kumiai [Trade Unions]* (Tokyo: Nihon Roudou Kenkyu Kikou, 2001), p. 71.

effect, Japanese employees are increasingly feeling the ineffectiveness of unions in protecting their rights, leading to growing disinterest with the union movement.¹⁰⁶ This decrease of interests in union movement is reflected in the number of workers joining unions. The percentage of organised workers as a proportion of all employees in Japan has steadily fallen from its peak of 55.8 percent in 1949 and reached 19.6 percent in 2003.¹⁰⁷ The figure of 19.6 percent as the rate of organised workers may not seem particularly low compared with those of other nations.¹⁰⁸ However, within the 19.6 percent, the majority are members of enterprise unions who joined unions involuntarily because of the union shop clause.

In order to find out how many workers in Japan have voluntarily joined trade unions, we can examine the case of smaller sized companies where there are no enterprise unions. In 2003 among all Japanese wage-labourers in the private sector, 19 percent (9,040,000 persons) worked for companies with 1000 employees or more, 25.8 percent (12,310,000 persons) worked for companies with 100 to 999 employees, and 54.5 percent (25,920,000 persons) worked for companies with less than 100 employees. In terms of the percentage of organised workers, in companies with 1000 employees or more, the ratio was 51.9 percent, in companies with 100 to 999 employees, it was 16.6 percent, and in companies with less than 100 workers, organised labourers were limited to 1.2 percent.¹⁰⁹

The statistics above shows that in 2003, 54.5 percent of all Japanese employees in the private sector worked for companies with less than 100 workers, and 98.8 percent of them did not belong to any unions. These figures do not indicate that workers of smaller-sized companies are more satisfied with their working conditions than workers of larger companies and therefore do not feel the need to join unions. To the contrary, the working conditions in smaller companies in general tend to be lower than those of larger companies. For instance, the average monthly wage of employees of companies with 5 to 29 workers was 289,633 yen after

¹⁰⁶ In a survey conducted by the Ministry of Health, Labour and Welfare in 1991, 84.4 % answered that labourers' attitudes towards life and work had changed within the previous 5 years, and among the 84.4 %, 78.6 % pointed out that compared to 5 years earlier, the number of people who were willing to lead the union movement had fallen, 56.8 % stated that the unity of the trade union had been weakened, and 54.5 % felt that the interest towards winning better conditions through union movement had decreased. (Inagami, op. cit., p. 7.)

¹⁰⁷ 19.2 % in 2004. Figures presented by the Ministry of Health, Labour and Welfare:
<<http://www.mhlw.go.jp/toukei/itiran/roudou/roushi/kiso/01/fuhyo1.html>>,
<<http://www.mhlw.go.jp/toukei/itiran/roudou/roushi/kiso/03/kekka.html>>.

¹⁰⁸ In the year 2000, the ratio of organised labour was 13.5 % in the U.S., 29.4 % in the U.K., 29.0 % in Germany, 12.0 % in the Republic of Korea, 15.0 % in Singapore, 27.2 % in the Philippines, 24.7 % in Australia. (Report on Overseas Situation by the Ministry of Health, Labour and Welfare:
<<http://www.mhlw.go.jp>>.)

¹⁰⁹ Figures presented by the Ministry of Health, Labour and Welfare:
<<http://www.mhlw.go.jp/toukei/itiran/roudou/roushi/kiso/03/kekka.html>>.

tax in 2001 while that of companies with 500 workers or more was 511,075 yen (about 76 percent more).¹¹⁰ Moreover, in 2002 employees of companies with 1000 workers or more were given an average of 19.5 days of annual paid holiday and used 53.1 percent of it while employees of companies with 30 to 99 workers were given 17.0 days of annual paid holiday in average, and their uptake rate of their entitlement was 43.1 percent.¹¹¹ These figures suggest that the higher percentage of organised workers in larger companies may be attributed to the inclined existence of enterprise unions among them, whereas the lower percentage in smaller companies is attributable to the lack of enterprise unions alongside the lack of interests towards union activities among the employees. In fact, the substantial figure of organised workers who joined union movements of their own free will can be as low as 1.2 percent in Japan. Most Japanese trade unions which exist in the form of enterprise unions are not free trade unions per se as they are in the West, and in practice, Japanese workers are not using their trade union rights in order to protect themselves against the overwhelming power of capitalists.

Conclusion

This chapter has examined how Japanese companies, where the Japanese traditional value of familism has persisted, systematically create company persons who are mentally as well as materially dependent on the company. In Japan, new employees upon graduation from school enter the company where they are trained to be devoted company persons who will most probably stay at the same company until retirement. The development and permeation of the systems of lifetime employment, seniority wage, and fringe benefits, has cumulatively made job-changes in Japanese society largely disadvantageous for employees. On the other hand, workers tied to the company consider their companies as their family-like communities which provide the necessary protection just as traditional villages did to their villagers. Japanese employees develop a strong sense of belonging and loyalty towards the company, while developing no sense of fellowship with labourers of other companies.

The pervasion of a duty and group-oriented mentality and the lack of individualism in Japanese workplaces has been strengthened by the systems of shared responsibility, serious discouragement of autonomous opinions, and strong sectionalism in which each group operates under its own morality. In England, workers needed to be able to claim their rights in order to avoid further exploitation by employers in the capitalist economy. In Japan, workers did not develop an active free trade union movement to fight against the power of the capitalists.

¹¹⁰ An Annual Report of the Monthly Statistical Survey on Labour by the Ministry of Health, Labour and Welfare: <<http://www.chusho.meti.go.jp/hakusyo/h15/html/15s11000.html>>.

¹¹¹ Figures presented by the Ministry of Health, Labour and Welfare: <<http://www.mhlw.go.jp/toukei/itiran/roudou/jikan/syurou/03/4-1.html>>.

Instead, under the domination of the enterprise union system, they learned to cooperate with the management with whom they believe they share the same fate. Nevertheless, the capitalist economy continues to induce exploitations of workers so long as the ultimate goal of companies is to make largest profit possible and as long as there is a difference of power between employers and employees. Cooperative employee-management relations do not change the characteristics of capitalists as profit pursuers with “the imperatives” to “accumulate relentlessly and constantly maximise their profits,”¹¹² nor give employees equal power to that of the employer. Indeed, the lack of individualism and human rights claims in a strong capitalist economy is, as will be examined in the following chapter, resulting in the violation of workers’ rights in Japan.

¹¹² Ellen Meiksins Wood, “Globalisation and the State: Where is the power of Capital?” Alfredo Saad-Filho, ed., *Anti-Capitalism: A Marxist Introduction* (London: Pluto Press, 2003), p. 132.

Chapter Seven

The Violation of Workers' Rights in Contemporary Japanese Enterprise System: The Consequences

Workers' rights in Japan are legally well protected but neglected in practice. The history of workers' rights in Japan began soon after the Second World War, when the Occupation Forces decided to grant rights to Japanese workers as part of its democratisation policy. The sudden granting of rights from above, however, did not create rights-oriented values among the workers, and today the overall awareness of Japanese workers about their entitlement rights remains quite low. In England, labourers realised that acting collectively was the only effective way of protecting their interests against those of their capitalist employers. Japanese employees, on the other hand, generally consider their interests as compatible with those of the company management and have not learned to effectively utilise their trade union rights. This low consciousness of Japanese workers towards their own rights gives companies great opportunities to make profits by exploiting their employees.

The violation of workers' rights in Japan tends not to attract international attention, being outshone by the blinding economic success of the country. However, close observation of the lives of individual Japanese workers reveals the gravity of their plight. The violation of rights is especially pronounced in relation to workers' excessive annual working hours sustained by the custom of service overtime and low uptake of annual paid holidays. Work in Japanese enterprises can be so intense that death from overwork has been recognised as Japanese industrial phenomenon. Overworking is a difficult problem to tackle, however, particularly because of the ambiguity surrounding the issue. To begin with, the actual working hours of employees are hard to grasp since the workers themselves, together with company management, try to hide the real figure. In fact, employees' overworking appears to be taking place with their consent. Nonetheless, we should never overlook the enormous pressure that has been driving Japanese employees to overwork, and the aim of this chapter is to reveal this covert force underpinning the apparent economic success of Japan. Towards that end, this chapter looks at issues which bring into relief the neglect of universally recognised rights taking place in Japanese workplaces, such as the issues of low uptake of annual paid holidays, service overtime, long working hours, and death from overworking.

Low uptake of annual paid holidays

Japanese workers are legally guaranteed between 10 and 20 days of paid holidays per year,¹ and companies grant holidays accordingly. However, workers tend to use only part of their holiday entitlement. The consumption rate of annual paid holidays has been steadily falling and reached 47.4 percent in 2004, when workers were on average given 18.0 days of holiday a year but consumed only 8.5 days.² Being asked why they do not take all of their entitled leave in several surveys, workers have given three main reasons, which are 1) because the workload does not allow them to take holidays, 2) because taking holidays would cause inconvenience to other people in the office (or the atmosphere of the office makes it difficult to ask for holidays), and 3) because they need to save holidays in case they fall ill.³

Among these three reasons, the first two are interrelated. In Japan, employers assume workers will not fully use their holiday entitlement when calculating production capacity. In Western countries, where it is taken for granted that employees will use their full holiday and sick leave entitlement, production power is calculated on the basis of about 80 percent of attendance at work. On the other hand, in Japan it is calculated using the premise that attendance will be no less than 95 percent, and the workload is allotted accordingly.⁴ Because the Japanese management system allots the work quota to section groups, one worker's taking their full quota of leave inevitably increases the workload of their co-workers within the section. The worker himself/herself will also have backlogs when they return from holiday. In a survey carried out by the prefecture government of Tokyo in 1988, three fourths of workers replied that taking

¹ Article 39 of the Labour Standards Law guarantees 10 paid annual holidays to workers after 6 months of employment with more than 80 % attendance, and thereafter, the number of holidays increases up to 20 days according to the years of service. (See Appendix 7, "Labour Standards Law (Abstract) (1947).")

² Figures presented by the Ministry of Health, Labour and Welfare:
<<http://stat.jil.go.jp:8080/tokei/html>>.

³ In a survey in 1983 which asked workers why they refrained from using all of their entitled holidays (multiple answers), 69.2 % mentioned the workload as the reason (39.9 % referred to the lack of workforce and 29.3 % answered that the work would not proceed without them.), 27.4 % answered that they were saving holidays in case of sickness, and 43.4 % replied that they refrained from taking holidays out of consideration for the feelings of other workers in the office (24.6 % mentioned the feelings of their bosses while 18.8 % mentioned those of their colleagues). There were also 10.4 % who answered that they had nothing to do during holidays and 8.4 % who replied that they did not want to take holidays because they enjoyed working. (Tomokazu Sakumoto, *Nihonteki Keiei to Karo Syndrome [Japanese Style Management and the Overwork Syndrome]* (Tokyo: Chuoukeizai-sha, 1997), p. 46.)

In another survey carried out by the Ministry of Health, Labour and Welfare in 1989, the reasons workers gave were as follows (multiple choices): Because it may cause inconvenience to others (32.4 %), in order to save holidays in case of sickness (27.8 %), because it will result in a backlog after the holiday (27.0 %), because of too much work and lack of workforce (23.7 %), the atmosphere in the office makes it difficult to take holidays (15.0 %), taking holidays gives guilty feelings (13.6 %), because of the concern about the work progress (12.0 %), being given two days off each weekend, it is difficult to ask for more holidays (8.3 %), out of concern about its affect on future promotion, wage raise, and so on (6.6 %). (Sakumoto, op. cit., p. 47.)

⁴ Sakumoto, op. cit., p. 48.

holidays causes inconvenience to their co-workers or makes their own work busier before and after the holiday. Despite the fact that the difficulty of taking leave is caused by employers' neglect of workers' right to holiday entitlement, Japanese workers who retain a strong sense of duty towards their group feel guilty about taking holiday and consequently use less than half of their entitlement.

The pressure that works to depress the uptake of paid leave also comes from the dominant values within work groups. In Japanese enterprises, taking one's full quota of holiday could lower an employee's reputation within the group because such an act is considered to be selfish and disloyal to the group. It is regarded as an act of solely thinking of one's own pleasure while causing other people inconvenience by overloading them with extra work. Ronald Dore observes this phenomenon in Hitachi in the 1960s and 70s. He notes that although one can insist on taking holiday, "insistence on one's rights to a holiday *merely* for one's own personal pleasure"⁵ can lower the person's assessment by the company which influences the person's wage. For that reason, many workers refrain from consuming all their holidays. Dore points out there is also a feeling among workers that "it is unfair to be away enjoying oneself when everyone else is working."⁶ Replying to Dore's interview, the chairman of the foundry's union committee who Dore called "a loyal Hitachi man" commented that there was "a lot of selfishness"⁷ over the issue of taking holiday. The chairman stated that because Hitachi was a large firm, it complied with the Labour Standards Law, and that everyone could "take holidays on false pretexts and get away with it."⁸ Dore interprets that for this chairman "the *company* was often the innocent victim of unscrupulous workers"⁹ who insisted on taking all their holiday, and that "when he spoke of cheating in the taking of holidays," he meant not only cheating the company but also cheating "more conscientious fellow workers" who were burdened with extra work "because of someone else's insistence on his rights."¹⁰ Dore also refers to several union representatives who mentioned their feeling sense of guilt about attending council meetings within working hours, for it would put extra work on their co-workers.¹¹

⁵ Ronald Dore, *British Factory Japanese Factory: The Origins of National Diversity in Industrial Relations* (Berkeley: University of California Press, 1973), p.188 (Emphasis original).

⁶ *Ibid.* (Emphasis original).

⁷ *Ibid.*, p. 189.

⁸ *Ibid.*

⁹ *Ibid.* (Emphasis original).

¹⁰ *Ibid.*, pp. 189-90.

¹¹ *Ibid.*, p. 190.

Still, in the 21st century taking one's full quota of holiday is considered to be a sign of selfishness and lack of cooperativeness. In the traditionally collectivistic society of Japan, selfish acts are among the most disliked of behaviour, and disloyalty to a group is considered to be betrayal. Taking one's holiday may, as a result, undermine their standing in the workplace. Despite the fact that Article 136 of the Labour Standards Law prohibits disadvantageous treatment of workers such as wage-decrease for taking entitled holiday (See Appendix 7, "Labour Standards Law (Abstract) (1947)"), using their full holiday quota in practice tends to "put them at a disadvantage when it comes to assessments for bonuses, special allowances, salary increases and promotion" because the "scheduled paid leave is frequently looked at in the same way as absenteeism."¹² Consequently, it is usual at Japanese workplaces that workers ask their bosses if they can take holidays of one day or a few days consecutively at longest, carefully considering their managers' mood as well as the work situation so that their holiday will cause the least inconvenience to the work of the section. It is also a common practice to save holidays and ask sickness absenteeism to be counted as part of annual holidays.

The above observation reveals that in Japanese enterprises, holidays are considered by both employers and employees to be a kind of favour given by companies to workers and, therefore, to be taken in a way to cause least inconvenience at work. In general, neither employers nor employees are aware that holidays with pay are workers' due rights and are human rights as per Article 24 of the United Nations Universal Declaration of Human Rights and Article 7 of the United Nations International Covenant on Economic, Social and Cultural Rights.¹³ Accordingly, Japanese workers' low uptake of paid holiday can be attributed to their strong sense of duty towards the work group and weak sense of having rights. While the pervading collectivism which values group harmony is keeping workers from taking their entitled holidays, companies are making profits by ratcheting-up attendance rates when allotting work to each section. Workers' low awareness of their rights is thus being exploited, and as a result they experience the covert violation of their human rights by capitalists.

Service overtime

Besides the low uptake of paid holidays, unreported and therefore unpaid overtime work called "service overtime" is another practice commonly taking place in Japanese enterprises, which constitutes a serious violation of workers' human rights. The International Labour Organization in its annual report of 1993 indicates that the actual working hours in Japan are much longer than officially announced because of this unpaid "service overtime." The report

¹² Koji Morioka, "The Life Style of Japanese Workers," National Defense Counsel for Victims of Karoshi, ed., *Karoshi: When the "Corporate Warrior" Dies* (Tokyo: Mado-sha, 1990), pp. 73-74.

¹³ Japan ratified this international covenant in 1979.

refers to a survey by Keidanren (a federation of employers' organisations) which indicated that 88 percent of companies in Japan "rely on such overtime."¹⁴ Furthermore, according to a questionnaire conducted by RENGO to its 23,000 members in 2002, the ratio of workers who did service overtime was 51.2 percent (19.2 percent quite often, 6.7 percent about 10 days a month, and 25.3 percent once in a while).¹⁵ In another survey conducted in 1992 of 1,398 employees in non-managerial positions in the Tokyo area, 27.1 percent answered that they never received payment for their overtime work, 15.3 percent were paid only limited amount and 5.2 percent received set amount of overtime payment regardless of their actual overtime hours.¹⁶

Since service overtime is something companies try to hide, it is difficult to grasp the real picture. Nevertheless, rough figures of service overtime hours can be obtained by using two regularly conducted surveys, which are the Monthly Labour Survey of the Ministry of Health, Labour and Welfare and the Labour Force Survey of the Statistics Bureau.¹⁷ The Monthly Labour Survey is based on figures provided by companies while the Labour Force Survey is based on questionnaires filled in by individual workers. The difference between the two results can be regarded as the difference between the work hours paid off by companies and hours actually worked by employees. Therefore, the calculated result can be taken as an indication of the hours of service overtime carried out by employees. According to the results, the service overtime carried out by one Japanese employee over a year was on average no less than 374.4 hours (7.2 hours a week) in 2002, and 353.6 hours (6.8 hours a week) in 2003. According to the aforementioned survey by RENGO, the ratio of workers who do service overtime is about half of all workers. If it is the case then this result, which is the average of all Japanese workers' service overtime, indicates that among those who do service overtime, the average of unpaid work-hours per person comes to be more than 700 hours a year. This huge amount of unpaid overtime is a result of a mixture of the restrictions placed by companies and the restriction which workers place on themselves.¹⁸

¹⁴ The International Labour Office, *World Labour Report 1993*, 6 (Geneva: International Labour Office, 1993), p. 67.

¹⁵ RENGO, "The Realities of Increasing Workload and Service Overtime in Employment Restructuring: Results of RENGO Questionnaire on Lives 2002":

<http://www.jtuc-rengo.or.jp/new/download/chousa/2002_seikatu_enq/index.html>.

¹⁶ Ryusuke Kawai, "Service Zangyou no Jittai to sono Shakaiteki Haikei [The Real Picture of Service Overtime and Its Social Background]," Junryou Honda, and Koji Morioka, eds., *Datsu "Service Zangyou" Shakai – Ima Nippon no Hatarakikata wo Kangaeru [Getting out of "Service Overtime" Society – Considering Japanese Way of Working]* (Tokyo: Ruodou Junpou-sha, 1993), p. 24.

¹⁷ The Monthly Labour Survey, the Ministry of Health, Labour and Welfare: <www.mhlw.go.jp>.

The Labour Force Survey, the Statistics Bureau, the Ministry of Internal Affairs and Communications: <<http://www.stat.go.jp/data/roudou/index.htm>>.

¹⁸ In the RENGO questionnaire of 2002, being asked why they did overtime (multiple answers), 44.7 % answered because they needed to finish their individual work quota, 22.4 % because everyone else did, 21.6 % in order to improve their work capacity, 19.8 % out of hesitation in claiming overtime, and 13.6 %

It is a common Japanese business practice to illegally set an upper limit to the overtime payment¹⁹ (especially common in the field of banking which is notorious for having long working hours). Under this practice, companies set an upper limit of claimable overtime per month per person for each section and notify it to the workers at the beginning of each financial year. Any overtime beyond the limit goes unpaid. Moreover, the upper limit for overtime payments is being reduced as a response to the long recession from the beginning of the 1990s. The increase in workload for individual workers caused by the redundancy of their co-workers is said to be covertly increasing service overtime even further.²⁰ Japanese workers patiently accept this deprivation system of their pay partly from fear of losing jobs and partly from the belief that the crisis of the company is their own crisis which they have to weather even by making some personal sacrifices.

Simultaneously, strong restrictions on overtime claims come from workers themselves.²¹ Under the Japanese management system where the loyalty of each worker to the work group and company is carefully monitored, workers express their devotion through service overtime, especially if he/she desires to win higher approval in the group and get promoted. In Japanese companies, where service overtime is taken for granted, workers who are willing to carry out more service overtime are considered to be better employees. This custom of support by workers for service overtime makes it even more difficult to ascertain the real situation and reduce the practice. Japanese workers tend to regard the profit of company as something that leads to their own gain and thus often try to protect the company by hiding the practice of service overtime.²² Revealing the company's practice of service overtime to outsiders is

because of the set upper limit of payment. (RENGO, op. cit.)

¹⁹ It is also common that companies pay only a set amount of money each month for overtime, which is normally far less than the actual amount they ought to pay.

²⁰ The following are somewhat extreme but illustrative examples taken from comments contributed to a website: a computer company employee wrote that his daily working hours are from 10:00 to 24:00 with once a week of all-night shift and three to four days a month of work on holiday, but that he receives only 20 hours a month of overtime payment. Another person claimed he/she normally works between 120 and 180 hours of overtime but receives only 5 hours a month of overtime payment. A supermarket employee also commented that he/she works for an average of 150 hours a month of overtime but is paid for 5 hours a month only. The company told this worker that it was their own responsibility that they cannot finish the work within the regular working hours.

(<http://www5e.biglobe.ne.jp/~sabizann/kannrishitsul.htm>.)

²¹ Ryusuke Kawai summarises the reasons why Japanese workers choose not to claim overtime as follows: they do not want to give a bad impression to their bosses or lower their evaluations by demanding full payment; they cannot leave the office before their bosses; they feel part of the work is for their own improvement; they do not want their overtime claim to exceed those of their co-workers; they do not want to be considered as slow workers who are incapable of conducting work in a given amount of time. (Kawai, op. cit., pp. 27-31.)

²² For instance, when the Tokyo Labour Standards Office sent the case of Hokuriku Bank, a large local bank, to the public prosecutor's office for violating the Labours Standards Law by not paying for

considered an act of betrayal. Japanese workers are not aware that the practice of service overtime actually deprives them of their rights to due payment. In the meantime, companies are making huge profits from the free labour.

Long working hours

The neglect of workers' rights by both employers and employees has resulted in longer working hours, which has created serious consequences for Japanese society. Article 32 of the Labour Standards Law sets the working hours to 8 hours a day, 40 hours a week (See Appendix 7, "Labour Standards Law (Abstract) (1947)"). However, the actual working hours of Japanese employees are much longer. The employees' responses to the Labour Force Survey by the Statistics Bureau indicate that in 2000 the actual figure for Japanese male workers in the manufacturing industries was about 2,449 hours a year. This is 463 hours longer than for American workers, 547 hours longer than U.K. workers, 860 hours longer than French workers, and 924 hours longer than German workers, for the same year and same industrial category.²³ For all other industries except for agriculture, Japanese male workers worked 2,465 hours (female workers, 1,882 hours) in 2000 and 2,423 hours (female workers, 1,830 hours²⁴) in 2003 according to the Labour Force Survey.

On the top of these long working hours, Japanese workers also spend a significant amount of time commuting because of the particularly difficult housing conditions in the big cities. It is quite usual for workers in the Tokyo area to spend more than two hours a day commuting, and an increasing number of workers are spending three hours or more. Having to take extremely crowded trains for commuting adds strain to the already weary workers. During rush hours, trains in the Tokyo area are so packed that one cannot even move his/her arm once they are pushed into the train by other passengers and rail workers in order to close train doors. Hiroshi Kawahito suggests that this "tremendous strain" of commuting is something "that would probably be hard for most workers in other countries to conceive of."²⁵ Kawahito also points

overtime, the enterprise union decided not to demand the company pay the money back to workers. (Kawai, op. cit., p. 40.)

²³ On the other hand, the Monthly Labour Survey of the Ministry of Health, Labour and Welfare, which is based on a survey on employers, presented the working hours of employees in the same industrial category in the same year as 1,970 hours (including 175 hours of overtime), which makes Japan's working hours not so different from those of the U.S. and the U.K.

(<<http://www.mhlw.go.jp>>.)

²⁴ The reason why the working hours of female workers are so much shorter (by 593 hours in 2003) than those of male workers is that nearly half of female employees (10,050,000 out of 21,670,000 in 2003) are part-time or sub-contract workers, as well as that women are generally not assigned to work of a serious responsibility in Japanese workplaces. (Figures presented by the Statistics Bureau, the Ministry of Internal Affairs and Communications: <<http://www.stat.go.jp>>.)

²⁵ Hiroshi Kawahito, "Karoshi and Its Background – From the 'Karoshi Hotline' Program," National

out that spending three hours a day commuting means that the person spends an additional 750 hours per year on work-related activities.

Even if we estimate that the typical commuting time in Japan is just one and a half hours a day (though actually much longer in cities²⁶), this still means that Japanese male workers spent 2,798 hours on work and work-related activities during the year of 2003. Moreover, this figure only shows the average, so in reality many Japanese workers spend much longer hours on work and work-related activities. In the year of 2003, according to the Labour Force Survey, 17,970,000 Japanese workers (28.95 percent of entire work force) worked 49 hours or more per week, and the number of those who worked 60 hours or more per week was 8,110,000 (13.06 percent of all workers; 18.4 percent of male workers and 5.3 percent of female workers). Working 60 hours or more per week means working 3,120 hours or more a year including more than 1,200 hours a year or 5 hours a day of overtime work. The average commuting time of the workers in the big cities is 2.5 hours a day. Adding 1.5 hours for lunch and other breaks, those workers who work 60 hours or more per week in the big cities spend more than 16 hours a day on job-related activities. This trend has given rise to the expression “seven-eleven”, reflecting that leaving home at 7 a.m., he/she will not return until 11 p.m.²⁷ About 8,110,000 Japanese workers, or one out of five Japanese male workers, had this life style in 2003.

***Karoshi* (death from overwork)**

It was revealed in a survey that among the workers whose overtime exceeds 90 hours a month, 56.7 percent feel worried about its effect on their health.²⁸ Another survey suggests that when one's overtime exceeds 100 hours a month, 60 percent workers feel exhausted after work and more than 40 percent do not feel they have recovered from their exhaustion even after holidays. It is also pointed out that persons who work 3,000 hours a year (with overtime of approximately 100 hours a month) risk dying from overworking. In Japan workers dying from overworking became a social issue in the latter half of the 1980s when one in four male non-agricultural employees worked more than 3,000 hours a year. The Japanese word for dying from overworking, “*karoshi*”²⁹ became internationally recognised. Andrew Gordon views this

Defense Counsel for Victims of Karoshi, ed., op. cit., p. 10.

²⁶ The result of a survey published in 1986 indicates that in the big cities in Japan, 45 % of workers spend more than two hours a day commuting and 16 % spend more than three hours. (Sakumoto, op. cit., p. 38.)

²⁷ Koji Morioka, *Kigyō Chūshin Shakai no Jikan Kaōzō* [*The Time Structure of a Company-Centred Society*] (Tokyo: Aoki-shoten, 1995), pp. 83-84.

²⁸ RENGO, op. cit.

²⁹ “*Karoshi*” is defined as “a permanent disability or death brought on by worsening high blood pressure or arteriosclerosis resulting in diseases of the blood vessels in the brain such as cerebral hemorrhage, subarachnoidal hemorrhage and cerebral infarction and acute heart failure and myocardial infarction

word as “[o]ne much-noted symbol of the pathology of workaholic, middle-age men.”³⁰ Gordon defines *karoshi* as the term “coined to describe cases where a man (invariably), with no particular history of disease, died suddenly of a heart attack or stroke, at a time when he was spending extraordinary, stressful hours – perhaps one hundred or more per week – at work.”³¹

The International Labour Organization also reports *karoshi* syndrome and its relation to the working hours in Japan, whose length is exceptional among the industrial nations. It relates job burnout to people the report calls “workaholics”, reflecting their long working hours that reach 80 hours per week. The report points out that such long hours can damage workers’ health and refers to the case of Japan where people’s excessive working hours have become a focal issue “by claims related to *karoshi* – death from overwork.”³² It mentions the long hours of Japanese bank officials many of who work 3,000 hours a year which, as the report describes, is “the equivalent of 12 hours a day for 250 days.” The report also introduces a survey by the Institute for Science of Labour which revealed that workers of one major insurance firm in Japan worked 11 hours 20 minutes a day in 1991, risen from nine hours a day 15 years earlier. The report further warns of the worsening of the situation surrounding *karoshi* in Japan, referring to one psychiatrist who reported in 1992 that “the number of patients consulting him for stress problems had quadrupled over the previous ten years.”³³

In actual cases of *karoshi*, the victims’ working hours in the one or two years prior to their deaths often exceeds 3,000 hours a year with some cases exceeding 3,500 hours. In one reported case of *karoshi*, a 37-year-old man died after working excessively long hours for more than three years in which he would leave home before 7:00 am, begin work by 8:00 am and would not return home until about 2:00 am. He also worked during holidays.³⁴ In another case of *karoshi*, a victim of 43 years old left notes which called Japanese workers “corporate slaves” whose conditions were even more inhumane than those of actual slaves, without sharing “the simplest of pleasures that those forced laborers of ages past enjoyed: the right to sit down at the dinner table with their families.”³⁵ The wife of another *karoshi* victim of 40 years old claims that her husband worked 370 hours a month and managed to take only one day of paid

induced by conditions such as ischemic heart disease (IHD).” (Tetsunojo Uehata, “A Medical Study of Karoshi,” National Defense Counsel for Victims of Karoshi, ed., op. cit., p. 98.)

³⁰ Andrew Gordon, *A Modern History of Japan: From Tokugawa Times to the Present* (New York: Oxford University Press, 2003), p. 305.

³¹ *Ibid.*

³² The International Labour Office, *World Labour Report 1993*, 6., op. cit., p. 67.

³³ *Ibid.*

³⁴ Kawahito, “Karoshi and Its Background,” op. cit., p. 5.

³⁵ *Ibid.*, p. 4.

holiday in four years.³⁶ A life with working 370 hours a month is hard to imagine, but it is not so rare to find workers with such long working hours in the software industry, where one worker is reported to have been working a consecutive shift of two days and one night 10 times a month.³⁷

Hiroshi Kawahito, a lawyer tackling the *karoshi* issue, estimates that the number of *karoshi* victims in Japan is at least 10,000 each year.³⁸ When people outside Japan hear these stories, they ask: Why do the Japanese work themselves to death, why don't they stop before collapsing? The answer to the question may lie in something that may be expressed as "forced voluntary" labour. Company employees work excessive hours not always because they are told to but often because they feel they need to do so. The driving force behind their overwork is a mixture of systemic external forces and their own volition.

Systemic external forces for overworking

The biggest external force leading to excessive working hours is the allotment of huge work quotas to workers by the company. Under Article 37 of the Labour Standards Law, employers have to pay for employees' overtime or holiday work at increased wages rates "within the range of no less than 25 percent and no more than 50 percent over the normal wage per working hour or working day,"³⁹ and they therefore usually set the overtime pay increase rate to 25 percent. Because Clause 4 of the same article states that the "regular wage" excludes all the fringe benefits which account for large part of Japanese company wages, the actual overtime pay increase turns out to be quite low. For companies, paying 25 percent in addition to the ordinary wage for overtime consequently comes to be much lower in cost than hiring extra employees for the work. (It was once calculated that in order for the overtime cost to equal hiring a new employee, the overtime pay increase rate had to be 62.9 percent.⁴⁰) In this system, companies benefit from making employees work longer overtime, and they often calculate their employees' overtime work as a regular feature in making the production plans. As a result, workers are allotted a much larger amount of work than they could finish within the normal working hours. In fact, it is pointed out that 70 to 80 percent of overtime work in Japan is caused by the excessive work allotment.⁴¹

³⁶ Zenkoku Karoshi wo Kangaeru Kazoku no Kai, ed., *Nihon wa Shiawaseka [Is Japan Happy?]* (Tokyo: Kyouiku Shiryō Shuppan-kai, 1991), p. 10.

³⁷ Takeshi Inaki, et al., *Karoshi tono Tatakai [War against Karoshi]* (Tokyo: Shin-Nippon Shuppan-sha, 1989), p. 48.

³⁸ Hiroshi Kawahito, *Karoshi to Kigyō no Sekinin [Karoshi and Responsibility of Companies]* (Tokyo: Shakai Shisō-sha, 1996), p. 68.

³⁹ Appendix 7, "Labour Standards Law (Abstract) (1947)."

⁴⁰ Morioka, "The Life Style of Japanese Workers," op. cit., p. 71.

⁴¹ Hiroshi Kikuchi, and Ken-ichi Yoshida, *Watashitachi niwa Konna Kenri ga Aru [We Have These*

The overtime pay rate is not the only provision in the Labour Standards Law that works for the benefit of the employers rather than the employees. Although the Law restricts working hours to 8 hours a day, 40 hours a week, it provides for generous exceptions in Article 36 which permits each employer to set his/her own limits of overtime and holiday work-time provided that they sign an agreement with either the enterprise union or a representative of the majority of employees and submit the agreement to the appropriate government agency.⁴² There is no limitation to the amount of overtime the companies can set. Working hours are practically unrestricted in Japan. In fact, in the company where one victim of *karoshi* worked, the victim's annual working hour of 4,038 hours did not violate any regulations or agreements. The agreement made between the employer and employees under Article 36 in that company allowed a male employee's overtime to be up to 15 hours a day (with normal working hour of 8 hours and 1 hour of break, it sums up to 24 hours), and regarding holidays it allowed the employer to use male employees from 8 a.m. to 5 p.m. but also before 8 a.m. or after 5 p.m. if necessary. The working hour agreement was signed by the enterprise union of that company and approved by the Labour Standards Inspection Office. In effect, the employer of the company was allowed to use male employees 24 hours a day on any day of the week.⁴³

Based on these two provisions of the Labour Standards Law alone, it is questionable if the Japanese government is serious about preventing worker exploitation. In fact, there are reasons why the government is not so keen on tackling the issue of industrial relations. In Japan, business leaders are strong supporters of the Liberal Democratic Party which has almost been the only ruling party for decades. This conservative government is careful not to upset the capitalists by drawing workers' attention to their employment rights, which, they fear, would encourage industrial action and lead to the decline of the economy. As a result, the government is indifferent towards protecting workers' rights through sufficient legal enforcement.

Presumably for similar reasons, the government is apparently also not so keen on tackling *karoshi* issue. Under the Labour Standards Law, when a worker dies due to occupational causes, his/her bereaved family or dependents are entitled to compensation from the employer.⁴⁴ In order to carry out this provision, the Workers' Compensation Insurance Law covers almost all

Rights] (Tokyo: Shin-Nippon Shuppan-sha, 1996), p. 49.

⁴² See Appendix 7, "Labour Standards Law (Abstract) (1947)."

⁴³ Morioka, *The Time Structure*, op. cit., pp. 102, 108-109.

⁴⁴ See Appendix 7, "Labour Standards Law (Abstract) (1947)," Chapter VIII: Accident Compensation (Articles 75-88), especially Article 79 (Compensation for Heirs) and Article 85 (Examination and Arbitration).

Japanese workers with a government-managed insurance system financed by insurance premiums obligatorily paid by employers. When a worker dies from overworking, the victim's family should be able to claim workers' compensation. However, before receiving the compensation which they are supposedly entitled to, the victim's family need to provide the documents to prove the connection between the worker's death and overworking to the Ministry of Labour and have their claim approved. In many cases a large proportion of the victims' working hours consists of service overtime which is extremely difficult to trace. Fear of taking the blame for the deaths of their employees means that companies rarely cooperate with the investigation. Similarly, fear of disturbing their relations with the management means that the enterprise unions are also often reluctant to cooperate.

Shinsuke Miyano describes in *Karoshi: When the "Corporate Warrior" Dies*, that when lawyers with *karoshi* victims' wives visit trade unions and ask for their cooperation in order to file claims for workers' compensation, most unions show unwillingness to get involved. Miyano claims that there are even some unions which declare that the death of the worker has nothing to do with his/her work and try to obstruct the filing of compensation claims. In such cases, Miyano maintains that the victim's side has to seek for help from the company which is the one they are trying to prove responsible for the death of the victim.⁴⁵ This situation surrounding the filing of claims for workers' compensation causes enormous stress for the victims' families. Moreover, accomplishing the task of completing the form does not secure the compensation claim. To make the situation even more lamentable for the victim's side, the Ministry of Labour, which approves *karoshi* compensation payments, is also not so keen on increasing the number of *karoshi* cases by issuing approvals. They fear that wider acknowledgement will encourage other victims' families to come forward with claims. In 1990 it was exposed that the Ministry secretly prepared a manual to tighten acknowledging cases of *karoshi*.⁴⁶

In its 1993 report the International Labour Organization refers to this unwillingness of the Japanese Ministry of Labour to acknowledge *karoshi* as well as to the scarcity of compensation claims filed by *karoshi* victims:

⁴⁵ Shinsuke Miyano, "The Labour Unions," National Defense Counsel for Victims of Karoshi, ed., op. cit., p. 77.

⁴⁶ "The Ministry of Labor later confirmed that it had distributed this manual in January, 1988, to officials dealing with claims. The manual illustrates the present formula by means of 14 hypothetical cases. One of these states that for compensation to be awarded, the worker must have worked more than twice his regular hours during the week prior to collapse, or three times his regular hours the previous day. Another states that just one day off during the week prior to collapse disqualifies the victim for compensation, even if he or she had worked twice the regular number of hours on the remaining six days (Rengo Tsushin, Apr. 5, 1990; Asahi Shimbun, May 19, 1990, etc.)." (Toshiro Ueyanagi, "Laws Concerning Karoshi," National Defense Counsel for Victims of Karoshi, ed., op. cit., p. 93.)

In Japan there have been relatively few claims for compensation for stress-related disability or death. In 1989, for example, there were 777 workers' compensation claims filed with the Japanese Ministry of Labour; 110 of these were successful, but 80 were classified as accident-related implying that just 30 were due to pressure of work. The Ministry does not recognize the term *karoshi*, pointing to the difficulty of relating levels of fatigue to particular diseases, and only grants compensation in cases where a worker was given a heavier workload than usual in the week before collapsing on the job.⁴⁷

The Ministry of Labour later loosened their conditions for granting compensation to the victims of overworking in response to the increase of public interest in the issue of *karoshi*.⁴⁸ However, the number of cases they acknowledge as victims of overworking is still far less than the estimated actual figure. Hiroshi Kawahito argues that the reason the Ministry is reluctant to approve *karoshi* cases is because they are afraid of the effect the increased number of acknowledgements would have on the Japanese company management system as well as on the workers' compensation insurance system. An approval of a *karoshi* case is an acknowledgement of the company's responsibility for the employee's death. Increased number of approvals will inevitably lead to improvements in working conditions and may disturb the basis of many Japanese companies' labour policies which are sustained by employees' overworking. The Ministry of Labour thus tries to keep down the number of *karoshi* claims out of concern for the private business sector.⁴⁹ As a result, Kawahito estimates, the rate of *karoshi* cases acknowledged by the Ministry of Labour as deaths from overworking and compensated is limited to about 5 percent of the actual number.⁵⁰ In the meantime, the working hours of Japanese employees continue to be very long and the excessive work allotment by company managements continues to go unabated in the absence of any serious effort of the government to stop such practices.⁵¹

⁴⁷ The International Labour Office, *World Labour Report 1993*, 6., op. cit., p. 67.

⁴⁸ A report of the ILO states: "However there has been considerable public disquiet. One survey indicated that over 40 per cent of Japanese said they feared they would die of overwork. And the families of people who feel their relatives are *karoshi* victims now seem more likely to take action. In 1988 a Tokyo lawyers' group set up a panel to counsel relatives and assist them in seeking compensation. The first lawsuit claiming *karoshi* was launched in 1991 by the widow of a vice-president of an engineering company; her husband had made 20 overseas business trips a year and died at the age of 51 of a brain haemorrhage. At the end of 1991 at least ten such claims were working their way through the courts." (The International Labour Office, *World Labour Report 1993*, 6., op. cit., pp. 67-68.)

⁴⁹ The number of cases acknowledged as *karoshi* (including cases in which victims survived but were left with permanent disabilities) was 21 (in 1987), 29 (in 1988), 30 (in 1989), 90 (in 1998), 81 (in 1999), 85 (in 2000), 143 (in 2001), and 317 (in 2002). The sudden increase in 2002 was due to some relaxation in the interpretation of determining *karoshi* in December 2001. Within the 317 cases of 2002, 160 cases were with victims dead. (Figures presented by the Ministry of Health, Labour and Welfare: <<http://www.mhlw.go.jp/houdou/2003/06/h0610-4a.html>>.)

⁵⁰ Kawahito, *Karoshi and Responsibilities of Companies*, op. cit., pp. 62-63, 67-70.

⁵¹ Besides, the Ministry of Labour, which is the institution to supervise the working conditions of the

The forced voluntary volition of workers

Being allotted with large amount of work, however, does not explain why workers do not say “no” to the demand, or why workers apparently of their own volition respond to the high work quota by working longer hours. Yoshitaka Oohira explains this phenomenon in terms of employees’ “shouldering” the company.⁵² Oohira points out that a company by nature tries to incorporate employees into its structure as far as possible in order to maximise their contribution towards the company profit. According to Oohira, employees in the West use contracts and prevent company enclosure from extending further than necessary. Japanese employees, on the other hand, not only let the company deeply incorporate them but seem to identify the company’s responsibility with that of their own or even company itself with themselves. Although many of them are highly unsatisfied with their long working hours and worry about the dangers of dying from overwork, Japanese employees continue working in the same company because they have a strong sense of responsibility to the company. From a Western or individualist point of view, this seems irrational. According to Oohira, this is because they are making decisions, not by reference to their values as autonomous individuals as is common in the West but instead by reference to the values of the group.

Oohira argues that this decision-making process which takes place within each Japanese employee is a result of the training given to them throughout their school education, where they learn to accept and obey authority and to refrain from making self-assertions or disturbing harmony of the group. They are trained to “autonomously” or “voluntarily” sense and judge what kind of behaviour is expected of them and to “autonomously” or “voluntarily” act to meet that expectation. As Oohira points out, “autonomy” in the Japanese school education does not require establishing universal values within a person or forming his/her own autonomous opinions but requires one to always be able to make judgements according to the values of the surrounding situation. This value orientation is quite similar to the one that existed in the tradition of the Japanese village system where each village had its own established values and villagers were expected to fully comply with them.⁵³ In Japan, from ancient times to the present, there has never been a tradition of establishing individuals based on the value of

private sector, itself is dominated by the custom of service overtime. As many as 83.2 % of the employees of the Ministry of Labour have not been claiming the pay for their overtime work nor taking substitute days off for their work on holiday. (Hiroshi Kawahito, *Karo Jisatsu [Suicide from Overwork]* (Tokyo: Iwanami-shoten, 1998), p. 169.)

⁵² Yoshitaka Oohira, “Nihon-jin Jugyouin no Kigyō heno Kakawariaikata no Saikou – ‘Seoikomi’ toiu Nihonteki na Kakawariaikata no Rikai [Reconsideration of the Way Japanese Employees Involve Themselves with Companies – Understanding ‘Shouldering’ as Japanese Way of Involvement],” *Annals of Japan Academy of Management*, No. 4 (1995): 58-64.

⁵³ See chapter four.

autonomy, i.e. individualism. The harmony of the group has always been given precedence over individuals. In order to examine why Japanese labourers let companies violate their workers' rights without revolt, it is important to understand the absence of individualism as a value within each Japanese worker.

When a person does not have his/her own autonomous values, he/she always needs to refer to an outside values. A Japanese person is therefore prepared to accept the values of the group they happen to belong to. Moreover, when a Japanese person joins a company, he/she changes the value of reference by transferring from one value group (in most cases school or university) to another (company). A new employee thereafter accepts the values of the company and forms a new identity as a member of the company. Japanese employees thus voluntarily, though unconsciously, "shoulder" companies for purposes of self-identification.⁵⁴ Companies, on the other hand, do not miss the opportunity to utilise this readiness of employees to accept authority and to respond to expectations with a sense of responsibility cultivated through school education. Companies do not have to force employees to work hard. They simply need to enforce the passive characteristic of Japanese employees and efficiently utilise it to maximise their profits.⁵⁵

The enforcement of the passive characteristic of employees takes place first during the initial training of new employees. The ways that companies cultivate employees' loyalty and create "company persons" during the initial training was already referred to in chapter six.⁵⁶ Moreover, by implanting company absolutism in new employees as the central value, some companies also emphasise to the new workers that good employees are those who devote themselves to companies and never complain about work. They insist that the workers who complain are failures. In 1994, for instance, a company, Teijin, prepared a manual for their new employees of the sales division, which taught: "Never say tired even when you are," "Never be off sick for such trifling reasons as having a cold," "Come to work even by crawling about," "Not showing willingness to accept overtime work is evidence of the lack of ability and responsibility."⁵⁷

In 1989, the "Business Practice Correspondence Q&A for the Newly-employed" was prepared by Nikkin, the largest trade paper with a circulation of 200,000 in banking, where male workers'

⁵⁴ Yoshitaka Oohira, "'Kakoikomi' to 'Seoikomi' ['Enclosure' and 'Shouldering']," *Kougyou Keiei Kenkyu [Study on Industrial Management]*, No. 10 (1996): 41-45.

⁵⁵ Yoshitaka Oohira, "Wagakuni Jugyounin no 'Juyou' no Kousatsu – Kyoutani no Giron wo Chushin ni [A Study of 'Acceptance' in Japanese Employee – With the Argument of Kyoutani at the Centre]," *Kougyou Keiei Kenkyu [Study on Industrial Management]*, No. 11 (1997): 53-57.

⁵⁶ See the section on "vocational training and the creation of company persons" in chapter six.

⁵⁷ Morioka, *The Time Structure*, op. cit., p. 33.

average working hours are estimated to reach 3,000 hours with no less than 700 hours of service overtime. In the paper, one new employee claimed that he could not leave the office till late because the section chief always stayed on late. The employee stated he had been employed for two months by the company and was afraid that if he continued these working practices, his health would be injured. He asked what he should do, and the paper replied that if he needed to whine that way at such an early stage of his carrier, he should quit the job at the bank. The reply further warned that the same situation would occur wherever the employee went next. It advised him not to get “deluded by such a word as overworking,” warning that if one could not get away from the thought that he was only paid for the time of labour and that overtime work was a violation of contract, then there would be no peace of mind in his future life at bank and he would never be happy. The correspondence concludes by pointing out that “reward for labour is not paid for the hours worked but paid for visible and invisible value of the labour.”⁵⁸ This statement sums up well the dominant management philosophy in banking and the value companies try to implant to new employees.

Employees, who are prepared to identify themselves with the group they join, accept such management policies and develop a heavy sense of responsibility for the work. They are then unable to separate themselves from the surrounding situation and start shouldering all the responsibilities around them. In fact, being asked why they continue to work even when they feel and fear the possibilities of *karoshi*, workers mention their responsibilities to work. When employees try to fulfil all the responsibilities under conditions of rising work quotas, some inevitably end up working themselves to death. *Karoshi* has been caused by this sense of responsibility being successfully implanted to employees by the company under the collectivist tradition of identifying oneself with the surrounding values of the group and putting the whole before individuals.⁵⁹

***Karo* suicide (suicide from overwork)**

The employees' deep involvement with the company and strong sense of responsibility is also implicated in the number of suicide cases. In Japan, the suicide rate has been moving in line with the unemployment rate since the end of World War II. Kawahito argues that the number of suicide cases increases with the unemployment rate not only because unemployment causes

⁵⁸ Hiroshi Kawahito, *Karoshi Shakai to Nippon [Karoshi Society and Japan]* (Tokyo: Kyouei-shobou, 1992), pp. 58-59.

⁵⁹ Yoshitaka Oohira, “Keiei Rinri to Nihonteki Keiei no Kajuroudou · Yokonarabi – Ningen Koudou no Saisei no Kenkyu kara [Business Ethics and ‘Super Overwork’ · ‘Yokonarabi’ in Japanese Management – from a Study of the Difference in Human Behavior],” *Journal of Japan Society for Business Ethics Study*, No. 3 (1996): 83-91.

financial difficulties but more significantly that when Japanese people lose their jobs, they tend to lose their psychological balance as well.⁶⁰ As explained earlier, Japanese workers identify their values and even themselves with companies they belong to. For many of them, losing their job means losing their identity and self-value, which upsets their mental balance. Moreover, since entering a company is like becoming a new member of a big family, being made redundant may also give rise to feelings similar to being rejected by one's own family.

The increase in the unemployment rate also affects workers who are still employed. Seeing their co-workers being dismissed, they begin to fear that the same may happen to them and try to retain their current jobs by working even harder. In the meantime, their work quota increases as they have to do the same amount of work allotted to the group with fewer workers.⁶¹ Under these difficult conditions, some workers suffer from mental stress. When physical exhaustion from overworking or disappointment of failing to achieve work goals is added, the mental stress becomes overwhelming and ends up leading to suicides. This kind of suicide attributable to overwork is called "*karo* suicide," suicide from overwork. The number of *karo* suicide cases increases under economic depression because workers' mental stress increases as they try to retain their jobs in worsening working conditions, which makes it increasingly difficult to fulfil their responsibilities and which ultimately leads them to run into a wall. According to the statistics of the National Police Agency, the number of suicide cases whose motives were work-related was 919 in 1980 (4.4 percent of total cases) and 1,877 in 1998 (5.7 percent of total cases). Kawahito estimates that in reality the number of suicide cases caused by overworking or stress from work reaches several thousands per year.⁶²

One striking factor about *karo* suicide is the deep sense of responsibility the suicide victim shows towards their work and company. Despite the cause of their death being attributable to the company's excessive demands on them, they seem to blame only themselves for not being able to meet the demands and fulfil their responsibilities. Kawahito points out that in the suicides notes Japanese workers almost never express hostility to the company or criticise their

⁶⁰ Kawahito, *Suicide from Overwork*, op. cit., pp. 96-97.

⁶¹ In a questionnaire conducted in 1997 by a research institution, 23.0 % answered that more than a fifth of workers had been made redundant in their companies, and 51.4 % of them replied that their stress or exhaustion had increased because of the personnel reduction at their workplace. Survey results also suggest that at the workplace where there has been a personnel reduction, the working hours of the remaining employees increase. (Kawahito, *Suicide from Overwork*, op. cit., pp. 173-74.)

⁶² Hiroshi Kawahito, "Roudousha no Jisatsu wo Umidasu Shakaiteki Haikei – Roudousha no Jisatsu no Roudou Keizaigakuteki Kousatsu [The Social Background Which Creates Suicides of Labourers – Labour Economical Study of Suicides of Labourers]," Stress Kanja Rousai Kenkyukai, and National Defense Counsel for Victims of Karoshi, eds., *Gekizou suru Karo Jisatsu: Karera wa Naze Shindaka [An Upsurge of Suicides from Overwork: Why They Died]* (Tokyo: Kosei-sha, 2000), p. 278.

bosses for forcing them too hard. Instead, they blame themselves for not being able to fulfil their duties and responsibilities. One personnel section-chief left a suicide note to the department chief stating:

I tried hard to meet your expectations, but it was beyond my ability. All I can do now is to apologise by taking my own life. I deeply, deeply apologise to everyone in the company, from the president, people of the department, union members, and all other people concerned. I am sincerely sorry I am doing this at such a difficult time for everyone.⁶³

Another person's suicide note told his family not to blame the company for his death, since he was already causing a lot of concern and inconvenience to the people of the company.⁶⁴ These feelings of such deep remorse may be partly attributable to depression, but at the same time, it shows how completely the company dominated their lives and how much priority they gave to company work over their individual lives.

Kawahito explains Japanese employees' *karo* suicides by referring to the analysis of Emile Durkheim. Durkheim categorises suicides into three basic types. The first type is "egoistic suicide" which occurs "due to excessive individuation." The second one is "altruistic suicide" which is "caused by too rudimentary individuation," and the third, "anomic suicide" which "results from man's activity's lacking regulation and his consequent sufferings."⁶⁵ Kawahito points out the similarity between *karo* suicide and what Durkheim calls "altruistic suicide." Durkheim defines "altruism" as the state where one's ego is blended with the whole and the goal of conduct lies in the group of one's belonging.⁶⁶ In altruism, one's principle of action is external to himself/herself,⁶⁷ and when the state of altruism is intense, it can cause altruistic suicide.

Durkheim associates "egoistic suicide" with the "most civilized nations" and "altruistic suicide" with "primitive peoples" in "lower societies."⁶⁸ He then argues that in the contemporary societies of his time (*Suicide* was published in 1897) altruistic suicides could not be widespread,

⁶³ Translated from Kawahito, *Suicide from Overwork*, op. cit., p. 85.

⁶⁴ An engineer wrote to people of his company: "I am sorry for causing so much trouble. Please forgive me for not being able to fulfil the task. . . . I feel that if I continued working, I would only be a nuisance to you. So, I have decided to take my life. I am sorry for the trouble I caused." One section-chief also wrote a note and mentioned several names begging for their forgiveness. (Translated from Kawahito, *Suicide from Overwork*, op. cit., pp. 85-86.)

⁶⁵ Emile Durkheim, *Suicide: A Study in Sociology*, trans. John A. Spaulding and George Simpson, ed. and intro. George Simpson (London: Routledge & Kegan Paul Ltd, 1963), pp. 221, 258.

⁶⁶ *Ibid.*, p. 221.

⁶⁷ *Ibid.*, p. 234.

⁶⁸ *Ibid.*, pp. 223, 227.

as individual personality was “increasingly free from the collective personality.”⁶⁹ However, there was “a special environment where altruistic suicide” was “chronic: namely, the army.”⁷⁰ The army consists of large intimate groups where individual members are not allowed to take autonomous actions. This kind of moral structure is the basis of altruism, and therefore, military suicide can be attributed to the same source as altruistic suicide. Durkheim contends that soldiers’ suicide rate increases with the duration of service because the “aptitude for renunciation” or the “taste for impersonality develops as a result of prolonged discipline.”⁷¹ This tendency in the army, Kawahito points out, has certain similarities to the tendencies in Japanese enterprises whose constitutional similarities to the army are often pointed out.⁷² Kawahito argues that, just as in the army, in Japanese enterprises employees’ dependency and subordination to the company increases according to the duration of service, which results in the increase of words of apology in the suicide notes of *karo* suicide victims. Although the direct cause of *karo* suicide is overworking and mental stress, the fundamental source of the whole situation is individual worker’s strong sense of loyalty, belonging, duty and responsibility towards the company. *Karo* suicide in this sense can be called “company-centred suicide.”⁷³

Moreover, there is an argument which points out that deeper down *karoshi* also shares the same causes as altruistic suicide. Tatsuo Inoue maintains that *karoshi* is basically caused by the fact that companies in Japan are not mere buyers of a commoditised labour power but are belonging groups for employees which determine their identities and principles of actions, and in this sense *karoshi*, as well as *karo* suicide, is connected with altruistic suicide which is “caused by too rudimentary individualism.” Inoue further points out that *karoshi* symbolises the dilemma of contemporary Japanese society constituted by the co-existence of capitalism and the principle of community-oriented social structure.⁷⁴

Universal human rights ignored

Japanese workers’ strong sense of responsibility also prevents them from taking rests even when they are sick, because they worry about the inconvenience their absence may cause to other

⁶⁹ *Ibid.*, p. 228.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*, p. 234.

⁷² For instance, Saburo Takahashi identifies the fundamental organisational style of Japanese people in former Japanese Army in his “Kyu-nihongun no Soshiki Genri [The Organisational Principle of Former Japanese Army],” Eshun Hamaguchi, and Shunpei Kumon, eds., *Nihonteki Shudanshugi [Japanese Collectivism]* (Tokyo: Yuhikaku, 1982), pp. 127-42.

⁷³ Kawahito, *Suicide from Overwork*, op. cit., pp. 88-95.

⁷⁴ Quoted in *Ibid.*, pp. 94-95, from Tatsuo Inoue, “Kojinken to Kyoudousei – ‘Nayameru Keizai Taikoku’ no Rinriteki Saihen [Individual Rights and Cooperativeness – Ethical Restructuring of ‘the Economic Superpower in Dilemma’],” Noritaka Kato, ed., *Jiyu Keizai to Rinri [Free Economy and Ethics]* (Tokyo: Seibun-dou, 1995).

people. This spirit of pushing oneself over his/her limit for the fulfilment of duty to the group is highly valued in the Japanese workplace and society. Causing inconvenience to others for personal reasons, on the other hand, is regarded as an inappropriate or selfish act. Employees' having such duty-oriented values has been encouraged and utilised by employers. These values allow employers to give excessive work quota to employees and makes employees respond to the demand by overworking, sometimes to the extent that they work themselves to death. Nobody involved seem to pay attention to or recognise the fact that overworking employees is a violation of human rights guaranteed in Article 24 of the United Nations Universal Declaration of Human Rights which states: "Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay" as well as Article 7 of the United Nations International Covenant on Economic, Social and Cultural Rights which Japan ratified in 1979.

In Japanese collectivism where the values of the group form the central values of its members, "universal" values such as human rights can rarely be the standards of people's behaviour. People recognise rules outside their groups as important, but the standards of the group often take precedence. Since overworking employees operates for the profit of companies, its violation of internationally recognised rules does not generate attention among the people involved. This situation is in a plain contrast to the individualist West where individuals use their inalienable rights to put their own needs before those of the community or society. In an individualistic society, people have autonomous values established within themselves and a strong sense of their individual rights. When they feel their rights are being violated by other persons, groups, or societies, they judge the situation by reference to the values within themselves and make the necessary complaint against the violator. On the other hand, in a collectivistic society like that of Japan, the values of the group are identical with the values of the individual members, and therefore, it is difficult for people to clearly recognise that their rights are being violated when the violator is the community they belong to. (It is a different story altogether when the violator is a group they do not belong to, as explained in the section on "sectionalism (pseudo-individualism)" in chapter six.)

Moreover, even when they do realise that their rights are being violated by the group they belong to, Japanese people rarely speak up by bringing up their "rights". Disturbing the harmony of the group is often despised as a selfish act in Japan, and when a person stands up against the group, he/she is likely to either receive no support or be criticised by other members of the group. A person who makes claims which disturbs the group harmony is an enemy of the group as a whole. Claims of rights are thus suppressed by all members of the group, no

matter whether they are employees or managers. This is the mechanism by which the violation of workers' rights by companies goes unchecked in Japan. Where the harmony of the group is of utmost importance, people are not willing to claim their rights, and without people's willingness to exercise them, it is difficult to protect each person's human rights.

From a cultural perspective, the violation of workers' rights in Japan in a way embodies the dilemma of a society which has pervasive capitalism on one hand and community-oriented collectivistic values on the other. In a fully industrialised society with a fully developed capitalist market economy, Japanese workers belong to companies in the same way as they used to belong to the traditional village communities, putting the needs of the group before those of their own. However, there is a significant difference in the function of the village community and the company in a capitalist economy. Traditional Japanese villages were collectivistic communities which provided the necessary security for each community member. They had an established mutual aid system and would rarely abandon members in need. Villagers were guaranteed security in return for their loyal fulfilment of duties to the community.

The ultimate aim of running a company, on the other hand, is not to guarantee the security to its employees but is to generate profits. Employees' loyalty to the company or the fulfilment of their duties does not guarantee them any security. Employees and their families face this reality for the first time when they run into situations such as redundancy, sickness, or death. Families of *karoshi* victims often claim that they felt betrayed when they encountered the unwillingness of companies to support them, especially in respect of filing claims for compensation. There are even cases in which companies tried to block the claims from being filed in order to protect themselves from being acknowledged as responsible for the death of their employees. In cases of *karo* suicides, furthermore, companies sometimes use the victims' suicide notes which carry words of apologies in order to argue that victims themselves are responsible for their own deaths while companies are not liable in any way.

While the well-developed system of capitalism is ready to generate profits by exploiting workers, Japanese workers are not ready to protect themselves by claiming their rights against the capitalists. The lack of interest by the government in improving the working conditions in the private sector has also favoured companies' pursuit of their profits at the expense of workers' interests. Robert Cole contends that realising a model labour standards law "depends on the provisions for enforcement, the diligence of government officials in securing compliance, the cooperation of employers, and the willingness of workers to exercise their rights."⁷⁵ None

⁷⁵ Robert E. Cole, *Japanese Blue Collar: The Changing Tradition* (Berkeley: University of California

of these conditions exist in Japanese society, making the violation of workers' rights inevitable. In order to improve the situation, it is indispensable for each individual worker to know that taking holidays and working reasonable hours are their inalienable human right.

Human rights in Japanese collectivistic culture

In non-rights-oriented culture, however, it is difficult for people to grasp the meaning of having rights. In fact, many Japanese people do not seem to understand what rights are. In a survey conducted in 1998 asking "which of the followings are guaranteed not as duties but as rights in the Constitution?" people chose: public expression of opinions (37 percent), paying tax (42 percent), obeying one's superiors (7 percent), walking the right side of the road (16 percent), leading a humane life (76 percent), organising a trade union (23 percent).⁷⁶

Furthermore, the series of handbooks published by the Osaka Council for the Promotion of Human Rights Education indicate what is emphasised in the current human rights education in Japan. The first handbook of the series is entitled, "What are Human Rights?" the second, "Images and Awareness," and the third, "Rights and Responsibilities." The third handbook, which is subtitled, "To Obtain Rights Means to Bear Responsibilities," is especially noteworthy for it reflects the emphasis put by society on social obligations in human rights talks.⁷⁷ It begins by explaining why age limits are put on the exercise of certain freedoms or rights, such as driving, marriage, voting, drinking, and smoking. The book states that when a person reaches a certain age, he/she gets the freedom to take these actions or is allowed to exercise these rights, because with the age, one naturally gets the ability to fulfil the social responsibilities and duties. The handbook then mentions that younger people (who are not yet able to fulfil these duties) are protected by the law, such as the labour law which prohibits child labour of under 15 years of age. The book teaches that "rights" and "responsibilities" have to be regarded as a set of notions and should be considered in terms of human relationships in our daily lives.

In a book aiming at educating Japanese people on human rights, the writer thus confuses actions regulated by social rules with liberal rights and also connects the fulfilment of social responsibilities with one's having rights. She asserts: "If someone asks me what it means to

Press, 1971), p. 33.

⁷⁶ NHK Housou Bunka Kenkyusho, ed., *Gendai Nihon-jin no Ishiki Kouzou [The Structure of Contemporary Japanese People's Consciousness]* (Tokyo: Nihon Housou Shuppan Kyokai, 2000), pp. 90-92.

⁷⁷ Kiyoko Nakagawa, *Kenri to Sekinin [Rights and Responsibilities]*, Jinken Gakushu [Human Rights Education] Handbook Vol. 3 (Osaka: Osakashi Jinken Keihatsu Suishin Kyougikai).

respect human rights, I shall say it means not to do what I do not want others to do to me.”⁷⁸ — exactly the same explanation with that of *jen*, the central virtue of Confucianism. She further explains that the community consists of many members depending on each other, and therefore that in order to be able to claim rights, one has to respect the rights of others. The rest of this third handbook is devoted to emphasising responsibilities which, according to the writer, always accompany one’s exercise of rights.

The emphasis put on responsibilities and duties in human rights education in Japan can be also perceived in the second handbook entitled “Images and Awareness.”⁷⁹ The book concentrates on teaching the wrongness of discriminating against others, which is highly indicative of the tendency observed in the Japanese understanding of human rights. In Japan, ideas of human rights are mostly associated with social integration (elimination of discrimination), and morality is associated with harmony, peace, and social integration (anti-discrimination). Indeed, in Japan, the issue of human rights is almost always connected with the issue of discrimination. Moreover, what is truly stressed in terms of the issue of anti-discrimination is people’s duties not to discriminate against others and not people’s rights not to be discriminated against. Discrimination is something mainly (or at least in Japan) committed by the majority against the minority. Therefore, if human rights are always about the duties not to discriminate against others, whenever a human rights issue is brought up, it is, for the majority of Japanese people, about being accused of their failing to fulfil their duties towards others, and never about their rights. This may be one of the reasons why Japanese people feel so uncomfortable about rights talks.

The emphasis put on responsibilities and the tendency to consider one’s fulfilment of social duties as the condition for one’s having human rights manifests itself in the way the country treats criminal suspects, which is internationally criticised as a systemic human rights violation. Japan is often pointed out for its ignoring the human rights of criminals and criminal suspects, especially in terms of its pre-trial detention system and the employment of the death penalty. Since the issue of capital punishment is highly controversial involving various arguments beyond the sphere of human rights talk, this discussion limits itself to that of the treatment of criminal suspects during the pre-trial detention period. In its annual report of 2001, Amnesty International points out:

⁷⁸ Translated from *Ibid.*

⁷⁹ Kiyoko Nakagawa, *Image to Ninshiki [Images and Awareness]*, Jinken Gakushuu [Human Rights Education] Handbood Vol. 2 (Osaka: Osakashi Jinken Keihatsu Suishin Kyougikai).

The *Daiyo Kangoku* system of pre-trial detention continued despite criticisms from the UN Human Rights Committee. Suspects may be held for up to 23 days in police detention cells during which time they are closely monitored, and are questioned for long periods by several police interrogators. There are no legal regulations governing police interrogation procedures and no provision for court-appointed lawyers for criminal suspects prior to indictment. Interrogations are not recorded or videotaped nor are defence lawyers allowed to be present during the interrogations. Many detainees confess during this initial detention period. Some have reportedly been beaten and many have alleged that they were tricked into believing that if they confessed the detention would end. The forced confessions have been used in court as evidence.⁸⁰

Also, in Charles Humana's *World Human Rights Guide*, Japan is repeatedly criticised for its pre-detention system, enforcement of the death penalty, and discrimination against women and minority groups.⁸¹

Partly responding to these international criticisms, voices to call for the revision and improvement of the pre-detention system sometimes occur in Japanese society. However, they soon get drowned out by the overwhelming opposition from the majority of the people with opinions such as; "We should consider the victims rather than things like rights of criminals." or; "Why should we give rights to criminals?" or even; "Do criminals have human rights?" To introduce one case which brought the inadequacies of the Japanese pre-detention system to international fora, in 2001 American soldiers stationed in Okinawa, the southern island of Japan, raped a local Japanese girl. When Japanese police demanded the U.S. army hand over the suspects who had escaped to the U.S. military base which is protected by extraterritoriality, the U.S. military refused to do so on the basis that the human rights of criminal suspects are not protected in Japan. This refusal by the U.S. army infuriated the majority of Japanese people, especially those in Okinawa who have suffered similar crimes committed by locally stationed American soldiers, and voices arose demanding that the Japanese government take back the land which is used for the U.S. military base. In the meanwhile, no voices were heard among Japanese people which talked about the revision of their inadequate pre-detention system.

In its report Amnesty International also criticises Japan for its ill-treatment of asylum-seekers. The report points out that in the year 2000 Japan approved only 22 asylum-seekers as refugees out of 216 applicants. It criticises Japan for the secretive process of granting asylum as well as the ill-treatment of the asylum-seekers and other foreign nationals by immigration officials during the interrogations at immigration detention centres. This ill-respect for the rights of

⁸⁰ Amnesty International, *Amnesty International Report 2001* (London: Amnesty International Publications, 2001), p. 142.

⁸¹ Charles Humana, *World Human Rights Guide* 3rd ed. (Oxford: Oxford University Press, 1992).

non-Japanese nationals, however, rarely attracts people's attention within the country. This may be a result of the tendency for Japanese people only to recognise human rights of those who have places in society and fulfil their social duties. Those who do not have places in society or do not fulfil duties as members of society, such as foreign nationals or criminal suspects, therefore, may not be considered as human rights holders. Japan's collectivistic society, which manifests itself in the people's tendency to consider the fulfilment of duties as the condition of a person's having (human) rights, is thus hindering human rights from functioning as every person's protection of human dignity in society.

The difficulty of claiming rights in a collectivistic culture

Besides the fact that people do not have a clear understanding of what human rights are, there is another factor preventing the smooth implementation of human rights in Japanese society, which is the lack of tolerance among people towards the act of claiming rights. As Harry Triandis points out, Japanese society is one of "cultural tightness" which "collectivism is most often a consequence of." According to the explanation of Triandis, tightness "refers to the extent members of a culture (1) agree about what constitutes correct action; (2) must behave exactly according to the norms of the culture; and (3) suffer or offer severe criticism for even slight deviations from norms."⁸² Because "there are few appropriate ways to respond to a particular situation" in tight cultures, the "members of the culture have clear ideas about what to do," and "everyone is expected to follow the norms."⁸³ Conforming to this definition, in the collectivist society of Japan, which Triandis names as having a particularly tight culture, there can be no deviations from norms, and accordingly, there can be no tolerance towards harmony-disturbing acts such as rights claiming.

One survey result partially reveals this intolerance of people towards rights claims in contemporary Japanese society. In a book entitled *Suggestions for Human Rights Education: From Social Obligations • Compassion to Human Rights*, Mariko Akuzawa conducts a survey asking people to define "human rights." While many answered, "I do not know," or "I have never thought of it," Akuzawa analyses other answers by dividing them into roughly two groups. One group of people replied that "human rights are the rights a human being possesses from his/her birth." When further asked to name some human rights, many of them mentioned social rights, such as "right to education," or "right to life with a certain standard," but few named liberal rights. Akuzawa interprets this tendency as a possible indication of people's

⁸² Harry C. Triandis, *Individualism & Collectivism* (Boulder: Westview Press, 1995), p. 52.

⁸³ *Ibid.*

understanding that human rights are something to be guaranteed by the state. On the other hand, the other group gave some abstract answers such as human rights were “compassion” or “kindness”, and many of them argued that “it is better to learn about duties than about brandish things like rights.” Some respondents also stated that “human rights talks chill the society,” or that “in human rights education, we should teach about compassion.”⁸⁴

This negative reaction of Japanese people towards human rights may, Akuzawa suggests, have its root partly in the Japanese translation of the term “human rights.”⁸⁵ As briefly mentioned earlier in chapter five,⁸⁶ the Japanese translation of the word “human rights” came directly from China where the term “human rights” was translated as “human power.”⁸⁷ Akuzawa points out that this image of power attached to the term of human rights makes people cautious towards its use. In the same book, Minoru Mori argues that “obligation” and “compassion” are norms of communitarianism while human rights are individualistic ideas. According to his explanation, Japanese people tend to feel that whereas compassion deepens human relations, the human rights norms create distance among people.⁸⁸ In collectivist societies where one’s “self” is determined by the human relations around the person, notions which create distance among people generate instability to one’s “self” identification. It may be, then, only natural that Japanese people feel more comfortable with the notion of compassion rather than individualistic notion of human rights.

Kuniko Miyanaaga also argues that, in a society where “group identity provides security through large and established social organizations, then individualism provides only insecurity and disunity that will lead to unrest.”⁸⁹ In Japanese society, individualistic actions are regarded as those of selfishness which threaten social harmony. Accordingly, those who are “labelled individualistic are considered to be not only nonconformist but also antitraditional,

⁸⁴ Mariko Akuzawa, “Watashitachi nitotte ‘Jinken’ towa [What Are Human Rights for Us],” Hurights Osaka, ed., *Jinken Kyouiku heno Teian: Giri · Ninjou kara Jinken he [Suggestions for Human Rights Education: From Social Obligations · Compassion to Human Rights]* (Osaka: Hurights Osaka, 2001), pp. 1-3.

⁸⁵ *Ibid.*, pp. 10-11.

⁸⁶ See the section on “problematic terminology and national policy” in chapter five.

⁸⁷ Since these two countries use the same letters, the term “human rights” in Japanese also carries the character which signifies “power”. “Human rights” in Japanese is written as “人權” (*jin-ken*). “人” (*jin*) means “human”, and “權” (*ken*) means “power”. “Rights” in Japanese is written as 権利 (*ken-ri*), “power” and “interests”.

⁸⁸ Minoru Mori, “Giri · Ninjou kara Hito wo Tsunagu Jinken Kyouiku he [From Social Obligations · Compassion to Human Rights Education That Connect People],” Hurights Osaka, ed., op. cit., p. 81.

⁸⁹ Kuniko Miyanaaga, *The Creative Edge: Emerging Individualism in Japan* (New Brunswick: Transaction Publishers, 1991), p. 24.

anti-Japanese, and antisocial.”⁹⁰ While the norms of Japanese people’s behaviour are formed by duties and obligations, individualistic ideas of human rights face enormous difficulties in being accepted in society. Indeed, when Mori asked his students, “Between obligations/compassion and human rights, which do you feel more familiar with?” more than 80 percent of them chose obligations/compassion.⁹¹ In another survey of 1,728 employees of a train company, which was conducted in 1980 on morality in human relationship, 66.0 percent answered that it was more important to repay an obligation to others than to respect each other’s rights, while 30.1 percent considered respecting each other’s rights was more important in human relationships.⁹²

A Japanese thinker, Takao Tanase also explains why the behaviour of claiming rights is not welcomed in Japanese society. According to Tanase, the term “right” has been used more and more often in Japanese society. However, languages stipulating one’s right, such as “I have the right” or “you have no right to say such things,” make Japanese people feel rejected, for such remarks bring strain to the social relationships by closing the opportunity for any further reasoning or communication.⁹³ For Japanese people, actively practicing rights in a community is a threat to the social harmony they have long cherished. As early as in 604, Shotoku Taishi (the regent of the country), whom Japanese people still today revere, enacted *Junanajou no Kempou* (Seventeen Article Constitution), with its first article stating: “Harmony is to be valued, and an avoidance of wanton opposition to be honoured.”⁹⁴ Since then, for over 1400 years, social morality in Japan has always emphasised the social harmony.

In Japan from ancient times to the present, people have always preferred a person who complies with the social custom and disliked a person who disturbs the social harmony by asserting their own opinions. In his *Individualism & Collectivism*, Triandis introduces a citation from the writing of an American person who became a Japanese citizen by naturalisation at the end of the 19th century. Referring to Japan before his time, the naturalised Japanese person wrote: “The individual was completely and pitilessly sacrificed to the community.” Then he continued to comment that even in his time, “the only safe rule of conduct in a Japanese settlement is to act

⁹⁰ *Ibid.*, p. 23.

⁹¹ Mori, op. cit., p. 82.

⁹² Matsuyama Shouka Daigaku Keizai Keiei Kenkyusho, ed., *Shokuba Shudan to Roudousha Ishiki no Henka – Chihoutoshi • Shitetsu I Kigyō wo Jirei toshite [Changes of Work Groups and Workers’ Attitude – With an Example of Private Railway Company I in a Provincial City]* (Matsuyama: Matsuyama Shouka Daigaku Keizai Keiei Kenkyusho, 1984), p. 15.

⁹³ Takao Tanase, “Kenri to Kyoudoutai [Rights and Communities],” *Houritsu Jihou*, Vol. 69, No. 2 (1997), pp. 7-13.

⁹⁴ Appendix 2, “Seventeen Article Constitution (604).”

in all things according to local custom; for the slightest divergence from rule will be observed with disfavor.”⁹⁵ With a further citation of the naturalised Japanese person’s words, Triandis explains that “the rules were so strongly internalized that they were ‘followed without any expression of difficulty or reluctance in doing so.’ A person’s honor and self-esteem depended on following the rules, and failure to do so shamed not only the individual but also the whole group.”⁹⁶

Following custom is still regarded today as highly important in Japanese society. In a survey conducted in 1980, 21.4 percent said that a person should stick to one’s belief even if it went against the social custom, while 77.4 percent answered one should always comply with the social custom.⁹⁷ In collectivist cultures like that of Japan, a person “does what the collective expects, asks, or demands, without opposing the will of the collective,” and “enjoy[s] doing what is ‘right’ from the perspective of the collective.”⁹⁸ By complying with social custom and doing what is considered to be right, people manage to avoid any direct confrontation within the group which is especially “undesirable” in most collectivist cultures where “the maintenance of *harmony* with one’s social environment” is “a key virtue.”⁹⁹

This preference of people for compliance over confrontation in collectivist cultures is reflected in the unwillingness of Japanese employees to exercise their rights at workplaces, which has been, according to one attitude survey, consolidated even further. The survey asked: “Suppose you are employed by a newly established company. After a while a strong dissatisfaction grows among the employees regarding the working conditions such as wages and working hours. What would you do?” In 1998, 49 percent (increased from 37 percent of 1973) said they would wait for a while because they believed the working conditions would eventually improve in the new company. 25 percent (increased from 24 percent of 1973) said they would ask their bosses to do something to improve the working conditions, and 21 percent (decreased from 32 percent of 1973) indicated that they would organise a trade union and take actions to improve the working conditions.¹⁰⁰ In 1998, only a fifth of employees (decreased by nearly a third within a quarter of a century) were willing to take matters in their own hands while all others preferred not to cause any discord at the workplace.

⁹⁵ Triandis, op. cit., p. 52.

⁹⁶ *Ibid.*, p. 53.

⁹⁷ Matsuyama Shouka Daigaku Keizai Keiei Kenkyusho, ed., op. cit., p. 15.

⁹⁸ Triandis, op. cit., p. 11.

⁹⁹ Geert Hofstede, *Cultures and Organizations: Software of the Mind – Intercultural Cooperation and Its Importance for Survival* (London: Harper Collins Business, 1991), p. 58 (Emphasis original).

¹⁰⁰ NHK Housou Bunka Kenkyusho, ed., op. cit., pp. 98-100.

Japanese people do feel that the issue of human rights is important, and that rights must be protected. However, that does not make them tolerant towards other person's act of claiming rights, and people continue to refrain from claiming their own rights in fear of disturbing the social harmony. Because human rights do not function without people's willingness to exercise their rights, the lack of social tolerance towards right claims is impeding the effective implementation of human rights in Japanese society. In order for human rights to be an effective means to protect people's dignity in Japanese society, acts of claiming rights must become recognised not as selfish behaviour but a necessary condition for protecting Japanese people themselves in the society with an already well-developed capitalist economy.

Conclusion

The Japanese company systems of lifetime-employment, seniority wage, and enterprise unionism have developed loyalty among employees towards companies, which drives them to work excessive hours, while employers profit from the exploitation. The company-centred society of Japan has been neglecting the human rights of workers. The fact that Japan has ratified only 46 out of 185 ILO conventions¹⁰¹ (as of 6th September 2004) shows just how far Japan is from satisfying the internationally set standards for working conditions. The recent economic recession has been threatening the lifetime-employment system and the seniority wage system, which are the main factors sustaining company absolutism in Japan. However, it has not affected the other important factor; the enterprise union system, and has failed to raise workers' class-consciousness or solidarity with other workers beyond the company boundaries. Whereas labourers in England learned to stand together as one class in order to protect themselves against the overwhelming power of capitalists, Japanese employers successfully contained their employees within the company under the guise of the enterprise-family sharing the same fate. In the collectivist culture of Japan which puts special value on harmony, it is difficult to make rights claims. In Japanese society, there are always non-stated rules and values which restrict individualistic behaviours such as claiming rights. In order to improve workers' rights protection as well as other rights in Japan, therefore, the permeation of individualism or, at least, the development of tolerance towards individualistic actions is indispensable. People need to understand what it means to have human rights and what human rights they have. After all, without the improvement of workers' rights protection, there can be no improvement of Japan's human rights record.

¹⁰¹ In terms of the eight central ILO conventions, Japan has ratified Forced Labour Convention, Freedom of Association and Protection of the Right to Organise Convention, Right to Organise and Collective Bargaining Convention, Equal Remuneration Convention, Minimum Age Convention, and Worst Forms of Child Labour Convention, but has not ratified Abolition of Forced Labour Convention and Discrimination (Employment and Occupation) Convention.

Conclusion

The primary purpose of this thesis was to examine the dilemma and consequences of the contradictory co-existence of a culture of collectivism alongside the transformation of the objective conditions inline with individualism in a society. Underlying the examination was the following argument. The forces of modernisation place transformational pressures whose accumulative impact is to compel non-Western societies to adopt Western norms and practices which result in the westernisation of their culture with regard to both subjective and objective elements. Forces such as new technologies, capitalism, and Western social systems, affect the “objective elements” of culture such as “tools, roads, and appliances,”¹ whereas transformational pressures towards ideological westernisation and individualisation of people’s behavioural patterns affect the subjective dimension which “has elements that predict social behavior,” such as “categories, associations, beliefs, attitudes, norms, roles, and values.”² However, the degree of transformation that these forces bring about varies widely across the different dimensions of culture. While the “objective elements” of culture are relatively open to the effects of modernisation, the subjective dimension of culture tends to be more persistent.

Industrialisation triggered by the introduction of new technologies and capitalism engenders high social and geographical mobility, urbanisation, the formation of a large number of nuclear families and wage-labourers, alongside the erosion of traditional peasant community systems and extended families. The transformation of social systems takes place in a relatively short period of time producing the modern nation-state with the rule of law and other political systems of Western origin such as those of electoral parliamentary democracy. In the meanwhile, the inflows of new ideas and ideologies, such as liberty, rights, individualism and democracy, encourage the permeation of individualism in a society and discourage collectivistic behavioural patterns. However, because of the relative persistence of subjective cultural elements against external transformational pressures, inflows of ideas and ideologies of Western origin often fail to bring about ideological westernisation in non-Western societies where the culture of collectivism has been dominant.

This difference in the impact produced by each category of modernisation creates a dilemma in societies; namely, the co-existence of the contradictory pressures of persistent collectivism in

¹ Harry C. Triandis, “Cross-cultural Industrial and Organizational Psychology,” Harry C. Triandis, Marvin D. Dunnette, and Leaetta M. Hough, eds., *Handbook of Industrial and Organizational Psychology* (Palo Alto, California: Consulting Psychologists Press, 1994), p. 111.

² *Ibid.*

people's mentality and political, economic, and social systems inline with individualism. Among the consequences of having individualistic elements in a dominantly collectivist culture, the thesis focused on the difficulties of rights claiming, which derives from the people's intolerance towards other's individualistic behaviours of taking such actions. The aim of the discussion was to point out the difficulties of implementing human rights in non-Western societies, not in order to justify the neglect of human rights or poor human rights records in some of these societies, but in order to reveal the cause of the difficulties these non-Western societies experience in implementing human rights so that we will be able to move towards better human rights practices in these societies.

Towards that end, the thesis first looked at the phenomena of industrialisation, human rights, and the individualisation of society, principally focusing on their origins, conceptions, and interrelationships. The examination of the origins of individualism revealed that the individualisation of a society occurred first in England with the emergence of industrialisation and the realisation of human rights practices. The question asked in the discussion was: When did English society become one in which individuals considered themselves as supreme and put their own interests before those of society? The answer to this question reached in chapter one was that English society's individualisation commenced in the 16th century with the Reformation and was completed during the Industrial Revolution. Despite the existence of physical features indicative of individualistic societies, such as individual property rights, nuclear families, high geographical and social mobility, wage-labour, and developed towns and market since at least as early as in the 13th century, English society showed collectivistic characters until at least the 16th century.

Before industrialisation, most English people worked on the land within communities, where the custom and well-being of the group or society took precedence over the interests of individuals. When the Industrial Revolution brought about rapid urbanisation, people who were detached from rural communities did not know how to protect themselves against the power of the capitalists, thereby giving the emerging capitalists a great opportunity to make huge profits through exploiting labourers. As part of the exploitative relations between capitalists and wage-labourers, workers were forced to work excessive hours under dreadful conditions with little pay, while factory owners were able to replace workers at will. Labourers urgently needed a means to protect themselves against the overwhelming power of the capitalists, and their effort to do so eventually took the form of class struggle. Workers learned to unite in pursuit of their interests: They put their demands forward by forming trade unions as well as by gaining political power.

The restless struggle of labour through the workers' movement gradually realised the attribution of inalienable rights to individual workers. Until industrialisation, the idea that every individual person possessed inalienable rights as a human being from his/her birth was absent in English society. It was through the struggle during English industrialisation that labourers, for the first time in human history, gained inalienable rights to protect themselves against other people, groups or the state. Moreover, it was only with the acquisition of these rights that English society for the first time became an individualist society where people were able to put their own individual interests before those of the group, society, or state. In England, industrialisation created the need for human rights to safeguard people's human dignity, and people's acquisition of such rights marked the individualisation of the society.

As the case of the English experience demonstrates, human rights, industrialisation and the individualisation of society are deeply interrelated. This interrelation creates both the possibilities and limitations in relation to the wider applicability of the idea of human rights beyond the Western world, the examination of which was the central theme of the discussion of chapter two. The idea and practice of human rights arose in England in response to the social, political, and economic changes created by the emergence of the state system, capitalist market and industrialisation. Conversely, this indicates that without these factors of modernisation, there is no demand for human rights practices. In fact, throughout most of human history, in the West and non-West alike, people have protected their human dignity through non-human rights, group and duty-oriented approaches to communal protection. Such traditional approaches to human dignity, which work best in traditional communities, are still applied in many parts of the world.

Nevertheless, in the contemporary world it is difficult for a society to remain isolated from the influence of the forces of modernisation. Almost all countries today have state-systems and growing capitalist markets, and communally-oriented social systems have been eroded with the weakening of in-group ties. Industrialisation is also bringing about urbanisation concentrating populations in large cities where, detached from communal protections, they exist as vulnerable individuals. Industrial capitalism triggered by the forces of modernisation put people in a similar situation to the workers of 18th and 19th century England. These people in modernising countries who face exploitative conditions require the implementation of human rights, which remain the best suited system of protection against the threats of the capitalist economy. Thus, with regard to the relationship between human rights and industrialisation, the world-wide phenomenon of modernisation has created the need to apply human rights practices beyond the

cultural boundaries of the West, thereby enhancing the possibilities of extending the applicability of the idea of human rights beyond the Western world.

On the other hand, with regard to human rights implementation, the interrelation between human rights and individualism creates one of the largest obstacles in non-Western societies which are dominated by the persistent culture of collectivism. If the implementation of human rights requires the permeation of individualism, people in modernising or newly modernised societies in the non-Western world need to acquire individualistic attitudes to pursue their own individual interests as well as to cultivate tolerance towards others' individualistic behaviour and rights claims. According to the dominant social conditions associated with both the cultures of collectivism and individualism, such transformations are due to occur with the forces of rapid modernisation which destroys community system, generate urbanisation and the dominance of nuclear families, and create a mass of wage-labourers. Theoretically, collectivism cannot persist once people start leaving their native communities to become wage-labourers in cities, since collectivism "pertains to societies in which people from birth onwards are integrated into strong, cohesive ingroups, which throughout people's lifetime continue to protect them in exchange for unquestioning loyalty."³ Instead, individualism should start growing once people lose their ties with the communities and begin living in a form of nuclear families, for individualism is supposed to pertain to "societies in which the ties between individuals are loose: everyone is expected to look after himself or herself and his or her immediate family."⁴ Besides loosening ties between individuals, the spread of capitalism is also supposed to create a fully developed conception of individual, private property including one's own labour power, and in this respect Max Weber includes "free labour" in his checklists of the preconditions of capitalism.⁵ People should become able to buy and sell their own and each other's labour power in pursuit of individual profits, thereby reinforcing the permeation of individualism in society.

However, the reality does not always follow this theory. Unlike the physical transformations of society, psychological aspects of culture tend to be persistent against the transformational forces of modernisation. As a result, despite the inflows of ideas and ideologies, such as individualism, human rights, liberty, and democracy and the transformational pressures supposedly generated by the forces of modernisation towards the individualisation of people's behavioural patterns in society, many non-Western societies tend to stay collectivistic even after their full modernisation. This gives rise to the contradiction of having an economic and social

³ Geert Hofstede, *Cultures and Organizations: Software of the Mind – International Cooperation and its Importance for Survival* (London: Harper Collins Business, 1991), p. 51.

⁴ *Ibid.*

⁵ Alan Macfarlane, *The Culture of Capitalism* (Oxford: Basil Blackwell, 1987), pp. 223, 226.

system inline with individualism, i.e., where “the interests of the individual prevail over the interests of the group,” on one hand, and the reality of dominant collectivism, in which people are expected to put the interests of the group before their individual interests, on the other.⁶

Since the economic and social systems which are inline with individualism require the implementation of human rights to protect individualised persons in society, the persistence of collectivism, which is incompatible with human rights practices, creates a deep dilemma in these modernised societies of the non-Western world. While these societies have urgent needs for the implementation of human rights in order to protect people from the exploitive conditions of a capitalist economy, continual intolerance in the society towards other person’s individualistic behaviour of claiming rights prevents the effective functioning of human rights as a protection of people’s human dignity. The possibilities and limitations of human rights implementation in non-Western societies, originating from the expansion of modernisation and persistence of collectivist cultures, thus create dilemmas in a society which has both a strong demand for, but difficulty of implementing, human rights.

Partly because of this difficulty deriving from the interrelation between human rights and individualism, or rather, from the incompatibility of human rights practices with cultural collectivism, demands for the conceptual expansion of human rights have been actively voiced mainly from the non-Western world, where despite the large diversity of traditions, the culture of collectivism is dominant. The discussion of chapter three investigated the conceptual expansion of human rights which has been taking place in response to such demands. Central to these demands is the argument that cultures and values of the non-Western world should also be reflected in the conceptualisation of human rights, which are of Western origin and whose current conceptualisation is felt to be Western value-oriented. In order to facilitate the effective functioning of human rights in non-Western societies, and also in order to soften the dilemma these societies face in importing human rights practices, some adjustments need to be made to the concept; just as in the history of human rights in the West where the continuous expansion of the concept developed the idea from that of the privileges of certain groups of people to the contemporary notion as the inalienable rights of every human being.

At the same time, it is also important to put some limitations to the conceptual expansion, for otherwise, human rights norms will ultimately lose all their virtues and become nothing but empty names to be used at convenience for the justification of political repression, as is done in some Asian countries. In order to retain the benefits of human rights and prevent such abuse

⁶ Hofstede, *op. cit.*, p. 51.

of the concept, certain restrictions are necessary on its conceptual expansion, especially in areas related to collectivism and collective human rights. Although there are some human rights which can only be protected in the form of group rights, the concept of human rights cannot be extended to include all group rights. For group rights to be human rights, claims have to be made by the weak against the powerful with a purpose of protecting the members of the group which is formed through a shared interest. Any other claims, such as governments' claims of bearing rights to development made to justify the suppression of their populations, cannot be categorised as human rights.

The caution required in identifying collective human rights further underlines the importance of the interrelation between human rights and individualism. Even though limiting the implementation of human rights to an individualistic approach may hinder widening the norm's applicability, it is the nature of rights that they do not function effectively without pervasive individualistic ways of thinking or behavioural patterns among populations which ultimately enable a person to freely demand his/her rights against others in society. There can be no effective implementation of human rights with a group-oriented mentality which places restrictions upon the pursuit of individual interests over and above group interests. The future conceptualisation of human rights cannot challenge the connection between human rights and individualism without undermining their principal function.

This in turn requires that non-Western societies make some changes to their dominantly collectivist cultural traditions if they are to facilitate the effective functioning of human rights in societies which are already physically transformed by the forces of modernisation. However, because of the persistence of subjective elements of culture, the individualisation of society is a far more time-consuming process compared to physical changes in social and economic systems. In the meantime, people in collectivist societies continue to sacrifice their interests for the sake of the group, offering capitalists considerable opportunity to make profits by exploiting, and ignoring the rights of, their employees. This inevitable exploitation resulting from the lack of individualism in the capitalist economy was illustrated in this thesis by investigating the case of Japan. Although contemporary Japan has one of the most advanced capitalist economies in the world, its culture is still dominantly collectivistic and group-oriented. Therefore, the case of Japan provides a opportunity to investigate the inefficacy of human rights implementation in the absence of pervasive individualism and its social consequences.

The case study began by examining the historical background of Japanese group-oriented culture (chapter four). Since ancient times, Japan has consisted of villages where

group-oriented values were fostered. Within the village communities morality was formed by the customs of the community, which villagers were expected to follow, rather than making autonomous judgements. It was important that village members fulfilled duties, respected harmony and unity of the community, refrained from appearing self-assertive to others, and put the common interests of the village before their personal desires. In return, village communities would provide security to village members and support them both mentally and materially, so long as they behaved as good villagers fulfilling these expectations.

The religions of Shinto, Confucianism, and Buddhism also sustained and reinforced the collectivistic norms of Japanese culture. Shinto as the indigenous religion of Japan developed within the village communities. In Shinto, there can be so many *kami* (divine figures) that each community was able to develop its own *kami*. This consequently allowed each community to cultivate its own values and rules which were not necessarily identical to those of the neighbouring village communities. The isolation of these individual communities made unity within each of them strong and underscored the importance of putting the prosperity of the community before individual needs. Despite its foreign origin, Confucianism also contributed to the fostering the group-oriented culture of Japanese society. To begin with, Confucianism has always been distinctively community and duty-oriented. It stresses the importance of duty and harmony in human relationships and puts so much importance on the communal values that, in Confucian ethical philosophy, morality is to be determined by customs and mores of community. At the same time, the religious aspect of Confucianism emphasises the family and its continuity, stressing the importance of the ancestor worship. These values of Confucianism suited the existing mores of Japan and strengthened the collectivistic features of the culture. The case of Buddhism is slightly different. Buddhism originally taught people to seek salvation through individual diligence. However, after entering Japan, it transformed into a religion of family ancestor worship and group salvation, consolidating the group-oriented values of Japanese society. The village community system of Japan together with these three religious faiths profoundly enrooted the collectivist culture in Japanese society, stressing the importance of duties and groups rather than rights and individuals.

Chapter five examined the effect of modernisation in the strongly collectivist society of Japan. Modernisation suddenly came to Japan at the end of the 19th century, generating radical social changes. As a consequence of industrialisation triggered by the introduction of new technologies and a capitalist economy, the people of Japan began leaving their native village communities for larger cities to become wage-labourers. The inflow of technologies, capitalism and social systems from the West was accompanied by the introduction of Western

ideas and ideologies. However, the inflow of these Western ideas did not bring about the ideological westernisation of Japanese society or the individualisation of people's behavioural patterns. Although a horizontal labour market, free trade unions, and a human rights movement did show some signs of development at the early stages of modernisation, these movements were quickly suppressed by the pre-war policies of the Japanese government. Unlike in the case of England, Japanese workers never developed the habit of protecting themselves by claiming rights against the capitalists.

Despite this failure in the psychological westernisation of Japanese people, the forces of modernisation had broken down the traditional community system. This left the unremittingly collectivistic Japanese people in need of substitute communities of belonging, which they found in the nationalistic state in terms of the government's state-absolutist ideology of the "state as one family." When state-absolutism was abolished with the end of the war and democracy was introduced along with the legislative attribution of fundamental human rights to all Japanese nationals by the Occupation Forces, the ideology of company familism simply replaced the space of family-state. The rights-oriented workers' ethics or the habit of claiming their inalienable rights never took root among the Japanese people because the forces of modernisation did not engender the individualisation of society or people's mentality.

The absence of individualism and the persistence of collectivism in Japanese society remains embodied in the contemporary Japanese enterprise system, as illustrated in chapter six. In contemporary Japanese society, employees belong to companies in the same way they used to belong to the traditional village communities. Its commonly employed systems of lifetime employment, seniority wage, and various fringe benefits, as well as enterprise unionism, have deepened the dependence of workers to the company and consequently prevented the development of a sense of class consciousness among workers. The traditional value of collectivism and the lack of individualism have also been consolidated by the group-oriented practices commonly occurring in the Japanese workplace such as shared responsibility, serious discouragement of autonomous opinions, and strong sectionalism in which each group operates under its own morality. Workers who are bound to companies as a consequence of these practices are encouraged to view the company as their family-like community which gives them identity and a secure place of belonging. As a result, Japanese workers tend to cooperate with the management with whom they are inclined to believe that they share the same fate.

The Japanese company-centred culture fostered in the business world has discouraged the development of workers' rights consciousness and the establishment of an active, free trade

union movement beyond the company boundaries. Instead, it has created company persons who are mentally as well as materially dependent on companies with low overall consciousness about their rights. These company persons try to respond to the expectations of the company and other workers by placing the prosperity of the work group and company as a whole before their individual interests and family lives. However, the cooperative attitude of workers towards management does not change the motivation of capitalists as profit pursuers with “the imperatives” to “accumulate relentlessly and constantly maximise their profits”⁷ in the competitive capitalist market. Since it does not give employees equal power with employers, the lack of individualism and particularly low human rights consciousness among the people in a strong capitalist economy inevitably leads to the violation of workers’ rights. Chapter seven examined the neglect of workers’ rights commonly taking place in Japanese workplaces as a result of the successful cultivation of workers’ cooperative attitudes towards their company management.

The violation of workers’ rights in Japan is especially overt in the long working hours sustained by the pervasive practice of unpaid overtime and low uptake of paid annual holidays. Japanese employees work excessive hours not only because they are devoted to their work and are therefore willing to make personal sacrifices for the prosperity of the company, but also because they are driven to overwork by the enormous pressure from the group-oriented societal mentality which discourages people to resist demands to contribute to the group by working longer hours when an excessive work quota is allocated. Japanese employees with their enormous sense of responsibility towards their belonging group try to fulfil their duties by working hard while the excessive work quotas maintain large company profits. As a result, employees end up working such long hours that it sometimes leads to workers’ *karoshi*; death from overwork. Japanese companies’ prosperity in capitalist economies is largely attributable to the strong sense of responsibility successfully implanted in employees under the collectivist tradition of putting the group as a whole before individuals.

Another factor of the Japanese collectivist culture tradition which has been enabling the employers’ exploitive use of labour power and neglect of workers’ rights is absence of an internalised sense in each worker of the notion of universal value standards. In group-oriented cultures, the value of a group always takes precedence, and people tend to identify themselves with the surrounding values of the immediate group of belonging. A person in collectivist cultures “does what the collective expects, asks, or demands, without opposing the will of the

⁷ Ellen Meiksins Wood, “Globalisation and the State: Where is the power of Capital?” Alfredo Saad-Filho, ed., *Anti-Capitalism: A Marxist Introduction* (London: Pluto Press, 2003), p. 132.

collective,” and does “enjoy doing what is ‘right’ from the perspective of the collective,”⁸ since “the maintenance of *harmony* with one’s social environment” is “a key virtue.”⁹ In Japan, too, each company or working group forms its own set of ethics and rules, which take no account of internationally recognised human rights. Japanese employees with low rights-consciousness comply with these rules and let their workers’ rights violated. They will not take individualistic actions such as rights claims which disturb the harmony of the group. Because human rights never function effectively without people’s willingness to exercise their rights, the pervasive culture of collectivism has hampered the effective implementation of human rights in Japanese society. In the meantime, workers’ rights continue to be ignored. The case study of Japan thus elucidates the dilemma modernisation poses for non-Western societies: the contradictory existence of an advanced industrial-capitalist society alongside a collectivistic culture.

Understanding the cultural dimension involved in human rights implementation, i.e., its inefficacy in the absence of pervasive individualism, is significant if one aims at improving human rights practices in non-Western societies. In human rights talks, many non-Western societies are expressing their dissatisfaction of the imposition of Western values and demanding their re-interpretation of human rights in accordance with their society’s differed cultural values added to the concept. It is certainly true that in many cases such arguments are formed by the officials of oppressive governments whose aim is to justify their actions of human rights violations against their citizens. However, it also indicates the difficulty and uneasiness these non-Western societies have when dealing with the issue. In order to move the debate forward and overcome these differences of view, especially between developed countries representing Western values and under-developed or developing countries representing non-Western values, it is indispensable to understand the cause of the difficulties non-Western countries may face in implementing human rights practices. Such an understanding would in turn provide a basis for arguing against some claims for collective rights made for the justification of domestic human rights violations.

As the rapidly growing global capitalist economy extends its influence over the world in the period of contemporary globalization, a growing number of societies are expected to experience this dilemma generated by the incompatibility of human rights practices with their local group-oriented cultures. This makes it increasingly important for people in collectivistic societies to understand the full implications of the assertion that every human being has

⁸ Harry C. Triandis, *Individualism & Collectivism* (Boulder: Westview Press, 1995), p. 11.

⁹ Hofstede, op. cit., p. 58 (Emphasis original).

inalienable rights from birth and the importance of tolerance towards other people's actions of claiming rights in pursue of their individual interests. As the case study of the violation of workers' rights by Japanese companies indicates, for the successful implementation of human rights the mere provision of adequate legal protection is not sufficient. The development of people's awareness of their inalienable rights and cultural tolerance towards other's rights claims is crucial. Despite numerous disadvantages of individualism especially in terms of human relationships, the world-wide phenomenon of modernisation today is creating the necessity for human rights practices in many parts of the world, and for effective human rights approach to human dignity, the permeation of individualism is indispensable.

Appendix 1

History of Japan

JOMON (10,000 B.C. – 300 B.C.)

Prehistoric period of tribal/clan organisation.

The early Japanese were gatherers, hunters and fishers (no farming or stock-farming).

660 B.C. Mythological Jinmu, descendant of sun goddess Amaterasu Omikami, founds empire.

YAYOI (300 B.C. – 300 A.D.)

The introduction of rice agriculture evokes the development of a social hierarchy.

100 – 300 A.D. Local clans form small political units.

KOFUN (300 – 710)

Clan rulers, claiming descent from Amaterasu Omikami, begin the imperial dynasty that continues to occupy the throne today.

Japan adopts Chinese written characters.

300 Japan is roughly unified for the first time.

405 Introduction of Confucianism.

538/552 Introduction of Buddhism.

604 Shotoku Taishi's Seventeen Article Constitution is promulgated.

NARA (710 – 784)

The emperor rules the country with the political system based on the legal codes called "Ritsuryou Codes."

The Imperial Court patronises Buddhism.

Legends surrounding the founding of Japan are compiled as history in *Kojiki* [Record of Ancient Matters] (712) and *Nihon Shoki* [Chronicle of Japan] (720).

HEIAN (794 – 1185)

805 The Tendai Buddhist sect is introduced from China by Saichou.

806 The Shingon Buddhist sect is introduced from China by Kukai.

1175 The Buddhist Jodo (Pure Land) sect is founded by Honen.

Court undergoes decline of power with rise of provincial warrior class.

KAMAKURA (1192 – 1333)

The class of warriors takes over the Imperial Court as a new ruling class while the emperor remains as a figurehead with the court aristocracy in the old capital.

1191 The Zen sect is brought in from China. (It becomes popular particularly among the warriors.)

1224 The Jodo-Shinshu (True Pure Land) sect is founded by Honen's successor Shinran. (The Jodo sect continues to have millions of followers today.)

1232 A legal code, the *Joze Shikimoku*, is promulgated.

1253 The Lotus Hokke (or Nichiren) sect is founded by Nichiren.

1274 and 1281 The Mongols try to invade Japan, but fail mainly because of storms called *kamikaze* [divine winds].

MUROMACHI (1336 – 1568)

1467-1568 The chaotic era of warring states. Japan consists of dozens of independent states constantly fighting each other. Between wars, many warriors work on land as farmers.

The rulers become patrons of Zen.

1549 Christianity is brought in by Francis Xavier.

AZUCHIMOMOYAMA (1568 – 1600)

Foundation of modern Japan as a unified country is laid.

Rulers fight the militant Buddhist monasteries (especially the Jodo sect) and practically extinguish Buddhist activities in the political sector.

1587 Christianity is banned in the ruling class.

1588 The ruler confiscates the weapons of farmers and religious institutions in the “Sword Hunt” (separation of the class of warriors from others).

1590 Japan is reunited after a century of civil war.

1592-98 Unsuccessful invasion of Korea.

EDO (1603 – 1867)

An age of peace and national isolation.

Establishment of rigid social hierarchy. (Samurai warriors are ranked highest, followed by farmers, artisans, merchants, and classes of the untouchables.)

1612 Christianity is prohibited by the government order.

1614 The ruler intensifies suppression and persecution of Christianity.

1639 National isolation policy limits traders to the Chinese and Dutch.

Education becomes available to the urban population.

1853 American Commodore Matthew C. Perry forces the Japanese government to open a limited number of ports for trade.

MEIJI (1868 – 1912)

1868 Meiji Restoration.

The emperor regains the ruling position over the country with fall of feudal system and political reform, abolishing the system of social hierarchy of the Edo era.

Japan makes transition to nation-state and aims at becoming a militarily strong, highly industrialised state.

Shinto becomes the state religion and is separated from Buddhism.

1889 The Constitution of the Empire of Japan (the Meiji Constitution) is promulgated.

1890 Imperial Rescript on Education is promulgated.

1894-95 Sino-Japanese War.

1904-05 Russo-Japanese War.

TAISHO (1912 – 1926)

1914-18 Japan joins allied forces in World War I.

SHOWA (1926 – 1989)

1930s The military establishes almost complete control over the government.

1931 Manchurian Incident.

1941 Pacific War starts.

1945 Japan surrenders unconditionally (Potsdam Declaration).

1946 The Constitution of Japan (the new constitution) is promulgated.

1947 Labour standards Law.

1948 The Government Ordinance 201.

1949 Trade Union Law.

1952 The Allied Occupation of Japan ends.

1956 Japan becomes a member of the UN.

HEISEI (1989 –)

Appendix 2

Seventeen Article Constitution (604)

1. Harmony is to be valued, and an avoidance of wanton opposition to be honoured. All men are influenced by class-feelings, and there are few who are intelligent. Hence there are some who disobey their lords and fathers, or who maintain feuds with the neighbouring villages. But when those above are harmonious and those below are friendly, and there is concord in the discussion of business, right views of things spontaneously gain acceptance. Then what is there which cannot be accomplished!

2. Sincerely reverence the three treasures. The three treasures: the Buddha, the Law, and the Priesthood, [The Buddha, the Law of Dharma, and the Sangha, or order of male and female monks, are the three treasures, or key elements, of Buddhism] are the final refuge . . . and are the supreme objects of faith in all countries. What man in what age can fail to reverence this law? Few men are utterly bad. They may be taught to follow it. But if they do not go to the three treasures, how shall their crookedness be made straight?

3. When you receive the Imperial commands, fail not scrupulously to obey them. The lord is Heaven, the vassal is Earth. Heaven overspreads, and Earth upbears. When this is so, the four seasons follow their due course, and the powers of Nature obtain their efficacy. If the Earth attempted to overspread, Heaven would simply fall in ruin. Therefore is it that when the lord speaks, the vassal listens; when the superior acts, the inferior yields compliance. Consequently when you receive the Imperial commands, fail not to carry them out scrupulously. Let there be a want of care in this matter, and ruin is the natural consequence.

4. The Ministers and functionaries should make decorous behaviour their leading principle, for the leading principle of the government of the people consists in decorous behaviour. If the superiors do not behave with decorum, the inferiors are disorderly: if inferiors are wanting in proper behaviour, there must necessarily be offenses. Therefore it is that when lord and vassal behave with propriety, the distinctions of rank are not confused: when the people behave with propriety, the Government of the Commonwealth proceeds of itself. . .

6. Chastise that which is evil and encourage that which is good. This was the excellent rule of antiquity. Conceal not, therefore, the good qualities of others, and fail not to correct that which is wrong when you see it. Flatterers and deceivers are a sharp weapon for the overthrow of the State, and a pointed sword for the destruction of the people. Sycophants are also fond, when they meet, of speaking at length to their superiors on the errors of their inferiors; to their inferiors, they censure the faults of their superiors. Men of this kind are all wanting in fidelity to their lord, and in benevolence toward the people. From such an origin great civil disturbances arise.

7. Let every man have his own charge, and let not the spheres of duty be confused. When wise men are entrusted with office, the sound of praise arises. If unprincipled men hold office, disasters and tumults are multiplied. In this world, few are born with knowledge: wisdom is the product of earnest meditation. In all things, whether great or small, find the right man, and they will surely be well managed: on all occasions, be they urgent or the reverse, meet but with a wise man, and they will of themselves be amenable. In this way will the State be lasting and the Temples of the Earth and of Grain will be free from danger. Therefore did the wise sovereigns of antiquity seek the man to fill the office, and not the office for the sake of the man. . . .

10. Let us cease from wrath, and refrain from angry looks. Nor let us be resentful when others differ from us. For all men have hearts, and each heart has its own leanings. Their right is our wrong, and our right is their wrong. We are not unquestionably sages, nor are they unquestionably fools. Both of us are simply ordinary men. How can any one lay down a rule by which to distinguish right from wrong? For we are all, one with another, wise and foolish, like a ring which has no end. Therefore, although others give way to anger, let us on the contrary dread our own faults, and though we alone may be in the right, let us follow the multitude and act like men...

11. Give clear appreciation to merit and demerit, and deal out to each its sure reward or punishment. In these days, reward does not attend upon merit, nor punishment upon crime. You high functionaries who have charge of public affairs, let it be your task to make clear rewards and punishments. . . .

15. To turn away from that which is private, and to set our faces toward that which is public - this is the path of a Minister. Now if a man is influenced by private motives, he will assuredly feel resentments, and if he is influenced by resentful feelings, he will assuredly fail to act harmoniously with others. If he fails to act harmoniously with others, he will assuredly sacrifice the public interests to his private feelings. When resentment arises, it interferes with order, and is subversive of law. . . .

16. Let the people be employed [in forced labour] at seasonable times. This is an ancient and excellent rule. Let them be employed, therefore, in the winter months, when they are at leisure. But from Spring to Autumn, when they are engaged in agriculture or with the mulberry trees, the people should not be so employed. For if they do not attend to agriculture, what will they have to eat? If they do not attend the mulberry trees, what will they do for clothing?

17. Decisions on important matters should not be made by one person alone. They may miscarry, that one should arrange. They should be discussed with many. But small matters are of less consequence. It is unnecessary to consult a number of people. It is only in the case of the discussion of weighty affairs, when there is a suspicion that they may miscarry, that one should arrange matters in concert with others, so as to arrive at the right conclusion.

Source: W.G. Aston, trans., *Nihongi: Chronicles of Japan from the Earliest Times to A.D. 697*, 2 vols. in 1 (London: Keagan and Co., 1896), vol. 2, pp. 128-133.

(Washington State University, World Civilizations: An Internet Classroom and Anthology: <<http://www.wsu.edu:8080/~dee/ANCJAPAN/CONST.HTM>>.)

Appendix 3

The Constitution of the Empire of Japan (1889)

Contents

Chapter I.	The Emperor	(Article 1-17)
Chapter II.	Rights and Duties of Subjects	(Article 18-32)
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Imperial Oath Sworn in the Sanctuary in the Imperial Palace (Tsuge-bumi)

We, the Successor to the prosperous Throne of Our Predecessors, do humbly and solemnly swear to the Imperial Founder of Our House and to Our other Imperial Ancestors that, in pursuance of a great policy co-extensive with the Heavens and with the Earth, We shall maintain and secure from decline the ancient form of government.

In consideration of the progressive tendency of the course of human affairs and in parallel with the advance of civilization, We deem it expedient, in order to give clearness and distinctness to the instructions bequeathed by the Imperial Founder of Our House and by Our other Imperial Ancestors, to establish fundamental laws formulated into express provisions of law, so that, on the one hand, Our Imperial posterity may possess an express guide for the course they are to follow, and that, on the other, Our subjects shall thereby be enabled to enjoy a wider range of action in giving Us their support, and that the observance of Our laws shall continue to the remotest ages of time. We will thereby to give greater firmness to the stability of Our country and to promote the welfare of all the people within the boundaries of Our dominions; and We now establish the Imperial House Law and the Constitution. These Laws come to only an exposition of grand precepts for the conduct of the government, bequeathed by the Imperial Founder of Our House and by Our other Imperial Ancestors. That we have been so fortunate in Our reign, in keeping with the tendency of the times, as to accomplish this work, We owe to the glorious Spirits of the Imperial Founder of Our House and of Our other Imperial Ancestors.

We now reverently make Our prayer to Them and to Our Illustrious Father, and implore the help of Their Sacred Spirits, and make to Them solemn oath never at this time nor in the future to fail to be an example to our subjects in the observance of the Laws hereby established.

May the heavenly Spirits witness this Our solemn Oath.

Imperial Rescript on the Promulgation of the Constitution

Whereas We make it the joy and glory of Our heart to behold the prosperity of Our country, and the welfare of Our subjects, We do hereby, in virtue of the Supreme power We inherit from Our Imperial Ancestors, promulgate the present immutable fundamental law, for the sake of Our present subjects and their descendants.

The Imperial Founder of Our House and Our other Imperial ancestors, by the help and support of the forefathers of Our subjects, laid the foundation of Our Empire upon a basis, which is to last forever. That this brilliant achievement embellishes the annals of Our country, is due to the glorious virtues of Our Sacred Imperial ancestors, and to the loyalty and bravery of Our subjects, their love of their country and their public spirit. Considering that Our subjects are the descendants of the loyal and good subjects of Our Imperial Ancestors, We doubt not but that Our subjects will be guided by Our views, and will sympathize with all Our endeavors, and that, harmoniously cooperating together, they will share with Us Our hope of making manifest the glory of Our country, both at home and abroad, and of securing forever the stability of the work bequeathed to Us by Our Imperial Ancestors.

Preamble [or Edict] (Joyu)

Having, by virtue of the glories of Our Ancestors, ascended the throne of a lineal succession unbroken for ages eternal; desiring to promote the welfare of, and to give development to the moral and intellectual faculties of Our beloved subjects, the very same that have been favoured with the benevolent care and affectionate vigilance of Our Ancestors; and hoping to maintain the prosperity of the State, in concert with Our people and with their support, We hereby promulgate, in pursuance of Our Imperial Rescript of the 12th day of the 10th month of the 14th year of Meiji, a fundamental law of the State, to exhibit the principles, by which We are guided in Our conduct, and to point out to what Our descendants and Our subjects and their descendants are forever to conform.

The right of sovereignty of the State, We have inherited from Our Ancestors, and We shall bequeath them to Our descendants. Neither We nor they shall in the future fail to wield them, in accordance with the provisions of the Constitution hereby granted.

We now declare to respect and protect the security of the rights and of the property of Our people, and to secure to them the complete enjoyment of the same, within the extent of the provisions of the present Constitution and of the law.

The Imperial Diet shall first be convoked for the 23rd year of Meiji and the time of its opening shall be the date, when the present Constitution comes into force.

When in the future it may become necessary to amend any of the provisions of the present Constitution, We or Our successors shall assume the initiative right, and submit a project for the same to the Imperial Diet. The Imperial Diet shall pass its vote upon it, according to the conditions imposed by the present Constitution, and in no otherwise shall Our descendants or Our subjects be permitted to attempt any alteration thereof.

Our Ministers of State, on Our behalf, shall be held responsible for the carrying out of the present Constitution, and Our present and future subjects shall forever assume the duty of allegiance to the present Constitution.

CHAPTER I. THE EMPEROR

Article 1. The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal.

Article 2. The Imperial Throne shall be succeeded to by Imperial male descendants, according to the provisions of the Imperial House Law.

Article 3. The Emperor is sacred and inviolable.

Article 4. The Emperor is the head of the Empire, combining in Himself the rights of sovereignty, and exercises them, according to the provisions of the present Constitution.

Article 5. The Emperor exercises the legislative power with the consent of the Imperial Diet.

Article 6. The Emperor gives sanction to laws, and orders them to be promulgated and executed.

Article 7. The Emperor convokes the Imperial Diet, opens, closes, and prorogues it, and dissolves the House of Representatives.

Article 8. The Emperor, in consequence of an urgent necessity to maintain public safety or to avert public calamities, issues, when the Imperial Diet is not sitting, Imperial ordinances in the place of law. (2) Such Imperial Ordinances are to be laid before the Imperial Diet at its next session, and when the Diet does not approve the said Ordinances, the Government shall declare them to be invalid for the future.

Article 9. The Emperor issues or causes to be issued, the Ordinances necessary for the carrying out of the laws, or for the maintenance of the public peace and order, and for the promotion of the welfare of the subjects. But no Ordinance shall in any way alter any of the existing laws.

Article 10. The Emperor determines the organization of the different branches of the administration, and salaries of all civil and military officers, and appoints and dismisses the same. Exceptions especially provided for in the present Constitution or in other laws, shall be in accordance with the respective provisions (bearing thereon).

Article 11. The Emperor has the supreme command of the Army and Navy.

Article 12. The Emperor determines the organization and peace standing of the Army and Navy.

Article 13. The Emperor declares war, makes peace, and concludes treaties.

Article 14. The Emperor declares a state of siege. (2) The conditions and effects of a state of siege shall be determined by law.

Article 15. The Emperor confers titles of nobility, rank, orders and other marks of honour.

Article 16. The Emperor orders amnesty, pardon, commutation of punishments and rehabilitation.

Article 17. A Regency shall be instituted in conformity with the provisions of the Imperial House Law. (2) The Regent shall exercise the powers appertaining to the Emperor in His name.

CHAPTER II. RIGHTS AND DUTIES OF SUBJECTS

Article 18. The conditions necessary for being a Japanese subject shall be determined by law.

Article 19. Japanese subjects may, according to qualifications determined in laws or ordinances, be appointed to civil or military or any other public offices equally.

Article 20. Japanese subjects are amenable to service in the Army or Navy, according to the provisions of law.

Article 21. Japanese subjects are amenable to the duty of paying taxes, according to the provisions of law.

Article 22. Japanese subjects shall have the liberty of abode and of changing the same within the limits of the law.

Article 23. No Japanese subject shall be arrested, detained, tried or punished, unless according to law.

Article 24. No Japanese subject shall be deprived of his right of being tried by the judges determined by law.

Article 25. Except in the cases provided for in the law, the house of no Japanese subject shall be entered or searched without his consent.

Article 26. Except in the cases mentioned in the law, the secrecy of the letters of every Japanese subject shall remain inviolate.

Article 27. The right of property of every Japanese subject shall remain inviolate.
(2) Measures necessary to be taken for the public benefit shall be any provided for by law.

Article 28. Japanese subjects shall, within limits not prejudicial to peace and order, and not antagonistic to their duties as subjects, enjoy freedom of religious belief.

Article 29. Japanese subjects shall, within the limits of law, enjoy the liberty of speech, writing, publication, public meetings and associations.

Article 30. Japanese subjects may present petitions, by observing the proper forms of respect, and by complying with the rules specially provided for the same.

Article 31. The provisions contained in the present Chapter shall not affect the exercises of the powers appertaining to the Emperor, in times of war or in cases of a national emergency.

Article 32. Each and every one of the provisions contained in the preceding Articles of the present Chapter, that are not in conflict with the laws or the rules and discipline of the Army and Navy, shall apply to the officers and men of the Army and of the Navy.

CHAPTER III. THE IMPERIAL DIET

Article 33. The Imperial Diet shall consist of two Houses, a House of Peers and a House of Representatives.

Article 34. The House of Peers shall, in accordance with the ordinance concerning the House of Peers, be composed of the members of the Imperial Family, of the orders of nobility, and of those who have been nominated thereto by the Emperor.

Article 35. The House of Representatives shall be composed of members elected by the people, according to the provisions of the law of Election.

Article 36. No one can at one and the same time be a Member of both Houses.

Article 37. Every law requires the consent of the Imperial Diet.

Article 38. Both Houses shall vote upon projects of law submitted to it by the Government, and may respectively initiate projects of law.

Article 39. A Bill, which has been rejected by either the one or the other of the two Houses, shall not be brought in again during the same session.

Article 40. Both Houses can make representations to the Government, as to laws or upon any other subject. When, however, such representations are not accepted, they cannot be made a second time during the same session.

Article 41. The Imperial Diet shall be convoked every year.

Article 42. A session of the Imperial Diet shall last during three months. In case of necessity, the duration of a session may be prolonged by the Imperial Order.

Article 43. When urgent necessity arises, an extraordinary session may be convoked in addition to the ordinary one. (2) The duration of an extraordinary session shall be determined by Imperial Order.

Article 44. The opening, closing, prolongation of session and prorogation of the Imperial Diet, shall be effected simultaneously for both Houses. (2) In case the House of Representatives has been ordered to dissolve, the House of Peers shall at the same time be prorogued.

Article 45. When the House of Representatives has been ordered to dissolve, Members shall be caused by Imperial Order to be newly elected, and the new House shall be convoked within five months from the day of dissolution.

Article 46. No debate can be opened and no vote can be taken in either House of the Imperial Diet, unless not less than one-third of the whole number of Members thereof is present.

Article 47. Votes shall be taken in both Houses by absolute majority. In the case of a tie vote, the President shall have the casting vote.

Article 48. The deliberations of both Houses shall be held in public. The deliberations may, however, upon demand of the Government or by resolution of the House, be held in secret sitting.

Article 49. Both Houses of the Imperial Diet may respectively present addresses to the Emperor.

Article 50. Both Houses may receive petitions presented by subjects.

Article 51. Both Houses may enact, besides what is provided for in the present Constitution and in the Law of the Houses, rules necessary for the management of their internal affairs.

Article 52. No Member of either House shall be held responsible outside the respective Houses, for any opinion uttered or for any vote given in the House. When, however, a Member himself has given publicity to his opinions by public speech, by documents in print or in writing, or by any other similar means, he shall, in the matter, be amenable to the general law.

Article 53. The Members of both Houses shall, during the session, be free from arrest, unless with the consent of the House, except in cases of flagrant delicts, or of offenses connected with a state of internal commotion or with a foreign trouble.

Article 54. The Ministers of State and the Delegates of the Government may, at any time, take seats and speak in either House.

CHAPTER IV. THE MINISTERS OF STATE AND THE PRIVY COUNCIL

Article 55. The respective Ministers of State shall give their advice to the Emperor, and be responsible for it. (2) All Laws, Imperial Ordinances, and Imperial Rescripts of whatever kind, that relate to the affairs of the state, require the countersignature of a Minister of State.

Article 56. The Privy Councillors shall, in accordance with the provisions for the organization of the Privy Council, deliberate upon important matters of State when they have been consulted by the Emperor.

CHAPTER V. THE JUDICATURE

Article 57. The Judicature shall be exercised by the Courts of Law according to law, in the name of the Emperor. (2) The organization of the Courts of Law shall be determined by law.

Article 58. The judges shall be appointed from among those, who possess proper qualifications according to law. (2) No judge shall be deprived of his position, unless by way of criminal sentence or disciplinary punishment. (3) Rules for disciplinary punishment shall be determined by law.

Article 59. Trials and judgments of a Court shall be conducted publicly. When, however, there exists any fear, that such publicity may be prejudicial to peace and order, or to the maintenance of public morality, the public trial may be suspended by provisions of law or by the decision of the Court of Law.

Article 60. All matters that fall within the competency of a special Court, shall be specially provided for by law.

Article 61. No suit at law, which relates to rights alleged to have been infringed by the illegal measures of the administrative authorities, and which shall come within the competency of the Court of Administrative Litigation specially established by law, shall be taken cognisance of by Court of Law.

CHAPTER VI. FINANCE

Article 62. The imposition of a new tax or the modification of the rates (of an existing one) shall be determined by law. (2) However, all such administrative fees or other revenue having the nature of compensation shall not fall within the category of the above clause. (3) The raising of national loans and the contracting of other liabilities to the charge of the National Treasury, except those that are provided in the Budget, shall require the consent of the Imperial Diet.

Article 63. The taxes levied at present shall, in so far as they are not remodelled by a new law, be collected according to the old system.

Article 64. The expenditure and revenue of the State require the consent of the Imperial Diet by means of an annual Budget. (2) Any and all expenditures overpassing the appropriations set forth in the Titles and Paragraphs of the Budget, or that are not provided for in the Budget, shall subsequently require the approbation of the Imperial Diet.

Article 65. The Budget shall be first laid before the House of Representatives.

Article 66. The expenditures of the Imperial House shall be defrayed every year out of the National Treasury, according to the present fixed amount for the same, and shall not require the consent thereto of the Imperial Diet, except in case an increase thereof is found necessary.

Article 67. Those already fixed expenditures based by the Constitution upon the powers appertaining to the Emperor, and such expenditures as may have arisen by the effect of law, or that appertain to the legal obligations of the Government, shall be neither rejected nor reduced by the Imperial Diet, without the concurrence of the Government.

Article 68. In order to meet special requirements, the Government may ask the consent of the Imperial Diet to a certain amount as a Continuing Expenditure Fund, for a previously fixed number of years.

Article 69. In order to supply deficiencies, which are unavoidable, in the Budget, and to meet requirements unprovided for in the same, a Reserve Fund shall be provided in the Budget.

Article 70. When the Imperial Diet cannot be convoked, owing to the external or internal condition of the country, in case of urgent need for the maintenance of public safety, the Government may take all necessary financial measures, by means of an Imperial Ordinance. (2) In the case mentioned in the preceding clause, the matter shall be submitted to the Imperial Diet at its next session, and its approbation shall be obtained thereto.

Article 71. When the Imperial Diet has not voted on the Budget, or when the Budget has not been brought into actual existence, the Government shall carry out the Budget of the preceding year.

Article 72. The final account of the expenditures and revenues of the State shall be verified and confirmed by the Board of Audit, and it shall be submitted by the Government to the Imperial Diet, together with the report of verification of the said board. (2) The organization and competency of the Board of Audit shall be determined by law separately.

CHAPTER VII. SUPPLEMENTARY RULES

Article 73. When it has become necessary in future to amend the provisions of the present Constitution, a project to the effect shall be submitted to the Imperial Diet by Imperial Order. (2) In the above case, neither House can open the debate, unless not less than two-thirds of the whole number of Members are present, and no amendment can be passed, unless a majority of not less than two-thirds of the Members present is obtained.

Article 74. No modification of the Imperial House Law shall be required to be submitted to the deliberation of the Imperial Diet. (2) No provision of the present Constitution can be modified by the Imperial House Law.

Article 75. No modification can be introduced into the Constitution, or into the Imperial House Law, during the time of a Regency.

Article 76. Existing legal enactments, such as laws, regulations, Ordinances, or by whatever names they may be called, shall, so far as they do not conflict with the present Constitution, continue in force. (2) All existing contracts or orders, that entail obligations upon the Government, and that are connected with expenditure, shall come within the scope of Article 67.

Source: Hirobumi Ito, *Commentaries on the constitution of the empire of Japan*, trans. Miyoji Ito (Tokyo: Igitu-horitsu gakko, 22nd year of Meiji, 1889), Hanover Historical Texts Project, Scanned by Jonathan Dresner, Harvard University.

(National Diet Library: <<http://www.ndl.go.jp/constitution/e/etc/c02.html>>.)

Appendix 4

Imperial Rescript on Education of the Emperor Meiji (1890)

Know ye, Our subjects:

Our Imperial Ancestors have founded Our Empire on a basis broad and everlasting and have deeply and firmly implanted virtue; Our subjects ever united in loyalty and filial piety have from generation to generation illustrated the beauty thereof. This is the glory of the fundamental character of Our Empire, and herein also lies the source of Our education.

Ye, Our subjects, be filial to your parents, affectionate to your brothers and sisters; as husbands and wives be harmonious, as friends true; bear yourselves in modesty and moderation; extend your benevolence to all; pursue learning and cultivate arts, and thereby develop intellectual faculties and perfect moral powers; furthermore advance public good and promote common interests; always respect the Constitution and observe the laws; should emergency arise, offer yourselves courageously to the State; and thus guard and maintain the prosperity of Our Imperial Throne coeval with heaven and earth.

So shall ye not only be Our good and faithful subjects, but render illustrious the best traditions of your forefathers. The Way here set forth is indeed the teaching bequeathed by Our Imperial Ancestors, to be observed alike by Their Descendants and the subjects, infallible for all ages and true in all places. It is Our wish to lay it to heart in all reverence, in common with you, Our subjects, that we may thus attain to the same virtue.

The 30th day of the 10th month of the 23rd year of Meiji. (October 30, 1890)

Source: <<http://members.ozemail.com.au/~skyaxe/rescript.htm>>.

Appendix 5

Potsdam Declaration (1945)

Proclamation Defining Terms for Japanese Surrender

(1) We-the President of the United States, the President of the National Government of the Republic of China, and the Prime Minister of Great Britain, representing the hundreds of millions of our countrymen, have conferred and agree that Japan shall be given an opportunity to end this war.

(2) The prodigious land, sea and air forces of the United States, the British Empire and of China, many times reinforced by their armies and air fleets from the west, are poised to strike the final blows upon Japan. This military power is sustained and inspired by the determination of all the Allied Nations to prosecute the war against Japan until she ceases to resist.

(3) The result of the futile and senseless German resistance to the might of the aroused free peoples of the world stands forth in awful clarity as an example to the people of Japan. The might that now converges on Japan is immeasurably greater than that which, when applied to the resisting Nazis, necessarily laid waste to the lands, the industry and the method of life of the whole German people. The full application of our military power, backed by our resolve, will mean the inevitable and complete destruction of the Japanese armed forces and just as inevitably the utter devastation of the Japanese homeland.

(4) The time has come for Japan to decide whether she will continue to be controlled by those self-willed militaristic advisers whose unintelligent calculations have brought the Empire of Japan to the threshold of annihilation, or whether she will follow the path of reason.

(5) Following are our terms. We will not deviate from them. There are no alternatives. We shall brook no delay.

(6) There must be eliminated for all time the authority and influence of those who have deceived and misled the people of Japan into embarking on world conquest, for we insist that a new order of peace, security and justice will be impossible until irresponsible militarism is driven from the world.

(7) Until such a new order is established and until there is convincing proof that Japan's war-making power is destroyed, points in Japanese territory to be designated by the Allies shall be occupied to secure the achievement of the basic objectives we are here setting forth.

(8) The terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine.

(9) The Japanese military forces, after being completely disarmed, shall be permitted to return to their homes with the opportunity to lead peaceful and productive lives.

(10) We do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners. The Japanese Government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people. Freedom of speech, of

religion, and of thought, as well as respect for the fundamental human rights shall be established.

(11) Japan shall be permitted to maintain such industries as will sustain her economy and permit the exaction of just reparations in kind, but not those which would enable her to re-arm for war. To this end, access to, as distinguished from control of, raw materials shall be permitted. Eventual Japanese, participation in world trade relations shall be permitted.

(12) The occupying forces of the Allies shall be withdrawn from Japan as soon as these objectives have been accomplished and there has been established in accordance with the freely expressed will of the Japanese people a peacefully inclined and responsible government.

(13) We call upon the government of Japan to proclaim now the unconditional surrender of all Japanese armed forces, and to provide proper and adequate assurances of their good faith in such action. The alternative for Japan is prompt and utter destruction.

Source: National Diet Library: <<http://www.ndl.go.jp/constitution/e/etc/c06.html>>.

Appendix 6

The Constitution of Japan (1946)

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We, the Japanese people, acting through our duly elected representatives in the National Diet, determined that we shall secure for ourselves and our posterity the fruits of peaceful cooperation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people and do firmly establish this Constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people. This is a universal principle of mankind upon which this Constitution is founded. We reject and revoke all constitutions, laws, ordinances, and rescripts in conflict herewith.

We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honoured place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want. We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations. We, the Japanese people, pledge our national honour to accomplish these high ideals and purposes with all our resources.

CHAPTER I. THE EMPEROR

Article 1. The Emperor shall be the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power.

Article 2. The Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.

Article 3. The advice and approval of the Cabinet shall be required for all acts of the Emperor in matters of state, and the Cabinet shall be responsible therefor.

Article 4. The Emperor shall perform only such acts in matters of state as are provided for in this Constitution and he shall not have powers related to government.

(2) The Emperor may delegate the performance of his acts in matters of state as may be provided by law.

Article 5. When, in accordance with the Imperial House Law, a Regency is established, the Regent shall perform his acts in matters of state in the Emperor's name. In this case, paragraph one of the preceding article will be applicable.

Article 6. The Emperor shall appoint the Prime Minister as designated by the Diet.

(2) The Emperor shall appoint the Chief Judge of the Supreme Court as designated by the Cabinet.

Article 7. The Emperor, with the advice and approval of the Cabinet, shall perform the following acts in matters of state on behalf of the people:

1. Promulgation of amendments of the constitution, laws, cabinet orders and treaties.
2. Convocation of the Diet.
3. Dissolution of the House of Representatives.
4. Proclamation of general election of members of the Diet.
5. Attestation of the appointment and dismissal of Ministers of State and other officials as provided for by law, and of full powers and credentials of Ambassadors and Ministers.
6. Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights.
7. Awarding of honors.
8. Attestation of instruments of ratification and other diplomatic documents as provided for by law.
9. Receiving foreign ambassadors and ministers.
10. Performance of ceremonial functions.

Article 8. No property can be given to, or received by, the Imperial House, nor can any gifts be made therefrom, without the authorization of the Diet.

CHAPTER II. RENUNCIATION OF WAR

Article 9. Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

(2) In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

CHAPTER III. RIGHTS AND DUTIES OF THE PEOPLE

Article 10. The conditions necessary for being a Japanese national shall be determined by law.

Article 11. The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolable rights.

Article 12. The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavour of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

Article 13. All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

Article 14. All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.

(2) Peers and peerage shall not be recognized.

(3) No privilege shall accompany any award of honour, decoration or any distinction, nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

Article 15. The people have the inalienable right to choose their public officials and to dismiss them.

(2) All public officials are servants of the whole community and not of any group thereof.

(3) Universal adult suffrage is guaranteed with regard to the election of public officials.

(4) In all elections, secrecy of the ballot shall not be violated. A voter shall not be answerable, publicly or privately, for the choice he has made.

Article 16. Every person shall have the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters; nor shall any person be in any way discriminated against for sponsoring such a petition.

Article 17. Every person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official.

Article 18. No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

Article 19. Freedom of thought and conscience shall not be violated.

Article 20. Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority.

(2) No person shall be compelled to take part in any religious act, celebration, rite or practice.

(3) The State and its organs shall refrain from religious education or any other religious activity.

Article 21. Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.

(2) No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

Article 22. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.

(2) Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

Article 23. Academic freedom is guaranteed.

Article 24. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.

(2) With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.

Article 25. All people shall have the right to maintain the minimum standards of wholesome and cultured living.

(2) In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.

Article 26. All people shall have the right to receive an equal education correspondent to their ability, as provided by law.

(2) All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free.

Article 27. All people shall have the right and the obligation to work.

(2) Standards for wages, hours, rest and other working conditions shall be fixed by law.

(3) Children shall not be exploited.

Article 28. The right of workers to organize and to bargain and act collectively is guaranteed.

Article 29. The right to own or to hold property is inviolable.

(2) Property rights shall be defined by law, in conformity with the public welfare.

(3) Private property may be taken for public use upon just compensation therefor.

Article 30. The people shall be liable to taxation as provided by law.

Article 31. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

Article 32. No person shall be denied the right of access to the courts.

Article 33. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended, the offense being committed.

Article 34. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

Article 35. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33.

(2) Each search or seizure shall be made upon separate warrant issued by a competent judicial officer.

Article 36. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

Article 37. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

(2) He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.

(3) At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.

Article 38. No person shall be compelled to testify against himself.

(2) Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence.

(3) No person shall be convicted or punished in cases where the only proof against him is his own confession.

Article 39. No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.

Article 40. Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law.

CHAPTER IV. THE DIET

Article 41. The Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State.

Article 42. The Diet shall consist of two Houses, namely the House of Representatives and the House of Councillors.

Article 43. Both Houses shall consist of elected members, representative of all the people.

(2) The number of the members of each House shall be fixed by law.

Article 44. The qualifications of members of both Houses and their electors shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income.

Article 45. The term of office of members of the House of Representatives shall be four years. However, the term shall be terminated before the full term is up in case the House of Representatives is dissolved.

Article 46. The term of office of members of the House of Councillors shall be six years, and election for half the members shall take place every three years.

Article 47. Electoral districts, method of voting and other matters pertaining to the method of election of members of both Houses shall be fixed by law.

Article 48. No person shall be permitted to be a member of both Houses simultaneously.

Article 49. Members of both Houses shall receive appropriate annual payment from the national treasury in accordance with law.

Article 50. Except in cases provided by law, members of both Houses shall be exempt from apprehension while the Diet is in session, and any members apprehended before the opening of the session shall be freed during the term of the session upon demand of the House.

Article 51. Members of both Houses shall not be held liable outside the House for speeches, debates or votes cast inside the House.

Article 52. An ordinary session of the Diet shall be convoked once per year.

Article 53. The Cabinet may determine to convoke extraordinary sessions of the Diet. When a quarter or more of the total members of either House makes the demand, the Cabinet must determine on such convocation.

Article 54. When the House of Representatives is dissolved, there must be a general election of members of the House of Representatives within forty (40) days from the date of dissolution, and the Diet must be convoked within thirty (30) days from the date of the election.

(2) When the House of Representatives is dissolved, the House of Councillors is closed at the same time. However, the Cabinet may in time of national emergency convoke the House of Councillors in emergency session.

(3) Measures taken at such session as mentioned in the proviso of the preceding paragraph shall be provisional and shall become null and void unless agreed to by the House of Representatives within a period of ten (10) days after the opening of the next session of the Diet.

Article 55. Each House shall judge disputes related to qualifications of its members. However, in order to deny a seat to any member, it is necessary to pass a resolution by a majority of two-thirds or more of the members present.

Article 56. Business cannot be transacted in either House unless one-third or more of total membership is present.

(2) All matters shall be decided, in each House, by a majority of those present, except as elsewhere provided in the Constitution, and in case of a tie, the presiding officer shall decide the issue.

Article 57. Deliberation in each House shall be public. However, a secret meeting may be held where a majority of two-thirds or more of those members present passes a resolution therefor.

(2) Each House shall keep a record of proceedings. This record shall be published and given general circulation, excepting such parts of proceedings of secret session as may be deemed to require secrecy.

(3) Upon demand of one-fifth or more of the members present, votes of members on any matter shall be recorded in the minutes.

Article 58. Each House shall select its own president and other officials.

(2) Each House shall establish its rules pertaining to meetings, proceedings and internal discipline, and may punish members for disorderly conduct. However, in order to expel a member, a majority of two-thirds or more of those members present must pass a resolution thereon.

Article 59. A bill becomes a law on passage by both Houses, except as otherwise provided by the Constitution.

(2) A bill which is passed by the House of Representatives, and upon which the House of Councillors makes a decision different from that of the House of Representatives, becomes a law when passed a second time by the House of Representatives by a majority of two-thirds or more of the members present.

(3) The provision of the preceding paragraph does not preclude the House of Representatives from calling for the meeting of a joint committee of both Houses, provided for by law.

(4) Failure by the House of Councillors to take final action within sixty (60) days after receipt of a bill passed by the House of Representatives, time in recess excepted, may be determined by the House of Representatives to constitute a rejection of the said bill by the House of Councillors.

Article 60. The budget must first be submitted to the House of Representatives.

(2) Upon consideration of the budget, when the House of Councillors makes a decision different from that of the House of Representatives, and when no agreement can be reached even through a joint committee of both Houses, provided for by law, or in the case of failure by the House of Councillors to take final action within thirty (30) days, the period of recess excluded, after the receipt of the budget passed by the House of Representatives, the decision of the House of Representatives shall be the decision of the Diet.

Article 61. The second paragraph of the preceding article applies also to the Diet approval required for the conclusion of treaties.

Article 62. Each House may conduct investigations in relation to government, and may demand the presence and testimony of witnesses, and the production of records.

Article 63. The Prime Minister and other Ministers of State may, at any time, appear in either House for the purpose of speaking on bills, regardless of whether they are members of the House or not. They must appear when their presence is required in order to give answers or explanations.

Article 64. The Diet shall set up an impeachment court from among the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted.

(2) Matters relating to impeachment shall be provided by law.

CHAPTER V. THE CABINET

Article 65. Executive power shall be vested in the Cabinet.

Article 66. The Cabinet shall consist of the Prime Minister, who shall be its head, and other Ministers of State, as provided for by law.

(2) The Prime Minister and other Ministers of State must be civilians.

(3) The Cabinet, in the exercise of executive power, shall be collectively responsible to the Diet.

Article 67. The Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet. This designation shall precede all other business.

(2) If the House of Representatives and the House of Councillors disagree and if no agreement can be reached even through a joint committee of both Houses, provided for by law, or the House of Councillors fails to make designation within ten (10) days, exclusive of the period of recess, after the House of Representatives has made designation, the decision of the House of Representatives shall be the decision of the Diet.

Article 68. The Prime Minister shall appoint the Ministers of State. However, a majority of their number must be chosen from among the members of the Diet.

(2) The Prime Minister may remove the Ministers of State as he chooses.

Article 69. If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign en masse, unless the House of Representatives is dissolved within ten (10) days.

Article 70. When there is a vacancy in the post of Prime Minister, or upon the first convocation of the Diet after a general election of members of the House of Representatives, the Cabinet shall resign en masse.

Article 71. In the cases mentioned in the two preceding articles, the Cabinet shall continue its functions until the time when a new Prime Minister is appointed.

Article 72. The Prime Minister, representing the Cabinet, submits bills, reports on general national affairs and foreign relations to the Diet and exercises control and supervision over various administrative branches.

Article 73. The Cabinet, in addition to other general administrative functions, shall perform the following functions:

1. Administer the law faithfully; conduct affairs of state.
2. Manage foreign affairs.
3. Conclude treaties. However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet.
4. Administer the civil service, in accordance with standards established by law.
5. Prepare the budget, and present it to the Diet.
6. Enact cabinet orders in order to execute the provisions of this Constitution and of the law. However, it cannot include penal provisions in such cabinet orders unless authorized by such law.
7. Decide on general amnesty, special amnesty, commutation of punishment, reprieve, and restoration of rights.

Article 74. All laws and cabinet orders shall be signed by the competent Minister of State and countersigned by the Prime Minister.

Article 75. The Ministers of State, during their tenure of office, shall not be subject to legal action without the consent of the Prime Minister. However, the right to take that action is not impaired hereby.

CHAPTER VI. JUDICIARY

Article 76. The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law.

(2) No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

(3) All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.

Article 77. The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the courts and the administration of judicial affairs.

(2) Public procurators shall be subject to the rule-making power of the Supreme Court.

(3) The Supreme Court may delegate the power to make rules for inferior courts to such courts.

Article 78. Judges shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against judges shall be administered by any executive organ or agency.

Article 79. The Supreme Court shall consist of a Chief Judge and such number of judges as may be determined by law; all such judges excepting the Chief Judge shall be appointed by the Cabinet.

(2) The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after a lapse of ten (10) years, and in the same manner thereafter.

(3) In cases mentioned in the foregoing paragraph, when the majority of the voters favours the dismissal of a judge, he shall be dismissed.

(4) Matters pertaining to review shall be prescribed by law.

(5) The judges of the Supreme Court shall be retired upon the attainment of the age as fixed by law.

(6) All such judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article 80. The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a term of ten

(10) years with privilege of reappointment, provided that they shall be retired upon the attainment of the age as fixed by law.

(2) The judges of the inferior courts shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article 81. The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

Article 82. Trials shall be conducted and judgment declared publicly.

(2) Where a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press or cases wherein the rights of people as guaranteed in Chapter III of this Constitution are in question shall always be conducted publicly.

CHAPTER VII. FINANCE

Article 83. The power to administer national finances shall be exercised as the Diet shall determine.

Article 84. No new taxes shall be imposed or existing ones modified except by law or under such conditions as law may prescribe.

Article 85. No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet.

Article 86. The Cabinet shall prepare and submit to the Diet for its consideration and decision a budget for each fiscal year.

Article 87. In order to provide for unforeseen deficiencies in the budget, a reserve fund may be authorized by the Diet to be expended upon the responsibility of the Cabinet.

(2) The Cabinet must get subsequent approval of the Diet for all payments from the reserve fund.

Article 88. All property of the Imperial Household shall belong to the State. All expenses of the Imperial Household shall be appropriated by the Diet in the budget.

Article 89. No public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority.

Article 90. Final accounts of the expenditures and revenues of the State shall be audited annually by a Board of Audit and submitted by the Cabinet to the Diet, together with the statement of audit, during the fiscal year immediately following the period covered.

(2) The organization and competency of the Board of Audit shall be determined by law.

Article 91. At regular intervals and at least annually the Cabinet shall report to the Diet and the people on the state of national finances.

CHAPTER VIII. LOCAL SELF-GOVERNMENT

Article 92. Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.

Article 93. The local public entities shall establish assemblies as their deliberative organs, in accordance with law.

(2) The chief executive officers of all local public entities, the members of their assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.

Article 94. Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law.

Article 95. A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.

CHAPTER IX. AMENDMENTS

Article 96. Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each House and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify.

(2) Amendments when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of this Constitution.

CHAPTER X. SUPREME LAW

Article 97. The fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of man to be free; they have survived the many exacting tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolate.

Article 98. This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

(2) The treaties concluded by Japan and established laws of nations shall be faithfully observed.

Article 99. The Emperor or the Regent as well as Ministers of State, members of the Diet, judges, and all other public officials have the obligation to respect and uphold this Constitution.

Chapter XI. Supplementary Provisions

Article 100. This Constitution shall be enforced as from the day when the period of six months will have elapsed counting from the day of its promulgation.

(2) The enactment of laws necessary for the enforcement of this Constitution, the election of members of the House of Councillors and the procedure for the convocation of the Diet and other preparatory procedures necessary for the enforcement of this Constitution may be executed before the day prescribed in the preceding paragraph.

Article 101. If the House of Councillors is not constituted before the effective date of this Constitution, the House of Representatives shall function as the Diet until such time as the House of Councillors shall be constituted.

Article 102. The term of office for half the members of the House of Councillors serving in the first term under this Constitution shall be three years. Members falling under this category shall be determined in accordance with law.

Article 103. The Ministers of State, members of the House of Representatives, and judges in office on the effective date of this Constitution, and all other public officials who occupy positions corresponding to such positions as are recognized by this Constitution shall not forfeit their positions automatically on account of the enforcement of this Constitution unless

otherwise specified by law. When, however, successors are elected or appointed under the provisions of this Constitution, they shall forfeit their positions as a matter of course.

Source: National Diet Library: < <http://www.ndl.go.jp/constitution/e/etc/c01.html>>.

Appendix 7

Labour Standards Law (1947) Abstract

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CHAPTER I. GENERAL PROVISIONS

(Principle of Working Conditions)

Article 1. Working conditions shall be those which should meet the needs of workers who live lives worthy of human beings.

2. The standards for working conditions fixed by this Law are minimum standards. Accordingly, parties to labour relations shall not reduce working conditions with these standards as an excuse and, instead, should endeavour to raise the working conditions.

(Determination of Working Conditions)

Article 2. Working conditions should be determined by the workers and employers on an equal basis.

2. The workers and employers shall abide by collective agreements, rules of employment and labour contracts, and shall discharge their respective duties faithfully.

(Equal Treatment)

Article 3. An employer shall not engage in discriminatory treatment with respect to wages, working hours or other working conditions by reason of the nationality, creed or social status of any worker.

(Principle of Equal Wages for Men and Women)

Article 4. An employer shall not engage in discriminatory treatment of a woman as compared with a man with respect to wages by reason of the worker being a woman.

(Prohibition of Forced Labour)

Article 5. An employer shall not force workers to work against their will by means of

violence, intimidation, imprisonment, or any other unfair restraint on the mental or physical freedom of the workers.

..... Omitted.

(Definitions)

Article 9. In this Law, worker shall mean one who is employed at an enterprise or place of business (hereinafter referred to simply as an enterprise) and receives wages therefrom, without regard to the kind of occupation.

Article 10. In this Law, employer shall mean the owner or manager of the enterprise or any other person who acts on behalf of the owner of the enterprise in matters concerning the workers of the enterprise.

Article 11. In this Law, wage shall mean the wage, salary, allowance, bonus and every other payment to the worker from the employer as remuneration for labour, regardless of the name by which such payment may be called.

..... Omitted.

CHAPTER II. LABOUR CONTRACT

..... Omitted.

(Clear Statement of Working Conditions)

Article 15. In concluding a labour contract, the employer shall clearly state the wages, working hours and other working conditions to the worker. In this case, matters concerning wages and working hours and other matters stipulated by Ordinance of the Ministry of Health, Labour & Welfare shall be clearly stated in the manner prescribed by Ordinance of the Ministry of Health, Labour & Welfare.

2. In the event that the working conditions as clearly stated under the provisions of the preceding paragraph differ from actual fact, the worker may immediately cancel the labour contract.

..... Omitted.

(Restrictions on Dismissal of Workers)

Article 19. An employer shall not dismiss a worker during a period of rest for medical treatment with respect to injuries or illnesses suffered in the course of employment nor within 30 days thereafter, and shall not discharge a woman during a period of rest before and after childbirth in accordance with the provisions of Article 65 nor within 30 days thereafter; provided, however, that this shall not apply in the event that the employer pays compensation for termination in accordance with Article 81 nor when the continuance of the enterprise has been made impossible by a natural disaster or other unavoidable cause.

2. In the event of a circumstance under the latter part of the proviso of the preceding paragraph, the employer shall obtain the approval of the administrative office with respect to the reason in question.

(Notice of Dismissal)

Article 20. In the event that an employer wishes to dismiss a worker, the employer shall provide at least 30 days advance notice. An employer who does not give 30 days advance notice shall pay the average wages for a period of not less than 30 days. However, that this shall not apply in the event that the continuance of the enterprise has been made impossible by a natural disaster or other unavoidable cause nor when the worker is dismissed for reasons attributable to the worker.

2. The number of days of notice under the preceding paragraph may be reduced in the event that the employer pays the average wage for each day by which the period is reduced.
3. The provisions of paragraph 2 of the preceding Article shall apply correspondingly to a case under the proviso to paragraph 1.

Article 21. The provisions of the preceding article shall not apply to any worker coming under one of the following items; provided, however, that this shall not be the case with respect to a worker coming under item 1 who has been employed consecutively for more than one month, a worker coming under either item 2 or item 3 who has been employed consecutively for more than the period set forth in each such item respectively, nor a worker coming under item 4 who has been employed consecutively for more than 14 days:

- (1) Workers who are employed on a daily basis;
- (2) Workers who are employed for a fixed period not longer than 2 months;
- (3) Workers who are employed in seasonal work for a fixed period not longer than 4 months;
- (4) Workers in a probationary period.

..... Omitted.

CHAPTER III. WAGES

..... Omitted.

CHAPTER IV. WORKING HOURS, REST PERIODS, REST DAYS, AND ANNUAL LEAVE WITH PAY

(Working Hours)

Article 32. An employer shall not have a worker work more than 40 hours per week, excluding rest periods.

2. An employer shall not have a worker work more than 8 hours per day for each day of the week, excluding rest periods.

(Monthly working hours averaging system)

Article 32-2. In the event that an employer has stipulated, pursuant to a written agreement with a trade union organized by a majority of the workers at the workplace concerned where such a union exists, or with a person representing a majority of the workers where no such union exists, or pursuant to rules of employment or the equivalent thereof, that the average working hours per week over the course of a fixed period of no more than one month will not exceed the working hours set forth in paragraph 1 of the preceding Article, the employer may, in accordance with such stipulation and regardless of the provisions of the preceding Article, have a worker work in excess of the working hours set forth in paragraph 1 of the preceding Article in a specified week or weeks and may have a worker work in excess of the working hours set forth in paragraph 2 of the preceding Article in a specified day or days.

2. The employer shall submit the agreement stipulated in the preceding paragraph to the administrative office, as provided for by Ordinance of the Ministry of Health, Labour & Welfare.

(Flex-time system)

Article 32-3. In the event that the following items have been provided in a written agreement either with a trade union organized by a majority of the workers at the workplace concerned where such a trade union exists, or with a person representing a majority of the workers where no such trade union exists, the employer may, with respect to a worker for whom the starting and ending time for work is left to the worker's own decision pursuant to rules of employment or the equivalent, and regardless of the provisions of Article 32, have such a worker work in excess of the working hours set forth in paragraph 1 of Article 32 in a week and may have such a worker work in excess of the working hours set forth in paragraph

2 of that Article in a day, to the extent that the average working hours per week during a period provided in the above-mentioned written agreement as the settlement period (of which conditions are defined in item 2 below) does not exceed the working hours set forth in paragraph 1 of Article 32:

- (1) The scope of workers whom the employer may have work under the working hour provisions of this Article;
- (2) A settlement period (which shall be a period, not to exceed one month in length, during which average working hours per week will not exceed the working hours under Article 32, paragraph 1. The same shall apply in the following item.);
- (3) Total working hours in the settlement period;
- (4) Other matters as set forth by Ordinance of the Ministry of Health, Labour & Welfare.

(Annual working hours averaging system)

Article 32-4. In the event that the employer has stipulated the following items pursuant to a written agreement either with a trade union organized by a majority of the workers at the workplace concerned where such a trade union exists, or with a person representing a majority of the workers at a workplace where no such trade union exists, regardless of the provisions of Article 32, the employer may have a worker work in excess of the working hours set forth in paragraph 1 of Article 32 in a specified week or weeks and may have a worker work in excess of the working hours set forth in paragraph 2 of that Article in a specified day or days in accordance with the said written agreement (including stipulations that have been set under the provisions of the following paragraph in cases where this is applicable), to the extent that the average working hours per week for the period set in that agreement as the applicable period defined at item 2 below does not exceed 40 hours:

- (1) The scope of workers whom the employer may have work under the working hours provisions of this Article;
- (2) Applicable period (a period longer than one month but not exceeding one year, during which the average working hours per week does not exceed 40 hours; the same shall apply hereinafter for this Article and the following Article);
- (3) Specified period (a period within the applicable period when work is particularly busy; the same shall apply to paragraph 3);
- (4) Working days in the applicable period and working hours for each of the said working days (in cases where the applicable period is divided into sub-periods of one month or more, working days and working hours for each working day in the sub-period which includes the first day of the applicable period (hereinafter in this Article referred to as the “initial sub-period”) and the number of working days and total working hours of each sub-period excluding the initial sub-period);
- (5) Other items as stipulated by Ordinance of the Ministry of Health, Labour & Welfare.

2. In the event that in the written agreement of the preceding paragraph the employer has divided the applicable period as provided for in item 4 of the said paragraph, and stipulated the number of working days and total working hours for each sub-period excluding the initial sub-period, the employer shall, no later than 30 days before the first day of each sub-period, and with the consent of either a trade union organized by a majority of the workers at the workplace concerned where such a trade union exists or a person representing a majority of the workers at a workplace where no such trade union exists and in accordance with Ordinance of the Ministry of Health, Labour & Welfare, set the working days within each sub-period, to the extent that it does not exceed the said number of working days and the working hours for each working day in each sub-period, to the extent that it does not exceed the said total working hours.

3. After hearing the opinions of the Labour Policy Council, the Minister of Health, Labour & Welfare may establish limits by Ordinance of the Ministry of Health, Labour & Welfare concerning the number of working days in the applicable period, the daily and weekly working hours in the applicable period, and the number of consecutive days within the applicable period (excluding the period set as the specified period by the written agreement stipulated in paragraph 1) and the period set as the specified period by the written agreement stipulated in the said paragraph on which the employer may have workers work.

4. The provisions of paragraph 2 of Article 32-2 shall apply correspondingly to an agreement under paragraph 1.

Article 32-4-2. In the event that, pursuant to the provisions of the preceding Article, an employer has a worker work during the applicable period for a period shorter than the said applicable period, and the average weekly hours the employer has the worker work exceeds 40 hours, the employer shall pay increased wages for the working hours that exceed 40 hours (excluding working hours that have been extended or working hours on rest days pursuant to the provisions of Article 33 or paragraph 1 of Article 36) as provided for in Article 37.

(Weekly non-regular working hours averaging system)

Article 32-5. With respect to workers employed in enterprises of which business categories are specified by Ordinance of the Ministry of Health, Labour & Welfare as having an amount of daily business which is often subject to wide fluctuations and given this forecast it would be difficult to fix daily working hours by rules of employment or the equivalent, and of which the number of regular employees is under the number specified by Ordinance of the Ministry of the Health, Labour & Welfare, the employer may, regardless of the provisions of paragraph 2 of Article 32, have workers work for up to ten hours per day, if there is a written agreement either with a trade union organized by a majority of the workers at the workplace concerned where such a trade union exists or with a person representing a majority of the workers where no such trade union exists.

2. In the event that an employer has a worker work pursuant to the provisions of the preceding paragraph, the employer shall notify the worker in advance of the working hours for each day of the work week in accordance with Ordinance of the Ministry of Health, Labour & Welfare.

3. The provisions of paragraph 2 of Article 32-2 shall apply correspondingly to an agreement under paragraph 1 of this Article.

(Extra Work, etc., at Times of Temporary Necessity as a Result of Disasters, etc.)

Article 33. In the event of temporary necessity by reason of disaster or other unavoidable circumstances, an employer may extend the working hours stipulated in Articles 32 through 32-5 and Article 40, and may have workers work on rest days stipulated in Article 35 with the permission of the administrative office within the limits of such necessity; however, in the event that the necessity is so urgent that there is not time enough to obtain the permission of the administrative office, the employer shall report this after the fact without delay.

2. In the case where there has been a report pursuant to the proviso of the preceding paragraph, if the administrative office determines that it was inappropriate to extend the working hours or have work on rest days, thereafter that office may order the employer to provide the workers with rest periods or rest days corresponding to the time worked.

3. Regardless of the provisions of paragraph 1, in the event of temporary necessity for purposes of public service, the working hours stipulated in Articles 32 through 32-5 and Article 40 may be extended for national and local public servants engaged in enterprises at public offices (excluding enterprises stipulated in Annexed Table No. 1), and those workers may be required to work on rest days under Article 35.

(Rest Periods)

Article 34. An employer shall provide rest periods during working hours of at least 45 minutes in the event that working hours exceed 6 hours and of at least one hour in the event that working hours exceed 8 hours.

2. The rest periods stipulated in the preceding paragraph shall be provided to all workers at the same time; however, this shall not apply if there is a written agreement either with a trade union organized by a majority of the workers at the workplace concerned where such a trade union exists or with a person representing a majority of the workers where no such trade union exists.

3. An employer shall permit the free use of rest periods stipulated in paragraph 1.

(Rest Days)

Article 35. An employer shall provide workers at least one rest day per week.

2. The provisions of the preceding paragraph shall not apply to an employer who provides at least 4 rest days during a four-week period.

(Overtime Work and Work on Rest Days)

Article 36. In the event that the employer has entered a written agreement either with a trade union organized by a majority of the workers at the workplace concerned where such a trade union exists or with a person representing a majority of the workers where no such trade union exists and has filed such agreement with the administrative office, the employer may, in accordance with the provisions of such agreement, and regardless of the provisions of Articles 32 through 32-5 and Article 40 with respect to working hours (hereinafter in this Article referred to as “working hours”) and the provisions of the preceding Article with respect to rest days (hereinafter in this paragraph referred to as “rest days”), extend the working hours or have workers work on rest days; provided, however, that the extension in working hours for underground work and other work specified by Ordinance of the Ministry of Health, Labour & Welfare as especially injurious to health shall not exceed 2 hours per day.

2. The Minister of Health, Labour & Welfare may, in order to ensure that the extension of working hours be appropriate, prescribe standards for the limits on the extension of working hours set forth in the agreement stipulated in the preceding paragraph, and other necessary matters, taking into consideration the welfare of workers, the trends of overtime work, and any other relevant factors.

3. The employer and the trade union or the person representing a majority of the workers who conclude the agreement stipulated in paragraph 1, when setting an extension of working hours in the said agreement, shall ensure that the particulars of the said agreement conform with the standards stipulated in the preceding paragraph.

4. With respect to the standards stipulated in paragraph 2, the administrative office may provide the necessary advice and guidance to the employer and the trade union or the person representing a majority of the workers who conclude the agreement stipulated in paragraph 1.

(Increased Wages for Overtime Work, Work on Rest Days and Night Work)

Article 37. In the event that an employer extends working hours or has a worker work on rest days pursuant to the provisions of Article 33 or paragraph 1 of the preceding Article, the employer shall pay increased wages for work during such hours or on such days at a rate no lower than the rate stipulated by cabinet order within the range of no less than 25 percent and no more than 50 percent over the normal wage per working hour or working day.

2. The cabinet order under the preceding paragraph shall be set taking into consideration the welfare of workers, the trends of overtime work and of work on rest days, and any other relevant factors.

3. In the event that an employer has a worker work during the period between 10 p.m. and 5 a.m. (or the period between 11 p.m. and 6 a.m., in case the Minister of Health, Labour & Welfare admits necessity of application for a certain area or time of the year), the employer shall pay increased wages for work during such hours at a rate no lower than 25 percent over the normal wage per working hour.

4. Family allowances, commutation allowances, and other elements of wages as stipulated by Ordinance of the Ministry of Health, Labour & Welfare shall not be added to the base wages of the increased wages of paragraph 1 and the preceding paragraph.

(Computation of Working Time)

Article 38. For purposes of application of the provisions on working hours, total hours worked shall be aggregated, even if workplaces are different.

2. With regard to underground labour, the working hours shall be deemed to be the time from entry into the mouth of the mine to exit from the mouth of the mine, including rest periods; however, in this case the provisions of Article 34, paragraphs 2 and 3, regarding rest periods shall not apply.

Article 38-2. In cases where workers perform their duties outside of the workplace during all or part of their working hours and it would be difficult to calculate working hours, the number of hours worked shall be deemed to be the scheduled working hours; however, in cases where it would normally be necessary to work in excess of the scheduled working hours in order to accomplish the duties, the number of hours worked shall be deemed to be the number of hours normally necessary to accomplish such duties as stipulated by Ordinance of the Ministry of Health, Labour & Welfare.

2. In a case under the proviso of the preceding paragraph, when there is a written agreement either with a trade union organized by a majority of the workers at the workplace concerned where such a trade union exists or with a person representing a majority of the workers where no such trade union exists, the number of hours specified in such agreement shall be regarded as the number of hours normally necessary to accomplish the duties under that proviso.

3. The employer shall file the agreement referred to in the preceding paragraph with the administrative office in accordance with Ordinance of the Ministry of Health, Labour & Welfare.

Article 38-3. In the event that an employer, pursuant to a written agreement either with a trade union organized by a majority of the workers at the workplace concerned where such a trade union exists or with a person representing a majority of the workers at a workplace where no such trade union exists, has assigned a worker to duties stipulated by Ordinance of the Ministry of Health, Labour & Welfare as duties for which it is difficult for the employer to give concrete directives regarding such decisions as the means of accomplishment and allocation of time because the nature of the duties is such that the methods for accomplishment must be left largely to the discretion of the workers engaged in the said duties, and has stipulated that concrete directives regarding such decisions as the means of accomplishing the said duties and allocation of time will not be given and that the calculation of the working hours will be in accordance with the said written agreement, the working hours of workers who have been assigned to the said duties shall, as stipulated by Ordinance of the Ministry of Health, Labour & Welfare, be regarded as the number of hours set forth in the agreement.

2. The provisions of paragraph 3 of the preceding Article shall apply correspondingly to an agreement under the preceding paragraph.

..... Omitted.

(Annual Leave with Pay)

Article 39. An employer shall grant annual leave with pay of 10 working days, either consecutive or divided into portions, to workers who have been employed continuously for 6 months calculated from the day of their being hired and who have reported for work on at least 80 percent of the total working days.

2. With respect to workers who have been employed continuously for at least one year and a half, an employer shall grant annual leave with pay, calculated by adding to the number of days stipulated in the preceding paragraph, the number of work days stipulated in the lower row of the following table corresponding to the number of years of continuous service from the day of their having served continuously for 6 months (hereinafter referred to as “6 months completion day”) in the upper row of the table for each additional year of continuous service from the 6 months completion day. However, for workers who have reported for work on less than 80 percent of the total working days for the one-year period ending with the day before the first day of each one-year period from the 6 months completion day (when the final period is less than one year, the period concerned), the employer is not required to grant paid leave for the one year following the said first day. Number of years of continuous service from the six months completion day One year Two years Three years Four years Five years Six years or more Work days One day Two days Four days Six days Eight days Ten days.

..... Omitted.

4. The employer shall grant the leave with pay under the provisions of the three preceding paragraphs during the period requested by the worker; however, when the granting of leave in the requested period would interfere with the normal operation of the enterprise, the employer may grant the leave during another period.

5. In the event that an employer, pursuant to a written agreement either with a trade union organized by a majority of the workers at the workplace concerned where such a trade union exists or with a person representing a majority of the workers where no such trade union exists, has made a stipulation with regard to the period in which leave with pay pursuant to paragraphs 1 through 3 will be granted, the employer may, regardless of the provisions of the preceding paragraph, grant paid leave in accordance with such stipulation for portions of paid leave under paragraphs 1 through 3 in excess of 5 days.

6. For the period of leave with pay under the provisions of paragraphs 1 through 3, the employer shall, in accordance with rules of employment or the equivalent, pay either the average wage or the amount of wages that would normally be paid for working the prescribed working hours; however, when there is a written agreement either with a trade union organized by a majority of the workers at the workplace concerned where such a trade union exists or with a person representing a majority of the workers where no such trade union exists, that provides for the payment for the period of a sum equivalent to the daily amount of standard remuneration provided for under paragraph 1 of Article 99 of the Health Insurance Law (Law No. 70 of 1922), such agreement shall be complied with.

7. With respect to the application of the provisions of paragraph 1 and paragraph 2, a worker shall be deemed to have reported for work during periods of rest for medical treatment for injuries or illness suffered in the course of employment, during periods of rest for childcare leave prescribed in item 1 of Article 2 of the Law Concerning the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave or for family care leave prescribed in item 2 of the said Article, and during periods of rest for women before and after childbirth pursuant to the provisions of Article 65.

..... Omitted.

(Exclusions from Application of Provisions on Working Hours, etc.)

Article 41. The provisions regarding working hours, rest periods and rest days set forth in this Chapter, Chapter VI and Chapter VI-II shall not apply to workers coming under one of the following items:

- (1) Persons engaged in enterprises stipulated in item 6 (excluding forestry) or item 7 of Annexed Table No. 1;
- (2) Persons in positions of supervision or management or persons handling confidential matters, regardless of the type of enterprise;
- (3) Persons engaged in keeping watch or in intermittent labour, with respect to which the employer has obtained approval from the administrative office.

CHAPTER V. SAFETY AND HEALTH

Article 42. Matters concerning the safety and health of workers shall be as provided for by the Industrial Safety and Health Law (Law No. 57 of 1972).

Articles 43 – 55 ... Deleted.

CHAPTER VI. MINORS

(Minimum Age)

Article 56. An employer shall not employ children until the first 31st of March following their having fully reached the age of 15 years.

2. Regardless of the provisions of the preceding paragraph, outside of school hours, children above 13 full years of age maybe employed in occupations in enterprises other than those stipulated in items 1 through 5 of Annexed Table No. 1, and which involve light labour that is not injurious to the health and welfare of the children, with the permission of the administrative office. This shall also apply with respect to children under 13 full years of age employed in motion picture production and theatrical performance enterprises.

..... Omitted.

CHAPTER VI-II. WOMEN

..... Omitted.

(Before and After Childbirth)

Article 65. In the event that a woman who is expected to give birth within 6 weeks (or within 14 weeks in the case of multiple fetuses) requests rest days, the employer shall not make such a person work.

2. An employer shall not have a woman work within 8 weeks after childbirth; however, this shall not prevent an employer from having such a woman work, if she has so requested, after 6 weeks have passed since childbirth, in duties which a doctor has approved as having no adverse effect on her.

3. In the event that a pregnant woman has so requested, an employer shall transfer her to other light duties.

Article 66. Regardless of the provisions of paragraph 1 of Article 32-2, paragraph 1 of Article 32-4, and paragraph 1 of Article 32-5, an employer shall not have an expectant or nursing mother work weekly working hours in excess of those stipulated in paragraph 1 of Article 32, or daily working hours in excess of those stipulated in paragraph 2 of the same Article, if so requested by the expectant or nursing mother.

2. Regardless of the provisions of Article 33, paragraphs 1 and 3, and of Article 36, in the event that an expectant or nursing mother has requested, an employer shall not have her work overtime nor work on rest days.

3. In the event that an expectant or nursing mother has so requested, an employer shall not have her work at night.

(Time for Childcare)

Article 67. A woman raising an infant under the age of one full year may request time to care for the infant of at least 30 minutes twice a day, in addition to the rest periods stipulated in Article 34.

2. The employer shall not have the said woman work during the childcare time stipulated in the preceding paragraph.

(Measures for Women for Whose Work During Menstrual Periods Would Be Especially Difficult)

Article 68. When a woman for whose work during menstrual periods would be especially difficult has requested leave, the employer shall not have the said woman work on days of the menstrual period.

CHAPTER VII. TRAINING OF SKILLED LABOURERS

..... Omitted.

CHAPTER VIII. ACCIDENT COMPENSATION

(Medical Compensation)

Article 75. In the event that a worker suffers an injury or illness in the course of employment, the employer shall furnish necessary medical treatment at his expense or shall bear the expense for necessary medical treatment.

2. The scope of illness in the course of employment and of medical treatment under the provisions of the preceding paragraph shall be established by Ordinance of the Ministry of Health, Labour & Welfare.

(Compensation for Lost Time)

Article 76. In the event that a worker does not receive wages because the worker is unable to work by reason of the medical treatment under the provisions of the preceding paragraph, the employer shall provide compensation for lost time at the rate of 60 percent of the worker's average wage.

2. In the event that the average per capita monthly amount of ordinary wages payable in the period of January through March, April through June, July through September, or October through December, respectively (any such period being referred to hereinafter as a "quarter"), for the prescribed number of working hours for a worker at the same workplace and engaged in the same type of work as the worker receiving compensation for lost time under the preceding paragraph (or, for a workplace ordinarily employing under 100 workers, the average monthly amount during the quarter per worker of compensation paid every month in the industry to which that workplace belongs, under the Monthly Labour Survey compiled by the Ministry of Health, Labour & Welfare; hereinafter whichever amount applies shall be referred to as the average compensation amount) shall exceed 120 percent of the average compensation amount during the quarter in which the worker in question suffered the injury or illness or shall fall below 80 percent of that same amount, the employer shall adjust the amount of compensation for lost time which is payable to the worker in question in accordance with such rate of increase or decrease in the second quarter following the quarter in which the average compensation amount so exceeded or fell below the original amount; and the employer shall make compensation for lost time in such revised amount from the first month of the quarter in which such adjustment takes effect. Thereafter, adjustment to the previously adjusted amount of compensation for lost time shall be made in the same manner.

3. Necessary matters regarding the method of adjustment and other particulars of the provisions of the preceding paragraph, where it would be difficult to follow those provisions, shall be established by Ordinance of the Ministry of Health, Labour & Welfare.

(Compensation for Disabilities)

Article 77. With respect to a worker who has suffered an injury or illness in the course of employment and who remains physically disabled after recovery, the employer shall, in accordance with the degree of such disability, provide compensation for the disability in the amount determined by multiplying the average wage by the number of days set forth in Annexed Table No. 2.

(Exceptions to Compensation for Lost Time and to Compensation for Disabilities)

Article 78. In the event that a worker suffered injury or illness in the course of employment as a result of grave negligence, and the employer has received acknowledgment of such negligence from the administrative office, the employer is not obligated to pay compensation for lost time or compensation for disabilities.

(Compensation for Heirs)

Article 79. In the event that a worker has died in the course of employment, the employer shall pay compensation to the bereaved family in the amount of the average wage for 1,000 days.

(Funeral Expenses)

Article 80. In the event that a worker has died in the course of employment, the employer shall pay the equivalent of the average wage for 60 days as funeral expenses to the person handling the funeral rites.

(Compensation for Discontinuance)

Article 81. In the event that a worker receiving compensation pursuant to the provisions of Article 75 fails to recover from the injury or illness within 3 years from the date of commencement of medical treatment, the employer may pay discontinuance compensation, equivalent to the average wage, for 1,200 days; thereafter, the employer shall not be obligated to pay compensation under the provisions of this Law.

(Payment of Compensation in Instalments)

Article 82. In the event that an employer demonstrates an ability to pay and receives the consent of the person entitled to compensation, the employer may pay annual compensation over a six-year period in the amount derived by multiplying the average wage by the number of days set forth in Annexed Table No. 3 in place of the compensation stipulated in Article 77 or Article 79.

(Right to Receive Compensation)

Article 83. The right to receive compensation shall not be affected by the resignation of the worker.

2. The right to receive compensation shall not be transferred or placed under attachment.

(Relation to Other Laws)

Article 84. In the event that payments equivalent to accident compensation under this Law are to be made under the Workmen's Accident Compensation Insurance Law (Law No. 50 of 1947) or under some other law as designated by Ordinance of the Ministry of Health, Labour & Welfare, for matters that would give rise to accident compensation under the provisions of this Law, the employer shall be exempt from the responsibility of making compensation under this Law.

2. In the event that an employer has paid compensation under this Law, the employer shall be exempt, up to the amount of such payments, from responsibility for damages under the Civil Code based on the same grounds.

(Examination and Arbitration)

Article 85. Persons who have objections concerning the acknowledgment of injury, illness, or death in the course of employment; the method of medical treatment; the determination of the amount of compensation; or other matters pertaining to the compensation, may apply to the administrative office for examination or arbitration of such matters.

2. The administrative office, when it deems necessary, may examine or arbitrate matters on its own authority.

3. When a civil action has been filed with respect to a matter on which an application for examination or arbitration under paragraph 1 has been made, or with respect to a matter on which the administrative office has commenced an examination or arbitration under the preceding paragraph, the administrative office shall not conduct an examination or arbitration with respect to the matter in question.

4. The administrative office, when it deems this necessary for purposes of the examination or arbitration, may have a physician perform a diagnosis or examination.

5. With respect to interruption of a period of prescription, an application for examination or arbitration under paragraph 1 and/or the commencement of examination or arbitration under paragraph 2 shall be deemed to be a demand in a judicial court.

Article 86. A person having a complaint about the results of examination or arbitration pursuant to the provisions of the preceding Article may apply for examination or arbitration to a Workmen's Accident Compensation Insurance Referee.

2. The provisions of paragraph 3 of the preceding Article shall apply correspondingly to an application for examination or arbitration pursuant to the provisions of the preceding paragraph.

(Exceptions for Subcontracting Enterprises)

Article 87. For matters performed by undertakings designated by Ordinance of the Ministry of Health, Labour & Welfare pursuant to a series of contracts, the prime contractor shall be deemed the employer with respect to accident compensation.

2. In a case under the preceding paragraph in which the prime contractor has by written contract had a subcontractor assume responsibility for the compensation, the subcontractor shall also be regarded as the employer; however, two or more subcontractors may not each be required to assume responsibility for compensation with respect to the same undertaking.

3. In a case under the preceding paragraph in which the prime contractor has received a request for compensation, the prime contractor may request that a demand for compensation first be made to the subcontractor that has assumed responsibility for compensation; however, this shall not apply in the event that the subcontractor has been declared bankrupt or has disappeared.

(Particulars Regarding Compensation)

Article 88. Particulars regarding compensation other than those set forth in this Chapter shall be set forth by Ordinance of the Ministry of Health, Labour & Welfare.

CHAPTER IX. RULES OF EMPLOYMENT

(Responsibility for Drawing up and Submitting)

Article 89. An employer who continuously employs 10 or more workers shall draw up rules of employment covering the following items and shall submit those rules of employment to the administrative office. In the event that the employer alters the following items, the same shall apply:

(1) Matters pertaining to the times at which work begins and at which work ends, rest periods, rest days, leaves, and matters pertaining to the change in shifts when workers are employed in two or more shifts;

(2) Matters pertaining to the methods for determination, computation and payment of wages (excluding extraordinary wages and the like; hereinafter in this item the same qualification shall apply); the dates for closing accounts for wages and for payment of wages; and increases in wages;

(3) Matters pertaining to retirement;

(3-2) In the event that there are stipulations for retirement allowances, matters pertaining to the scope of workers covered; methods for determination, computation, and payment of retirement allowances; and the dates for payment of retirement allowances;

(4) In the event that there are stipulations for extraordinary wages and the like (but excluding retirement allowances) and/or minimum wage amounts, matters pertaining to such items;

(5) In the event that there are stipulations for having workers bear the cost of food, supplies for work, and other such expenses, matters pertaining to such items;

(6) In the event that there are stipulations concerning safety and health, matters pertaining to such items;

(7) In the event that there are stipulations concerning vocational training, matters pertaining to such items;

(8) In the event that there are stipulations concerning accident compensation and/or assistance for injury or illness outside the course of employment, matters pertaining to such items;

(9) In the event that there are stipulations concerning commendations and/or sanctions, matters pertaining to their kinds and limits;

(10) In the event that there are stipulations applicable to all workers at the workplace concerned on matters other than those contained in the preceding items, matters pertaining to such other items.

(Procedures for Drawing Up)

Article 90. In drawing up or changing the rules of employment, the employer shall ask the opinion of either a trade union organized by a majority of the workers at the workplace

concerned where such a trade union exists, or a person representing a majority of the workers where no such trade union exists.

2. In submitting the rules of employment in accordance with the provisions of the preceding Article, the employer shall attach a document setting forth the opinion stipulated in the preceding paragraph.

(Restrictions on Sanction Provisions)

Article 91. In the event that the rules of employment provide for a decrease in wages as a sanction to a worker, the amount of decrease for a single occasion shall not exceed 50 percent of the daily average wage, and also the total amount of decrease shall not exceed 10 percent of the total wages for a single pay period.

(Relation to Laws and Ordinances and to Collective Agreements)

Article 92. The rules of employment shall not infringe any laws and ordinances or any collective agreement applicable to the workplace concerned.

2. The administrative office may order the revision of rules of employment which conflict with laws and ordinances or with collective agreements.

(Validity)

Article 93. Labour contracts which stipulate working conditions inferior to the standards established by the rules of employment shall be invalid with respect to such portions. In such a case the portions which have become invalid shall be governed by the standards established by the rules of employment.

CHAPTER X. DORMITORIES

..... Omitted.

CHAPTER XI. INSPECTION BODIES

(Staff Members of Inspection Bodies, etc.)

Article 97. Labour Standards Inspectors and other necessary staff members prescribed by Ordinance of the Ministry of Health, Labour and Welfare may be appointed in the Labour Standards Management Bureau (i.e., the department established within the Ministry of Health, Labour and Welfare with administrative responsibility for matters relating to labour conditions and the protection of workers; hereinafter the same shall apply), Prefectural Labour Offices and Labour Standards Inspection Offices.

2. The Director-General of the Labour Standards Management Bureau (hereinafter referred to as the "Director-General of the Labour Standards Management Bureau"), the directors of Prefectural Labour Offices and the directors of Labour Standards Inspection Offices shall be appointed from among Labour Standards Inspectors.

3. Matters relating to the qualifications and appointment and dismissal of Labour Standards Inspectors shall be prescribed by Cabinet Order.

4. A Labour Standards Inspector Dismissal Council may be established pursuant to Cabinet Order in the Ministry of Health, Labour and Welfare.

5. The consent of the Labour Standards Inspector Council is required for the dismissal of a Labour Standards Inspector.

6. In addition to the provisions of the above two paragraphs, necessary matters relating to the structure and operation of the Labour Standards Inspector Dismissal Council shall be prescribed by Cabinet Order.

Article 98 ... Deleted.

(Authority of Director-General of the Labour Standards Management Bureau)

Article 99. The Director-General of the Labour Standards Management Bureau, under the direction and supervision of the Minister of Health, Labour & Welfare, shall direct and supervise the directors of the Prefectural Labour Offices; shall administer matters concerning the establishment, revision or abrogation of laws and ordinances concerning labour standards, matters concerning the appointment, dismissal and training of labour standards inspectors, matters concerning the establishment and adjustment of regulations concerning inspection methods, matters concerning the preparation of an annual report on inspection, matters concerning the Labour Policy Council and Labour Standards Inspector Dismissal Investigative Council (With respect to matters relating to the Labour Policy Council, limited to those relating to labour conditions and the protection of workers.), and other matters relating to the enforcement of this Law; and shall direct and supervise staff members who belong to the Bureau.

2. The directors of the Prefectural Labour Offices, under the direction and supervision of the Director-General of the Labour Standards Management Bureau, shall direct and supervise the directors of the Labour Standards Inspection Offices within their jurisdiction; shall administer matters concerning the adjustment of inspection methods and other matters relating to the enforcement of this Law; and shall direct and supervise staff members who belong to their Offices.

3. The directors of the Labour Standards Inspection Offices, under the direction and supervision of the director of the Prefectural Labour Office, shall administer inspections, questioning, approvals, acknowledgments, investigations, arbitration, and other matters relating to the implementation of this Law, and shall direct and supervise staff members who belong to their Offices.

4. The Director-General of the Labour Standards Management Bureau and the directors of Prefectural Labour Offices may themselves exercise powers of subordinate offices or may have labour standards inspectors belonging to their offices exercise such powers.

..... Omitted.

(Authority of Labour Standards Inspectors)

Article 101. Labour standards inspectors are authorized to inspect workplaces, dormitories, and other associated buildings; to demand the production of books and records; and to conduct questioning of employers and workers.

2. In cases under the preceding paragraph, labour standards inspectors shall carry identification proving their status.

Article 102. With respect to a violation of this Law, labour standards inspectors shall exercise the duties of judicial police officers under the Criminal Procedure Law.

..... Omitted.

(Report to Inspection Body)

Article 104. In the event that a violation of this Law or of an ordinance issued pursuant to this Law exists at a workplace, a worker may report such fact to the administrative office or to a labour standards inspector.

2. An employer shall not dismiss a worker or shall not give a worker other disadvantageous treatment by reason of such worker's having made a report under the preceding paragraph.

(Reports etc.)

Article 104-2. In the event that the administrative office deems it necessary to enforce this law, the administrative office may have an employer or a worker submits a report on the necessary matters or may order an employer or a worker to report in person as stipulated by Ordinance of the Ministry of Health, Labour & Welfare.

2. In the event that a labour standards inspector deems it necessary to enforce this law, the inspector may have an employer or a worker submit a report on the necessary matters or order an employer or a worker to report in person.

..... Omitted.

CHAPTER XII. MISCELLANEOUS PROVISIONS

(Assistance Obligation of the State)

Article 105-2. In order to attain the objectives of this Law, the Minister of Health, Labour & Welfare and the directors of the Prefectural Labour Offices shall provide workers and employers with data and other necessary assistance.

(Dissemination of Laws and Regulations)

Article 106. The employer shall make known to the workers the substance of this Law and ordinances issued under this Law, the rules of employment, the agreements stipulated in paragraph 2 of Article 18, the proviso to paragraph 1 of Article 24, paragraph 1 of Article 32-2, Article 32-3, paragraph 1 of Article 32-4, paragraph 1 of Article 32-5, the proviso to paragraph 2 of Article 34, paragraph 1 of Article 36, paragraph 2 of Article 38-2, paragraph 1 of Article 38-3, and paragraph 5 and the proviso to paragraph 6 of Article 39, and the decisions stipulated in paragraphs 1 and 5 of Article 38-4, by displaying or posting them at all times in a conspicuous location or locations in the workplace, by distributing written copies, or by other methods as prescribed by Ordinance of the Ministry of Health, Labour & Welfare.

2. The employer shall make known to the workers living in a dormitory the provisions of this Law and ordinances issued under this Law relating to dormitories and the dormitory rules, by displaying or posting them in a conspicuous location or locations in the dormitory, or by other methods.

..... Omitted.

(Application to the State and Public Organizations)

Article 112. This Law and ordinances issued under this Law shall be deemed to apply to the state, prefectures, cities, towns and villages, and other equivalent bodies.

(Establishment of Ordinances)

Article 113. Ordinances issued under this Law shall be established after hearing the opinions of representatives of workers, representatives of employers, and representatives of the public interest on the draft of those ordinances at a public hearing.

(Payment of Additional Amounts)

Article 114. A court, pursuant to the request of a worker, may order an employer who has violated the provisions of Articles 20, 26 or 37, or an employer who has not paid wages in accordance with the provisions of Article 39, paragraph 6, to pay, in addition to the unpaid portion of the amount that the employer was required to pay under those provisions, an additional payment of that identical amount; however, such a request shall be made within two years from the date of the violation.

(Prescription)

Article 115. Claims for wages (excluding retirement allowances), accident compensation and other claims under the provisions of this Law shall lapse by prescription if not made within two years; and claims for retirement allowances under the provisions of this Law shall lapse by prescription if not made within 5 years.

..... Omitted.

CHAPTER XIII. PENAL PROVISIONS

Article 117. A person who has violated the provisions of Article 5 shall be sentenced to penal servitude of not less than one year and not more than 10 years, or to a fine of not less than 200,000 yen and not more than 3,000,000 yen.

Article 118. A person who has violated the provisions of Article 6, Article 56, Article 63 or Article 64-2 shall be sentenced to penal servitude of not more than one year or to a fine of not more than 500,000 yen.

2. A person who has violated an Ordinance of the Ministry of Health, Labour & Welfare issued under the provisions of Article 70 (but limited to those portions of such ordinance related to Article 63 or Article 64-2) shall be sentenced in accordance with the preceding paragraph.

Article 119. A person who comes under any of the following items shall be sentenced to penal servitude of not more than 6 months or to a fine of not more than 300,000 yen:

- (1) A person who has violated the provisions of Article 3, Article 4, Article 7, Article 16, Article 17, paragraph 1 of Article 18, Article 19, Article 20, paragraph 3 of Article 22, Article 32, Article 34, Article 35, the proviso to paragraph 1 of Article 36, Article 37, Article 39, Article 61, Article 62, Articles 64-3 through 67, Article 72, Articles 75 through 77, Article 79, Article 80, paragraph 2 of Article 94, Article 96, or paragraph 2 of Article 104;
- (2) A person who has violated an ordinance pursuant to the provisions of paragraph 2 of Article 33, paragraph 2 of Article 96-2, or paragraph 1 of Article 96-3;
- (3) A person who has violated an Ordinance of the Minister of Health, Labour & Welfare issued under the provisions of Article 40;
- (4) A person who has violated an Ordinance of the Ministry of Health, Labour & Welfare issued under the provisions of Article 70 (but limited to those portions of such ordinance related to the provisions of Article 62 or Article 64-3).

Article 120. A person who comes under any of the following items shall be sentenced to a fine of not more than 300,000 yen:

- (1) A person who has violated the provisions of Article 14, paragraph 1 or 3 of Article 15, paragraph 7 of Article 18, paragraph 1 or 2 of Article 22, Articles 23 through 27, paragraph 2 of Article 32-2 (including a case where the same provisions are applied correspondingly under paragraph 4 of Article 32-4 and paragraph 3 of Article 32-5), paragraph 2 of Article 32-5, the proviso to paragraph 1 of Article 33, paragraph 3 of Article 38-2 (including a case where the same provisions are applied correspondingly under paragraph 2 of Article 38-3), Articles 57 through 59, Article 64, Article 68, Article 89, paragraph 1 of Article 90, Article 91, paragraph 1 or 2 of Article 95, paragraph 1 of Article 96-2, Article 105 (including a case where the same provisions are applied correspondingly under paragraph 3 of Article 100), or Articles 106 through 109;
- (2) A person who has violated an Ordinance of the Ministry of Health, Labour & Welfare issued under the provisions of Article 70 (but limited to those portions of such ordinance related to the provisions of Article 14);
- (3) A person who has violated an ordinance under the provisions of paragraph 2 of Article 92, or Article paragraph 2 of 96-3;
- (4) A person who has refused, impeded or evaded an inspection by a labour standards inspector or by the Director-General of the Women's Management Bureau or an official of that Bureau designated by the Director-General based on the provisions of Article 101 (including a case where the same provisions are applied correspondingly under paragraph 3 of Article 100), a person who has not replied or has made false statements in response to questioning by a labour standards inspector or by the Director-General of the Women's Management Bureau or an official of that Bureau designated by the Director-General, or a person who has not submitted books and records or has submitted books and records containing false entries to a labour standards inspector or to the Director-General of the Women's Management Bureau or an official of that Bureau designated by the Director-General;

(5) A person who has not made a report, has submitted a false report, or has not appeared pursuant to the provisions of Article 104-2.

Article 121. In the event that a person who has violated this Law is an agent or other employee acting on behalf of the proprietor of the enterprise, with respect to matters concerning workers at that enterprise, the fine under the relevant Article shall also be assessed against the proprietor; however, this shall not apply in the event that the proprietor has taken necessary measures to prevent such violation. (In the event that the proprietor is a juridical person, the representative thereof shall be deemed proprietor; and in the event that the proprietor is a minor or an adult ward who lacks the capacity regarding business of an adult, the legal representative thereof shall be deemed proprietor (if the statutory agent is a corporation, the representative thereof). The same shall apply hereinafter in this Article.)

2. In the event that the proprietor knew of the plan for the violation but did not take necessary measures to prevent it, knew of the violation and did not take necessary measures to correct it, or instigated the violation, the proprietor shall also be punished as the violator.

SUPPLEMENTARY PROVISIONS (EXCERPTS)

Article 122. The date of enforcement of this Law shall be fixed by Imperial Ordinance.

..... Omitted.

Article 136. The employer shall not treat in a disadvantageously, such as by making a deduction from wages, workers who have taken leave with pay under the provisions of paragraphs 1 to 3 of Article 39.

Source: The Japan Institute of Labour Policy and Training (Provisional Translation by a Specialist): < http://www.jil.go.jp/jil/laborinfo-e/docs/lhj_law1-rev.pdf>.

Appendix 8

Trade Union Law (1949)

CONTENTS

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CHAPTER I. GENERAL PROVISIONS

(Purpose)

Article 1. The purposes of this Law are to elevate the status of workers by promoting their being on equal standing with their employer in their bargaining with the employer; to protect the exercise by workers of autonomous self-organization and association in trade unions so that they may carry out collective action including the designation of representatives of their own choosing to negotiate working conditions; and to encourage the practice of collective bargaining, and procedures therefore, for the purpose of concluding collective agreements governing relations between employers and workers.

2. The provisions of Article 35 of the Criminal Code (Law No. 45 of 1907) shall apply to collective bargaining and other acts of a trade union which are proper and have been performed for the attainment of the purposes of the preceding paragraph, provided, however, that in no event shall acts of violence be construed as proper acts of trade unions.

(Trade Unions)

Article 2. "Trade unions" under this Law shall be those organizations, or federations thereof, formed autonomously and composed mainly of the workers for the main purposes of maintaining and improving working conditions and raising the economic status of the workers, provided, however, that this shall not apply to those:

(1) which admit to membership officers; workers in supervisory positions having direct authority with respect to hiring, firing, promotions or transfers; workers in supervisory positions having access to confidential information relating to the employer's labour relations plans and policies so that their official duties and responsibilities directly conflict with their loyalty and responsibilities as members of the trade union concerned; and other persons who represent the interests of the employer;

(2) which receive the employer's financial support in defraying the organizations' operational expenditures, provided, however, that this shall not prevent the employer from permitting workers to confer or negotiate with the employer during working hours without loss of time or pay and this shall not apply to the employer's contributions for public welfare funds or welfare and other funds which are actually used for payments to prevent or relieve economic misfortunes or accidents, nor to the furnishing of minimum office space;

(3) whose objects are confined to mutual aid work or other welfare work;

(4) whose objects are principally political or social movements.

(Workers)

Article 3. "Workers" under this Law shall be those persons who live on their wages, salaries or other remuneration assailable thereto, regardless of the kind of occupation.

Article 4. Deleted.

CHAPTER II. TRADE UNIONS

(Treatment of an Organization Which Has Been Formed as a Trade Union)

Article 5. Unless the trade union has submitted evidence to the Labour Relations Commission and proved that it is in compliance with the provisions of Article 2 and paragraph 2 of this Article, the trade union shall not be eligible to participate in the procedures provided in this Law and shall not be granted the remedies provided in this Law, provided, however, that nothing herein shall be construed so as to deny any individual worker the protections accorded by Article 7, item 1.

2. The constitution of a trade union shall include the provisions set forth in each of the following items:

- (1) name;
- (2) address of the main office;
- (3) that members of a trade union other than a trade union that is a federation (such other trade union hereinafter referred to as a "local union") shall have the right to participate in all affairs of such trade union and shall have the right to receive equal treatment;
- (4) that in no event shall anyone be disqualified for union membership on the basis of race, religion, sex, social status or family origin;
- (5) in the case of a local union, that the officers shall be elected by direct secret ballot of the members, and, in the case of a federation or a trade union having national scope, that the officers shall be elected by direct secret ballot either of the members of the local unions or of delegates elected by direct secret ballot of the members of the local unions;
- (6) that a general meeting shall be held at least once every year;
- (7) that a financial report showing all sources of revenues and expenses, the names of main contributors and the current financial status, together with certification of its accuracy by a professionally competent auditor appointed by the members; shall be released to the members at least once every year,
- (8) that no strike action shall be started without a majority decision made by direct secret ballot either of the members or of delegates elected by direct secret ballot of the members;
- (9) in the case of local union, that the constitution shall not be revised unless such revision has received majority support by direct secret ballot of the members, and, in the case of a trade union which is a federation or a trade union which has national scope, the constitution shall not be revised unless such revision has received majority support by direct secret ballot either of the members of the local unions or of the delegates elected by direct secret ballot of the members of the local unions.

(Authority to Negotiate)

Article 6. Representatives of a trade union or those to whom the authority has been delegated by the trade union shall have authority to negotiate with the employer or the employers' organization on behalf of the trade union or the members of the trade union with respect to conclusion of a collective agreement and other matters.

(Unfair Labour Practices)

Article 7. The employer shall not commit the acts set forth in the following items:

- (1) to discharge or otherwise treat in a disadvantageous manner a worker by reason of such worker's being a member of a trade union, having tried to join or organize a trade union, or having performed proper acts of a trade union; or to make it a condition of employment that the worker must not join or must withdraw from a trade union. However, where a trade union

represents a majority of workers employed at a particular plant or workplace, this shall not prevent an employer from concluding a collective agreement which requires, as a condition of employment, that the workers must be members of such trade union;

(2) to refuse to bargain collectively with the representative of the workers employed by the employer without proper reasons;

(3) to control or interfere with the formation or management of a trade union by workers or to give financial support in defraying the trade union's operational expenditures, provided, however, that this shall not prevent the employer from permitting workers to confer or negotiate with the employer during working hours without loss of time or pay and this shall not apply to the employer's contributions for public welfare funds or welfare and other funds which are actually used for payments to prevent or relieve economic misfortunes or accidents, nor to the furnishing of minimum office space;

(4) to discharge or otherwise treat in a disadvantageous manner a worker for such worker's having filed a complaint with the Labour Relations Commission that the employer has violated the provisions of this Article; for such worker's having requested the Central Labour Relations Commission to review an order issued under the provisions of Article 27, paragraph 4; or for such worker's having presented evidence or having spoken at an investigation or hearing conducted by the Labour Relations Commission in regard to such a complaint or request or at an adjustment of labour disputes as provided for under the Labour Relations Adjustment Law (Law No. 25 of 1946).

(Indemnity)

Article 8. An employer shall not be permitted to claim indemnity from a trade union or a member of the same for damages received through a strike or other acts of dispute which are proper acts.

(Diversion of Funds)

Article 9. When a trade union intends to divert for other purposes funds specially set up for mutual aid and other welfare activities, it shall obtain a resolution of the general meeting of the union.

(Dissolution)

Article 10. A trade union shall be dissolved in the following cases:

(1) occurrence of circumstances requiring dissolution as provided in the constitution of the trade union;

(2) adoption of resolution for dissolution at the general meeting of the trade union by a majority of three-fourths or more of the members or the affiliated organizations.

(Trade Union which is a Juridical Person)

Article 11. A trade union which has received certification by the Labour Relations Commission that it is in compliance with the provisions of this Law shall acquire the status of a juridical person by registering itself at the place where its main office is located.

2. The matters necessary for registration other than those provided in this Law shall be fixed by cabinet order.

3. The matters necessary for registration for a trade union may not be raised against any third person until after registration has been effected.

(Mutatis Mutandis Application)

Article 12. The provisions of Articles 43.44 (except with respect to the cases provided for in Article 8 of this Law), 50, 52 to 55, and 57 of the Civil Code (Law No. 89 of 1896) and the provisions of Articles 35.36 and 37-2 of the Law on Procedures in Non-Contentious Cases (Law No. 14 of 1898) shall apply mutatis mutandis to a trade union which is a juridical person.

2. The provisions of Articles 72 to 83 of the Civil Code and the provisions of Articles 136, 137 and 138 of the Law on Procedures in Non-Contentious Cases shall apply mutatis mutandis to a

trade union which is a juridical person and which has dissolved according to the provisions of Article 10 of this Law.

Article 13. Deleted.

CHAPTER III. COLLECTIVE AGREEMENTS

(Taking Effect of a Collective Agreement)

Article 14. A collective agreement between a trade union and an employer or an employers' organization concerning conditions of work and other matters shall take effect when the agreement is put in writing and is either signed by or with names affixed with seals by both of the parties concerned.

(Term of a Collective Agreement)

Article 15. A term of validity exceeding three years shall not be provided for in a collective agreement.

2. A collective agreement providing for a term of validity exceeding three years shall be regarded as a collective agreement providing for a term of validity of three years.

3. A collective agreement which does not provide for a term of validity may be terminated by either party by giving notice to the other party in writing either signed by or with name affixed with seal by the party giving notice. A collective agreement which provides for a definite term and which includes a provision to the effect that the agreement shall continue in effect after expiration of said term without specifying any time limit for such continuation shall be treated in the same way after the expiration of said term.

4. The notice provided for in the preceding paragraph shall be given at least ninety days prior to the date on which termination is to be made.

(Effectiveness of the Standards)

Article 16. Any portion of an individual labour contract contravening the standards concerning conditions of work and other matters relating to the treatment of workers provided in the collective agreement shall be void. In such a case, the invalidated part of the individual labour contract shall be governed by the provisions of the standards. With respect to matters as to which the individual labour contract contains no provisions, the same rule shall apply.

(General Binding Power)

Article 17. When three-fourths or more of the workers of the same kind regularly employed in a particular factory or other workplace come under application of a particular collective agreement, the agreement concerned shall be regarded as also applying to the remaining workers of the same kind employed in the factory concerned or workplace.

(General Binding Power in a Locality)

Article 18. When a majority of the workers of the same kind in a particular locality come under application of a particular collective agreement, the Minister of Health, Labour and Welfare or the prefectural governor may, at the request of either one or both of the parties to the collective agreement concerned and pursuant to a resolution of the Labour Relations Commission, decide that the collective agreement concerned (including an agreement revised pursuant to the provisions of paragraph 2) should apply to the remaining workers of the same kind employed in the same locality and to their employers.

2. In the event the Labour Relations Commission determines, in making the resolution referred to the preceding paragraph, that the collective agreement concerned contains inappropriate portions, the Commission may amend those portions.

3. A decision under paragraph 1 shall be effectuated by public notification.

4. In the event the Minister of Health, Labour and Welfare or the prefectural labour director determines that the collective agreement referred to in a request under paragraph 1 constitutes a collective agreement as provided for in Article 11 of the Minimum Wages Law (Law No. 137 of 1959), the Minister of Health, Labour and Welfare or the prefectural labour director, in making the decision referred to in that paragraph; shall, prior thereto obtain the opinion of the Central Minimum Wages Council or the Chief of the Prefectural Labour Standards Office concerning

the portion of the collective Agreement relating to wages. In such a case, the Chief of the Prefectural Labour Standards Office, prior to presenting his or her opinion, shall obtain the opinion of the Local Minimum Wages Council.

CHAPTER IV. LABOUR RELATIONS COMMISSIONS

(Labour Relations Commissions)

Article 19. Labour Relations Commissions shall be composed of equal numbers of persons representing employers (hereinafter referred to as "employer members"), persons representing workers (hereinafter referred to as "labour members") and persons representing the public interest (hereinafter referred to as "public members").

2. The Labour Relations Commissions shall consist of the Central Labour Relations Commission, the Central Labour Relations Commission for Seafarers, Prefectural Labour Relations Commissions and Local Labour Relations Commissions for Seafarers.

3. Matters concerning the Labour Relations Commissions other than those laid down in this Law shall be fixed by cabinet order.

(Central Labour Relations Commission)

Article 19-2. The Central Labour Relations Commission shall be established under the jurisdiction of the Minister of Health, Labour and Welfare based on the provisions of Article 3, paragraph 2 of the National Government Organization Law (Law No. 120 of 1948).

2. The Central Labour Relations Commission shall have the duty to protect the workers' exercise of association and promote the fair adjustment of labour relations.

3. In order to fulfil the duties provided for in the preceding paragraph, the Central Labour Relations Commission shall take charge of matters based on the provisions of Article 5, Article 11, Article 18, Article 26 and Article 27 of this Law; matters concerning the conciliation, mediation and arbitration of labour disputes; matters pursuant to the provisions of Article 35-2 and Article 35-3 of the Labour Relations Adjustment Law; and other matters entrusted to the Central Labour Relations Commission based on laws (including orders based on laws).

(Appointment of the Members of the Central Labour Relations Commission, etc.)

Article 19-3. The Central Labour Relations Commission shall be composed of fifteen each of employer members, labour members and public members.

2. The Prime Minister shall appoint the employer members based upon the recommendations of employers' organizations (and as to six of the employer members, based upon the recommendations of the national enterprises (this shall mean the national enterprises as provided for in Article 2, item 1 of the Law Concerning the Labour Relations of National Enterprises and Specified Independent Administrative Institution (Law No. 257 of 1948); hereinafter in this paragraph and in Article 19-10, paragraph 1, the same shall apply.) or specified independent administrative Institution (this shall mean the specified independent administrative institution provided for in Article 2, paragraph 2 of the Specified Independent Administrative Institution Law (Law No. 103 of 1999) hereinafter in this paragraph and in Article 19-4, paragraph 2, item 3 and Article 19-10, paragraph 1, the same shall apply.)), the labour members based upon the recommendations of the labour unions (and as to four of the labour members, based upon the recommendations of the labour unions organized or joined by employees of national enterprises provided for in Article 2, item 4 of the Law Concerning the Labour Relations of National Enterprises and Specified Independent Administrative Institution (hereinafter in this chapter such employees are referred to as "employees of the national enterprises") or employees of special independent government corporations provided for in the same item (hereinafter in this chapter such employees are referred to as "employees of special independent government corporations")), and the public members with the consent of both Houses from among the persons entered in a list of candidates prepared by the Minister of Health, Labour and Welfare after obtaining the consent of the employer members and the labour members.

3. In case the term of office of a public member has expired or a vacancy of a public member has occurred and the consent of both Houses cannot be obtained because the Diet is not in session or the House of Representatives has been dissolved, the Prime Minister may, notwithstanding the provisions of the preceding paragraph, appoint a public member from among the persons entered in a list of candidates prepared by the Minister of Health, Labour and Welfare after obtaining the consent of the employer members and the labour members.

4. In a case under the preceding paragraph, the Prime Minister shall ask for subsequent approval by both Houses at the first session after said appointment. In this case, if subsequent approval of both Houses cannot be obtained, the Prime Minister shall immediately dismiss the public member or members concerned.

5. As to appointment of the public members, seven or more of such members shall not belong to one and the same political party.

6. The members of the Central Labour Relations Commission (referred to simply as "members" in the next Article through Article 19-9 inclusive) shall be in part-time positions; provided however, that two or fewer of the public members may be in full-time positions.

(In-eligibility of Members)

Article 19-4. A person who has been sentenced to punishment of or greater than imprisonment and who is still under the execution of the sentence or who has not ceased to be subject to the execution of the sentence may not become a member.

2. No person falling under any one of the following items may become a public member

(1) a member of the Diet or a member of the assembly of a local public body;

(2) an employee of a national enterprise, or a member or officer of a trade union which is organized or joined by employees of the national enterprises.

(3) a member or officer of a trade union organized or joined by officers of national enterprises, employees of the national enterprises or employees of specified independent administrative institution.

(Term of Office of Members, etc.)

Article 19-5. The term of office of members shall be two years; provided that a member who is appointed to fill a vacancy shall hold office during the remaining term of such predecessor.

2. Members may be re-appointed.

3. When the term of office of a member has expired, such member shall remain as a member until a successor has been appointed.

(Obligations of Public Members)

Article 19-6. No public member in full-time positions shall, during the term of office, perform any act falling under any one of the following items:

(1) become an officer of a political party or other political organization, or actively engage in political activities;

(2) except in cases where there has been permission from the Prime Minister, receive remuneration and engage in any other job for reward, or undertake a profit-making enterprise or otherwise engage in any business aiming at pecuniary gain.

2. No public member in a part-time position shall, during the term of office, perform any act falling under item 1 of the preceding paragraph.

(Loss of Position and Dismissal of a Member)

Article 19-7. A member shall lose his position in the event that such member has fallen under any one of the items of Article 19-4, paragraph 1. The same shall apply in the event that a public member has fallen under any one of the items of paragraph 2 of the same Article.

2. The Prime Minister may, when the Prime Minister determines that a member cannot perform his or her duties by reason of mental or physical defects or that a member has acted contrary to the duties of his or her position or is otherwise guilty of such misconduct as to render such member unfit to be a member, dismiss such member with the consent of the Central

Labour Relations Commission in the case of an employer member or a labour member, or with the consent of both Houses in the case of a public member.

3. In case the Prime Minister has, in accordance with the provisions of the preceding paragraph, requested the Central Labour Relations Commission to give its consent to the dismissal of an employer member or a labour member, the member concerned may not take part in the proceedings.

4. The Prime Minister shall immediately dismiss a public member who has newly come to belong to a political party to which six of the public members already belong.

5. In the event seven or more of the public members have come to belong to the same political party (excluding a case which falls under the provisions of the preceding paragraph), the Prime Minister, with the consent of both Houses, shall dismiss public members so that the number of public members belonging to the same party is reduced to six, provided, however, that the Prime Minister may not dismiss members who have not changed the political party to which they belong.

(Pay of the Members, etc.)

Article 19-8. Members shall receive such salaries, allowances and other pay as are fixed separately by laws, and shall also receive compensation for expenses necessary for the performance of their duties as fixed by cabinet order.

(Chairman of the Central Labour Relations Commission)

Article 19-9. The Central Labour Relations Commission shall have a chairman.

2. The chairman shall be elected by the members from among the public members.

3. The chairman shall preside over the business of the Central Labour Relations Commission and shall represent the Central Labour Relations Commission.

4. The Central Labour Relations Commission shall designate in advance a member, by election by the members from among the public members, who shall act for the chairman in the event the chairman is impeded from performing duties.

(Local Members for Adjustment)

Article 19-10. The Central Labour Relations Commission shall establish Local Members for Adjustment representing, respectively, the employers, the workers and the public interest to participate in conciliation or mediation in disputes arising between national enterprises and the employees of the national enterprises thereof and disputes arising between specified independent administrative institution and the employees of special independent administrative institution thereof and other disputes fixed by cabinet order as those in local areas to be dealt with by the Central Labour Relations Commission, and to participate in investigations or hearings as provided for in Article 27, paragraph 13.

2. For each area fixed by cabinet order, the Minister of Health, Labour and Welfare shall appoint Local Members for Adjustment with the consent of the Central Labour Relations Commission.

3. The provisions of Article 19-5, the main clause of paragraph 1 and paragraph 2; Article 19-7, paragraph 2; and Article 19-8 shall apply mutatis mutandis to the Local Members for Adjustment. In this case, "the Prime Minister" in Article 19-7, paragraph 2, shall be read as "the Minister of Health, Labour and Welfare", and "with the consent of the Central Labour Relations Commission in the case of an employer member or a labour member, or with the consent of both Houses in the case of a public member" in the same paragraph shall be read as "with the consent of the Central Labour Relations Commission".

(Executive Office of the Central Labour Relations Commission)

Article 19-11. An Executive Office shall be established in the Central Labour Relations Commission to handle the administrative affairs of the Commission, and the Executive Office shall have an office director-general and other necessary staff appointed by the Minister of Health, Labour and Welfare with the consent of the chairman.

2. The Executive Office shall establish local offices, which shall take charge of affairs in local areas.
3. The locations, names and jurisdictional areas of the local offices shall be fixed by cabinet order.

(Local Labour Relations Commissions)

Article 19-12. The Local Labour Relations Commissions shall be established under the jurisdiction of the prefectural governors.

2. The Prefectural Labour Relations Commissions shall be composed of either thirteen members each (restricted to the commission established by the Tokyo Metropolitan Government), eleven members each (restricted to the commission established by the Osaka Prefectural Government), nine members each, seven members each, or five members each for employer members, labour members, and public members respectively, with the number as fixed by cabinet order.
3. The prefectural governor shall appoint the employer members based upon the recommendations of the employers' organizations, the labour members based upon the recommendations of the trade unions, and the public members with the consent of the employer members and the labour members.
4. The provisions of Article 19-3, paragraph 5 and the main clause of paragraph 6; Article 19-4, paragraph 1; Article 19-5; Article 19-7, the first clause of paragraph 1, paragraph 2 and paragraph 3; Article 19-8; Article 19-9; and the first paragraph of the preceding Article shall apply *mutatis mutandis* to the Local Labour Relations Commissions. In this case, "seven or more of such members" in Article 19-3, paragraph 5 shall be read as "six or more of such members in a Local Labour Relations Commission containing 13 public members, five or more of such members in a Local Labour Relations Commission containing 11 public members, four or more of such members in a Local Labour Relations Commission containing nine public members, three or more of such members in a Local Labour Relations Commission containing seven public members, two or more of such members in a Local Labour Relations Commission containing five public members"; "the Prime Minister" in Article 19-7, paragraph 2 shall be read as "the prefectural governor"; "with the consent of the Central Labour Relations Commission in the case of an employer member or a labour member, or with the consent of both Houses in the case of a public member" in the same paragraph shall be read as "the Local Labour Relations Commission"; "the Prime Minister" in paragraph 3 of the same Article shall be read as "the prefectural governor"; "an employer member or a labour member" in the same paragraph shall be read as "a member of the Local Labour Relations Commission"; "the Minister of Health, Labor and Welfare" in paragraph 1 of the preceding Article shall be read as "the prefectural governor"; and "an office director-general and other necessary staff" shall be read as "an office director-general, two or fewer vice-directors-general and other necessary staff."
5. When a public member has by his or her own actions come into conflict with the provisions of Article 19-3, paragraph 5, as incorporated under the provisions of the preceding paragraph, such member shall automatically be retired.

(Labour Relations Commission for Seafarers)

Article 19-13. With regard to mariners (excluding employees of the national enterprises and specified independent administrative institution; hereinafter in this paragraph the same qualification applies) covered by the Mariners Law (Law No. 100 of 1947), the functions of the Central Labour Relations Commission, the Prefectural Labour Relations Commission, the Minister of Health, Labour and Welfare and the prefectural governors as provided for in this Law shall be performed, respectively, by the Central Labour Relations Commission for Seafarers, the Local Labour Relations Commission for Seafarers and the Minister of Land, Infrastructure and Transport. In this case, the provisions of Article 18, paragraph 4, shall not apply to mariners.

2. The Central Labour Relations Commission for Seafarers shall be composed of seven employer members, seven labour members and seven Trade Union Law public members, and the Local Labour Relations Commissions for Seafarers shall be composed of five employer members, five labour members and five public members.

3. The Minister of Land, Infrastructure and Transport shall appoint the employer members based upon the recommendations of the employers' organizations, the labour members based upon the recommendations of the trade unions and the public members based upon the consent of the employer members and the labour members.

4. The provisions concerning the Central Labour Relations Commission and the Local Labour Relations Commissions ((excluding the provisions of Article 19-2; Article 19-3, paragraphs 1 to 4 inclusive and the proviso to paragraph 6; Article 19-4, paragraph 2; Article 19-6; Article 19-7, the latter clause of paragraph 1, paragraph 4 and paragraph 5; Article 19-10; Article 19-11, paragraph 2 and paragraph 3; paragraph 2, paragraph 3 and the latter clause of paragraph 4 (restricted to the part specifying that "an office director-general and other necessary staff" in Article 19-11, paragraph 1 shall be read as "an office director-general, two or fewer vice-directors-general and other necessary staff") of the preceding Article; Article 24, paragraph 2; and Article 27, paragraph 13) shall apply mutatis mutandis to the Central Labour Relations Commission for Seafarers and the Local Labour Relations Commissions for Seafarers. In this case, "seven or more" in Article 19-3, paragraph 5 shall be read as "three or more"; "the Prime Minister" in Article 19-7, paragraph 2 shall be read as "the Minister of Land, Infrastructure and Transport"; "with the consent of the Central Labour Relations Commission in the case of an employer member or a labour member, or with the consent of both Houses in the case of a public member" in the same paragraph shall be read as "the Central Labour Relations Commission for Seafarers"; "the Prime Minister" in paragraph 3 of the same Article shall be read as "Minister of Land, Infrastructure and Transport"; "an employer member or a labour member" in the same paragraph shall be read as "a member of the Central Labour Relations Commission for Seafarers"; "Minister of Health, Labor and Welfare" in Article 19-11, paragraph 1 shall be read as "Minister of Land, Infrastructure and Transport"; "under the jurisdiction of the prefectural governors" in paragraph 1 of the preceding Article shall be read as "whose jurisdictional area shall be that of each Local Transport Bureau (excluding areas fixed by cabinet order for Local Transport Bureaus fixed by cabinet order) and the area fixed by the cabinet order concerned, and, for the time being, the area of Okinawa prefecture"; "the prefectural governor" in paragraph 4 of the same Article shall be read as "Minister of Land, Infrastructure and Transport"; "In cases concerning the labour relations of employees of the national enterprises and specified independent administrative institution, the Central Labour Relations Commission shall assume exclusive jurisdiction over conciliation, mediation, arbitration, and disposition (with respect to disposition under the provisions of Article 5, paragraph 1, and Article 11, paragraph 1 concerning a trade union which is organized or joined by employees of the national enterprises or employees of specified independent administrative institution, such disposition shall be restricted to that fixed by cabinet order); and the Central Labour Relations Commission shall assume initial jurisdiction over conciliation, mediation, arbitration, and disposition, in cases which span two or more prefectures" in Article 25, paragraph 1 shall be read as "shall assume initial jurisdiction over conciliation, mediation, arbitration, and disposition, in cases which span two or more jurisdictional areas of the Local Labour Relations Commissions for Seafarers."

5. The provisions of paragraph 5 of the preceding Article shall apply mutatis mutandis to a public member of the Central Labour Relations Commission for Seafarers.

(Authority of the Labour Relations Commissions)

Article 20. In addition to those matters pursuant to the provisions of Articles 5, 11, 18 and 27, the Labour Relations Commissions shall have authority to perform conciliation, mediation and arbitration of Labour disputes.

(Meetings)

Article 21. When a Labour Relations Commission deems it necessary for the public welfare, its meetings may be made public.

2. The meetings of a Labour Relations Commission shall be called by the chairman.

3. The Labour Relations Commission shall not open a meeting nor make any decision unless at least one employer member, one labour member and one public member is present.

4. Matters shall be decided by a majority of the members present, and in case of a tie matters shall be decided by the chairman.

(Authority for Compulsion)

Article 22. When a Labour Relations Commission deems it necessary for carrying out its work, the Labour Relations Commission may demand the attendance of or the presentation of reports or the presentation of necessary books and documents by the employer or the employers' organization or by the trade union or others concerned, and the Labour Relations Commission may also have its members or staff (hereinafter referred to simply as "staff") inspect factories and other workplaces concerned and inspect the conditions of business, books and papers and other objects.

2. In the event the Labour Relations Commission has its members or staff inspect or investigate pursuant to the preceding paragraph, the Labour Relations Commission shall require them to carry a certificate certifying their positions and to show such certificate to persons concerned.

(Duty to Keep Secrets)

Article 23. Members and those who have been members as well as the staff or those who have been on the staff of a Labour Relations Commission shall not disclose any secret information obtained in performing their functions. The same shall apply to Local Members for Adjustment and those who have been Local Members for Adjustment of the Central Labour Relations Commission.

(Authorities Which Is Carried Out Only by Public Members)

Article 24. Only the public members of a Labour Relations Commission shall participate in the disposition of cases arising under Articles 5, 7, 11 and 27 hereof and under Article 42 of the Labour Relations Adjustment Law; provided, however, that this shall not preclude employer members and labour members from participating in hearings held prior to a decision.

2. The Central Labour Relations Commission may have public members in full-time positions investigate conditions of labour relations of employees of the national enterprises and employees of specified independent administrative institution deemed necessary for dealing with the business of the Central Labour Relations Commission, in addition to matters relating to cases pending before the Central Labour Relations Commission.

(Authority of the Central Labour Relations Commission)

Article 25. In cases concerning the labour relations of employees of the national enterprises and employees of specified independent administrative institution, the Central Labour Relations Commission shall assume exclusive jurisdiction over conciliation, mediation, arbitration, and disposition (with respect to disposition under the provisions of Article 5, paragraph 1 and Article 11, paragraph 1 concerning a trade union which is organized or joined by employees of the national enterprises or employees of specified independent administrative institution, such disposition shall be restricted to that fixed by cabinet order); and the Central Labour Relations Commission shall assume initial jurisdiction over conciliation, mediation, arbitration, and disposition, in cases which span two or more prefectures or which present issues of national importance.

2. The Central Labour Relations Commission may review the dispositions of the Local Labour Relations Commission pursuant to the provisions of Articles 5, 7 and 27 with full authority to reverse, accept, or modify such dispositions, or it may reject an appeal for review of such dispositions. Such review shall be initiated by appeal of either party from the disposition of the Local Labour Relations Commission, or ex officio.

(Authority to Establish Rules)

Article 26. The Central Labour Relations Commission shall have authority to formulate and promulgate rules of procedure for the Local Labour Relations Commission, as well as rules of procedure for its own proceedings.

(Orders, etc., of the Labour Relations Commission)

Article 27. When a complaint that an employer has violated the provisions of Article 7 is received, the Labour Relations Commission shall make an investigation without delay and, if it is deemed necessary, shall hold a hearing on the merits of the complaint. Such investigation and hearing shall follow the rules of procedures prescribed by the Central Labour Relations Commission, as provided for in the preceding Article, and, in the procedures for such hearing, sufficient opportunity to present evidence and cross-examine the witnesses shall be given to the employer concerned and to the complainant

2. The Labour Relations Commission shall not accept a complaint under the preceding paragraph when more than one year has elapsed since the day on which the act in question was committed (and, in the case of a continuing act, from the date on which such act ended).

3. The Labour Relations Commission, in conducting the hearing under paragraph 1, may demand the attendance of witnesses and put questions to them, at the request of the parties concerned or ex officio.

4. At the conclusion of the-hearing procedures under paragraph 1, the Labour Relations Commission shall make findings of fact and issue its order in accordance therewith, either granting in full or in part the remedies sought by the complaint or dismissing the complaint. Such findings of fact and such order shall be in writing, and a copy thereof shall be served on the employer concerned and to the complainant. Such order shall take effect from the date of service. Proceedings under the provisions of this paragraph shall be in accordance with the rules of procedure prescribed by the Central Labour Relations Commissions, as provided for in the preceding Article.

5. The employer may, within a period of 15 days from receipt of the order from the Local Labour Relations Commission (or, where there has been an unavoidable reason such as a natural disaster, or other reason why the request for review was not filed within this period, within a week from the day after the termination of that reason), file a request for review by the Central Labour Relations Commission, provided, however, that such a request shall not have the effect of staying the order concerned and such order shall lose its force and effect only when the Central Labour Relations Commission reverses or modifies it as a result of review in accordance with the provisions of Article 25.

6. In the event the employer elects not to request review by the Central Labour Relations Commission of the order of the Local Labour Relations Commission, or in the event the Central Labour Relations Commission has issued an order, the employer may, within 30 days from the date of service of the order concerned, file an appeal to cancel the order concerned. This period shall be an unchangeable period.

7. In the event the employer files a request for review by the Central Labour Relations Commission in accordance with the provisions of paragraph 5, the employer may file an appeal for cancellation only with respect to an order issued by the Central Labour Relations Commission on the request for review. The provisions of paragraph 3 of Article 12 of the Administrative Case Litigation Law (Law No. 139 of 1962) shall not be applicable to such appeal.

8. In the event the employer files an appeal with a court in accordance with the provisions of paragraph 6, the court with which the appeal is filed may, at the request of the Labour Relations Commission concerned, issue an order in the form of a decision to require the employer concerned to comply in full or in part with the order of said Labour Relations Commission pending final judgment by the courts, or it may cancel or modify the decision on application by the parties concerned or ex officio.

9. In the event the employer does not file an appeal with respect to an order of the Labour Relations Commission within the period under paragraph 6, such order of the Labour Relations Commission concerned shall become fixed. In this case, if the employer does not comply with the order of the Labour Relations Commission, the Labour Relations Commission shall so notify the District Court in the place where the employer's domicile is located. The worker may also make such notifications.

10. In the event the whole or a part of the order of a Local Labour Relations Commission is upheld in a final judgment on an appeal under paragraph 6, the Central Labour Relations Commission cannot review such order of the Local Labour Relations Commission.

11. The provisions of paragraph 5 shall apply *mutatis mutandis* to a request for review to the Central Labour Relations Commission by the trade union or the worker, and the provisions of paragraph 7 shall apply *mutatis mutandis* to an appeal for cancellation filed by the trade union or the worker in accordance with the provisions of the Administrative Case Litigation Law.

12. The provisions of paragraphs 1, 3 and 4 shall apply *mutatis mutandis* to the procedures for review by the Central Labour Relations Commission.

13. Notwithstanding the provisions of Article 24, paragraph 1, the Central Labour Relations Commission may have the Local Members for Adjustment representing the public interest carry out an investigation or conduct a hearing in regard to a complaint as provided for in paragraph 1 or a request for review as provided for in paragraph 5 or paragraph 11, with respect to cases pending before the Central Labour Relations Commission, and in accordance with the provisions of the rules of procedures prescribed by the Central Labour Relations Commission as provided for in the preceding Article. In this case, the Local Members for Adjustment representing the employers and the Local Members for Adjustment representing workers may participate, in the hearing concerned.

(Compensation for Expenses)

Article 27-2. Those who have been required to attend pursuant to the provisions of Article 22, paragraph 1, or Article 27, paragraph 3, may be compensated for their expenses as fixed by cabinet order.

(Exception from Application of Administrative Procedural Law)

Article 27-3. The provisions of Chapter 2 and Chapter 3 of the Administrative Procedural Law (Law No. 88 of 1993) shall not apply to dispositions which the Labour Relations Commission conducts.

(Restriction on Filing of Objections)

Article 27-4. No objection may be filed under the Administrative Complaint Investigation Law (Law No. 160 of 1962) with respect to dispositions made by a Labour Relations Commission.

CHAPTER V. PENALTIES

Article 28. In the event of a violation of an order of the Labour Relations Commission pursuant to the provisions of Article 27, when the whole or a part of said order has been sustained by the final judgment of the courts, those who have committed such a violation shall be liable to imprisonment not exceeding one year or to a fine not exceeding one hundred thousand yen, or to both.

Article 29. Those who have contravened the provisions of Article 23 shall be liable to imprisonment at hard labour not exceeding one year or to a fine not exceeding thirty thousand yen.

Article 30. Those who have failed to present reports or made false reports or failed to submit books or papers in violation of the provisions of Article 22; and those who have failed to present themselves in violation of the provisions of the same Article; and those who have refused, obstructed, or evaded inspection under the provisions of the same Article shall be liable to a fine not exceeding thirty thousand yen.

Article 31. When an agent, co-habitant, employee, or other worker of a juridical person or a person has violated the provisions of the first clause of the preceding Article, in connection with the business of said juridical person or of the person, said juridical person or person shall not be immune from penalty by reason of not having given an instruction for such a violation.

2. The provisions of the first clause of the preceding Article shall apply, in the case of a juridical person, to the directors, managers or other officers who execute the business of such juridical person and, in the case of a minor or an adult ward, to the legal representative of such minor or adult ward (if the statutory agent is a corporation, the representative thereof); provided, however, that this rule shall not apply to a minor having the same capacity as an adult in the performance of business.

Article 32. In the event an employer has violated an order of a court under the provisions of Article 27, paragraph 8, such employer shall be liable to a non-penal fine not exceeding one hundred thousand yen (and if the order concerned requires affirmative action, to a fine not exceeding the total amount of money obtained by multiplying one hundred thousand yen by the number of days of non-compliance). The same shall apply in the event an employer has violated an order of the Labour Relations Commission which has become final pursuant to the provisions of Article 27, paragraph 9.

Article 33. In the event that the liquidator of a trade union which is a juridical person has violated the provisions of the Civil Code which are applied *mutatis mutandis* under Article 12 of this Law and has committed an act which is made punishable under the provisions of Article 84 of the Civil Code, such liquidator shall be subject to a fine of the same amount as provided for in said Article of the Civil Code.

2. The provisions of the preceding paragraph shall apply *mutatis mutandis* to the representative of a trade union which is a juridical person when such representative has failed to register changes in the matters registered concerning said juridical person, as provided in a cabinet order issued under the provisions of Article 11, paragraph 2 of this Law.

Supplementary Provisions

1. The date of enforcement of this Law shall be within thirty days from the day of promulgation and shall be fixed by cabinet order. (The rest is omitted.)

Source: The Japan Institute for Labour Policy and Training (Tentative translation by the specialist): <http://www.jil.go.jp/english/laborinfo/library/documents/llj_law2.pdf>.

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