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The Retrial of the "Yokohama Incident": A Six-decade battle for human dignity

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By Nishimura Hideki

Translated by Aaron Skabelund

[*It is well known that Japan's neighbors, especially China and South Korea, are unhappy at what they see as Japan's failure to accept responsibility, apologize and compensate victims for its wartime crimes and colonial abuses. What is less well known, however, is the Japanese state's reluctance to address the same questions of justice and human rights in the case of its own citizens who were victims of crimes committed by the prewar or wartime state. No Japanese court has ever adequately addressed the criminality of any action by the prewar or wartime state, including its armed forces. Courts have been, and continue to be, deeply reluctant to consider any possible claim of state criminality.*

The following article illustrates how the Japanese state, while going to great lengths to compensate, and commemorate, former "loyal" Japanese soldiers and their families, persists to this day in denying and covering up the crimes committed by that state, including judicial frame-up, detention and torture. Some 70,000 people were arrested under Japan's prewar and wartime peace preservation laws between 1925 and 1945. The Yokohama Incident was the biggest single case. The secret police, procurators, and the judiciary persisted in the actions described here to the point of securing many of the guilty verdicts and carrying out the punishments even after the Japanese surrender.

The victims pursued their search for justice and apology through countless judicial applications and reverses over more than six decades until a final judgment was announced on 9 February 2006 (shortly after the following article was written). By then, all the victims in the incident had died, and it was their families and supporters that persisted in the action in their name.

The court ruled as the defense (the Japanese state) urged it to, dismissing the case on grounds of lack of evidence. The victims were obviously unable to plead their own case and incriminating documents had long been destroyed in the process of deliberate cover-up. The victims and their families would have to content themselves with the "pardon" (predicated on "guilt") issued in October 1945. The responsibility of the state would not be pursued. The pursuit of justice met a stone wall.

Three of the special higher police involved in this case were arrested and convicted in the years following Japan's surrender, but all were freed without serving any time behind bars in the amnesty accompanying the signing of the San Francisco Treaty (1951). The judge who tried most of them, interviewed many years later, denied knowledge of any torture and defended the peace preservation legislation as something necessary to protect the state.

As the 21st century Japanese state gropes towards a renewed system of thought control and state intrusions on conscience – punishing teachers who refuse to stand for the national anthem or flag ceremonies, detaining, arresting, and indicting anti-war leafleters at Tachikawa in Tokyo or in Okinawa (the former for 75 days), and seeking to revise the constitution to give greater powers to the state and diminish popular liberties, the Yokohama story deserves to be widely known and its lessons pondered.

(In addition to the following article, interested readers might wish to consult a study of the affair in some detail in a two part article by Tanaka Nobumasa, other of whose writings have been translated in Japan Focus, in Sekai, March and April 2006.) GMcC]

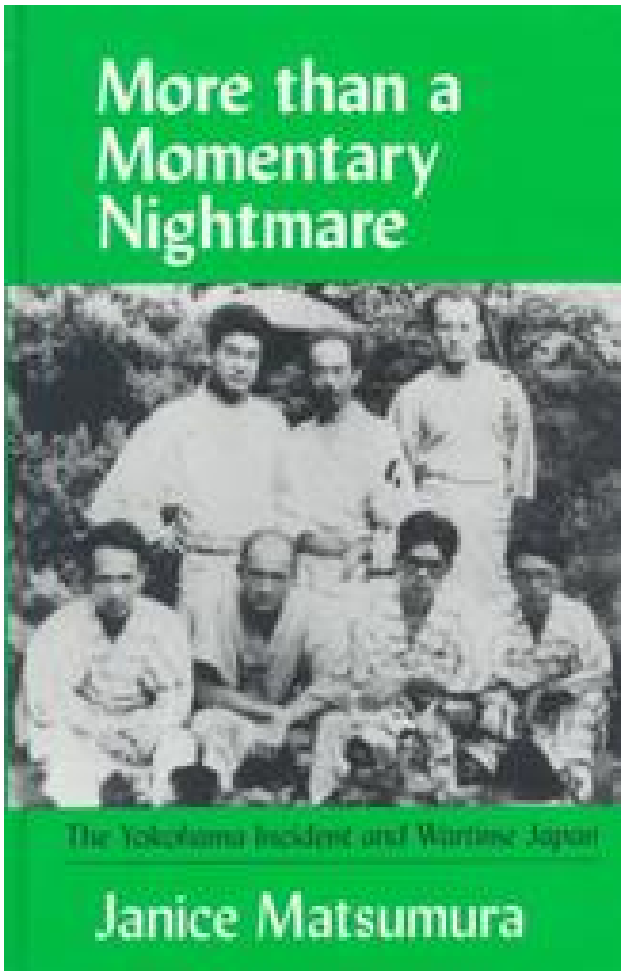
Three phrases—post-defeat judgment, torture, and suppression of thought and speech—define the Yokohama Incident and shed light on an episode that remains difficult to understand.

Post-Defeat Judgment

First, let's examine the incident as a post-defeat judgment. The Yokohama Incident is employed to designate six cases in which charges for violation of the Peace Preservation Law were filed by investigators near the end of the Asian-Pacific War. According to the August 1944 *Tokko geppo* (Special Higher Police Monthly Report), the six cases were the American Communist Party Member Incident, the Soviet Information Research Group Incident, the (Communist) Party Reconstruction Preparation Group Incident, which centered on Hosokawa Karoku, the Political Economic Research Group Incident (Showa juku), an incident involving leftist groups within the *Kaizo* and *Chuo Koron* publishing companies, and the Patriotic Political Comrades Group Incident.

It is said that the Japanese Communist Party was decimated on March 4, 1935, some seven years before the Yokohama Incident began. Despite this, Special Higher Police investigators used a photograph of editors from the *Kaizo* and *Chuo Koron* companies at a publication celebration party as evidence that they had gathered to prepare to reestablish the party. The police employed torture to force the suspects to make "confessions."

As highlighted by the inclusion of the Patriotic Political Comrades Group Incident, in which nationalists were implicated, there is only a narrow connection between the suspects who were arrested one after another in the various cases of the Yokohama Incident.



1.Defendents in the Yokohama Incident

What the cases do have in common, though, is

that in most of them judgments were handed down after Japan's defeat. Of the sixty suspects who were arrested for allegedly violating the Peace Preservation Law, only thirty-three were prosecuted. Of those prosecuted, other than the seven suspects charged in the American Communist Party Member case, almost all of the other defendants were sentenced after defeat. All five of those who are now demanding a retrial were condemned after Japan surrendered. Four of them were sentenced on August 29 and 30 while the fifth, Kimura Toru, was convicted on September 15.

The war ended on August 15, 1945, and fifteen days later on the thirtieth, General Douglas MacArthur stepped onto the tarmac at the Atsugi airbase with his corn pipe in hand. On September 2, Shigemitsu Mamoru signed the declaration of surrender on the battleship Missouri floating in Tokyo Bay. During this same period, Yokohama District Court prosecutors were taking advantage of postwar confusion to convict the Yokohama Incident defendants for breaking the Peace Preservation Law, even though the Japanese government's acceptance of the Potsdam Declaration had invalidated the law. Lawyers at the original trial suspected that the judge and prosecutor made a "secret agreement" to acquit those arrested as a rite of passage after issuing a guilty sentence with a postponed punishment. This unimaginable abnormality occurred just as the postwar age was being born.

During this same month (September), philosopher Miki Atsushi, who was imprisoned in the Toyotama Prison, died on the twenty-sixth due to scabies that covered his entire body. It was not until October 15 that the Peace Preservation Law was finally abolished, thanks to an article written by a foreign correspondent. As a result of the fact that a Yomiuri newspaper chief editor hid news of Miki's prison death, Yomiuri employees called for an investigation into the wartime responsibility of owner Shoriki Matsutaro and demanded greater democracy within the company in a clash that came to be known as the "Yomiuri Dispute."

When the original Yokohama Incident verdict was handed down, Takaki Kenjiro, one of the defendants, told the judge that the "ruling was difficult to accept." During the recent retrial court hearings, lawyers harshly criticized the Yokohama District Court: "The role that the judiciary should perform is to enforce the rule of law. Unfortunately, during the original trial, the Yokohama District Court disregarded its role as a judicial organization and became an aggressive assailant." The responsibility of the Yokohama District Court judges in issuing guilty verdicts for violation of the Peace Preservation Law even after Japan had accepted the Potsdam Declaration is heavy.

Torture: Criminals Judged the Victims

The second concept that is essential to understanding the Yokohama Incident is torture. Kawada Hisashi, the wife of Hisashi, who was arrested as part of the American Communist Party Member case suffered unimaginable interrogation.

"For two months after my arrest, Police Section Chief Matsushita oversaw my case. Interrogations took place at night and for many hours at a time. Naked from my waist down, they gagged me and forced me to kneel on the floor. They often kicked me in the thighs, knees, and head, which caused terrible internal bleeding. They whipped me so that long thin scars covered my entire body. On top of all that, they would poke me with tongs and the end of an umbrella. Such brutal torture continued to the point that I could no longer walk. Also, they did all they could to insult me by forcing me to show my private parts, sticking a rod inside."

Special Higher Police prosecutors repeatedly threatened suspects by asking them, "Do you

know why Kobayashi Takiji was killed?" [1] None of the suspects thought the taunt was a mere threat.

In fact, for some, it was not. Of the thirty-three suspects that were prosecuted, four (Takahashi Yoshiyo, Asaishi Haruyo, Wada Kitaro, and Tanaka Masao) died in custody and two (Aikawa Hiroshi and Nishio Tadashiro) passed away shortly after being released on bail.

In their closing statement at the retrial hearing, a defense lawyer made the following declaration: "The cases against these defendants, as well as all of the defendants of the Yokohama Incident, were based on fallacies, illusions, and forgeries. All of the defendants are innocent, and all of them are victims of the fabrications of the Yokohama Incident. The confessions were a product of the torture administered by the Special Higher Police."

As highlighted by the conviction of Matsushita and two other policemen in 1949 for their acts of torture, the interrogation methods used during the Yokohama Incident were a violation of the law at the time, and they provide further grounds for the case to be retried. Their conviction for torture highlights the fact that during the Yokohama Incident "criminals judged the victims."

2. Morikawa Kinju (center) leader of the defense team following the court verdict.

Suppression of Thought and Speech

The third concept necessary to better understand the Yokohama Incident is the deployment of the Peace Preservation Law to suppress thought and speech. The incident demonstrates the menace of laws that make certain thoughts and speech a crime, even when no action had been taken.

I interviewed Captain Beniko Isamu and Chief Engineer Kuriura Yoshio, crewmembers of the No. 18 Fujiyama-maru, who were detained by North Korea for seven years, about the interrogation methods of the Korean authorities. North Korean investigators did not physically abuse the two men, but they forced them to repeatedly write depositions until they were satisfied with the content. Police officials of the military dictatorial regime of South Korea used the identical method that they, too, had learned during the colonial period. This technique is exactly the same employed by the Special Higher Police during the Yokohama Incident.

Judicial authorities created fake records to charge many people charged in the Yokohama Incident with violation of the Peace Preservation Law. As a result, Information Agency bureaucrats ordered *Kaizo* and *Chuo Koron* to disband and they were forced to cease publishing their magazines.

As part of the retrial motion, the defense showed a video of two of the now deceased defendants testifying about the case. One of those defendants was Kimura, who was arrested as part of the Political Economic Research Group (Showa juku) case. (For more about Kimura's experiences, see the interview below with Kimura Maki.) The other defendant to appear in the video was Sakai Shosaku.

Sakai testified: "I predicted two years before defeat and soon after the U.S. army occupied Saipan that government authorities were ready to 'make an offer to surrender if American leaders would guarantee that the emperor system could be maintained.'" Although Japanese leaders may have been unwilling to surrender until after the invasion of Okinawa, Sakai's prediction was generally on target. The Yokohama Special Higher Police targeted the freedom of conscience of people who were "disobedient" to the national policy to continue the desperate prosecution of the war. It is clear that the suspects, rather than the police, had a correct historical view. The Peace Preservation Law made "disobedience" to government policy a crime.

The Contemporary Significance of the Incident

In the twenty-first century will authority be used, as it was during the Yokohama Incident, to crush freedom of consciousness?

The Peace Preservation Law was designed to suppress any organization that advocated changes to the kokutai (national polity) or "denied the system of private property" (capitalism). It made it illegal to discuss such proposals or to provide assistance to those who advocated them, so the government could round up people who were only remotely related to such groups. Among those arrested under the law were members of religious groups such as Omotokyo and Tenri hondo, as well as government officials who were detained in the Planning Bureau Incident for contemplating the creation of a new economic system. Moreover, the law allowed for preventive detention whereby those convicted could continue to be detained even after their sentences had expired on the pretext that they might commit another crime.

Making it a crime to merely advocate a goal is a feature of the Conspiracy Law that the government recently introduced as a bill in the Diet. The Japan Federation of Bar Associations has announced its opposition to the bill because the "necessary conditions for violation of the law are based on 'association' and 'organization.' There is a danger that the scope of the law would make anyone with associated with a suspect group guilty of complicity." Consideration of the bill highlights the fact that the Yokohama Incident is not a thing of the past.

The Yokohama District Prosecutor requested a "dismissal" of the retrial request on the grounds that "it is impossible to prove a violation of the Preservation Peace Law because none of the original documents from the Yokohama Incident survive." The defendants, however, seek a more fundamental ruling.

Their lawyers make the following argument: "The institutional principle for a post-death retrial for the defendants by the bereaved families seeks nothing short of an acquittal that will restore the honor of the victims of a mistaken verdict.

In the proceedings of the retrial hearing, the Tokyo court made the following statement: "A primary characteristic of the Yokohama Incident was that confessions provided the ultimate evidence of the guilt of the defendants. But if there is clear doubt about the reliability of the confessions, this undermines the determination of guilt. The oral testimony of Kimura Toru and other defendants provides the court with clear evidence of their innocence."

The bereaved families are not seeking a "dismissal verdict" from the three Yokohama District Court judges overseeing the retrial motion. The claimants believe that a "just and accurate innocent verdict" is imperative in order to restore public trust in the judiciary system. They are also demanding a "sincere

and forthright apology for a mistaken verdict." After attending the hearings, I too strongly felt that these steps are vital.

More fundamentally, will the verdict shed more light on how human dignity was violated during the Yokohama Incident? The judiciary itself will be judged when the decision on the retrial motion is announced on February 9.

[1] Kobayashi (1903-33) was an author of proletarian literature who was killed under torture by police.

The Retrial Verdict as a Departure Point: An Interview with Kimura Maki, a Claimant

Interviewed by Kumatani Shin'ichiro

The Retrial Hearing, a Product of a Dedicated Movement

Kumatani: The decision about a retrial will be announced on February 9. This is a major milestone for a six-decade long fight. What was the energy that sustained the movement?

Kimura: It was simply that we would not forgive the injustices and fabrications. What drove me on personally were not ideas and principles, but that I could never separate the existence of Kimura Toru from the Yokohama Incident.

3. Kimura Maki

It was only natural for me to become a claimant demanding a retrial. During my life with Kimura, we discussed the incident routinely, while eating and in bed. The incident was something we shared, so it was only fitting that I continue his work after his passing.

I don't think Kimura even for a second thought about giving up on a retrial, even when the Supreme Court dismissed the case. In contrast, such decisions boosted his will to fight on. From his diary and other writings, it is clear that at times Kimura's spirits were low. He suffered from asthma and so he engaged in the battle carrying a vaporizer.

I think Kimura's strength was mental rather than physical. Until the very end, he was completely dedicated in his resolve. In the fight for a retrial, as during his time in prison, he endured through mental more than physical power.

The source of Kimura's energy that drove him to pursue a retrial was the duty he felt as a journalist. He could not forgive the lies. He could not forgive his own weakness for giving into torture and writing a false confession. What sustained Kimura was the hope that retrying the case would help create a society that would not allow such an incident to happen again.

Kumatani: So respect for the victims served to unify everyone?

Kimura: Yes, but the actual presence of the victims made a big difference. We have had to overcome their passing. We could not end the movement just because all of them died.

Supporters and the legal team have filled the hole created by the passing away of the victims. The legal work of Morikawa Kanetoshi was especially crucial. One young lawyer said that Morikawa was like a lighthouse. I wholeheartedly agree. The current hearings for a retrial are the product of a dedicated movement that never gave up.

I think the most important thing is the motion for a new trial. No matter how many times we are rejected it is important for us to raise our objections, to declare that the court judgment on the victims was wrong, to demand a rehearing. Even if it results in defeat after defeat, it will leave a trail of documents. The courts have repeatedly rejected the case on the pretext that the original court records no longer exist, even though it was the court itself that burned those documents. Continuing to demand a retrial will create a set of documents and articles in the media and engrave in history how stupid those rulings were.

If we do not demand a retrial, the judiciary will merely keep its mouth shut. Even if our motions for a retrial are rejected, they force the judges explain their rationale. It is important to make the court open its mouth.

The Court Must Reflect on its Actions and Apologize

Kumatani: In court, you talked about the torture, the motivations of the victims in pursuing a retrial, and demanded that the court overturn its mistakes.

Kimura: Having expended so much effort for the retrial motion, when I stood to testify at the hearing, I was not sure what to say. One thing I remember feeling, though, was the humiliation at having to speak looking up at the judges, who were looking down at me. The positioning should have been the other way around.

If the defendants themselves were still alive and had been able to testify, I don't think they would have been able to do so calmly. Because Kimura, in particular, was a very emotional person, who expressed his feelings directly, he probably would not have been able to talk in a reasoned manner.

It is terribly unfortunate, though, that the defendants themselves could not be present. Their absence cannot be mourned enough. The defendants should at least have had the opportunity to say something. Because the preparation to file for a retrial involved mostly the submission of documents, the defendants did not have a single opportunity to voice their feelings completely.

I feel a sense of responsibility and hope to share the experiences they were not able to fully express.

Kumatani: What is the verdict you are seeking?

Kimura: We do not simply want a not guilty verdict. There should be a candid apology and self-examination by the judiciary that reveals, without hiding anything about the actions of the courts at the time. I want an end to the deception that we have witnessed until now.

A retrial provides the judiciary with the

ultimate opportunity to reflect on its actions. Even though evidence existed in the form of the Supreme Court's 1952 sentencing of the three Special Higher Police officers, the courts repeatedly rejected motions for a retrial hearing since 1986 until all of the defendants had left this world. We want the judiciary to take responsibility for this series of mistakes. We are not simply seeking an accounting of the past, but a decision that will have a direct impact on today's society.

The Future of the Yokohama Incident

Kumatani: What do you think the significance of this trial at a time when the possibility of official oppression reemerges?

Kimura: Authority is constantly trying to maintain surveillance of and exercise control over citizens. Bills such as the State Secrecy Law, Subversive Activities Prevention Law, Wiretapping Law, and most recently the Conspiracy Law have been introduced. If citizens are not sensitive to these movements and don't raise their voices against them, an event like the Yokohama Incident might happen again.

Once I believed that a retrial victory would lead to a change in the status quo, but now I realize that things are not that simple. I think, though, that a series of small steps are important. I have a feeling that the impact of a retrial would be magnified as time passed.

Kumatani: I think the trial and the movement would be significant for future generations.

Kimura: Kimura liked young people and was always happy to talk to audiences of students and youth. Kimura constantly emphasized that we must not let such an incident ever happen again and that we should use the Yokohama Incident as a lesson to ensure that.
I would like people to be conscious of the fact that each of them are sovereigns of this country, and I want them to create a society that values human rights. I want people to be suspicious of authority, to maintain a spirit of resistance, and to never give up no matter what happens. This was the message that Kimura shared with young people.

Kumatani: What are your plans for the future?

Kimura: The verdict will be the departure point. I feel that strongly.

This verdict is of course important. Even if the verdict is a positive one, it does not mean that the movement will come to an end. How we utilize the verdict is what is important.

Future generations will surely want to conduct research about the incident. This will determine the influence of the incident. I hope that fiction writers will take an interest in the Yokohama Incident so that it becomes even more widely known. Ishikawa Tetsuzo used the incident as material to write Kaze ni soyogu ashi (Like a Reed Shaken in the Wind). I think it is a masterpiece. It conveys the air of oppression that engulfed the era, the misery of war, and how humans lost their humanity. A positive verdict will lead to an end to addressing the incident in court, but there are many aspects of the case that are not yet clear.

Because we have come this far with the support of so many people, I would like to return the fruits of our labors to society. That is why we demanded a retrial. This was not only a trial for the victims and the families.

It has been a nonstop, endless fight, just like life.

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