

# MOBILIZING INTERNATIONAL NORMS

## Domestic Actors, Immigrants, and the Japanese State

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AFTER a long period of relative silence, international relations scholars are beginning to talk about immigration and immigrants.<sup>1</sup> One important theme in these discussions has been the question of whether, and if so how, states are constrained in developing immigrant and immigration policies. On one side of this debate are scholars, largely outside of the field of political science, arguing that governments are constrained by international human rights standards in setting immigrant policy. Soysal, for example, argues that a postwar discourse on rights endows people, rather than just citizens, with rights and that this international discourse is propelling a trend toward international standardization of rights for noncitizens.<sup>2</sup> Similarly, Jacobson argues that citizenship has been devalued and that international

\* This project was researched with the support of an SSRC-MacArthur Peace and Security in a Changing World Fellowship, with additional travel support from the Cornell University Graduate School and Peace Studies Program, and was written while I was a visiting scholar at the School of International Relations, University of Southern California. An earlier version was presented at the annual meeting of the Western Political Science Association, Los Angeles, March 19–21, 1998. I would like to thank Peter Andreas, Patrick Ireland, Saori Katada, and Peter Katzenstein, as well as four anonymous reviewers, for comments and suggestions. I would also like to thank the Institute of Social Sciences at Tokyo University and especially David Leheny, for making my research in Tokyo extremely productive. Katherine Tegtmeyer Pak and Myron Weiner were extremely helpful in giving advice and contacts for my research in Japan. Finally, I would like to thank all of my interviewees, and especially those who wrote to government officials asking them to meet with me.

<sup>1</sup> For example, between 1980 and 1995 *International Organization* and *World Politics* published only two articles on immigration. Since 1995 they have published four: Leah Haus, "U.S. Immigration Policy and Labor," *International Organization* 49 (Spring 1995); Christian Joppke, "Why Liberal States Accept Unwanted Immigration," *World Politics* 50 (January 1998); Anthony M. Messina, "The Not So Silent Revolution: Postwar Migration to Western Europe," *World Politics* 49 (October 1996); and Jeannette Money, "The Political Geography of Immigration Control," *International Organization* 51 (Autumn 1997).

<sup>2</sup> Yasemin Nuhoğlu Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: Chicago University Press, 1994), 42, 131–32.

rights standards are increasingly important for immigrants to make claims against states.<sup>3</sup>

Others in the debate focus on the domestic level of analysis. They argue either that states extend unexpected rights to noncitizens or that they allow unwanted migration (1) because of the influence of liberal ideals embedded in liberal democracies,<sup>4</sup> (2) because domestic courts and the rule of law force governments to apply their liberal constitutions to noncitizens,<sup>5</sup> or (3) because of specific historical relationships that create moral obligations between sending and receiving states.<sup>6</sup> Still others argue that decisions about immigrants have nothing to do with human rights or liberal ideals, but are made for narrowly defined interest-based reasons, for example, to please a small number of disproportionately powerful interest groups<sup>7</sup> or to maintain racial harmony.<sup>8</sup>

Scholars falling into both latter categories (domestic ideas approaches and rationalist interest-based approaches) tend to be skeptical of arguments focusing on the international level. Discussing the extension of rights to immigrants in a recent *World Politics* article, Joppke states that “[a]mong the global factors either absent or ineffective in this discussion has been the ‘international human rights regime,’ perhaps the single most inflated construction in recent social science discourse.” He argues further that although an international human rights regime may indeed affect states, this has yet to be demonstrated. It is true that those asserting the importance of international human rights standards in immigrant policy have not sufficiently demonstrated their importance domestically. International norms and standards do not diffuse automatically or consistently across states. Soysal’s study, as well as many others focusing on the importance of international standards, does not examine either the mechanisms and agents of norm diffusion or how that diffusion varies across time and place.<sup>9</sup> In short, the

<sup>3</sup> David Jacobson, *Rights across Borders: Immigration and the Decline of Citizenship* (Baltimore: Johns Hopkins University Press, 1996), 9. See also Saskia Sassen, *Losing Control?* (New York: Columbia University Press, 1996). On the impact of international norms more generally, see the contributions to Peter J. Katzenstein, ed., *The Culture of National Security: Norms and Identity in World Politics* (New York: Columbia University Press, 1996).

<sup>4</sup> James F. Hollifield, “Migration and International Relations: Cooperation and Control in the European Community,” *International Migration Review* 26, no. 2 (1992).

<sup>5</sup> Joppke (fn. 1), 281–87; and Hollifield (fn. 4), 222.

<sup>6</sup> Messina (fn. 1), 141–45; and Joppke (fn. 1), 271.

<sup>7</sup> Gary P. Freeman, “Modes of Immigration Politics in Liberal Democratic States,” *International Migration Review* 24, no. 4 (1995).

<sup>8</sup> Messina (fn. 1), 147.

<sup>9</sup> It should be stressed that Soysal does look at difference across states, which in fact makes up the bulk of the book. The point is that those differences are in the policies themselves and are seen as resulting from domestic structures. They are not differences in how states react to international norms or in how they incorporate them, and they do not account for change across time. For another examination

scholars sometimes referred to as “globalists” have examined the nature of these international standards and have noted correlations between these standards and state behavior, but they have not engaged in “detailed process tracing by which their soft power may become domestically effective.”<sup>10</sup> Indeed, in Joppke’s view, there may be little process to trace.<sup>11</sup>

This article addresses the gap between these scholars by using process tracing to examine changing policies toward both Koreans and recent migrant workers in Japan. Koreans have been blatantly discriminated against, officially and unofficially, since World War II. Recent migrant workers, while needed in Japan, are neither wanted nor encouraged to stay. For both groups discrimination has been wide-ranging across the economic, social, and political spheres. Discrimination is also very common in social relations, where since the war, for example, marriage between Westerners and ethnic Japanese has been more acceptable than marriage between Japanese and other Asian groups. As I will discuss below, companies have been loath to hire Korean permanent residents, social benefits have been restricted to Japanese citizens, and the naturalization process has been onerous. But discriminatory policies have been changing, albeit slowly and at the margins. International norms have played a critical role in these changes, both in the courts and in activist demands against the government. The role of international norms has been central in part because these standards have provided pro-immigrant actors with a tool to use in their arguments against the government in the face of domestic resistance to change.

Japan represents a hard case where we would not expect international norms to have a significant impact. First, Japan has been extremely resistant to compromising its notions of ethnic homogeneity. Even if not an accurate portrayal of Japanese society, the ideal of homogeneity is seen as contributing to Japan’s economic success. Second, politics in Japan often focuses on the idea that Japan is unique in the international system and that the norms of that system do not accord

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of the role of domestic structures in the diffusion of norms, see Jeffrey Checkel, “International Norms and Domestic Institutions: Identity Politics in Post-Cold War Europe” (Paper presented at the annual meeting of the American Political Science Association, Chicago, 1995).

<sup>10</sup> Joppke (fn. 1), 269.

<sup>11</sup> Ibid. On the need for process tracing, see Martha Finnemore, “Norms, Culture, and World Politics: Insights from Sociology’s Institutionalism,” *International Organization* 50 (Spring 1996). Jeffrey Checkel argues that constructivists in general have failed to sufficiently examine agency, the causal mechanisms by which norms have domestic effects, and why norms diffuse differently. See Checkel, “The Constructivist Turn in International Relations Theory,” *World Politics* 50 (January 1998).

with Japanese domestic norms. Third, while I will not discuss this here, Japan sees itself as a powerful state that should be able to resist international norms if it wishes to do so. But international norms have mattered in Japan and continue to do so. Where there are few domestic resources available, international norms may have an impact on policy in direct and observable ways; but we need to explain the mechanisms and processes by which they do so, and why they matter when they do.

Before proceeding it is necessary to say what this argument is not. First, contrary to the oft asserted dichotomy between international and domestic levels of analyses, this is not about international versus domestic factors; it is, rather, about interaction. Domestic actors use international norms in specific domestic contexts to further their causes, and if those norms are to have any impact, states must incorporate them. In addition, while I do not address this here, governments are responsible for the development of most of these international norms in the first place. This is therefore not an argument about loss of control or the withering away of the state. States are not paralyzed by international norms. On the contrary, state actors are actively involved in the process of integrating international standards domestically. This is a critical point, because if we expect government officials to react to international norms as if they were guns pointed at their heads, we will see little influence. International norms can matter only when they are used domestically and when they work their way into the political process; the question of whether the influence is internal or external is therefore a distinction of limited use.

Second, this argument is not about international norms mattering everywhere all the time. The impact of international norms varies across time and place, and it is only through detailed process tracing that we can understand when and where they matter. Among other factors, variation is due to how the government views the international society in which these norms are embedded, and what the domestic politics about the issue-area in question are. My research on Germany, for example, finds that international norms have not played a direct role in recent policy-making toward immigrants. That said, if we look for the influence of international norms in a less direct way, we find a somewhat different story. Policy toward migrants in Germany is in a sense self-limited, as opposed to externally limited. But to account for change in a particular state over time we often need to examine how that self is transformed, at times under the influence of international norms. For example, the "emergent moral consensus among the political elites to cope humanely with the consequences of guest-worker re-

cruitment" noted by Joppke is partly due to a select few elites being influenced by international and regional standards, whether they appear in written treaties or simply are norms commonly practiced in Europe.<sup>12</sup> These standards allow pro-immigrant actors to point out, for example, that Germany's policy of pure *jus sanguinis* is outdated. Yet in contrast to the Japanese case, the impact of international norms is broad and diffuse. It is difficult to attribute specific policy changes to international norms, and domestic explanations have proved more important. These differences in how international norms affect political debates in Germany and Japan are largely due to differences in how each state views the international society in which those norms are embedded.<sup>13</sup> Germany is more secure in its international and regional standing and can therefore more easily resist international norms that run counter to domestic ones (as these norms do in both states). Japan, as I discuss in this article, is engaged in debates about internationalization that leave it, somewhat paradoxically, more vulnerable to arguments invoking international standards.

In the remainder of this article I first discuss how norms matter. In the next section I examine their impact on Koreans, arguing that many of the changes toward Koreans made in the early 1980s are attributable to newly ratified international covenants. Finally, I examine changes toward more recent migrant workers.

### INTERNATIONAL NORMS AND DOMESTIC CONTEXT

I define norms as standards of appropriate and legitimate behavior. These norms may be consciously cultivated in international forums or result from common practice among states. A full description of the international human rights norms relevant for immigrants is beyond the scope of this article and here I simply draw attention to three categories of norms. First, general human rights and antidiscrimination norms, because they tend to apply to persons, not only citizens, are relevant to immigrants.<sup>14</sup> Second, there are norms aimed specifically at minorities.

<sup>12</sup> Joppke (fn. 1), 286.

<sup>13</sup> This article is part of a larger project examining the impact of international human rights norms on immigrant policy in Germany, Japan, Canada, and Malaysia. In this project I argue that we can understand variation in the impact of international norms only by examining how those norms are mobilized by domestic actors and how their impact is mediated by specific state histories and identities. While the amount of detailed process that can be discussed in this article is limited by space, more detail can be found in this larger project. Gurowitz, "Mobilizing International Norms: Domestic Actors, Immigrants, and the State" (Ph.D. diss., Cornell University, 1999).

<sup>14</sup> Soysal (fn. 2), 41. Important international agreements include the Universal Declaration of Human Rights, the two UN Human Rights Covenants, the Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination against Women.

While many minority rights norms are geared toward national minorities, not immigrant groups or migrant workers, a number of them are relevant in that they address general factors such as assimilation versus cultural pluralism, and the broader issue of how the state incorporates difference.<sup>15</sup> Finally, there are norms aimed specifically at migrant workers.<sup>16</sup>

Shifts in norms, whether domestic or international, can make room for new voices by altering contexts and making new types of action possible. For example, in the absence of any norms about women's rights, women's claims about sexual harassment cannot be heard. Once norms are developed stating that women have a right to not be harassed, women's claims can be heard as coming from legitimate voices.<sup>17</sup> Pro-immigrant actors, potentially including nongovernmental organizations (NGOs), academics, lawyers, and the media, use these international norms to further their causes and to pressure governments to change their policies and approaches toward immigrants.<sup>18</sup> In addition, state actors may be involved, although the extent and form of their involvement varies across countries. As I discuss below, in the Japanese case local government bureaucracies have often allied themselves with local activists. At the national level the Ministries of Foreign Affairs and Labor (MOFA and MOL) have at certain times invoked international norms, although their concerns have tended to be more narrow than those of NGOs and not directly related to immigrant rights per se. During the late 1980s, for example, the MOFA was concerned with international reputation and the MOL was concerned with the growing demand for labor. In many other countries, including Germany, there is a national government office devoted to immigrant rights and integration, and state actors in these offices may play a role similar to that of NGOs (that is, pressuring other, more powerful state actors).<sup>19</sup>

<sup>15</sup> See, for example, article 27 of the International Covenant on Civil and Political Rights.

<sup>16</sup> Two of the most important international documents for migrant workers are International Labor Organization Convention 143 and the Council of Europe Convention on Migrant Workers. The recent UN Convention on the Rights of Migrant Workers and Their Families has had little impact, as very few states have ratified it.

<sup>17</sup> Finnemore makes a similar argument when she states that nonwhite and non-Christian states can now make claims that they previously could not because they were not viewed as legitimate actors. See Martha Finnemore, "Constructing Norms of Humanitarian Intervention," in Katzenstein (fn. 3).

<sup>18</sup> The media first picked up the issue of migrant rights in the mid-1980s, when they began reporting on undocumented, often female, migrants. By 1988 they were reporting more widely on a variety of migrant issues. See Masami Sekine, "Guest Worker Policies in Japan," *Migration* (September 1991), 54; and Marilyn Selby, "Human Rights and Undocumented Immigrant Workers in Japan," *Stanford Journal of International Law* 26, no. 1 (1989), 354.

<sup>19</sup> This article offers no theory regarding when state versus nonstate actors will mobilize international norms. In the cases examined in my larger project, differences depended on which government offices were involved in immigrant issues. One avenue to answer the question of when state versus

Norms not only legitimate the causes that activists such as NGOs fight for, they may actually legitimate the actors themselves. David Martin argues that between 1945 and the 1970s United Nations pronouncements on human rights were routine and were not widely expected to have any real impact on government practice.<sup>20</sup> Nonetheless, these pronouncements and documents can now be invoked in NGO claims against governments, sometimes lending support to those claims. These standards “transform the NGO from a busybody unjustifiably poking its nose into someone else’s business into a steward of agreed international principles, simply asking questions or pressing points it has a right to care about.”<sup>21</sup>

But while international norms are often a critical source of ideas for change in state policy, there is a great deal of variation in their impact. In order to understand this variation we need to go beyond correlating international norms with state behavior, to detailed process tracing examining the domestic mechanisms by which norms have effects. This involves two moves: first, a focus on the actors who mobilize international norms; and second, an examination of the specific domestic circumstances that those actors confront. Pro-immigrant activists use international norms as they use other tools at their disposal. But they do so only when they believe that those norms will enhance their arguments. In Malaysia, for example, where invocation of international norms often results in activists being accused of being pawns of the West, those activists may need to turn to other, more indigenous resources. Only by examining the dynamics of activism and the standing of international norms with the government can one illuminate the ways in which activists in Malaysia are at the same time empowered by those norms in their internal workings and constrained in their dealings with the government.

It might be argued that the use of international norms to back NGO arguments is unsurprising, since it may be the case that activists will use

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nonstate actors will be involved lies in the work of a number of authors who have begun examining the interaction between transnational variables and domestic structures. Checkel, for example, argues that a state’s domestic structure shapes who the agents of normative change will be (societal pressure or elite learning) and what the likelihood of norm institutionalization will be. For a related study, see Risse-Kappen’s examination of two variables that help determine the impact of transnational movements: the degree to which an issue-area is institutionalized internationally and a state’s domestic structure. See Checkel (fn. 9); and Thomas Risse-Kappen, “Bringing Transnational Relations Back In: Introduction,” in Risse-Kappen, ed., *Bringing Transnationalism Back In: Non-State Actors, Domestic Structures and International Institutions* (Cambridge: Cambridge University Press, 1995).

<sup>20</sup> David A. Martin, “Effects of International Law on Migration Policy and Practice: The Uses of Hypocrisy,” *International Migration Review* 23, no. 2 (1989), 552.

<sup>21</sup> *Ibid.*, 554.

any argument that works.<sup>22</sup> While perhaps not surprising from this perspective, the fact that international norms provide an additional weapon in the arsenal of claims that activists (be they NGOs, lawyers, and so on) can make and the fact that they sometimes work are not trivial points for a number of reasons. First, the invocation of international norms and the success of such invocations vary across time and place, and that variation warrants investigation. Second, it should be noted that the success or failure of relatively weak actors, those with access to few material incentives, will often hinge on how powerful an argument they can make from a moral standpoint or from the standpoint of a government concerned with reputation. In short, the fact that international arguments are often among the most powerful arguments that these actors can make is significant. Finally, this is a relatively recent development, at least as a reasonably widespread phenomenon, and it is often downplayed in the literature because it has not been adequately explored.

Immigrant activists in Japan face a government that is quite resistant to integrating immigrants, as well as to international norms calling for increased rights and integration. This is the case for two reasons, both rooted in Japanese history. First, Japan is ethnically, racially, and linguistically much less diverse than most other countries in the world (see Table 1). More importantly, the notion (as a description and an ideal) of Japan as a homogeneous nation based on racial identification has been actively promulgated since the Meiji period, as has the view that uniqueness (*Nihonjinron*) and homogeneity are important factors in the success of the Japanese state.<sup>23</sup> Myron Weiner argues that the Japanese emphasize their uniqueness, as do Americans, but while the latter's conception of uniqueness "is universalism (others can be like us), the Japanese sense of uniqueness is a denial of any universal mission (no one can be like us)."<sup>24</sup>

As Yoko Sellek points out, lineage and race are seen as the primary determinants of Japaneseness.<sup>25</sup> Definitions of statehood are rarely ex-

<sup>22</sup> One reviewer made this argument with regard to court cases.

<sup>23</sup> On the building of Japanese nationhood, see especially Carol Gluck, *Japan's Modern Myths* (Princeton: Princeton University Press, 1985). On the importance of the ideal of homogeneity in the context of immigration, see Yoko Sellek, "Nikkeijin: The Phenomenon of Return Migration," in Michael Weiner, ed., *Japan's Minorities: The Illusion of Homogeneity* (London: Routledge, 1997); and Millie Creighton, "Soto Others and Uchi Others: Imaging Racial Diversity, Imagining Homogeneous Japan," in Weiner.

<sup>24</sup> Myron Weiner, "Opposing Visions: Migration and Citizenship Policies in Japan and the United States," in Myron Weiner and Tadashi Hanami, eds., *Temporary Workers or Future Citizens* (New York: New York University Press, 1998), 7.

<sup>25</sup> Sellek (fn. 23), 201.



TABLE 1  
FOREIGN POPULATION IN SELECT OECD COUNTRIES

<i>Country</i>	<i>Foreign Population as % of Total Population as of 1996</i>
Austria	9.0
Belgium	9.0
Denmark	4.7
Finland	1.4
France	6.3
Germany	8.9
Ireland	3.2
Italy	2.0
<b>Japan</b>	<b>1.1</b>
Luxembourg	34.1
Netherlands	4.4
Norway	3.6
Portugal	1.7
Spain	1.3
Sweden	6.0
Switzerland	19.0
United Kingdom	3.4

SOURCE: SOPEMI, *Trends in International Migration: Continuous Reporting System on Migration* (Paris: OECD, 1998).

pressed in Japan. Rather, the state is considered the extension of the family and local community, the expression of a grouping based on common blood, language, and culture. Of course the Japanese state does not consist of a homogeneous group. Not only are there recent immigrants like Koreans and a variety of Asian migrant workers, but Japan was a colonial power (from 1895 to 1945 in Taiwan and from 1910 to 1945 in Korea) with experience in both diversity and, to some degree, intermarriage.<sup>26</sup> Finally, there are indigenous minorities like the Ainu and racialized groups like the Burakumin. As Millie Creighton points out, "Japan's self-assertion of an imagined homogeneous self maintains its minorities in a living contradiction."<sup>27</sup> However, it should be noted that the majority of Japanese, as well as the government, consider the Ainu and Burakumin to have been incorporated into the Japanese homogeneous nation (although they are still discriminated

<sup>26</sup> Japanese imperialism mirrored Western imperialism in its "civilizing" mission and its use of unequal treaties and other policies used by the West in Japan. The Sino-Japanese War, out of which the Japanese received Taiwan, is said to have put Japan on the imperialist map.

<sup>27</sup> Creighton (fn. 23), 213.

against).<sup>28</sup> Because the government does not consider these groups to be of a different "race," it has frequently denied the existence of minorities in the country.<sup>29</sup>

Second, for reasons involving the history of Japan's entry into international society, the Japanese state is reluctant to engage fully in international society and its norms.<sup>30</sup> In comparison with most other industrialized states, Japan identifies relatively weakly with international society, working with "core" members but seeing itself as somewhat removed from them. The government engages only hesitantly in international activities (although this is slowly changing) and it is less committed to multilateralism than many other developed states.<sup>31</sup>

As a result, Japan does sometimes adopt international norms wholeheartedly, but it does so not because it sees those norms as relating to domestic politics or as a natural extension of Japanese domestic norms. Rather, adoption of norms is seen as the necessary price of existence in the outside world. When those norms clash with domestic norms, however, or when external pressure is not sufficiently strong, the government is reluctant to adopt them.<sup>32</sup> Furthermore, even when international norms do not clash significantly with domestic norms, the government still often does not adopt them, simply because the international arena is not an intuitive or obvious place for the government to look in developing domestic policy. While there are a number of examples of the Japanese government being influenced by international norms, Japan's ratification rate for international agreements on human

<sup>28</sup> The Burakumin are of the same lineage as other Japanese but are a minority group because of their historic status as outcasts.

<sup>29</sup> For example, in response to a UN call for the elimination of discrimination against minorities, the government stated that there were no minorities in Japan and therefore no discrimination. Creighton (fn. 23), 227.

<sup>30</sup> I discuss Japan's international identity at length in my dissertation; Gurowitz (fn. 13). See also Peter J. Katzenstein, *Cultural Norms and National Security: Police and Military in Postwar Japan* (Ithaca, N.Y.: Cornell University Press, 1996); Kent E. Calder, "Japanese Foreign Economic Policy Formation: Explaining the Reactive State," *World Politics* 40 (July 1988); Peter Duus, *The Rise of Modern Japan* (Boston: Houghton Mifflin Company, 1976), 255; Takashi Inoguchi, *Japan's Foreign Policy in an Era of Global Change* (London: Pinter Publishers, 1993), 65; and Masaru Tamamoto, "The Ideology of Nothingness: A Meditation on Japanese National Identity," *World Policy Journal* 11 (Winter 1994), 96.

<sup>31</sup> This description draws on Peter Katzenstein's conceptualization of Japan as a Hobbesian state. It is also related to Duus's reference to Japan as the "reluctant giant" and to Takashi Inoguchi's application of David Lake's term "supporter" to describe Japan's position in the international system. See Katzenstein (fn. 30); Duus (fn. 30), 255; Inoguchi (fn. 30), 65. Karel van Wolferen, in a chapter title, refers to Japan as being "in the world but not of it." Van Wolferen, *The Enigma of Japanese Power* (New York: Alfred A. Knopf, 1989), chap. 16.

<sup>32</sup> Katzenstein points out that this external pressure, or *gaiatsu*, has become institutionalized such that domestic actors may exploit foreign pressure to sell unpopular policies at home. See Katzenstein (fn. 30), 38.

TABLE 2  
RATIFICATION RATES AMONG OECD COUNTRIES<sup>a</sup>

<i>Country</i>	<i># of Human Rights Conventions State Is Party to</i>	<i># of Human Rights Conventions State Is Signatory to</i>
Australia	19	
Austria	19	
Belgium	20	1
Canada	17	
Czech Republic	18	
Denmark	19	1
Finland	21	
France	20	
Germany	20	
Greece	19	
Hungary	19	
Iceland	16	1
Ireland	16	4
Italy	21	
<b>Japan</b>	<b>13</b>	
South Korea	14	
Luxembourg	20	
Mexico	18	
Netherlands	20	
New Zealand	17	
Norway	21	
Poland	20	
Portugal	17	
Russia	21	
Spain	21	
Sweden	20	
Switzerland	15	1
Turkey	13	2
United Kingdom	17	2
United States	11	6

SOURCE: U.S. Government, Department of State, *Country Reports on Human Rights Practices for 1996* (Washington: U.S. Government Printing Office, 1997), 1501-1505.

<sup>a</sup>This table shows the number of major international human rights conventions tracked by the U.S. government that OECD states are party to or have signed as of 1996. These twenty-two conventions include both international human rights covenants. The U.S. tracks twenty-three conventions, but since one is a European convention I have left it out.

rights is significantly lower than that of almost all other OECD countries (see Table 2).<sup>33</sup>

<sup>33</sup> Two examples of the impact of international standards should be noted. First, Frank Upham argues that during the mid-1970s, under the impetus of the UN Declaration of the UN Decade for Women, the Japanese government committed itself to ending gender discrimination by 1985, and in

Yet there is another side to Japan's international identity. While Japan has continued to view itself, and to be viewed, as one step removed from the Western developed states in international society, an ongoing theme in Japanese state identity since the Meiji period has been to avoid being alienated from these same states. Minimal adoption of the norms accepted by that peer group is often seen within Japan and also outside as necessary for the country to maintain its place in the international system. The tensions created by this inside/outside relationship with international society result today in a general approach to international norms that is not necessarily resistant to their content (although it is in the case of immigrant rights) but that also does not see them as integral to state identity.

These two identity factors, national and international, clarify the domestic context faced by pro-immigrant activists and help account for the fact that international norms had little impact in the early postwar period. But, as I discuss in the next section, since the late 1970s, and in particular since the mid-1990s, pro-immigrant activists empowered by international norms have been more successful. During this later period the Japanese government has been increasingly sensitive to the perceptions of other states, as questions about the integration and treatment of non-Japanese have been brought up in the same context as questions about internationalization—historically, a very important theme in Japan, as we have seen.

Most importantly for this study, the government's sensitivity to issues of internationalization has been usefully exploited by pro-immigrant actors. The debate over internationalization and the concern for international reputation have created an opening for the growing number of NGOs and other pro-immigrant actors to pressure the government. Since compliance with dominant norms is one sign of integration into international society, the Japanese government has been moved to take action on norms that it had previously ignored, and this has led directly to changes in policies toward immigrants.

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1980 the government signed the Convention on the Elimination of All Forms of Discrimination against Women. Second, in 1957 Japan's workers' delegate appealed to the ILO for support in a conflict between the government and two unions. This began a long debate between the Japanese government, the unions, and the ILO over issues involving union membership. In 1965 the Diet ratified ILO convention 87 and changed its laws to comply with that convention. Ehud Harari argues that union leaders internationalized their demands because they believed that there was a good chance that government officials would respond to international pressure because the government was increasingly aware of the disparity between its laws and those of other industrialized countries and because it was increasingly sensitive to international criticism as it was trying to enhance its prestige abroad. Harari, *The Politics of Labor Legislation in Japan* (Berkeley: University of California Press, 1973), esp. 174; and Frank K. Upham, *Law and Social Change in Postwar Japan* (Cambridge: Harvard University Press, 1987), esp. 148–51.

## KOREAN-JAPANESE: FROM DENATIONALIZATION TO LIMITED INTEGRATION<sup>34</sup>

### LEGAL/CONSTITUTIONAL STATUS

Most of the Koreans now living in Japan are immigrants or their descendants who migrated, or were forced to migrate, after Japan's 1910 annexation of Korea.<sup>35</sup> All Koreans became Japanese citizens in 1910, but a distinction based on lineage was maintained between ethnic Koreans and ethnic Japanese. Nonetheless, when male suffrage was passed in 1925, Korean men were given the vote.<sup>36</sup> In the early days of the postwar occupation the Supreme Commander for the Allied Powers (SCAP) did not rule on the legal status of Koreans in Japan. This was followed by a series of confused moves, first putting Koreans under the jurisdiction of the Japanese and then stating that Koreans would be able to make their own nationality decisions. In short, for the most part the decision of how to classify Koreans was left to the Japanese authorities.<sup>37</sup>

In May 1947 Japan enacted an Alien Registration Law, forcing Koreans to register and classifying them as aliens. This deprived them of their citizenship rights, required them to carry registration cards, and gave local governors the right to deport those sentenced for crimes. Nine days before the peace treaty went into effect, the government announced that since Korea was no longer part of Japanese territory, Koreans in Japan would lose their nationality.<sup>38</sup> Finally, in 1955 a law requiring the fingerprinting of all aliens over age fourteen was enacted.<sup>39</sup>

To make matters worse, there was little protection for noncitizens. After the war, the United States demanded that the new Japanese constitution include various human rights and equality provisions, includ-

<sup>34</sup> Research for this project is based on interviews conducted in early 1997, as well as on secondary sources. The section on Koreans necessarily relies more on secondary sources, backed up by interviews. The next section, based more on primary data, includes more detail about the role of international norms.

<sup>35</sup> There was very little migration during the first decade. Between 1920 and 1930 the Korean population in Japan increased tenfold, then threefold by 1940, and then doubled again by the end of the war. Forced migration began in 1939. See Changsoo Lee and George De Vos, *Koreans in Japan: Ethnic Conflict and Accommodation* (Berkeley: University of California Press, 1981), 35, 52. There were also Taiwanese immigrants, but because their numbers are quite small, I focus on Koreans here. However, the discussion and changes reviewed generally apply to both groups.

<sup>36</sup> Lee and De Vos (fn. 35), 51.

<sup>37</sup> *Ibid.*, 77.

<sup>38</sup> Because citizenship is based on *jus sanguinis*, and until 1985 only on patrilineal consanguinity, children born to denationalized Korean-Japanese are not Japanese citizens either. Interestingly, the Nationality Law of 1950 was made even more restrictive than the 1899 law had been, denying automatic acquisition of citizenship for certain categories of people such as spouses of Japanese citizens. See Lee and De Vos (fn. 35), 152.

<sup>39</sup> International Commission of Jurists, "Japan's Denationalisation of the Korean Minority," *Review* 29 (December 1982), 29–30.

ing protections for minorities. The SCAP draft constitution contained two articles guaranteeing rights to foreigners in Japan. Article 13 read: "All natural persons are equal before the law"; and article 16 stated: "Aliens shall be entitled to the equal protection of law."<sup>40</sup> The government changed "all natural persons" to "all of the people" (*subete no kokumin*) in article 13 and dropped article 16. From the perspective of Koreans, the problem is that *kokumin* is the semantic equivalent of the Japanese. After some debate in the government *kokumin* was adopted, and the rights of foreigners were essentially eliminated.<sup>41</sup> Between the 1950s and 1970s, then, Koreans were left with little protection, as the constitution was designed to allow the government to restrict the rights of noncitizens, which the Koreans had become.

Until the 1965 normalization treaty between the Republic of Korea and Japan, Koreans in Japan occupied an ambiguous status. In the preamble to the treaty the government recognized the long years of Korean residence in Japan, but the Koreans were nonetheless limited in their eligibility to become permanent residents. During the negotiations South Korea had insisted that permanent residence be granted to all future Korean residents in Japan, but the Japanese government refused to consider the proposal.<sup>42</sup> Since Japan did not recognize North Korea, those failing to acquire South Korean nationality were not eligible for permanent residence.<sup>43</sup>

#### KOREANS AND THE ROLE OF INTERNATIONAL NORMS AND LAW

With little domestic recourse, international standards took greater potential importance in the struggle for rights. But prior to 1979 Japan had ratified only two international human rights agreements and did not tend to take international standards into account more generally in formulating domestic human rights policies. In 1973, on the twenty-fifth anniversary of the Universal Declaration on Human Rights (UDHR), seventeen NGOs launched an appeal to the government to take immediate action on ratification of international human rights conventions. They made further appeals in 1974, 1976, and 1977, each on International Human Rights Day.<sup>44</sup> NGOs like the Japanese Civil

<sup>40</sup> Koseki Shoichi, "Japanizing the Constitution," *Japan Quarterly* 35, no. 3 (1988), 235.

<sup>41</sup> *Ibid.*, 234–40; and Paul Lansing and Tamra Domeyer, "Japan's Attempt at Internationalization and Its Lack of Sensitivity to Minority Issues," *California Western International Law Journal* 22, no. 1 (1991–92), 140.

<sup>42</sup> Lee and De Vos (fn. 35), 147.

<sup>43</sup> *Ibid.*, 148.

<sup>44</sup> Saito Yasuhiko, "Japan and Human Rights Covenants," *Human Rights Law Journal* 2, no. 1–2 (1981), 88–90.

Liberties Union lobbied vociferously for ratification of the International Covenant on Civil and Political Rights, and groups like the National Women's Committee of the UN, Amnesty International, the Tokyo Bar Association, and the Asian Human Rights Center attempted to embarrass the government by pointing up its poor ratification record in comparison with that of other states and by arguing that failure to ratify would "seriously damage the Japanese image as a peace-seeking nation that pledges to give first priority in her policy and diplomacy to the high ideals enshrined in the United Nations Charter."<sup>45</sup> During major debates over ratification in the Diet, Minister of Foreign Affairs Sunao Sonoda, in acknowledging the changing international environment in which the salience of human rights was increasing, stressed the importance for Japan of ratifying the covenants in order to pursue diplomacy on an equal basis with other states.<sup>46</sup>

Pressure to ratify should be placed in the larger historical context of internationalization. During the second half of the nineteenth century following the "opening" of Japan and throughout the Meiji period internationalization meant modernization and Westernization.<sup>47</sup> Herbert Passin argues that internationalization today can be seen on at least four levels: nationally in Japan's participation in international society; organizationally in the adjustment of Japanese organizations; culturally in the adaptation of Japanese culture to international interdependence; and individually at the level of popular culture.<sup>48</sup> He argues that internationalization involves "being in step with the world (*sekai nami*), where "the world" refers to the Western industrialized states.<sup>49</sup> The term internationalization (*kokusaika*) came into wide use in the 1970s and 1980s and refers to such diverse things as learning English, traveling abroad, keeping up technologically with other advanced industrial

<sup>45</sup> Quoted in Yasuhiko (fn. 44), 89–91. Yasuhiko was the chair for NGO meetings making these arguments to the government.

<sup>46</sup> Yasuhiko (fn. 44), 94.

<sup>47</sup> Gerrit Gong notes that the terms modernization, Westernization, and civilization were all used during the Meiji era. Gong, *The Standard of Civilization in International Society* (Oxford: Clarendon Press, 1984), 164.

<sup>48</sup> Herbert Passin, "Overview: The Internationalization of Japan—Some Reflections," in Hiroshi Mannari and Harumi Befu, eds., *The Challenge of Japan's Internationalization* (Hyogo, Japan: Kwansai Gakuin University, 1983), 20. On internationalization, see also Glenn D. Hook and Michael A. Weiner, eds., *The Internationalization of Japan* (London: Routledge, 1992); and Mannari and Befu.

<sup>49</sup> Passin (fn. 48), 21. See also Sadako Ogata, "Interdependence and Internationalization," in Hook and Weiner (fn. 48), 64. It should be noted though that internationalization does not refer only to Westernization. There have historically been strong counterarguments in Japan for Asianization, and today Japan is trying to become more integrated into the Asian region. I am grateful to Saori Katada for stressing this point.

states, and participating fully in international institutions.<sup>50</sup> While Japan has a long history of questioning its role in the world and specifically vis-à-vis the major powers and the West, this debate was reignited in the late 1970s and early 1980s, once Japan's role as a major economic power became clear. Hook and Weiner identify Prime Minister Nakasone's 1980 pledge to transform Japan into an international state as a seminal moment.<sup>51</sup> Whereas historical debates about internationalization involved catching up, contemporary debates are concerned with the idea that economic power brings with it new responsibilities that extend beyond the purely economic realm.<sup>52</sup>

The Japanese government's diverse policies aimed at meeting the demands of internationalization include developing closer links with European states and regional institutions<sup>53</sup> and, more recently, becoming increasingly involved in aid to Eastern Europe. Ezra Vogel points out that internationally minded Japanese have begun to envision their country taking a leadership role by assisting developing countries and championing their causes at international meetings, an idea reflected within the MOFA.<sup>54</sup> The government has also increased its role in Asia. One of the clearest shifts in Japan's international involvement and one with direct bearing on issues of immigrants is its participation in the UN human rights machinery and in the UN more generally.<sup>55</sup> Yasuhiro Ueki argues that Japan's attitude toward the UN has been ambivalent and pragmatic but that economic success is undermining the tenability of this position and creating expectations in and out of Japan that it will assume more global responsibility.<sup>56</sup>

Under this intense pressure to internationalize, the government in 1979 ratified both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights (ICCPR and ICESCR), in 1982 the Refugee Convention, in

<sup>50</sup> Weiner (fn. 24), 9. Weiner argues that internationalization did not mean the incorporation of foreigners into Japanese society. While this was clearly not the intent, I argue that the idea of a closed, ethnically homogeneous society has been called into question by the idea of internationalization and that the two issues are now intimately linked in domestic debates.

<sup>51</sup> Glenn D. Hook and Michael A. Weiner, "Introduction," in Hook and Weiner (fn. 48), 1.

<sup>52</sup> Ogata (fn. 49), 64.

<sup>53</sup> Dennis T. Yasutomo, "The Politicization of Japan's Post-Cold War Multilateral Diplomacy," in Gerald L. Curtis, ed., *Japan's Foreign Policy after the Cold War* (New York: M. E. Sharpe, 1993), 330.

<sup>54</sup> Ezra F. Vogel, "Pax Nipponica," *Foreign Affairs* 64 (Spring 1986), 756; and author interview with Haruka Okumura, Human Rights Division, Ministry of Foreign Affairs, Tokyo, February 10, 1997.

<sup>55</sup> While I will address only UN human rights issues here, Japan has also been actively seeking a seat on the UN Security Council and has been engaged in much debate over participation in international peacekeeping missions.

<sup>56</sup> Yasuhiro Ueki, "Japan's UN Diplomacy: Sources of Passivism and Activism," in Curtis (fn. 53), 347.



1985 the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), and finally, in 1995 the Convention on the Elimination of Racial Discrimination (CERD).<sup>57</sup> In addition, in 1982 Japan joined the UN Human Rights Commission, and in 1984 the first Japanese representative to the Subcommission on Minorities was sent to the UN and a Human Rights Refugee division was created within the MOFA.<sup>58</sup>

Japanese lawyers, activists, and government officials have attributed the various improvements in policy toward Korean-Japanese (as well as toward Burakumin and Ainu) in large part to ratification of these agreements. Thus, when the Diet was considering ratification, the government acknowledged that such ratification would require revisions in the Japanese laws concerning the treatment of Koreans. Additional international pressure came from communications about human rights violations filed with the UN under ECOSOC resolution 1503, first in 1979 by a group in Japan and later in 1980 by the International Human Rights Law Group in Washington. The UN Subcommission on the Prevention of Discrimination referred the situation to the Commission on Human Rights, making Japan one of the few developed countries to be examined under this procedure.<sup>59</sup>

In the wake of ratification of these international covenants, there have been improvements or intensified action regarding naturalization, the economic and social rights of Koreans, and fingerprinting. First, some Koreans have started claiming in court that they retain Japanese nationality and that the move to deny them their nationality was a violation of the UDHR, which provides that no one may arbitrarily be deprived of her/his nationality. The court has not yet accepted this argument. But interestingly, the courts have stated that the reason is

<sup>57</sup> CERD is one of the most widely ratified human rights conventions in the world. Japan ratified it only after the U.S. did, something not lost on human rights observers in Japan. Author interview at the International Movement against All Forms of Discrimination and Racism (IMADR), Tokyo, February 11, 1997.

<sup>58</sup> Another way that Japan has enhanced participation is to increase its profile with officials in high positions like Sadako Ogata, head of the United Nations High Commission for Refugees, Yasushi Akashi, head of the UN Transitional Authority in Cambodia, and Hiroshi Nakajima, head of the World Health Organization.

<sup>59</sup> The best sources documenting the arguments made in courts on behalf of Koreans citing international agreements are Yuji Iwasawa. "Legal Treatment of Koreans in Japan: The Impact of International Human Rights Law on Japanese Law," *Human Rights Quarterly* 8, no. 2 (1986); and idem, "The Impact of International Law on Japanese Law: Revolution or Accommodation" (SJD diss., University of Virginia, 1996), 128. Iwasawa is widely recognized as the leading expert in this area. Much information found in Iwasawa's work was confirmed in interviews with other lawyers in Japan and is reiterated in other sources. See, for example, George Hicks, *Japan's Hidden Apartheid: The Korean Minority and the Japanese* (Aldershot: Ashgate, 1997); and Yung-Hwan Jo, "Japan," in Jay A. Sigler, ed., *International Handbook on Race and Racism* (New York: Greenwood Press, 1987).

not that domestic law takes precedence over international standards but that the right to not be deprived of nationality is not yet established as customary international law.<sup>60</sup>

Naturalization is technically not overly difficult in Japan (although it has historically been very discretionary), but in the past most Korean-Japanese have not tried to naturalize because of the government policy requiring that applicants assimilate into Japanese society and “recommending” that Koreans take Japanese names.<sup>61</sup> This recommendation, in reality more of a requirement, is clearly not in the spirit of article 27 of the ICCPR, and in 1982 when a former Vietnamese citizen wanted to restore his Vietnamese name, the Kobe family court allowed it, arguing that “in view of the present reality that the society increasingly has become mobile and internationalized . . . this Court believes that the selection of one’s name . . . should be allowed.”<sup>62</sup> In 1985 the law was changed so that Japanese nationals married to foreigners could take the foreign name. This was a profound change in the sense that being Japanese is no longer absolutely equated with having a Japanese name.<sup>63</sup> In addition, in 1985 Japan ratified the CEDAW and as a result revised its nationality law so that not only children born to Japanese fathers but also those born to Japanese mothers are now considered Japanese nationals.

The constitution, despite the absence of specific rights for Koreans, has been important, although the interpretation of the constitution has changed over time. Iwasawa points out that there have been three views with regard to how the human rights provisions in the constitution should be applied to aliens: (1) that these provisions are applicable only to Japanese nationals; (2) that those provisions referring to *kokumin* are applicable only to Japanese nationals; and (3) that except for those rights that by their nature must be limited to nationals, human rights provisions in principle apply to aliens. Iwasawa argues that the third view is now the predominant one.<sup>64</sup> For example, article 25 of the Japanese constitution provides that “all *kokumin* shall have the right to maintain the standards of wholesome and cultured living.” The government had traditionally interpreted this as guaranteeing social rights only to nationals, a position that had been accepted by constitutional scholars. Such a policy became untenable when Japan acceded to the

<sup>60</sup> Iwasawa (fn. 59, 1996), 146, fn. 68.

<sup>61</sup> Annual naturalization rates are extremely low, less than 1 percent of the Korean population.

<sup>62</sup> Quoted in Iwasawa (fn. 59, 1996), 130.

<sup>63</sup> *Ibid.*, 129.

<sup>64</sup> *Ibid.*, 116.

ICESCR, which guarantees social rights to everyone, including the right to social security and social assistance.<sup>65</sup>

Before 1982 Koreans were excluded from the national pension plan, but in 1982, in connection with Japan's ratification of the Refugee Convention, the nationality restrictions were eliminated.<sup>66</sup> Prior to this revision a Korean brought a lawsuit against the Social Insurance Agency to be paid an old-age pension because he had been persuaded to join even though it was known that he was Korean. The plaintiff argued that the refusal to pay him went against both the constitution and article 9 of the ICESCR. A district court rejected this by arguing that article 9 was not self-executing, but the High Court reversed the decision in 1983 and referred to human rights treaties in its interpretation. The government now recognizes that the term "everyone" in article 25 refers to aliens as well as nationals.<sup>67</sup>

Fingerprinting of aliens is one of the most criticized aspects of the Japanese government's treatment of foreigners. Since 1980 many resident aliens have refused to be fingerprinted, arguing that the practice violates their human rights as stated in the constitution, as well as the ICCPR's clauses on degrading treatment, discrimination, and due process. The Tokyo District Court has in principle acknowledged arguments about the ICCPR, but has argued that fingerprinting did not violate the constitution because there was sufficient cause for the practice and because it was not clear what was meant by "degrading treatment" in the covenant.<sup>68</sup> Nonetheless, in 1982 the Alien Registration Law was revised, raising the age limit for fingerprinting to sixteen and increasing the interval between fingerprintings (but at the same time increasing the fine for noncompliance). In 1985 the law was changed again when, in the face of international and domestic protests, the ink used was changed to colorless ink. Finally, after countless adjustments in the face of international, Korean, and domestic protest, fingerprinting was eliminated for permanent residents in 1993, doing away at last with one of the most despised immigration control procedures practiced by the Japanese government.<sup>69</sup>

<sup>65</sup> Hicks and Jo both also cite the importance of the Refugee Convention in making Koreans eligible for social security by removing the nationality requirements from the law. Hicks (fn. 59), 56; and Jo (fn. 59), 146.

<sup>66</sup> Hicks (fn. 59), 57; and Jo (fn. 59), 136.

<sup>67</sup> Certain protections such as livelihood protection apply to Koreans, but not to short-term migrants or illegal aliens. See Iwasawa (fn. 59, 1996), 156.

<sup>68</sup> Han Chong-sok was the first to refuse to be fingerprinted and to go to court over the issue. On his case, see Hicks (fn. 59), 96.

<sup>69</sup> Iwasawa (fn. 59, 1996), 143-44.

Accounting for improvements in policies toward Koreans without reference to the context of Japan's international identity and the role of norms is difficult because nothing specific to the Korean situation (in terms of numbers, for example) changed at the time and very little changed by way of pressure on the government that was unrelated to change in pressure for ratification. While the Korea-Japan agreement of 1965 did normalize the permanent residence status of those Koreans claiming allegiance to South Korea, the changes noted here do not seem to have occurred as a direct result of this agreement (and most occurred much later). Finally, this was not a case of simply applying pre-existing domestic laws, but rather was one of reinterpreting the application of those laws to Korean-Japanese.

But norms do not diffuse automatically to states. First, most of the international norms invoked by pro-immigrant activists had existed for a number of years prior to their having an impact in Japan (for example the international covenants were adopted in 1966). Furthermore, the changes in immigrant rights that took place internationally and across Europe occurred during the early 1970s, a decade before most of the changes occurred in Japan. We therefore need to account for why international norms had an impact when they did. Rather than happening by some automatic diffusion, ratification was fought for by activists, and only after that were there substantial gains for Korean rights. Japan's low ratification rate is one indication that norms do not automatically proliferate to governments. Had the Japanese government not been pushed to ratify, it is reasonable to assume that it would not have done so and that the norms embedded in these international documents would not have worked their way into the courts.

Second, while Koreans had made some gains prior to the adoption of these international instruments, the advances were minimal. Korean groups faced extreme resistance not only because of racism but because one of the major Korean groups pushing for change was affiliated with North Korea and the Japanese government and public were worried about communist subversion.<sup>70</sup> But during the late 1970s and early 1980s two causes began to converge: the efforts of human rights groups to achieve ratification and the efforts of Korean rights groups to improve their situation. This empowered new activists, in this case pri-

<sup>70</sup> For example, the Choren, a Korean organization affiliated with North Korea, was able to get an amendment to the ordinance on the Acquisition of Property for Foreign Nationals that allowed Koreans who had been Japanese nationals as of September 2, 1945, and had since resided in Japan continuously, to not be included as foreign nationals under the ordinance. The Choren was disbanded by the government before the Korean War but was replaced by the Soren, or Chongryun, which worked to try to block Diet bills that would adversely affect Koreans. See Hicks (fn. 59), 30-34.

marily lawyers and some government actors (but later NGOs), to become involved first with Korean rights and subsequently with immigrant rights. Because ratification of international agreements did not occur directly out of concern for Korean rights, it still took a series of court cases for them to affect policy.

The government became more vulnerable to arguments for change when the debate began over what the consequences of economic prosperity were for Japan's international responsibilities and participation. As Repeta argues, with the adoption of the human rights covenants (and, I would argue, of other international instruments), human rights activists have "gained a tool of coherent legal structure sanctioned by the UN and many nations viewed by Japan as the most advanced." The usefulness of this tool, viewed in the context of concern over internationalization and reputation, should not be underestimated.

## POST-WORLD WAR II IMMIGRATION AND JAPAN'S ROLE IN THE WORLD

### INTERNATIONALIZATION AND MIGRANT WORKERS

Foreign workers in Japan, legal and illegal, number between half a million and seven hundred thousand.<sup>71</sup> In comparison with other major industrialized states, Japan got a late start in the importation of labor. Unlike European states that imported labor during the 1960s, Japan worked to reduce the need for migrants through technological development.<sup>72</sup> Japan's overall approach to migrant workers has thus been one of avoiding them when possible and maintaining a policy of non-integration when necessary, in order to avoid compromising the ideal of the homogeneous nation. However, this policy has recently been challenged in a number of ways.

The first stage of postwar immigration to Japan lasted from the late 1970s until about 1986 and was characterized by the migration of large numbers of female entertainers from Thailand, the Philippines, South Korea, and Taiwan. Until 1985 most of the undocumented migrants apprehended were female, but because migrant workers are typically

<sup>71</sup> Wayne A. Cornelius, "Japan: The Illusion of Immigration Control," in Wayne A. Cornelius, Philip L. Martin, and James F. Hollifield, eds., *Controlling Immigration: A Global Perspective* (Stanford: Stanford University Press, 1994), 382; and Yasushi Iguchi, "Japan" (Paper presented at the Conference on International Migration and Labor Markets in Asia, Tokyo, January 30–31, 1997), 25. This number does not include permanent legal residents such as Koreans. The estimate has such a wide range because it refers to both official and unofficial figures. Illegal workers are primarily those overstaying visas. It is estimated that in May 1997 there were 285,000 illegal workers in Japan. "Japan: Chinese and Integration," *Migrant News* 4, no. 5 (1997).

<sup>72</sup> Sekine (fn. 18), 52.

seen as male laborers this wave was not recognized as a migrant worker phenomenon.<sup>73</sup> The second stage, which began in the second half of the 1980s, was characterized by a shift toward male undocumented migrant workers from South and Southeast Asia, China, South Korea, and Iran, and an increase in the total number of workers entering Japan. The increase was due to a number of factors including the appreciation of the yen and demand generated by low birth rates and the depletion of rural labor reserves in Japan.

The legal instrument for controlling immigration to Japan is the Immigration Control and Refugee Act (ICRA), written in 1956 and modeled on U.S. statutes. It was amended in 1981 in response to international pressure to admit six thousand Indochinese refugees. When immigration to Japan increased during the 1980s and became a major media topic, the Ministry of Justice (MOJ) proposed a revision of the ICRA, defining the issue as a challenge to the continued control of foreigners and the need for social order. Yoko Sellek argues that the resulting 1990 revision marked the onset of the third stage of immigration. The changes broaden the scope of legal activities for foreigners in specific skilled and professional categories, which the government held up as evidence of its willingness to internationalize,<sup>74</sup> while simultaneously imposing severe penalties on employers using illegal labor. Thus, a number of side doors into Japan were opened, even as the prohibition on unskilled labor was maintained.

First, new visa categories were created to allow Latin American Japanese (*Nikkeijin*) to live and work in Japan for three years (renewable indefinitely) with the justification that this would facilitate reunification of Japanese families.<sup>75</sup> As a result, the number of visas issued in São Paulo between 1988 and 1991 jumped from 8,602 to 61,500.<sup>76</sup> Sellek points out that the decision to accept nearly 200,000 *Nikkeijin* (who often have little or no Japanese language ability and have closer cultural connections with Latin America than with Japan) while excluding other migrant workers has reinforced assumptions of racial homogeneity.<sup>77</sup> It is clearly for this reason that the government decided

<sup>73</sup> Sellek (fn. 23), 182.

<sup>74</sup> Haruo Shimada, *Japan's "Guest Workers,"* trans. Roger Northridge (Tokyo: University of Tokyo Press, 1994), 62; and Katherine Tegtmeier Pak, "Immigration Politics in Japan: Differences in Issue Articulation across Levels of Government and Society" (Paper presented at the annual meeting of the American Political Science Association, Chicago 1995), 14. As Pak points out, this does not address the fact that skilled professionals are generally equated with whites.

<sup>75</sup> Pak (fn. 74), 14.

<sup>76</sup> Sellek (fn. 23), 187–88.

<sup>77</sup> *Ibid.*, 189.

that this labor force is preferable to unskilled workers from other parts of Asia.

The second side door is open to trainees. In 1991 the Japanese International Training Cooperation Organization (JITCO) was established as an umbrella organization for individual training programs run by local groups and businesses. During the same year a subcommission on Japan's role in the world recommended the establishment of a skills training program as a means of letting in more labor; and the government began a major expansion of these programs in 1993, during the longest and most severe recession in postwar Japan.<sup>78</sup> The government officially justifies this program as a form of development assistance to poorer states and as a means of skill and technology transfer. Nonetheless, it is largely seen as a means of hiring foreign workers who will work in the *kitamai* (dirty), *kiken* (dangerous), *kitsui* (difficult) jobs that Japanese workers often will not accept. Because these immigrants are trainees, not employees, they do not receive regular wages, health insurance, or other fringe benefits but are compensated with a stipend and housing provided by the employer.<sup>79</sup> Finally, student visas open a third side door by allowing students to work twenty hours per week.

The debate over immigrants has largely taken place along the lines of whether or not to internationalize and within the context of increased international pressure on Japan to do so. In general, supporters of immigrant rights and more extensive migrant worker programs make the following arguments:

- As one of the most advanced industrialized countries, Japan has a responsibility to accept immigrants, especially from developing countries.
- Japan should become more internationalized, and accepting immigrants and refugees will demonstrate its commitment to internationalization.
- Japan must shed its image as an ethnocentric society.<sup>80</sup>
- Japan has a low birth rate and therefore needs more workers.

Opponents tend to argue as follows:

- The economic benefits of migrant worker programs in Europe have been outweighed by the enormous social costs, and this should serve as an example for Japan.
- Diversity is a cause of social disintegration.
- Technological innovation can continue to offset demand for labor.

<sup>78</sup> Cornelius (fn. 71), 398.

<sup>79</sup> *Ibid.*, 399. Shimada argues that changes to the training programs have been very significant, although not in the numbers. He argues that the programs are very future looking and that no other country has them. Author interview with Haruo Shimada, Keio University, Tokyo, February 12, 1997.

<sup>80</sup> Sekine (fn. 18), 60.

—Japan should increase aid to developed states and should not import labor, which creates a dual labor market.<sup>81</sup>

—Japan is overpopulated and migrant workers might become permanent.

Interestingly, the two sides of the debate use the terms *sakoku* (keep them out at all costs) and *kaikoku* (open the doors, at least to some degree)—both taken from the mid-nineteenth-century debates over whether Japan should remain in feudal isolation or open its borders in order to catch up with the West.<sup>82</sup> The government ministries most involved with internationalization tend to lean toward the pro-immigrant position. In the debates leading up to the 1990 change MOFA officials were the most likely to make such arguments. The MOJ took the hardest anti-immigration line, and the MOL fell somewhere in between, trying to balance the MOJ approach with the reality that businesses needed workers. The unions have not been very active on this issue but tend to push for tight control.<sup>83</sup> The views of big business range between accepting a small number of foreign workers in the sectors that need them most, but with the proviso that they will return home, and arguing that Japan should not admit nonskilled workers at all.<sup>84</sup>

Since 1990, as the debate has shifted from an almost exclusive focus on immigration flows to a focus on immigrant integration and provision of services, the role of the government and other more powerful actors in the debate has decreased and a number of additional actors, including NGOs, lawyers, and local governments, have become more vocal. In part due to the recession, the MOFA argues that there is already sufficient flexibility in the 1990 system.<sup>85</sup> Industry people who were supporters of the introduction of some manual laborers during the late 1980s have largely lost interest.<sup>86</sup> In interviews with me people tended

<sup>81</sup> Ibid. These sentiments are found throughout the literature and were confirmed in my interviews.

<sup>82</sup> Takashi Oka, *Prying Open the Door: Foreign Workers in Japan* (Washington, D.C.: Carnegie Endowment for International Peace, 1994), 4.

<sup>83</sup> For a detailed description of union positions, see Hiroshi Komai, *Migrant Workers in Japan* (London: Kegan Paul International, 1995), 215–16. According to Komai, Rengo, the umbrella organization for trade unions, is against accepting unskilled workers, although their think tank in 1990 showed some tendency toward openness as an alternative to increased numbers of illegal workers. Yasushi Iguchi, of Kwansai Gakuin University, says that Rengo intends to make immigrant rights a new issue; author interview, February 14, 1997. While it appears that, as in other states, unions may shift toward equal rights for migrants, they are not yet a major player in Japanese debates. The National Federation of Construction Workers' Unions is strongly opposed to the acceptance of foreign labor, as are the shipbuilding and engineering unions. The National Confederation of Trade Unions has favored acceptance of foreign workers with restrictions on numbers as has the National Machinery and Metal Workers' Union.

<sup>84</sup> Sekine (fn. 18), 66; and Komai (fn. 83), 212–14.

<sup>85</sup> Author interview with Mr. Nikai, Ministry of Foreign Affairs, Tokyo, February 7, 1997.

<sup>86</sup> Sellek (fn. 23, 1997), 186.



to argue that since the 1990 change there has not been a great deal of direct pressure from powerful actors to work on issues of immigrant integration. In short, since the early 1990s it has been “weaker” actors who have effected change.

In the early 1990s there was a significant increase in the number of NGOs addressing a variety of issues and in the amount of attention they received. *Look Japan*, a magazine published by the Japanese MOFA, argues that the Gulf War forced the Japanese government to focus on a number of issues including the need to help people in ways that go beyond what the Overseas Development Office does. It is likely that this has promoted greater acceptance of NGOs. As the number of NGOs has increased, so has the attention that they get. Press coverage in *Yomiuri Shimbun* went from 13 articles on NGOs in 1987 to 55 in 1992, while coverage of volunteers increased four times over the same period, to 453 stories in 1991.<sup>87</sup> There are now over thirty NGOs in Japan working specifically on migrant worker issues. About half of them have been created since 1990; most of the rest date back to the mid-late 1980s.

The role of lawyers using international law has also increased, and before discussing specific policy changes a few words are in order about aspects of international law that are especially relevant to this time period in Japan. Treaties have the force of law in Japan and are generally regarded as taking precedence over statute but as being subordinate to the constitution.<sup>88</sup> Therefore, as discussed earlier, ratification of treaties requires—and indeed has resulted in—extensive change in domestic law. Japanese courts are generally quite conservative and are reluctant to deal with arguments based on international law, in part because they tend to be relatively unfamiliar with it and in part because of the relationship between the universal nature of international law and the view within Japan that the country is unique in the international system.<sup>89</sup> While international law is rarely successful in courts *directly* (that is, courts do not tend to find that a domestic practice is illegal based on international law), international law, international norms, and the acts of international organizations (IOs) have been an effective route to

<sup>87</sup> Kunio Nishimura, “Helping Hands,” *Look Japan* (April 1992), 4.

<sup>88</sup> See Constitution, Article 98 (2). Yuji Iwasawa, “The Domestic Impact of Acts of International Organizations Relating to Human Rights” (Paper presented at the Second Trilateral Symposium, Atlanta, March 24–26, 1996), 2.

<sup>89</sup> Author interviews with Yuji Iwasawa, University of Tokyo, Tokyo, February 17, 1997, and Yasushi Higashizawa, attorney, Tokyo, February 18, 1997. On universalism versus uniqueness, see Katzenstein (fn. 30), 177; and Peter J. Katzenstein and Yutaka Tsujinaka, *Defending the Japanese State: Structures, Norms and the Political Responses to Terrorism and Violent Social Protest in the 1970s and 1980s* (Ithaca, N.Y.: East Asia Program, Cornell University), 1991.

change in many human rights-related issues.<sup>90</sup> These international references have given legitimacy to movements to change domestic laws and have been used extensively in an indirect way to interpret domestic law and to persuade the government to change. Iwasawa points out that not only international law but also acts of IOs relating to human rights (such as declarations) have had a significant impact on domestic law. While acts of IOs are rejected by the courts as nonbinding, they have had an effect in interpreting human rights treaties and domestic law.<sup>91</sup>

In one prominent case the Osaka High Court ordered the Kyoto prefectural government to pay compensation to a plaintiff who refused to be fingerprinted and was then arrested and forcibly fingerprinted. The lawyers cited the Vienna convention on the interpretation of treaties, decisions of the European courts, and comments of the Human Rights Commission as an interpretation of the ICCPR. While the court did not directly refer to the covenants in recognizing the illegality of the act, it did make reference to the above international sources in calculating compensation and in arguing that the need to require fingerprinting had passed and was possibly contrary to article 7 (degrading treatment) and 26 (nondiscrimination) of the ICCPR.<sup>92</sup>

Because of successes in the indirect use of international law, there is now a growing interest in international law among Japanese lawyers, a move that is most striking in the human rights arena.<sup>93</sup> The Japanese Federation of Bar Associations (JFBA) began extensive research into international law and norms about 1984–85 and has now produced a practical manual for lawyers on the ICCPR and other conventions that interprets them and discusses cases from around the world that have made use of them (including cases from other countries and UN Human Rights Committee decisions).<sup>94</sup> In addition, the JFBA has organized symposia on human rights at its regular meetings; six hundred

<sup>90</sup> Information on the role of law in Japan and on current trends was gathered from author interviews with Yuichi Kaido, attorney, Tokyo, February 15, 1997; Higashizawa, Tokyo, February 18, 1997; Susumu Yamagami, director of Adjudication Division, Immigration Bureau, Ministry of Justice, Tokyo, February 16, 1997; Iwasawa, Tokyo, February 17, 1997; and IMADR, Tokyo, February 11, 1997. Information was also drawn from Iwasawa (fn. 59, 88). In an interesting aside, Tadashi Hanami points out that law student interest in international law has increased dramatically over the last fifteen years. Author interview with Tadashi Hanami, Sophia University, Tokyo, February 14, 1997.

<sup>91</sup> See Iwasawa (fn. 88). Repeta, in a similar argument, points out that the most effective enforcement of the ICCPR is likely to be produced not through litigation but through pressure for reform exerted on government-agencies and the legislature. See Lawrence Repeta, "The International Covenant on Civil and Political Rights and Human Rights Law in Japan," *Law in Japan* 20, no. 1 (1987), 4.

<sup>92</sup> Author interview with Higashizawa, Tokyo, February 18, 1997; and Iwasawa (fn. 88), 12.

<sup>93</sup> Author interview with Higashizawa, Tokyo, February 18, 1997.

<sup>94</sup> Japanese Federation of Bar Associations, *Utilizing International Human Rights Covenants in the Courtroom (Hotei ni ikaso kokusai jinken kinyuko)* (Japanese Federation of Bar Associations, 1996).

lawyers attended their 1996 meeting.<sup>95</sup> Government ministries have also been consulting with international lawyers during the last few years.<sup>96</sup>

Despite the relative absence of powerful actors pushing for change, a number of significant changes have been made at the technical level of government procedure, the societal level, the judicial and legislative level, and finally, the local level. Procedures for entry are being streamlined and made easier for those who qualify. In addition, reentry possibilities are increasing, although mainly for business people. In response to increased international pressure, more foreign students, mostly Asian, are being allowed to enter, trainee time periods have also been increased, and forty-five new categories have been added.<sup>97</sup> At the societal level there are an increasing number of foreign-language newspapers and magazines,<sup>98</sup> marriage between foreigners and Japanese nationals is up sharply,<sup>99</sup> naturalization doubled between 1990 and 1995,<sup>100</sup> and, perhaps most importantly, the debate is now slowly moving toward issues of integration and rights, concepts rarely discussed in the early stages of immigration.<sup>101</sup>

There have also been significant changes as a result of court decisions. Article 900 of the civil code states that children born out of wedlock receive half of the inheritance of children born to married parents. In 1990 a child born out of wedlock brought suit arguing that this policy was unconstitutional and invoking the CEDAW, the UDHR, the ICCPR, the UN Convention on the Rights of the Child, and a 1972 Economic and Social Council resolution on the status of the unmarried mother. The Tokyo High Court dismissed the claim without reason in 1991. But in 1993, in what Iwasawa refers to as "an epoch making decision" in which "the Tokyo High Court took an initiative to change society with the support of international human rights law," another challenge was brought against article 900. This one invoked the above conventions, as well as an additional provision of the children's convention and a general comment of the Human Rights Committee, with the latter offered as the authoritative interpretation of the ICCPR. The

<sup>95</sup> Author interview with Higashizawa, Tokyo, February 18, 1997.

<sup>96</sup> Author interview with Kaido, Tokyo, February 15, 1997.

<sup>97</sup> *Migrant News* (fn. 71). The idea that foreign pressure is responsible for this was widely expressed in my interviews with government officials.

<sup>98</sup> There are now one hundred ethnic publications in fifteen different languages. "Japan's New Immigration Law," *Migrant News* 4, no. 6 (1997), 26.

<sup>99</sup> According to the Ministry of Health and Welfare, over twenty thousand marriages between Japanese men and foreign women have taken place since 1995. "Japan's New Immigration Law" (fn. 98).

<sup>100</sup> Iguchi (fn. 71), 6.

<sup>101</sup> Author interviews with Iguchi, Tokyo, February 14, 1997; and Higashizawa, Tokyo, February 18, 1997.

court, holding that the article was unconstitutional on the grounds of unreasonable discrimination, used international human rights law as an aid in interpreting the constitution.<sup>102</sup> In late 1996 the Hiroshima District Court granted citizenship to a child born out of wedlock to a Filipino woman and a Japanese man, following an MOJ announcement that divorced, separated, widowed, and single undocumented foreigners who are parents of children with one legal parent would be granted legal residency in Japan.<sup>103</sup>

Additional judicial and legislative changes have been made in the areas of social and economic rights. Because these changes occurred in the context of increased awareness of international standards and because there are no other obvious explanations for them, it is reasonable to assume that the changes were made because they were seen as necessary to internationalize and to comply with international norms, as in the other instances of change discussed above. It should be noted, however, that the changes cannot decisively be linked to international norms through direct reference to specific international covenants or to internationalization. Following are some of the changes. Whereas Japan used to require twenty-five years of affiliation with the national pension plan for eligibility, with foreign workers nevertheless required to pay the mandatory fees, in 1994 the law was amended to enable foreign workers to receive a lump-sum payment upon application within two months of departure from Japan. The situation in housing also shows some signs of improving: in June 1994 the Osaka district court laid down a critical decision ordering a landlord to pay damages to a Korean resident whom he had discriminated against on the basis of nationality.<sup>104</sup> Finally, in 1991 the Ministry of Health and Welfare (MOHW) ruled that foreigners with a visa status of one year or more could join the national health plan. This has since been further expanded, and allows overstayers and short-term migrants to join.<sup>105</sup>

<sup>102</sup> Iwasawa (fn. 88), 13.

<sup>103</sup> "Japan Copes with Illegal Foreigners," *Migrant News* 3, no. 12 (1996). Higashizawa discussed another case of a Filipino overstayer who had a child with a Japanese national. They planned to marry, but he died. The woman and child stayed in Japan but were not allowed to join the insurance plan because of an initial MOHW ruling that only foreigners legally resident for a year or more were eligible for the national health plan. In late 1995 the Tokyo District Court rejected the woman's claim saying that it was at the discretion of the government whether to include foreigners in the plan and that the court therefore could not overrule the government. Higashizawa argues that the attorneys on the case did not place a high enough priority on the ICCPR and ICESCR. Author interview with Higashizawa, Tokyo, February 18, 1997.

<sup>104</sup> Tadashi Hanami, "Japanese Policies on the Rights and Benefits Granted to Foreign Workers, Residents, Refugees and Illegals," in Myron Weiner and Tadashi Hanami, eds., *Temporary Workers or Future Citizens* (New York: New York University Press, 1998), 233.

<sup>105</sup> Author interview with Higashizawa, Tokyo, February 18, 1997.

Perhaps the most significant changes have taken place at the local level. Pak, in an extensive study of the differences between national and local responses to foreigners in Japan, argues that local actors commonly invoke an ideal of internationalization that envisions a transformation of domestic social relations and reconciliation of Japan with Asia. She argues that the challenge to the status quo is coming from the local context because of local autonomy movements and long-standing patterns of delegating social policy within Japan. In addition, there has been a rise in the number of international sections in local governments. As a result, says Pak, "combinations of locally based NGOs and local governments are slowly but steadily constructing a policy of accommodation in response to the realities of Japan's *de facto* emergence as a destination of international migrant flows."<sup>106</sup> According to the Japanese press, many municipalities have begun to treat foreigners like other residents, without regard to matters of legality or illegality,<sup>107</sup> and Pak finds that position papers in Kawasaki and Hamamatsu are "laden with radical language which promises to protect the human rights of" foreign nationals.<sup>108</sup> This echoes the language used by activists, lawyers, and academics more generally in linking internationalization and rights. In addition, cities are providing language training, job-placement assistance, and classes in Japanese culture.

There is also a trend toward granting local voting rights to foreigners. According to one survey in 1994, more than one hundred local bodies, including nine prefectural assemblies, have adopted nonbinding resolutions urging voting rights for non-Japanese residents. In 1995 the Kawasaki city government, as an experimental measure, established a panel of non-Japanese residents similar to those in some European countries designed to give foreigners a voice in local affairs.<sup>109</sup> Finally, in November 1996 the Ministry of Home Affairs changed the nationality clause in the government hiring laws, allowing local governments to hire foreigners,<sup>110</sup> and beginning in April 1997 Kobe and Yokohama eliminated nationality clauses on exams for many government jobs.

## ANALYSIS

There has been no sea change in Japan's approach to immigrant integration; change has been incremental. And while there have been some

<sup>106</sup> Pak (fn. 74), 21.

<sup>107</sup> *Migrant News* (fn. 102).

<sup>108</sup> Pak (fn. 74), 22.

<sup>109</sup> Hanami (fn. 104), 234.

<sup>110</sup> Author interview with Iguchi, Tokyo, February 14, 1997. This occurred after a Kawasaki court in 1994 decided that employment of foreigners in local government was not a constitutional issue.

chinks in the national ideology of a homogeneous and unique state, it remains largely intact. Citizenship policy, for example, is not open for debate. But integration and rights, previously disregarded, are now on the table, and in some quarters Japan's policy toward migrant workers is moving slowly from an exclusionary approach to one of coexistence. As witnessed by policy changes, legal revisions, and new laws, the government is beginning to realize that migrants who are in Japan have to be granted certain basic rights, regardless of whether they will eventually leave. International norms mobilized by pro-immigrant actors have been important in this transition. Lawyers, NGOs, and local governments have linked the issues of immigration and integration—issues about exclusivity and uniqueness in Japan—to Japan's role in the world and what type of image it wishes to convey internationally. While it is difficult in an article to convey the full flavor of how these issues have been linked, throughout my research I found that acceptance of at least some immigration and respect for the rights of those immigrants in Japan is seen as one of the key symbols of internationalization.<sup>111</sup> Shimada, a leading economist and a specialist on immigration to Japan, argues that the foreign worker issue is

likely to call into question Japan's position in the world community. It is undeniable that Japan has forged ahead of the world, and even of the other industrialized countries, in terms of economic and income opportunities, and yet it still protects its homogeneity on the human level, and plainly gives the outside world the impression that it is a closed society.<sup>112</sup>

He goes so far as to say that Japan's response to the foreign worker problem "is a litmus test of the kind of nation it seeks to become."<sup>113</sup>

Why has internationalization been such a catalyst? A priori we should expect that the Japanese government, because of its ideas about the merits of a homogeneous state, as well as its often hesitant role in the international system, would not be particularly receptive to international norms. But even as Japan has seen itself as somewhat removed from the core of international society and its norms, an important part of the history of the Japanese state has been extreme sensitivity to what peers in other states think about Japan. This historical context shapes how people in Japan have responded to calls to internationalize, not only economically, but also socially and culturally. Shimada argues that

<sup>111</sup> Hook and Weiner (fn. 51), 2.

<sup>112</sup> Shimada (fn. 74), 202.

<sup>113</sup> Ibid., viii. Sellek and Weiner also refer to this as a "litmus test." Yoko Sellek and Michael A. Weiner, "Migrant Workers: The Japanese Case in International Perspective," in Hook and Weiner (fn. 48), 205.

as debates over immigrants began, the Japanese were thinking about single-country passivism in a new international context, and looking out in the world “they thought they weren’t liked.” Internationalists saw this as an opportunity.<sup>114</sup> Tetsuo Yamazaki, director general of the Tokyo Regional Immigration Bureau, did a study on immigrants and found that compared with European states Japan was too strict and needed more foreigners in the context of internationalization and the concomitant interest in diversity, a comparison that is frequently cited as reason for Japan to change.<sup>115</sup>

Similarly Hanami points to the importance of the link between current debates in Japan and recent international criticism, especially by the U.S. media, of alleged Japanese racism.<sup>116</sup> This criticism was largely provoked by Foreign Minister Watanabe’s and Prime Minister Nakasone’s comments implying that the high crime rate and low efficiency of American society was caused by the presence of racial minorities, and by publicity surrounding publication of a book entitled, *Little Black Sambo*, considered racist by the American media.<sup>117</sup> Hanami argues that proposals and opinions regarding foreign workers reflect Japan’s inferiority complex in relation to the West, and that many opinions regarding foreign workers are based on the idea that current policies are closed, uninternational, and discriminatory.<sup>118</sup>

Debates over internationalization have changed the context in which immigrants are discussed (from a perspective of domestic isolation to a more global and regional context) and they have empowered new actors to contest and challenge state identity and policy with an arsenal of international norms that would not be useful if the government were not already highly sensitive to international criticism and if immigrant issues were seen as purely domestic matters.

This changing context has been especially important since 1990, when most powerful actors in the debate lost interest following the changes of that year. Pak argues that “the remarkable aspect of [efforts for change] is that there is no broad constituency demanding or sup-

<sup>114</sup> Author interview with Shimada, Tokyo, February 17, 1997. Many interviewees also spoke of the impact of international-minded young people.

<sup>115</sup> Author interview, with Tesuo Yamazaki, Tokyo Immigration Bureau, Tokyo, February 12, 1997. The Tokyo Immigration Bureau is part of the Ministry of Justice.

<sup>116</sup> Tadashi Hanami, “Discrimination in the U.S. and Japan: From a Legal Viewpoint,” *Journal of American and Canadian Studies* 8 (Autumn 1991).

<sup>117</sup> *Ibid.*, 2–4. Patrick Ireland has pointed out to me that, in addition to these accusations of racism, the Japanese are being “Goldhagened” by the recent focus on their wartime activities and treatment of “comfort women.” There is little doubt that this type of criticism makes people in the government increasingly sensitive.

<sup>118</sup> Hanami (fn. 116), 5.

porting them."<sup>119</sup> Asian sending states, a likely advocate for their emigrants, are largely absent from the discussion. The government of the Philippines has set up a shelter in the Setagaya district of Tokyo for Filipinos facing forced prostitution and exploitative work conditions, and the Thai embassy keeps detailed statistics on the problems faced by Thai nationals in Japan, but neither government has directly appealed to the Japanese government, presumably because they need aid and they need to export labor.<sup>120</sup>

As noted earlier, powerful ministries pushing for change, like the MOFA, appear satisfied with the 1990 change and now downplay the issue. A few employer groups favor allowing migrant workers into Japan but, as in other countries, they do not push for rights and integration. Rather, they tend to support strong control and surveillance.<sup>121</sup> Because the economy is sluggish, even this sort of pressure to let migrant workers in has let up lately.<sup>122</sup> It should also be noted that the recent context is a particularly surprising one for fostering progressive change in immigrant rights, however minimal, since unemployment in late 1995 was at its highest level since 1953.<sup>123</sup> Yet traditionally weaker actors, emboldened by international norms and driven to internationalize, have made progress despite circumstances that would predict otherwise.

## CONCLUSION

International norms matter in this case but not in some mysterious or automatic way. Rather, domestic actors use international norms to bolster arguments for which they have found few domestic resources and those norms in turn work under particular domestic circumstances. It was much more difficult for pro-immigrant actors to make these arguments without the backing of international norms, partly because there have not been powerful domestic actors pushing for immigrant rights. Thus, business pushed for migrant workers at various times, but not for rights and not for integration. Japan does not have powerful ethnic lobbies as one might argue the U.S. has; this was not the client politics that Freeman finds in the U.S. case.<sup>124</sup> Furthermore, prior to its rein-

<sup>119</sup> Pak (fn. 74), 22.

<sup>120</sup> Selby (fn. 18), 362. There is pressure on Japan from other Asian states to open labor markets. But there is not a significant degree of corresponding pressure regarding the treatment of migrant workers once in Japan.

<sup>121</sup> Sekine (fn. 18), 68.

<sup>122</sup> Author interview with Yamagami, Tokyo, February 16, 1997.

<sup>123</sup> "Japan: Unemployment and Foreign Workers," *Migrant News* 3, no. 2 (1996).

<sup>124</sup> Freeman (fn. 7).



terpretation, activists and lawyers could not rely on the constitution, since it was in part designed to exclude Koreans and foreigners.

This reinforces an important point: this is not about international *or* domestic politics. The constitution, for example, is important, but it had to be reinterpreted over time, and that reinterpretation took place with the aid of international norms. In short, liberalism and the rule of law, two alternative explanations offered in the literature, are alone insufficient. Japan's "liberalism" was designed for people of Japanese ethnicity and it was combined with the very powerful idea that homogeneity is necessary for success and that diversity as seen in countries like the U.S. is dangerous and unstable. Finally, the rule of law may be a norm, but for the most part the pertinent laws did not cover noncitizens.

International norms allowed activists to say to the government: you should change these policies because they are out of line with the standards of international society. But importantly, activists mobilizing these norms would not have been successful just anywhere at anytime. They would not, for example, have been successful where a government was hostile to international norms or simply did not much care what other states thought of its domestic politics. This is not the case in Japan. The Japanese government, since 1868, has been highly sensitive to international opinion and to the accusation that the country is not sufficiently internationalized. This concern has varied in intensity and in its specific concerns over time, and when it was heightened due to Japan's increased economic stature, pro-immigrant actors were able to link their cause to it. In looking at the impact of international norms there is a process to trace, but it is not present everywhere and only through examining domestic politics and not accepting correlation as causation can we find it.