

The Changing Nature of Crime and Punishment in Japan

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ABSTRACT

Japan's crime rate, although still low by Western standards, has been rising every year since 1996. This paper focuses on the three areas that have attracted greatest attention: violent crime by male juveniles, schoolgirl prostitution, and organized crime that increasingly includes foreigners. Because Japanese patterns of schoolgirl prostitution and organized crime are most unique, these two areas are examined in more detail. Causes and solutions for Japan's mounting crime problems, as reported by domestic and foreign media sources, are surveyed. The Japanese exercise of the "rule of law" is considered more generally. Examples of non-compliance with laws by Japanese citizens in private and public capacities, relatively lax enforcement of laws by Japanese police, and the meting out of relatively lenient punishments by Japanese judges are placed into broader social context. Japanese society is undergoing a profound transition in terms of public safety and criminal justice: movement toward a rule of law featuring fuller enforcement and more substantial punishment is discernible.

OUTLINE

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1. Introduction

“Crime is a mirror of a nation’s social condition, and, simply put, Japanese society is sick” (*Japan Times* 2002a). The newspaper editorialist was not being melodramatic. Penal code violations hit a record high in 2001, increasing by 12 percent over the previous year. The number of crimes solved in 2001, meanwhile, plunged to below 20 percent for the first time in the postwar period, after hovering around 40 percent for most of the 1990s. Serious crimes such as homicide, robbery, rape and kidnapping surged by 18 percent in 2001, although theft-related offenses accounted for nearly 90 percent of overall crime (*Daily Yomiuri* 2002a). Compared to ten years ago, the number of muggings in Japan has multiplied by 4.5 times, purse-snatchings by 2.9 times, and burglaries by 2.2 times (*Daily Yomiuri* 2002b). There is widespread concern among Japanese that, as a domestic counterpart to their nation’s declining position in global economic and political arenas, the social fabric is fraying and the root cause is a broad-based moral meltdown. An editorial headlined “Law, Order Breaking Down” struck a typically alarmist chord: “The recent increase in criminal offenses by foreigners, threats posed by crime syndicates and a rash of hideous murders are menaces facing both densely populated

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cities and rural areas” (Misawa 2002a). For the seventh straight year, crime continued to rise further still in 2002, prompting the National Police Agency to wishfully entitle its annual white paper, “Toward Recovery of Our Country’s Public Safety.”

The nature of crime itself is changing fast, with criminal offenses becoming more violent, diversified and commonplace. Teenage boys are erupting in spontaneous, occasionally lethal violence over feelings of personal irritation; by night, some are banding together to beat up homeless people (Misawa 2002b) and mug drunken company employees in a practice known as “middle-aged man hunting” (*oyaji-gari*). Driven by brand-name consumerism rather than economic necessity, teenage girls in high school and even middle school are engaging in prostitution on a troubling scale; more disturbing is their lack of compunction. Foreigners and Japanese alike are robbing banks, convenience stores and taxi drivers at knifepoint and gunpoint. Organized crime, long tolerated in Japan, is becoming more violent and socially destabilizing. Drug use, having lost much of its social stigma, is booming. Road rage, air rage, stalking, fatal arson attacks and similar social pathologies are all up. Everyday civility is way down. The local subway system has resorted to using English as an eye-catching device. “No touch, No punch, No break,” the subway signs read, alongside a picture of handcuffs, attempting to discourage groping, fighting and vandalism. Illegality involving corporations, politicians and bureaucrats, in a land where major corruption scandals are routine, also scaled new summits in 2002. The criminals have worn police uniforms on numerous occasions, as the nation’s police corps has been buffeted by misconduct and low morale.

Japan has lost much of its public safety “exceptionalism” and is now suffering from the crime-related symptoms of “post-industrial disease” that have plagued Western nations for decades. Most alarming to the Japanese is just how quickly the bottom fell out; most pressing is the

question of how far it will continue to fall. *The New York Times*, in a 1995 special report, was still able to praise Japan's "strong families (and) a sense of social cohesiveness" for producing a "shared antipathy toward crime. ... The idea is to create an environment where everyone agrees that crime is intolerable" (Kristof 1995). It was a case of the crime situation appearing brightest just before the sun began setting on Japan as the world's public order leader. A 1995 *World & I* magazine article called "Crime and Culture in Japan" similarly lauded the country's crime suppression achievements, but presciently compared the country to the United States of 1960, when raising divorce rates and societal fragmentation began taking their crime toll among Americans (Lempres 1995).

So have 127 million once law-abiding Japanese collectively gone bad overnight? Not exactly. The Japanese, incongruously, have previously never needed to be particularly law-abiding in the Western sense. "Lawlessness and order" can even be used to rhetorically describe post-war Japan, meaning that extra-legal forces long predating the introduction of American-style jurisprudence were largely to thank for remarkably low crime rates, making the penal code itself to some extent superfluous. Crime was more of a social taboo, violation of which resulted in shame and potential community ostracism. Today, the efficacy for controlling behavior of forces such as group cohesion, deference to authority, and the shared goal of national industrial expansion is evaporating. Japanese youth feel far less bound than before by social strictures as a mechanism for crime control; foreigners have never felt so bound, and their numbers within Japanese society have dramatically increased. Three aspects of Japanese crime that have attracted most attention are violent crime by male juveniles, schoolgirl prostitution, and organized crime that increasingly includes foreigners. This paper focuses mainly on Japanese patterns of schoolgirl prostitution and organized crime because they are most unique. Causes of crime and proposed solutions, as report-

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ed by Japanese and overseas media sources, are surveyed.

Out of necessity for maintaining public order, in a broad process also considered by this article, Japan is now undergoing a profound transition in its application of the rule of law. Because the “rule of law” is not a monolithic construct, its expression varies across cultures and over time. The Japanese version of recent decades, as viewed from this American writer’s perspective, has included relatively lax enforcement of laws by Japanese police and the meting out of relatively lenient punishments by Japanese judges. This has contributed to a significant degree of non-compliance with laws by Japanese citizens in private and public capacities. Following an extended grace period, the results of Japan’s partial importation of the rule of law are becoming manifested in the form of burgeoning street crime. To rectify this, the Japanese criminal justice system is evolving toward fuller enforcement of laws and more substantial punishment of lawbreakers. It should be stressed that Japan remains a very safe society by Western, and especially American, standards. Yet by Japanese standards, the rapid decline in public safety has produced the near-unanimous perception that communal bonds are disintegrating, that the population has become detached from its ethical moorings and is adrift in a sea of crime.

2. Juvenile violence

By the mid-1990s, Japan had already been experiencing a very difficult decade. The bubble economy had long since imploded and would not be bouncing back. In January 1995, the Great Hanshin Earthquake killed 6,000 people in Kobe. In Tokyo two months later, the Aum Shinrikyo religious cult executed its nerve gas attacks in the subway system during the morning commute, killing 12 people and sickening 5,000. Also in March 1995, and again in the nation’s capital in broad daylight, a masked bicycle-riding assailant pumped four bullets into the

director of the National Police Agency (NPA); he survived but the case remains unsolved. Back in Kobe and more shocking still were the 1997 murders, by a 14-year-old boy, of two children in separate hammer attacks. The teen killer placed the severed head of one victim, an 11-year-old acquaintance with a learning disability, in front of the local junior high school's front gate and then taunted police by mail. Japan's kids were no longer all right. The era of adolescent violence had begun.

In January 1998, a 13-year-old male student fatally stabbed his teacher with a butterfly knife, in an outburst of rage after she scolded him for being late to English class. The following month, a ninth-grader attacked a police officer with a butterfly knife, in an attempt to wrest away his police revolver. Next, underscoring a growing callousness among young male criminals, a 14-year-old stabbed an 80-year-old woman to death while robbing her for money to play video arcade games. (A middle-aged housewife murdered four people via arsenic-laced curry rice at a summer 1998 neighborhood festival, spawning a nationwide rash of copycat poisonings.) Matters did not improve during the new millennium. Spring 2000's "Golden Week" string of national holidays was dominated by a bus hijacking by a 17-year-old male and the ensuing 15-hour, nationally televised hostage drama. Police stormed the bus just before dawn, but only after the teenager fatally knifed an elderly woman. A 15-year-old male knifed all six members of a neighbor family in their sleep, killing three. A 17-year-old knifed a 65-year-old woman to death because he wanted to experience killing someone. A member of a high school baseball club erupted in anger, injuring four teammates with a metal baseball bat before going home and killing his mother with it. Reacting to the national crisis of adolescents who kill or commit other violent crimes for little or no reason, lawmakers in 2001 lowered the age at which juveniles can be prosecuted as criminals from 16 to 14.

Worst of all, in the eyes of older Japanese still operating under the

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“crime discouragement” paradigm that is not codified in writing, has been the refusal of many teen criminals to express remorse for their actions. This suggests the destigmatization of shame itself, and the futility of relying on shame to constrain youth behavior in the future. Younger generations everywhere have been viewed as rebellious and self-seeking, and for decades young Japanese have been disapprovingly dubbed a “new breed” for untraditional behavior such as sitting on the ground, putting on makeup in public, and even eating hamburgers instead of rice. Yet a 68-year-old former Russian consul general was moved to observe that Japan “has changed almost beyond recognition over the past four decades or so, even going so far as to say that ‘today’s young people seem to me almost a different race—not Japanese’” (Nasu 2002). The nation was shocked in January 2001 by the behavior of some 20-year-olds taking part in the normally staid Coming of Age Day ceremonies. Besides mildly unruly acts like talking on cell phones during addresses by dignitaries, there were more defiantly disrespectful pranks like throwing mayonnaise and even firecrackers at speakers. This breakdown in public civility has not occurred in a vacuum, of course. In 1999, the publicly funded “bug ad” campaign admonished middle-aged male office workers to stop spitting in public by comparing them to insects (Magnier 2001; Sugiyama 2001). In the opinion of fully 90 percent of Japanese, as measured by a June 2002 survey, manners and behavior have worsened across the board (*Daily Yomiuri* 2002c).

The rise in juvenile delinquency must also be viewed within the context of an adult society that has grown more violently disharmonious. Knives are the homicide weapon of choice in Japan only because there are few handguns, but various inanimate objects have been employed of late. In May 2002, a 33-year-old man used an umbrella to stab a 55-year-old man to death at seven o’clock in the morning, following a traffic altercation about who should yield the right of way on a narrow country road.

The very next month, a second umbrella murder stemmed from a dispute over manners involving two unemployed 32-year-old male acquaintances; the victim was killed for using the perpetrator's name without an honorific title. Also in June 2002, a 30-year-old company employee used a child's car seat to beat a 57-year-old newspaper delivery man to death at 4:30 a.m.

3.1. Schoolgirl prostitution

Enjo kosai ("dating for assistance") is a form of prostitution involving Japanese schoolgirls and older men that made the media's list of hit new phrases in 1995. Euphemisms aside, this national problem is believed to involve around five percent of high school girls in Tokyo (Wijers-Hasegawa 2002; Kingston 2001; 117) and has emerged as a female counterpart to juvenile male violence. Typically high school students or junior high school students from middle class homes, the schoolgirl prostitutes cite financial motives ranging from the desire to buy expensive clothes to the need to pay the monthly bills for the Internet-equipped mobile phones that make the practice possible. Their services are in great demand, as the media salaciously report a steady stream of middle-aged men from all professions arrested for prostitution with minors, an activity that was formally outlawed only in 1999. A Tokyo High Court judge, aged 43, was impeached by parliament in 2001 after paying for sex with a 14-year-old girl. A 56-year-old senior police officer in Tokyo, assigned to the division in charge of cracking down on schoolgirl prostitution, was fired in December 2002 for having sex with a 15-year-old he met during the course of an investigation. In an especially tragic 2001 case, a 34-year-old middle school teacher picked up a 12-year-old girl for sex using one of Japan's ubiquitous telephone dating clubs, then handcuffed and tear-gassed her in his van while en route to a similarly ubiquitous "love hotel." The girl jumped from the speeding van onto the highway, and was struck

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and killed by a truck.

The U.S. State Department, in its 2001 Country Reports on Human Rights Practices, noted with diplomatic reserve that “teenage prostitution and dating for money continue to be a concern” in Japan (quoted in *Japan Today* 2002a). Not all Japanese agree. Illustrating society’s moral polarization, a few voices have actually defended compensated dating involving minors, which may not include sex in every instance, as a new form of youth culture or self-expression. Female participants tend to lack guilty consciences and have wondered what is wrong with benefiting from what they enjoy doing. Indeed, in Yokohama in December 2001, delegates to the major international conference on the commercial sexual exploitation of children found it necessary to distinguish between two types of underage prostitution: the human rights-based model that often involves human trafficking and the separate, morality-based model represented by Japanese *enjo kosai*. “Japanese society had been undergoing a steady loss of moral fiber since at least the 1970s, but the emergence of this disgusting phenomenon as a ‘fad’ indicated that the country had finally crossed the line into rampant depravity,” asserted Terumasa Nakanishi, a Kyoto University professor with strongly conservative views. “The emergence of a widespread phenomenon of this sort indicates that postwar Japan’s civilization of money and material goods is entering a realm of depravity unprecedented in the history of civilizations around the world” (Nakanishi 2000).

Related to compensated dating, the problem of “petite runaway” refers to adolescent girls who leave home for a few days at a time, casually hopping on the bullet train and gravitating to places like Tokyo and Osaka. They are often not reported as missing, and not considered runaways by police because they remain in loose cell-phone contact with their parents. “Young girls know how to get sex dates through Internet sites they access on their cell phones. In Tokyo, countless sex shops

openly market minors for anything from a grope to intercourse,” according to *Time Asia*. “And for proudly middle-class Japan, a larger question looms: What kind of generation spends its formative years—and gets its kicks—lurking in alleys among drunks and pimps or sponging off licentious men as old as their fathers?” (Cullen 2001). These otherwise respectable, necktie-wearing fathers represent the other half of the *enjo kosai* problem, which could not exist apart from Japan’s distinctive social-sexual milieu.

3.2. Prostitution in context

At about one percent of annual GDP, Japan’s enormous sex industry is said to be equivalent to the nation’s annual defense budget (Kattoulas 2000; Kingston 2001; 77). Outside any major train station, sharply dressed young men known as “catch” approach young women at all hours, enticing them with offers of making easy money in the “water trade” (*mizu shobai*), as Japan’s drinking-related pleasure quarters are collectively called (see French 2001a). At the entry level, a female water trade worker might pour drinks for the businessmen patrons of a “hostess bar,” providing merely platonic companionship. Bigger paychecks can be obtained in “soapland,” the bath houses in every sizeable city where prostitution takes place in an essentially open and organized fashion, with obvious gangster involvement and police forbearance. The more secretive, seedier street prostitution that exists in American downtowns (itself highly undesirable) has never been necessary in Japan, where for centuries state authorities managed the industry using a regulatory approach (see Garon 1997). A Princeton University professor refers to the more contemporary failure of the Japanese postwar women’s movement “to transform the morality of a society that tolerated prostitution as a normal sexual outlet for husbands and single men alike” (Garon 1997; 204). Observed *The New York Times*: “Prostitution was made illegal

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only in the 1950s, and even now it is regarded by many as less felonious than jaywalking” (Kristof 1999a). For such cultural and historical reasons, the scale of prostitution in Japan is acknowledged to be the largest among developed nations. One Japanese sex education expert (mainly concerned with the record rates of abortion and sexually transmitted diseases among minors) cited a study in which 14 percent of Japanese men between 18 and 48 reported having an encounter with a prostitute within the previous year, while less than 2 percent of Americans and Europeans reported such activity (Wijers-Hasegawa 2002). Yet, in a prime example of non-enforcement and non-compliance (and poor legislative drafting), Japan’s Anti-Prostitution Law of 1957 expressly outlaws the selling of sexual intercourse, but has functioned as a green light for the basically open buying and selling of all other sexual services.

Today, prostitution appears to be booming as never before, even as fixed-location “soaplands” are steadily going out of business. “Home delivery” prostitution, in which sexual services are rendered in the client’s home, now represents the cutting edge of the Japanese sex-for-money industry. By the end of 2001, there were more than 10,000 businesses providing “on-call” sex, triple the number in 1999, when a revised adult-entertainment law began requiring such operations to register with police (*Japan Times* 2002b). Full-color, shirt pocket-sized advertisements for this brazen form of prostitution are stuffed into every mailbox in my apartment complex at roughly the same frequency as pizza delivery ads. The ads feature women in semi-pornographic poses and text assuring that “our talented young girls are willing to do anything, including” In case the ellipses are too vague for some potential customers, there is a startlingly explicit “menu” of sexual acts available, excluding only intercourse, at a base rate of about \$100 per half hour. Credit cards are accepted and receipts are available. No transportation fee, no “girl change” fee. The advertisements, also posted prominently in downtown

areas, always emphasize that the companies are actively hiring female service providers (no experience necessary) and male drivers. Among the working conditions offered: choose your own hours between noon and 5 a.m., dormitory rooms available or wait at home for your calls, daily pay, \$70,000 monthly income guaranteed, and no quotas. One blunt recruitment ad showed a cheerful young woman (presumably over 18) clutching half a dozen handbags, along with the caption, “I was able to buy all these!”

A Canadian friend living in Seoul was amazed by these “home delivery” advertisements during a recent visit to my city; he stated that neither the ads nor such a blatant system of prostitution would be tolerated in morally straight-laced South Korea. But in 21st-century Japan, there are indications that the provision of sexual services by females (not just their reception by males) is being increasingly condoned by mainstream society. There are specialty magazines devoted to helping freelancers get started, complete with fashion-related advertising and directories of “home delivery” businesses broken down by city. An “alibi industry” has arisen to provide prostitutes with fake pay stubs and phony employment references, making it easier for them to rent apartments and get credit cards (Kristof 1999b). Largely sympathetic articles have appeared in general-circulation magazines about housewives who, in order to repay consumer debt, supposedly engage in prostitution on weekday afternoons and return home in time to cook dinner; prostitution by senior citizens has been featured as well. Even if some of these “vernacular press” accounts are apocryphal, they nonetheless tend to demonstrate society’s indulgent attitude toward prostitution. This helps explain why schoolgirl prostitution is flourishing and somewhat mitigates the culpability of the juvenile females involved.

In fact, although the term *enjo kosai* originally referred only to schoolgirls, its meaning has expanded to include anyone who sells sex

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without being a fulltime sex industry professional. Internet and telephone dating clubs are a related, technology-driven phenomenon that frequently includes direct underground prostitution, along with more serious problems. Half a dozen murders and dozens of rapes connected to Internet dating sites were reported in 2001, a year in which Internet dating-related crimes increased eight-fold (*Japan Today* 2002b). Such crimes were on pace to double again in 2002, with the vast majority of victims being female minors, usually involved in prostitution (*Japan Today* 2002c). A Fukuoka High Court judge resigned last year for interfering in an investigation involving his 40-year-old wife, who had harassed and made death threats against a female rival for the affections of their mutual lover, met through a cell-phone website.

Japan's 1999 law banning sex with persons under age 18 also criminalized the production, sale or distribution of pornography featuring minors. This law was partly in reaction to negative publicity from abroad, as Interpol announced in the late 1990s that Japan was by far the largest source of child pornography on the Internet (Osuga 2001; Kingston 2001; 77). Some of Japan's mass-circulation comic books (*manga*), specifically the "Lolita complex" genre that caters to older men's fixation on school-girls, have been pilloried by Japanese and foreign activists for what they describe as pedophilic content and the encouragement of violence against women (Kadri 2001; Kingston 2001; 165-66). Such disturbing material is about power as much as sex, pointing out another facet of Japan's pervasive pornography and broader sex industry. In 2002, the U.S. State Department listed Japan as a "tier two" country in its annual report under the Victims of Trafficking and Violence Protection Act, meaning that the country is making progress but does not currently comply with the act's minimum standards (*Japan Today* 2002d). Tens of thousands of women, mostly from Southeast Asian countries, are understood to be working under duress in the Japanese sex industry, making them, in the eyes of

some critics, “contemporary comfort women” for the nation’s corporate warriors (Kattoulas 2000).

The relatively low status of women within Japanese society has contributed to the commodification of sex, a gender-related background cause of schoolgirl prostitution. Molestation of women on crowded commuter trains has become such a serious problem that several train companies have introduced female-only carriages during peak travel times. The 57-year-old chief judge of the Kobe District Court resigned in 2001 after he was caught molesting a female train commuter. The media also report in sensational detail incidents such as the arrest of a police officer for filming up the skirts of women on an escalator. The tables were turned on the Tokyo Broadcasting System, though, when within the same month a news executive was arrested for train molestation and a reporter was discovered video-taping a woman as she took a bath. In 2001, Japan became the last advanced industrialized nation to enact legislation outlawing domestic violence; courts issued more than 1,000 protective restraining orders in the law’s first year. Canadian police arrested a Japanese consul general on spousal abuse charges in 1998, even though the 51-year-old diplomat tried to dismiss punching his wife in the face as a “Japanese cultural issue.” In 1999, the Japanese government’s first nationwide survey on domestic violence revealed that 20 percent of Japanese wives had suffered physical abuse during their marriages (Magnier 2002). Another government survey indicated that nearly 25 percent of women in their 20s and 30s have been targeted by stalkers; a new anti-stalking law also took effect in 2001. One aspect of Japan’s escalating crime statistics is that such social pathologies are being openly discussed, and reported to police, more often.

3.3. *Enjo kosai* as a symptom

Compensated dating, along with the growing visibility of prostitution

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as a whole, is symptomatic of deeper disarray within society. *Japan Echo* is a bimonthly journal featuring English translations of articles on such current issues by Japanese academics and opinion leaders; the articles come from publications such as *Bungei Shunju*, *Chuo Koron*, and *Sekai*. According to “Moral Crisis,” written by *Japan Echo* editor (and Keio University professor) Sumiko Iwao: “Today Japan may be paying the price for 50 years of avoidance—a half-century spent single-mindedly pursuing economic prosperity at the expense of our emotional and spiritual health. The rise of *enjo kosai* ... epitomizes the problems that have come home to roost” (Iwao 1997a). The problems include the difficulty within post-industrial Japanese society of transferring values from older to younger generations, along with fuzzy attitudes toward law and order that frequently appear situational and disconnected from any moral absolutes. Parents of adolescent prostitutes, Iwao continued, “have failed to instill in them such traditional values as frugality and the work ethic or a clear sense of right and wrong.” To solve the problem of compensated dating, Japanese society must examine and treat the “warped sexual attitudes and practices, the worship of money, the conformist desire for famous-name goods, and the lack of spirituality that pervade our society—not as the problems of a few teenage girls but as our own” (ibid.). Author Ryu Murakami similarly interpreted *enjo kosai* as representing a dashboard indicator light for the unhealthy state of Japanese society. “Unconsciously, these high school girls are involved in a kind of movement. To use a bit of hyperbole, they’re spearheading a movement whose message is, ‘Do you really think everything is as it should be in Japan? Don’t be so complacent, all of you’” (quoted in Kawai 1997).

Nakanishi sees in teen prostitution nothing less than a national crisis “whose implications go beyond the appalling sexual mores of today’s young Japanese and the coarsening of our TV fare; it involves the immaturity of our democracy and the failings of our postwar value system.

At its root this goes back to the issue of postwar Japan” (Nakanishi 2000). Increasingly popular not only with conservatives and nationalists, the critique holds that the nation sold its soul in the headlong rush to achieve economic parity with the West, that its essential “Japanese-ness” was sacrificed in the process. Nakanishi refers to “the country’s peculiar preoccupation with establishing a postwar identity divorced from its prewar self” as a root cause of *enjo kosai*, and by extension rising crime and general ethical collapse. All have stemmed from postwar Japan’s avoidance of absolute values and moral codes, which were discredited as remnants of wartime state religion. He asserts that “if the Japanese lose touch with their traditional culture on a deep level, they inevitably lose their spirit of morality,” because in his analysis Western morality with its abstract ethical principles is simply less transferable to Japan (ibid.). The transfer of the rule of law itself, predicated in the liberal democratic tradition upon a normative moral base, remains a work in progress.

4.1. Organized crime by foreigners

The number of Chinese in Japan began increasing dramatically in the mid-1980s, when Beijing started allowing overseas travel for purposes like study and research, and Tokyo announced an ambitious goal of bringing 100,000 foreign students to the nation’s universities and language schools by the year 2000. In 2001, the record number of nonresident foreigners arrested or detained by Japanese police on suspicion of criminal activity was 15 percent higher than in the previous year (*Japan Today* 2002e). Chinese nationals accounted for nearly half the total; there were also sizeable numbers of Middle Easterners and South Americans. Organized crime by Chinese has reached alarming proportions, with overseas-based “Snakehead” syndicates smuggling people and drugs into Japan, while exporting stolen luxury cars out. Smaller, less organized groups of Chinese specialize in the stealing and fencing of expensive

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goods like furs, handbags, jewelry and shoes. The items are sometimes resold at discount shops within Tokyo, a practice that may involve pay-offs to local police. Or in the “hit and run” variation, the stolen merchandise may be resold in Hong Kong or Shanghai on the same day, with original labels still affixed, by “crime tourists” who break into luxury goods stores and quickly return home with the assistance of Japanese crime groups. Chinese-on-Chinese crime in Japan has become rampant and brutal, including acts such as robbery, extortion, abduction for ransom from the mainland, torture and even execution-style slayings. Perpetrators as well as victims are frequently illegal aliens, as in the 2002 case of the Tokyo kidnapping for ransom of a six-year-old Chinese boy whose parents cooperated with police and were deported after being reunited with their son.

Criminals comprising the loosely knit Chinese “black way” differ in organization and operation from the hierarchical and disciplined *yakuza*, Japan’s far larger homegrown mob. In Kabukicho, the Tokyo entertainment district infamous for its sex and gambling subculture, Chinese mafia groups are elbowing aside native *yakuza* by being bolder and more violently aggressive. (Kabukicho is also where a large chunk of the billions of dollars remitted abroad through underground banks starts its illegal journey. Arson is suspected in the 2000 fire that killed 44 people in a cluster of Kabukicho sex clubs, and the tabloid press has floated rumors of Chinese gang involvement.) Police frankly acknowledge that traditional methods of controlling street crime, involving cooperation with and accommodation of *yakuza*, are highly ineffective with Chinese criminals, who, for example, decline to confess upon arrest. Authorities are thus scrambling to retool crime-fighting task forces and develop new investigative techniques. Fifty surveillance cameras were recently deployed in Kabukicho, where a crime is nearly 200 times more likely to occur than in Tokyo’s surrounding districts (see Schreiber 2002; Kristof

1999a).

Although Chinese criminals in Tokyo have attracted the most headlines, foreigners of numerous nationalities have committed crimes ranging from purse-snatchings to multiple homicides, in remote villages and major metropolises across the nation. (Crimes committed by U.S. military personnel have become an emotionally charged political issue, but represent a distinct problem confined mainly to Okinawa.) Japan's best-selling locksmith even advertised its new home security locks as being "foreigner-proof" (Arudou 2002). Crime prevention posters put out by local police departments have featured racial stereotyping that would spark lawsuits in the U.S., but have prompted scant outrage amid public perceptions of a foreign crime onslaught. Tokyo Governor Shintaro Ishihara, proudly politically incorrect, suggested in 2000 that the Japanese military should round up illegal aliens in the event of a major earthquake, in order to head off potential urban rioting. In an inflammatory front-page newspaper article the following year, Ishihara posited the existence of criminal DNA that predisposes Chinese to crime of a more violent and immoral nature than Japanese crime, and called on Japan to defend its "internal flank." One-fifth of Tokyo's overcrowded prison cells are indeed occupied by foreigners; Ishihara has lamented the need for expensive translators and complying with inmate dietary restrictions.

Issho Kikaku (www.issho.org), a Tokyo-based group of multicultural activists, and others have challenged the Japanese media's often selective and overheated reporting of crime by foreigners (see also Miyai 2002). The group points out that racial profiling and police crackdowns are bound to result in higher arrest rates, and that the number of foreign residents has grown by nearly half over the past decade, while the number of Japanese is flat and will soon begin to decline sharply. (Foreigners made up a record 1.4 percent of Japan's population in 2001.) This demographic reality has produced mixed feelings among Japanese regard-

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ing foreigners in their midst. The pressing need for foreign labor to perform the so-called “dirty, difficult and dangerous” jobs that young Japanese now shun coexists with substantial levels of xenophobia and cultural insularity. Roughly half a million, mostly Asian foreigners have entered the country since 1991 as part of a vocational training program, intended to develop a long-term foreign labor pool, run by the Japan International Training Cooperation Organization. Due largely to exploitation and ill treatment, thousands of these industrial interns have gone underground instead of returning home, entering the ranks of Japan’s undocumented workforce and in some cases turning to crime (Ishida 2002). The bungling of the JITCO training program illustrates the difficulty of internationalization in a country where discrimination against foreigners exists in employment, housing and other areas.

Indeed, the Japanese government’s hastily conceived foreign student recruitment scheme, along with deep-seated racism against Chinese, has been blamed for fostering crime. The vast majority of Chinese in Japan originally entered the country as language school students; while tens of thousands eventually entered Japanese universities, thousands of others pursued illegal livelihoods. If there had been a more effective academic screening mechanism, and if colleges had been better equipped both materially and culturally to accept massive numbers of foreign students, a Chinese writer notes, then “Japan would not today be facing such a serious crime problem in its foreign community. Japan’s failure to adopt a rational and systematic policy on foreign students eventually created an atmosphere in which many immigrants—particularly these language students—felt justified making a living by any means available” (Mo 1998). Although better social service and educational support networks are being erected, overcoming the marginalization of non-Japanese will take much longer. “The atmosphere of prejudice against foreigners—particularly Asians—that pervades Japanese society helps the immigrants

who have turned to crime in this manner rationalize their activities” (ibid.).

4.2. Japanese organized crime

A pre-existing condition that has facilitated the growth of organized crime by foreigners is society’s toleration of the *yakuza*, very large Japanese organized crime syndicates that are well-integrated into national life at all levels. Older *yakuza* members profess traditional samurai values and cling to a romanticized image, complete with intricate tattoos and severed fingers, dating back to the 17th century (making the order older than the Italian mafia). *Yakuza* on occasion served as a shadow security force in helping police quell left-wing protests in the chaotic aftermath of World War II. In fact, right-wing nationalists with strong underworld links played a key role in the founding of Japan’s long-dominant Liberal Democratic Party in the 1950s; enduring LDP-*yakuza* ties are a poorly kept secret. In years past, the *yakuza* provided an institutional outlet for society’s incorrigible “lone wolves,” minimizing “disorganized crime” by giving such individuals an organizational affiliation. This arrangement kept crime securely compartmentalized within society; criminal violence against ordinary citizens remained virtually nonexistent. Conventional *yakuza* activities include gambling, prostitution, loan sharking and extortion, as well as deep involvement in the construction industry, making the syndicates major beneficiaries of what can be fairly termed the “government-assisted bid-rigging” endemic to Japan’s domestic “construction state” economy. *Yakuza* also perform more fluid roles as “fixers,” using intimidation to mediate civil disputes over car accidents and collect debts for consumer finance companies.

During the economic boom of the 1980s, however, organized crime’s influence evolved in ambitious new directions. *Yakuza* “moved from smoky gambling dens to the stock market, from rackets on construction

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sites to the real estate development industry, from ties with the neighborhood police to influence over national politicians” (Sterngold 1992a). The director of the National Police Agency’s anti-mob division conceded in 1992 that the Japanese public was “becoming worried that if they allowed the *yakuza* to continue any further, the entire legitimate society would be swallowed up by them” (ibid.). New laws that same year required organizations with a large percentage of members with criminal records to register with police; as of 2002, there were some 84,000 full-time and part-time members of officially designated criminal groups. (It was the sixth straight annual increase, as *yakuza* membership is not illegal and the larger groups openly maintain corporate offices with gang logos.) Police investigative powers have been gradually widened, after decades in which anti-*yakuza* efforts were basically confined to street corner billboards wishfully proclaiming, “This is a gang-free town.” But Japan still lacks an anti-racketeering measure like the American RICO statute that might financially defang organized crime. There is no provision for confiscation of ill-gotten wealth, and nothing like a witness protection program. The former British ambassador to Japan, in a newspaper editorial called “Breaking the *Yakuza*’s Grip,” recently described organized crime as “a serious canker, which could undermine Japanese parliamentary democracy. Japan’s reputation as a democratic state, which maintains and protects human rights, is at stake” (Cortazzi 2001).

Today, *yakuza* discipline is breaking down and violence is heating up (Sims 2000; French 2001b). The double homicide perpetrated at a *yakuza* funeral in 2001 flouted what was formerly an iron-clad taboo, while a 2003 bar shooting killed three innocent bystanders along with the intended gangster victim. In 2002, a Tokyo gunman forced his way through shrubbery outside a hospital intensive care unit, leaned through the window and finished off a rival gang leader who had previously been shot in the street. A mob hit at a family restaurant during the lunch rush

similarly shocked the public, as did the kidnapping, torture and murder of a doctoral student in a dispute over a parking space. Meanwhile, lower-level *yakuza* have stooped to disorderly crimes such as theft and robbery that were once considered far beneath their dignity. Society's *yakuza* tolerance level has plummeted as a result, but combating organized crime is made difficult by its entrenched nature. Revelations in 2002 of a senior public prosecutor in Osaka being wined and dined by gangsters were not overly surprising, although eyebrows were raised by the fact that *yakuza* were living in a condominium owned by the prosecutor, who allegedly received payoffs for information about police investigations. It also came to light that even the venerable neighborhood post office has been compromised. More than 300 post offices nationwide have routinely been giving preferential treatment to *yakuza* mail, putting their letters and postcards in special envelopes to avoid getting them dirty (*Japan Today* 2002f). It turned out, too, that for years gang members have been receiving steep discounts on tickets to Tokyo Dome sporting events.

Organized crime tentacles within the heart of Japan's financial system and corporate culture may be the most insidious. Back when the bubble economy was still going strong, banks and brokerage houses granted massive unsecured loans to *yakuza* groups and illegally compensated them for stock losses. Professional criminals usually figured in that era's plethora of insider trading and share manipulation scams as well. Moreover, throughout the 1980s countless Japanese corporations paid hefty sums in protection money to *yakuza*-connected blackmailers and extortionists known as *sokaiya*, or "general meeting fixers." A well-kept *sokaiya* would use intimidation to suppress questions from the floor during an annual company shareholders' meeting. A *sokaiya* feeling underappreciated, on the other hand, could disrupt such meetings by loudly threatening to reveal sensitive information about the company or its executives. By the late 1990s, though, *sokaiya* had become nearly extinct

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for several reasons: police started prosecuting corporations for making illegal payoffs; a dramatic increase in foreign direct investment in Japanese companies discouraged such opaque dealings; and corporations began holding their annual meetings on the same day in June, making it more difficult for *sokaiya* to attend (see Sterngold 1992b; Strom 1999). Nevertheless, it was revealed in late 2002 that two of the nation's biggest consumer credit companies had never ceased paying hundreds of thousands of dollars in mob protection money.

Even less easily overcome, the bad loan disposal problem at the root of Japan's 14-year-long economic malaise is partly an organized crime legacy, giving rise to the label "*yakuza* recession." While mobsters in pinstripe suits borrowed billions from banks to plow into stocks and property during the 1980s, their brawnier colleagues worked as "land turners" (*jiageya*) skilled in expediting the sale of choice properties. These *jiageya* were hired by individual land speculators or even by the bank-affiliated real estate lending companies known as *jusen*, scores of which went bankrupt after the market collapse, necessitating a multi-billion dollar government bailout. "Much of the loan default problem can be traced back to these *jusen*, suggesting that the bubble was a giant con game that enriched the mob at public expense" (Kingston 2001; 107). *Yakuza* involvement continues to complicate clean up of the problem on the back end; up to half of non-performing loans may be linked in some way to organized crime and therefore ultimately unrecoverable (Kattoulas 2002). Even seeking loan repayment can be dangerous. In the early 1990s, two bank officials were murdered after attempting to collect mob debts, while among the seven apparent suicides by senior bankers and financial inspectors since 1997, foul play has been suspected more than once (*ibid.*; Watts 2002). Banks have warned employees involved in such collection work to exercise caution in public places, such as when waiting on train platforms. In Japan, in short, the long-standing objective

has been to manage organized crime, not to eliminate it.

4.3. Related groups

A brief description of two other *yakuza*-linked groups, right-wing ultranationalists and teenage motorcycles gangs, helps paint a fuller picture of organized crime in Japan. Membership in right-wing organizations (*uyokuha*) jumped by about one-third during the 1990s, due to mainline *yakuza* joining such groups to avoid police detection as well as to rising nationalism. The record number of rightists arrested in 2001, mostly for fraud and blackmail, was 25 percent higher than in 2000 (*Japan Today* 2002g). Ultranationalists can be observed driving slowly through Japan's downtowns in black busses and trucks with the "Rising Sun" flag of the erstwhile Imperial Navy painted on the sides. Loudspeakers mounted on the roofs of the vehicles aggressively broadcast martial music and the basic *uyokuha* message: restoring the emperor to ruling status, rewriting the constitution to unshackle Japan's military, demanding the return of the four Russian-held northern islands, and criticizing liberal newspapers and lifestyles. Disagreeable free speech can be a sign of healthy democracy, of course, but in Japan extremists have succeeded in curtailing public discourse and, at least indirectly, influencing government policy.

Right-wing extremists have on multiple occasions blocked the domestic release of WWII-related movies and books, through intimidation of movie theaters and publishing houses. Their threats are not empty. Nagasaki's mayor, himself a pedigreed LDP conservative, was shot and nearly assassinated by an ultranationalist in 1990, for stating his opinion that Emperor Hirohito bore war responsibility. (In a similar sort of incident, a leading Japanese film producer was left facially disfigured by a 1992 slashing attack, after his film suggested resisting mob activities.) One of Japan's most famous athletes, soccer star Hidetoshi

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Nakata, became the target of right-wing extremist death threats for calling Japan's national anthem "uncool." Nakata later left Japan for the Italian leagues, partly out of concern for his personal safety. It was discovered in 2001 that the black *uyokuha* busses, frequently traveling in fear-inspiring convoys, have routinely been paying the far cheaper mini-car toll rates on Japan's public highways (*Japan Today* 2002h). Toll collectors reported that they felt threatened and wanted to avoid trouble, highlighting a fundamental reason why organized crime of various stripes thrives in Japan.

Bosozoku, or "wild riding gangs" on motorcycles and in hot-rod cars, have always been tolerated as a relatively innocuous rite of teenage rebellion, even as legions of juvenile *bosozoku* members eventually matriculated to the ranks of full-fledged *yakuza*. But today's crop of *bosozoku* is decidedly more dangerous, sometimes committing robbery and extortion on the street. Drug trafficking has become commonplace and violent street clashes with police, including at least two riots, have occurred. Even in broad daylight now, some *bosozoku* members ride their illegally modified motorcycles (no mufflers, no license plates, and no helmets) through urban intersections against the red light, as police and bystanders pretend not to notice. At night, *bosozoku* riding solo and in packs through densely populated cities, revving their engines for maximum noise, are permitted to disturb the slumber of literally millions of Japanese on a regular basis, eliciting little more than fatigued sighs the following morning. Reflecting new attitudes toward crime and punishment, however, police are finally removing the kid gloves. A record number of *bosozoku* were arrested in 2001 and enforcement activities (formerly summed up by street signs instructing, "No wild riding") are being expanded to include impoundment of vehicles and jail terms for the most egregious lawbreakers—obvious solutions that Japanese society has until now rejected as being too draconian. Local governments are passing

anti-motor gang ordinances, with penalty clauses, against *bosozoku* habits like carrying steel pipes useful for committing assault. Previous laws had prohibited the owners of illegally modified motorcycles from buying gasoline, but lacked any penalties and were predictably ineffective. As of 2001, according to police, there were more than 1,000 motor gangs nationwide with nearly 23,000 members (Suzuki 2002).

5. Lax enforcement, lenient punishment

The “broken window theory” of crime prevention holds that unless a broken windowpane is repaired as soon as it is discovered, additional broken windows will begin appearing throughout the neighborhood. Because even small transgressions tend to undermine law and order, thereby encouraging more serious crime, zero tolerance of criminal behavior is necessary. Japan’s very low levels of street crime that persisted until the mid-90s thus represented something of a criminal justice enigma, as society ignores broken windows in the form of laws that go unenforced and lawbreakers who go unpunished. Following an unusually long lag time, though, crime is now spiraling out of control by Japanese standards, and the nation is rushing to replace windowpanes through fuller police enforcement of the penal code and stiffer judicial sentences. (In Tokyo’s upscale Shibuya shopping district, efforts to protect windows have been literal, as merchants are mounting night patrols to combat the scratching of expensive glass windows and doors by vandals.)

Japanese society used to be largely self-policing in terms of street crime. Despite the community-policing model symbolized by the neighborhood “police box” and annual visits to private homes, the National Police Agency (NPA) adopted a low-profile, even disengaged approach to law enforcement that was formerly sufficient. When asked about this surprising reality of a nearly invisible police force (in reference to why

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tax-paying, voting citizens allow *bosozoku* motor gangs to keep them awake at night), Japanese acquaintances have brought up the wartime police state that existed within living memory. This fact of history helps explain society's apparently unreceptive attitude toward rigorous law enforcement in such areas. In other instances, Japanese police themselves have been reluctant to employ the enforcement tools society has given them. A wiretapping law allowing investigators to eavesdrop on organized crime communications came into effect in 2000, but police declined to exercise their new powers for nearly two years, until they finally tapped the cell phones of low-level gangsters selling small quantities of drugs via the Internet.

In the national defense arena, a similarly hands-off attitude was displayed following an intense December 2001 firefight between Japan Coast Guard patrol boats and a rocket-firing vessel immediately suspected to be of North Korean origin. Just as the NPA does whenever a police officer fires his pistol in the line of duty, military spokesmen appeared overly apologetic in justifying the sinking of the aggressively hostile boat and the drowning of its 15-member crew. It then took Japanese authorities two months to begin investigating the sunken ship via camera probe, and nine months to raise it, despite the fact that North Korean agents were known to have spied, abducted Japanese residents and smuggled drugs in the past. As of early 2003, Japan's government was supporting U.S. policy toward Iraq more fully than the general public, judging from friends' reactions to my observation that, for the sake of legal consistency, the United Nations should either insist on enforcement of its own Security Council resolutions or else repeal them. Average Japanese appear to be less bothered by such contradictions than average Americans.

The baseball diamond provides a good cross-cultural example of Japan's partial importation of the rule of law and indulgent attitudes

toward wrongdoing. In 1997, Mike Di Muro became the first American to umpire regular-season baseball games in Japan, but he quit and returned to the U.S. after a mere 39 games. The final straw came for Di Muro after a Japanese player strongly protested a strike call and was ejected. Players and coaches then rushed Di Muro, jostling him with elbow jabs in clear violation of Japanese baseball rules, which state that umpire decisions are final and cannot be protested. “In Japanese professional baseball, however, it is a fact that argumentative behavior that violates the rules takes place openly, and umpires have lost their authority” (Ikei 1997). Social commentators sought to explain the clash of baseball cultures by comparing America’s dry and rational business mentality to Japan’s wet and emotional group approach, noting that even in baseball disputes Japanese favor a conciliatory middle ground between black and white. (Highlighting this negotiability, a Japanese umpire backed down under a manager’s protest the day after the Di Muro incident, deciding that he had called a strike a ball by mistake, something unthinkable for American umpires.) A Kyoto University professor emeritus observed of the Di Muro debacle: “In contrast to the United States, where judgments are made according to one set of rules and order, Japan is, in a good sense, flexible, in a bad sense, loose. Even when the Japanese know that something is a foul or violation, they tend to let it go. So we have corporate racketeers and ... huge illegal loans. Such incidents, unparalleled in other countries, are Japan’s shame” (Hisao Onoe, quoted in Takashina 1997). As a law enforcement paradigm, “looseness” has lost its ability to maintain public order in Japan and is being discarded. For Japanese baseball, too, it was concluded that “when the rules are not functioning in practice, it is probably better to think about changing them than to keep tolerating violations” (Takashina 1997).

It is not easy to be a Japanese police officer these days, for the NPA has been buffeted by harsh criticism and morale is flagging. Recent police

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scandals have included systematic cover-ups of traffic offenses and drug use by colleagues, along with personal and professional misconduct involving sexual offenses, shoplifting, evidence-tampering, falsification of documents and outright extortion. Everyday arrogance and incompetence is another reason why public respect for the police is at low ebb. Homicides have been the end result of a number of cases in which police have refused to take crime reports from victims. (Part of the increase in crime statistics can be attributed to the fact that, due to public outrage, police have begun to formally process cases they used to handle informally or ignore altogether.) *Japan Today*, an online news publication, conducted a wholly unscientific web poll on the question, “What is your impression of Japanese police?” While the website is in English and the majority of respondents were apparently foreign expatriates, the 2002 poll results were indicative of public perceptions and the irreverent discussion board anecdotes rang true.

Out of the 1000 or so votes cast online, the largest group (43 percent) said Japanese police “can’t solve a crime without a confession” and the smallest group (13 percent) opined that Japanese police are “very good” (*Japan Today* 2002i). Police performance in the notorious Niigata kidnapping case bore out the majority view. In 1991, a 30-year-old man abducted a nine-year-old girl and then confined her in his house (located a few meters from a police box) for nine years, feeding her once a day and regularly abusing her with a stun gun. Following the girl’s disappearance, police failed to follow basic investigative procedures and mistakenly omitted the abductor’s name from a list of known offenders. Public health workers twice requested police visits to the house, but were rebuffed. When the girl was at last discovered by health workers in 2000, police untruthfully attempted to claim credit. A group of the region’s top police officials, finally, were found to be drinking and playing mahjong at a hotel on the day the girl was rescued. Unprecedented police reforms,

being overseen by a civilian watchdog agency, are targeting the NPA's unaccountable and secretive nature.

Japanese judges, for their part, do relatively little adjudicating. Virtually all criminal suspects end up confessing, making judicial rulings on guilt or innocence unnecessary. Instead, the main job of criminal courts is to determine sentences, which in many cases strike Western observers as very lenient. Suspended sentences (probation but no prison time) lacking much of a deterrent punch are handed down with great regularity, even for quite serious crimes if the offender is sufficiently contrite. "According to Japanese judges," notes a British professor at Oxford Polytechnic who specializes in Japanese sociology, "the primary purpose of trials is to correct behavior, not to punish it, and if an apology seems to be sincere, the aim is deemed to have been achieved" (Hendry 1987; 189). The confession is the major indicator of an offender's sincerity within this essentially Confucian model, but payment of monetary compensation also leads to significantly reduced sentences. For example, a 33-year-old cram school teacher who confessed to confining one of his junior high school students at his home for seven months was recently given a suspended prison sentence because, as the judge noted, the man had accepted responsibility and compensated the girl's family.

Judges issue explanations of their rulings that can seem distinctly subjective, displaying a muted sense of answerability to the law itself. Rulings in civil cases, in which judges push hard for out-of-court settlements, show a central emphasis on compromise and conciliation. "As a general rule, a judge seeks solutions to cases which satisfy both sides, and there is a reluctance to apply universal principles in which declarations are made about absolute right and wrong" (ibid.). Even in traffic accidents where one party was completely at fault and the other party totally blameless, the long-standing custom for both legal and insurance purposes has been to apportion fault at perhaps 80 percent and 20 percent,

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respectively. Related legal attitudes can be discerned in the case of the 75-year-old public treasurer of a rural village who gave some \$4 million of embezzled funds to 11 female friends, driving the village to the brink of bankruptcy. The women were urged to return the money, but not required to do so because they did not know it was illegally acquired.

On rarer occasions, judges have creatively managed to increase sentences. In the Niigata kidnapping and nine-year confinement case mentioned above, the maximum penalty of 10 years in prison would have barely exceeded the length of the crime itself. Therefore, the defendant was given an additional four years for the petty theft of four pairs of underwear (a \$20 total value) that he had shoplifted for the girl, bringing his total prison sentence to 14 years. Sentencing in a 2002 case involving a 27-year-old man who tortured and killed a cat and then posted photos of the crime on the Internet was also interesting. Despite receiving some 3,000 letters and emails demanding a harsh punishment, the judge issued only a suspended sentence because private information about the offender and his family had also been posted on the Internet by outraged citizens (*Japan Times* 2002c). The judge, resisting public opinion in a way that an American judge might find difficult, determined that the man's social punishment (which had "gone too far") should serve as a substitute for formal legal sanctions. It is true that within Japanese society, much more than in the U.S., simply being arrested and accused of a crime entails extra-judicial sanctions of social disapproval and potential ostracism, although this phenomenon may be waning. Such cultural differences make comparisons of Japanese and American jurisprudence tricky. What appears clear, and will be discussed in more detail below, is that due to rising crime Japan is moving in the direction of stiffer sentences and more objectively sanction-based deterrence.

6.1. Everyday non-compliance with laws

Lax enforcement of laws and the lenient punishment of violators have naturally resulted in significant levels of non-compliance with laws by rank-and-file citizens, private corporations, politicians and bureaucrats. Critiquing another country's driving habits can be too facile, but for the average citizen driving represents a daily point of contact with law and order. Numbers of both traffic accidents and accident-related injuries posted record highs in 2001, with the former notching the ninth straight annual increase and latter the fourth straight annual increase (*Japan Today* 2002j), confirming that driving is another area where the rubber of declining public civility is meeting the road. All manner of traffic laws in Japan are openly flouted because they are loosely enforced. Behaviors such as extreme speeding and illegal parking on main thoroughfares result in numerous serious accidents, but have long been overlooked as if they were uncontrollable events like the weather. Red lights function as traffic suggestions for many drivers, as multiple cars often pass through intersections against the red. (Traffic lights are liberally timed to allow for this, a solution akin to setting one's clock ten minutes fast in order to avoid being late for work.) Everyone agrees that red-light running has steadily worsened, though I have also been told the problem is particularly bad in my corner of Japan, which would mean that geography has been allowed to influence the meaning of traffic signals.

Japanese motorcyclists and scooter riders are required to wear helmets, but this is another traffic law suffering from non-compliance. Young people were the first to begin wearing their helmets draped loosely around their necks, then down about their shoulders, now increasingly not at all. Yet police seldom make American-style traffic stops, in which an officer witnesses a violation and issues a citation. Instead, usually during periodic traffic safety campaigns, officers stand beside the road and whistle motorists over to check for licenses and give mini-lectures.

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Highway speeding is combated very ineffectively by fixed-position radar; the American method of using police cruisers to physically intercept speeders is not employed. But in regard to driving, too, Japanese notions of crime and punishment are being recast. Founded by the parents of two small girls killed by a drunken trucker in 1999, a grassroots movement analogous to the Mothers Against Drunk Driving (MADD) phenomenon of the 1980s in the U.S. has contributed to a major overhaul of the Road Traffic Law, and courts are cracking down on dangerous drivers as never before (*Daily Yomiuri* 2002d). New fines can be levied even against passengers in vehicles driven by drunks.

Television viewing is one more area of everyday life where it is possible to safely disregard the law. According to Japanese law, all households with television sets are required to pay a monthly reception fee to the NHK public broadcasting corporation, which does not air commercials. There is no mechanism to legally force payment, however, making the law a de facto suggestion. As non-enforcement breeds non-compliance, millions of Japanese now simply ignore the occasional home visits from NHK collectors, while the millions who still pay murmur quietly about the system's unfairness. This can be contrasted with the situation in the United Kingdom (the prototypical rule of law country), where a similar law—with teeth—requires universal TV reception fees. In Britain, the government deploys high-tech trucks capable of determining whether non-paying residents are receiving TV signals behind closed doors. British cheaters end up paying their TV fees, plus penalties.

6.2. Corporate non-compliance

Japan's culture of non-compliance with rules and regulations extends from motorways to corporate boardrooms to parliament. *Kusai mono ni futa*, "if it smells, keep a lid on it," is a mindset that explains how dishonest and unethical business practices have come to exist on a

massive scale. After mad cow disease was first discovered in Japan in 2001, a subsidiary of Snow Brand Foods Co. (the nation's leading dairy products company) disguised imported Australian beef as domestic beef, in order to fraudulently claim government "meat buy back" subsidies. The company also relabeled beef from Hokkaido (where mad cow disease was found) to conceal its place of origin, and re-stamped beef to falsely indicate dates prior to discovery of the disease. Multiple corporations frequently engage in the same scams, and a domino effect ensues after the first transgressions come to light. Other meat and food wholesalers, including some of the country's top firms and the major agricultural cooperative, admitted in short order to falsifying labels on beef, chicken and pork. Food labeling violations involving untrue places of origin continued to make headlines for several months: South Korean tomatoes, Chinese burdock and Vietnamese salt were among the numerous imported items exposed to be masquerading as the more expensive domestic articles. By spring 2002, 80 percent of Japanese consumers were said to distrust information provided on food labels, with one newspaper headline declaring: "Food Scandals Reveal Flawed Legal System" (Toda 2002). DNA tests were even being performed on eels to establish their true pedigree and fair market price.

A sideshow to this cluster of scandals came in September 2002, when a Sapporo supermarket, naively assuming that Japan's former honor system was still in effect, began offering refunds—without receipts—to customers who had purchased falsely labeled pork loin and ox tongue during the previous year. Hundreds of young people descended upon the store, forcing it to discontinue the campaign after paying out several times more in refunds than it actually sold in meat. Two youths were arrested for assaulting store security guards; one *yakuza* member was arrested for attempted extortion after claiming to have forced other *yakuza* undeserving of refunds to leave the store. A newspaper editorial

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decrying the incident was unfairly titled, “Shameless Young Japanese Imperil National Morality” (Kikuchi 2002), insofar as it was the meatpacker’s original immorality that set the fiasco in motion. New pro-consumer laws allow for stiffer fines and even prison terms for willful food mislabelers. Government regulators are also now permitted to release the names of corporate violators, something that formerly required a company’s consent.

Familiarity, in the form of lifelong employment and unquestioned company loyalty, has bred contempt by giving employees vested interests in keeping improper practices under tight wraps. “Because Japanese corporate society provides no framework for workers who would follow the dictates of their civic conscience rather than the internal ethics of the organization, independent individuals with a well-developed sense of morality are ostracized,” according to Mariko Sugahara, in a *Japan Echo* English translation of an article that originally appeared in *Chuo Koron* (Sugahara 1994). Mitsubishi Motors Corp. was recently revealed to have covered up vehicle defects for decades. It was learned in 2002 that Tokyo Electric Power Co. covered up the potentially catastrophic problem of cracked nuclear reactor pipes; other nuclear utilities were soon revealed to have done the same thing. In these and other cases, remarkably for Japan, employees themselves reported the unethical behavior, and by the end of 2002 most of the nation’s top firms, hoping to avoid the negative publicity of exposed cover-ups, had hurriedly set up in-house whistleblower programs.

Whistle-blowing has taken off partly due to declining company loyalty amid emergency restructuring and massive layoffs, and because of a shrinking government pork barrel. “Because the recession has helped decrease the number of public works projects, some construction companies have been denied a share of rigged bids. Such firms have chosen to blow the whistle on bid-rigging cases from which they have not

benefited” (*Daily Yomiuri* 2002e). Legislation to protect the employment status of people who disclose private and public sector wrongdoing is pending, but unless this is accompanied by a strengthened normative sense that rules should not be broken, whistle-blowing may turn out to be another unsuitable foreign import (see Masui 2002). Writing before Japan’s street crime wave picked up but intimating its connection to large-scale corporate offenses, Sugahara called for more robust application of the rule of the law in business. “Because the Japanese public spirit and ethical conscience is so weak today, we need to institute strict laws and company regulations that will heavily penalize those firms and individuals that cross over the line” (Sugahara 1994).

6.3. Political, bureaucratic non-compliance

Lawbreaking in official places has a trickle down effect, meaning that any discussion of crime in Japan would be incomplete without reference to the public sector, and the Liberal Democratic Party (LDP) that has dominated Japanese politics for 50 years. Central to the problem of public illegality is the so-called “iron triangle” of collusion between bureaucrats, politicians and big business. Bureaucrats, observed a professor at Australia’s Adelaide University, are rewarded through “highly paid employment in private or semi-government organizations after their retirement. Politicians receive money from business to fuel their political machines in return for the favors they bestow through bureaucrats. Business and industry thrive on government projects and public policies that favor them. Taxpayers foot the bill for this arrangement” (Jain 2002). Political corruption and influence-peddling scandals play out in the Japanese news media as constant background noise. The public barely takes notice, although the message that laws are made to be broken, often by the very people making the laws, gets through. According to a Japanese academic at New York University, “The nature

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of politics in Japan is clearly not that of a modern state. In Japan, money for budgetary allocations—be it public works at home or foreign policy-related overseas development assistance—flows back directly or indirectly to the politicians involved in those areas” (Sato 2002). Such may be nature of politics anywhere, but in Japan the financial stakes are unrivaled due to the “construction state” (*dokken kokka*) economy, in which annual public works spending is the rough equivalent of the U.S. defense budget (Kingston 2001; 196). Building unnecessary dams and mountain highways leading nowhere has been disastrous both environmentally and in terms of institutionalized graft. The head of the NPA, sounding more like his top cop counterparts in non-democratic countries like China or Vietnam, recently urged a crackdown on bribery among politicians, bureaucrats, and businesses (*Japan Times* 2002d).

Even within this existing framework, 2002 was a ripe year for LDP scandals. First, it became evident that someone had given untruthful Diet testimony over an inconsequential matter (the barring of a non-governmental organization from an international conference in Tokyo). Efforts to determine who lied touched off intense factional infighting, pitting as the two protagonists Makiko Tanaka (the strong-willed foreign minister and daughter of a late prime minister) and one Muneo Suzuki, a vaguely Nixonesque lawmaker at the pinnacle of LDP power politics. Tanaka was eventually removed from her cabinet post for being insufficiently conciliatory, rather than for proven wrongdoing. This pointed up Japan’s “emotional inability to focus on the rights and wrongs of a dispute,” according to Gregory Clark, a prominent Japanologist and former Australian diplomat. “By refusing to run away from the issue, (Tanaka) seems to have committed the ultimate Japanese crime. She has caused a fuss. ... This anti-fuss mentality ... may do much to keep group harmony. But it does enormous damage to Japan. Subjective shame rather than objective guilt becomes the criterion for morality. It is a major reason

why scandals have to be covered up; often it is those who expose the scandals rather than the perpetrators who have to take the blame. Gangsters proliferate because they can so easily intimidate the innocent simply by threatening noise and a false scandal” (Clark 2002).

Suzuki fared far worse, spending most of 2002 in a jail cell on unrelated bribery charges that would not have surfaced had he not become embroiled in the Diet controversy. Ironically, the instrument of Suzuki’s downfall was an opposition lawmaker who similarly drew too much attention to herself by aggressively questioning him on live television. She resigned her parliament seat after admitting to having received a policy secretary’s state-paid salary as a campaign donation, a practice other sitting Diet members are believed to have formerly engaged in. In a separate 2002 scandal, a former LDP secretary general and future prime ministerial hopeful resigned his seat in a case of bid-rigging and tax-evasion involving his top aide, nicknamed the “vault teller.” Yet another LDP heavyweight resigned as speaker of parliament’s upper house over unrelated kickback charges; the legislator next in line to fill that post had to be passed over when it was discovered that his wife was on his staff payroll. Reflective of broad political instability, even as the nation slips closer to financial collapse, Japan has had eight prime ministers in the past 10 years, a turnover rate nearly double the postwar average.

The much-reported “fall of the bureaucrats,” meanwhile, has been mostly due to illegal and unethical behavior. Much more so than in America, where the allure of the entrepreneurial business world is relatively strong, in Japan the higher civil service has traditionally attracted society’s best and brightest, who after attending the top schools end up in fast-track government careers. “Benevolence from above,” a theoretical concept key to the pre-democratic relationship between government and the governed, has since the feudal age presupposed the moral integrity of

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those in charge. That is, the right to govern involved the responsibility of “selfless public service” known as *messhi hoko*. “All this changed after World War II. Nominally, bureaucrats were public servants, but the rise of an egotistic individualism in the name of democracy gradually eroded the high aspirations of earlier times and utterly transformed the bureaucratic system” (Ueda 1998). Nothing has transformed the bureaucracy more adversely than *amakudari*, the process whereby top bureaucrats retire while still in their 50s and “descend from heaven” into lucrative private-sector posts in the same industries they formerly regulated.

If *messhi hoko* was always an idealized construct existing on the ground rather imperfectly, today the myth of bureaucratic moral integrity has become a national joke, and the reputation of the public service is at rock bottom. “Bureaucrat bashing is now in fashion. Over the last 10 years Japanese bureaucrats have lost their sense of mission as public servants and have perpetrated blunder after blunder, revealing appalling ineptness and decadence” (Nakanishi 1999). The Foreign Ministry, once considered the prestigious apex of Japan’s meritocracy, has come to represent the apex of corruption. One official pocketed millions of dollars in secret ministry “discretionary funds” intended for diplomatic visits abroad, amassing condominiums, sports cars and race horses in the process. Another Foreign Ministry embezzler padded hotel and limousine bills by millions of dollars over many years. In a clear example of the judiciary’s emerging model of deterrence through punishment, both disgraced bureaucrats were sentenced to prison terms; formerly, suspended sentences would have been automatic. Several Foreign Ministry sections, in fact, were found to be running off-the-books slush funds totaling millions of dollars, accumulated through institutionalized bill-padding, while the consul general in Denver was fired for improperly diverting \$81,000 for personal use. Similar examples could be cited from other government ministries in Japan, a country whose postwar reputation for

low crime has never accurately depicted public- and private-sector realities.

7.1. Economic cause of crime

Japan in recent years has resembled a nation of electricians trying to trace down the shorts in a building's wiring system, as scholars and pundits struggle to explain how public order and morality became so destabilized so quickly. Paradoxically, while the economic stagnation of the past decade is an obvious candidate for blame, the preceding decades of stunning growth helped lay the foundation for current crime. "For Japanese experts who are attempting to understand the rise of youth crime, the central irony is that it appears to be not so much an expression of social deviance but a byproduct of the single-minded industriousness that has propelled Japan toward economic success. The dark flip-side of economic power, many experts say, has been the gutting of family life and playtime in the name of workplace performance and school achievement" (French 1999). Restated, Japan became too successful too quickly at creating a mass consumer society, with too few connections to the social order that preceded it. In 1988, at the height of Japan's economic achievement, *Japan Echo* published a special issue analyzing the profound changes in national values and the implications for social stability. Major articles included "The National Character in Transition" (Hayashi 1988) and "The Japanese: Portrait of Change" (Iwao 1988).

The situation became fully apparent only after the domestic economic meltdown and the post-Cold War globalization of the world economy, to which most Japanese companies have not adapted well. This sudden, structural economic change has been viewed as a root cause of crime by observers such as Hayao Kawai, a leading clinical psychologist and chief of the Cultural Affairs Agency. Following WWII, the theory explains, the traditional family system was dismantled in the name of

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democraticization and industrialization. The company-based lifetime employment system fulfilled family-type functions and provided for general welfare; employees even spiritually identified themselves with companies. But due to corporate restructuring and bankruptcies (which will surge when Japan eventually confronts its bad loan debacle), individual freedom and mammonism have replaced company loyalty and sacrifice. “The problem is that the demise of the family and company-based orders has weakened the forces that restrained individual egoism. In a country without the ethic restraints found in Christian countries, some people tend to behave in extremely egocentric ways. However, it is no longer possible to restore this (former) order” (Tennichi 2001; see also Yamazaki 2002).

7.2. Family cause

The Japanese family unit has been transformed from the extended, patriarchal *ie* system of the prewar period, agrarian in spirit if not always in livelihood, to the highly urbanized nuclear and sub-nuclear arrangements of today. Divorce rates are rising fast, even as couples are getting married later and having far fewer children, about 1.2 on average. “New towns” refer to the antiseptic, suburban neighborhoods lacking the depth of human relationships found in more ramshackle older neighborhoods, where isolation is less physically possible. Affluent, tract home architecture means that children have their own rooms and TVs and computers; kids with no siblings have fewer opportunities to learn how to compromise. With less familial support for child-rearing, a general breakdown in parenting skills has been highlighted by news accounts of young parents taking infant children to late-night video game arcades. In recent summers, several children have died of heat exhaustion in parked cars while their parents gambled inside air-conditioned pachinko parlors. In a situation boding particularly ill for the future, willful child abuse soared

from barely 1,000 reported cases in 1990 to more than 17,000 cases ten years later, due partly to new laws requiring reporting of child abuse (*Japan Today* 2002k). In addition to working outside the home in record numbers, mothers face the heavy pressure of being responsible for nearly all child care and household work; fathers typically set out on their lengthy commutes early in the morning and return home late at night, after socializing with coworkers.

Many modern Japanese, like their counterparts in other advanced societies, are becoming parents without first becoming mature adults, complicating the transference of values and standards of conduct. In the soul-searching that followed the teenage killer cases of the late 1990s, it was lamented that “most Japanese parents today simply do not teach their children basic human or social values at any level, be it responsibility, courtesy, or a sense of right and wrong. The problem is that today’s adults simply do not have such values to pass on to their children. As a result, they are tolerant of every sort of behavior. Parents treat their children gingerly, as if walking on eggs, letting them do as they please and rarely scolding” (Iwao 1997b). By default, a significant portion of parental duties have come to be outsourced, mainly to the nation’s beleaguered public schools.

7.3. Education cause

By the late 1990s, the term “classroom collapse” was coined to describe how entire middle school classes were becoming uncontrollable and unteachable due to disorderly students. Investigation of long-term truancy cases, which have doubled over the past decade, yielded another troubling new term, “social withdrawal” syndrome. While school administrators remained reluctant to use expulsions to deal with the unfamiliar problem of openly defiant students, mounting violence included bullying, suicide and homicide. The irony of Japan’s educational crisis is that the

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very features of the highly regimented system so recently praised for its success (such as the strong emphasis on standardized tests, compulsory uniforms and socialization through group activities like daily cleaning) were suddenly being blamed for producing alienated young people prone to anger and untempered materialism, as exemplified by juvenile delinquency and *enjo kosai* (Nasu 1997). According to a newspaper summary of a National Police Agency report, youth violence is traceable in part to “change in the social environment, such as the rapid development of the information society, as symbolized by the diffusion of cell phones, and the weakened normative consciousness of children. The white paper questions the roles of the family and school while pointing out the indifference of local communities” (*Japan Times* 2001). Obviously of prime importance, this concept of “weakened normative consciousness” has been tied to a lack of self-respect and self-identity on the part of Japanese young people, to a lack of inner resources of a moral or spiritual nature.

7.4. World War II cause

This condition, in turn, is often traced to the individualization of Japanese society following World War II, which is alternately perceived to be either excessive or incomplete. The polarization of debate regarding the optimum degree of individualism within society was reflected during a 1998 conference of education, media, police and parent-teacher groups, convened by the prime minister’s office. “Some participants saw a cause of juvenile crime in the excessive value placed on individuality and personal freedom in the postwar period. Others saw a need to place more emphasis on individual responsibilities, and even to reduce individual freedoms somewhat for the sake of the common good” (Iwao 1998a).

The ultranationalist Japanese Society for History Textbook Reform denies, among other views at extreme variance with international historical consensus, that a massacre by the Japanese army took place at

Nanjing in 1937 or that the so-called “comfort women” were sexually enslaved. While most Japanese reject such revisionism, there is more mainstream support for the group’s contention that, regarding WWII-related education, “there is too much in the way of ‘masochistic’ depictions, which it says cause children to lose pride in their country. The Society cites a lack of national pride as a reason for the increase in juvenile delinquency” (Wakamatsu 2001). “Pride” was the title of a late-90s movie that cinematically exonerated General Hideki Tojo and castigated the Tokyo War Crimes Tribunal for imposing unfair “victor’s justice” in executing the wartime leader; I recall reading a glowing endorsement of the movie at a local Shinto shrine. A major plank of current Japanese nationalism that resonates with much of the general public holds that Japan’s collective “backbone” was removed during the postwar period, producing a people cut off from cultural roots such as Shinto, and thereby predisposed to hedonism and degeneracy such as crime.

The United States, according to this politically conservative school of the war-related cause of crime, emasculated Japan beginning with its early Occupation policies, even though some democratic reforms were rolled back during the later “reverse course” phase (and the U.S. has spent much of the postwar period prodding Japan to remilitarize). Also blamed for society’s fallen state is America’s basic ideology of individualism and, particularly in connection with schoolgirl prostitution, the related fruits of materialism and mass consumption. Youth lack self-esteem because they are estranged from their essential Japanese identity and therefore must return to their cultural source, many conservatives say. (But patriots fixated on Japan’s ethnic origins were disappointed in 2001 by revelations that a leading archeologist, whose startling findings of 30,000-year-old stone tools had made their way into school textbooks, had fabricated finds by planting artifacts at dozens of sites nationwide.)

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A very different, politically progressive explanation of how Japan's handling of its World War II legacy (*senjo shori*) is a root cause of the modern malaise asserts that acknowledgment of war responsibility has been insufficient, that postwar society has not changed thoroughly enough and authentic individualism has not yet been allowed to flower. Collectively, the Japanese have done a singularly poor job of assigning the guilt of waging aggressive war to themselves, which is why neighboring Asian nations remain deeply unsatisfied with past apology-like pronouncements, and virtually all individual redress claims have met political and judicial brick walls. Jeffrey Kingston, a history professor at Temple University in Tokyo, observed that the Diet's national war apology resolution of June 1995 was interpreted by many Japanese and other Asians "as an attempt to mitigate Japan's actions and spread blame in a way that deflects attention away from the widespread atrocities committed by the Imperial armed forces" (Kingston 2001; 140). Such efforts to diffuse fault would be in line with elements of the Japanese rule of law described above. The subjective sense of national contrition expressed in the immediate postwar period, in the *sozangei* process of "collective confession," began weakening rather quickly. Guilt, the more objective measure with greater historical staying power, never made much headway. Starting with the exemption by the U.S. of Emperor Hirohito from war crimes prosecution, continuing with the rehabilitation of formerly purged wartime leaders, and visible today in the rebuffing of compensation claims by now-elderly Asian and Western victims, a mixed message has been transmitted regarding the rule of law: that it is relative and selectively applicable. Victor's justice, progressives believe, was not stern enough.

The Japanese Constitution itself, drafted on tight deadline by a handful of Americans and embodying the utterly foreign principle of popular sovereignty, furnishes one of the 20th century's top examples of

creative legal interpretation. Article 9 of the never-revised document states unambiguously that “land, sea and air forces as well as other war potential will never be maintained,” and permanently renounces the nation’s right of belligerency. “The existence of Article 9, which renounces not just war but even the possession of armed forces or other military potential, may in fact be the biggest underlying cause of postwar Japan’s moral collapse. Here we have a situation in which our nation’s basic law prohibits something (namely, military potential), but it exists anyway (in the form of the Self-Defense Forces), and furthermore, its existence is clearly necessary. Having allowed this fundamental contradiction to exist, how can we expect to avoid the resulting damage to our national morals?” (Nakanishi 2000). In November 2002, even as Japanese citizens continue to grow into their Constitution’s popular sovereignty provisions, a Diet committee released its long-awaited, highly controversial report on potential Constitutional revision. The committee recommended changing Article 9 so as to normalize the status of the nation’s armed forces and permit their overseas deployment.

7.5. Spiritual cause

Proximate causes of crime such as violence and pornography in the media and video games have also been noted, along with a pseudoscientific theory that overbonding between mothers and children and the decline of the traditional fish and rice diet have physically altered the frontal lobes of adolescent Japanese brains (Sawaguchi 2001). However, the most convincing explanations for declining public safety, for the source of the short in Japan’s moral electrical system, emanate from a deeper realm. “I feel the single greatest cause for the wave of juvenile crime has been our failure to instill the basic consciousness in children that tells them what they may and may not do. ... So long as parents, teachers, and other adults have no firmly established beliefs

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about why a certain action is bad, and why it must not be done, we will be unable to teach those standards to our children with any confidence” (Iwao 1998a).

This call not only for moral behavior, but for the systematic teaching and transfer of morality, borders on the religious, terrain in which the majority of Japanese are highly uncomfortable treading. “Japan is an unusual case, having made a success of capitalist production while resolutely disregarding such considerations as social ethics and ascetic morality since World War II,” according to the academic author of “Neo-Bushido for Tomorrow’s Japan,” a title referring to the *samurai* value code. “Since the destruction of the imperial ideology that attended its defeat in World War II, Japan has lacked a control mechanism of ethics and ascetic morality grounded in a strong philosophy or religion” (Ueda 1998). Growing numbers of Japanese seem to intuit that the solution to the current crisis offered by their cultural past predates and goes beyond mere patriotism, that it is spiritual in nature. “We will only be able to get high school girls to abandon this behavior (of prostitution) when we have convinced them that it is bad for the soul” (Kawai 1997).

8.1. Pending legislative solutions

Translating spiritual solutions into social or criminal justice policy is problematic, but numerous legislative, executive, and judicial measures for restoring public order are being attempted. Legislatively, penalty provisions of existing laws are being beefed up, or added for the first time, and fresh laws are targeting increasingly troublesome behaviors like drug use. Possession and sale of hallucinogenic mushrooms, for example, long popular among a certain element of the foreign community but until recently of scant interest to most Japanese, was made illegal in 2002. (The nation is particularly awash in stimulant drugs, Japan Coast Guard seizures of which rose by an astounding 26-fold in 2002.) Posses-

sion of lock-picking tools is being criminalized. Proposed legislation to regulate Internet dating sites would make it a crime even to solicit prostitution from minors, while minors engaged in prostitution would be punished too (*Japan Times* 2002e). Crime victims' rights are suddenly in vogue at the national level, and the first local ordinances outlawing the quintessential "broken window" of graffiti have appeared. Perhaps the most curious local attempt to reassert a sense of law and order, considering that fully half of Japanese men smoke, was the 2002 ordinance that bans *outside* smoking in designated areas of Tokyo's busy Chiyoda Ward and fines violators about \$15, enacted to counter the growing problem of cigarette butt litter and the possible danger of burns. Fukuoka quickly followed suit, prohibiting smoking in designated areas by pedestrians and bicyclists.

Major reform of the nation's public education system can be viewed partly as an anti-crime initiative, since schools have been criticized for contributing to anti-social tendencies among juveniles. New national teaching guidelines issued by Japan's education ministry are shifting the focus from sheer academics to character-building by reducing public school textbook content by 30 percent and promoting flexible activities like community volunteerism. "Free schools" are being set up as alternatives for teenagers who are falling through the educational system cracks (Shimoyachi 2002), as authorities redirect priorities to "human formation" and "education of the heart." Other catch phrases describing the revised policies can be combined and rendered in English as "relaxed, cram-free education with latitude and room to grow." It is hoped that law-abiding young citizens will result.

But the most controversial legislative solution to crime involves revision of the Fundamental Law on Education, enacted in 1947 and never amended. The government's Central Education Council released an interim report in November 2002 that called for overhauling the law's

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basic principles to nurture stronger and more spiritually rich young people, by fostering patriotism and respect for traditional culture. Japanese society “lacks a balance between freedom and responsibility, rights and obligations, and the self and the public, and a sense of ethics is neglected,” according to the report (*Japan Times* 2002f). Conservative lawmakers contend that the current law’s focus on “education for the individual and not the country” overcompensated as a reaction to prewar militaristic education and has led indirectly to crime. They succeeded in 1999 in making the national flag and national anthem (the *Kimigayo*, or “Thy Majesty’s Reign”) mandatory in public schools; some elementary schools are already evaluating patriotism as part of student grades. Progressives have protested what they see as excessive nationalism, but the Fundamental Law on Education is likely to be revised in 2003. Incorporating respect for traditional culture would be, for revision proponents, an action with “effects going beyond the education of school-children; it is bound to raise the moral tone of Japanese society as a whole” (Nakanishi 2000). It remains unclear, to say the least, whether such legislative measures can reduce crime.

8.2. Police solutions

The National Police Agency recently announced that, after completing a study of New York City’s highly successful “zero-tolerance” approach to law enforcement, it will copy and begin implementing key aspects of the program. The NYC concept of “total law enforcement” directs police resources not only at arresting serious criminals, but also at apprehending and prosecuting petty offenders for vandalism, subway fare-dodging and the like. A Japanese example of this more proactive model of crime fighting came in November 2002, when Tokyo police conducted their first-ever undercover drug sting, in which four Iranians were arrested for selling stimulants in a park; police had avoided using

stings in the past because there are no legal guidelines explicitly regulating them. A major component of the coming crime crackdown will be the hiring of thousands of new police officers, who will be less gun shy than ever before. Rules on the police use of guns have been eased, eliminating the requirement for firing warning shots. Police are still restricted to firing their weapons only in cases of self-defense, though, meaning that the shooting of hostage-takers by police snipers is forbidden. Police have also urged the general public to develop a sense of “personal crime consciousness” that could help prevent crimes like pick-pocketing, purse-snatching, residential burglary, and automobile theft. (Japanese tourists overseas represent prime targets for criminals because, until recently, they have never needed much crime consciousness at home.) In Osaka, a city with nearly double Tokyo’s number of purse-snatchings despite being 30 percent smaller in population, protective netting for bicycle baskets has become *de rigueur* (Ueba 2002). The Guardian Angels became active in Japan in 1996 and are expanding.

Japan being Japan, technology plays a unique law enforcement role. Osaka police are monitoring a 24-hour email account that receives messages from street crime victims, who can even use their mobile phones to transmit photos of suspects. Streetlights in some Osaka neighborhoods come equipped with an emergency button: when a crime victim or witness touches the button, it activates a security camera and intercom that transmit live audio and video to police headquarters. A technological solution to a separate problem involves equipping construction backhoes with global positioning systems, because in 2002 there were nearly 60 cases in which stolen backhoes were successfully used to break open automated teller machines and steal the cash. To help head off crime at a younger age, there was one proposal to create “a variety of systematic game software programs incorporating the concepts of ethics and use them to educate schoolchildren. The exercise of choosing among options

would help cultivate the ability to make moral judgments” (Kaji 2000).

8.3. Judicial solutions

In his article, “Call for a Return to Popular Morality,” a neo-Confucian scholar and professor emeritus at Osaka University urged the swift and certain punishment of misbehavior, a mainstay of the rule of law that has not always been emphasized in Japan. “In my opinion, the way to deal with the present disorder (of frequently violent disruption in schools) is, first and foremost, to restore legal order. Even the slightest violence toward teachers should be subject to legal penalties. ... Teaching the Penal Code is more important than teaching the Constitution” (Kaji 2000). Not only is the trend toward harsher sanctions obvious for various classes of violent criminals, but the judiciary also seems intent on setting a deterrent example in high-profile cases involving crimes that have long drawn suspended sentences. The 57-year-old, politically connected grandson of Japan’s wartime foreign minister was handed an eight-month prison sentence in 2001 for molesting a woman on a crowded train, and for being a repeat offender. In 2002, the 72-year-old former head of Japan’s construction ministry was sentenced to two years in prison for accepting bribes, even after “taking responsibility” for his crime by confessing and apologizing. (His briber escaped prosecution thanks to a three-year statute of limitations; even murder carries a statute of limitations of 15 years, although calls for revising these criminal-friendly provisions may soon be heeded.)

Out of deterrent necessity, as crime by first-time offenders has been especially alarming, a guilt-punishment paradigm is supplanting the tattered shame-remorse one. This Copernican change will require judges to more actively adjudicate cases, not merely pass sentencing on confessed defendants. Judicial reform proposals envision a time limit of perhaps two or three years on both criminal and civil cases, which now

sometimes extend for a decade or longer, and even a modified jury system. Many more judges and lawyers, whose ranks are carefully restricted by the government, will be needed. Major restructuring of law schools and the bar system, as well as the prison system, is under way. Plans for building the nation's first new prisons in 20 years are being fast-tracked, for overcrowding is severe and worsening. Japan's total prison and jail population is projected to top 80,000 by 2005 (Asakura 2002). That is a drop in the correctional bucket by unmatched U.S. standards (more than 2,000,000 people incarcerated and counting), but for Japan it will mark a hefty 25 percent increase over 2000 levels.

9. Conclusion

The rule of law, in the seminal British tradition, involves absolute principles of morality derived from natural law. These are activated via the social contract between a sovereign body of individuals and the state they freely agree to erect, chiefly for purposes of ensuring public order. Noting the stark contrast between Western and Japanese political traditions, Karel van Wolferen refers to the “positing (of) the existence of ‘natural rights’ as a rational basis for liberalism, and through these to contemporary ideas of international law, human rights and the idea of ‘justice’ in general. Moving through Japanese history one finds, by contrast, only the strengthening of an ideology in which rulers figured as the embodiment of morality” (Wolferen 1990; 207). For most of Japan's long, relatively orderly history, this “rule by virtue” (*tokuchi*, loosely analogous to the European divine right of kings) was the operative principle. The Meiji Constitution of 1889, for example, was considered a gift from the emperor to his subjects, a product of “benevolence from above” devoid of any concept of natural rights. Thus, while the Japanese Constitution of 1947 embodies the full letter of the rule of law, its spirit did not suddenly infuse the population of freshly minted citizens. In key

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respects, described at length above, development and implementation of the “rule of law” (*houchi*) is reaching fruition in the early 21st century.

None of the foregoing is meant to imply that Western legal norms and practices are inherently superior to traditional Japanese ones, in either the prewar or postwar periods. [Wolferen has been accused of “Japan-bashing” in the past, but Japanese translations of the Dutchman’s books have sold half a million copies (see Neff 2000). Princeton’s Garon states that Wolferen “has offered the only serious analysis of present-day Japanese social management” (Garon 1997; 17).] In fact, the Japanese arrangement continues to yield generally superior results in terms of public order as measured by street crime, although that margin is narrowing. But partly because other forms of non-violent, less visibly disruptive illegality have been tolerated in Japan, the postwar criminal justice model is disintegrating. Growing numbers of people, not only youth and foreigners, no longer feel bound by the shame-based paradigm, predicated on social disapproval as an informal means of crime discouragement. Japanese society has ceased policing itself, so a guilt-based approach built more squarely upon law enforcement and formal punishment is emerging. American society, it is worth noting, could benefit from a healthy dose of shame, though not as a basis for law and order.

Western criminal justice is also founded upon the liberal view of human nature. It is an essentially pessimistic appraisal holding that individuals are self-interested in a typically unenlightened manner. Minus the threat of certain and substantial sanctions, they cannot be trusted to avoid misconduct. Japan’s crime surge of the past few years tends to support such a Hobbesian view, suggesting that Japanese in the state of nature might be similarly “red in tooth and claw.” A local police official recently told me that Japanese authorities are aiming to contain crime at current record levels, but he did not sound at all optimistic. “If Western democracies relied as little on law as Japan does, they would be

rocked by incessant civil commotion and probably witness a collapse of the authority structure,” Wolferen continued. “Conversely, if Japan were to use the law as it is used in the Western democracies, and as it is supposed to be used under the Japanese Constitution, the present Japanese authority structure would collapse” (Wolferen 1990; 212). Japanese society has lost its innocence and crossed the threshold into an untested new world of crime and punishment. Society will not likely collapse, but it will certainly never be the same.

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