INSTITUTIONALIZING MEDIATION: THE EVOLUTION OF THE CIVIL LIBERTIES BUREAU IN JAPAN

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The Japanese Civil Liberties Bureau (CLB) was created to promote individual rights but evolved into an organization that mediates disputes between private parties. Unlike comparable institutions in other societies, the CLB is able to mediate large numbers of cases effectively. Although the conditions under which the agency was created and continues to flourish may be unique to Japan, the ability of the CLB to function in a complex, urbanized society should not be attributed to Japanese tradition and culture alone. Instead, institutions like the CLB play an important role in the shaping of that culture, helping the Japanese to settle disputes without litigation and enabling them to perceive their society as one with little need for litigation. The experience of the CLB should make us rethink some of our commonly held assumptions about how the Japanese deal with disputes.

A Japanese colleague who has lived for extended periods in the United States and is extremely knowledgeable about American law once told me that when he was living in New York he always wondered which agency of government someone went to if nobody in their apartment building would talk to them.

I. INTRODUCTION

The Civil Liberties Bureau (CLB; *Jinken yogo kyoku*)[1] was established on February 5, 1948 during the American occupation of Japan as part of the Japanese Ministry of Justice (at the time the Attorney General's Office). Originally modeled after the Civil Rights Section of the United States Justice Department, the CLB has evolved into an institution that in 1984 heard over 375,000 cases. Much of what has been written in

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[1] The English translation of *Jinken yogo kyoku* given by the Ministry of Justice is "Civil Liberties Bureau." Because *jinken* literally means "human rights," many Japanese call the agency the Human Rights Bureau, which probably more accurately conveys the Japanese conception of the bureau.

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both Japan and the United States about the CLB concerns its role as either a protector of civil rights or an ombudsman.[2] Although the bureau performs both functions, with the ombudsman role bringing it some of its most nationally significant cases, together they represent less than 5 percent of the CLB's caseload. The other 95 percent reflect the agency's evolution into a place for hearing disputes that in the United States and many Western European countries would be settled through mediation by the police or a therapeutically oriented social service agency or would "fall between the cracks."

Why did an institution designed to protect civil rights become a place where people bring cases for mediation? How does a government agency handling 375,000 disputes per year coexist with popularly held ideas about the limited role that public means of dispute resolution play in Japanese society? In attempts to explain why the Japanese so infrequently use formal adjudication, too much attention has been given to Japanese culture and tradition and not enough to institutions such as the CLB.

II. THE ROLE OF THE CLB

Most of the 375,000 CLB cases in 1984 involved problems that the complainants believed raised questions about fundamental human rights. This represented only a slight increase over previous years. This number of cases would be high even for places like South Africa or the Soviet Union, where many violations of human rights have often been alleged. But in Japan, the numbers in no way reflect the extent of the human rights problem.

In the vast majority of its cases the CLB's function is best described as mediation. Most cases involve what can be called social rights rather than individual rights. When asked about the cases in his office, for example, the director of the bureau in Hiroshima, a city of close to one million people, first mentioned those involving social ostracism and family disputes. The CLB tries to help people who are having such problems to reach mutually acceptable solutions.

Less than 1 percent of the cases involve public officials.

[2] It would be a mistake to ignore the CLB's role in protecting human rights and civil liberties, as defined in the West. This has been analyzed in Beer and Weeramantry (1979) and Beer (1983; 1985). English-language materials that mention the CLB focus on the bureau's function as either the protector of human rights in the Western sense or ombudsmen. The Japanese legal scholars I interviewed see the agency as dealing with relatively unimportant personal disputes (see Ishimura and Wada, 1984: 19).

Although the bureau hears allegations of misconduct by individual police officers, it has consciously avoided general questions about the rights of defendants because CLB officials believe that other organizations can best deal with those issues. Groups traditionally discriminated against, such as Koreans, women, and *burakumin* (descendants of Tokugawa period outcasts), do not find the CLB especially useful (see Upham, 1984; Tsurushima, 1984). The CLB has likewise not been involved in any of the major controversies involving censorship or the separation of church and state.

Other avenues are open to those concerned with what Americans would call civil liberties. The Japan Civil Liberties Union, also set up and encouraged under the American occupation, addresses such issues. More importantly, however, the Japan Federation of Bar Associations obligates lawyers to play an active role in the protection of civil rights in the Western sense (Horiuchi, 1968: 80). Contrary to the popular notion that Japan is a peaceful society with little conflict, civil disobedience, mass demonstrations, and even violent protest have proved successful for a variety of groups interested in civil rights (Upham, forthcoming).

The type of cases that the CLB can hear is limited only by the cases brought to it and by the judgment of the Civil Liberties Commissioners (Ministry of Justice, 1985: 6–8). Less than 5 percent of the cases require more than counseling by the commissioners. Cases arise from complaints about neighbors, family members, and minor public officials. A great many involve public nuisances, such as dogs, loud music, noisy children, bad odors, and noise or vibrations from trains, planes, construction, or business activity. People also bring complaints about newspaper articles, movies, television shows, and even neighborhood rumors that they feel are damaging their good names. Many of the family disputes involve complaints by older citizens who feel that their children or grandchildren are not treating them properly.

A peculiarly Japanese complaint centers on ostracism (*mura-hachibu*) (Haley, 1982b: 277). Although social intercourse is not usually regarded as a human right, in traditional Japanese society people were supposed to be entitled to belong to a group for religious and economic reasons. Those who feel they are being ostracized from a certain group continue to bring complaints to the CLB (Horiuchi, 1968: 72; Ministry of Justice, 1985).

According to agency documents, over 360,000 of the more than 375,000 cases brought to the CLB in 1984 were handled by

consultation with the parties involved. Of the remaining cases, 14,500 were deemed too serious to be resolved by routine consultation and were consequently investigated. Usually a little more than half are found to involve actual violations of human rights. Only 243 of this smaller group involved public officials (the usual source of alleged human rights violations in the West), who in most years are judged to be at fault in a little less than half the cases (Ministry of Justice, 1985: 7–8).[3]

Because the majority of cases are handled quickly and quietly through consultation with the parties involved, few records are kept. The following sampling of cases shows how the CLB defines civil rights violations and why mediation is used to protect these rights:[4]

Case 1. A farmer's wife was mentally ill. Her mother applied the usual home remedies: binding her hands and feet, scorching her face with hot incense, and feeding her hot peppers. The husband asked the CLB to intervene and let his mother-in-law and neighbors know that he was not acting improperly by stopping the home remedies and placing his wife in a mental hospital (Gellhorn, 1966: 725 n. 65)

Case 2. A rural family was ostracized by their neighbors for being uncooperative; they were not invited to any weddings or funerals, and their children were bullied at school. CLB officials convinced the community that its behavior was inappropriate (Horiuchi, 1968: 72).

Case 3. An elderly gentleman was unable to sleep because of noise in a business adjoining his apartment. The CLB showed both parties how to mute the noise (Beer and Weeramantry, 1979: 12)

Case 4. A woman was falsely accused of stealing from a store. Even though she was acquitted and the real culprit was caught, news of her arrest caused her, her son, and her husband great embarrassment. For example, children at her son's school would have nothing to do with him. The CLB distributed handbills explaining the mistake all over her neighborhood.

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[3] Compared to data for other countries, this is fairly aggressive (Rowart, 1983).

[4] These cases were drawn from my interviews with CLB officials, from agency publications, and from certain English sources (Beer and Weeramantry, 1979; Gellhorn, 1966; Horiuchi, 1968). They were judged by the Civil Liberties Commissioners to be appropriate for the CLB. Most were serious enough to be considered "special cases," which require complete documentation and consultation with the central office in Tokyo. The examples thus overrepresent serious cases.

Everyone was said to have lived "happily ever after" (Gellhorn, 1966: 725).

Case 5. The family of a patient who had been treated for a serious illness complained that the patient had received the wrong blood type during a transfusion. Although the mistake was corrected, the patient did suffer some unnecessary discomfort. The patient died a few days later, but an investigation showed that the error was not the cause of death. The CLB persuaded the doctor to publicly recognize his mistake and apologize to the family (Horiuchi, 1968: 75)

Case 6. An elderly woman was very lonely and felt that she did not see her son, daughter, and grandchildren enough. A Civil Liberties Commissioner contacted the offending relatives. The elderly woman was not satisfied with the results, but did stay in contact with the commissioner who had tried to help her.

Case 7. The CLB was able to stop the private publication of a list of *burakumin* who lived in and around a large city, which would have made it easier for people to discriminate against this group.[5]

Case 8. A home was damaged by vibrations from nearby construction. The CLB persuaded the private company to pay damages (Gellhorn, 1966: 720).

Case 9. People living hear the Shimida River in Tokyo claimed that noxious odors from the river were threatening their health and making their homes unusable. After some hesitation, the CLB helped persuade the local and national governments to do something about the pollution. The river now has fish living in it. The CLB takes credit for assisting in establishing the notion of environmental rights, publicizing the problem, and applying pressure for change (ibid., 719; Horiuchi, 1968: 74).

Case 10. A railroad policeman stopped a railroad worker from bathing in a public rest room and forced him to walk half-naked through a crowded train station. The CLB persuaded the policeman's superior to make sure that the worker received an apology and that the policeman was given a reprimand (Horiuchi, 1968: 58).

Case 11. Workers at a drug company were forced to take a drug the company wanted to test. A number became ill, and

[5] Both cases 6 and 7 were taken from interviews in Hiroshima, Japan (November 5, 1981).

one died. The CLB persuaded the company to cease such practices and compensate the injured parties (ibid.).

Case 12. The CLB has often intervened after citizens complained that fictionalized accounts of real events in movies or on television would embarrass them and damage their good names. The CLB reports success in obtaining clearer disclaimers on such movies and programs and even in stopping some proposed projects (Ministry of Justice, 1960: 8).

The interviews with CLB officials and the various CLB publications that were a source for the above examples reveal the agency's particular pride in achieving a substantial reduction in the amount of cruel corporal punishment in Japanese public schools, helping to foster the concept of environmental rights, making it more difficult for companies to search their employees, and reducing the amount of rude behavior by public officials (Horiuchi, 1968; Ministry of Justice, 1985: 8).

At its inception, the CLB was charged with a number of missions, including to investigate and collect information about violations of human rights, to disseminate information about human rights, to sponsor programs to promote human rights, and to prod other governmental and nongovernmental organizations to respect the fundamental rights of individuals (Horiuchi, 1968: 54). Although virtually no limits are placed on the kinds of cases it hears, the CLB is supposed to avoid hearing cases that are currently being litigated, have already been heard in a civil or criminal court, or would clearly be more appropriate for other government agencies (ibid., p. 75). The above examples show that even these minimal guidelines are not followed very closely.

III. THE ORGANIZATION OF THE CLB

The agency relies on commissioners appointed from the citizenry to handle most cases. The Civil Liberties Commissioners Law, Law No. 139 of 1949, provides for up to 20,000 commissioners throughout the country, one for every district of a city, town, or village. In 1984 there were 11,468 commissioners. Tokyo has about 360 (Beer, 1983: 107). Commissioners are nominated by the mayor and the local assembly. Nominations are then sent to the Ministry of Justice, where they are investigated. If approved they are sent back to the local bar association, the local organization of Civil Liberties Commissioners, and the governor of the prefecture for final approval (Ministry of Justice, 1985: 3).

Commissioners should be people who command some re-

spect in their community. The elaborate nomination process adds additional prestige to the position (Beer, 1983: 107). In theory commissioners are compensated by the national government for their out-of-pocket expenses only and serve because it is an honor to hold the position. In practice commissioners usually receive a small stipend from the local community from which they were nominated (Horiuchi, 1968: 61–65). In 1985 only 11 percent of the commissioners were women (Ministry of Justice, 1985: 4). In a society that venerates age it is not surprising that the commissioners tend to be a great deal older than the population at large (Horiuchi, 1968: 62).

The CLB, unlike the Civil Rights Section of the United States Justice Department on which it is modeled, has no formal enforcement powers. It cannot subpoena information, it has no FBI or other police agency at its disposal, and it cannot rely on the courts to force compliance (ibid., p. 77). Instead it relies largely on persuasion, publicity, and conciliation to achieve its goals.

The professional staff of the Bureau is small. Its 205 members are exclusively engaged in the business of protecting human and civil rights in fifty cities throughout the country. The staff of the central bureau in Tokyo numbers 23. All are civil servants. Most hold undergraduate degrees from the law faculties of major Japanese universities but are not considered lawyers. However, the staff in over 250 branch bureaus and over 1,000 branch offices of the Ministry of Justice can help with rights cases if necessary (Ministry of Justice, 1985: 2–3).

The division of labor between the professional staff and the Civil Liberties Commissioners is vague (Horiuchi, 1968: 57). Both are responsible for finding cases. Because the bureau is charged with both protecting and promoting human rights, the commissioners engage in a wide variety of activities to promote its use. They play their largest role in the simplest cases between individuals and in those cases that involve counseling (Gellhorn, 1966: 722–724). The commissioners are said to be especially adept at handling cases involving ostracism, public nuisances, schools, and family relations.

The commissioners are supposed to keep the staff apprised of their activities and to ask for assistance in more serious or "special" cases that require consultation with the national director of the agency. The commissioners rely on staff to gather necessary information. They also conduct investigations, especially with regard to rumors they hear or cases they discover during their normal activities. More complex investigations are turned over to the professional staff. Because the CLB has no

subpoena powers, all information has to be acquired voluntarily from the parties to the dispute or from other people who choose to cooperate.

The staff appears to play a greater role in cases involving government officials (Horiuchi, 1968: 80–87). When the agency determines that human rights may have been violated (as occurred in about 16,000 cases in 1980 and in 14,000 in 1984), the staff usually investigates to obtain as much information as they can and then briefs the commissioners, who meet with the parties (Beer and Weeramantry, 1979). A common way to deal with abuses by public officials or members of private organizations is for the commissioners or the staff to contact the party's supervisor (Ministry of Justice, 1985: 9). In Japan those in authority bear great responsibility for people they supervise (Haley, 1982b: 277; Smith, 1984: 54). When appropriate, cases can be referred to the public prosecutor. However, such action is rare, and has not happened at all in recent years (Ministry of Justice, 1985: 9).

The agency's publications claim that its goal is to eliminate problems rather than to punish people. With no formal power to punish, the CLB relies on warnings, public opinion, and persuasion. Over 95 percent of the cases are handled by the commissioners admonishing one of the parties. The CLB can also recommend that the parties use the court system or refer people to social service agencies (Horiuchi, 1968: 78–79).

The CLB is effective in part because the commissioners have high status, even if they are not personally known to the parties. The staff contributes to the effectiveness as well by cultivating good relations with the press. If they deem it necessary, staff members are not reluctant to give information about recalcitrant individuals to the media and other influential individuals (ibid., p. 30). In Japan there is little danger that CLB officials could be successfully accused of libel or slander. The CLB thus both promotes and relies on a strong normative sense of the proper behavior for Japanese citizens.

IV. THE DEVELOPMENT OF THE CLB

The CLB was part of the legal machinery set up under the guidance of American and Japanese reformers during the postwar period. In its present form it is a product of three factors: the efforts of reformers to increase rights consciousness among the Japanese, the traditional conception of rights in Japan, and the persistence and adaptability of the traditional Japanese forms of conflict resolution.

A. *The Original Intent*

One of the goals of the American occupation forces in Japan was to prevent the recurrence of the kind of totalitarian government that had led Japan into the war. Some of those advising General Douglas MacArthur, Supreme Commander of the Allied Forces occupying Japan, believed that Japanese totalitarianism was in part the product of a society in which individualism was too easily suppressed (Oppler, 1976).

The Japanese do not have a long tradition of respect for individual rights as they are understood in the West. The Japanese word for "rights" (*kenri*) was first used during the nineteenth century by Japanese scholars who tried to translate Dutch and French legal codes into Japanese (Noda, 1976: 43; Henderson, 1968: 433). Even after its introduction, *kenri* was used more often by the government to control the behavior of individuals than by individuals to make claims against government (Noda, 1976: 159–160; Kawashima, 1975). Well into the twentieth century, government in Japan was believed to be largely above the law and not subject to claims of rights by individual citizens (Kawashima, 1975: 268; Haley, 1982a: 126–127).

After World War II, the Japanese and American architects of the new constitution and the new legal system believed that both constitutional and statutory mechanisms were needed to protect individual rights (Oppler, 1976: 106–107). Articles 10 through 40 of the Japanese constitution adopted in 1947 contain most of the rights adopted a year later in the United Nations Declaration on Human Rights. Given that the Japanese tradition of individual rights was so weak, postwar reformers made certain that mechanisms to implement these rights were also created. As will be explained, in Japan these rights have been understood in broader or at least different terms than they are in the West.

The first attorney general to serve under the new constitution, Suzuki Yoshio, established machinery to enable the state to play an active role in protecting the newly created rights (ibid.; Horiuchi, 1968: 51). In 1948, the CLB, modeled on the United States Justice Department's Civil Rights Section, was set up in the Ministry of Justice (Beer and Weeramantry, 1979: 6). Alfred Oppler (1976: 177), one of the architects of Japan's new legal system, saw "the coming into existence of such an organization as a milestone in Japan's history of human freedom. It emphasized . . . the obligation of a free democratic government not only to refrain from infringing on the people's rights, but affirmatively to safeguard and promote them." Although

the agency does hear cases involving the kinds of rights Oppler and Suzuki had in mind (Beer, 1983), the vast majority of the rights the CLB protects are best understood as social rights rather than individual rights.[6]

B. Social Rights

While the Japanese may have had a weak conception of civil liberties and individual rights as they are defined in the West, they had and continue to have a strong sense of what are best called social rights. Although this strong sense is certainly not unique to Japan, Japan may be unique among highly urbanized, complex capitalist societies in having public institutions like the CLB that both recognize and protect these rights. Included as social rights are ideas about how group members ought to treat each other and how people of higher status ought to treat those of lower status.

The social rights protected by the CLB are more consistent with the traditional Japanese self-conception than with the individualistic notions that the postwar reformers were trying to encourage. In traditional Japan "justice was relational . . . [as] superiors as well as inferiors were only important as parts of a group which legitimately claimed their complete dedication. Duty, not right, was the emphasis" (Henderson, 1965: 174). Although notions of reciprocal duties among family, social group, community, and country have always been strong in Japan, Japanese scholars have argued that if there were anything like the Western idea of rights in Japan, it involved the concepts of group membership (Kawashima, 1963: 44–45) and group rather than individual entitlements (Kawashima, 1975: 264–265).

During the formative Tokugawa shogunate (1603–1868), the legal remedies available to an individual, as well as one's legal status, were the result of membership in a family, clan or village group (Henderson, 1965: 25–28). In this rigidly hierarchical society, disputes between group members were to be settled through conciliation by the leader of the group, whether it be the family head, the five-man group chief, the village headman, or the lord of the fief. Family or status group officials responsi-

[6] The observation that "people make their own law, but do not make it just as they please" (Felstiner *et al.*, 1980–81) certainly applies to the efforts of the American occupation forces in Japan. The development of the CLB is an example of the unintended consequences of transferring legal institutions from one society to another, especially if, as will be argued, the CLB has reinforced rather than weakened societal tendencies toward social solidarity as opposed to individualism.

ble for conciliation had considerable resources to coerce compliance or at least to guide it to serve the interests of social harmony that they were supposed to maintain (ibid., pp. 174–177). The greater the social distance between disputants, the larger the group involved and the higher status and the greater the resources of the official responsible for conciliation (ibid., p. 174).

It would be wrong, however, to characterize traditional Japanese society as quiescent, with few claims being made against officialdom. Although under Tokugawa rule individuals had to overcome formidable obstacles to claim their social rights against those of higher status, many still did (Haley, 1978: 371). Such claims were usually stated in group rather than individual terms (Upham, 1976).[7] People could also bring claims about essentially private matters to public officials. This is very different from the Western, Lockean notion that views rights as protections from government (Flathman, 1976).

In part because of its language, which calls for the protection of "the right to maintain the minimum standards of wholesome and cultured living" (Kenpō, art. 25), the right to individual dignity and equality in marriage (Kenpō, art. 24), and the right to be "respected as individuals" (Kenpō, art. 13), the Japanese constitution has been interpreted as protecting a range of rights, including these social rights, broader than those protected in the West.[8] These rights are as likely or more likely to be read as adjurations to the public (covering largely private activities) as to government officials (Gellhorn, 1966: 719; Ministry of Justice, 1985: 7–8). That this notion of group or social rights is still prevalent in Japan helps explain why the CLB, an institution that Westerners believed would protect individuals from government, is used so extensively to mediate problems between individuals.

C. Conciliation

Japan has a long tradition of providing public means to mediate essentially private disputes. Traditional law in Japan, as

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[7] Upham (1976) shows how this notion of rights continues to facilitate protest and other forms of collective action in Japan, where rights claims play a very different role than they do in America. It is interesting to compare Upham's article with Scheingold's (1974) analysis of the politics of rights in the United States.

[8] Social rights were recognized by the Japanese Supreme Court in Judgment of May 24, 1967, 21 Minshū 1043. Tanaka and Smith (1976) and Henderson and Haley (1978) devote chapters of their case books on Japanese law to social rights but make no mention of the CLB. Their discussions focus primarily on the rights of workers and the "right to maintain minimum standards of wholesome and cultured living" (Kenpō, art. 25).

elsewhere, stressed conciliation (Henderson, 1965: 183–184; Kawashima, 1963: 44, 46–47). Like the mediation practiced by the CLB, conciliation in Tokugawa Japan focused on the facts unique to each dispute as opposed to the universal notions of rights and duties. For the Japanese equity has always been a more important component of justice than consistency and predictability (Henderson, 1968: 409–410, esp. nn. 42 and 43; Kawashima, 1975). "The notion that a justice measured by universal standards can exist independent of the wills of the disputants is apparently alien to the traditional habit of the Japanese people" (Kawashima, 1963: 50). Some commentators see the tendency of the Japanese to rely on institutions that individualize disputes as an important obstacle to the growth of rights consciousness and the rule of law envisioned by the framers of the postwar legal system (Henderson, 1968: 448–454; Haley, 1982b).

Whether the tendency of the Japanese people to avoid litigation can be explained by their inherent nature, the system of discipline set up by the Tokugawa shogunate clearly reinforced conciliatory attitudes (Henderson, 1965: 174). During this period every effort was made to see that interpersonal disputes at the local level were handled by conciliation. While the shogunate developed a system of courts to hear cases that crossed status lines and feudal boundaries,[9] these courts had little relevance for the average citizen, whose disputes were handled through conciliation by family or status officials within the household village. "The thought was that if people must live permanently in close association with others, they must compromise their differences and not to be too contentious about their interests" (ibid.). Even when cases went to court, it was felt that reason and the particulars of each case should override custom and precedent (Henderson, 1968: 409).

Local officials responsible for maintaining the peace were given a high degree of autonomy and could impose criminal penalties in any case (Henderson, 1965: 92–98, 123–129). In addition to local officials, every community also had unofficial mediators of considerable prestige and status who had developed reputations for their skill in resolving disputes. Once a local official or one of these other mediators was brought into a dispute, the parties were under considerable pressure to settle their differences. "One suspects that the 'conciliation' principle

[9] Long before the introduction of Western law, these courts adjudicated cases and developed general rules and precedents in ways that have been compared to the common law system in England (Henderson, 1965: 58).

was not that it was better to agree, but rather 'You had better agree!'—a principle more like adjudication" (ibid., p. 236). Individuals had no real choice about where to bring their disputes and no effective appeal from the decisions.

Henderson (1965) has argued that the principal difference between the traditional forms of conciliation in Tokugawa Japan (*atsukai* and *naisai*) and the nonadjudicatory forms of dispute settlement in contemporary Japan (*chotei, wakai*, and *jidan*) is that the latter are voluntary. *Chotei* and *wakai*, which he refers to as formal conciliation, are curious blends of informal justice and adjudication. Although they are voluntary and not guided by formal rules and precedents, they take place in court. Under the Japanese Code of Civil Procedure (Minji soshō ho, arts. 203, 695, 696), the settlements can have the force of a final judgment. Court-sponsored mediation has been the subject of considerable scholarly analysis (Tanaka and Smith, 1976: 492–494; Henderson and Haley, 1978: 649–673). *Jidan*, which Henderson calls informal conciliation, is practiced outside the courts and is used to characterize the activities of institutions like the CLB (Henderson, 1965: 184).

Those who facilitate conciliation outside the courts are no longer traditional authority figures such as village chiefs and local Tokugawa officials. Their place has been taken by institutions like the CLB, the police, and the myriad of public conciliation organizations set up by the courts and local governments. Although the family and neighborhood dignitaries used by these organizations can be heavy-handed, relying on a strong normative sense of what it means to be Japanese, *jidan* as practiced by the CLB is considerably different from Tokugawa conciliation. It involves no formal sanctions, its use is voluntary, and there are a variety of forums to which the Japanese can bring their disputes. Disputants also retain their right to bring cases to the courts for formal adjudication. The number of cases heard by the CLB demonstrates that the notion that individuals can bring private disputes to public institutions continues to affect how the Japanese deal with their disputes even if those institutions have dramatically changed.

The ability of an agency like the CLB to function effectively in a complex, urban society should not be attributed to uniquely Japanese traditions alone. Examples of social rights and a preference for informal ways to settle disputes abound in both historical studies of Western law and anthropological accounts of dispute-processing in third world countries (Merry, 1982; McThenia and Shaffer, 1985; Felstiner, 1974; Auerbach, 1983). However much it has been clothed in traditional sym-

bols, the voluntary aspects of mediation practiced by the CLB stand in marked contrast to traditional forms of conciliation in Japan.

The movement from what Henderson has called didactic conciliation under the Tokugawa to voluntary mediation was one of the many changes the Japanese made after their increased contact with the West (Henderson, 1965: 187–191; Haley, 1982a). It has been argued that voluntary mediation was encouraged by the traditional elite in Japan in response to the growing number of lawsuits during the turbulent period following World War I (Haley, 1982a; Cole, 1979: 127). The Japanese have been particularly adept at attaching traditional symbols to institutions they borrow from abroad. Like the development of permanent employment and quality circles, which likewise arose from exposure to the West, the adoption of voluntary forms of mediation came to be attributed to unique Japanese culture and traditions (Cole, 1979: 12–14). Rather than being a static barrier to the development of modern institutions, Japanese tradition has been flexible enough to facilitate the creation of new institutions and practices that have later been seen as distinctly Japanese ways of handling problems (White, 1974: 419–422). The evolution of the CLB and its ability to attract a large number of cases demonstrates both the adaptability and persistence of those traditions.

V. WHY THE CLB IS SUCCESSFUL

It is said to be difficult for institutions of informal justice like the CLB to work effectively in modern, complex societies because such societies lack the continuous relationships, common values, and recognized sources of authority necessary to make informal justice work (Felstiner, 1974; Auerbach, 1983).[10] Usually such informal agencies can do little for the personal problems (including alcoholism, marital trouble, and financial difficulties) that people are likely to bring to them (Felstiner

[10] One can legitimately ask whether the CLB and other institutionalized forms of mediation in Japan fall under the general rubric of informal justice. While these institutions do not have formal rules governing the handling of cases, rely on laypeople rather than professionals to settle disputes, cannot coerce compliance, and emphasize compromise and reconciliation rather than the proclamation of winners and losers, there is very little that is ordinarily associated with the concept "informal" about them. They have professional staffs and are arranged hierarchically with central coordination, and the lay mediators receive training from the national government. The commissioners' expenses are paid by the national government, and some prefectural governments also pay a small stipend. While the commissioners have no official sanctioning powers, their recommendations are very difficult to ignore because of the nature of Japanese society (cf. Felstiner, 1974: 74 n. 16).

and Williams, 1978). In the United States these agencies often function as extensions of the courts and other parts of the formal legal system rather than alternatives (Harrington, 1982).

Japan is rightly characterized as a society with a high degree of social solidarity, whether it be within a household, a division of a company, a union, a department of a university, or a social or religious organization. Where village life, the traditional provider of social solidarity, has been destroyed by modernization, the Japanese have tried to create "pseudo-villages" within otherwise large, impersonal organizations (White, 1974: 411). Where traditional institutions are no longer appropriate, new ones have been adapted and sometimes even identified as being distinctly Japanese (Cole, 1979: 22). Japan, however, bears little resemblance to the pastoral, stable, closely knit societies that provide the models for those who argue for expanding the role of informal justice (Felstiner, 1974; Merry, 1982; Cain and Kulcsar, 1981–82: 383). Instead Japan is an increasingly mobile society in which relations between strangers (e.g., neighbors in large apartment houses or new suburbs) and even between family members not living in the same household are as fragmented as they are in the United States. It has even been argued that it is more difficult for unconnected individuals to relate to each other in Japan than in other societies (Nakane, 1970).

When strong ties exist between members of the same Japanese organization, disputes are usually settled informally within the organization, as they are in the West (Felstiner, 1974). The CLB, however, is able to address disputes between people who either do not have access to the informal mechanisms that come from common group membership (see Cases 3 and 5 listed above) or are unable to resolve their conflicts effectively even when such mechanisms exist (Cases 1, 2, and 6). The agency mediates disputes between family members (Case 6), neighbors who share no effective common ties (Cases 3 and 4), strangers (Case 3) and individuals and large public (Cases 5, 9, and 10) or private organizations (Cases 8, 11, and 12). The CLB regularly settles conflicts between unconnected individuals from all areas of Japanese society and is able to do so without becoming an extension of the formal legal system. The proof of its effectiveness is the large number of cases it hears. There would be no reason for large numbers of people to continue to bring cases to an agency like the CLB if it were not worthwhile (Fuller, 1981: 135).

The structure of the CLB is part of the reason it can handle so many disputes. The way in which the commissioners are

chosen provides them with the authority such figures usually lack in modern societies. Both staff and commissioners provide the agency with the necessary expertise. The CLB may be organized more effectively than informal institutions in other societies because, as one critic of informal justice advocates, local bureaus are part of a national network and thus are able to coordinate efforts to deal with persistent problems (Merry, 1982: 40–41). Local, regional, and national organizations of Civil Liberties Commissioners meet periodically and have at times been able to transform isolated local complaints into issues on the national political agenda (Gellhorn, 1966: 718 n. 52). For example the CLB played a major role in mobilizing national support for the creation of administrative mechanisms to deal with pollution and to equalize damage awards to individuals involved in automobile accidents.[11]

Unlike agencies with similar roles in the West, the CLB gets very few cases from either the courts or the police and rarely relies on the formal legal system to ensure compliance (Ministry of Justice, 1985: 8). It does not hesitate to use the media to pressure businesses or high-status individuals to comply with its decisions. Commissioners make public moral judgments about parties without fear of being reprimanded as sometimes happens in the United States (Abel, 1982: 289).

Although it does not deal with cases that could potentially alter the distribution of wealth and power in Japanese society or cause the demise of bureaucratic rule in Japan, the CLB claims in its publications that one of its primary missions is to prevent high-status individuals from exploiting those of lower social status, thereby at least giving encouragement to people who want to make such claims. "It is the view of the Human Rights Organs that, when any person who is socially influential exercises such influence and oppresses the person who is socially weak, infringing upon his rights, it is necessary to regard it as an infringement upon human rights and take remedial action" (Ministry of Justice, 1985: 8).

Certainly aspects of Japanese society such as its homogeneity, its traditions of social rights and conciliation, and its strong sense of group identity allow institutions like the CLB to function more effectively in Japan than in other complex, modern societies. It would be a mistake, however, to underestimate the ability of institutions to actively shape the culture and traditions of a society (Sawyer, 1965: 186–189). Such a view ignores the context within which individual Japanese make decisions

[11] Personal communication from Takeo Tanase and Koichiro Fujikura.

about how to handle their disputes. Cultural patterns persist not only because they are old but also because they work. Just as one should not try to understand the Japanese way of dealing with disputes without understanding Japanese culture, so one should not try to understand components of that culture, like attitudes toward the legal system, without examining the institutional arrangements that help to perpetuate it: "To say that Japanese behave the way they do because of their culture ignores the process by which culture is transformed into action" (Ramseyer, 1985: 644).

A firm social rights consciousness remains in Japan in part because institutions like the CLB make it worthwhile for people to claim these rights. Such institutions also help maintain the strong sense of group solidarity that is so often used to explain many aspects of Japanese society (Nakane, 1970; Vogel, 1979). Indeed, the stated intention of those who created the first government-sponsored mediation in Japan in the 1920s was to encourage the persistence of traditional social patterns as opposed to individualism (or class conflict) (cf. Kawashima, 1963; Haley, 1982a). Not surprisingly, the belief that informal institutions can foster social solidarity is central to arguments of advocates of informal justice in the United States (Danzig, 1973; Wahrharftig, 1982; Auerbach, 1983; McThenia and Shaffer, 1985).

VI. RETHINKING THE JAPANESE CASE

What are we to make, then, of the CLB's role in the transformation of disputes in Japanese society? Certainly a government agency handling 375,000 cases does not conform to the popular view of the disputing process in Japan. With its small number of lawyers and low rate of litigation Japan is supposed to be a country where, because of its Confucian traditions and unique culture, there is little need for individuals to use public institutions to settle disputes. Japan is also described as a society with little need for law because there are so many other traditional means of social control (Vogel, 1979; Kawashima, 1963). The disputing process in Japan is usually misunderstood by defining law in terms of what happens in courts and by relying on cultural rather than institutional factors to explain why there is so little litigation. The stress on cultural factors is encouraged by the Japanese, who usually argue that whatever differentiates them from anyone else comes simply from being Japanese (White, 1974: 401). But if one starts with the question

of how the Japanese handle disputes, a very different picture emerges (Abel, 1974: 217).

The Japanese regularly bring disputes to a variety of public agencies where mediation rather than adjudication is the norm. Although it handles most of such cases, the CLB is only one of many institutions in which volunteers help settle disputes that would be adjudicated in the West. In Japan, for example, family courts use volunteers to mediate between couples seeking a divorce (Bryant, 1984) and the Administrative Management Agency uses volunteers to hear complaints about government agencies (Gellhorn, 1966: 729–730). Traffic Accident Dispute Resolution Centers, Consumer Aid Centers, and Municipal Legal Service Centers are among the host of other agencies set up at local, prefectural, and national levels to help individuals resolve disputes without using courts (Ishimura and Wada, 1984; Gellhorn, 1966).

However, just because the Japanese do not litigate at a high rate we should not automatically assume that they have fewer disputes or perceived injurious experiences than anyone else. (see Felstiner, *et al.*, 1980–81). Nor is there any reason to believe that the Japanese have or have ever had more spontaneous, private ways to settle disputes. What may be different about Japan is not the number and kinds of their disputes, but the nature of the agencies to which people bring their disputes. Although it is sometimes characterized as traditional and underdeveloped, the disputing process in Japan is actually highly differentiated and in many ways quite modern (Schwartz and Miller, 1964).[12]

VII. EVALUATING THE JAPANESE CASE

Legal scholars in the United States and elsewhere have raised a number of questions about the pernicious effects of informal justice. Some ask whether informal institutions are really able to help people in complex, modern societies (Felstiner,

[12] Despite its reputation for having an underdeveloped legal system with few lawyers, Japan might be better characterized as a society with a highly differentiated system for handling conflict. The CLB is just one of a wide variety of specialized agencies for dealing with disputes. Japanese lawyers, courts, and judges handle only a small part of the social control functions with which they are associated in the West. Few of these mechanisms are accountable to democratic or parliamentary processes (cf. Ramseyer, 1985; Cain and Kulcsar, 1981–82). Although the idea that there should be a variety of institutions to handle different kinds of disputes predates the introduction of Western forms of social control to Japan (Henderson, 1965), Japan may come as close as any society to possessing the kind of postliberal legal system described (and feared) by Unger (1976: 224–231, 193–205), Mathiesen (1980), and de Sousa Santos (1982).

1974), while others worry about the modern state's growing use of agencies of informal justice to delegalize and depoliticize conflict (Mathiesen, 1980; Cain and Kulcsar, 1981–82: 392–394).[13] Law does more than help people settle disputes. When legal systems apply general rules to new situations, they help to clarify, articulate, and define basic norms. However desirable it is to have institutions that promote social harmony by allowing individuals to settle disputes as amicably as possible, when cases are settled informally there is less opportunity to explore the normative underpinnings of society.

Although the ability of the Japanese to avoid formal litigation is often viewed as a positive attribute of their unique character and culture (Kawashima, 1963; Noda, 1976; Vogel, 1979), some take a more critical view of this phenomenon. Several scholars believe that the persistence of informal dispute resolution has retarded the growth of law and the development of rights consciousness in Japan (cf. Henderson, 1968; Haley, 1982b; Ramseyer, 1985). For example, Henderson (1965: 241) has written that

> the excessive use of conciliation stunts the growth and refinement of the body of rules necessary to sustain complex community life; it dulls the citizens' sense of right, essential to the vindication of the law. It may also allow old rules and social prejudices, which new legislation has sought to abolish, to influence the outcomes of disputes; or it may allow a new regime to ignore the law in favor of its new policy, as happened in Japan in the 1930's. In other words, conciliation is neither conservative nor progressive in principle; it is simply unprincipled.

Institutions like the CLB may contribute to the low litigation rate in Japanese society by providing an attractive alternative to the courts, which, in addition to being slow and expensive, offer few benefits even to those who win cases (Haley, 1978: 362–364; 1982b). With few people using the courts there is little pressure on the government either to make more attor-

[13] The basic argument against the use of informal justice, or alternative dispute resolution (ADR), is that informal justice institutions in the United States receive the great bulk of their cases from the courts and thus function more as extensions of formal institutions than as alternatives (Harrington, 1982: 60). Because they depend on existing structures of authority (Merry, 1982; Abel, 1982) and lack the sanctions necessary to ensure compliance (Fiss, 1984; 1985), informal institutions can do little for the powerless who have claims against the powerful. Because with ADR cases are individualized, few records are kept, and no precedents are set, informal justice inhibits the growth of law and rights consciousness by individualizing and neutralizing conflict (de Sousa Santos, 1982; Fiss, 1984). ADR is advocated by many who also wish to deny the poor and traditionally powerless real access to the legal system (Nader, 1985).

neys available or to allow the courts to offer litigants a wider range of remedies. Because litigation has the potential to generate new rules and either vindicate or challenge the viability of old ones, there are cases in which both the individuals involved and society as a whole might be better served by formal litigation. This cannot happen when a dispute goes to the CLB. Informal institutions in Japan rely on existing norms and by their actions reinforce those norms (Bryant, 1984: 86).

In recent years the idea that the Japanese have little need for lawyers, litigation, and effective legal remedies has come under attack by a number of Western legal scholars (Haley, 1982b; Ramseyer, 1985; Bryant, 1984) who assert that the Japanese would be no less likely to litigate than anyone else if their government allowed more lawyers to be trained and if the courts were able to offer more effective remedies to litigants (Haley, 1982b). Some argue that the "myth of the reluctant litigant" (Haley, 1978) is manipulated by political elites to encourage the Japanese to believe that they are by nature nonlitigious, thereby perpetuating the status quo by discouraging litigation that could directly challenge widely held norms (Ramseyer, 1985: 637–643; Haley, 1982b). "The larger the number of Japanese who went to court, the harder each individual would find it to believe that such conduct was unethical and to define a Japanese as someone who does not sue" (Ramseyer, 1985: 610). By providing an attractive alternative to litigation the CLB may reinforce a normative climate that delegitimizes conflict and inhibits democracy (ibid., pp. 637–643). The growth of alternatives to courts was encouraged in the 1920s for just such purposes (Haley, 1978; 1982a).

Whatever informal justice institutions may contribute to the low litigation rate in Japan, individual citizens seem to have access to a wider variety of useful alternative agencies for resolving their disputes than do citizens in most other industrialized societies (Hayden, 1986: 244–247). The CLB has transformed some of the negative externalities normally experienced by large numbers of powerless people, including damage to the environment, unfriendly neighbors, automobile accidents, noise from airports, ungrateful children, corporal punishment in the schools, and intrusive media, into injuries for which people actively seek a remedy. Whatever else it may do, the CLB seems to support those values in Japanese society that discourage exploitation and encourage social solidarity. It is hard to imagine that the life of the average Japanese would be better without it.

Because the courts are perceived as weak, the Japanese are

less likely to see them as the solution to as wide a range of problems as Americans do. While institutions like the CLB may defuse cases in which both the individual and the society could benefit from litigation, Japanese groups interested in social change, such as environmentalists and *burakumin*, are also less likely to become involved in litigation and more inclined to take direct collective action (White, 1984) to protect their existing rights and at times to create new ones. It is not at all clear whether they have been less successful than comparable groups in the United States that have relied heavily on the courts (cf. Scheingold, 1974; Upham, forthcoming).

Whether normative criticisms of informal justice apply to the CLB depends in part on what one sees as the proper role of law and litigation in a modern society. Although the Japanese have created a variety of useful mechanisms to help people settle disputes quickly, quietly, and amicably, this may have occurred at the expense of the system's ability to resolve or clarify larger normative issues. While the CLB and other agencies of informal justice cannot alter the distribution of wealth and power in Japanese society, it is doubtful that formal litigation could, or should, be very effective in achieving this goal even in the United States with its active judiciary (cf. Horowitz, 1977; Fiss, 1979; 1984).

VIII. CONCLUSION

The Japanese case shows that under the right conditions large-scale mediation organizations can function effectively in complex, modern societies. Citizens in Japan have access to a variety of effective forums to which they can bring their problems. Large numbers of individuals would not continue to use the CLB unless they found its benefits significant. The ability of the agency to survive and flourish should give heart to those who support the use of informal justice (Beer, 1983) but also make them aware of the resources necessary for this kind of organization to succeed.

While unique aspects of Japanese cultural traditions may allow an institution like the CLB to function more effectively than comparable institutions in other complex, modern societies, one should not underestimate the ability of institutions like the CLB to shape these very traditions. The effectiveness of informal institutions like the CLB in contrast to the general ineffectiveness of formal litigation is an important component of the social reality within which individual Japanese handle their disputes. The Japanese have created institutions like the

CLB that enable people to settle disputes without using formal litigation and to perceive their society as one with little need for litigation. Rather than marveling at the unique culture and traditions that allow the Japanese to avoid litigation, we might do better to study the origins and functions of the institutions that both support and maintain them.

REFERENCES

ABEL, Richard (1982) "The Contradictions of Informal Justice," in R. Abel (ed.), *The Politics of Informal Justice*, Vol. 1. New York: Academic Press.
——— (1974) "A Comparative Theory of Dispute Institutions in Society" 8 *Law & Society Review* 217.
AUERBACH, Jerold (1983) *Justice without Law*. New York: Oxford University Press.
BEER, Lawrence (1985) *Freedom of Expression in Japan*. Tokyo: Kodansha.
——— (1983) "Postwar Law on Civil Liberties in Japan," 2 *UCLA Pacific Basin Law Review* 98.
BEER, Lawrence, and C. WEERAMANTRY (1979) "Human Rights in Japan: Some Protections and Problems," 1 *Universal Human Rights* 3.
BRYANT, Taimie (1984) "Marital Dissolution in Japan: Legal Obstacles and Their Impact," 17 *Law in Japan* 73.
CAIN, Maureen, and Kalman KULCSAR (1981–82) "Thinking Disputes: An Essay on the Origins of the Dispute Industry," 16 *Law & Society Review* 375.
COLE, Robert (1979) *Work, Mobility, & Participation*. Berkeley: University of California Press.
DANZIG, Richard (1973) "Toward the Creation of a Complementary, Decentralized System of Criminal Justice," 26 *Stanford Law Review* 1.
DE SOUSA SANTOS, Boaventura (1982) "Law and Community: The Changing Nature of the State Power in Law in Late Capitalism," in R. Abel (ed.), *The Politics of Informal Justice*, Vol. 1. New York: Academic Press.
FELSTINER, William (1974) "Influences of Social Organization on Dispute Processing," 9 *Law & Society Review* 63.
FELSTINER, William, Richard ABEL, and Austin SARAT (1980–81) "The Emergence and Transformation of Disputes: Naming, Blaming and Claiming," 15 *Law & Society Review* 631.
FELSTINER, William, and Lynne WILLIAMS (1978) "Mediation as an Alternative to Criminal Prosecution: Ideology and Limitations," 2 *Law and Human Behavior* 223.
FISS, Owen (1985) "Out of Eden," 94 *Yale Law Journal* 71669.
——— (1984) "Against Settlement," 93 *Yale Law Journal* 1073.
——— (1979) "The Supreme Court, 1978 Term—Forward: The Forms of Justice," 93 *Harvard Law Review* 1.
FLATHMAN, Richard (1976) *The Practice of Rights*. New York: Cambridge University Press.
FULLER, Lon (1981) "Mediation—Its Forms and Functions," in K. Winston (ed.), *The Principles of Social Order*. Durham, NC: Duke University Press.
GELLHORN, Walter (1966) "Settling Disagreements with Officials in Japan," 79 *Harvard Law Review* 685.
HALEY, John Owen (1982a) "The Politics of Informal Justice: The Japanese Experience, 1922–1942," in R. Abel, (ed.), *The Politics of Informal Justice*, Vol. 2. New York: Academic Press.
——— (1982b) "Sheathing the Sword of Justice in Japan: An Essay on Law without Sanctions," 8 *Journal of Japanese Studies* 265.
——— (1978) "The Myth of the Reluctant Litigant," 4 *Journal of Japanese Studies* 359.
HARRINGTON, Christine (1982) "Delegalization Reform Movements: A His-

torical Analysis," in R. Abel (ed.), *The Politics of Informal Justice*, Vol. 1. New York: Academic Press.
HAYDEN, Robert (1986) "Popular Use of Yugoslav Labor Courts and the Contradiction of Social Courts," 20 *Law & Society Review* 229.
HENDERSON, Dan Fenno (1968) "Law and Political Modernization in Japan," in Ward (ed.), *Political Development in Modern Japan*. Princeton: Princeton University Press.
——— (1965) *Conciliation and Japanese Law*, 2 Vols. Seattle: University of Washington Press.
HENDERSON, Dan Fenno, and John Owen HALEY (1978) *Law and the Legal Process in Japan*. Seattle: University of Washington Law School.
HORIUCHI, Tsueno (1968) "The Civil Liberties Bureau of the Ministry of Justice and the System of Civil Liberties Commissioners," in United Nations, *The Effective Realization of Human Rights at the National Level—Selected Studies*. New York: United Nations.
HOROWITZ, Donald (1977) *The Courts and Social Policy*. Washington, D.C.: Brookings Institute.
ISHIMURA, Zensuke, and Yashiro WADA (1984) "Dispute Processing among Citizens in Tokyo, Japan." Presented at the Annual Meeting of the Law and Society Association, Boston (June).
KAWASHIMA, Takeyoshi (1975) "The Status of the Individual in the Notion of Law, Right, and the Social Order in Japan," in Moore (ed.), *The Japanese Mind*. Honolulu: The University of Hawaii Press.
——— (1963) "Dispute Resolution in Contemporary Japan," in A. Von Mehren (ed.), *Law in Japan*. Cambridge, MA: Harvard University Press.
MCTHENIA, Andrew, and Thomas SHAFFER (1985) "For Reconciliation," 94 *Yale Law Journal* 1660.
MATHIESEN, Thomas (1980) *Law, Society and Political Action: Towards a Strategy under Late Capitalism*. London: Academic Press.
MERRY, Sally Engle (1982) "The Social Organization of Mediation in Nonindustrial Societies: Implications for Informal Community Justice in America," in R. Abel (ed.), *The Politics of Informal Justice*, Vol. 2. New York: Academic Press.
MINISTRY OF JUSTICE (1985) "The Organization and Functions of the Organs for the Protection of Human Rights and Legal Aid System in Japan." Tokyo: Ministry of Justice.
——— (1960) "The Civil Liberties Bureau of the Ministry of Justice System of Civil Liberties Commissioners and Legal Aid in Japan." Tokyo: Ministry of Justice.
NADER, Laura (1985) "The Intellectual Odyssey of Informalism." Presented at the Annual Meeting of the Law and Society Association, San Diego (June 7).
NAKANE, Chie (1970) *Japanese Society*. Berkeley: University of California Press.
NODA, Yosiyuki (1976) *Introduction to Japanese Law*. Tokyo: Tokyo University Press.
OPPLER, Alfred (1976) *Legal Reform in Occupied Japan*. Princeton: Princeton University Press.
RAMSEYER, J. Marc (1985) "The Costs of the Consensual Myth: Anti-Trust Enforcement and Institutional Barriers to Litigation in Japan," 94 *Yale Law Review* 604.
ROWART, D. (1983) "A Critique of the Japanese Study Group's Report on the Ombudsman." Unpublished. Occasional Paper, International Ombudsman Institute, Alberta.
SAWER, Geoffrey (1965) *Law in Society*. London: Oxford University Press.
SCHEINGOLD, Stuart (1974) *The Politics of Rights*. New Haven: Yale University Press.
SCHWARTZ, Richard, and James MILLER (1964) "Legal Evolution and Societal Complexity," 70 *American Journal of Sociology* 159.
SMITH, Robert (1984) "Lawyers, Litigiousness and the Law," 11 *Cornell Law Forum* 53.
TANAKA, Hideo, and Michael SMITH (eds.) (1976) *The Japanese Legal System*. Tokyo: University of Tokyo Press.
TSURUSHIMA, Setsure (1984) "Human Rights and Minority Status of Kore-

ans in Japan," in DeVos (ed.), *Institutions for Change in Japanese Society*. Berkeley: University of California Press.
UNGER, Roberto (1976) *Law in Modern Society*. New York: The Free Press.
UPHAM, Frank (forthcoming) Cambridge, MA: Harvard University Press.
——— (1984) "Instrumental Violence and Social Change: The Buraku Liberation League and the Tactic of 'Denunciation Struggle,'" 17 *Law in Japan* 185.
——— (1979) "After Minamata: Current Prospects and Problems in Japanese Environmental Litigation," 8 *Ecology Law Quarterly* 213.
——— (1976) "Litigation and Moral Consciousness in Japan: An Interpretative Analysis of Four Japanese Pollution Suits," 10 *Law & Society Review* 579.
VOGEL, Ezra (1979) *Japan as Number One: Lessons for America*. Cambridge, MA: Harvard University Press.
WAHRHARFTIG, Paul (1982) "An Overview of Community-Oriented Citizen Dispute Resolution Programs in the United States," in R. Abel (ed.), *The Politics of Informal Justice*, Vol. 1. New York: Academic Press.
WHITE, James (1984) "Protest and Change in Contemporary Japan: An Overview," in DeVos (ed.), *Institutions for Change in Japanese Society*. Berkeley: University of California Press.
——— (1974) "Tradition and Politics in Studies of Contemporary Japan," 26 *World Politics* 400.

CASE CITED

Judgment of May 24, 1967, Saikosai (Supreme Court), Japan, 21 Minshū 1043.

CODE CITED

Minji soshō hō (Code of Civil Procedure), arts. 203, 695, 696.

CONSTITUTION CITED

Kenpō arts. 13, 24, 25.

STATUTE CITED

Civil Liberties Commissioners Law, Law No. 139 of 1949.