Legal Status of Korean Residents in Japan: Past, Present and Future

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I. Koreans as an Invisible Ethnic Minority in Japan

The core of the Korean minority problem in Japan is the contradiction between the prevalent myth of the “single nation society” and the actual existence of the Korean minority in Japan. This problem underlies most of the legal issues involving rights of aliens in Japan because, on the one hand, most Koreans in Japan do not have Japanese nationality (1), and, on the other hand, their population comprises approximately 80 percent of the total number of resident aliens in Japan.

As of 1984, approximately 680,000 Koreans lived as foreign nationals in Japan. The accumulated figure of those who were naturalized had reached approximately 130,000. No figure is available for the naturalized Koreans living in Japan today. There must be illegal immigrant Koreans as well as Koreans who were born from the inter-marriage between Japanese and Koreans and have Japanese nationality by birth (2). Taking all these figures into consideration, however, one can estimate that Koreans in the ethnic sense residing

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(1) In this article, “nationality” is, unless indicated otherwise, used to designate the legal status of being a member of a state. Nationality in this sense should, according to modern politico-legal thought, include political rights, and thus, coincide with the concept of citizenship, although this was not the case for most colonial peoples.

(2) As will be discussed later, the Japanese Nationality Law was based on the principle of *jus sanguinis a patre* until 1984. Consequently, only those who had a Korean mother and a Japanese father could acquire Japanese nationality by birth. There were also cases in which, although a Korean male and a Japanese female were perfectly married in the social sense, they did not marry legally so that their children could acquire Japanese nationality by birth through their mother, who had no husband in the legal sense.
in Japan number less than one million. This means that they comprise less than 0.8 percent of the whole Japanese population, although they constitute the largest ethnic minority in the country. When compared with other countries, which usually have minority populations exceeding several percent, this figure indicates that Japan is a relatively homogeneous country in terms of ethnicity, though this fact by no means verifies the prevailing myth that Japanese society is “single nation.”

This appearance of relative homogeneity is heightened by factors beyond the overwhelming numerical proportion of the ethnic majority. In terms of physical characteristics and culture, the differences between Japanese and Koreans are relatively small. First of all, there is hardly a difference in color or physical appearance, for both belong to the same race. Second, in language, religion and culture, the Korean minority has much more in common with the Japanese majority than minorities in other countries, such as the Turks in West Germany, the Algerians in France, and other linguistic and religious minorities in Europe, Asia and Africa. Two reasons underlie this second point.

First, both Korea and Japan have been “peripheral” nations to Chinese civilization and were greatly influenced by Chinese culture. In addition, Korean culture itself had a strong influence upon Japan, especially in the ancient period. Consequently, a relatively high degree of similarity has developed in the ways of thinking and in the behavioral patterns of the two nations. Second, due to the lengthy stay of Koreans in Japan, their relatively small proportion in the whole population, and, among other things, a strong pressure for assimilation into Japanese society, their assimilation (Japanization) has progressed steadily.

Consequently, Koreans as an ethnic minority differ relatively little from the majority group. This is one of the reasons for their “invisibility” in Japanese society. The foregoing facts, i.e., that Koreans are a relatively assimilated ethnic minority whose existence is hardly visible, are the basic starting point for understanding many issues related to the Korean minority problem in Japan.
II. Colonial Rule and Nationality Settlement upon Independence

Koreans began to live as an ethnic minority in Japanese society after 1910, the year of the Japanese annexation of Korea. A large number of Koreans migrated to Japan due to economic difficulties in Korea or were forced to migrate during the Second World War. Consequently, as of 1945, at least two million Koreans resided in Japan. Most of them returned to their homeland immediately after the war. Approximately 500,000 Koreans remained, however, due to delays in the attainment of Korean independence, disastrous economic conditions on the Korean peninsula, and by then deeply rooted existences in Japan. The present Korean community in Japan is basically composed of those who thus remained and their descendants. Today, more than 80 percent of the whole Korean population in Japan belong to the latter. Thus, the existence of the Korean minority in Japan is the result of Japanese colonial rule over Korea. Such an existence of minorities originating from former colonies is common to all ex-colonial states.

The world-wide colonial system, which lasted more than four centuries, came to end in the post-war period, at least insofar as territorial rule over the colony was concerned. When nations hitherto under colonial rule achieved independence, some people originating from the former colonies who had resided in the colonial states remained there. Algerians in France, estimated at approximately 550,000, are probably the best known example, but one can find similar examples in the U. K. and other ex-colonial countries. Furthermore, Austrians in Germany occupy a status comparable to Koreans in Japan. Both nations were independent before being annexed, and both recovered independence after the aggressive annexing powers were defeated. How to treat such persons from former colonies has been a complex and serious problem common to ex-ruling states after the Second World War.

One of the most important manifestations of this problem arises out of the
laws and policies concerning nationality. For one thing, how and to what degree one enjoys rights and duties depends heavily on whether one lives in a country as its national or as an alien. Furthermore, laws and policies concerning nationality largely reflect the majority attitude toward its ethnic minorities.

Ethnic minorities from colonies living in the ex-ruling nations had the nationality (in the international law sense) of the colonial power during the period of colonial rule. With the attainment of independence, their nationality came to fall within four categories:

(1) If the newly independent state made them its nationals and the ex-ruling state continued to recognize their former nationality, they would have dual nationality.

(2) If the former did not make them its nationals but the latter continued to recognize former nationality, they would retain only the nationality of the latter.

(3) In the reverse case, they would have only the nationality of the newly independent state.

(4) If neither state made them its nationals, they would become stateless.

Before the Second World War, war was the primary source of nationality settlements related to territorial change. Most such settlements fell under categories (2) or (3) and were effected by treaties between the states involved. After the war, however, nationality settlements related to territorial change resulted from national self-determination, such as attainment or recovery of independence by subjugated nations. These nations denied the legality of the

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(3) For a detailed study, see Onuma Yasuaki, "Zainichi Chosenjin no Hoteki Chii ni Kansuru Ichikosatsu (A Reflection on the Legal Status of Koreans in Japan), (1), (2), Hogaku Kyokai Zassi, XCVI (1979), no. 3, pp. 30-79, no. 4, pp. 1-68.

(4) Traditionally, the principle of automatic change of nationality as a consequence of territorial change was prevalent. According to this principle, when the territory of a state is acquired by another state, the nationals of the first state who continue their habitual residence there, and only they, ipso facto lose their former nationality and become nationals of the successor state. This principle, however, is not of a peremptory, but rather of a dispositive character, working as a supplementary norm in the absence of concrete provisions. See further, Onuma Yasuaki, "Nationality and Territorial Change: In Search of the State of the Law," Yale Journal of World Public Order, III, no. 1 (fall, 1981), pp. 1-35.
former (colonial) rule. They argued that they alone were entitled to determine who would be their nationals and that any settlement by means of treaty was unacceptable. The ex-ruling states had to accept these claims because they too had to admit the immorality of the former (colonial) rule.

In consequence, few nationality problems were settled by treaty relating to the attainment or recovery of national independence. In most cases, the newly independent states defined who would constitute their nationals. In so doing, most of them adopted a criterion of “nation,” regardless of the domicile or residence of those concerned. Thereafter, ex-ruling states defined who would be their nationals, usually with an eye to insuring that this would leave no person stateless. Both states usually granted a *de jure* or *de facto* option to a wide range of people involved. Consequently, most of those who had a bond of nationality in an ethnic sense to the newly independent state and of residence to the ex-ruling state could opt for one of the two nationalities concerned.

III. The “Solution” of the Koreans’ Nationality Problem in Japan

In contrast to these former colony settlements after the Second World War, Japan “solved” its Korean nationality problem in unique manner. The Second World War ended with Japan’s acceptance of the Potsdam Declaration. It provided that “the terms of the Cairo Declaration shall be carried out,” and Cairo Declaration provided that “The aforesaid three great powers,..., are determined that in due course Korea shall become free and independent.” The Japanese government, however, treated Koreans as Japanese nationals until 28 April, 1952, when the San Francisco Peace Treaty came into effect. This followed the traditional theory of international law on the ending of war, and formally justifiable as long as Korea did not achieve independence. According to traditional international law, although hostilities ended on August 15, 1945, the former legal status continued until a new legal status was created by peace treaty. Under the former legal status, Koreans were Japanese subjects. There-
fore, even after the end of the war in 1945, they formally retained Japanese nationality under international law.

This seemingly justifiable position of the Japanese government, however, involved several problems. First, notwithstanding the formal position of the Japanese government, it in fact treated Koreans in many important ways as aliens. For example, the Japanese government suspended Korean suffrage by the Amendment to Election Law No.42 of the House of Representatives on 17 December, 1945. Thus, one of the essential rights of nationality was denied to Koreans. Also, the Alien Registration Order, enacted on 2 May, 1947, “regarded” (Art. 11) Koreans as aliens and put them under its control. The Order functioned as virtually the only immigration and alien registration law in those days. (5) Second, and more fundamentally, the Japanese government payed little attention when Korea achieved independence and defined who would be Korean nationals.

In 1948, the Republic of Korea (ROK) in the south, and the Democratic People’s Republic of Korea (DPRK) in the north were established. Both claimed to be the only legitimate government representing the whole Korean nation. Thus, not only Koreans residing in the territory under the respective regime, but also Koreans living in the other territory as well as abroad were regarded as nationals of the respective state. Consequently, Koreans in Japan were considered ROK nationals by the ROK, DPRK nationals by the DPRK, and Japanese nationals by the Japanese government.

On 28 April 1952, the San Francisco Peace Treaty came into effect. Japan could have granted Koreans in Japan the option to retain Japanese nationality, similar to the action of ex-colonial states after the Second World War. However, Japan did not follow that example. Instead, the Japanese government issued the Circular Notice Concerning Nationality and Family Registry Pursuant to the Coming into Force of the Peace Treaty (Civil Affairs A-438 issued by

(5) For a detailed study, see Onuma Yasuaki, Tan-itsu Minzoku Shakai no Shinwa o Koete (Beyond the Myth of the Single Nation Society, Toshindo, 1986).
the Director of Civil Affairs Bureau of the Ministry of Justice) on 19 April 1952. It provided that “Korea...shall cease to be the territory of Japan upon the coming into force of the Peace Treaty, and thereby Koreans ...including those residing in mainland Japan shall lose their Japanese nationality.” In defining who were “Koreans”, the Japanese government adopted the criterion of Family Registry.

Thus, the Japanese government “solved” the nationality problem of Koreans in Japan not by enacting a statute in the Diet but by issuing a circular notice, i.e., an administrative measure. This “solution”—rather exceptional from a comparative perspective—was justified by the following logic:

1. Nationality problems related to territorial change are usually settled by treaty. The rule that inhabitants of the ceded territory ipso facto acquire the new nationality, whereas those remaining in the ex-ruling state retain the former nationality applies only in the absence of a treaty.

2. Although the Peace Treaty does not have an explicit provision on nationality, it does provide in Article 2 (a) that “Japan, recognizing the independence of Korea, renounces all rights, title and claim to Korea...”. The Treaty thus contains an implicit agreement on the nationality of Koreans.

3. The underlying philosophy of Article 2 (a) is to eliminate the aggressive policy of imperial Japan, and to prescribe a restituto ad integrum of Korea. In other words, the Treaty requires restoration of the status quo ante.

4. Consequently, Koreans as a whole nation are to be liberated from Japanese rule. Therefore, not only Koreans in Korea, but also Koreans in Japan are to be exempt from Japan’s personal sovereignty.

5. In defining who would be Koreans, the Family Registry is the most appropriate criterion, because it was used for distinguishing Japanese and Koreans during the days of Japanese rule over Korea.

6. Although Article 10 of the Constitution of Japan provides that “The conditions necessary for being a Japanese national shall be determined by law,” it does not prohibit settling a nationality problem by treaty. First, under the
Constitution, a treaty is superior to a statute in the legal hierarchy. Second, change of nationality caused by international acts is, as indicated in (1), usually regulated by treaty. This, of course, is completely allowed by the Constitution.

(7) Since Circular Notice A-438 properly interprets and executes Article 2 (a) of the Peace Treaty, the nationality settlement based on the Circular Notice A-438 is constitutional(6).

At first glance, the above arguments seem logical. They even appear to express a sincere atonement for the former Japanese aggressive policy. Closer scrutiny, however, reveals that they are neither logical nor so impressively sincere as they seem.

First, when a nationality problem between two nations is settled by treaty, both nations must be a party to the treaty. However, neither the Republic of Korea nor the Democratic People's Republic of Korea was a party to the San Francisco Peace Treaty. How can a treaty without any Korean nation participating as a party solve the nationality problem of Koreans?

Second, the drafters of the Peace Treaty had no intention of addressing and did not purport to solve the nationality problem of Koreans in Japan. They believed that it should be left to future consultations between Korea and Japan. To assume the existence of an implicit agreement on the nationality issue in the Peace Treaty is totally groundless. This is clearly shown by first-hand inspection of historical materials written or recorded by the drafters and by interviews of them by the present author.

Third, even if Koreans are exempt from Japan's personal jurisdiction, they remain under its territorial jurisdiction as long as they live in Japan. In other words, they live in Japan as aliens, whose enjoyment of rights and privileges is much worse than that of nationals. Beautiful words like the "elimination of pre-war Japanese aggressive policy" or the "to be liberated from the Japanese rule" merely veil the discrimination against Koreans in Japan based on

(6) The Supreme Court, in its judgment of 5 April 1961, basically recognized these arguments and held the administrative measure constitutional. The majority view among academic circles in those days also supported it.
nationality.

Fourth, the Family Registry is a **domestic** institution of Japan. How can one expect it to define appropriately who would be Korean nationals in the absence of agreement between Korea and Japan? In fact, whereas the Republic of Korea adopted the Family Registry as its criterion in defining who would be its nationals, the Democratic People's Republic of Korea adopted the criterion of paternal lineage. Therefore, not everyone who was regarded as Korean by the criterion of the Japanese government *ipso facto* acquired Korean nationality or *vice versa*.

Fifth, in order that a provision of a treaty can regulate rights and duties of individuals without a statute enacted by a parliament, it must be self-executing in nature; that is to say, it must be concrete and clear enough to specify what individuals have what rights and duties. The wording of Article 2 (a) of the Peace Treaty is far from satisfying this requirement.

As the Japanese government conceded, the solution based on the Circular Notice does not, in itself, satisfy the requirement of Article 10 of the Constitution, for it is essentially an administrative measure, which is inferior to a law promulgated by the Diet. Therefore, its constitutionality exclusively depends upon the argument that it properly executes the Peace Treaty. However, the above analysis indicates that the solution based on Circular Notice A-438 cannot be considered an execution of the Peace Treaty, and it is, therefore, of highly questionable constitutionality.\(^{(7)}\)

Nevertheless, the constitutionality of this solution was hardly questioned until recently; The counter analysis outlined above began to appear only after the 1970's. Today, in academic circles, the prevailing view rejects the governmental "solution," but the judicial decisions and the government's attitude remain basically the same. Therefore, in looking at the existing legal situation, we must recognize that the so-called "'52 Regime" persisted for thirty years. Conse-

quently, a discussion of that system is necessary before one can understand the more recent developments (known as the “‘82 Regime”).

IV. The ’52 Regime

The “’52 Regime” is a shorthand term for the following rules and practices adopted by the Japanese government with respect to aliens, and Koreans in particular: (1) the circular notice discussed above, which deprived Koreans of their Japanese nationality regardless of their or their home countries’ desires, (2) the Nationality Law promulgated on 4 May 1950, which was based on the *jus sanguinis a patre* principle, (3) the Immigration Control Order promulgated on 4 October 1951, which, in many respects, was modeled after the U.S. immigration system, (4) the Alien Registration Law promulgated on 28 April 1952, which was modeled after the U.S. Alien Registration Act of 1940, (5) various provisions of law explicitly prohibiting or restricting the enjoyment of rights by aliens regardless of the length of their stay in Japan, and (6) the governmental practice of interpreting existing laws unfavorably against aliens, that is to say, as if they contained implicit provisions restricting aliens in the enjoyment of rights.

Certain features respecting items (2)~(6) of the ’52 Regime deserve more detailed attention. With regard to (2), the Nationality Law was based on the principle of *jus sanguinis a patre* until it was amended in 1984. Consequently, even those born in Japan did not acquire Japanese nationality by birth unless they had a Japanese father. Since Koreans were reluctant to marry Japanese, relatively few of their descendants acquired the Japanese nationality by birth.\(^\text{(8)}\)

As a result, most of the second, third and fourth generation Koreans are thus far aliens, although they were born and bred in Japan, speak only Japanese, and have never been to Korea. Today, more than 80 percent of “alien” Koreans

\(^{(8)}\) As will be discussed later, this tendency apparently changed after the 1970s. Together with the amendment of the Nationality Law, it will result in a dramatic change in the formal legal status of many Koreans in Japan.
consist of these second, third and fourth generation Koreans.

Items (3)~(6) of the '52 Regime have given the Japanese government an apparent legal basis for discrimination against Koreans, justifying it on the ground that they are "aliens."

When the Japanese government enacted the Immigration Control Order in 1951, it intended to apply it to Koreans, who still had Japanese nationality, by including an explicit provision "regarding" Koreans as aliens for the purposes of the Order. This was not realized due to the strong opposition of the Allied Occupation Forces. From 28 April 1952 on, however, almost all provisions, including those on deportation, a duty to always carry an alien registration card, a requirement of finger-printing, and punishment for failure to follow the requirements specified in the Immigration Control Order and the Alien Registration Law, were fully and positively applied to "alien" Koreans who "lost" their Japanese nationality by virtue of Circular Notice A-438. Judicial challenges to these administrative measures based on excess or abuse of discretionary power were rarely successful.

A number of restrictions were imposed upon aliens with respect to property rights, the freedom to choose one's occupation, and rights to social welfare. Thus, Koreans, as aliens, were not entitled to become patent attorneys, notaries public, or pilots; nor could they enjoy mining rights or own or run ships and airplanes, radio wave enterprises or similar businesses. Koreans were not entitled to National Health Insurance, Daily Life Security, publicly or semi-publicly managed housing, or public loans, such as People's Finance Corporation loan or Housing Loan Corporation loan; other social welfare programs as well.

The denial of or restrictions on the rights of aliens were not limited situations in which an explicit requirement of nationality for the enjoyment of a right was provided. Although neither the National nor the Local Public Service Law has a nationality requirement for eligibility, the Japanese government was reluctant to employ aliens as public servants. Consequently, only extremely limited areas, such as medical doctors and nurses in public hospitals, research
assistants in public universities, and a limited number of teachers in public schools, were open to “alien” Koreans. Even in public universities, one was required to be a Japanese national in order to be a full faculty member, i.e., a professor or an associate professor.

The Japanese government was also hostile to the ethnic education of Koreans in Japan. Most of the Korean schools were, and still are, run by the Ch'ongnyŏn, a pro-North Korean organization composed of Koreans in Japan who identify themselves as North Korean nationals living abroad. The Ministry of Education has always opposed their accreditation as regular schools under Article 1 of the School Education Law. It was reluctant to accredit them even as “miscellaneous schools” under Article 83.

Under the post-war decentralized educational system, authorization for establishing schools rests upon prefectural governors. In consequence, in spite of the reluctant attitude of the Ministry of Education, all have been accredited as miscellaneous schools, although in some cases only after a long struggle between the prefecture and the Ministry of Education. Still, they have not had the status of regular schools. Their graduates find it difficult to apply for higher education due to this deficiency in meeting the formal requirements. Some private and municipal colleges and universities, and their graduate schools, have admitted them, but most colleges and universities, including national universities, have not, unless they have further attended regular high schools for an additional period of time.

On the whole, the Japanese government under the '52 Regime had a hostile and suspicious attitude toward Koreans in Japan. It saw the problem of Koreans in Japan basically as one of public order. Thus, it tried to prevent Koreans from continuing to exist in Japan as an ethnic minority group, pursuing a policy of “total assimilation or expulsion.”

The above governmental policy was, to some extent, understandable, especially

during the period immediately after the war. Some factions of Koreans engaged in anti-government activities—sometimes even in armed struggle together with the Japanese Communist Party. Korean schools under the auspices of the Chŏryŏn and Ch’ŏngnyŏn, carried out strongly pro-North Korean, ideology-oriented education. For example, the purpose of Choson University has not only been to give an ethnic education to Koreans in Japan, but also to serve as a training base to spread its political ideology in Asia.\(^{(10)}\)

In addition, spies dispatched by North Korean authorities have, from time to time, been found and arrested. The Japanese government, not wholly without ground, believed that members of the Ch’ŏngnyŏn were involved in these illegal activities.

Still, it is very difficult to justify the extremely harsh and stern attitude of the Japanese government toward all Koreans in Japan. Had the Japanese government—and Japanese society as a whole—engaged in sincere self-reflection on the prewar imperialist policy toward Korea, their rigidly hostile attitude would have significantly changed.

In actuality, however, the stern policy lasted nearly three decades. In 1965, Japan “normalized” relationships with the Republic of Korea and granted a “permanent resident status by treaty” to Koreans in Japan who identified themselves as ROK nationals. Koreans who claimed to be DPRK nationals strongly opposed the “normalization” between Japan and the ROK. They were not entitled to “permanent resident status by treaty” so long as they stuck to their DPRK nationality. As a result, some 300,000 Koreans did not acquire “permanent resident status by treaty.”

Furthermore, from 1968 to 1972, the Japanese government submitted to the Diet as many as four bills to amend the Immigration Control Order. The core of the proposed amendment was to provide for new and severe restrictions on political activities of aliens. It evidently envisaged the activities of Koreans, especially the members of Ch’ŏngnyon. The bills, however, were severely

criticized not only by socialists, communists and liberals, but even by a certain number of conservatives. The Liberal Democratic Party, though having a majority in the Diet, finally gave up on the proposal. This was a serious blow to the Ministry of Justice, which had been the “headquarter” of the stern policy toward Koreans. In fact, the successful “Nyukan Toso (the struggle against the immigration control system)” gave further encouragement not only to Koreans but also to Japanese who were involved in the struggle.

V. The ’82 Regime

The 1970’s witnessed steadily growing new waves that have softened the rigid attitudes of both the Korean minority and the Japanese government. These changes have come to be known as the “’82 Regime.”

(i) New Waves among Koreans

On the part of the Korean community, the 1970’s marked a steady increase in the power of second- and third-generation Koreans. This resulted, first of all, in a declining attitude toward repatriatism—more colloquially but perhaps more accurately “return-to-home”ism—among Koreans.

In the 1950’s and ’60’s, when only first-generation Koreans had a voice in the Korean community, they regarded Japanese society as a temporary home. Although their actual lives were deeply rooted in Japanese society, they could not give up the dream of “some day” returning to their homeland: Korea. Thus, it was only natural that they did not make strong efforts to improve Japanese society, even though they had thousands of claims against it.

In contrast, to second- and third-generation Koreans, Japan is the country where they were born, bred, and most likely to spend all of their lives. Ethnic discrimination would accompany them for their entire lives, unless they made efforts to abolish it. Consequently, such efforts were inevitable.

Second, with gradual and steady assimilation, the strong antagonism against anything “Japanese” has gradually diminished. This is shown by the following
statistics: The number of Koreans becoming naturalized steadily increased from approximately 2,000 per year in the 1950's to 3,400 in the '60's, 4,700 in the '70's, and 5,900 in the '80's. Moreover, marriage with Japanese also increased steadily. In 1976, more than 50 percent of the total number of Koreans marrying married Japanese, and the ratio has been increasing year by year.(11) This assimilative tendency is partly due to strong pressure for assimilation by Japanese society. For example, primary motivation for getting naturalized has been, for many Koreans, negative rather than positive, i.e., to avoid discrimination based on nationality. At the same time the tendency is natural in the sense that any ethnic minority becomes more and more assimilated as the generation descends.

Third, the first-generation Koreans, when being discriminated against, did not take this as a violation of their rights. To them, it was useless to complain about or protest against discrimination in Japan. Japan was a country in which any such criticism was meaningless.

In contrast, second- and third-generation Koreans tend to regard ethnic discrimination as a violation of human rights that they inherently enjoy. They have seen that Japanese citizens, to a certain extent, have been successful in their “struggle for rights.” To them, Japan is no longer a country where criticism makes no sense. Their own efforts will largely determine how and to what degree they will be treated as equal members of the same community. This belief, shared by many younger Koreans, led them to engage in civil rights movements, which began to emerge in various local communities in the 1970's.

(ii) New Waves in the Japanese Government

The Japanese government was also compelled to change its rigid attitude, for a number of reasons.

First, in 1978, the Supreme Court rendered a judgment in the McLean case. The issue was the legality of the government’s denial, based on plaintiff’s

(11) As of 1983, out of 8006 Koreans who married, as many as 5,292 married Japanese nationals.
alleged illegal political activities, of plaintiff’s application to renew the period of his stay in Japan. The judgment, while ultimately upholding the legality of the government’s action in the particular case, confirmed the principle that aliens were entitled to freedom of political activity. The Ministry of Justice, already suffering from the abortive attempts to amend the Immigration Control Order in the Diet, had to give up its policy of seeking to place restriction on the political activities of aliens.

Second, there emerged strong pressures from within the government as well as business circles for the improvement of administrative efficiency. Since the policy toward aliens—essentially Koreans—sought to control Koreans as effectively as possible, little attention was paid to its economic efficiency. When Japan entered the phase of low economic growth, this policy came under severe criticism even from within the government. Change from the public-order-oriented policy to a more sophisticated administrative-efficiency-oriented policy was inevitable.

Third, there were “international” pressures on Japan to improve its human rights standards. As Japan became an “advanced country,” it had to show that it was not only “advanced” in economics, but also in humanity or human rights. Thus, Japan ratified the International Covenants on Human Rights in 1979 and the Convention on Refugees in 1981. These human rights treaties contain clauses providing for and embodying the principle of non-discrimination. Consequently, when Japan ratified these treaties, it had to abolish nationality requirement in various fields, especially in the social welfare system. Change from the stern policy to a more lenient policy toward aliens was thus required.

Fourth, the various civil rights movements carried out by second- and third-generation Koreans and supportive Japanese forced a rational response by governmental officials. Unlike Koreans in the ’50’s and ’60’s, who claimed “democratic national rights” in an abstract and ideological manner, the new wave sought equal treatment with Japanese on the ground that they were members of a local community. Since they shared all community burdens, such
as the payment of taxes, their claims were persuasive to their Japanese neighbors, not only in logic but also in human emotions. It was difficult for the Japanese authorities to deny sharing community benefits simply because they were "aliens" under some formal legal rule.

Finally, there was a new wave within the Ministry of Justice itself. As indicated earlier, there could be seen, especially among second- and third-generation Koreans, a gradual and steady tendency for assimilation. If this was the case, these "new wave" officials argued, it was counter-productive for the government to continue applying a stern policy. The "natural tendency" to assimilate would be inhibited by reactions against the sternness of the policy. Rather, it would be wiser to encourage this "natural tendency" through a more lenient policy. This would finally lead to the total assimilation of the Korean minority into the Japanese, i.e., to the extinction of Koreans as an ethnic minority.  

(iii) The '82 Regime

The foregoing factors, seen in the 1970's resulted in various changes in the law and policies toward aliens. The Alien Registration Law, amended in 1980, 1981 and 1982, increased the age of those who were required to be fingerprinted from 14 to 16. It also changed the renewal period of alien registration from every three years to every five years. It further softened the punishment for failure to comply with the requirements of the Law.

In the field of social welfare, the nationality requirement for the eligibility for publicly or semi-publicly owned and managed housings, and for public loans, such as a People's Finance Corporation loan or Housing Loan or Corporation loan, was abolished when Japan ratified the International Convenants on Human Rights in 1979. Nationality was also abolished as an eligibility requirement for various social welfare programs, such as National Health Insurance, Child Rearing Allowance, Children's Allowance and National Pension when Japan

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(12) See, for example, Sakanaka Hidenori, "Kongo no Shutsunyukoku Kanri Gyosei no Arikata ni Tsuite," Nyuken Geppo, no. 176 (1975).
ratified the Convention on Refugees.

The most conspicuous change is the amendment of the Immigration Control Order. In 1981, the Japanese government submitted to the Diet a bill to amend the Order. The bill, unlike the abortive bills submitted from 1968 to 1972, did not contain clauses restricting the political activities of aliens. Rather, it provided that permanent resident status would, upon application, ipso jure be granted to those habitually resident Koreans who did not acquire "permanent resident status by treaty."

The bill, again unlike the earlier bills, was unanimously adopted in the Diet, and the new law, the Immigration-Control and Refugee-Recognition Act of 12 June 1981, came into effect as of 1 January 1982. The Ch'ongnyön, which had vigorously opposed the "permanent resident status by treaty" agreement, reacted favorably to the newly offered permanent resident status. Most Koreans who identified themselves as Democratic People's Republic of Korea nationals applied for it, and some 240,000 applications were granted.

The new Immigration Control Law, effective in 1982, was symbolic of the "new waves" that were beginning to form in the early 1970's and took concrete form in the late 1970's and early '80's. First, it was symbolic in that the Japanese government decisively adopted a new "soft line" policy, giving up the idea of further restricting political activities. Second, it was symbolic in that the Ch'ongnyön, which had been the most passionate advocate of "return-to-home" ism, implicitly accepted the fact that Koreans had a firmly settled residence in Japan. Since these changes represent the new waves discussed above, one can now say that the '82 Regime has replaced the '52 Regime. This new regime is composed of the newly amended Alien Registration Law, a social welfare system now basically open to all resident aliens, and the new Immigration Control Law, together with the new attitude of Koreans in Japan.
VI. Problem Remaining Under the '82 Regime

The '82 Regime has no doubt improved the legal status of the Koreans in Japan, the overwhelming majority of whom are aliens. Moreover, since law, to a certain extent, reflects underlying social attitudes, the new regime also shows considerable improvement in the basic attitude of Japanese society toward Koreans in Japan.

By no means, however, is this to say that the Korean minority problem in Japan is now fundamentally solved. It does not even mean that the legal status of Koreans in Japan is basically settled. Many important legal issues remain. Moreover, a fundamental solution to the Korean minority problem will require Japan to overcome many socio-psychological barriers.

(i) Remaining Problems in Law

Although most Koreans now enjoy permanent resident status either “by treaty” or under the new Immigration Control Law, this does not eliminate the unconstitutional and unjustifiable nationality “solution” adopted in 1952. Needless to say, permanent status is not equivalent to nationality. Even permanent resident aliens, for example, are not immune from deportation. They are subject to all restrictions imposed upon aliens in general, with the minor exception that Koreans with permanent resident status by treaty are favorably treated in extremely limited areas. Moreover, descendants of permanent resident Koreans are not accorded the same status, although they are much more deeply rooted in Japanese society.

The naturalization policy, which required complete assimilation, has changed little. For example, though the Nationality Law does not explicitly require an applicant to adopt a Japanese name, many Koreans have implicitly been “suggested” to do so.

Many harassing requirements generally applicable to aliens, such as always carrying an alien registration card, or being fingerprinted every five years,
under threat of criminal sanction, are still completely applied to Koreans, including those of the second and third generations. Similarly, most of the provisions of the Immigration Control Law are applied to Koreans without any reservations.

In addition, explicit restrictions on the freedom to choose one’s occupation as well as restrictive practices in interpreting laws, orders, and regulations are still prevalent. Although there have been more than 30 alien teachers in public schools, the Ministry of Education is all the more reluctant, even hostile, to the idea of alien teachers in public schools. It discourages prefectoral educational commissions from hiring alien teachers by issuing circular notices and giving them various forms of “guidance.”

(ii) Overcoming Socio-Psychological Barriers

Behind these legal problems lie a host of socio-psychological problems of Japanese society. Discriminatory practices produce even graver problems where there are no explicit legal provisions restricting the rights of aliens. For example, it is extremely difficult for Koreans to be hired by leading Japanese companies. Although having a diploma from leading universities normally constitutes a passport to leading companies, this is not the case for Koreans. Even those who graduate from the most highly regarded universities, such as Tokyo, Kyoto, Keio and Waseda, find it difficult to enter first rank companies like Mitsubishi, Mitsui, and Sumitomo. In many personal activities, like getting married, renting houses, and borrowing money from a bank, Koreans face similar difficulties.

The finger-printing issue, which shook Japanese society in 1985, revealed the frustrations and complaints Koreans have had against their social treatment. First, finger-printing of resident aliens is, in itself, violative of the sense of human dignity. This was especially so when the method of finger-printing was the same as for those suspected of a crime.

However, their complaints went deeper than that. Koreans strongly opposed the finger-printing requirement because, to them, it was symbolic of the discri-
mination still deeply rooted in Japanese society. Therefore, they were not satisfied with the "improvement" announced by the Japanese Government in May 1985, which changed the method from revolving finger-printing, which was used on suspects, to that of simple printing. Most of those who refused to be finger-printed regarded this "improvement" as completely off the point. They have criticized not only the fact of finger-printing, but also, or rather, the ethnic discrimination that it represents in general.

Finger-printing is required of all resident aliens. However, Koreans constitute approximately 80 percent of all aliens, so when the Japanese government enacts laws, orders and regulations affecting the legal status of aliens, it always has Koreans in mind as a major target. Thus, it is natural for the Koreans to regard finger-printing as symbolic of ethnic discrimination.

It is vital that ethnic discrimination be minimized, for several reasons. First, ethnic discrimination against Koreans is only one of many types of discrimination against various kinds of minorities. Here, the term "minority" should be understood as a relative rather than a substantive concept: A minority is a group of persons who are classified by a certain criterion as a minority in number and are disadvantaged in the enjoyment of certain social benefits under the justification that the disadvantage must be endured for the sake of the greatest good for the greatest number. The aged, the handicapped, the original inhabitants near an airport who suffer from the noise—all these are minorities in the above relative sense. To disregard the rights of minorities is to disregard the rights of everybody, for anybody can be classified as a minority depending on the criteria. Thus, the rights of Koreans as an ethnic minority must be respected and discrimination must be minimized.

Second, the existence of Korean minority in particular is a result of Japanese colonial rule over Korea. It is the historical duty of Japan to bring about a just and proper solution to the problem of Koreans in Japan. As a minimum, such a just and proper solution requires that discrimination against Koreans be substantially diminished.
Third, this solution is necessary for Japan to liberate itself from the belief in “Extrication from Asia and Assimilation into Europe.” This is the belief that almost all Japanese have had since the Meiji Restoration. By adoring, respecting and modeling Europe and America for a century, Japan has gained a material wealth. In return, however, it has caught the psychological disease of despising and neglecting Asians and Africans—colored people in general. To minimize ethnic discrimination against Koreans constitutes one of the essential actions required for achieving a sounder society.

Fourth, a solution is necessary so that Japan can liberate itself from the myth of the single nation society. As indicated above, Japan is relatively homogeneous in ethnicity. Partly due to this, the myth of a single nation is extremely strong in Japan, and it prevents Japan from becoming a more open, and culturally more pluralistic and fruitful society. To recognize the existence of Koreans as an ethnic minority and to encourage their culture would go far in deflating the prevailing myth and would contribute to opening up the closed Japanese society.

Koreans, on the other hand, could also take helpful actions. The new Nationality Law, enacted in 1984, adopted the principle of *jus sanguinis* based on equality of sex. This means that Japanese nationality comes not only from a father, but also from a mother. Inter-marriage between Koreans and Japanese, as indicated earlier, has steadily been increasing. If this tendency continues, which is likely, Koreans as aliens will diminish to a negligible number in the near future. Koreans, like the Japanese, tend to identify nationality in the legal sense with nationality in the social and cultural sense (ethnicity). If they stick to this, there will be few Koreans in Japan, for most will have Japanese nationality. Only by identifying themselves in the ethnic (socio-cultural) sense as Koreans can they claim their identity and contribute to both their home countries—in the spiritual sense, Korea, and in the physical sense, Japan.