

Becoming a Non-Immigration Country with Immigrants: The Institutional Regime of Japanese Immigration Policy towards Economic Migrants

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Abstract

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How can one detect and understand change in the face of apparent continuity? This is the question which has been asked by some scholars of institutionalism. One way of answering this is to make analytical room for incremental change as an endogenous source of institutional transformation. Put bluntly, one does not always need spectacular exogenous events, such as wars and revolutions, to explain institutional change.

The present thesis is a qualitative case study of Japan's immigration policy towards economic migrants since the 1980s. Its aim is to uncover a causal mechanism behind the policy development by drawing on a model of institutional change put forward by James Mahoney, Wolfgang Streeck and Kathleen Thelen. At first, the inquiry may seem ill-founded for Japan is neither an immigration country nor an immigrant-receiving country. Indeed, the country still lacks an immigration policy to speak of, and immigrants continue to be called *gaikokujin* (foreigners) as opposed to *imin* (immigrants).

A closer examination of the recent policy development, however, shows that the content and practice of Japanese immigration policy simply belie its self-description. Since 2012 the Japanese government has admitted highly-skilled migrants as potential permanent residents using a points-based system and has incorporated foreigners into the resident register system for Japanese citizens in order to facilitate their integration into Japanese society.

The central claim of the present research is that Japanese immigration policy has become increasingly settlement-oriented as an unexpected consequence of earlier policy decisions and that the change has been endogenously effected without dismantling the pre-existing institution of immigration management. In making this claim, I particularly draw attention to the way in which a cumulative effect of minor changes eventually transformed the basic nature of the policy institution.

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Notes

Following Japanese naming convention, Japanese names appear in the present thesis with the last name first. All direct quotes from Japanese sources have been translated by the present author unless stated otherwise.

List of Acronyms

APFS: Asian People's Friendship Society	133
ARA: Alien Registration Act	27
ARS: Alien Registration System	159
BRRA: Basic Resident Register Act	199
CAHHR: Council for the Admission of High-level Human Resources	97
CEFP: Council on Economic and Fiscal Policy	91
CERD: Convention on the Elimination of All Forms of Discrimination	14
CGP: Clean Government Party	67
CLAIR: Council of Local Authorities for International Relations	150
CLALNF: Council of Local Authorities with a Large Number of Foreigners	158
CPMC: Conference for the Promotion of Multicultural Coexistence	165
CPMFR: Council for the Promotion of Measures for Foreign Residents	27
CPRR: Council for the Promotion of Regulatory Reform	64
CRR: Council of Regulatory Reform	59
DPJ: Democratic Party of Japan	5
EPA: Economic Partnership Agreement	99
ICA: Immigration Control Act	131
ICESCR: International Covenant on Economic, Social and Cultural Rights	145
ICO: Immigration Control Ordinance	131
ICPRFW: Inter-Ministerial Council for Problems Related to Foreign Workers	27
ICRRA: Immigration Control and Refugee Recognition Act	27
JCP: Japanese Communist Party	46
JITCO: Japan International Training Cooperation Organisation	54
LDP: Liberal Democratic Party	41
MESC: Ministry of Education, Science and Culture	76
METI: Ministry of Economy, Trade and Industry	31
MEXT: Ministry of Education, Culture, Sports and Technology	27
MHA: Ministry of Home Affairs	150
MHLW: Ministry of Health, Labour and Welfare	27
MIAC: Ministry of Internal Affairs and Communications	27
MITI: Ministry of International Trade and Industry	45
MLIT: Ministry of Land, Infrastructure, Transport and Tourism	27
MOF: Ministry of Finance	122
MOFA: Ministry of Foreign Affairs	31
MOJ: Ministry of Justice	8
MOL: Ministry of Labour	41
MOW: Ministry of Welfare	152

NGO: Non-Governmental Organisation	12
NPA: National Police Agency	41
SCAP: Supreme Commander for the Allied Powers	130
TITP: Technical-Intern Training Programme	55

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Chapter 1: Introduction

‘The Japanese archipelago is not the possession of Japanese people alone...’ (A comment by Hatoyama Yukio in 2009)

Research Topic and Principal Question

Some of the book-length scholarly works on Japan published in the 2000s had the following titles: *Japan and Global Migration: Foreign Workers and the Advent of a Multicultural Society* (Douglass & Roberts, 2000), *Multiculturalism in the New Japan: Crossing the Boundaries Within* (Graburn, Ertl, & Tierney, 2008) and *Transcultural Japan: At the Borderlands of Race, Gender, and Identity* (Willis & Murphy-Shigematsu, 2008). They all suggest that something novel is happening in the country often understood to have been bequeathed with near perfect congruence of the nation and the state. In this context, a politically clumsy utterance made by Hatoyama Yukio, then prime ministerial contender who eventually led the Democratic Party of Japan (DPJ) to a landmark victory in 2009, on a YouTube-like Japanese internet site reverberates with a scandalous echo but is not altogether incomprehensible (Nico Nico Doga, 2009).

During the same decade, Western Europe went through a different but related kind of change. After the 2002 victory of the Pim Fortuyn List, the Netherlands moved away from the textbook multicultural policy it had practiced and began putting a stronger emphasis on the integration of immigrants, some of whom were seen as threats to Dutch liberal values. The discrediting of multiculturalism was not confined to far-right, extremist circles. Both Angela Merkel and David Cameron have asserted that multiculturalism has failed in Germany and Britain respectively (BBC, 2010, 2011). More recently, Nicolas Sarkozy’s campaign video bearing the slogan of ‘*La France Forte*’ strategically evoked Islamic imageries in the 2012 presidential election to warn French voters that *laïcité* was under attack.

What can one say about this juxtaposition of the two seemingly opposing trends in Japan and Western Europe? First, these are both responses to international migration. In a

comprehensive review of the phenomenon, Castles and Miller (2009) tell their readers that they now live in *The Age of Migration*. Today virtually no corners of the world are left untouched by the global movement of people. Second, multiculturalism is both descriptive and prescriptive. In the Japanese case, multiculturalism applies in the first sense of the word, meaning that the population is becoming increasingly diverse as a consequence of international migration. In the Western European case, multiculturalism has also been a normative prescription which is now being exposed to thorough-going political refutation.

The above observations raise a question of whether there is a common path of immigration management that Japan is following; or it makes any difference, for example, that Japan became a migrant-receiving country later than other liberal democracies did, that it has done so as a post-industrial society, or that the migrants the country usually admits are economic migrants rather than refugees.

The present thesis examines Japan's immigration policy towards economic migrants. An economic migrant could be unskilled, skilled or highly-skilled, legal or illegal, *de jure* or *de facto*. The complexity of defining economic migration is illustrated well by the term 'educationally-channelled international labor migration' which Liu-Farrer uses to describe the phenomenon in which international students are incorporated into the labour market of the host economy during and after their studies (2011, p. 3).¹ More often than not, a migrant's motivation for border-crossing is influenced by multiple goals, such as receiving education, earning an income and/or expanding one's cultural horizon. Therefore, categorising migration and migrants is necessarily an arbitrary exercise.

Although I am cognisant of this difficulty, I employ the term economic migration, broadly defined, in order to set the scope of this research which includes migrants arriving in Japan starting around 1980 and excludes former colonial migrants and their descendants (hereafter *zainichi* migrants) who arrived and settled before, during and immediately after

¹ Liu-Farrer calls this 'educationally-channelled international labor mobility' (2009, p. 179) in her earlier journal article, but the two slightly different terms essentially describe the same phenomenon.

the Second World War.² Specifying the motivation(s) of colonial migration is an equally nebulous task especially since some of it was forced under the Japanese imperial rule.

However, factors which have facilitated the international movement of people to Japan in the past three decades or so are no longer directly linked to the country's colonial history, and it is in these contemporary factors that I am interested. In this thesis, I understand economic migrants to include all migrants whose presence has significant implications for the Japanese labour market.

At first, my inquiry may seem ill-founded for Japan is neither an immigration country nor an immigrant-receiving country in comparison with other advanced capitalist democracies. The country is the polar opposite of classic immigration countries, such as the United States, Canada and Australia, which have been founded upon immigrant settlement since the very beginning of nationhood. Nor can Japan be categorized alongside immigrant-receiving countries in Western Europe where migrants arrived through colonial linkages and guest worker programs in the post-war period. Unlike France and Britain, Japan shut down the path of colonial migration immediately after the Second World War when it relinquished its overseas colonies. Unlike Germany, Japan did not adopt a guest worker programme even during the first post-war economic boom in the latter half of the 1960s and the beginning of the 1970s. When one looks at the percentage of foreign population, defined as those possessing a foreign citizenship, Japan is at the bottom of the OECD ranking with countries, such as Hungary, Mexico, South Korea and Slovakia (Organisation for Economic Co-operation and Development [OECD], 2012, p. 356). Insofar as international migration is concerned, the Japanese case curiously belongs to a group of newly-industrialized, post-authoritarian transition countries.

The relative absence of immigrants is not just in Japan's post-war history or its population. The country does not have an immigration policy to speak of, and economic

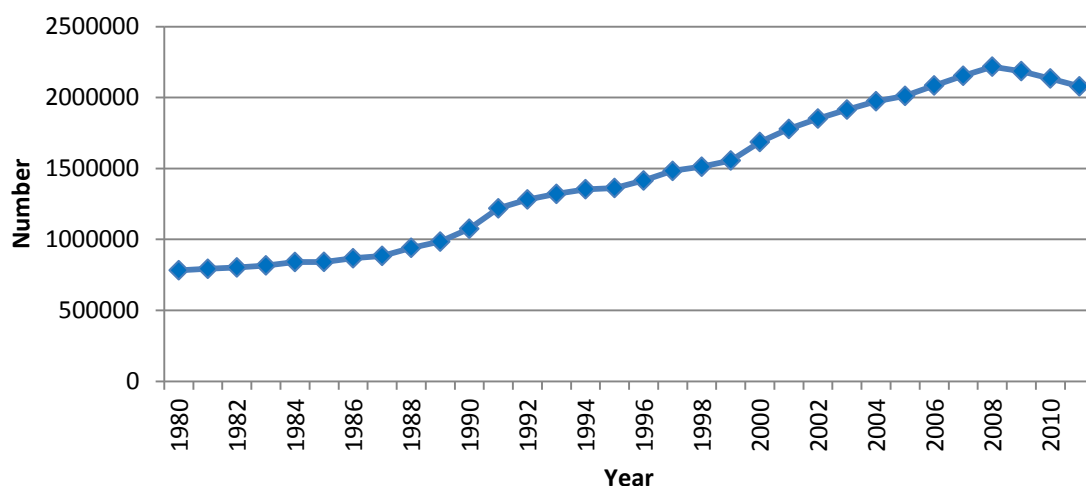
² I recognise that not all *zainichi* migrants are actual migrants since most of them who live in Japan today are descendents of people who originally moved to Japan as colonial migrants. However, I still employ the expression for the lack of better alternatives.

migrants are called foreign workers (*gaikokujin rōdōsha*). Their admission and post-arrival arrangements have been dealt with under the jurisdiction of disparate bureaucratic organisations nominally unrelated to immigration management with the exception of the Ministry of Justice (MOJ). Even within MOJ, immigration management is called ‘management of exits from and entries into the country’ (*shutsu nyūkoku kanri*) if translated directly. In this sense, immigration policy is an indisputable misnomer if I were to take the policy’s discursive construction at face value. In short, Japan continues to be a self-consciously non-immigration country.

Notwithstanding the absence of immigration and immigrants in Japan, the number of foreigners in general and economic migrants in particular has increased dramatically in the past three decades. As Figure 1 demonstrates, there were 782,910 registered foreigners in Japan in 1980. The number peaked in 2008 at 2,217,426 and declined slightly thereafter due to the 2008 financial crisis and the 2011 Tohoku earthquake. In 2011, there were 2,078,508 registered foreigners, constituting 1.63% of the national population (Ministry of Justice, 2012a). Concurrently, the percentage of *zainichi* migrants who are non-naturalised permanent residents has progressively shrunk as one can see in Figure 2 below.³ It was 39.2% in 1996 and 18.7% in 2009, 2010 and 2011. As the absolute number of *zainichi* migrants has declined due to deaths in old age and naturalisation, their relative size has also decreased due to the influx of new economic migrants. In 2007, non-naturalised *zainichi* migrants on the special permanent resident visa, which was established specifically for them, ceased to be the largest visa group of foreign residents and were overtaken by ordinary permanent residents.

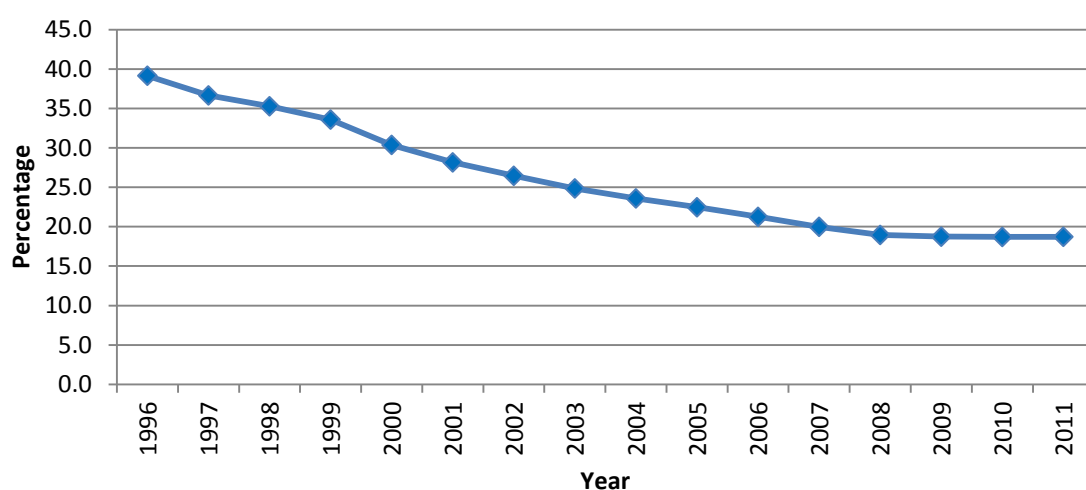
Figure 1: Number of Foreign Residents

³ I made the calculation by using the number of foreign residents on the special permanent resident visa which is given to *zainichi* migrants. However, there are also naturalised Japanese citizens of *zainichi* origin whom the statistics do not capture.



Sources: Ministry of Justice, 1992, 1998, 2001, 2012a

Figure 2: Percentage of *Zainichi* Migrants

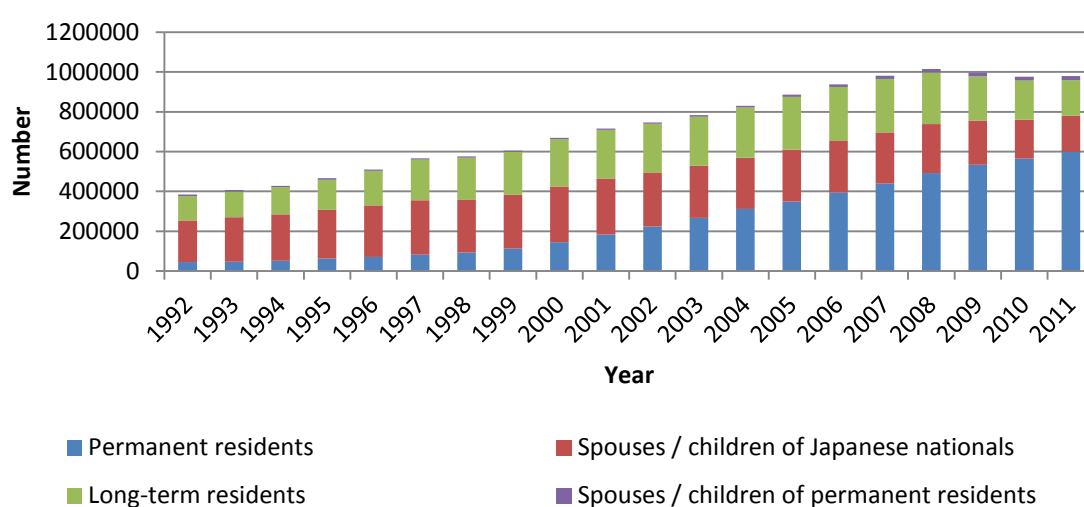


Sources: Ministry of Justice, 2001, 2003, 2007, 2012a

Moreover, migrant workers have become increasingly sedentary. Overall, the population of settled migrants, excluding special permanent residents, grew by 154.3% between 1992 and 2011. The total number of settled migrants was fairly modest at 385,176 in 1992 (see Figure 3), and their proportion to the total population of foreign residents was 30.1%. The absolute figure increased thereafter until reaching the peak at 1,013,890 in 2008. It declined slightly after this as did the total number of foreign residents due to the aforementioned exogenous factors. However, 979,867 settled migrants still lived in Japan in

2011, and their share of the total population of foreign residents had actually increased by 0.2% and reached 45.9% because the decrease in the absolute number was greater for temporary migrants than for settled migrants.⁴ The increase in the number of permanent residents has been even more remarkable. There were 45,229 permanent residents in 1992, and the number had multiplied more than 13 times before it reached 598,440 in 2011. Today, almost half of Japan's foreign residents are non-*zainichi* settled migrants.

Figure 3: Number of Settled Migrants by Visa Type



Sources: Ministry of Justice, 1998, 2001, 2006a, 2011, 2012a

Japan's immigration management in recent years exhibits an unmistakable settlement orientation. Notably, a new points-based admission system and a revised resident register system were implemented in 2012. The former grants immigration privileges, including relaxed access to permanent residence status and family migration, to highly-skilled migrants who can accumulate enough points to meet a set threshold. The latter, which previously only existed to manage administrative records on Japanese citizens, now incorporates those of foreign residents. The information is used by local authorities to provide social services and to collect taxes and social security contributions. Whether to facilitate the permanent residence of highly-skilled migrants or to hold accurate records of

⁴ The total number of foreign residents declined by 3% from 2,217,426 to 2,134,151 between 2008 and 2011.

foreign residents, both systems have been designed with foreigners as settled migrants in mind. Migrant settlement has become a constituent element of Japanese immigration policy.

The present thesis is interested in the paradox of Japanese immigration policy which I have outlined in the foregoing discussion. Despite being an officially non-immigration country, Japan has not only a growing number of settled migrants but also a settlement-oriented immigration policy. The situation one can observe here is not a case in which the government tacitly tolerates the unwanted presence of settled migrants. The institutional changes which were implemented in 2012 signalled Japan's resolve to live alongside foreigners. I, therefore, ask the following principal question: Why has Japanese immigration policy become settlement-oriented despite continuing to present itself as a country without immigration or immigrants? In the following section, I probe the existing scholarly literature in an attempt to identify some hints to the above question.

The State of the Art and Its Shortcomings

Japan has regularly been depicted as a stubborn non-immigration country by scholars of international migration and Japanese Studies alike. This depiction is rooted in three broad policy characteristics which are the restrictiveness of admission policy, the paucity of integration policy and the weak protection of foreigners' rights. Below, I elaborate upon these in turn.

Immigration admission has been governed by the Immigration Control and Refugee Recognition Act (ICRRA). Since the original enactment at the time of Japan's post-war independence in 1952, the law has gone through three major revisions: the addition of clauses relating to refugee recognition in 1982; wholesale rationalisation of visa categories in 1990; and the introduction of the new residence management system in 2009. However, the fundamental principle of immigration admission has remained stable throughout the post-war period. At least in principle, the Japanese government only allows the admission of skilled and professional workers, thereby banning that of unskilled workers.

Ironically, it was precisely the latter type of migrants that the Japanese labour market was in need of during an economic boom in the latter half of the 1980s (Mori, 1997, p. 38). Given the dissonance between the existing admission policy and the new economic exigency, the so-called side-door mechanisms to admit co-ethnic return migrants (hereafter *nikkeijin*) and technical trainees were opened up in 1990 in order to procure *de facto* unskilled workers from abroad (Komai, 1995; Mori, 1997; Tsuda, 1999; Tsuda & Cornelius, 2004). This was an instance in which the government had to give into the pressure from labour-hungry employers despite its policy principle of not admitting unskilled foreign workers. However, as I shall explain further in the following chapters, the government was able to uphold the same policy principle at least in official rhetoric as the ostensible basis of the admission was not to import unskilled workers.

Japan's willingness to admit migrant workers is selective, but its aversion towards migrant settlement is said to be universal. There are no organised programmes for permanent immigration or family reunification (Tsuda, 2006), and the relative number of settled migrants has indeed been low compared to that in other advanced liberal democracies (Seol & Skrentny, 2009). Unsurprisingly, then, policies to ensure migrants' smooth integration into the host community was wholly absent even when the number of new economic migrants was increasing rapidly throughout the 1990s. Against this background, local authorities with a large number of *nikkeijin*, who tend to settle in concentrated areas with a strong manufacturing base, came to fill the policy gap. Without being given any direction from the national government, some local authorities and non-governmental organisations (NGOs) started offering language lessons and cultural activities and conducting research and advocacy work in an effort to incorporate foreign residents as local citizens into the community (Tegtmeyer Pak, 2000, 2006; Yamanaka, 2006).

Japan's refusal to admit immigrants is said to be emblematically enshrined in foreigners' difficult access to citizenship which is an important stage of immigrant integration. Japan's nationality law continues to be based on the principle of *jus sanguinis* and

prohibits dual citizenship. Therefore, only children born to a Japanese parent automatically acquire Japanese citizenship and must renounce the other nationality by the age of 22.

However, the official assessment criteria for naturalisation are reasonably straightforward. The applicant must have a record of five-year continuous residence and demonstrate good character and financial viability. Unlike in many countries, the applicant is not required to have lived in Japan as a permanent resident prior to becoming naturalised or to demonstrate her language and civic knowledge in a formalised way (Chung, 2010, p. 35).

The required paperwork is onerous and may discourage prospective citizens from applying for naturalisation (Tsuda, 2006, p. 17), but the true difficulty seems to be neither legal nor logistical. In Japan, naturalisation is not a right but a privilege. In other words, fulfilling the criteria codified in the Nationality Act does not automatically entitle the applicant to Japanese citizenship. Therefore, MOJ has a considerable amount of administrative discretion for assessing the applicant's level of cultural assimilation. For example, adopting a Japanese name at the time of naturalisation was an administrative requirement until 1984 (Kondo, 2001, p. 13). For many *zainichi* migrants, the conflation of Japanese ethnicity and Japanese citizenship has been a symbolic injury to their ethnic heritage especially given the past imperial brutality and pervasive discrimination (Chung, 2010).

Furthermore, the restrictive admission policy and the underdeveloped integration policy are understood to operate in a legal environment in which foreigners' rights are weakly protected (Seol & Skrentny, 2009; Tsuda, 2006). The signing of a series of international human rights conventions starting in the late 1970s expanded foreigners' access to socio-economic rights (Gurowitz, 1999, 2006; Flowers, 2009). Since a landmark Supreme Court ruling in 1978, equality before the law guaranteed by the Japanese constitution has applied to all regardless of nationality, except in special cases bearing direct consequences on national sovereignty. At the same time, however, Japanese courts have played an ambivalent role in expanding foreigners' rights (Gurowitz, 1999; Surak, 2008), and

Japan has yet to adopt domestic anti-discrimination legislation despite being a signatory party to the United Nations Convention on the Elimination of All Forms of Racial Discrimination (hereafter CERD).

The nature of Japanese immigration policy is frequently attributed to ethno-cultural nationalism. For example, Tsuda writes that 'the Japanese government, which adheres to the myth of Japan as an ethnically homogeneous nation that is not and never has been a country of immigration, has one of the most restrictive immigration policies among advanced industrialized countries' (2006, p. 13). Elsewhere Tsuda (1999) has also argued that Latin American *nikkeijin* were allowed admission in 1990 because there was a government-wide, cross-ministerial consensus that *nikkeijin* would not have major problems with assimilating into the Japanese ethno-cultural nation owing to their shared ethnic descent. The consensus extends beyond the bureaucracy and includes elected representatives. On the same topic of the admission of *nikkeijin*, both Tsuda (1999) and Yamanaka (1993) mention that the ethno-cultural thinking was present in the incumbent political party. More generally, Weiner writes that 'the issue for Japan is whether and how it can reconcile employer demands for labor and its own notion of collective identity' (1998, p. 5). The implication of his assessment, of course, is that Japan has generally prioritised the latter over the former.

The main problem with causal explanations which privilege ethno-cultural nationalism of Japanese immigration policy is the marked absence of politics. The interest of policy actors is assumed to be bound by an overriding consensus to preserve the nation's ethnic homogeneity. With little evidence of power relations and political cleavages presented, the type of explanatory accounts implicitly presents or rather misrepresents the Japanese government and the policy-making elite as an amorphous meta-entity. This ontological assumption about policy actors, in turn, over-determines the stability and coherence of Japanese immigration policy which, in actuality, contains contingent and conflicting logics reflecting a multitude of political interests.

I would argue that this apolitical bias is born out of the overall nature of the existing literature on Japanese immigration policy. Reflecting the recent growth of the foreign population in Japan, scholars have increasingly examined contemporary international migration into the country. However, they have mainly focused on identifying factors which have precipitated the migration flow (Fuess, 2003; Iredale, 2000; Tsuda, 1999; Tsuda & Cornelius, 2004) or on consequences of Japan's immigration policy in terms of migrants' welfare or local governance and civil activism in the host society (Komai, 1995; Milly, 2006; Shipper, 2002, 2008; Tegtmeier Pak, 2000, 2006; Tsuda, 2006; Yamanaka, 2006). Ultimately, this has produced a discernible trend in which detailed processes of policy-making have been underexplored. Therefore, what is missing from the story is a political account which treats Japan's immigration policy as a dependent variable to be explained.

Perhaps Bartram (2000) was one of the first scholars to identify the deficit when he argued that the Japanese case needs to be examined as the negative case in comparative studies of labour migration. He rightly pointed out that existing migration theories, such as neo-classical theory, dual labour market theory and world system theory, cannot account for the absence of labour migration during Japan's first post-war economic boom. When demographic and economic indicators of Western European countries and Japan from the time are compared, one would expect Japan to have imported foreign labour just as others did. In light of this, he urges scholars to turn to policy-based explanations and offers his preliminary hypothesis that small- and medium-size employers who would have benefited from labour migration did not have access to powerful policy makers in the existing institutional structure of political economy.

Since then, scattered accounts of policy-making have appeared in the English language. For instance, Seol and Skrentny (2009) highlight another dominant norm, namely, the developmental state mentality, as a crucial factor explaining the settlement-unfriendly policy in East Asia compared to the settlement-friendly policy in Europe. They argue that 'Asian elites, both in the state and in groups that have easy access to state officials' share the

same developmental state mentality which prioritises economic gains over human rights (Seol & Skrentny, p. 605). The study followed an earlier piece by Skrentny and his other colleagues who reach a similar conclusion on Japan's co-ethnic migration policy by arguing that Asian policy makers, including Japanese ones, advance economic consideration at the expense of co-ethnic solidarity more than their European counterparts do (Skrentny, Chan, Fox, & Kim, 2007).

Although Skrentny and his colleagues do treat policy as a dependent variable, I find their explanatory accounts unsatisfactory for the following reasons. First, if the developmental state mentality undergirded Japanese policy-making in general, Japan would have adopted a guest worker programme during the first post-war economic boom. If operated strictly, guest worker programmes are an economically-efficient mechanism to import temporary workers because they normally are not entitled to a full range of social rights or to the rights to permanent settlement and family unification. For Japanese policy makers who, according to Skrentny and his colleagues, are not rights-conscious at least comparatively speaking, a guest worker programme would have been an ideal way to adjust the labour market temporarily in the period of cyclical upturn.

Second, Skrentny and his colleagues draw a direct line from the overwhelmingly potent cognitive template of policy makers to policy output. In this sense, their studies suffer from the same weakness of other works which give explanatory primacy to ethno-cultural nationalism. The existence of a political consensus is assumed rather than substantiated and is linked to the shape of immigration policy. I acknowledge that this is an unfair critique given that Skrentny and his colleagues cover multiple countries in order to provide a general explanation that can apply to a class of cases. At the same time, I would still argue that the developmental state thesis can benefit from a context-rich case study that digs deeper into the political cause of Japanese immigration policy by giving analytical significance to power struggles between policy actors. This way, one would be able to test the causal inference

rigorously by examining intervening steps which may or may not connect the independent and dependent variables.

Other scholars, like Bartram, are more conscious of the political division amongst policy makers. Whist Tsuda and Cornelius (2004) attribute the restrictiveness of Japanese immigration policy to the government's ethno-cultural nationalism, they also mention three political factors creating the gap between Japanese immigration policy, which bans the admission of unskilled workers, and the actual economic need for them. First, elected representatives, some of whom may have labour-hungry employers in their constituencies, are weak vis-à-vis the bureaucracy which has the real control over policy-making. Second, small- and medium-size firms do not have access to the bureaucracy as Bartram has already suggested. Third, the bureaucracy itself is internally divided and is hierarchically-organised with MOJ, a ministry reputed to be extremely conservative, exerting dominance over others in this policy area. The above configuration of power relations is presented alongside an overall assessment that 'During the fourteen years since the revised Immigration Control Act was implemented [i.e. in 1990], there has been no discernible shift in the Japanese government's official immigration policy' (Tsuda & Cornelius, p. 450).

Similarly, Chiavacci (2012), who examines the changing idea of valuable foreign workers in the past three decades, shows how the pro-reform camp has failed to liberalise the admission of unskilled workers on two occasions, once in the late 1980s and then again in the late 2000s. Although he acknowledges that the relative power shifted from the bureaucracy to politicians in the second reform debate and that limited changes were made, he attributes both instances of failure to 'an ideationally and institutionally fragmented policy-making process in which neither those in favor of accepting low-skilled foreign workers nor those rejecting them were able to control and shape the policy-making outcomes' (Chiavacci, p. 44). Put differently, the bureaucracy as well as political parties were internally divided and failed to reach a workable consensus.

If the consensus-driven, power-free view of policy-making can be discarded, the automaticity and stasis with which many scholars have characterised the restrictive immigration policy also come into question. Both works by Tsuda and Cornelius on one hand and Chiavacci on the other suggest that it is more empirically sound to view policy as an outcome of political negotiations, reflecting the interest of winning actors or even a compromise reached between multiple parties with differing interests. Chiavacci's work, in particular, also hints at a possibility that the configuration of power may shift over time. These political insights are extremely useful for contextualising Japanese immigration policy. However, I would argue that their analytical lenses continue privileging institutional stability of the policy by either omitting incremental changes from the story or treating them as minor adjustments in support of the overarching policy principle of non-immigration.

Throughout the past three decades during which economic migration became a salient phenomenon in Japan, immigration policy has remained stable at least on the surface. The admission of unskilled workers continues to be banned, and foreign workers are never admitted as permanently-settling immigrants. However, a closer examination of the actual policy development over the period suggests that the country has witnessed a number of changes that are relatively minor, unprincipled and low-profile and yet have created disproportionately substantial effects which defy the all-encompassing epithet of non-immigration country when assessed in their cumulative totality. My contention is that these fragments of change have so far failed to be woven into a more general understanding of Japanese immigration policy. Seen in this light, the dominant scholarly account of the existing policy may have become a reified, near assumption which should be re-evaluated with an acute sense of temporality and power. For this there needs to be an appropriate theoretical approach, which will be discussed below.

Theoretical Approach and Hypotheses

In reaction to the behaviourism of the 1960s and the 1970s, various theoretical approaches focusing on institutions' structural effect at regularising socio-political outcomes had developed by the mid-1990s (Hall & Taylor, 1996). These approaches formed a school of new institutionalisms although these could be divided into three broad groups of rational-choice institutionalism, sociological institutionalism and historical institutionalism (Hall & Taylor). The three institutionalisms give centrality to the role of institutions but hold different theoretical assumptions. For rational-choice institutionalism, the actor is atomistically-constituted and strategically maximises utility by taking advantage of institutionalised rules which are set up to lower transaction costs. On the other hand, the actor of sociological institutionalism is socially-constituted in a sense that the institution inculcates norms which regulate their behaviour. Historical institutionalism as a whole is agnostic about the constitution of the actor's interest but emphasises the way in which an institution freezes power asymmetry between actors at the time of its inception.

Despite the differences which exist between the three new institutionalisms, they have collectively been criticised for sharing common theoretical biases. First, new institutionalisms are better at explaining stasis than change. Both rational interests and social norms are taken to be equilibrated once an institution is established. The same can be said about historical institutionalism which relies on path dependency to explain institutional stability. Therefore, 'postformative institutional change' cannot be theoretically accounted for using the approach (Hay, 2010, p. 67). Second, when change must be explained, as it is an inevitable part of the social world, this cannot be done without resorting to an exogenous factor that overwhelms or disequilibriates the existing institutional arrangements (Mahoney & Thelen, 2009). In historical institutionalism, the moment when this happens is usually called critical juncture during which a new institution arises only to perpetuate until the next critical juncture. Third, the reliance on exogenous factors implies that structure overrules agency. The actor is unable to effect institutional change endogenously because her

behaviour is overwhelmingly constrained by structural incentives, norms or regularities in general (Schmidt, 2010).

This big bang, stop-and-start account of change takes stability as the norm, but this is empirically implausible (Blyth, 2010). In reality, the social world experiences different kinds of change, and abrupt changes caused by exogenous shocks are just one of the many kinds. Examining liberalisation of advanced political economies, Streeck and Thelen (2005) argue that the phenomenon has advanced without major historical events which could have dramatically destabilised the pre-existing arrangements. They write, ‘an essential and defining characteristic of the ongoing worldwide liberalization of advanced political economies is that it evolves in the form of gradual change that takes place within, and is conditioned and constrained by, the very same postwar institutions that it is reforming or even dissolving’ (Streeck & Thelen, p. 3). In other words, the effect of seemingly negligible changes under the guise of institutional continuity can endogenously induce a major institutional discontinuity.

In order to illustrate the point that change takes place in multiple forms, Streeck and Thelen (2005) construct a typology of institutional change by focusing on the process of change and the result of change (see Table 1). They point out that much of the existing literature of institutionalism focuses on abrupt changes leading to institutional discontinuity (Quadrant 4) and underplays other changes as minor adjustments in service of perpetuating institutional continuity (Quadrant 1). On the other hand, the literature has consistently neglected explaining the type of change which is incremental but results in an institutional discontinuity through a gradual transformation (Quadrant 2) or the type of change which is abrupt but does not lead to a discontinuity due to the resilience of the institution (Quadrant 3). Streeck and Thelen argue that liberalisation in advanced political economies is best understood as a case of gradual transformation.

Table 1: Types of Institutional Change

		Result of change	
		Continuity	Discontinuity
Process of change	Incremental	Quadrant 1. Reproduction by adaptation	Quadrant 2. Gradual transformation
	Abrupt	Quadrant 3. Survival and return	Quadrant 4. Breakdown and replacement

Source: Streeck and Thelen, 2005, p. 9

If gradual transformation of institutions is more common than the existing institutionalism literature leads one to believe, institutions must be re-conceptualised in order to accommodate variations of change. For Streeck and Thelen, institutions are akin to social regimes (2005, pp. 9-13). Institutions create rights and obligations; socially enforce the latter through a third party; and derive legitimacy from the social embeddedness of enforcement. Moreover, enforcement is ensured through legal-political means, thus giving institutions their formal character. Based on this understanding, Streeck and Thelen can distinguish the kind of institutions they are interested in from informal cultural institutions in which enforcement occurs through social opprobrium rather than legal sanctions, from public policies which do not necessarily entail normative enforcement of specific rights and obligations, and from organisations whose rules may not necessarily be publicly enforced.

The above definition of institutions creates a gap between rule makers and rules on one hand and rule takers and compliance on the other. The rule taker may or may not comply with the rules set by the rule maker because an institution cannot tip the balance of the cost-benefit analysis of every single rule taker. Nor can the coherence between the rule taker's preference and behaviour be assumed because an institution cannot alter the cognitive framework of every single rule taker. In short, institutions create losers, and losers may only comply grudgingly or not comply at all. If one can analytically allow for this possibility, it also becomes possible to see how institutional change can be induced endogenously. This leads to another closely-related characterisation of institutions by Mahoney and Thelen as

'distributional instruments laden with power implications' (2009, p. 8, original emphasis).

What this characterisation suggests is that institutions distribute resources and, therefore, are the constant object of struggles amongst political actors. Indeed, these struggles are the source of endogenous change.

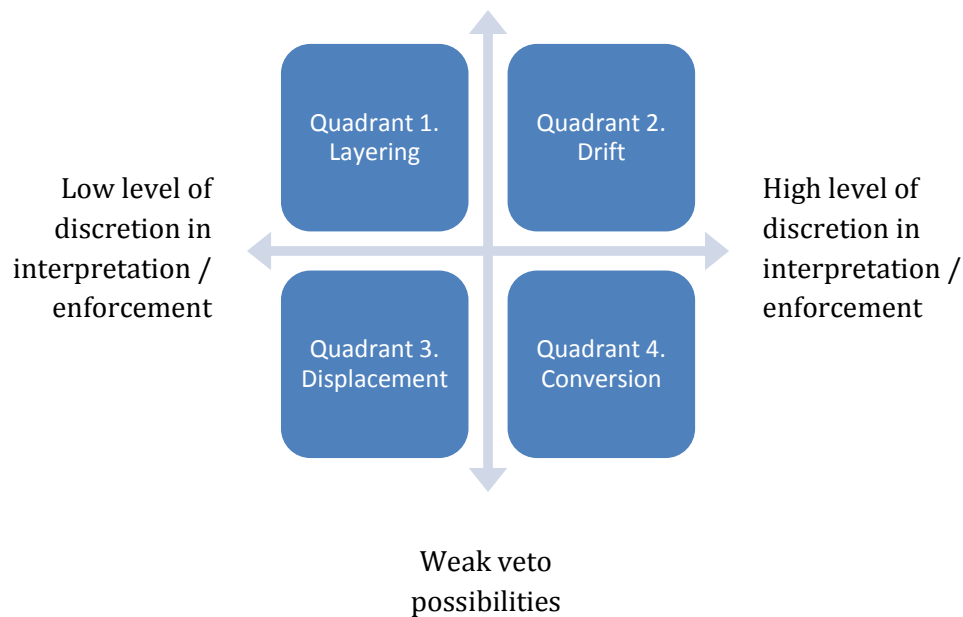
Another gap the above understanding of institutions creates is that between rules and their enactment. There are four ways through which the point can be illustrated (Streeck and Thelen, 2005, pp. 13-15). First, rules are not self-explanatory and must be interpreted before execution. Second, rules are not prescient and result in different effects depending on changing external circumstances. Third, rules are not self-executing and must be enacted for these to have any effects. Fourth, rules are not omnipotent thus being subject to subversion. In short, rules must be enacted via interpretive compliance under changing circumstances and do not automatically guarantee the same institutional effect over time. Therefore, the basic nature of rules leaves considerable room for contingency and indeterminacy of which institutional challengers can take advantage in order to effect endogenous change.

More importantly, the understanding of institutions put forward by Thelen and her colleagues helps one see that incremental change can lead to an institutional discontinuity because the practice of rules can change quite significantly over time under the roof of the same institutional structure. Fundamental change, then, 'ensues when a multitude of actors switch from one logic of action to another,' and this switch may take place without changing the façade of the institution (Streeck & Thelen, 2005, p. 18). Streeck and Thelen catalogue different modes of such logic switch. The categorisation has been further elaborated upon with specific causal factors by Mahoney and Thelen (2009). Figure 4 summarises these sources of incremental change.

Figure 4: Sources of Incremental Change⁵

Strong veto
possibilities

⁵ Streeck and Thelen (2005) also catalogue exhaustion as the fifth mode of incremental change, but this is dropped in the matrix by Mahoney and Thelen (2010).



Source: Mahoney and Thelen, 2009, p. 19

The mode of incremental change depends on the political context and characteristics of the institution. The political context refers to the capacity of status-quo defenders to veto, formally or informally, changes to rules themselves or to the way rules are enacted by other institutional actors. On the other hand, characteristics of the institution is the range in which rules can be interpreted and enforced in a variegated manner depending on the actor's preference and external circumstances she faces. Particular combinations of the two factors give rise to four distinct modes of change, which are layering, drift, displacement and conversion.

Layering (Quadrant 1) happens when the status-quo defender has strong veto possibilities and the status-quo challenger has little room for liberal interpretation or discretionary enforcement of existing rules. In this case, the status-quo challenger tries to layer new rules onto or amend existing ones because neither subversion of rule enactment nor displacement of the existing rules is possible due to the preponderance of the status-quo defender. Once layering occurs, it often creates institutional incoherence because new and old rules may contain different logics. A common causal mechanism which produces institutional transformation is 'differential growth,' whereby use of the new rule outpaces

that of the old rule resulting in a fundamental switch in institutional logic within the same institutional structure (Streeck & Thelen, 2005, p. 23)

Institutions require constant maintenance and cultivation if they were to avoid atrophy under changing external circumstances. Drift (Quadrant 2) is a type of incremental change which arises when formal rules remain unchanged but the level of enactment is allowed to decline over time. There is an element of complicity on the part of the status-quo defender who, in this mode of institutional change, possesses considerable veto possibilities to maintain formal institutional structure but allows the relevance of rules to slip away in practice by abstaining from making new decisions. The status-quo challenger can initiate a gradual transformation of the institution through non-compliance which, in turn, is enabled by the slippage.

Conversion (Quadrant 4) results from low veto possibilities of the status-quo defender and expansive room for rule enactment by the status-quo challenger. More specifically, the status-quo challenger opportunistically re-interprets the meaning of existing rules and uses them to achieve ends that depart from the original purpose of the rules. As a form of political strategy, this is less costly than launching frontal attack on existing rules as in the case of displacement (Quadrant 3). Displacement occurs when the status-quo challenger can introduce new rules to replace existing rules completely because veto possibilities are weak. In this mode of change, there is not a need for the status-quo challenger to use interpretation or enforcement of rules as a means to dismantle the prevailing logic of the institution.

I apply the above approach to incremental institutional change to the present case. Here I view immigration management as an institutional regime as described by Streeck and Thelen because its operation is premised on rights and obligations specified by rules which are formally and informally enforced with social legitimacy. However, I would argue that the treatment of institutions as distributional instruments by Mahoney and Thelen needs to be thought through carefully so as not to delimit the applicability of the approach. To reiterate,

Mahoney and Thelen posit that the institution is a site of on-going struggles because it allocates resources to relevant actors who become iterative winners or losers depending on their relationship with established rules. Put differently, struggles occur because actors are interested in maximising their respective share of scarce resources. This implicitly puts forward an unnecessarily narrow definition of political interest by exclusively focusing on material gain.

In fact, this is a common criticism mounted against new institutionalisms in general and rational-choice institutionalism in particular by possibly the fourth and latest new institutionalism called discursive institutionalism (Schmidt, 2010). The latter approach is cognizant of the role normative factors play in goal formation and denies the existence of objective interests (Hay, 2010). Seen from this perspective, the *a priori* assignment of resource maximisation as the goal of all actors appears as a problematic assumption. Instead, it is possible that at least some actors' struggle over existing rules is founded upon mixed motivations, both material and normative (Hay). Similarly, what the institution distributes through the use of existing rules may be both material and symbolic. Therefore, I would argue that it is more useful to describe the institutionally-distributed goods as rewards rather than resources.

Given the foregoing discussions, I define the institution as a set of legal, operational and normative rules which distribute material and/or symbolic rewards to relevant actors in an uneven and iterative pattern. Rules are legal when established by the legislature as adopted bills, by the judiciary as legal precedents or by the bureaucracy as ordinances. In contrast, operational rules dictate the interpretation and enforcement of legal rules to the extent to which the latter leaves space for such action. Normative rules are moral beliefs which often underpin legal and operational rules but, if at all, are vaguely articulated in these. Together, legal, operational and normative rules distribute rewards which are material and/or symbolic. For example, a reward may be access to a supply of cheap foreign labour for profit-maximising firms or popular legitimacy for the bureaucracy as the country's elite

policy makers. It is, therefore, difficult to ascertain the nature of the rewards an institution distributes in an *a priori* manner as this depends on the social context in which actors are placed.

Moreover, rewards are distributed unevenly and iteratively because institutionalised rules possess a quality of structural semi-permanence which, in effect, produces winners who benefit from the existing institutional arrangements vis-à-vis others. However, an important lesson from the above discussion on incremental change is that external circumstances as well as unexpected consequences of existing rules may change the relationship between rules and their enactment. Therefore, I do not assume that winners and losers within an institution remain so permanently. On the contrary, the changing pattern of reward distribution may create new status-quo challengers who, in turn, may effect an endogenous institutional transformation through incremental changes.

Finally, the present research divides the institutional regime of Japanese immigration policy into the two areas of immigration admission and immigrant integration. I understand immigration admission to be a process which Hammar explains using 'the three entrance gates' (1990, p. 17). When a foreigner passes the first gate, she becomes a temporary worker or guest worker. The second gate is set up for a migrant who wants to become a permanent resident or denizen to borrow Hammar's term. A denizen becomes a full citizen through naturalisation after passing the third gate. Immigration admission policy contains rules and procedures for regulating the three gates by specifying, *inter alia*, criteria for visa application and renewal, conditions on residence and employment and reasons for deportation. On the other hand, I use the term immigrant integration as a process through which the social, economic and political, but not necessarily cultural, disparities between citizens and non-citizens is narrowed in formal and substantive ways. Immigrant integration policy is comprised of rules and procedures for regulating this process which commences after a foreigner enters the host country.

The post-war institutional status-quo of Japanese immigration policy has been characterised by three policy principles, which are to deter the entry of unskilled migrants, to facilitate the entry of skilled and professional migrants and to deter the settlement of all economic migrants. In the policy area of immigration admission, MOJ is the dominant, status-quo defender which, to borrow the language of Mahoney and Thelen, commands strong veto possibilities as the sole custodian of relevant laws. ICRRRA spells out conditions of visa issuance, renewal and revocation as well as the grounds for deportation, and the Alien Registration Act (ARA), until 2012, specified procedures through which foreign residents must register with and obtain an alien registration certificate from local authorities during their stay in Japan. Until the abrogation of ARA, the Immigration Bureau under the supervision of MOJ checked documentation at customs and for visa renewal, local authorities registered foreign residents, and both the Immigration Bureau and the Police detected and apprehended illegal migrants. The laws were implemented by multiple actors, but the room for discretionary interpretation and enactment of rules was narrow.

On the other hand, the policy area of immigrant integration is mired in a web of multiple actors. Supra-ministerial organs, such as the Inter-Ministerial Council for Problems Related to Foreign Workers (ICPRFW) and the Council for the Promotion of Measures for Foreign Residents (CPMFR), as well as the Ministry of Internal Affairs and Communications (MIAC) have spearheaded some policy measures. However, Japan does not have a comprehensive law dealing specifically with immigrant integration, and, therefore, legally-enforced rules are dispersed across the government. The Ministry of Education, Culture, Sports and Technology (MEXT) is responsible for migrant children's education, the Ministry of Health, Labour and Welfare (MHLW) for migrant workers' social security and health, the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) for their housing, so on and so forth. Moreover, these central ministries heavily rely on sub-national actors, such as local

authorities, local governments and job centres, for day-to-day enactment of rules.⁶ In short, the policy area of immigrant integration lacks a dominant status-quo defender.

Based on the above understanding of the political context and institutional characteristics of Japanese immigration policy, I put forward the following set of hypotheses on the dominant mode of incremental change.

Hypothesis 1: Strong veto possibilities and strong oversight capacity of MOJ give rise to institutional layering in the policy area of immigration admission.

Hypothesis 2: Weak veto possibilities and weak oversight capacity of MOJ give rise to institutional conversion in the policy area of immigrant integration.

The two policy areas exhibit differing modes of incremental change depending on the presence or absence of a dominant status-quo defender. In immigration admission, MOJ exerts political influence coloured by its restrictionist preference defined as aversion to the admission of unskilled workers and settlement of all economic migrants and their families. More specifically, MOJ successfully prevents others from displacing existing rules supporting this preference. However, dominance does not equal omnipotence, and even MOJ is not able to deter status-quo challengers from grafting new rules onto or revising existing ones. This gives rise to incremental change through institutional layering.

On the other hand, MOJ is not the dominant status-quo defender in the policy area of immigrant integration. In a vertically segregated bureaucratic structure, various central ministries are separately responsible for relevant legal rules under their respective jurisdictions. However, these rules which were initially established for Japanese citizens are enforced by sub-national governments which subject institutional rules to their liberal interpretation and discretionary enforcement in practice to deal with problems arising from migrant settlement. Therefore, the policy area is characterised by weak veto possibilities and expansive room for rule enactment. In short, the institutional context gives rise to incremental change through institutional conversion.

⁶ In this thesis I use 'local government' to refer to a prefectural government (*todōfuken*) and 'local authority' to refer to a constituent municipality of a local government (*shichōson*).

Overall, I argue that the linked accumulation of incremental changes, in the forms of layering and conversion, and their unintended consequences has resulted in a fundamental transformation of the institutional regime. Japan continues to be neither an immigration country nor an immigrant-receiving country, and yet its immigration policy now contains settlement-oriented logics. The outward stature of institutional continuity belies its internal incoherence produced through the dynamics endogenous to itself.

Methodological Approach and Thesis Structure

The present research is a qualitative case study which examines the development of Japanese immigration policy towards economic migrants. The period under examination includes the 1970s when scant evidence of labour migration began appearing but only to foreground the subsequent decades which are the main focus of the study. I take the 1980s as the decade marking the beginning of contemporary economic migration in Japan and extend my discussion of the case to 2012. Moreover, observations of the phenomenon are organised synchronically as I have two within-case variations which are immigration admission and immigrant integration.

A single case study is not the most appropriate methodological choice for proving or refuting a hypothesis. Compared to large-N cross-case studies, single case studies are prone to a Type 1 error whereby a wide variety of variables can be used to support a causal relationship that may not actually exist (Gerring, 2007, p. 41). Given the methodological pitfall, what I attempt to do in this research is to trace the causal mechanism or a series of intervening steps connecting the two causal factors, namely, the political context and institutional characteristics of Japanese immigration policy, and the mode of incremental change in policy areas of immigration admission and immigrant integration. In doing so, my aim is to increase the plausibility of the causal inferences I am making rather than to make a general claim about a population of cases. At the same time, however, the context-rich

understanding will be useful when studying Japan from a comparative perspective on other occasions.

I started the research by examining publicly-available government documents which include white papers, policy plans, policy statements receiving cabinet approval, press releases, Diet debate records, meeting minutes, meeting agendas and meeting input materials. Since Japan does not have a central agency holistically dealing with immigration management, these documents, except for Diet debate records, are published by a wide range of bureaucratic organisations, such as the Cabinet Office, the Cabinet Secretariat, various central ministries, central agencies, sub-national governments and para-public organisations. I have used these sources to develop a chronology of immigration policy and to understand the official policy rationale supporting various policy outputs.

Government documents, particularly Diet debates and meeting minutes, sometimes shed light on conflicting preferences held by policy actors. However, the amount of information that can be obtained through these sources is limited, and much more of it is needed in order to understand the configuration of actors within the institutional regime of immigration policy. In order to supplement the above sources, I have examined primacy sources published by non-governmental organisations, such as manifestos of political parties, policy proposals of business organisations and migrant-supporting NGOs. I have also gathered relevant articles from three major newspapers with national readership, namely, centre-left Asahi, centre-right Yomiuri and business-oriented Nikkei. I expect the ideological leaning of these newspapers to have insignificant methodological impact on my findings since I have used the sources to check facts rather than to interpret editorial opinions. Moreover, covering the three major newspapers has been useful since Nikkei tends to focus on stories with economic implications whilst the other two cover immigration policy more broadly.

Finally, I have conducted semi-structured interviews with policy makers and other influential actors. In the summer of 2012, I interviewed bureaucrats from departments and

offices dealing with issues related to immigration policy in the Cabinet Office, the Ministry of Economy, Trade and Industry (METI), MHLW, the Ministry of Foreign Affairs (MOFA), MOJ and MIAC. Although I was not able to interview bureaucrats at MEXT due to purely practical constraints, one of interviewees I did interview was on secondment from this ministry. In addition, I was able to interview members of a leading business organisation, an NGO active in the policy areas, a para-public organisation attached to MIAC, and a major consulting firm which does research for government ministries. All interviews except for the one with the consulting firm were conducted using a questionnaire, which was sent to interviewees prior to the meetings. However, interviewees often voluntarily digressed from my questions and provided interesting information which would not have surfaced by strictly following the questionnaire. In this sense, the interviews were semi-structured more or less unintentionally.

There are certain limitations to the primary sources I have used. First, I have mainly relied on digitised documents publicly available on the internet. This unfortunately means that some of the older materials, particularly from the 1980s, have not been subject to my direct interpretive analysis. I have attempted to compensate for the lack by gaining factual information from newspaper databases which go back much further and from secondary literature on Japanese immigration policy in the Japanese and English languages.

Second, newspaper articles have been gathered using the names of policies and legislation in full and abbreviated forms as search key words in databases. Therefore, it is highly likely that I have missed relevant articles which may have provided me with additional information. I have not been able to mitigate this effectively other than to look, as much as possible, at articles published slightly before a particular policy or legislation was introduced.

Third, reliability of the information provided by interviewees may have been compromised by the fact that I had no prior contact with them and that I recorded the interviews. The reluctance of bureaucrats to be recorded was more than apparent in almost all cases. One bureaucrat, for example, flatly told me that he would not be able to tell the

truth at all if he was to be recorded. More generally, many of my interviewees asked who else I was interviewing from the government and what the individuals had told me already as though they were trying to learn from others how truthful and forthcoming they were supposed to be with me.

Needless to say, I unequivocally refused to share any information obtained through other sources in order to protect every interviewee's anonymity. However, I did tell them that I would stop the recording device whenever they wanted me to in an attempt to ease their anxiety and increase data reliability. When I did stop the recording device, however, I jotted down notes as much as I could during the interview and made detailed field notes straight after. I also tried to interview multiple members from the same organisation whenever I could in order to ensure the accuracy of the information provided. I was able to do this with a leading business organisation, METI, MOJ, and MIAC.

Fourth, the internal validity of my interview data suffers from a sampling bias. The overwhelming majority of my interviewees were accessed through one person whose extensive contacts in the central government eventually led me to the departments and offices I was interested in. Moreover, bureaucrats in Japan rotate positions every three years, and this means that my interviewees could only provide first-hand accounts of events which happened in recent years. Therefore, my sampling method is not random. Notwithstanding the methodological flaw, it is also true that the entire population of immigration policy-making is difficult to demarcate, thus making random sampling an impossible enterprise. In order to circumvent the problem, I used purposive sampling. I only interviewed people who, at the time of meeting, belonged to an office or a department which directly deals with issues related to immigration policy, rather than just anybody from a given organisation. It was clear that the interviewees kept themselves abreast not only about current developments but also about past events through written internal records as well as anecdotes.

The remainder of the thesis is divided into seven chapters. Chapters 2, 3 and 4 examine immigration admission policies towards unskilled workers, skilled workers and

illegal workers in that order. In these chapters, I demonstrate how the institutional configuration of the policy area has given rise to changes through layering. On the other hand, Chapter 5 explores immigrant integration policy and shows that the dominant mode of change has been conversion. As I shall explain, immigrant integration is a relatively new policy area in Japan, and this accounts for the disproportionate allocation of discussion between immigration admission and immigrant integration in the present thesis. Chapter 6 focuses on the twin introduction of the new residence management system and the revised resident register system which, as I shall argue, marked a fundamental transformation of the Japanese immigration regime. In this chapter, I connect the instances of incremental change from the previous chapters on immigration admission and immigrant integration with the transformative change in order to illustrate the central theoretical claim that endogenous changes can lead to a fundamental transformation of an institution.

The penultimate chapter qualitatively differs from the preceding chapters for its aim is to assess Japanese immigration policy from a normative perspective. As I explained earlier, there is a pervasive scholarly claim that ethno-cultural nationalism is at the heart of the Japanese policy. Moreover, this has been linked, implicitly or explicitly, to the illiberal nature of the policy and indeed the nation itself. Against this claim, the present thesis demonstrates that the policy is the product of an institutional regime containing multiple and dynamic political preferences and that the policy evolution has taken place within the confines of liberal democracy. This has led me to confront directly the question pertaining to normative relationships between nationalism and liberal democracy in the context of international migration. In this chapter, I evaluate the ethics of Japanese immigration policy through the lenses of contemporary liberal political theories. The concluding chapter summarises the findings of the research and points at possible areas of future inquiries.

Chapter 2: Immigration Admission Policy towards Unskilled Migrants

Compared to the guest worker migration to Western European countries in the 1950s and the 1960s, the early phase of economic migration to Japan which only started in the 1970s had two defining features. First, migrants were generally illegal. Because legal migration channels for *de jure* unskilled workers were absent, the new entrants were engaging in unauthorised employment and were, thus, illegal as far as the government was concerned. Second, the new economic migration began as an overwhelmingly female phenomenon. Until the feminisation of international labour migration became recognisable in the 1960s, the general pattern of border-crossing was characterised by the primary entry of young, economically-active males followed by the secondary entry of their female spouses (Castles & Miller, 2009, p. 12).¹ Japan not only became a migrant-receiving country after the global migration pattern had shifted but was also geographically proximate to major female emigration countries in Southeast Asia.

The present chapter examines the development of immigration admission policy towards unskilled workers starting in the late 1970s. The first section illustrates how the inflow of unskilled workers led to the growing visibility of illegal employment as a public policy issue. This precipitated what Chiavacci (2012) calls ‘the first reform debate’ which ended with a major revision of ICRRA in 1990. The reform debate ultimately failed to liberalise unskilled labour migration, and the legal amendment reflected this. The second section, then, interrogates how unskilled labour migration was expanded through co-ethnic return migration and the foreign technical trainee programme despite the institutional continuity of immigration admission policy. The expansion created unexpected policy consequences for the government. *Nikkeijin* started settling permanently and posing integration problems in local communities, and trainees became targets of labour

¹ Against this view held by Castles and Miller, it is possible that women have always migrated in great numbers and that epistemic communities have belatedly realised this. See Villares-Varela’s blog post (2013) written for the Oxford Department of International Development for an insightful discussion of the topic.

exploitation. The third section explains how the government dealt with these unforeseen issues. The final section summarises the causal mechanism characterised by institutional layering whereby policy actors with an economic interest in expanded admission grafted new rules onto and amended existing rules without compromising the overall continuity of immigration admission policy towards unskilled migrants.

The Beginning of Contemporary Economic Migration

The first group of economic migrants arrived from the Philippines, Taiwan and Thailand towards the late 1970s, and they were women who mostly worked as entertainers (Mori, 1997; Morita & Sassen, 1994; Sellek, 1996).² Entertainer is, in fact, a euphemism for bar hostesses working in drinking establishments for Japanese businessmen. In Japan, entertainers are expected to sit with their male customers, engage in harmless conversations and serve drinks. Sex work is not part of their job at least nominally. However, foreign entertainers are vulnerable to various forms of labour and sexual exploitation, including coerced prostitution.

Sellek (1996) attributes the arrival of Filipino and Thai entertainers to factors related to globalization, such as the increased presence of Japanese firms in the countries of origin and the internationalization of the sex industry. In addition to the macro-structural factors, it is important to acknowledge that there was a pseudo-legal migration channel available to prospective entertainers. Whilst many entered Japan as short-term visitors and subsequently overstayed their tourist visas, others obtained the now notorious entertainment visa. Strictly speaking, the purpose of the entertainment visa is to admit artists and athletes. However, bar owners were able to sponsor prospective entertainers under the pretence that they would be

² Though not economic migrants in a strict sense, Southeast Asian women were also recruited as foreign brides of Japanese farmers by some local authorities which organised international bride search projects in the mid-1980s in order to solve depopulation (Suzuki, *Transgressing 'victims'* reading narratives of "Filipina brides" in Japan, 2003). However, Suzuki demonstrates that most Filipino-Japanese couples live in areas surrounding metropolitan areas and, therefore, are not the product of such public initiatives despite what the discourse of 'mail order brides' may suggest (2004, p. 503).

performing foreign songs and dances. The practice was facilitated by a transnational collusion between employers, migrant brokers and violent criminal organisations (Shipper, 2002).

Entertainers were followed by international students, most of whom coming from China which had normalised diplomatic relations with Japan in 1972 and liberalised overseas travel in the mid-1980s (Liu-Farrer, 2011). In 1983, the Japanese government launched the 100,000 International Students Plan which aimed to achieve the eponymous target by 2000 as part of Japan's internationalisation agenda. The early 1980s was a time when the country self-consciously attempted to rectify what was perceived as the island nation's cultural isolation from the rest of the world in the quest to gain international political legitimacy matching the new found economic might (Burgess, 2004).

Under this initiative, application procedures for student visas were simplified, particularly for pre-college students wanting to study Japanese in private language schools (Komai, 1995; Liu-Farrer, 2011). Moreover, international students were allowed to work up to twenty hours per week as long as they applied for permission from the Immigration Bureau. The provision was granted so that students from developing countries could financially support themselves during their studies. However, Liu-Farrer points out that the early wave of student migration was mostly economically-motivated, and some of the migrants did not attend school at all. Similar to the inflow of entertainers, the bogus student migration was strengthened by a transnational industry comprised of visa brokers and low-quality language schools.

The third group of new economic migrants consisted of male workers from Pakistan, Bangladesh and Iran. Their entry was enabled by visa exemption agreements Japan had signed for short-term visitors from the countries (Sellek, 2001). These migrants entered legally as tourists but overstayed their permitted length of stay and worked illegally, usually in the manufacturing and construction industries (Shipper, 2002). The entry of male workers reversed the gender composition of the new economic migration by the end of the 1980s. For

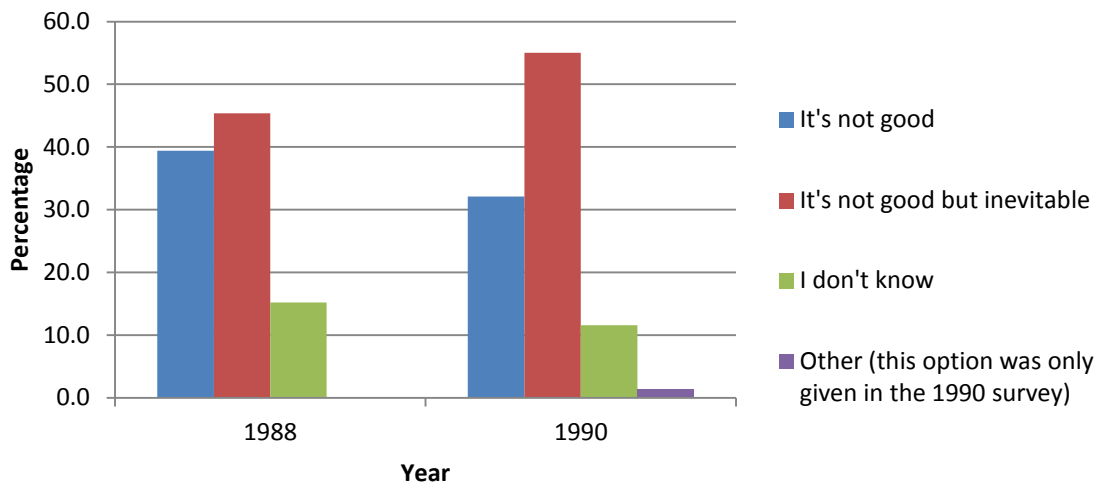
the first time, more male illegal workers than female illegal workers were apprehended by Japanese authorities in 1988 (Sellek, 1996).

Moreover, it was only with the growing visibility of male migrants that the economic nature of contemporary illegal migration became apparent to many Japanese, giving rise to the term *gaikokujin rōdōsha* [foreign worker] which, in Japanese, conjures up an image of a male unskilled worker and obscures the role of women as economically-active individuals (Sellek, 1996). Until then the presence of migrant workers was not a labour market issue because most of them were women working in the entertainment industry. The entertainer migration 'was treated rather as a problem of social mores, or the "internationalization of sexual exploitation"' (Mori, 1997, p. 71).

Although the number of illegal migrants was growing, public opinion around the time seemed to have been relatively nonchalant at least on the economic grounds. In the surveys conducted by the Cabinet Office in 1988 and 1990, respondents who thought illegal employment was 'not good but inevitable' outnumbered those who flatly disapproved it (see Figure 5).³ Moreover, the forgiving attitude towards illegal employment became stronger as the difference between the two responses grew from 6% to 22.9% just in two years.

Figure 5: Government Survey Results on Illegal Employment

³ The survey was conducted five times between 1980 and 2004. Unfortunately, the survey questions are not identical to each other in terms of format. The one from 1980 in particular is enormously different from the other four, and, the results, therefore, cannot be used for comparative purposes. However, the four surveys conducted in 1988, 1990, 2000 and 2004 had the same set of four similar questions on illegal migration and foreign unskilled labour. Furthermore, the 1980 survey asked whether respondents knew that there were employment restrictions placed on foreigners staying in Japan, and 54% of them answered no. This shows that economic migration was not yet a salient phenomenon in the early 1980s.



Sources: Cabinet Office, 1988, 1990

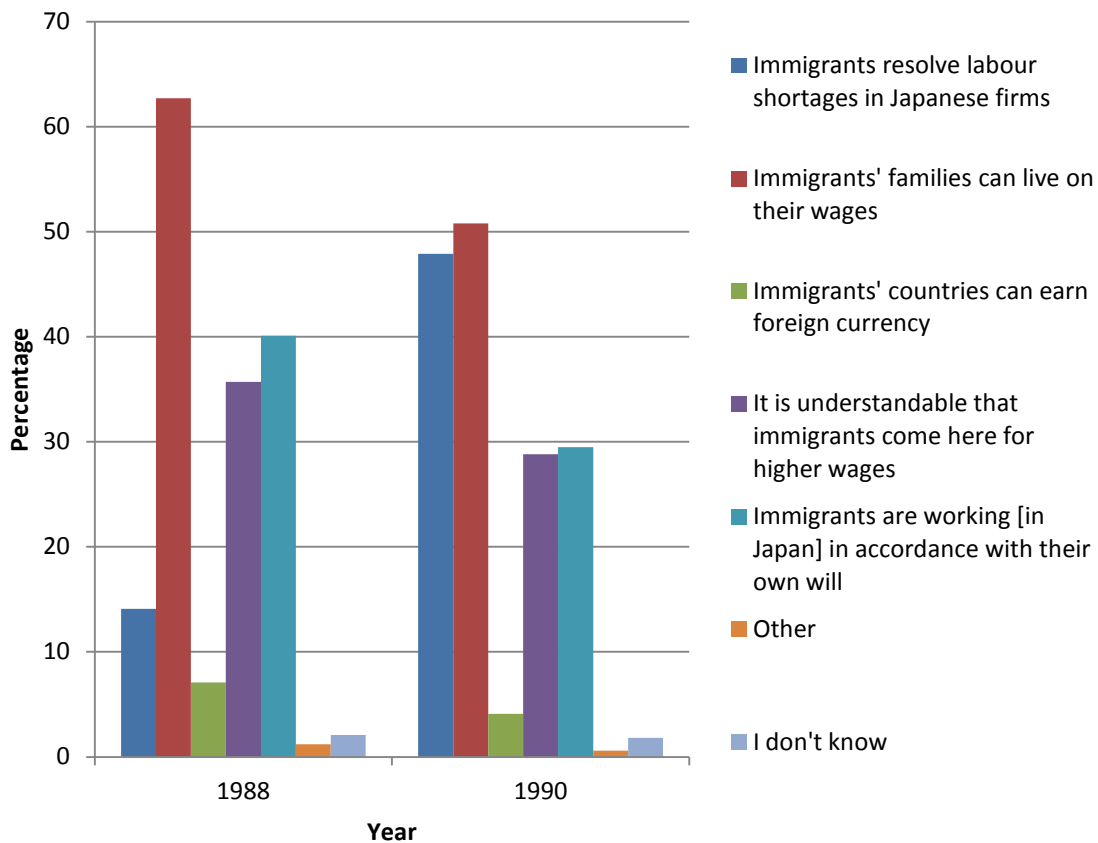
Amongst the respondents who flatly opposed illegal migration, concerns over law and order, public safety and human rights dominated their reasons (see Figure 6). At the same time, however, the percentage of those who viewed illegal employment as a way to resolve labour shortages increased by 33.8 % amongst those who tacitly condoned the practice (see Figure 7). When all the respondents were asked for their opinion on legalising foreign unskilled labour, those supporting conditional and unconditional admission overwhelmingly outnumbered those against it in both years (see Figure 8). From these survey results, one can infer that the public was generally amenable to the possibility of legally admitting unskilled labour migrants in the future.

Figure 6: Government Survey Results on Why 'Illegal Employment Is Not Good'



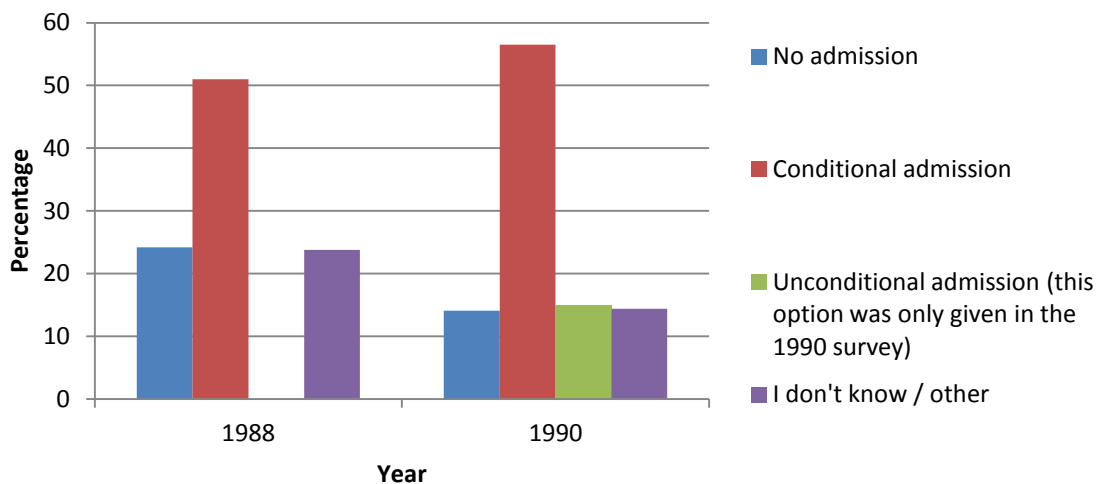
Sources: Cabinet Office 1988, 1990

Figure 7: Government Survey Results on Why 'Illegal Employment Is Not Good But Inevitable'



Sources: Cabinet Office 1988, 1990

Figure 8: Government Survey Results on the Future of Unskilled Migration



Sources: Cabinet Office 1988, 1990

The mere fact that the above surveys began to be conducted by the Cabinet Office suggests that the presence of foreign workers had become a new policy challenge not only for

MOJ but for the government as a whole by the late 1980s. Indeed, central ministries that hitherto had not been heavily involved in the so-called ‘foreign worker problem’ (*gaikokujin rōdōsha mondai*) were increasing bureaucratic capacity around the time. For instance, MOFA established the Foreigner Division in 1987, and the Ministry of Labour (MOL) the Foreigner Employment Management Office in 1989 (Akashi, 2010).⁴

Moreover, policy actors began deliberating future policy options independently (Akashi, 2010). Between 1985 and 1987, MOJ and its para-public organisation variously explored the introduction of a new law to manage the employment of foreign workers, a three-year guest worker programme and a new visa management system. In December 1987, MOL, for its part, organised a study group which later proposed the introduction of an employment permit system. Various sections of the Policy Affairs Research Council of the incumbent Liberal Democratic Party (LDP) also produced reports on the admission and employment of foreign workers.⁵

Whilst some ministries and politicians explored possible policy options, the National Police Agency (NPA) began targeting foreign workers as a threat to public safety. In the 1970s and the early 1980s, the agency’s annual white paper only made cursory remarks on foreign entertainers, prostitutes and drug smugglers operating with Japanese criminal organizations. A section on the internationalization of crime was introduced in the 1983 white paper, but the focus was on foreign criminal gangs who were claimed to be making brief sojourns to Japan for the purpose of burglary. The document linked crimes committed by foreigners to the increased inter-connectedness of the world in which professional criminals operated internationally but not necessarily to the new economic migrants, legal or otherwise.

⁴ MOL and the Ministry of Welfare merged and became MHLW in the 2001 administrative reform.

⁵ The Policy Affairs Research Council is an important policy-making organ of LDP. Its main remit is to conduct research for the party’s policy and bill proposals. See Chapter 2 in Murakawa (1985) for more details.

In contrast, the first chapter of the 1987 white paper was entitled *The Role of the Police in International Society* and highlighted the negative impact allegedly manifesting from the inflow of foreign workers. In the introductory chapter, NPA asserted that the police force had to live up to Japan's responsibility as a country whose 'international status had improved markedly' (National Police Agency, 1987). However, by treating foreign workers as potential criminals in a wholesale manner, NPA broke its own promise. It warned that crimes committed by foreigners were on the rise and explicitly linked the trend to the increasing number of foreign workers. The following passage is illustrative of this.

In countries, such as West Germany and France, which have admitted foreign workers, it has been pointed out that foreign workers' unemployment and other problems have become big social issues. In the meantime, there are concerns that social problems brought about by the increase of foreign workers may affect our country's public safety which is said to be good compared to that of other developed countries (National Police Agency, 1987).

The syllogism is astounding for it fails to make a distinction not only between legal and illegal migrants but also between illegal migrants and foreign criminals. At the risk of stating the obvious, not all foreign workers are illegal. Nor are all illegal migrants in contravention of law other than immigration law. The foreign worker here, nonetheless, is constructed to be illegal and criminal at once, and the parallel drawn between immigrant unemployment in Western Europe and foreign criminality in Japan relies on this very conflation.

Paradoxically, the two main types of foreign crime presented in the paper do not support NPA's argument that foreign workers are security threats. First, job brokers abetting illegal employment of foreign workers were said to be funnelling funds into Japanese mafia when, in fact, job brokers could be Japanese or foreign. Second, female overstayers were singled out for working in brothels even though they were often the victims of exploitation by criminal organizations and visa brokers. In both cases, the extent to which the presence of

foreign workers directly jeopardized public safety is highly debatable.⁶ Put another way, the rampant unauthorised employment certainly threatened the legitimacy of the existing immigration law if it had threatened anything at all, but its impact on public safety was arguably more imagined than real.

Against this background, ICPRFW was established in the Prime Minister's Office in the spring of 1988. The overall aim of the council was to forge a government-wide consensus on the future of immigration admission. More specifically, the council was to assess the actual nature and magnitude of foreign employment and to consider necessary revisions of ICRR (Nikkei, 22 May 1988). Cutting through the florid language of the bureaucracy, however, the real and urgent policy problem was the growing unauthorised employment. The government as a whole had to decide whether to abandon the fundamental policy principle of immigration admission and, thus, legalise the entry of unskilled foreign workers.

During the course of deliberation, however, it became apparent that the government was divided on the issue. Naturally, MOJ and NPA took a cautious stance given their jurisdictional preoccupation with law and order (Nikkei, 20 October 1989). MOJ, for example, had congratulated Japan for having achieved technological advancement by foregoing labour importation in the *1987 Immigration Control White Paper* (as cited in Akashi, 2010, p. 99). This was explicitly contrasted with the experience of Western European countries which were said to have suffered from foreigners' unemployment after the oil shock in the early 1970s. MOL too had already made its preference clear in the *Sixth Employment Management Basic Plan* which stated that the domestic labour market must be protected from foreign workers (as cited in Kondo, 2009, p.9). The Ministry of Construction was also in the opposition camp (Chiavacci, 2012).⁷ It had already circulated a notice instructing the

⁶ Other examples of crime provided in the paper, such as falsification of travel documents and bogus marriages, violated immigration law but not criminal law.

⁷ However, it is unclear from Chiavacci's paper why this was the case. On a separate note, the Ministry of Construction merged with the Ministry of Transport, the National Land Agency and the Hokkaido Development Agency to form MLIT in the 2001 administrative reform.

industry to stop hiring undocumented foreign workers (Nikkei, 20 October 1989).⁸ In addition, Welfare Minister Toida Saburō commented that liberalisation of immigration admission posed problems of public health (Nikkei, 17 October 1989).⁹

The public's lax attitude at the time was softened undoubtedly by the fact that Japan was going through the second post-war economic boom in the latter half of the 1980s. It is unsurprising, then, that some central ministries and agencies supported immigration reform for economic reasons. The Economic Planning Agency thought the entry of foreign workers would lead to a positive structural adjustment of the Japanese economy (Nikkei, 20 October 1989), and the Ministry of Transport also took an expansionist stance (Chiavacci, 2012). The most formidable bureaucratic voice for expanded admission, however, came from MOFA which argued that Japan should admit migrants as a way to contribute to international development (Chiavacci; Nikkei).

Whilst some central ministries and agencies took a clear stance, other influential pro-business actors were curiously on the fence (Chiavacci, 2012). As the economic boom accelerated, it was small- and medium-sized enterprises which suffered from acute labour shortages (Mori, 1997) and supported the admission of unskilled workers (Chiavacci). In contrast, similar demands were not made by Keidanren which represents the interest of large businesses.¹⁰ Generally speaking, Keidanren was not a vocal participant in the debate until a later stage according to Chiavacci. Even when the organisation was asked to express its opinion on the issue during the Diet's deliberation of the ICRRRA amendment, it took a cautious position that the structural mismatch in the labour market should be corrected by activating women and the elderly instead of admitting unskilled foreign workers (Lower

⁸ There were also media reports that Construction Minister Harada Shōzō wanted expanded admission of unskilled workers through the trainee programme by signing bilateral treaties (Nikkei, 17 October 1989; Asahi, 20 October 1989). However, it is uncertain how much of this reflected the ministry's position as a whole.

⁹ A bureaucrat I interviewed from MOJ also mentioned the public health concern without any signs of hesitation or embarrassment (personal communication, 27 September 2012). I do not know whether this association between foreigners and diseases is pervasive in today's Japanese society.

¹⁰ The English name of Keidanren is Japanese Business Federation. However, I use the Japanese name in my thesis following the common practice amongst scholars writing in the English language.

House Legal Council , 14 November 1989). Similarly, the Ministry of International Trade and Industry (MITI) and LDP were ambiguous players although they were known advocates of business interests.¹¹ It is likely that their lack of clear preference also stemmed from the industry divide between small- and medium-size businesses on one hand and large businesses on the other.

In October 1989, ICPRFW officially confirmed that the admission of unskilled foreign workers would continue to be barred (Asahi, 18 October 1989). Chiavacci (2012) argues that the pro-reform camp failed to prevail in the absence of support from powerful actors, such as LDP, Keidanren and MITI. Akashi (2010) points out that MOFA, in the end, had to acquiesce to the anti-reform camp given the growing public salience of illegal employment. Once the overall framework was established, the real bone of contention subsequently shifted to specific mechanisms through which the employment of unskilled and, thus, illegal foreign workers could be prevented (Chiavacci).

In the previous year, MOL formally adopted an earlier recommendation put forward by its study group to introduce an employer permit system (Nikkei, 28 March 1988). The system was envisioned to be operated by local employment offices under the jurisdiction of the ministry and to place a duty on employers to account for their foreign employees when applying for a permit. On the other hand, MOJ preferred to tackle illegal employment through tough employer sanctions (Surak, 2008).

Consequently, a bureaucratic turf war erupted as MOJ saw MOL's proposal as encroachment upon its policy space (Akashi, 2010; Chiavacci, 2012; Nikkei, 22 May 1988). Some business associations were also opposed to the system, but the real political challenge came from the Korean Residents Union in Japan (Mindan), a leading South Korean *zainichi* organisation, which argued that the measure would lead to stricter control over the

¹¹ MITI was renamed METI in the 2001 administrative reform.

permanent foreign community (Akashi, 2010, p. 103).¹² Some apparently understood this to be a conspiracy orchestrated by MOJ since the employment permit system was never intended to include the *zainichi* population in the first place.

In the end, MOJ succeeded not only at preserving the fundamental policy principle of not admitting unskilled foreign workers but also at defeating the idea of the rival ministry also in the anti-reform camp. The resulting amendment bill submitted to the Diet by MOJ contained measures to punish employers and job brokers who knowingly abet the employment of illegal migrants. The deliberation mainly focused on controlling illegal migration, and the Japanese Communist Party (JCP) was the sole legislative voice demanding the legalisation of foreign unskilled labour (Lower House Legal Council, 17 November 1989).¹³ The bill was adopted by the Diet in December 1989 and came into effect in the following year.

From this episode, MOJ emerged unscathed as the doyen of immigration admission policy in the new era of economic migration. As I shall show below, this position has been maintained since then and has continuously shaped the political context of the making of immigration admission policy. However, the amendment of ICRRA obviously did little to resolve the existing labour shortages experienced by small- and medium-sized enterprises. According to Chiavacci (2012), the pro-reform camp was able to take advantage of the bureaucratic squabble between MOJ and MOL to expand unskilled admission in other ways. I now turn to the two such examples, namely, co-ethnic return migration and the foreign technical trainee and intern programme.

The Expansion of Unskilled Migration

Nikkeijin. When Japan embarked on the road to modernisation starting in the Meiji period, emigration became a means to resolve unemployment resulting from rural-to-urban

¹² There have been two influential Korean organisations in post-war Japan. Mindan and the General Association of Korean Residents in Japan (Chongryon) are politically aligned with South and North Korea respectively (Tai, 2009).

¹³ However, even JCP did not advocate the permanent settlement of unskilled workers.

migration. Displaced and failed farmers who could not be absorbed into the urban economy began emigrating to the United States starting in 1885 (Yamanaka, 2000). Thereafter the migration flow expanded to Latin America. In 1925, it became an official policy of the Japanese government to send its nationals to Brazil which had abolished slavery in 1888 and had to rely on immigration to recruit plantation workers (Yamanaka).

Even though Japanese emigration halted during the Second World War, it resumed when the country re-gained independence with the signing of the San Francisco Peace Treaty in 1952. It was not until 1973 that the government discontinued its official emigration programme (Yamanaka, 2000). Between 1868 and 1941, 776,304 Japanese emigrated, and 244,946 of them went to South America (Sellek, 2001, p. 72). In addition, 53,000 more moved to Brazil after the war (Sellek, p. 72). Strictly speaking, *nikkeijin* simply means 'people of Japanese origin' and can be used to describe Japanese emigrants and their descendents regardless of their adopted nationality. However, the term is now strongly associated with those in Latin America for reasons which shall become clear later in the present chapter.

In the 1960s, Japan managed to recover from the war time devastation and became more prosperous than Latin American countries where Japanese emigrants had settled. At the same time, there were first generation *nikkeijin* with sole Japanese nationality and second generation *nikkeijin* with dual nationality who could work legally in Japan.¹⁴ As a result, a small number of *nikkeijin* temporarily entered Japan and worked in construction projects for the 1964 Tokyo Olympic Games and the 1975 World Expo in Okinawa (Sellek, 2001). However, it was not until the 1980s when Brazil experienced severe political and economic instability that Japan became a possible major destination for second and third generation *nikkeijin* migrants.

In 1982, a Japanese-Brazilian assembly member from Sao Paulo visited officials from MOFA and influential LDP politicians, ironically including Ishihara Shintarō who would later

¹⁴ Even though Japan prohibits dual nationality, a person born to one foreign parent need not declare her nationality until the age of 22.

become the key political voice behind a xenophobic discourse in the 2000s. The assembly member demanded that the Japanese government admit *nikkeijin* without Japanese nationality as temporary workers by granting long-term resident visas (Akashi, 2010; Mori, 1997). The request was met with general disinterest, but that did not deter *nikkeijin* from seeking work in Japan especially since job opportunities were ample. By the mid-1980s, Japanese job brokers were recruiting *nikkeijin* as unskilled workers in Japan and Brazil (Akashi; Mori).

At that time, third generation *nikkeijin* applying to obtain the discretionary residence visa had to provide extensive documentation proving that all four of their biological grandparents were Japanese or get a sponsorship certificate from a Japanese relative within the fourth degree of consanguinity (Mori, 1997). The bureaucratic procedures *nikkeijin* had to go through to be able to work in Japan legally were, thus, onerous. Since there were no official migration channels for *nikkeijin* without Japanese nationality to work legally in Japan, many entered as tourists and worked illegally. In this sense, *nikkeijin* 'were not substantially different from illegal migrant workers from, for example, Asia' (Mori, p. 107).

Some policy-makers were aware of this fact (Akashi, 2010), and MOJ relaxed operational rules applied to *nikkeijin* workers. In 1985, the ministry began allowing second generation illegal *nikkeijin* to obtain the visa for children of Japanese nationals, thus effectively condoning their unauthorised employment (Sellek, 2001, p. 74). Furthermore, MOFA apparently pressured the Immigration Bureau to relax the criteria used for issuing the discretionary residence visa to third generation *nikkeijin* so that they did not have to endure the exploitative working conditions faced by illegal migrant workers (Akashi, 2010).

As Tsuda puts it, 'this initial trickle of Japanese-Brazilians into Japan [became] a flow, and that flow [became] a flood – a sudden and massive influx of immigrants unprecedented in modern Japanese history' (Tsuda, 1999, p. 9). The 1990 amendment of ICRRRA introduced a catch-all visa called the long-term resident visa which is renewable, lasts up to three years at one time and imposes no labour market restrictions. Just seven days before the amended

ICRRA came into effect on 1 June 1990, MOJ circulated an official gazette stipulating new conditions for obtaining the long-term resident visa (Akashi, 2010; Sellek, 2001). With this change, not only third generation *nikkeijin* without Japanese nationality but also non-*nikkeijin* spouses and children of second and third generation *nikkeijin* were allowed access to the long-term resident visa.

That the rule change had an enormous effect on the size of the *nikkeijin* population in Japan is irrefutable. The number of Brazilian foreign residents increased from 14,528 in 1989 to 56,429 in 1990 (Tsuda, 1999, p. 10) and continued to grow thereafter until 2007. Today, Brazilians are the third largest nationality group of foreign residents in Japan. The term *nikkeijin* is now specifically associated with Japanese-Brazilians and, to a lesser extent, with Japanese-Peruvians. Today it is widely acknowledged that most *nikkeijin* are unskilled workers in the manufacturing industry. The explosion of *nikkeijin* migration, thus, sits uneasily with the institutional continuity of the country's immigration policy principle of not admitting unskilled foreign workers.

The government officially justified the migration channel by explaining that *nikkeijin* should be able to visit their relatives and explore the country from which their forbearers originated (Kondo, 2009; Tsuda, 1999; Yamanaka, 1993). However, unconvinced scholars have posited competing explanations for the opening up of this new migration channel. Given the acute labour shortages Japan experienced towards the end of the 1980s, the obvious explanation is that the measure was a labour market strategy to procure unskilled foreign workers. More importantly, *nikkeijin* were thought to be easily assimilable into the purportedly mono-ethnic society, and the number of potential *nikkeijin* entrants was believed to be limited compared to that from the rest of Asia (Kondo, 2009; Surak, 2008; Tsuda, 1999).

Corroborating this explanation, it has been known that a section of LDP's Policy Affairs Research Council was discussing the possibility of admitting *nikkeijin* as workers (Akashi, 2010, p. 118) when *nikkeijin* associations and business organisations in Japan and Brazil were making similar demands (Tsuda, 1999, p. 11; Yamanaka, 1993, p. 79).

Furthermore, there are retrospective facts that some *nikkeijin* had already been working legally and illegally in Japan before the rule change and that *nikkeijin* indeed became a major group of foreign unskilled workers after the rule change. In this light, the government's insistence that their admission was expanded out of non-economic consideration appears highly suspicious.

The second explanation, on the other hand, lends slightly greater credence to the official rhetoric than the first explanation does. Based on the interviews with bureaucrats who were involved in the policy-making process at that time, Kajita argues that the Immigration Bureau was concerned about balancing the legal status of *nikkeijin* and that of *zainichi* migrants (as cited in Abe, 2006, Akashi, 2010, and Chiavacci, 2012). During the 1980s, the rights of *zainichi* migrants became an important policy issue as the appearance of politically-active fourth generation *zainichi* youths made the existence of a permanent foreign community an undeniable fact. In this context, MOJ deliberated how and whether fourth generation *zainichi* migrants and third generation *nikkeijin* should achieve parity in immigration status. Here *nikkeijin* did not specifically mean Latin Americans but encompassed all overseas ethnic Japanese, including former Japanese orphans who had failed to repatriate from China after the war.¹⁵ According to this account, *nikkeijin*'s unlimited access to the labour market was granted not necessarily to resolve labour shortages but to bring their legal status in line with that of *zainichi* migrants.

It is often forgotten that introduction of the long-term resident visa was included in the 1990 amendment bill in order to accommodate Indo-Chinese refugees, not Latin American *nikkeijin* (Sellek, 2001, p. 62). In fact, the admission of third generation *nikkeijin* and their family members was not even mentioned in the draft bill. What is also often overlooked is the fact that it took 20 months from the time the bill was first reviewed by LDP before it was finally adopted by the Diet due to an unrelated political scandal involving then

¹⁵ These people are called *chūgoku zanryū koji*. Many Japanese children failed to leave China after the Second World War and were essentially raised as Chinese by their adopted parents.

Prime Minister Takeshita Noboru (Mori, 1997, p. 108). After the bill was adopted in December 1989, the head of a section examining immigration policy in LDP's Policy Affairs Research Council expressed dismay that his proposal to admit *nikkeijin* workers had not been reflected in the final bill (Akashi, 2010, p. 118). To reiterate, the long-term resident visa was not introduced for the admission of *nikkeijin*, and the Diet's deliberation of the ICRRA amendment did not include this point.

Instead, *nikkeijin* migration was expanded in a legal but rather undemocratic manner when MOJ circulated an official gazette stipulating special criteria for *nikkeijin* applying for the long-term resident visa shortly before the ICRRA amendment came into effect. I, therefore, argue that it is more accurate to describe the gazette's *ex post* sanction of *nikkeijin* employment, which after all had already been legally possible to a certain extent, as a coincidence of interests between MOJ concerned with equity between *nikkeijin* of all nationalities and *zainichi* migrants on one hand and a certain section of LDP wanting to recruit unskilled workers through co-ethnic return migration on the other. Furthermore, this low profile manoeuvre was undoubtedly enabled by the unexpectedly long period required for the enactment of the ICRRA amendment.

Seen in this light, the assessment of some scholars that the Japanese government justified the new channel of migration as an act of benevolence towards the ethnic brethren when, in actuality, it deliberately admitted them as unskilled workers because they were thought not to disturb the ethno-cultural homogeneity of the nation (Surak, 2008; Tsuda, 1999; Yamanaka, 1993) appears to glaze over the delicate interaction between nuanced political interests and a fortuitous temporal factor. This is not to state that co-ethnic mindedness was not present in policy-making. The marked lack of opposition to the new change (Akashi, 2010) except for a minor challenge raised by MOL which rightly pointed out the policy contradiction (Tsuda, 1999) attests to this. However, the meaning of the normative thinking differed for MOJ and said LDP politicians. It was more intrinsic than instrumental for

the former and vice versa for the latter. Ignoring these varying motivations is to over-ascribe linearity and coherence to the policy development of the time.

Technical trainees and interns. Admitting foreigners for the purpose of vocational training was a practice that was established long before economic migration became a salient phenomenon in Japan. In the 1960s, Japanese multinationals started bringing foreign employees to Japan in order to transfer technical knowledge and skills from home operations to foreign branches (Iguchi, 1998; Sellek, 2001).¹⁶

During the first phase of post-war economic boom which lasted from the latter half of the 1960s until the oil crisis in 1973 (Mori, 1997, p. 38), there were calls for the government to import foreign labour in order to alleviate what had become a chronic labour shortage (Bartram, 2000; Komai, 1995). For example, the Japanese Chamber of Commerce and Industry, which is a lobbying association for small- and medium-sized firms, adopted a resolution in 1970 urging the government to explore this possibility (Bartram). In the same year, the Tokyo Chamber of Commerce and Industry, another business lobbying association, demanded the trainee admission be augmented (Bartram; Komai). The demand was apparently supported by many businesses and business associations (Bartram).

Small trainee programs gained the backing of MOFA, MOL and MITI around that time, and an Asia-oriented technical development plan was adopted by MOL in 1971 (Bartram, 2000). Although Bartram seems to suggest that the prototype of the future technical trainee programme was devised in response to the industry demand, it is difficult to conclude from the evidence he provides whether the rationale behind it was to facilitate international development and/or to import unskilled workers in a disguised form, the former being the government's official explanation.¹⁷ Either way, businesses, small, medium and large, took

¹⁶ I am unsure of the legal and administrative procedures surrounding what seems to be a private-led initiative. Thus, it is difficult to say to what extent the practice was institutionalised at this point.

¹⁷ In contrast, Komai writes that such calls were essentially ignored by the government due to 'the seclusionist ideology' of MOL and other actors (1995, p. 54).

advantage of the programme to gain access to trainees as *de facto* economic migrants until the need for them disappeared with the end of the economic boom (Bartram; Komai, 1995).

In 1981, MOJ introduced a new visa category for admitting foreign trainees.¹⁸ According to Sellek, this resulted from the demand of Japanese firms with overseas ventures and subsidiaries, suggesting that the intended purpose genuinely was to transfer technological skills and knowledge from Japan to developing countries (Sellek, 2001, p. 65). On the other hand, Mori mentions that trainees were already being used as a labour stop gap in the casting and planting industries in the early 1980s (Mori, 1997, p. 116). In any case, the consonance of labour shortages and programme misuse was loud and clear by the end of the decade. The abuse of the programme was enabled by MOJ's lax application of company assessment procedures (Komai, 1995) and simple conditions which merely required the trainee to be at least 18 years of age and the number of trainees to be kept at 5% or less of the overall number of employees per firm (Mori, 1997, p. 117).

MOJ could not watch quietly the programme get abused. The ministry, as the sole custodian of immigration law, had to maintain its bureaucratic legitimacy. Therefore, the ministry issued an ordinance stipulating that the time spent on on-the-job-training should not exceed two-thirds of the entire duration of traineeship (Sellek, 2001, p. 66). Soon after this, MOJ also released an investigative report showing that some companies were indeed exploiting trainees as *de facto* labourers without providing them with scheduled classroom instruction (Komai, 1995; Mori, 1997). It is important to note that technical trainees were not covered by relevant labour laws since they were not admitted as *bona fide* workers. As a result, employers were not obliged to pay a minimum wage or to enrol trainees in health and workplace insurance schemes. This obviously left trainees recruited by unscrupulous employers in an extremely vulnerable position.

¹⁸ Before the amendment of the ICRRA in 1990, MOJ classified visas by numbering them rather than giving self-explanatory names, such as 'trainee visa.' This new visa introduced for trainees was called 4-1-6-2.

Whilst MOJ was trying to restore the official goal of the trainee programme which, to reiterate, was to transfer technical skills and knowledge to developing countries, other actors started advocating expanded use of the programme as a channel of unskilled labour migration. The Japan Association of Corporate Executives, a major business interest group, was first to propose this and advocated the acceptance of 100,000 trainees (Nikkei, 11 August 1989). Following this, MOFA made a ministerial decision to push for rescindment of the on-the-job-training rule circulated earlier by MOJ and for the coverage of trainees by relevant labour and welfare laws, including a minimum wage regulation (Nikkei, 19 May 1989).

MOFA also suggested establishing a para-public organisation overseeing the trainee programme and setting admission quotas through bilateral agreements between Japan and sending countries (Nikkei, 19 May 1989).¹⁹ MOL, which had been opposing the admission of unskilled workers, surprisingly put forward a similar proposal. It suggested setting an annual target of 10,000 new recruits to be achieved in a couple of years whilst maintaining that the purpose of the programme was to foster international development (Nikkei, 11 August 1989). Needless to say, these proposals created consternation in MOJ which adamantly opposed the admission of unskilled workers and did not particularly enjoy policy encroachment by other ministries. However, establishing a new para-public regulatory organisation to strengthen the monitoring capacity was a point upon which the conflicting ministries could agree. Thus, MOJ decided to create the Japan International Training Cooperation Organisation (JITCO) whose remit was to match up prospective trainees with firms and to enforce prescribed rules on participating employers.

The decision to set up a greater oversight capacity softened the attitude of MOJ, and this, in turn, was followed by a movement towards greater admission of foreign trainees. In

¹⁹ According to the newspaper article, the idea of signing a bilateral agreement to set a labour migration quota was suggested by the Philippines. This shows that the country was already interested in sending its workers to Japan in the late 1980s. As I will show in Chapter 3, this eventually became a reality in the 2000s but not as part of the trainee programme.

October 1989, ICPRFW announced that admission through the trainee programme would be expanded in the future (Nikkei, 18 October 1989). Soon after the amendment of ICRRA came into effect in June 1990, MOJ issued a bylaw spelling out detailed regulations which stressed the official goal of the programme (Komai, 1995, p. 40). However, this was immediately followed by another bylaw which created an exemption to the earlier regulation concerning the number of trainees a firm could legally take on at one time (Komai, p. 41). The aforementioned five-percent rule was relaxed in order to enable labour hungry small- and medium-sized enterprises to participate in the programme. These firms were now allowed to accept trainees through intermediary organisations, such as chambers of commerce and business associations. Relaxation of the rule had been suggested by the Industrial Policy Deliberation Committee of MITI which had joined the debate late but eventually became an active participant (Nikkei, 31 May 1990).

Expansion of the trainee programme did not stop there. In the same year, MOL started drafting a plan to create a new technical internship programme for re-admitting trainees through JITCO as workers with attendant labour rights for one year after passing a skill accreditation examination (Nikkei, 7 July 1990). MOL, MOJ, MITI and MOFA began discussing the possibility in the following summer (Nikkei, 28 June 1991). Following a recommendation made by the Provisional Council for the Promotion of Administrative Reform, the Cabinet passed a decision to create the Technical-Intern Training Programme (TITP) (Komai, 1995, p. 53). Subsequently the decision was endorsed by MOJ in the *First Basic Plan for Immigration Control* which promised to establish the programme (Ministry of Justice, 1992).

These signs of *détente* did not lead to an end of the bureaucratic rivalry between MOJ and MOL, however. The two ministries disagreed once again but this time on who should control the skill accreditation examination which trainees must pass in order to become interns. MOL proposed using a ministerial ordinance to amend the existing vocational qualification system under its own jurisdiction (Nikkei, 18 July 1992). This would have

created a new examination level suitable for foreign trainees. MOJ protested that this would give substantial control over the programme to MOL. Instead, MOJ suggested allowing firms to administer their own exams with MOJ having the final say on whether trainees could transition into the internship programme. MOL countered this by pointing out that making the passing of firm-administered examinations as a transition criterion was self-defeating since the idea of having examinations was intended to prevent employers from abusing the programme to procure cheap labour.

The resulting programme introduced in 1993 was the product of a bureaucratic compromise. The maximum duration of the programme, including the time spent as a trainee and an intern, was set at two years,²⁰ and the examination was decided to be administered by JITCO which had been established under the joint control of MOJ, MOL, MOFA and MITI.²¹ The arrangement was not the preferred option of MOJ or that of MOL. In that sense, both parties lost the battle. At the same time, however, the relative loss was perhaps bigger for MOJ than for MOL given the former's status as the dominant actor in the policy area of immigration admission.

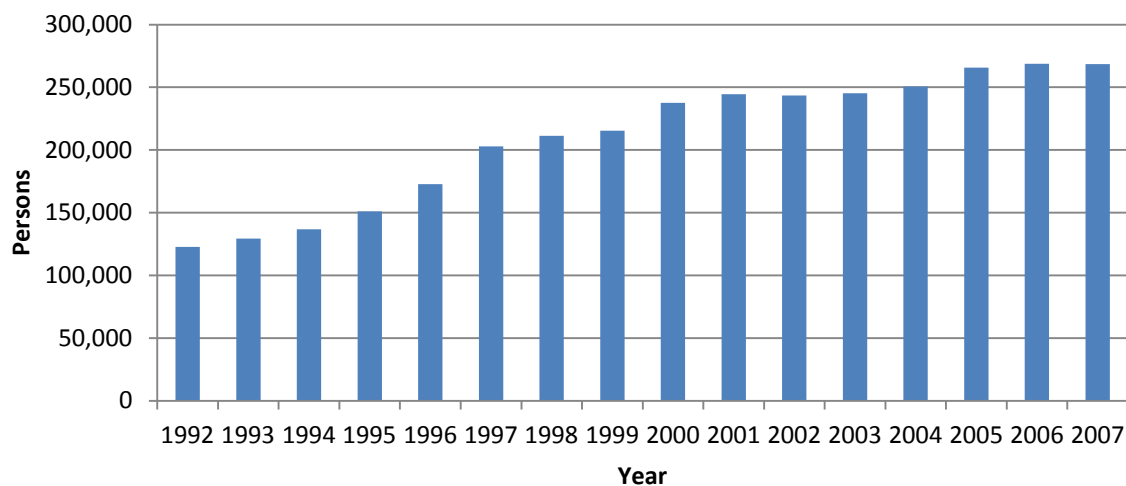
Unexpected Consequences of Unskilled Migration

Nikkeijin. The opening up of the *de jure* co-ethnic migration channel created unexpected policy consequences. First, the number of *nikkeijin* continued to grow despite the abrupt end of the second post-war economic boom in 1991. The increase of the *nikkeijin* population occurred because certain economic sectors were becoming structurally dependent on *nikkeijin* labour. Just in a decade and half, the number of long-term residents more than doubled (see Figure 9).

Figure 9: Number of Long-term Resident Visa Holders

²⁰ This was extended to three years in 1997.

²¹ Apparently, MOL had the possibility in mind in the first place, but it got lost during the inter-ministerial deliberation (Nikkei, 27 September 1992).



Sources: Ministry of Justice 1998, 2000, 2005b, 2010

The relatively benign attitude towards *nikkeijin* changed slightly after the onset of the recession. The Immigration Bureau tightened issuance of the long-term resident visa in the second half of 1992, and some applications made by Peruvian *nikkeijin* were rejected due to alleged falsity of documentation they provided (Sellek, 1996, p. 117). Only the local branch of the Immigration Bureau in Osaka gave an opportunity for re-examination, and some *nikkeijin* who came to know of this relocated there, prompting the Immigration Bureau to instruct all local branches to apply the same rule across the country. The government also launched a scheme in 1993 offering vocational training opportunities to *nikkeijin* in exchange for their repatriation upon completing the training (Sellek).

The government's effort at containing the number of *nikkeijin* largely failed. As Figure 9 above shows, the number of registered foreigners holding the long-term resident visa did not stagnate until the mid-2000s. More importantly, the introduction of the legal channel for *nikkeijin* migration led to an unexpected problem of immigrant integration. Not only did *nikkeijin* and their families begin settling in Japan, but they were not as assimilable as some policy actors had assumed. The concentrated presence of *nikkeijin* led to new social tension in certain localities.

In 1997, a Brazilian teenager was killed by a group of Japanese youths who were taking revenge for having a car destroyed by a group of Brazilian youths (Asahi, 25

November 1997). The boy was uninvolved in the earlier incident and was attacked simply for being a Brazilian. Two years later, the police were mobilised after a far right group and a horde of juvenile delinquents showed up and howled xenophobic insults using speaker phones in a public housing estate where many *nikkeijin* lived (Asahi, 8 June 1999).

MOJ was not unaware of such developments. The *Second Basic Plan for Immigration Control* published by the ministry in 2000 faulted second and third generation *nikkeijin* for imposing ‘an enormous impact,’ presumably negative, on local communities (Ministry of Justice, 2000). In addition, the plan recommended that the extent of their future admission as well as possible social integration measures should be reviewed by the government as a whole.

Three years later, Keidanren published an interim proposal on the admission of foreign workers (Keidanren, 14 November 2003). There, the organisation clearly acknowledged the crucial role *nikkeijin* had played in sustaining Japanese industry but warned that their easy access to the resident visa had encouraged them to migrate without much ‘forward-looking life-planning’ the lack of which, in turn, had made them and their families vulnerable to economic instability (Keidanren). It was, thus, suggested that proof of employment contracts should be a condition for new entries and that social insurance registration, Japanese language proficiency and children’s school enrolment should be checked at the time of visa renewal (Keidanren).

The new discursive linkage between *nikkeijin*’s fulfilment of socio-economic duties and their immigration readmission was accompanied by a normative construction of community membership which required *nikkeijin* to demonstrate their moral fitness. This was strongly underscored when a Peruvian *nikkeijin* sexually assaulted and murdered a seven-year old girl in 2005 (Nikkei, 22 December 2005). It later transpired that the perpetrator of the crime had prior criminal convictions in his home country and had illegally obtained a passport using a false name before entering Japan. Within four months of the incident, MOJ hastily circulated an official gazette which required new *nikkeijin* applicants of

the long-term resident visa to demonstrate ‘good character,’ meaning absence of prior criminal records (Ministry of Justice, 2007, p. 114). However, the new requirement excluded *nikkeijin* who were Japanese war orphans returning from China. On the new application assessment rule, a bureaucrat from MOJ said, ‘there was a widespread feeling at the time that the girl wouldn’t have had to die had there been a safety net like that’ (personal communication, 27 September 2012). The measure was a direct reaction to the earlier incident and specifically targeted Latin American *nikkeijin*.

The incipient barrier against *nikkeijin* admission was further strengthened throughout the rest of the decade. In 2007, the Council for the Promotion of Regulatory Reform (CPRR), which at the time was a powerful supra-ministerial, policy-making organ, published a three-year administrative plan which demanded MOJ clarify and publicise guidelines for visa renewal, specifically including rules on checking for the applicant’s taxation history, social security registration, employment conditions, children’s school enrolment if applicable and Japanese language proficiency (Council for the Promotion of Regulatory Reform, 2007c). In response to the request, MOJ published in March 2008 visa renewal guidelines which included checks on taxation and employment conditions (Ministry of Justice, 2012c). However, the ministry’s partial deferral to CPRR was met with a follow-up report which once again underlined the importance of checking for the applicant’s social security registration and language proficiency (Council for the Promotion of Regulatory Reform, 2008, pp. 269-271). In the following year, the ministry added the social security enrolment criterion to the guidelines but not the language and school enrolment criteria.

Later I shall return to explaining why MOJ failed to add the last two criteria. For now what is interesting is the ironic twist that the unintended policy consequence generated. The growing number of settled *nikkeijin* and the integration problems they were creating led MOJ to tighten their visa renewal. At the same time, however, the ministry was inadvertently training *nikkeijin* at integrating into Japanese society by giving them an incentive to fulfil legal obligations as members of the national community. Perhaps, this facilitation of

integration was not as inadvertent as I just suggested. In 2005, MOJ published guidelines for the assessment of permanent residence applications for the first time and clearly stated that long-term resident visa holders can apply after five years of continuous residence as opposed to ten years for other applicants (Ministry of Justice, 2005b).

Overall, the relationship between Japanese admission policy and *nikkeijin* is best described as ambiguous. This was appositely illustrated by the government's reaction to *nikkeijin*'s mass unemployment. In 2008, Japan too was hit by the global financial crisis, and manufacturing industry suffered as the volume of international trade declined. Since many *nikkeijin* were dispatched workers, they were extremely vulnerable to sudden unemployment. Indeed, the number of *nikkeijin* registrants seeking reemployment through the government's job centres in March 2009 was 15 times that in the same month of the previous year (Nikkei, 23 May 2009).

In response to this, the Cabinet quickly established CPMFR in January 2009. The remit of the council was to devise emergency measures including voluntary repatriation of unemployed migrants (Council for the Promotion of Measures for Foreign Residents, 2009). In the beginning, the council limited itself to asking sending countries, domestic employers and commercial carriers to facilitate the process. This was followed by an announcement by MHLW to launch a publicly-funded repatriation scheme which was claimed to be responding to the 'heartfelt need for repatriation' (*setsujitsu na kikoku ni-zu*) amongst unemployed foreigners (Ministry of Health, Labour and Welfare, 2009). The scheme, which did accompany alternative measures to support reemployment for those who wished to remain in Japan, paid 300,000 yen to the unemployed, 200,000 yen to every family member of the unemployed and a set lump sum in place of the remainder of unemployment insurance.²² In return for the compensation, it barred the re-entry of scheme takers under the same visa category 'for a while' (Ministry of Health, Labour and Welfare, n.d.e).

²² These roughly equal 2000 British pounds and 1300 British pounds respectively using today's exchange rate.

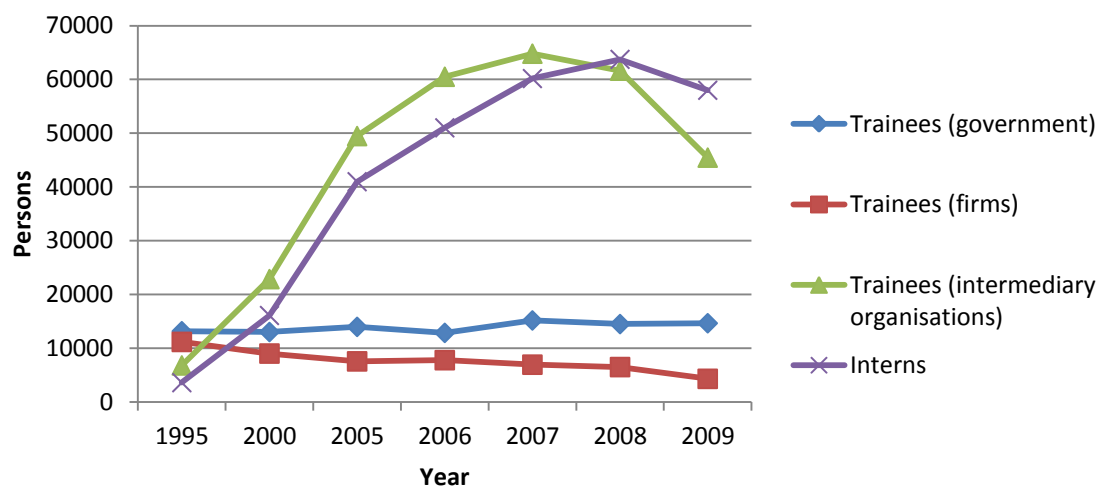
DPJ parliamentarian Nakagawa Masaharu, who would later become a minister overseeing immigrant integration after his party came into power, was the first to question the government on the ambiguous wording. He argued that the indefinite barring period was inhumane (Lower House Budget Administration Monitoring Council, 20 April 2009). The repercussion of this public relations blunder could not be contained within the national boundary. Brazilian and Peruvian governments and NGOs also protested (Sharpe, 2010), and international media was not silent on the issue either. Notably, the New York Times' article entitled 'Japan pays foreigners to go home,' complete with photographs of a distressed woman, called *nikkeijin* Japan's guest workers and reported Kawasaki Jirō, the head of LDP's taskforce which initially conceived the scheme, saying 'I do not think that Japan should ever become a multiethnic society' (New York Times, 2009).

Prime Minister Asō Tarō instructed his Cabinet to clear the 'misunderstanding' as a matter of urgency, and Cabinet Secretary Kawamura Takeo explained to the Diet that the barring period would last for approximately three years (Lower House Budget Council, 11 May 2009). Health, Labour and Welfare Minister Masuzoe Yōichi even added that Spain had adopted a similar scheme but that Japan may re-admit scheme takers earlier than the specified period depending on the speed of economic recovery (Lower House Budget Council). In the end, the government initiative, which had cost 7.3 billion yen (personal communication, 21 September 2012) and lasted from 1 April 2009 to 31 March 2010, repatriated 21,675 *nikkeijin*, 92% of them being Brazilians (Ministry of Health, Labour and Welfare, n.d.d). As of September 2012, the re-entry bar had not been lifted since the figure presented earlier in the Diet was merely indicative according to a bureaucrat I interviewed from MHLW (personal communication, 21 September 2012).

Technical trainees and interns. Just as the *nikkeijin* population grew through the 1990s to the mid-2000s, so did the number of trainees and interns. The take-up of the programme increased generally, especially between 2002 and 2008 when Japan was experiencing a cyclical upturn (see Figure 10). What is most interesting here, however, is the

type of hosting organisations. There are three channels through which trainees are accepted. The first type is fully funded and administered by government agencies and, thus, does not present an incentive to abuse the programme to procure cheap labour. In the second type, private firms are the hosting organisation and can only accept trainees who are present or prospective employees of foreign joint ventures, local affiliates or business partners (Mori, 1997, p. 119). The third type was established by the aforementioned bylaw in 1993 when small- and medium-sized enterprises were allowed to accept trainees through intermediary organisations.

Figure 10: Number of New Trainees and Interns

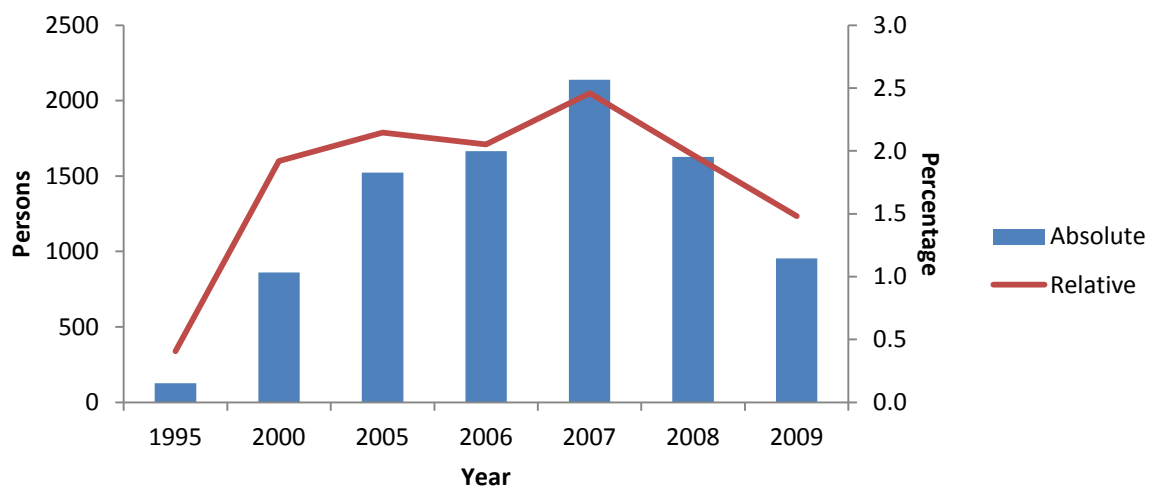


Source: Shiho, 2012

The admission of trainees through the third channel and the hosting of interns expanded rapidly whereas the admission of trainees through the first and second channels remained stagnant. Furthermore, the number of trainees accepted through the third channel and, though to a lesser extent, that of interns were noticeably affected by the financial crisis in 2008. These observations suggest that the programme was being used by small- and medium-sized firms to procure cheap manual labour from abroad despite the government's insistence that the objective of the programme was to contribute to international development.

The misuse of the programme resulted by design. I have already shown that the introduction of the third hosting channel was largely driven by a labour market concern towards the end of the 1980s. The egregious exploitation of trainees, on the other hand, was an unintended consequence for policy makers. In particular, it was often pointed out that some trainees were absconding from the programme and becoming illegal migrants. Figure 11 below presents absolute numbers of missing trainees as well as their size relative to the entire population of trainees. The percentage of missing trainees was less than 0.5% in 1995 whereas the figure consistently exceeded 2% between 2005 and 2008.²³ The number of organisations found to be violating the programme rules, such as not providing the designated hours of vocational training, also grew during the period (see Table 2).

Figure 11: Number of Missing Trainees



Source: Shiho, 2012²⁴

Table 2: Number of Offending Organisations

Year	2005	2006	2007	2008	2009	2010
Number	180	229	449	452	360	163

Source: Shiho, 2012, p. 43

²³ It is possible that the number was above 2% earlier in the 2000s, but I cannot confirm this due to limited data used in Shiho (2012).

²⁴ Relative figures are my own calculation based on the number provided by Shiho (2012).

Whether the numbers of missing trainees and offending organisations are serious or negligible is a matter of political judgment. However, the development did not go unnoticed by MOJ. In the Second Basic Plan for Immigration Control published in 2000, the ministry explained away the undesirable policy outcome by stating that the aim and content of the trainee programme were being misunderstood by trainees, employers and foreign sending organisations alike (Ministry of Justice, 2000). Moreover, the ministry acknowledged that the misunderstanding had led to incidents in which some trainees suffered from mental health problems whilst others absconded from the programme. However, the plan merely promised to reinforce guidance and supervision of participating firms. The assessment presented in the *Third Basic Plan for Immigration Control* published five years later, on the other hand, was more alarming. Whilst the ministry continued highlighting the problem, the latter was discussed in a slightly different light (Ministry of Justice, 2005). In the plan, the ministry stated that the programme required a comprehensive review and showed the ministry's commitment to protecting the rights of interns.

The tone of the *Third Basic Plan for Immigration Control* reflected what had become a widely-shared concern by then. In the same year the plan was published, CPRR called for legal reform of the programme (Council for the Promotion of Regulatory Reform, 2005a) and subsequently ordered MOJ to submit an ICRRRA amendment bill to the Diet by 2009 to this effect (Council for the Promotion of Regulatory Reform, 2006b). To make things worse for MOJ, the matter was no longer a domestic issue only. In 2007, the United States placed Japan in Tier 2 of the *Trafficking in Persons Report* citing, *inter alia*, 'the possible forced labor conditions' of the trainee programme (US Department of State, 2007, p. 125). The scale runs from Tier 1 for governments complying with the minimum standards, Tier 2 for governments making significant efforts to be compliant and to Tier 3 for governments not making

significant efforts to be compliant. To Japan's embarrassment, it was the only long-standing liberal democracy to be placed in Tier 2.²⁵

The slew of criticisms prompted relevant organisations to take action quickly. To start with, MOJ, MHLW,²⁶ METI and JITCO strengthened information-sharing so that MOJ would not inadvertently allow firms which had been found to be in violation of programme rules by other authorities to accept new trainees (Nikkei, 20 June 2006). In addition, MOJ issued new operational guidance which defined 'impermissible practice' more clearly by including employers' retention of trainees' passports and non-payment of trainee allowances (Nikkei, 26 December 2007). These measures, however, were only immediate and operational in nature and did not amount to a legal overhaul that CPRR had requested.

There were three main issues that policy makers had to address: legal protection of trainees, monitoring of hosting firms and possible introduction of an advanced technical-intern training programme. The third idea of introducing an add-on programme emerged in the first half of the 2000s as a way to re-admit internship graduates for an additional two-year period so that they could acquire higher skills, including managerial skills, after spending some time in the home country. This was also proposed by Keidanren to LDP's special committee on foreign workers (Nikkei, 3 October 2007).²⁷ In fact, the organisation even suggested that those finishing the add-on programme should be issued with the skilled labour visa to work in Japan as regular workers. LDP's special committee headed by Kimura Yoshio was reported to be enthusiastic about expanding unskilled migration on the condition of non-settlement. However, it faced internal opposition from fellow party members who raised concerns over crime control as well as the difficulty of preventing settlement by pointing at examples from Germany and France (Nikkei, 13 June 2006; Nikkei, 3 August 2006).

²⁵ See Gurowitz (1999) for how international legitimacy and approval has been politically important for the Japanese government.

²⁶ MOL and the Ministry of Welfare merged and became MHLW in the 2001 administrative reform.

²⁷ Special committees are established on a need-basis in order to deliberate *ad hoc* issues which tend to be cross-ministerial.

Against this background, MHLW and METI put forward separate proposals which reflected their differing bureaucratic interests. Concern over the protection of trainees and interns dominated the MHLW plan (Ministry of Health, Labour and Welfare, 2007). In order to prevent exploitation by employers, it was suggested that relevant labour laws should be applied not only to interns but also to trainees. This would put an obligation on employers to remunerate trainees according to a minimum wage regulation. It also suggested that the suspension period for offending firms to be extended from three years to five years and intermediary organisations to be responsible for the supervision of member firms. Finally, MHLW took a cautious stance on the add-on programme specifying that firms accepting trainees through intermediary organisations should be excluded from this given their past record of rule violation.

On the other hand, METI's proposal reflected industry interests (Ministry of Economy, Trade and Industry, 2007). The measures suggested to monitor hosting firms were not dissimilar to those of MHLW. However, METI wanted to keep the existing scope of legal coverage, meaning labour laws would continue to apply to interns only, and proposed to allow all types of hosting organisations, including small- and medium-sized firms accepting trainees through intermediary organisations, to participate in the new add-on scheme. Moreover, it even advised that issuance of work visas to those finishing the advanced scheme should be considered in the future. METI's proposal closely mirrored a recommendation put forward by Keidanren in the same year (Keidanren, 18 September 2007).

The resulting bill was submitted to the Diet in 2009 as part of wider immigration reform. Trainees would now be covered under relevant labour laws as had been suggested by MHLW. This strengthened the rights protection of trainees and, at the same time, made it relatively costly for firms to accept them since they would need to pay a minimum wage going forward. This was exactly the result METI and business wanted to avoid. The bill also proposed to introduce a new visa category called technical internship in order to stabilise the legal status of interns who hitherto had been issued with a catch-all, discretionary visa for

‘special activities’ (*tokutei katsudō*). Finally, introduction of the advanced technical-intern training programme did not make it into the final bill at all, thus foreclosing the possibility of issuing work visas to advanced internship graduates in the future.

According to an MOJ bureaucrat, the ministry reasoned that rectifying the existing problems in regards to rights protection and rule enforcement should be prioritised over expanding admission channels (personal communication, 27 September 2012). In the end, LDP, its coalition partner Clean Government Party (CGP) and their opposition DPJ jointly revised the bill in order to clarify the supervisory responsibility of intermediary organisations vis-à-vis hosting firms (Lower House Main Session, 19 June 2009). Upon the adoption of the revised bill, the Diet voted for a supplementary resolution which pointed out that the amendment was only a temporary solution and that the programme required a fundamental review once the law was enacted. This shows that most parliamentary members concurred with the Solidarity Network with Migrants Japan, which was invited to express its view as a representative NGO working on issues related to foreign workers, that piecemeal changes merely evaded fundamental discussions on the future direction of Japan’s immigration policy (Lower House Legal Council, 8 May 2009).

Explaining Layering as the Dominant Form of Incremental Change

When economic migration became a salient phenomenon, so did unauthorised employment of foreign workers. In the 1970s and the 1980s, changing conditions external to the institutional regime of immigration policy made its rules prohibiting unskilled migration difficult to enforce by inviting an ever increasing number of foreign illegal workers. This new traction further intensified when the strong labour demand emerged during the second period of post-war economic boom in the latter half of the 1980s.

Alongside other foreign workers, *nikkeijin* also arrived, and many worked illegally in the native country of their forbearers. Despite their unauthorised immigration status, *nikkeijin* were given preferential treatment by MOJ which allowed them to obtain visas to

work legally in the country. These were the first instances of layering in which the existing rules on visa issuance were amended to accommodate the new situation. Concurrently, trainees, for whom the trainee visa had been established in the early 1980s, were being used as a cheap supply of manual workers. The growing gap between the intention of the rule maker and the behaviour of rule takers eventually led to a debate on whether to reform ICRRRA. In the end, the 1990 amendment of ICRRRA preserved the institutional continuity of immigration policy at least in two ways.

First, the fundamental policy principle of not admitting unskilled labour was maintained despite the labour market pressure to abandon this. MOJ, under the jurisdiction of which ICRRRA resides, exhibited a preference for the status-quo. The preference coincided with that of MOL whilst other influential actors, namely, MITI, LDP and Keidanren, did not take a clear stance given the industry divide on the issue. MOFA could only acquiesce to the anti-reform camp given the growing salience of illegal migration. As a result, the government reached an inter-ministerial consensus in ICPRFW to base the future admission policy on the same policy principle. In short, the status-quo camp prevailed.

Second, institutional continuity was preserved in terms of who legitimately should control the rules. Once ICPRFW formally made the decision to continue barring unskilled migration, MOJ and MOL, both of which had opposed immigration reform, vociferously fought over who should be in charge of the mechanism to prevent illegal employment in the future. MOJ had bureaucratic ownership of the policy issue whilst MOL encountered unexpected opposition from societal actors when it proposed to introduce a new employment permit system. In the end, MOJ was able to circumscribe the management of illegal employment within the bounds of immigration admission policy and outside those of labour market policy. The resulting bill to amend ICRRRA, thus, introduced punitive measures against employers and job brokers. The episode further consolidated MOJ's political position.

MOJ continued to remain the legitimate custodian of immigration admission rules. However, limits of political power were not unknown even to this formidable bureaucratic

actor. To start with, the ministry had set a precedent by operationally facilitating the employment of illegal *nikkeijin*. Given this fact, it is unsurprising that some LDP politicians who reflected business interests were able to add minor revisions to the rules pertaining to the issuance of the newly-introduced long-term resident visa through the ministry's circulation of a gazette in 1990. The incremental changes made in the 1980s opened up a path to the establishment of a *de jure* migration channel for *nikkeijin* just before the ICRR amendment came into effect in 1990.

Another side-door mechanism for admitting unskilled workers was the expansion of the technical trainee programme. This was first advocated by MOFA and MOL, two influential ministries in the policy area. Therefore, MOJ faced a bureaucratic threat that was more coherent and concerted than the one it faced in the earlier immigration reform debate. Under the circumstances, the best strategy for MOJ was to co-opt its opponents by appropriating their idea to establish a regulatory organ. The decision to create JITCO was the ministry's way of maintaining dominance by not only positioning itself as the agenda-setter of immigration admission policy but also placing the organisation under joint ministerial control.

This instance of institutional layering, whereby new rules of supervisory responsibility were grafted onto existing rules of admission criteria, led the way to further addition of rules. Because the jointly-managed para-public organisation was expected to maintain effective regulatory control, MOJ could no longer use the programme's operational difficulty as a legitimate excuse for deterring the programme's expansion. The ministry's relative loss of policy influence manifested itself when ICPRFW announced to expand the admission of technical trainees. MOJ issued the bylaw which reflected business-backing MITI's request to allow small- and medium-sized enterprises to participate in the programme.

The general direction of the programme's expansion did not stop there. MOJ also had to accept the proposal to introduce TITP initially put forward by MOL and subsequently endorsed by the Cabinet. However, this re-ignited the bureaucratic rivalry between MOJ and MOL which now fought over the control of the skill accreditation examination. Arguably, both

ministries lost or won the battle, depending on how one sees it, for the jointly-managed, para-public organisation became the designated administrator of the exam. At the same time, the earlier decision to establish JITCO resulted in a relative loss of control for MOJ.

The series of new rules introduced in the early 1990s resulted in unexpected policy outcomes. In comparison with the expansion of the technical trainee programme, the systematic admission of *nikkeijin* was not a contentious issue. The prevalence of co-ethnic thinking explains the smoothness with which the new admission rules were introduced. However, the policy makers' assumption that *nikkeijin* would not settle or that they would be easily assimilable proved wrong. Concurrently, the technical trainee programme became widely used and abused by small- and medium-sized enterprises.

These unforeseen problems were already acknowledged by MOJ in the *Second Basic Plan for Immigration Control* in 2000. However, it was not until the failings of existing rules became widely acknowledged that a new round of institutional layering was triggered. The failings of *nikkeijin* policy were conspicuous given the series of highly-publicised incidents which were perceived to be affecting the country's public safety. CPRR's instruction to tighten *nikkeijin* admission and to reform the technical trainee programme took a top-down approach to immigration admission policy which had generally been the preserve of MOJ.

At first glance, what CPRR asked for coincided with MOJ's preference to deter the admission and settlement of unskilled workers. In that sense, the request was more of a convenient intervention than an unwanted intrusion from the perspective of MOJ. At the same time, by linking fulfilment of citizenship duties, such as paying taxes, with visa renewal, the ministry was facilitating *nikkeijin*'s integration. What started back in the 1980s as a minor revision of operational immigration admission rules opened up a new channel for *nikkeijin*'s large-scale immigration which, in turn, led to them being moulded into acceptable members of Japanese society. MOL may have done MOJ a favour by repatriating surplus *nikkeijin* after the Lehman shock. However, the controversy it caused only proved that *nikkeijin* could no longer be treated as temporary migrant workers who could be gotten rid of on a whim.

As for the trainee programme, MOL defeated METI by bringing trainees under the coverage of labour laws. This technically meant that trainees were now admitted as *bona fide* workers. After Japan was singled out as the only nation not complying with the minimum standards of human trafficking prevention amongst its international peers, MOJ had no choice but to allow for the greater protection of trainees' rights even if that meant admitting trainees to be migrant workers. Once again, earlier incremental changes produced an unexpected outcome to which the ministry had to react with another incremental change which belied the institutional continuity of Japanese immigration policy. In less than two decades since the expansion of the trainee programme, *de facto* unskilled workers came to be admitted as *de jure* unskilled workers.

In the 1980s, the rise of two external conditions, namely, the second post-war economic boom and the increased interconnectedness of the world, precipitated the incremental changes in immigration admission policy towards unskilled workers. As a result, Japan found itself in a situation where the type of migrant workers who officially was not supposed to exist indeed existed *en masse*. In contrast, the admission of skilled workers had never been barred in post-war Japan. This relatively understudied policy area in the literature on Japanese immigration management is the topic I examine in the next chapter.

Chapter 3: Immigration Admission Policy towards Skilled Migrants

As mentioned earlier Tsuda (2006) writes that Japan has one of the strictest immigration policies amongst developed countries. He is not alone in making this assessment. Cerna (2010), for example, compares admission policies towards highly-skilled migrants in Japan and 19 other industrialised democracies in North America, Western Europe and Oceania. In the index she constructs, Japan is ranked fifth after Sweden, Austria, Switzerland and Spain in terms of restrictiveness.¹ Similarly, Mahroum (2001) examines skilled migration policies in Australia, Canada, US, Japan, Korea, UK and France and comments that Japan and Korea are the strictest countries.²

On the contrary, that Japan's admission policy is stringent even towards skilled migrants, I would argue, is a widespread misconception which exists in immigration scholarship. Japan does not employ labour market tests or quotas for issuing work visas and allows spouses of migrants to work up to a certain number of hours after obtaining permission from the Immigration Bureau. Work visas are renewable indefinitely as long as the applicant has a job contract for undertaking occupational activities related to her visa category. Naturalisation requires only five-year prior residence in Japan, and already being a permanent resident at the time of naturalisation is not necessary unlike in many other countries. As Oishi points out, the Japanese policy bans the admission of unskilled workers and can rightly be considered strict in this particular sense, but the same cannot be said in regards to skilled workers (Oishi, 2012).

The present chapter examines the development of immigration admission policy towards skilled workers. Before moving onto the main topic of the chapter, however, the first section reviews student migration policy from the early 1980s when the plan to admit

¹ Cerna constructs the index by examining admission mechanisms, divided into sub categories of numerical caps, labour market tests, labour protection, work permit rights, employer portability, spouse's work rights and permanent residency rights. Each sub category employs an ordinal scale ranging from 0 (least strict) to 4 (strictest) and is equally weighted. The aggregate scores for all countries are subsequently indexed. Therefore, it is impossible to know the actual score she has assigned to Japan by looking at the paper.

² Mahroum does not explain how this conclusion has been reached.

100,000 international students was introduced and to the mid-2000s when their admission began to be subsumed under skilled migration policy. This is followed by a section tracing the expansion of the policy starting with the amendment of ICRRA in 1990. The third section examines how two changing circumstances external to the policy area of immigration admission prompted policy actors to make revisions to existing rules and to add new rules. More specifically, I discuss the admission policies for highly-skilled migrants and care workers which developed in response to the intensification of the global war for talent and a foreign trade strategy focused on bilateralism. The final section summarises the causal mechanism leading to the institutional layering of admission rules for international students and skilled migrants.

The Beginning of Student Migration

Internationalisation (*kokusaika*) strongly coloured Japanese politics in the early 1980s. The term was popularised with the establishment of the Nakasone Cabinet which attempted to boost Japan's international credential after having rapidly achieved the status of a major economic power (Burgess, 2004; Chiavacci, 2012; Gurowitz, 1999). Although it is difficult to pin down the exact meaning of the term with all its disparate usages and nuances, internationalisation was certainly the zeitgeist in the name of which various government initiatives were launched. As I have already mentioned briefly in Chapter 2, the 100,000 International Students Plan was one of these initiatives.

The original idea for the plan was conceived during Prime Minister Nakasone Yasuhiro's trip to Southeast Asia in 1983. There he had an opportunity to speak to former exchange students to Japan and was surprised to hear that they would not consider sending their children to Japanese universities (Chiavacci, 2012). After returning from the trip, he established a commission for international students which recommended launching a plan to expand the size of student migration.

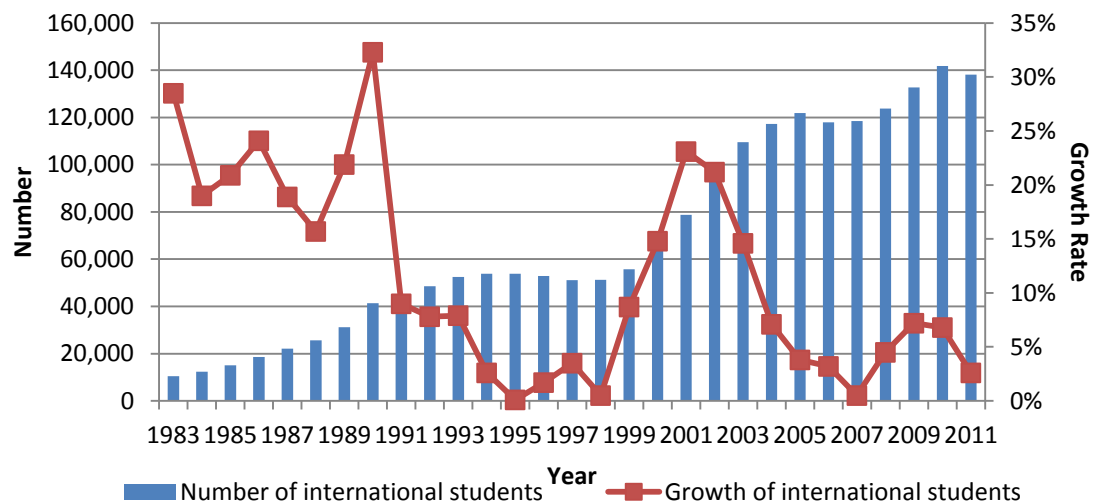
At the time of its inception, the number of international students in Japan was around 10,000. Looking at equivalent figures from the United States, United Kingdom, Germany and France, the government reasoned that Japan should be able to catch up numerically at least with France which at the time had approximately 100,000 students (Suhara, 2010). Using the rhetoric of internationalisation, the government exalted international students as crucial diplomatic bridges between Japan and the rest of the world (Ministry of Education, Culture, Sports, Science and Technology, 2002). It was also argued that educating international students could contribute to the development of human resources in developing countries.

The eponymous target was to be achieved by the beginning of the 21st century. To this end, MOJ relaxed visa procedures, especially for non-university Japanese language students, and allowed all international students to work up to 20 hours per week. Since then, the sanction of conditional employment has been justified by the Immigration Bureau on the grounds of the economic disparity which exists between Japan and surrounding Asian countries where most international students in Japan come from (Sakamoto, 2010, p. 63). This lax attitude towards student employment as well as ample availability of jobs during the 1980s made Japan an attractive destination for many prospective students. The launch of the plan roughly coincided with other regional factors, such as liberalisation of overseas travel in South Korea, Taiwan and China (Liu-Farrer, 2011; Suhara, 2010) and Malaysia's Look East Policy which strengthened the country's economic ties with Japan (Suhara).

As Figure 12 shows, the number of international students grew at a two-digit rate for the rest of the 1980s. There were 10,428 international students when the plan was launched in 1983, and the figure increased to 41,347 by 1990. However, the period of rapid increase was punctuated by policy-induced dips in 1987 and 1988. Diverging from the original purpose of the plan, easy access to the student visa had precipitated an inflow of disguised economic migrants mainly from China. As a colloquial term 'coin raking' (*pa fen*) used in Shanghai around the time suggests, there was a common perception that migration to Japan presented an opportunity to make quick cash (Liu-Farrer, 2009, p. 187). A substantial

number of fake international students also came from Fujian where there had been a long tradition of emigration (Liu-Farrer). The abuse of student migration was further strengthened by the proliferation of profit-driven Japanese language schools issuing entrance certificates and parasitic brokers who provided guarantors required for visa applications (Liu-Farrer; Suhara, 2010).

Figure 12: Number and Growth Rate of International Students



Source: Japan Student Services Organisation, 2012

The growing magnitude of student migration prompted MOJ to restrict admission. In 1988, the Immigration Bureau circulated a legal notice (Liu-Farrer, 2011, pp. 27-28). This resulted in the infamous Shanghai incident during which people who had their visa application rejected despite having already paid enrolment fees to Japanese language schools surrounded the Japanese consulate in the city (Sakamoto, 2010). MOJ also issued an ordinance on 24 May 1990 requiring new student visa applicants to prove their financial viability covering the duration of their study and obligating language schools to be accredited by the Association for the Promotion of Japanese Language Education established for this purpose in the previous year (Sakamoto). Access to part-time employment became restricted as students now had to obtain special permission from the Immigration Bureau and could

only work up to four hours a day (Ministry of Education, Science and Culture, 1990).³ The ordinance explicitly prohibited international students' employment in the entertainment industry. As a result of these measures, the annual growth rate of international students plummeted from 32% in 1990 to 9% in 1991. It continued declining thereafter until reaching 0.1% in 1995.

In the latter half of the 1990s, the government attempted to remove what Suhara calls the 'wall of three major guarantor systems blocking student migration to Japan' (*nihon ryūgaku o habamu 3 dai hoshōseido no kabe*) (2010, p. 10). In 1996, MOJ stopped requiring student visa applicants to name a guarantor residing in Japan. In the following year, the Ministry of Education, Science and Culture (MESC) urged universities to stop asking for a financial guarantor as part of the registration process.⁴ Finally, the international students housing guarantee system was introduced in 1999. Universities participating in this scheme could act as a guarantor for students signing a lease agreement with private landlords.

Looking at the stock figures above, however, these measures appear to have made a limited difference to the size of the international student population. In fact, Suhara (2010) points out that the last two measures in particular only achieved partial success. Not all universities followed the non-abiding instruction issued by MESC, and landlords simply became reluctant to take on tenants registered at universities participating in the housing guarantor system.

Instead, the second phase of rapid increase was induced by measures which were hurriedly introduced as the deadline to meet the target approached. In 1999, MOFA foreshadowed the change when it displayed anxiety in a report commissioned by Prime Minister Obuchi Keizō on Asia's economic recovery after the 1997 currency crisis (Ministry of Foreign Affairs, 1999). The report underlined the importance of student migration for

³ I have not been able to locate the original ordinance as it has been updated by MOJ since then. However, the changes can be confirmed in a circular published by the Ministry of Education, Science and Culture in 1990, and this is the source which I cite here.

⁴ MESC merged with the Science and Technology Agency to form MEXT in the 2001 administrative reform.

strengthening ties between Japan and the rest of Asia and regretted that merely 50% of the plan's target had been achieved to date.

Despite the previous preoccupation with controlling bogus student migration, MOJ, as the sole custodian of immigration admission laws, seemed to be willing to do its share in order to meet the target. In the Second Basic Plan for Immigration Control published in 2000, MOJ treated the abuse of student migration as a problem of the past and promised to facilitate the admission of international students 'ever so actively' because they 'are interested in our country [i.e., Japan] and are full of enthusiasm for education' (Ministry of Justice, 2000, Section III.1(3)). The words of the ministry were duly matched by the actions of the Immigration Bureau. The condition on student employment was relaxed in 1999 as the permitted working hours changed from four hours a day to 29 hours per week during term time and eight hours a day during vacation time (Sakamoto, 2010). This was followed by simplification of visa procedures in January 2000. Consequently, the annual growth rate of the international student population bounced back from 0.5% in 1998 to 23.1% in 2001. The target was achieved belatedly in 2002.

The celebratory moment quickly passed when a shocking incident involving international students gathered national attention. In June 2003, four dead bodies were found floating in the Hakata bay. Later it transpired that the corpses belonged to a married couple and their two children who had been murdered by three Chinese students (Asahi, 4 October 2003). After two of the suspects were detained in their home country to which they had fled presumably to evade arrests in Japan, the media reported that the suspects burgled the victims' house after failing to make tuition payments to their language schools. Five months after the incident, MOJ tightened immigration procedures by checking for the applicant's motivation for obtaining the visa and financial viability more thoroughly than before (Sakamoto, 2010).

The murder case accelerated the second phase of contraction during which the growth rate of the international student population continued to decrease until 2007. As I

will explain in greater detail in Chapter 4, the incident coincided with more general politicisation of crimes committed by foreigners. As MOJ tightened checks on student visa applications, Governor Matsuzawa Shigefumi of Kanagawa prefecture, for example, commented in a speech in Kawasaki city, ironically one of the most progressive cities with a long history of pro-migrant support, that '[people] enter from China and elsewhere on the language student visa, but they are all petty criminals' (Asahi, 3 November 2003). His comment reflected rather than incited the new xenophobia which had already become strongly visible in Japanese society. The association of criminality and international students, or Chinese international students in particular I might add, was routinely reinforced by sensationalistic media reports on their legal infractions (Suhara, 2010).

By the end of the year, the government's suspicious attitude towards student migration had become blatantly obvious. In a report submitted to MEXT on the future direction of student migration policy, the ministry's advisory council stated that the quality of the rapidly growing international student population was questionable (Ministry of Education, Culture, Sports, Science and Technology, 2003). As Suhara (2010) points out, the report, whilst acknowledging the importance of student migration, refrained from making numerically expansionary recommendations, and its pessimistic undertone implicitly linked foreign crime and international students.

The *Third Basic Plan for Immigration Control* published in 2005 criminalised international students more explicitly than the council's report did (Ministry of Justice, 2005). In the plan, MOJ explained that the meeting of the target set by the 100,000 International Students Plan came hand in hand with the spread of bogus student migration, illegal employment and foreign crime. Furthermore, the plan echoed the point made by the report submitted to MEXT that the focus should be on improving the quality, as opposed to increasing the quantity, of international students and advocated stricter immigration procedures and university entrance assessments.

Arguably international students have gone through the most dramatic and extreme discursive transformation of all migrant groups in contemporary Japan. As Suhara (2010) aptly summarises, they have been eclectically described as anything from symbols of internationalisation in the early 1980s, hard-working and pity-deserving students at the mercy of the strong yen in the late 1980s, bogus student migrants in the early 1990s to would-be criminals for most of the 2000s. What creates such volatility in Japan's student migration policy? A bureaucrat from MOJ provided me with a stylised account of the policy-making process which he called 'movements of antinomy' (*niritsuhaihan shita ugoki*) (personal communication, 27 September 2012). According to him, officers working in the Immigration Bureau are the first to notice a systematic abuse of student migration when dubious applications start arriving *en masse*. However, he regretted that their whistle blowing is usually dismissed in 'other quarters' (*hoka no tokoro*). By using this ambiguous expression, the bureaucrat was clearly referring to other ministries and politicians pushing to meet the admission target. In the meantime, the abuse of the system continues until highly-publicised incidents and the consonant disapprobation from the public initiate a movement to the opposite, restrictive direction.

Whether MOJ is the righteous custodian of immigration admission as the bureaucrat suggested or a complicit bystander in time of media quietude cannot be determined from his account alone. However, it is clear that the ebb and flow of student migration mirrored the on-going struggles between those anxious to meet the admission target under the rubric of internationalisation and MOJ attempting to prevent illegal employment and other destabilisation of public order. As the dominant policy actor, MOJ controls rules on the admission of international students. However, the fact that MOFA was able to induce revisions of immigration rules in order to meet the admission target and that MOJ conceded to MOFA's wishes demonstrates MOJ's vulnerability to challenges even in the policy area of immigration admission. Within this configuration of power, MOJ was able to prevail

decisively over its opponent only when the ill effects of student migration gained public visibility.

The Expansion of Skilled Migration

Prior to the amendment of the ICRRA in 1990, skilled workers were admitted only when their labour could not be replaced by that of native workers (Akashi, 2010, p. 151). Work visa categories were limited in number, and applicants whose occupation did not readily fit into the pre-existing classification were given the discretionary visa, the issuance of which required special permission from the Justice Minister. The *1986 White Paper on the National Lifestyle* was the first instance in which the government foreshadowed the abandoning of the policy principle of skill complementarity between foreign and native workers. The document pointed out that ‘internationalisation in the form of people [as opposed to capital], such as an inflow of foreigners, is yet to be advanced’ (as cited in Nikkei, 28 October 1986). MOL’s proposal to introduce a new employment permit system in 1987 also had expanded admission in mind. The system and its greater oversight capacity were thought to allow for relaxation of visa conditions for skilled migrants (Nikkei, 12 August 1987).

The burgeoning interest in the expansion of skilled migration turned into concrete policy decisions in 1988. In April that year, the Prime Minister’s advisory committee published a report entitled *Internationalisation of Citizens’ Lives* which recommended the complementarity principle to be abandoned in order to increase the number of skilled workers (Nikkei, 2 April 1988). MOJ’s first draft of the ICRRA amendment bill affirmed the above policy position and proposed to double the number of work visa categories (Nikkei, 16 April 1988). Following this, the Cabinet approved the *Economic Management Five-Year Plan* which promised to expand the admission of skilled and professional foreigners ‘as much as possible’ (as cited in Akashi, 2010, p. 150). The message was also reiterated by MOL in the *Sixth Employment Management Basic Plan* (Ministry of Labour, 1988). A government-wide consensus on skilled migration was thus formed.

When Justice Minister Gotō Masao introduced the ICRRRA amendment bill to the Diet in November 1989, he explained that the narrow range of work visa categories was no longer able to deal with the growing number and diversifying occupational activities of foreign skilled workers (Lower House Legal Council, 10 November 1989). Furthermore, the minister admitted that having to issue the discretionary visa to migrant workers, whom the pre-existing work visa categories could not accommodate, created administrative uncertainty for visa applicants and their employers because objective and transparent standards for assessment did not exist (Lower House Legal Council).

At the time of the deliberation, there were six pre-existing work visas for undertaking activities related to teaching/education, press service, science/culture, technical matters, business and other skilled labour.⁵ The amendment proposed to double the number of visa categories to include professorship, journalism, legal/accounting service, research, engineering, arts, investing/business management, medical service, education, humanities/international service, intra-company transfer and skilled labour. Furthermore, the bill made MOJ publicly clarify visa application criteria and introduce the certificate of eligibility. The latter could be obtained by the employer and subsequently submitted to an overseas consulate by the employee as part of her visa application. The measure was intended to simplify and expedite relevant administrative processes.

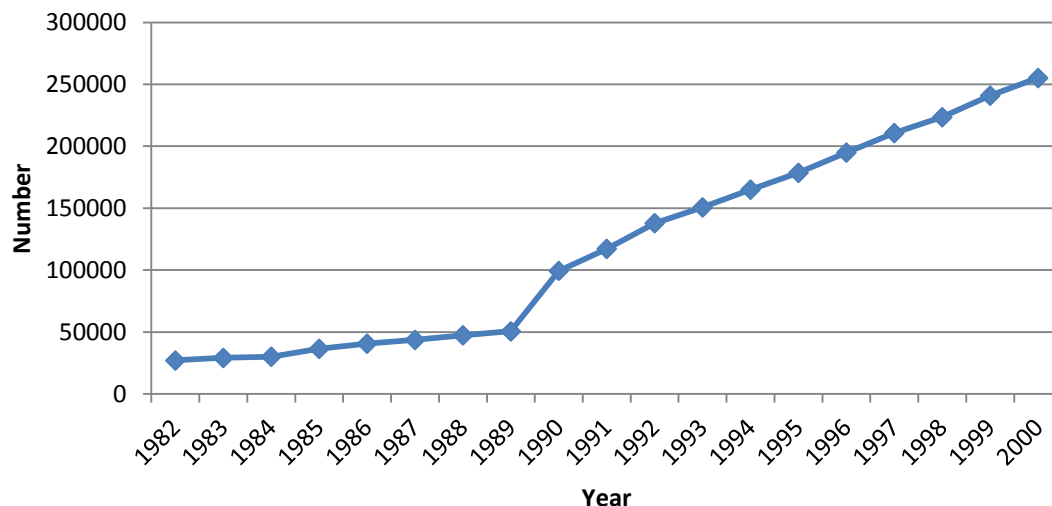
As Fuess points out, the revision of visa categories and the application process had an immediate and intended effect (2003, p. 250). The number of migrants entering on skilled and professional visas nearly doubled from 50,646 to 99,393 in just one year between 1989 and 1990 and continued to increase even after the onset of the recession (see Figure 13).⁶ However, the administrative facilitation of admitting skilled and professional migrants should not be mistaken as the beginning of an active recruitment policy. In regards to the 1990 amendment, Fuess argues that the country ‘modified its immigration policy’ due to

⁵ See Table 1 in Fuess (2003, p. 246) for a useful summary of visa categories prior to the amendment.

⁶ Fuess (2003) aggregates the numbers of issued work visas excluding the entertainment visa.

‘concerns about shortages of skilled labor’ (p. 244). Fuess also links the subsequent liberalisation of skilled migration policy to skill shortages emanating from the worsening quality of Japanese higher education and the flourishing of the IT sector, both of which became salient in the 1990s (2003, p. 245).

Figure 13: Number of Skilled and Professional Entrants



Source: Fuess, 2003, p. 249

Indeed, Japan experienced acute labour shortages towards the end the 1980s. Though not to the same extent, unskilled workers as well as skilled workers were in short supply. For instance, surveys conducted by MOL in 1989 and 1990 showed that two to three million skilled workers were needed mainly in small- and medium-sized firms (as cited in Akashi, 2010, p. 145). The incremental revision of visa categories, therefore, could be seen as a direct response to the changing need of Japanese employers. However, policy documents and relevant Diet debates from the late 1980s do not support Fuess’s claim which squarely places the 1990 amendment of skilled migration policy in the context of labour market adjustment.

Rather, skilled and professional workers were expected to make a relatively vague qualitative contribution which was to internationalise the Japanese economy in the increasingly interconnected world by virtue of them being foreign. In other words, their occupational skills as IT engineers or researchers, to give some examples, were of lesser

importance. The only crucial factor in this respect was that they were not unskilled. I concur with Ishii and Akashi that skilled migration around 1990 was neither pronounced in the wider policy debate on immigration reform nor specific in relevant policy prescriptions (Akashi, 2010, p. 155; Ishii, 2007, p. 127). As I will show later, it was only towards the end of the 1990s that skilled migrants came to be valued for their occupational skills unrelated to cultural-linguistic attributes.

The aforementioned report published by MOFA on Asia's economic recovery was one of the many reports which were commissioned by Prime Minister Obuchi Keizō. As a leader, Obuchi was hugely unpopular with the electorate and was often criticised for his lack of concrete policy ideas by political pundits. 'Vacuum prime minister' became his nickname, which he himself endorsed, because he multiplied the number of advisory commissions to fill up his reportedly vacuous mind by absorbing ideas from non-governmental experts.

The beginning of Obuchi's tenure was characterised by his fiscally expansionary response to severe financial market problems which he had inherited from his predecessor Hashimoto Ryūtarō. After a bank and an insurance company went bankrupt in 1997, Japan experienced the first negative GDP growth since the oil shock in the 1970s. Generally speaking, immigration encounters public opposition in periods of economic downturn (Freeman, 1995). In the Japanese case, however, it was in the immediate aftermath of the financial crisis that some of the forward-looking ideas of skilled migration policy were conceived.

Once the financial crisis was sufficiently contained, Obuchi revived his pet project which was to propose a new national vision at the turn of the millennium. The Commission on Japan's Goals in the 21st Century was the Prime Minister's personal advisory body not tied to any ministerial interests and received much of his time and attention despite being one of the many commissions established during his tenure. He personally handpicked the members, who included academics, business leaders and even a movie director, and

participated in an intensive discussion camp even when his coalition partner CGP was threatening to exit the ruling alliance.

An explicit aim of the commission was to engage in national soul-searching, and, therefore, the resulting report was moral and cultural in character. The opening paragraphs of the overview chapter are worth quoting here at length.

We Japanese have not engaged in discussion and debate on national aspirations for a long time. Over time, a sense emerged that talking about the goals or image of the nation was somehow embarrassing or old-fashioned. Apathy and ennui, mistrust of politics and the bureaucracy, were prevalent. Criticism of policies emanated from the National Diet, the media, and every other quarter, but few constructive proposals were advanced, partly because the government did not disclose sufficient information to enable people to formulate such proposals. This alienated the public from national involvement and hindered serious discussion of national goals and aspirations. In presenting our thoughts on Japan's goals in the twenty-first century, we hope to break down this inertia. In this report we will discuss Japan's aspirations, expressing our hopes for the nation and our determination to do what needs to be done. Addressing head-on the issue of Japan's goals in the twenty-first century, we will propose a number of principles and policies (Prime Minister's Commission on Japan's Goals in the 21st Century, 2000, p. 1, original translation).

The report did not aim to solve specific policy problems, such as fiscal imbalance or unemployment. Instead, the key term was image of the nation (*kokkazō*) which required a philosophical process of national introspection. The endeavour qualitatively differed from the earlier internationalisation agenda which was an attempt by the Japanese government to establish a political identity for foreign consumption with the goal of gaining legitimacy in the eyes of the world community. The 21st century commission, on the other hand, worked to create a new way of national thinking which was less self-conscious and had fewer imprints of the insecurity of a sudden economic giant.

In this sense, there was certain novelty to the 21st century report for it assured the Japanese that they 'can be justly proud of' the fact that Japan is the only non-western developed country, but self-indulgence was allowed only to remind themselves to dispense with complacency in the face of demographic challenges and global competition (Prime Minister's Commission on Japan's Goals in the 21st Century, 2000, Preface). The report urged Japan to transform itself from a group-oriented to individual-oriented society fit for

continued survival. More specifically, it attempted to redefine the relationship between the state and citizens by shifting the onus of improving one's socio-economic fate to the latter. However, this did not mean that the Japanese should somehow be aping westerners. According to the commission, the country had caught up with the west since the Meiji Restoration and yet managed to retain 'some of its quintessentially Japanese qualities' (Prime Minister's Commission on Japan's Goals in the 21st Century, Preface). These were to be simultaneously preserved and 'honed into qualities possessing universality' in the globalising world (Prime Minister's Commission on Japan's Goals in the 21st Century, Preface).

It was in this context that the report presented recommendations arguably verging on absurdity, such as adoption of English as the second official language and curtailment of public school instruction from five to three days a week. In terms of immigration management, the report suggested that the government should pursue a fully-fledged immigration policy, as opposed to a narrowly-defined temporary migrant worker policy, by facilitating the permanent settlement of favourable migrants and promoting ethnic diversity. As part of this, it recommended granting permanent residence status to international students automatically upon graduation from Japanese universities.

The use of the words immigrant and immigration was uncharacteristic of the Japanese government which had framed and still frames international migration as a 'foreign worker problem.' Unsurprisingly, the recommendation, like other ones unrelated to immigration, were never adopted by the government partly due to the sudden death of the incumbent prime minister a couple of months after the publication of the report. In fact, Edström (2003), quoting an anonymous personal communication, mentions in passing that the report was subsequently buried.

Nothing surpassed the boldness of the 21st century report, but there were other policy proposals which focused on immigration issues around the time. After Obuchi was re-elected for the second term in office in the summer of 1998, he commissioned Sakaiya Taichi, then head of the Economic Planning Agency, to produce a new medium-term economic plan

to supersede the existing one which was overly optimistic and had wrongly predicted an array of economic indicators (Asahi, 14 October 1998). Sakaiya, who was known to have a policy interest in Japan's population decline, managed to include immigration as one of the discussion topics during the preparation stage (Nikkei, 22 January 1999). As a result, one working group comprised of academics, Japanese and foreign business leaders and a lawyer was tasked with examining issues related to globalisation and extensively deliberated the future of immigration policy.

The Economic Planning Agency had outsourced research on immigration policy to a private consulting firm whose input material formed the basis of the subsequent deliberation (Economic Planning Agency, 1999). The content of the material can be summarised as the following. First, it strongly asserted that the admission of professional and skilled migrants, including international graduates of Japanese universities, must be rigorously pursued in order to hasten the structural transition into a knowledge-based economy. As part of this, it was recommended that the government grant permanent residence status to these migrants and promote their social integration as incentives for immigration.

Second, the report made a careful distinction between unskilled workers and what it called 'middle layer workers,' such as those who possess a specialised qualification or work experience but are not admitted into Japan under the existing system. It was suggested that the future temporary admission of the latter group of workers should be considered and that there are ways to maintain quantitative control, such as labour market tests and quotas, in order to protect the domestic labour market.

The Economic Planning Agency, under the influence of Sakaiya, appeared as though it was advocating an expansionary immigration policy based on selective permanent settlement when it presented the research material prepared by the consulting firm to the globalisation working group.⁷ It is also important to remember that the agency was in the

⁷ During one of the interviews I conducted, an anonymous source explained to me that the firm had produced research papers advocating expansionary immigration policy and had conducted similar

pro-reform camp during the immigration debate in the late 1980s. However, the Economic Planning Agency's policy preference did not matter too much in the end for the idea of settlement-oriented migration was lost on the members. Some warned that immigration policy should not be linked to demographic decline because Japan should advance employment opportunities for women and the elderly and increase productivity before importing foreign labour. Others emphasised a point made in the input material that Japan is surrounded by countries with high emigration pressure, such as China with an enormous population and the Philippines with active emigration policies.

During the discussion, the prospect of granting permanent settlement eluded even the minds of those who supported the expanded admission of skilled and professional migrants. The idea received neither active support nor active opposition. Instead, it was more or less forgotten and ignored. However, the group members did make an astute observation which would later become the government's basic policy premise of highly-skilled migration policy. The real problem was not whether to admit skilled and professional migrants but rather how to attract them when they have no shortage of potential destination countries. In the global competition for talent, Japan was said to be disadvantaged by its language barrier, seniority-based remuneration and promotion practices and paucity of social integration measures.

Even though the original goal of the commission was to create a new economic plan, the resulting document looked more like moral-cultural guidance, some of the lessons from which were later revisited in the aforementioned 21st century report (Economic Planning Agency, 1999). To begin with, the report dropped the word plan from the title altogether and did not include growth targets because the goal of the new pseudo-plan, as the Economic Planning Agency argued, was to provoke an ideational shift in society (Yomiuri, 6 July 1999).

research for another pro-immigration central ministry. The interviewee commented that central ministries and agencies regularly use advisory councils comprised of non-governmental members and research outputs of consulting firms to legitimate their policy preferences (personal communication, 26 September 2012).

In turn, the ideational shift, according to the agency, was supposed to trigger Japan's transition into a knowledge-based society in which individuals can pursue their ambitions autonomously by having access to diverse information.

Moreover, the report discredited Japan's societal culture which was argued to have fostered uniformity and conformity at the expense of diversity and competition. The overriding message was this. In order to ensure economic growth whilst overcoming the negative ramifications of population decline, Japan's ethical principle had to shift from equality of outcome to equality of opportunity. The picture painted here bore a distinctively Rawlsian hue as it was asserted that 'income inequality between winners and losers is justified' as long as the social minimum was secured (Economic Planning Agency, 1999).

In contrast with the grand vision, specific policy prescriptions required to actualise it were missing from the document. One council member lamented that reports requiring cabinet approval could only include measures individual ministries are willing to undertake (Yomiuri, 6 July 1999). Inability to reach a cross-ministerial consensus on key issues resulted in the lack of policy substance which rendered the document inoffensive but toothless. In this vein, recommendations on immigration policy were also stale and bland.

Skilled and professional workers and international students were positioned as purveyors of diverse knowledge, and their admission was strongly advocated in order to hasten the desired socio-economic transition (Economic Planning Agency, 1999). However, the Economic Planning Agency merely made a vague promise to improve living and work arrangements for the desirable migrants so that Japanese society could become an attractive destination in their eyes. More specifically, housing access and employment support for international students were to be improved. The possibility of facilitating their permanent settlement, which the input material prepared by the consulting firm had proposed, did not even receive a passing remark. Instead, the report recommended expanding the admission number by adjusting visa criteria and conditions within the existing system of immigration management.

In comparison with the 21st century commission, the Economic Planning Agency in the end only showed a modest aspiration for it fell short of advocating a settlement-oriented migration policy and merely continued with the pre-existing policy principle to admit skilled workers on a temporary-basis. However, the agency's economic pseudo-plan did put forward a new type of policy thinking which loosely tied together skilled migration and student migration. Until then, student migration belonged to the realm of foreign development policy bearing the banner of internationalisation. In contrast, the Economic Planning Agency viewed the retention, or might I say hoarding, of international students upon graduation as a policy strategy pertaining to the domestic economy and the labour market. International students began to be seen as future skilled migrants who were expected to contribute to the economic growth not of their home countries but of Japan.

The connection was also made in MOL's *Ninth Employment Policy Basic Plan* (1999) which not only repeated the previously stated stance on skilled migration as elucidated in the *Sixth Employment Basic Plan* from 1988 but also promised to facilitate foreign graduates' job search in the section on foreign workers. Above I have already noted the enthusiasm with which MOJ endorsed student migration in the *Second Basic Plan for Immigration Control*. The idea that foreign graduates could make positive contribution to the Japanese economy meshed well with the government's overall endorsement of student migration at the time as it was anxious to meet the admission target. In the plan, MOJ promised to facilitate international students' switching of residence status from the student visa to a work visa upon graduation from Japanese universities (2000, Section III.1(3)).

Changing Conditions of Skilled Migration

Highly-skilled migrants. When Japan was gingerly starting to realise the need to admit more skilled migrants to hasten a structural transition, other advanced economies were already intensifying efforts to recruit IT workers. Towards the end of the 1990s, skill shortages in the booming information and communication technologies sector were catching

the attention of policy makers across the world (Zalatel, 2006). Japan shared the same policy challenge and, in fact, enthusiastically embraced it believing that IT-led growth held the key to the country's economic recovery from the recession of the 1990s (Akashi, 2010, p. 156).

After the unexpected death of Obuchi Keizō, Mori Yoshirō became the prime minister in April 2000. Under his leadership, the Cabinet made policy decisions in quick succession for building the domestic IT infrastructure and industry. In March 2000, the Cabinet approved the *Three-year Plan for the Promotion of Deregulation* which stated the need to relax admission criteria for IT workers (as cited in Akashi 2010, p. 155). Endorsing this, MOJ promised in the *Second Basic Plan for Immigration Control* (2000) to expand the admission of strategically-important workers, such as business managers, investors and IT engineers, who the ministry expected to strengthen Japan's position in the global economic competition.

In the same year, the IT Strategy Headquarters was established by a cabinet decision, and the IT Strategy Council comprised of academics and business leaders was set up as an advisory body. Subsequently, the council produced the *Basic IT Strategy* which proposed to admit 30,000 highly-skilled workers by 2005 in order to raise the qualitative level of human resources in Japan specifically to that in the United States (Council on IT Strategy, 2000). The proposal was the first occasion on which the Japanese government had set a numerical target for immigration admission of foreign workers, let alone for admitting foreign workers with a specific type of occupational skills.⁸

The target as well as other suggested measures for facilitating skilled migration, such as internationalisation of skill accreditation and relaxation of visa acquisition criteria, re-appeared in the *e-Japan Strategy* put forward by the successor organisation which, in turn was established by the enactment of the Basic Law on the Formation of an Advanced Information and Telecommunications Network Society in January 2001 (IT Strategic Headquarters, 2001). The series of initiatives, in effect, triggered a decade-long trend in

⁸ Oishi writes that the e-Japan Strategy II from 2003 was the first instance in which the government set a numerical target for skilled migration (2012, p. 1083), but the goal had been carried over from said Basic IT Strategy established in 2000.

which Japan's skilled migration policy increasingly targeted niche knowledge workers for preferential admission.

In retrospect, the early 2000s was a colourful period in contemporary Japanese politics. After going through a slew of short-lived cabinets, the electorate voted for someone who would become one of the most unabashedly neo-liberal and reformist prime ministers in Japan's recent history. During a relatively long and stable tenure secured by the popularity Koizumi Junichirō cultivated through his media-friendly persona, the prime minister took advantage of administrative reforms which had taken place in the late 1990s to move the venue of decision-making from the bureaucracy to the Cabinet (Uchiyama, 2010).

As part of Koizumi's effort to democratise Japanese politics, the Council of Economic and Fiscal Policy (CEFP), headed by neo-liberal economist-turned-politician Takenaka Heizō, was created in order to oversee the country's structural reform in a top-down manner. CEFP also worked with the aforementioned CPRR which introduced a new deregulatory scheme allowing local authorities to be exempted from certain regulations in order to foster competition and business innovation. Although some of the key policy ideas of skilled migration were conceived during the Obuchi years, hence prior to Koizumi's reign, these were further developed and finally put into practice under the earnest tutelage of CEFP and CPRR.

In early 2002, CEFP started deliberating basic economic strategies to be established by the end of the year. Initially, the recruitment of foreign skilled workers was discussed in tandem with boosting the level of foreign direct investment to Japan. Okuda Hiroshi, chairman of Toyota, who prepared some of the input materials with three other council members, warned that 'Japan would become an isolated and closed economy' if 'considerable focus' was not placed on these cross-border issues (Council on Economic and Fiscal Policy, 2002a, p. 8). The four council members' proposal for attracting foreign skilled workers was gradually worked out to include international standardisation of skill accreditation, relaxation of visa conditions for migrants working in the fields of IT and nanotechnology, and

introduction of special visa arrangements allowing foreign graduates of Japanese universities to stay in Japan for one extra year for the purpose of job search (Council on Economic and Fiscal Policy).

In addition, the proposal contained measures which reflected the concern of Yoshikawa Hiroshi, economist and one of the four council members. In an earlier meeting, he shared with the council an anecdote explaining what a difficult time he had had trying to hire foreign academics (Council on Economic and Fiscal Policy, 2002a). He complained that providing access to housing, making multi-lingual street signs available and arranging medical treatment in foreign languages were some of the challenges that could not be overcome by employers, such as universities in his case. The point of the anecdote was to illustrate how Japanese society was not foreigner-friendly and required a systematic change if it were to attract more skilled workers. The final proposal, therefore, contained measures to improve the socio-economic well-being of migrants and their families, such as bilateral treaties to make social security contribution portable, one-stop shops providing administrative information to foreigners, medical care in foreign languages and subsidies for international schools (Council of Economic and Fiscal Policy).

The above measures were incorporated into CEF's *2002 Basic Policies for Economic and Fiscal Management and Structural Reform* (2002c, p. 20). Two things are worth noting about this policy document. First, to my knowledge, this was the very first instance in which the Japanese government used the term high-level human resources (*kōdo jinzai*) to describe highly-skilled migrants. Prior to this, the *Second Basic Plan for Immigration Control* referred to 'human resources that are high level' (*kōdo na jinzai*) in a more descriptive and general sense, and CEF's earlier input material used the term 'high-level workers' (*kōdo rōdōsha*) which is closer to the English term highly-skilled migrant. Nonetheless, high-level human resources has now become a generic term used in the government to denote highly-skilled migrants (Akashi, 2010, p. 164). That the meaning of the term has come to be widely shared

by policy makers shows that the development of skilled migration policy has resulted in the stratification between niche knowledge workers and the rest of skilled workers.

Second, the genesis of the term coincided with the government's incontrovertible admission that foreigners' living and working arrangements in Japan must be improved in order to attract the globally coveted workers. The point had already been made by the Economic Planning Agency, MOL and MOJ during the Obuchi administration as explained earlier. However, actual implementation did not immediately follow the acknowledgement of the problem, and the government preferred to boost the number of IT workers and other types of highly-skilled migrants by simply relaxing immigration admission rules.

In contrast, CEFP's basic policies not only made the crucial connection between the active acquisition of highly-skilled migrants and their post-arrival treatment but also realised that part of attracting highly-skilled workers was to make the lives of their family members comfortable as well. Therefore, CEFP put forward health and education measures which were intended to improve the welfare of migrant families as a whole. Once again, the real problem was looking straight into the eyes of the Japanese government. The real reason behind Japan not having enough highly-skilled migrants was not only because admission rules could be more lenient. It was also because such workers did not want to come to and work in Japan in the first place. In the words of the council, 'the nation as a whole, society as a whole must be attractive' to woo the affection of highly-skilled migrants and their families (Council on Economic and Fiscal Policy, 2002b, p. 8).

The focus on niche workers and their post-arrival care strengthened under the initiative of CPRR. In 2002, foreign researchers working in CPRR's special districts were allowed to undertake entrepreneurial activities that were related to their research whilst staying in Japan up to five years without visa renewal (Ministry of Justice, 2003, pp. 112-113). At the time, migrants on a work visa were only permitted to undertake occupational activities related to their visa category, and the maximum visa period was set at three years. In effect,

the special arrangement made under CPRR gave immigration privileges to a specific type of knowledge workers.

In the following year, another exceptional rule was introduced for IT workers whose visa expiration period was also extended to five years (Ministry of Justice, 2003, pp. 113-114). Seeing the success of the schemes, CPRR decided to roll out the new rule nationally for foreign researchers in 2004 and for IT workers in 2005 (Ministry of Justice, 2007, p. 77). The same measure was applied to foreign professors who were allowed to stay up to five years without visa renewal (Ministry of Justice, 2007, p. 77). In 2006, ICRRRA was amended in order to codify these exemptions (Ministry of Justice, 2007, p. 77).

Also under the aegis of CPRR, MOJ started issuing the 180-day short-stay visa to foreign graduates seeking employment in 2003, and the duration of the visa for those awaiting the start of their employment was extended in 2006 (Ministry of Justice, 2006b, pp. 114-115). The types of migrants to whom CPRR's exemption measures applied, namely, researchers, entrepreneurs, IT workers and foreign graduates, would later become the target of the Japanese government's first ever highly-skilled migration scheme as I will explain later.

Akashi writes that the eventual failure to meet the earlier target to admit 30,000 IT engineers made policy makers aware even more acutely that Japan did not have a welcoming environment for highly-skilled migrants (2010, p. 156). The myopic focus on making minor revisions to immigration admission rules proved to be an insufficient and misguided method to entice the globally-sought workers. Around the time, the necessity to improve the non-admission aspects of highly-skilled migration policy came to be voiced by influential policy actors with a business-oriented interest, namely, METI and Keidanren. In comparison with CEEP, these actors placed the policy challenge of skilled migration more squarely in the context of the global competition for talent.

In the *White Paper on International Trade* (2003), METI repeatedly compared Japan's policies with those of other countries. More specifically, it examined schemes for admitting highly-skilled migrants in detail and mentioned the American H1B visa, the British Highly-

skilled Migrant Programme and the German Green Card Programme. The white paper also noted that Japan had so far managed to sign bilateral social security treaties with Britain and Germany only whilst the two countries had already done so with 33 and 32 countries respectively. The already alarming tone of the document even invoked shame when it bluntly stated that ‘human resources that are high-level in China [i.e., Chinese highly-skilled migrants] are heading not to geographically proximate Japan but to the United States’ (Ministry of Economy, Trade and Industry, p. 136). The message was clear. Japan was falling behind on all counts.

Keidanren’s proposal published in 2004 was the first of a series of publications on the admission of foreign workers.⁹ Keidanren examined admission policies of other developed economies just as METI did but was more explicit in advocating the introduction of a ‘Japanese-styled Green Card Programme’ which was recommended to be modelled upon the British Highly-skilled Migrant Programme (2004). Moreover, what differentiated Keidanren’s proposal from METI’s white paper was that, in recommending the introduction of a scheme akin to the British one, the former put a clear emphasis on immigrant settlement. The following passage was even underlined in the proposal.

The admission of foreigners in the fields characterised by extremely high-level specialisation and technical skills, such as researchers, and *promotion of their settlement* have already become some of the major trends in the world. There is a need for discussion aimed at the establishment of such systems in Japan as well (Keidanren, my emphasis).

Half a decade after the original inception by the Economic Planning Agency and the 21st century commission in the late 1990s, settlement-oriented skilled migration policy was gaining wider support of influential policy actors.

In Japan, permanent residence applicants are required to demonstrate good character, financial viability and ability to further Japan’s interests, part of which is to have lived and worked in Japan for more than ten and five years respectively. In 2003, the Cabinet

⁹ Keidanren also published an interim report (2003a) on the topic in the previous year. The 2004 proposal was the final version which incorporated most of the recommendations made in the interim report.

approved CPRR's *Basic Policy on Structural Reform Special Districts* which included a scheme to shorten the stipulated period required for obtaining permanent residence status for foreigners who are engaged in business activities in designated districts (as cited in Akashi, 2010, p. 160). CPRR also demanded MOJ to clarify assessment criteria for permanent residence applications (Akashi, p. 160).

MOJ had already been granting the status to some applicants who did not meet the ten-year residence criterion on a discretionary-basis (Akashi, 2010, p. 160). However, the ministry did not passively accept the unwanted external interference of the powerful supra-ministerial organisation. After a reportedly heated argument with MOJ bureaucrats, head of CPRR Miyauchi Yoshihiko frustratingly commented that MOJ 'is a block of administrative discretion. Whilst we live in an age in which transparency is demanded, [MOJ] continues to be the most old-fashioned administrative organ' (Asahi, 23 October 2003). Given the authority CFP and CPRR commanded at the time, MOJ could not defy the top-down order even though the matters administratively sat within its policy turf. During Koizumi's tenure these powerful supra-ministerial organs pushed through deregulation of all stripes under the motto of 'structural reform without sacred cows.' In this ethos of political apocalypse, even the long-cherished policy principle of zero permanent immigration was not quite sacred enough to be embalmed with immunity from the neoliberal zeal.

In 2005, MOJ issued guidelines defining the permanent residence applicant's ability to further Japan's interest and publicised some successful and unsuccessful cases anonymously (as cited in Akashi, 2010, p. 160). The guidelines which were updated in 2006 outlined numerous factors taken into consideration for applicants working in the fields of international relations, economy and industry, arts and culture, education, research, society and general welfare (Ministry of Justice, 2006c). When comparing the *Basic Plan for Immigration Control* from 2000 and 2005, it shows that MOJ became amenable to the idea of selective permanent settlement over time. The 2000 plan merely referred to settlement (*teichaku*) which does not carry a strong connotation of permanence (Ministry of Justice,

2000). On the other hand, the 2005 plan clearly stated that skilled migration policy should be aiming for the admission, settlement and permanent residence of highly-skilled migrants (Ministry of Justice, 2005).

In the second half of the 2000s, CEEP repeatedly made recommendations to recruit and increase the number of international students, positioning them as future highly-skilled migrants. This was reinforced by a report published by the Council of the Asian Gateway Initiative headed by Prime Minister Abe Shinzō. The aim of the council was to ensure that Japan benefited from the rapid economic growth of the Asian economy, and it proposed to make Japan the hub of Asian highly-skilled migrants (Council for Asian Gateway Initiative, 2007). Here it was also reiterated that Japan was falling behind in the global competition for talent, and the council underlined the high policy priority of skilled migration by neatly summarising the necessary changes as a shift from ‘admission’ to ‘recruitment,’ and from ‘nice to have’ to ‘come no matter what’ (Council of the Asian Gateway Initiative, p. 28).

The renewed enthusiasm for student migration marked the end of the stagnant period characterised by wholesale criminalisation of international students. Riding the momentum, Prime Minister Fukuda Yasuo promised in his inauguration speech in 2008 to launch the 300,000 International Students Plan and to meet the eponymous target by 2020 (Suhara, 2010, p. 9). In comparison with the previous 100,000 plan, the new plan sidelined intellectual contribution to international development in favour of hoarding future highly-skilled migrants (Suhara, p. 9).

Finally, the decade-long development of skilled migration policy resulted in the creation of the Council on the Admission of High-level Human Resources (CAHHR) under the Cabinet Secretariat in 2009. This was the first time a supra-ministerial entity was assembled to discuss highly-skilled migration policy independently of other measures for skilled migration more generally. As one may expect, the creation of the council had been instructed by CEEP.

CAHHR's final report lacked numerical targets, setting of which had initially been envisioned, and repeated old recommendations which had already been made elsewhere (Council for the Admission of High-level Human Resources, 2009). However, the council did propose a brand new idea which would eventually come to fruition. Seven years after the United Kingdom introduced the British Highly-Skilled Migration Programme, Japan finally decided to establish its own points-based admission system. Similarly remarkable was the continuation of Japan's determination to win highly-skilled migrants as the dogged pursuit extended beyond the historically-significant change of political leadership from LDP to DPJ in 2009. Prime Minister Kan's DPJ administration promised to double the number of highly-skilled migrants by 2020 (Prime Minister and His Cabinet, 2010, p. 64). Oishi calls the declaration 'Japan's most open and aggressive immigration policy' to date (2012, p. 1083).

In May 2012, MOJ indeed launched Japan's very first points-based immigration admission system for highly-skilled migrants. Researchers, technical specialists and business managers already working in Japan are eligible to apply. Applicants are assessed on a set of criteria, such as education, work experience, income, age, completion of higher education in Japan, Japanese language proficiency and other miscellaneous factors. Highly-skilled migrants who have earned at least 70 points are entitled to various privileges, including undertaking income-generating activities that are not related to their original work visa category and receiving special consideration for permanent residence with just five years' work experience in a highly-skilled occupation. Moreover, the spouse of a qualified highly-skilled migrant is allowed to work full-time without obtaining special permission which, in any case, only allows employment up to twenty-eight hours per week. Finally, those who meet an additional income criterion are allowed to sponsor a foreign domestic worker as well as their parents and parents-in-law whose purpose of entry should be to look after their grandchildren younger than the age of three.

Health care migrants. The Economic Planning Agency's input material for the 1999 economic pseudo-plan attempted to redefine skilled migration in an expansionary direction

to no avail. However, it was not alone in advocating expansion through a redefinition of the migration category. In the same year, MOFA pointed out some of the future problems of elderly care and recommended recruiting caregivers and nurses from foreign countries in the aforementioned report on Asian regionalism (Ministry of Foreign Affairs, 1999). More specifically, MOFA suggested creating a new visa category for caregivers and recognising foreign qualifications for both nurses and caregivers (Ministry of Foreign Affairs). Legal migration for nurses had already been possible through the medical visa, but relevant criteria were so strict that the visa was being hardly used. Although the report was careful not to appear as though it was supporting unlimited immigration, it clearly stated that the range of skilled and professional visas should be expanded in order to make Japan more open to Asia.

Despite the suggestions made by the Economic Planning Agency and MOFA, a new migration channel for health care workers did not materialise as an immigration policy. Instead, an opportunity unexpectedly opened up as a foreign trade policy. In the late 1990s, METI and MOFA started pursuing a strategy of free trade bilateralism in order to enhance Japan's economic competitiveness abroad (Manger, 2005). The country signed the first Economic Partnership Agreement (EPA) with Singapore in January 2002 (Ministry of Foreign Affairs, n.d.) and started negotiations with other ASEAN countries.¹⁰ It was during this process that the admission of nurses and caregivers became a viable policy option.

When the pre-negotiation with the Philippines officially opened in October 2002, the Filipino government with its active emigration policy already came to the table with a plan to include labour migration as part of the bilateral package (Nikkei, 20 October 2002, 30 November 2002). The Filipino government wanted to achieve this goal by making the Japanese government recognise nursing and care giving qualifications issued in the Philippines. The contentiousness of the demand immediately stalled the pre-negotiation.

¹⁰ Today, Japan has signed Economic Partnership Agreements with Singapore (2002), Mexico (2005), Malaysia (2006), Chile (2007), Thailand (2007), Indonesia (2008), Brunei (2008), the Philippines (2008), Switzerland (2009), Vietnam (2009), India (2011) and Peru (2012). There is also an agreement with ASEAN (2008), but this is not bilateral.

Whilst METI and MOFA wanted to make swift progress, MHLW and the Japanese Nursing Association protested arguing that the quality of care may deteriorate and that there already were enough medical professionals in the domestic labour market (Nikkei, 21 September 2003, 12 December 2003, 29 December 2003). From there on, they refused to alter their position that no nurses without a Japanese qualification should be allowed to practice in Japan.

Even after the formal negotiation finally commenced in February 2004, the disagreement could not be ameliorated. On the contrary, the opposition camp seemed to have picked up additional supporters. In the same month, LDP's Free Trade Agreement Special Council expressed its opposition, and one member reportedly commented, 'you cannot communicate with patients unless you can speak Japanese (Nikkei, 1 March 2004). Similarly, the Tokyo Medical Association voiced its concern that creating a precedent with the Philippines would lead to a new and overwhelming migration inflow from China, with which Japan may sign a similar agreement in the future (Nikkei, 26 June 2004). The association allegedly feared that having foreign personnel would result in chaos in medical practice. MOJ also opposed the expansion but not for a reason related to nursing as a vocation. Rather, it unsurprisingly argued that inclusion of labour migration in EPA would produce additional visa overstayers (Nikkei, 19 May 2004).

Whilst the opposition to allowing foreign nurses access to the Japanese labour market strengthened, a countervailing force also developed. In March 2004, a cabinet council headed by Cabinet Secretariat Fukuda Yasuo was established as a venue for top-down decision-making related to EPA negotiations (Nikkei, 29 March 2004). The decision to create the council resulted from the earlier difficulty experienced with Mexico with which negotiations dragged on due to the inability of the Japanese government to transcend its internal bureaucratic divide. Negotiations with Asian countries were expected to be even more difficult given the prospect of including labour market liberalisation in the agreements, and the cabinet was not willing to repeat the same mistake by letting the opposition get in the

way. Furthermore, CEFPP included the promotion of economic partnership in the 2004 basic policies and promised to give consideration to the admission of nurses and caregivers (Council on Economic and Fiscal Policy, 2004).

In addition, METI, the key pro-EPA ministry alongside MOFA, found a strong ally in its long-time collaborator Keidanren. Around the time, the influential business organisation became increasingly vocal in its support for the admission of foreign workers. In the aforementioned policy proposal on the admission of foreign workers, Keidanren urged the government to admit nurses and caretakers through EPAs (Keidanren, 2004). Simultaneously, the organisation demanded relaxing the criteria for the nursing visa and admitting caregivers by issuing them the skilled labour visa. In an open meeting with Minister Nakagawa Shōichi of METI, Chairman Okuda Hiroshi, who was also a member of CEFPP, requested the topic to be raised for discussion instead of 'viewing it as a taboo' (Nikkei, 27 April 2004).

By the summer, the government managed to reach a decision to admit nurses and caregivers as part of the EPA arrangement. However, it remained adamant that those admitted to work in Japan must hold a Japanese qualification (Nikkei, 1 July 2004). Whilst MHLW argued that the demand for nurses would stop increasing at around 1.3 million in 2003, the Japanese Nursing Association finally accepted that foreign nurses can be admitted as long as they pass the Japanese nursing examination (Nikkei). To reiterate, what the Filipino government wanted was the Japanese government to recognise professional qualifications of the sending country. Therefore, the Japanese government did not fully meet the demand made by its counterpart. At the same time, the former was cognizant that the negotiation would not move forward without some concession.

By the end of 2004, the government had set up a basic admission framework which was preserved more or less in the same form in the final agreement (Nikkei, 26 October 2004). Nursing and care giving candidates are admitted, respectively, for three years and four years, and their visas are renewed once they complete the language training and pass the Japanese national examinations in their occupational fields. The Filipino government

agreed to the framework in principle, but the two governments continued to disagree on the setting of a quota which was left out of the framework for the time being.

Whilst the Japanese government only wanted to admit a couple hundred candidates per year (Nikkei, 30 October 2004), the number was unacceptably low for the Filipino government whose primary means of earning foreign currencies is the receipt of overseas remittances. Keidanren's Chairman Okuda also called on the Japanese government's reluctance when he commented that the failure to include a quota only exposed the real political intention which he thought was to keep the admission number as small as possible (Nikkei, 2 December 2004).

The disagreement over the quota once again stalled the negotiation. Despite the fact that the basic agreement had already been reached in November 2004, the Japan-Philippines EPA was not signed until 9 September 2006 without setting the contested quota which was said to be determined through a bureaucratic negotiation at a later date (Nikkei, 10 September 2006). Shortly after the signing of the agreement, MHLW announced the admission of 400 nurses and 600 caregivers in two years under the agreement (Nikkei, 12 September 2006).

The numbers were larger than the initial figures proposed by the Japanese government but were still miniscule considering their impact on the Japanese and Filipino labour markets. For this reason, ratification of the bilateral treaty was further delayed. The limited possibility of labour migration as well as unfavourable arrangements regarding the export of agricultural products made the EPA a low priority policy agenda for the Filipino government (Vogt, 2007, p. 17). The agreement finally came into effect on 1 July 2008.

In the mean time, CPRR stated in a report to the prime minister that more general immigration admission of nurses and caregivers outside EPAs must be considered given that the Japanese population is ageing (Council for the Promotion of Regulatory Reform, 2006a, pp. 30-31). This never materialised, and MHLW did not take kindly to the council's unwanted intervention (Nikkei, 3 August 2006). Instead, the agreement with the Philippines set a

template for the admission of nurses and caregivers within the framework of EPAs. On 20 August 2007, the Japanese government signed another agreement with Indonesia, and it came into force in the following year. Currently, there is another negotiation underway with Vietnam.¹¹

The EPA admission programme is more or less the same for the Philippines and Indonesia. Both nursing and care giving candidates are admitted on the special activity visa, the quota for which is set every year based on labour market conditions in Japan. Before being admitted, candidates are expected to undergo Japanese language lessons for six months and have had to practice as licensed nurses (two years for Indonesians and three years for Filipinos) or have completed higher education and hold a care giving licence in their home countries.¹²

Once the candidates arrive in Japan, they undertake additional Japanese lessons for six months and subsequently receive on-the-job training as *bona fide* workers in hospitals and nursing homes.¹³ Nursing candidates are allowed to sit the national exam starting in their first year whereas care giving candidates can do so in their final year of stay only. Once they pass the exam, they are entitled to a work visa which is renewable indefinitely. If they do not pass the exam during their stay, they need to go back to their home countries.

In 2008, 104 nursing candidates and 104 care giving candidates arrived from Indonesia (see Table 3). In the following year, 173 nursing and 189 care giving candidates came from Indonesia whilst 93 nursing and 217 care giving candidates came from the Philippines. In the same year, 82 nursing candidates from the 2008 intake sat the national examination, but none of them passed (see Table 4). In the following year, 100 candidates from the same batch tried again, and only two passed. Things were not better for the Filipino candidates. Out of 58 applicants, only one person was successful. Apparently, sitting the exam

¹¹ This is at the time of writing (March 2013).

¹² For care giving candidates, they can also be graduates of a nursing school.

¹³ For the language training component, exemptions are made for those who are already at a sufficient level of proficiency.

in Japanese was a tall order for foreign applicants especially because some of the medical terminology was expressed using Chinese characters that are difficult to understand even for ordinary Japanese.

Table 3: Number of EPA Admission for Nursing and Care Giving Candidates

Year	Total EPA admission	Indonesia			The Philippines		
		Nursing	Care taking	Subtotal	Nursing	Care taking	Subtotal
2008	208	104 (23)	104 (35)	208 (58)	-	-	-
2009	672	173 (24)	189	362 (24)	93 (11)	217 (1)	310 (12)
2010	244	39 (3)	77	116 (3)	46 (4)	82	128 (4)
2011	236	47 (0)	58	105	70 (0)	61	131
2012	202	29	72	101	28	73	101
Total	1562	392 (50)	500 (35)	892 (85)	237 (15)	433 (1)	670 (16)
NB: The numbers in brackets are those who have passed the national examinations.							

Sources: Ministry of Health, Labour and Welfare, n.d. a, n.d.c¹⁴

Table 4: Number and Pass Rate of Exam Applicants for Nursing¹⁵

		National total	EPA total	Indonesia				The Philippines		
				2008	2009	2010	2011	2009	2010	2012
2009	Applicants	50,906	82	82	-	-	-	-	-	-
	Pass (%)	45,784 (89.9%)	0 (0.0%)	0 (0.0%)	-	-	-	-	-	-
2010	Applicants	52,883	254	100	95	-	-	59	-	-
	Pass (%)	47,340 (89.5%)	3 (1.2%)	2 (2.0%)	0 (0.0%)	-	-	1 (1.7%)	-	-
2011	Applicants	54,138	398	91	159	35	-	73	40	-
	Pass (%)	49,688 (91.8%)	16 (4.0%)	13 (14.3%)	2 (1.3%)	0 (0.0%)	-	1 (1.4%)	0 (0.0%)	-
2012	Applicants	53,702	415	27	152	33	41	60	39	59
	Pass (%)	48,400 (90.1%)	47 (11.3%)	8 (29.6%)	22 (14.5%)	3 (9.1%)	0 (0.0%)	9 (15.0%)	4 (10.3%)	0 (0.0%)

¹⁴ Numbers of candidates successfully passing the exams were provided during an interview with bureaucrats from the Ministry of Health, Labour and Welfare (personal communication, 21 September 2012).

¹⁵ Numbers of candidates successfully passing the exams were provided during an interview with bureaucrats from the Ministry of Health, Labour and Welfare (personal communication, 21 September 2012).

Given the poor prospect of passing the exam and being able to practice nursing in Japan, the Indonesian Foreign Minister requested the Japanese government make special arrangements in regards to the use of Chinese characters (Nikkei, 18 January 2010). At the same time, the programme was becoming less popular in the sending countries. In 2009, 908 Indonesians and 516 Filipinos applied for the programme (Japan International Corporation of Welfare Services, 2012). The same figures dropped to 296 and 391 in 2010.

That only an extremely low number of candidates may be able to become licensed nurses also concerned hosting hospitals in Japan. According to a METI bureaucrat I interviewed, some employers feared that they may never be able to recuperate the cost they incur to put the candidates through the training mandated by the programme (personal communication, 25 September 2012). With a greater supply of Japanese workers in the health care industry after the Lehman shock in 2008, hospitals and nursing homes applying for the programme also dropped markedly from 477 to 155 for those wanting to host Indonesian candidates and from 604 to 215 for those wanting to host Filipino candidates between 2009 and 2010 (Japan International Corporation of Welfare Services, 2012).

The same METI bureaucrat I spoke to explained to me that the standard of care must be maintained by making candidates pass the national exams (personal communication, 25 September 2012). In saying so, he was hinting at the pressure from MHLW and the Japanese Nursing Association to keep the programme as selective as possible. Indeed, MHLW suggested introducing a new rule which would have required candidates to pass a Japanese language test before even entering Japan in order to lighten the training burden on hosting institutions (Nikkei, 7 May 2010).

At the same time, however, there were policy actors who had an interest in keeping the EPA programme operationally viable. The above METI bureaucrat, whilst trying not to contradict the view of MHLW, also commented, 'the position of the ministry (i.e. METI) is that this must be a sustainable programme... after all the training cost comes from Japanese

people's tax money' (personal communication, 25 September 2012). He then went on to explain that the cost for Japanese language training is funded by MOFA and METI. In short, the EPA admission had to strike a fine balance between ensuring the quality of foreign care workers and preserving the legitimacy of the programme.

In the summer of 2010, an advisory group of MHLW proposed amending the nursing exam by supplementing the name of medical conditions with English words, replacing some medical terminology with spoken expressions and using phonetic alphabet for difficult Chinese characters (Nikkei, 25 August 2010). As Table 4 above shows, the exam pass rate increased after the measures were implemented. For Indonesian applicants who entered in 2008, the figure jumped from 0% in 2009 to 29.6% in 2012. A similar increase was observed amongst Filipino candidates. In addition, the Cabinet made a top-down decision as part of the country's growth strategy to review the programme in order to improve its practical operation (Cabinet Office, 2010). An inter-ministerial group comprised of vice ministers was established, and they decided to extend the visa by one year as an *ad hoc* provision (Ministry of Health, Labour and Welfare, 2011, 2012b).

Aside from the above immediate measures, the inter-ministerial group also put forward a plan for a comprehensive review of the programme in June 2011 (Deliberative Group on the Movement of People, 2011). The group proposed to admit Vietnamese candidates under a new EPA only if they possess a certain level of Japanese proficiency. The group, however, remained equivocal in regards to introducing such a change to the existing agreements with Indonesia and the Philippines, merely stating that the wishes of the partner countries must be respected. Furthermore, it suggested considering providing care giving candidates with opportunities to take the exam more than once and making the exam easier. In 2012, the first batch of Indonesian candidates from the 2008 intake sat the care giving exam (see Table 5). The pass rate for the exam, which is easier than the nursing exam, was 37.9% for EPA candidates compared to 63.9% of the national average. Future changes in regards to the care giving exam can be expected to boost the pass rate even further.

Table 5: Number and Pass Rate of Exam Applicants for Care Giving¹⁶

		National total	EPA total	Indonesia				The Philippines		
				2008	2009	2010	2011	2009	2010	2012
2012	Applicants	137,961	95	94	-	-	-	1	-	-
	Pass (%)	88,190 (63.9%)	36 (37.9%)	35 (37.2%)	-	-	-	1 (100.0%)	-	-

Explaining Layering as the Dominant Form of Incremental Change

Scholars often view student migration as a channel through which the Japanese government has procured unskilled workers. It has been understood as another side-door mechanism which contradicts the fundamental policy principle of immigration admission. However, that many international students have provided unskilled labour does not necessarily mean that they were intentionally admitted to resolve chronic labour shortages.

On the contrary, what motivated the launch of the 100,000 International Students Plan was the government's internationalisation agenda. For Japan, the early 1980s was a time when the gap between its economic power and political legitimacy in the international world became glaringly obvious, and the plan was an attempt at filling the gap by educating the future human resources of developing countries. This was a clear instance of institutional layering by which policy actors, namely, Prime Minister Nakasone and MOFA, were able to add new expansionary rules to existing immigration admission rules.

Since student migration belonged to the realm of foreign policy, MOJ marched to the beat of the government's drum despite the ministry's policy preference to deter the admission of unskilled workers. As a result, MOJ introduced the pre-college visa and relaxed immigration procedures and conditions on part-time employment following the initiation of the project. However, complacency was abandoned when the gap between policy intention and policy outcome was made visible to the public through the media's reporting of the

¹⁶ Numbers of candidates successfully passing the exams were provided during an interview with bureaucrats from the Ministry of Health, Labour and Welfare (personal communication, 21 September 2012).

murder case in 2003 so much so that the ministry could no longer let the migration channel be used liberally. This resulted in the sudden reversal of earlier measures which had been introduced by MOJ to meet the plan's admission target.

On the other hand, the expansion of skilled migration was characterized by a relatively smooth and gradual opening. Although the number was limited due to the principle of skill complementarity in the 1980s, the admission of skilled migrants was never barred in the first place. In this sense, institutional continuity was amply manifest before and after the 1990 amendment of ICRRA. The latter further facilitated the admission of skilled migrants by multiplying visa categories and simplifying application procedures whilst continuing to restrict the admission of unskilled workers by introducing additional punitive measures.

At the turn of the millennium, Japan inhabited a rapidly changing world in which advanced economies pursued economic growth by recruiting niche knowledge workers and by accelerating trade liberalisation. Although both of these evolving circumstances were external to the institutional regime of immigration policy, the latter nonetheless had to be adjusted, albeit reactively, lest Japan falls behind other countries. A new series of incremental changes was, thus, triggered when the Japanese government belatedly realised that its nonchalance and aloofness towards foreign workers only dragged the country down in the intensifying global competition for talent.

More crucially, the failure to achieve the admission target for IT workers brought another important realisation that tampering with visa conditions alone was a measure insufficient for attracting the cadre of coveted workers. Thus, under the pressure from powerful supra-ministerial organs, namely, CFP and CPRR, MOJ was forced to introduce new rules intended to facilitate not only the admission but also the settlement of skilled migrants. MOJ relaxed permanent residence criteria, facilitated the switching of visas for foreign graduates of the Japanese universities and even provided immigration privileges, including family unification, to select skilled migrants now called high-level human resources.

Furthermore, institutional layering once again went beyond rule changes as CPRR fundamentally questioned the style with which MOJ had administered immigration admission. The power the ministry holds in the policy area, to a large extent, derives from the level of administrative discretion it is allowed to exercise. Clarifying the permanent residence criteria increases the level of transparency and objectivity which, in turn, meant that the ministry had to give up some amount of the unique prerogative to settle matters behind closed doors. The same can be said about the establishment of the points-based system. Although the system is operated by MOJ, skilled migrants are now entitled to some immigration privileges as long as they reach a prescribed threshold of assessment points.

The changing external circumstances also led to the introduction of a new admission channel. Under EPAs signed with the Philippines and Indonesia, Japan admitted foreign caregivers for the first time and made it easier for foreign nurses, for whom a work visa had already existed, to work in Japan. However, the arrangement had set a testing standard for migrants by requiring them to pass national examinations in their respective professions. The inconsistency between the introduction of the programme and the practical obstacles in its design reflected the divide between MHLW, professional medical associations, and some LDP politicians wanting to protect the domestic labour market and the standard of health care on one hand and MOFA, METI and CFPF eager to progress the trade negotiation on the other. Whilst the battle was fought at the forefront of the policy discussion, MOJ's concern over a potential impact on illegal migration receded in the background.

Without altering the overall structure or the underlying principle of the institutional regime, the incremental revision and addition of rules encouraged by external factors endogenously brought about a gradual transformation of immigration admission policy. The simple lack of resistance to skilled migration turned into aggressive acquisition of highly-skilled workers who are now admitted as potential permanent residents. A similar point can be made about EPA migrants. Japan's desire to pursue trade liberalisation forced itself to open up the doors to nurses and caregivers. Admittedly, the gesture was half-hearted for the

migrants still need to write examinations in Japanese. At the same time, however, they are allowed to settle permanently once they pass the examinations, and additional provisions have been made to facilitate the process.

The above examples of institutional layering in skilled migration policy point to one paradoxical fact which easily eludes one's attention. Japan is now a non-immigration country that wants immigrants. From a theoretical perspective, this chapter has demonstrated that continuity and transformation are not mutually exclusive. Moreover, this evolutionary development in the policy area raises a new challenge against the conventional view that Japanese immigration admission policy is exceptionally restrictive. There is no escape for Japan from the global economic competition, and its skilled migration policy has had to develop accordingly.

Chapter 4: Immigration Admission Policy towards Illegal Migrants

To reiterate, the three main groups of new economic migrants in the 1980s were female entertainers from Southeast Asia, bogus student migrants from China and male construction and manufacturing workers from South Asia and Iran (Chapter 2). Since unskilled labour migration was banned and an overwhelming proportion of new economic migrants consisted of unskilled workers, the nature of the migration flow in the 1980s was largely illegal. This gave rise to a policy debate on whether to legalise unskilled migration. However, the outcome of the debate preserved the post-war policy principle of not admitting unskilled foreign workers, and the resulting bill to amend ICRRA introduced measures aimed at punishing employers and job brokers abetting the employment of illegal migrants.¹

The enactment of the new measures did not have a significant effect on foreigners' illegal employment for the reasons I shall explain below, and MOJ had to tackle the problem through other means. Moreover, illegal migration became an increasingly complex phenomenon throughout the 1990s, and the 9.11 terrorist attacks in the United States only added to this on-going trend. Overall, immigration control became tightly associated not only with illegal employment, as it was the case until the early 1990s, but also with anti-terrorism and public safety more generally. It was during this period that the media and the government discursively criminalised foreign workers in a wholesale manner. At the same time, however, illegal migrants showed signs of settlement by forming family units with Japanese citizens and other migrant workers. Expulsion of these unwanted migrants in breach of immigration law was easier said than done in an Asian liberal democracy. The Japanese government, thus, quietly regularised illegal migrants in a fairly substantial number throughout the 2000s.

The aim of the present chapter is to understand the two contradictory policy reactions, namely, criminalisation of migrant workers and regularisation of illegal migrants. The first section traces the development of immigration control policy after the amendment

¹ Before then, only the act of illegal employment itself was banned (Akashi, 2010, p. 208).

of ICRR in 1990. This is followed by a section which focuses on the activism of civil society groups and illegal migrants themselves to politicise immigration amnesty as a viable policy option starting in the late 1990s. The concluding section analyses the mode of institutional change, and I argue that policy actors challenging the institutional regime of immigration management have been able to open up the doors to regularisation by forcing MOJ to adjust existing immigration rules.

The Complexification of Illegal Migration

Tsuda and Cornelius write, 'Not only is Japan's employer sanction law similar to those of the United States and Europe, it is equally flawed and unenforceable' (2004, p. 459). Indeed, the law only punishes employers who hire an undocumented migrant knowingly whilst they are not obligated to verify whether the prospective employee is permitted to work in the country. Furthermore, a supplementary resolution adopted at the passage of the 1990 amendment bill stipulated that employers hiring illegal migrants who arrived in Japan before the amendment comes into effect are exempted from the punitive measure (Tsuda & Cornelius, p. 460). The effectiveness of the law was highly dubious from the start.

Unsurprisingly, the number of employers and job brokers arrested for committing this offence was indubitably miniscule. In 1992, for instance, there were only 351 such arrests (Tsuda & Cornelius, p. 459). To contextualise this figure, 63,265 overstayers were apprehended that year (Akashi, 2010, p. 200), and 278,892 more were estimated to be remaining in the country (Ministry of Justice, 2003). The limited effect of the punitive measure, however, may not have been wholly attributable to the faulty design. Some scholars have argued that Japanese authorities enforced immigration rules only half-heartedly even after the 1990 amendment.

Writing in 1994, Morita and Sassen note that the number of arrests related to immigration violation went up after the 1990 amendment but this did not mean much because the number of overstayers also increased (p. 161). Furthermore, they point out that

large-scale initiatives to deport overstayers were absent even though authorities knew their approximate whereabouts (Morita & Sassen, p. 161). According to Shipper, the public gave more than 63,000 accurate tip-offs to the Tokyo Immigration Bureau, and yet it only responded to about 20% of the cases (2002, p. 50). The figures suggest that law enforcement authorities, namely, the Immigration Bureau and the police, in effect, turned a blind eye to employers hiring undocumented workers.

There are mainly two explanations to the apparently poor enforcement of the law. First, visa overstay was condoned because there was a demand for unskilled labour. Tsuda and Cornelius, for example, link MOJ's lack of determination to enforce employer sanction to the country's dependence on foreign labour (2004, p. 459). In short, MOJ had 'little political will' (Tsuda & Cornelius, p. 459). Here, Tsuda and Cornelius paint a picture in which MOJ was torn between the maintenance of law and order and the facilitation of labour market coordination. In contrast, Ball and Piper claim that unskilled foreign labour is deliberately illegalised in Japan in order to afford the government the maximum level of labour market flexibility. By reaching this conclusion, they assume the existence of a coherent policy preference across the government (Ball & Piper, 2002).

Second, it could be that law enforcement authorities did not have sufficient resources to deal with the scale of illegal migration that was taking place. According to Morita and Sassen, there were less than 2000 officers inspecting employers across the country (1994, p. 161). In this context of scarce human resources, Spencer writes that 'combating the inexorable flow of workers is somewhat like pushing on one end of a water balloon – pressure on one side simply makes the other side bulge out more' because targeting one nationality group for arrests and deportation only invites fresh entries of another nationality group (1992, p. 763). The problem was exacerbated by the fact that the police, which command a larger number of personnel than the Immigration Bureau does, shied away from apprehending illegal migrants believing this should be a task undertaken by the Immigration Bureau (Tsuda & Cornelius, 2004, p. 461).

The inverse relationship between the level of law enforcement and the economic demand for unskilled labour is plausible. According to Tsuda and Cornelius, there was an implicit agreement between the Diet and MOJ that the latter would not implement employment sanction aggressively (2004, p. 460). This explains the content of the supplementary resolution adopted at the passage of the 1990 ICRRA amendment. The additional stipulation rendered the new rule ineffective by excluding employers who had been hiring and continued hiring illegal migrants who were already in the country. Undoubtedly, the attempt to control illegal migration was hampered by the relative lack of resources to enforce the law which, in any case, was already faulty by design.

Despite the ineffectualness of the law, I hesitate to view MOJ as a bureaucratic organisation which was docilely accommodating the need of policy actors with an economic interest in condoning illegal migration. For the legal amendment to achieve the original goal, which was to combat illegal employment, one would expect the proposal to have obligated employers to verify the immigration status of foreign workers. Otherwise, employers could evade arrests by claiming to have hired an undocumented migrant unknowingly. However, there was not an effective mechanism to force employers to check for documentation since MOJ had foregone this option when it rejected MOL's proposal to introduce an employment permit system. Therefore, it is possible that the ineffectual design of the bill resulted from the outcome of the prior bureaucratic struggle.

More importantly, the supplementary resolution which exempted employers who had already been hiring illegal migrants was introduced by elected representatives, not MOJ. This was a clear instance of institutional layering in which policy actors whose political interest was to procure cheap foreign labour managed to subvert the rule established by the dominant player, that is, MOJ, by grafting an additional rule onto it. Far from lacking the political will, MOJ could do little to undo the decision made by the legislature. A similar point can be made in regards to the resource constraint experienced by the Immigration Bureau. Arrests and deportation of illegal migrants would have required increased administrative

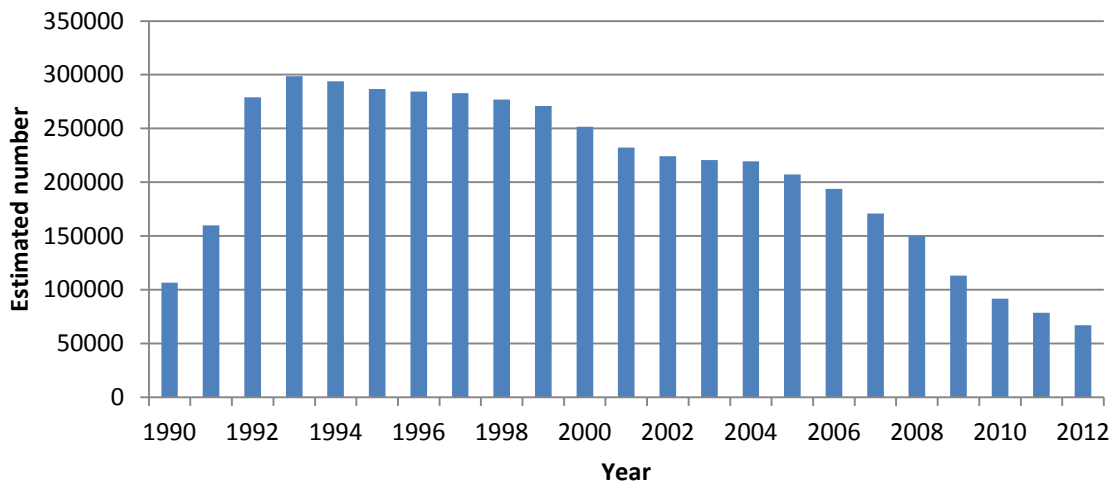
capacity, but the recruitment of new civil servants was not a matter that could be resolved by MOJ alone. It was not MOJ which lacked the political will. Rather, the government was divided by conflicting political preferences underneath the apparent institutional continuity of immigration admission policy.

In short, the amendment was not a sufficient measure to contain the growth of illegal migration. Accordingly, MOJ had to use other methods to combat the phenomenon. For example, that MOJ requested MOFA to restrict visa issuance in countries from which a large number of illegal migrants originated is common knowledge (Akashi, 2010, p. 211). In addition, strategically regulating visa requirements was a counter measure that was more effective at minimising the phenomenon than ICRRRA's employer sanction was (Akashi, p. 211). For example, the Japanese government put a moratorium on tourist visa exemption agreements with Bangladesh and Pakistan in 1989 and with Iran in 1992. In 1993, Malaysia was put on a watch list of countries whose nationals do not need to obtain a tourist visa before entering Japan but nonetheless would be scrutinised more carefully than usual during landing examination procedures without a tourist visa.

Akashi attributes the contraction of the estimated number of overstayers to these visa-related measures (2010, pp. 211-212). As Figure 14 shows, the number peaked at 298,646 in 1993 and decreased thereafter. More specifically, overstayers from the countries against which the measures were taken declined between 1992 and 1998 (Akashi, p. 211). On the other hand, overstayers from South Korea, China, Peru, Taiwan and Burma increased during the same period. Similar visa-related measures were not taken against these countries except for Peru which was also put on the watch list in 1995.²

² However, the estimated number of Peruvian overstayers already started declining in the same year (Akashi, 2010, p. 212).

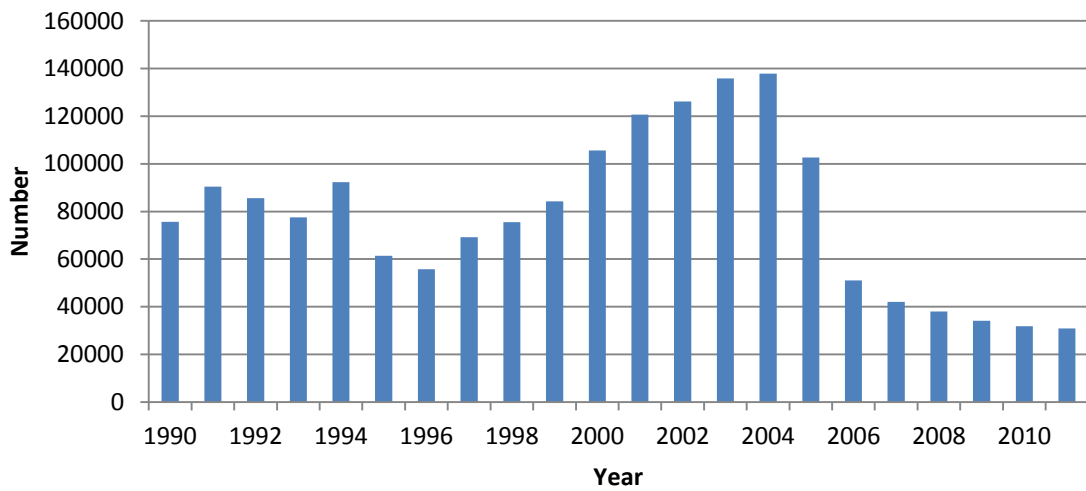
Figure 14: Estimated Number of Overstayers



Sources: Ministry of Justice, 2003, 2012b

Another way in which MOJ reduced the number of illegal migrants was to restrict the issuance of the entertainment visa. In 1994, the Immigration Bureau conducted a survey on 444 employers of foreign entertainers after receiving criticism from human rights organisations (Akashi, 2010, p. 214). Out of the sample cases, 412 were found to be in violation of ICRRA, and the Immigration Bureau subsequently placed a visa sponsorship moratorium on the offending employers. Some of the offences included entertainers working as bar hostesses and prostitutes, some of whom were coerced. In 1996, administrative rules used to assess applications for the visa were tightened in order to deter the entry of fake entertainers (Akashi, p. 214). As Figure 15 shows, the tightening of visa issuance had an immediate effect as the number of entrants on the entertainment visa decreased from 92,257 in 1994 to 55,808 in 1996. I shall return to the subsequent development of the entertainment visa policy later in the present section.

Figure 15: Number of Entrants Holding the Entertainment Visa



Sources: Ministry of Justice, 2008b, 2010b, 2011b

As the above discussion has shown, MOJ's focus on illegal employment remained unabated even after the ICRRA amendment came into effect in 1990. In the same year, NPA published the annual *Police White Paper* with the year's theme which read 'the rapid increase of foreign workers and the police's response' (National Police Agency, 1990). Although crimes committed by foreign workers were discussed, the main focus was on illegal employment of undocumented migrants. The white paper also pointed out how undocumented migrants had diversified in terms of migration routes. In addition to Southeast Asian entertainers and male unskilled workers from South Asia and Iran, it highlighted the new presence of bogus international students and fake refugees who were also entering Japan to engage in illegal employment.

The story behind the entry of fake refugees is worth elaborating upon here. In 1989, 2,804 boatpeople or Indochinese refugees suddenly arrived mainly in the Kyushu region which is on the western coast of Japan and provides convenient landing spots for illegal migrants from the East Asian region (National Police Agency, 1990). The number was an enormous jump considering only 219 boatpeople arrived in the previous year. Soon it transpired that most of them were, in fact, Chinese people pretending to be refugees. The impact of the highly-publicised incident should not be underestimated. The workload at the

Immigration Bureau increased so much so that an officer passed away from being overworked (Akashi, 2010, p. 210). In the same year, NPA established the Fake Refugee Counter-Measure Group, and MOJ strengthened the refugee screening procedures in order to manage the sudden phenomenon (Akashi).

It was with this heightened sense of immigration crisis that NPA's white paper presented survey results which suggested that the public was growing anxious about the increasing presence of foreign workers. For example, 55.9% of survey respondents who had either seen or heard about unskilled foreign workers in their neighbourhood had abstract fear of having them as neighbours (National Police Agency, 1990). The respondents outnumbered those who had no such fear by approximately 13%. No respondents reported feeling strong fear. When those who reported having abstract fear were asked to provide reasons for their response, 68.2% cited potential crimes, 56.1% cited the danger women may face walking alone at night, 37.2% cited no particular reason, 35.5% cited worsening of public health and 32.5% cited quarrels amongst foreigners.³

That fact that more than half of the survey respondents reported feeling abstract fear must be contextualised. According to the same white paper, the actual cases the public reported to the police consisted of minor social nuisances, such as noise pollution and failure to take out the garbage on designated days of the week (National Police Agency, 1990). Furthermore, other government surveys conducted around the same time suggest that the public may not have been as alarmed as NPA wanted people to believe. Comparing the results from the aforementioned survey conducted by the Cabinet Office in 1988 and 1990, the percentage of respondents who thought 'illegal employment is not good' decreased by 7.3% whereas the percentage of those who thought 'illegal employment is not good but inevitable' increased by 9.6% (see Figure 5). In both years, the latter outweighed the former. Amongst

³ Respondents were allowed to choose multiple options.

those who flatly opposed illegal migration, the percentage of respondents who cited concerns for public safety and morals even decreased slightly between the two years (see Figure 6).⁴

Insofar as these survey results suggest, the abstract fear NPA claimed that the public was feeling due to the inflow of foreign workers seemed to have been based not on negative and direct encounters with foreign criminals. The fear, indeed, was nothing more than abstract. Despite the public's generally lax attitude towards illegal migrants, MOJ and NPA continued to reinforce their capacity to remove them as long as they were violating immigration law. In February 1992, MOJ and NPA in cooperation with MOL established an inter-ministerial council to deliberate counter measures against illegal employment (Akashi, 2010, p. 210). In addition, the council's working group comprised of senior civil servants requested major organizations representing small, medium and large businesses, such as Keidanren, the Japan Chamber of Commerce and Industry, the National Federation of Small Business Associations and the Central Federation of Societies of Commerce and Industry, to instruct member firms not to hire illegal workers (Akashi). In the same year, MOL issued a circular to establish similar working groups at the local level consisting of Public Prosecutor Offices, Immigration Bureaus, Labour Offices, prefectural head offices of job centres and the police in order to detect and prosecute those involved in illegal employment (Akashi).

The police's resolve to combat illegal migration was also displayed in a very public way. Yoyogi Park in Tokyo had become a gathering place for Iranian migrants who exchanged news from home, prospective job information and goods, such as halal meat. When unemployment amongst Iranian migrants became a common problem with the onset of a recession in the early 1990s, some of them turned to the informal economy and opened up make-shift stalls. Soon the weekly Sunday gathering became a full-blown bazaar. By 1993 the police was set on dispersing the crowd after four cases of violence near the park involving Iranians were reported in one year (Asahi, 5 February 1993). It was claimed that illegal

⁴ Respondents were allowed to choose multiple options.

telephone cards and stolen goods were being sold and that the gathering was fostering other criminal activities.

The police began by arresting two Iranians who allegedly threatened a Japanese stall owner and demanded money. However, the Tokyo Metropolitan Government under whose jurisdiction the park operated approached the problem cautiously and refused the police's request to install security cameras and cut off water supply to food stalls (Asahi, 25 March 1993). Instead, it decided to close off temporarily the area frequented by Iranian workers explaining that new trees had to be planted there. Even though the area was subsequently reopened, a brawl involving both Iranians and Japanese led the government to fence off the area in the end.

Based on an interview with a senior official from NPA, Shipper reports that the interviewee deliberately fed information on Iranians' criminal activities to the press (2005, pp. 325-326). Going by this account, it is possible that some government officials engineered a negative publicity campaign against Iranians to a certain extent. Akashi observes that illegal migration was principally a problem of illegal employment in the early 1990s but came to be understood as a more qualitatively diverse phenomenon towards the end of the decade (Akashi, 2010). One major element of this was 'foreigner crime' (*gaikokujin hanzai*), the idea of which gained currency as the abstract illegal migrant became associated with criminal offences unrelated to immigration control.

The way in which the series of incidents at Yoyogi Park attracted ample media attention, I would argue, was one of the very early signs that foreign workers were becoming criminalised in an increasingly concrete and visible manner. The publicity of the case linked public safety, or its deterioration, not only with specific crimes, such as sales of stolen and illegal goods, anti-social behaviour and even sexual assaults, but also with a specific group of migrants, that is, male Iranian workers. In contrast, Southeast Asian women who had been associated with sex work were merely perceived to pose a threat to public morality. The

gender and phenotypical characteristics of Iranian migrants were not unrelated to the ease with which the public embraced the discourse of criminal Iranians.⁵

The complexification of illegal migration Akashi aptly describes can be traced by examining some of the documents published by NPA and MOJ in the latter half of the 1990s. The theme of the 1997 *Police White Paper*, for example, was international terrorism and highlighted Islamic fundamentalists, the Japanese extreme left and North Koreans as those posing serious potential threats to Japan (National Police Agency, 1997). Two years later, the same white paper focused on what it called cross-border crimes (*kokkyō o koeru hanzai*) which included immigration violation, foreign crime, drug and arms smuggling and money laundering (National Police Agency, 1999). In the *Second Basic Plan for Immigration Control* published in 2000, MOJ stated that the total number of arrests for criminal and immigration offences was rising and that the negative impact emanating from the very increase on Japan's public safety had grown so much so that it could no longer be ignored.

Reflecting the diversifying implications of international border-crossing, ICRRA went through a staggering number of amendments between 1997 and 2006. In 1997, abetting organised people smuggling became an independent crime as the offence had been previously treated as abetting illegal entry and landing. In the same year, offices dealing with organised people smuggling were established in the Metropolitan Police Department and the Coast Guard. In 1999, successive cases of organised people smuggling precipitated another amendment which made the staying of foreigners who have illegally entered Japan a punishable crime. Until then, there was a statute of limitations on illegal entry which meant that illegal entrants could not be punished for the offence after staying in Japan for more than three years. The amendment also extended the non-entry period for foreigners who have been previously deported from Japan.

⁵ I would like to note that Islamophobia never characterised this xenophobic sentiment towards Iranians. More generally, religious differences have never been a major reason for opposing immigration reform in Japan.

In July 2001, the Cabinet Secretariat established the Headquarters for the Promotion of Measures against International Organised Crime comprised of the Cabinet Secretary, the National Public Safety Commissioner and Vice Ministers of MOJ, MOFA, the Ministry of Finance (MOF), MHLW, and METI (Cabinet Secretariat, 2001). The stated aim of the organisation was to restore citizens' confidence in 'Japan, the safest nation in the world' (*sekaichi anzen na kuni, nippon*) (Cabinet Secretariat). Two months after the headquarters was established, the 9.11 attacks happened in the United States. The horrific event had an enormous impact on immigration administration across the world, and Japan was not an exception to this. In 2003, Cabinet Secretary Fukuda Yasuo commented on the need for additional counter-terrorism measures.

In a sense, Fukuda's point was validated when it transpired that an Al-Qaeda member, who was also an internationally wanted French national, had not only been entering and exiting Japan repeatedly using a fake passport but also been formally registered as a foreign resident with a local authority. Although Japan had never been a target of attacks orchestrated by Islamic fundamentalists, the incident was used to prove to the public that Japan could not be completely isolated from the transnational contagion of Islamic terrorism.

Following the revelation, counter-terrorism became a centre piece of Japan's immigration policy. LDP's Special Committee on Public Safety Measures suggested collecting foreigners' biometric information which had already been requested by the United States government (Akashi, 2010, p. 221). In addition, the aforementioned headquarters was succeeded by the Headquarters for the Promotion of Measures against International Organised Crime and International Terrorism (Kusaka, 2010, p. 130). The headquarters subsequently launched the *Action Plan for Terrorism Prevention* which instructed MOJ to submit an amendment bill to allow for the collection of fingerprints and photographs of foreigners passing through immigration control (Headquarters for the Promotion of Policies on International Organised Crime and International Terrorism, 2004, pp. 4-5).

As I will explain more in a later chapter, fingerprinting of foreigners had already been a thorny political issue which antagonised *zainichi* migrants and their foreign and Japanese supporters in the 1980s (Chung, 2010; Gurowitz, 1999; Kusaka, 2010). Aside from various ethical implications on foreigners' rights to privacy and human dignity, the government's collection of foreigners' fingerprints was an administrative practice which stirred up bitter colonial memories. Kusaka describes the 2006 amendment of ICRRA as a deliberately divisive tactic which separated *zainichi* migrants from other foreigners in order to limit the latter's civil liberties in the name of public safety (Kusaka, 2010, p. 130). The Cabinet's Crime Council's working team which designed the new system to collect biometric information was obviously cognizant of possible negative repercussions of reintroducing fingerprinting and, therefore, excluded special permanent residents from the new requirement.

In comparison with the previous amendments of ICRRA, the 2006 amendment was rigorously debated in the Diet as opposition parties and non-governmental groups, including the influential Japan Federation of Bar Associations, voiced serious concerns over the protection of foreigners' rights, the possibility of arbitrary data collection by the Immigration Bureau, and indiscriminate data sharing between governmental organisations unrelated to immigration control. MOJ, on the other hand, insisted that the new provision was a necessary counter-terrorism measure which had already been adopted by the United States and would soon be followed by European countries (Lower House Legal Council, 17 March 2006). In the end, the bill was adopted in the Diet with a supplementary resolution which stipulated that the data retention period should be reasonable and that the use of data outside of immigration administration should be minimal (Lower House Legal Council, 29 March 2006).

The obsessive preoccupation with counter-terrorism grew in tandem with the government's wider effort to combat illegal migration which increasingly criminalised foreigners in a wholesale manner in the early 2000s. As the aim of the aforementioned headquarters on international crime illustrates, people's confidence in public safety was eroding after some high profile incidents committed by Japanese citizens, such as a serial

murder of elementary school children by a 13-year old boy and a murder case which popularised the word stalker (*sutōkā*) in ordinary speech. In 2002, the Police published the annual white paper entitled *Towards Recovering Our Nation's Public Safety* in which the unprecedented number of criminal offences was attributed not only to juvenile delinquency but also to foreign crime (National Police Agency, 2002, p. 2).

In the following year, MOJ, the Tokyo Immigration Bureau, the Tokyo Metropolitan Government and the Metropolitan Police Department issued the *Joint Declaration on the Reinforcement of Measures against Illegal Migrants in the Tokyo Metropolitan Area* and promised to halve the number of illegal migrants in five years (Kusaka, 2010, p. 129). It is important to note that the governor of Tokyo by then was Ishihara Shintarō, well-known xenophobe, who had earlier warned Japanese troops to watch out for *sangokujin* when the next big earthquake happens because they might loot and riot (Shipper, 2005, pp. 308-309). The term was used to refer to former colonial subjects during the occupation era and is generally considered derogatory in Japanese society today.

In September 2003, the Cabinet Council on Crime Measures was established in the Cabinet following an LDP proposal. By the end of the year, the council published an action plan which introduced measures on everyday crime, foreign crime, juvenile crime, organised crime and other institutional problems related to public safety (Cabinet Council on Crime Measures, 2003). Calling illegal migrants 'the hotbed of crime' (*hanzai no onshō*), the plan promised to strengthen immigration control, particularly by deterring illegal migrants from entering the country in the first place, and to halve their number, which was estimated to be around a quarter million at that time, in five years.

The rigorous effort to combat illegal migration, not just illegal employment as it was the case in the early 1990s, was backed by a strong political coalition. The setting of the quantitative target not only echoed the earlier declaration made by the Tokyo Metropolitan Government and its collaborators but also had been put forward by Koizumi Junichirō in LDP's manifesto for the 2003 lower house election (Liberal Democratic Party, 2003). A

representative of an NGO which supports illegal migrants recounted to me that authorities used to turn a blind eye in the 1990s but started apprehending offenders in a highly persistent manner ‘when Mr Ishihara and Mr Koizumi teamed up and decided to halve [the number of undocumented migrants] or whatever’ (*Ishihara san to Koizumi san ga taggu o kunde, hangen saseru mitaina koto o yatte kara*) (personal communication, 25 September 2012).

Indeed, the crucial factor behind the launch and sustenance of the campaign was electoral. Although NPA and MOJ were already starting to lump together immigration violations, terrorism and non-immigration crimes as crimes committed by the generic and abstract foreigner around 2000, it was only with LDP’s electoral victory with a manifesto promising to tackle illegal migration that the Japanese government was able to overcome challenges which plagued the enforcement of immigration rules in the past. In the 2004 civil service personnel review, only the number of civil servants engaged in work related to immigration control, public safety, IT and intellectual property rights was allowed an increase (Akashi, 2010, pp. 221-222). In this manner, the personnel ceiling of the Immigration Bureau went up by 150 persons and that of the police by 3150 persons (Akashi, footnote 67).

In 2004, ICRRA was amended for the fourth time since 1990 in order to increase fines for abetting illegal employment, to extend the entry bar period for deportees and to introduce the exit order system and the visa cancellation system. The exit order system allowed overstayers who have voluntarily surrendered themselves to authorities and have no other criminal records to leave Japan without being detained. The visa cancellation system gave immigration control officers the power to investigate the veracity of documents submitted for landing examinations. Those who are found to have submitted false information could be asked to leave the country voluntarily or be deported. In sum, the amendment only strengthened the trend set earlier in the 2001 amendment which made it

easier to deport illegal migrants.⁶ Prior to the amendment, illegal migrants could be deported only after their verdict was heard in court, and this prolonged the average detention period during which the government inevitably incurred administrative costs (Akashi, 2010, p. 219). In order to achieve efficiency, the amendment introduced new grounds for landing refusal and deportation, thus pre-empting new unwanted entries and expediting deportation.

In addition to the series of ICRRA amendments, MOJ attempted to control illegal migration by restricting access to the entertainment visa. As mentioned earlier, the number of new entrants on the entertainment visa declined around the mid-1990s but bounced back again in 2004 (see Figure 15). The sharp decline the number experienced for the rest of the 2000s was a direct result of foreign intervention. In Chapter 2, I already explained how Japan was placed in Tier 2 in the 2007 *US Trafficking in Persons Report* which cited the abuse of the trainee programme. What I did not mention, however, was that Japan had previously been placed in Tier 2 Watch list which is for Tier 2 countries requiring special and on-going scrutiny.

The 2004 report acknowledged the government's 'significant efforts' at combating human trafficking by citing the recent establishment of a cabinet committee and drafting of legislation in order to resolve the problem (US Department of State, 2004, p. 96). At the same time, however, the report pointed out that the Japanese government hardly provided any support to human trafficking victims and had been simply deporting them as illegal migrants (US Department of State, p. 97). The partial commendation did not undo the embarrassment of being placed in Tier 2 Watch List alongside developed countries and non-liberal democratic regimes. The Justice Minister challenged the placement saying that the recent changes were not being evaluated fairly (Akashi, 2010, p. 225).

⁶ The primary purpose of the amendment was to introduce new clauses which would allow the Immigration Bureau to refuse the entry of suspected hooligans and to deport apprehended ones. At the time, Japan was preparing to co-host the 2002 World Cup with South Korea.

According to Akashi (2010), the real story behind the Justice Minister's remark was this. The Japanese government had been forewarned of the possibility of being placed on the watch list in the previous year and promised to make legal and institutional changes to avoid the imminent outcome. In 2004, the cabinet committee on human trafficking published the *Action Plan on Human Trafficking Policy* which instructed law enforcement authorities not to treat victims of trafficking as deportable criminals and promised to issue them a discretionary visa to allow them to remain in the country (Cabinet Secretariat, 2004). In the following year, ICRRA was amended in order to codify trafficking victims' right to protection (Ministry of Justice, 2006b). In any case, Japan had to make legal amendments in preparation for the adoption of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons and the Protocol against the Smuggling of Migrants by Land, Sea and Air.⁷ However, Akashi notes that the amendment went above and beyond what was required by the international commitment and calls this a classical example of Japanese docility whereby the government obligingly responds to the American pressure (Akashi, 2010, p. 225).⁸

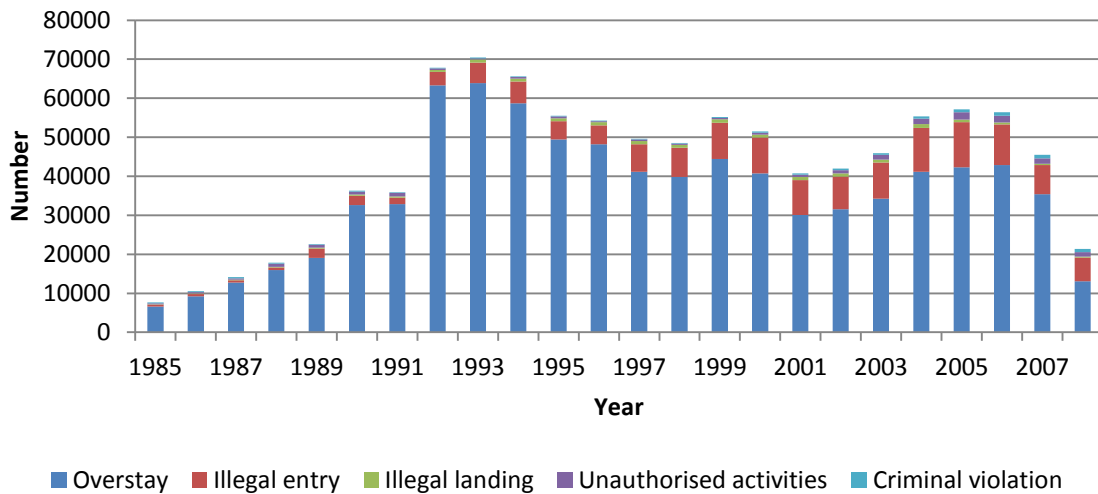
Overall, the government's five-year campaign to combat illegal migration was a proven success. Through the high number of arrests and the prevention of illegal entry, the government was able to halve the number of overstayers by January 2009. Figure 16 shows the number of arrests related to illegal migration from 1985 to 2008, the final year of the government's campaign. A general observation that can be made here is that the number of arrests went through two cycles of fluctuation peaking in 1993 and 2004 although it also experienced a slight spike in 1999 which was when a series of people smuggling cases were detected by Japanese authorities. Comparing the two major spikes, the total figure in 1993 was about 13,000 more than that in 2005. The contextual magnitude of the latter should not be underestimated, however, for the number of overstayers was also smaller by more than 90,000 in 2005 (see Figure 17). What has gone unnoticed by many is a surreptitious way in

⁷ Prior to the amendment, sales, purchase and transportation of persons brought to Japan from abroad was not even illegal in the country (Asahi, 27 July 2004).

⁸ *Gaiatsu* is the word Akashi uses to describe this.

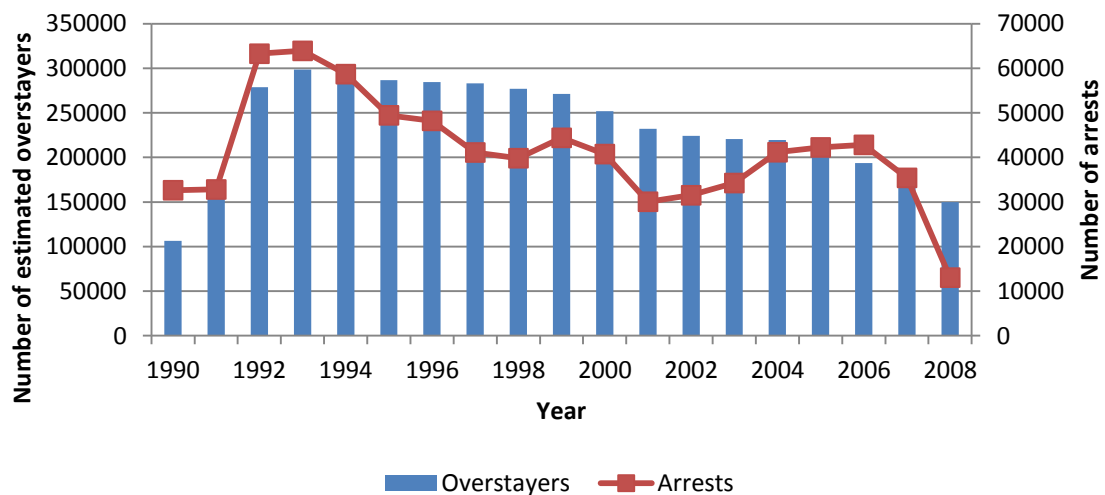
which the government achieved the campaign target. This is the topic I turn to in the next section.

Figure 16: Number of Arrests Related to Illegal Migration



Sources: Akashi, 2010; Morita & Sassen, 1994

Figure 17: Number of Estimated Overstayers and Number of Arrests



Sources: Combination of numbers from Figure 14 and Figure 16

Unexpected Consequences of Illegal Migration

In 1992 the Asahi Newspaper ran a story about a group of ten illegal migrants from Pakistan and Bangladesh who applied for immigration amnesty (Asahi, 26 June 1992).⁹ They all had a Japanese spouse and cited humanitarian consideration as the reason for their application. In the following year, three out of the ten applications were successfully accepted by MOJ. For the rest of the decade, similar stories ran repeatedly in the media.

Some of the common characteristics of the stories can be summarised as follows. First, male applicants tended to be from Bangladesh and Pakistan whilst female applicants were usually from the Philippines. Second, these applicants either had been in a conjugal relationship with a Japanese national or had given birth to a child fathered by a Japanese man in the cases which involved an unmarried foreign mother. Third, some illegal migrants applied for the permission in a group. Strictly speaking, MOJ does not accept group applications. However, submitting a number of applications in one batch presumably strengthened their chances of success by garnering public attention.

The granting of immigration amnesty to illegal migrants with a familial tie to a Japanese national was not the government's official policy for dealing with the increasing number of illegal migrants at least in the early 1990s. In the *First Basic Plan for Immigration Control* published in 1992, for instance, MOJ did not refer to the use of the visa to regularize illegal migrants (Ministry of Justice, 1992). Instead, the plan expended many words describing why the adoption of mass amnesty programmes was and should be rejected. MOJ not only noted that such programmes could encourage further illegal migration but also spectacularly argued that it would hurt illegal migrants themselves because their wages

⁹ Before this, the Special Permission to Stay was granted to foreigners who refused to submit their fingerprints and, thus, violated ARA before the practice was abolished in 1999 (see Chapter 5 for a longer discussion on the fingerprinting movement). The visa had also been the final resort for failed asylum seekers. There had been other idiosyncratic cases which were accepted by MOJ. For instance, a 76-year old Korean woman was permitted to stay with her only son, who lived and worked legally in Japan, after the shock of the Kobe earthquake rendered her partially paralyzed (Asahi, 27 July 1996). The variety of cases illustrates the flexible nature of the special permission to stay visa and the administrative discretion exercised by the incumbent Justice Minister.

would increase upon regularization in order to meet the minimum wage regulation and employers would stop hiring them.

At the same time, immigration amnesty was not wholly absent in the post-war history of Japanese immigration management for MOJ had used the Special Permission Stay to regularise illegal Korean migrants in the decades following the Second World War. Although the present thesis focuses on immigration policy for contemporary economic migrants, I must briefly summarise the historical background behind the use of the Special Permission Stay in regards to former colonial migrants in order to contextualise the subsequent discussion.

The 1920s was characterised by a rapid growth of colonial migration from the Korean peninsula to the metropole.¹⁰ There were 2.4 million Koreans living in Japan by the war's end. However, most of them repatriated to Korea soon after (Ryang, 2002, pp. 897-898), and ARA counted 529,907 Koreans in 1947 (Ryang, p. 898). Morris-Suzuki writes that the Supreme Commander for the Allied Powers (SCAP) had a fairly detailed plan for Japan's democratisation and economic stabilisation but neglected what to do with the country's ethnic minorities (Morris-Suzuki, 2006). It was not until December 1945, three months after Japan's defeat, that SCAP rolled out a repatriation programme for former colonial migrants.

The programme produced an unforeseen consequence, however, for it only permitted scheme takers to take with them 1000 yen, an amount which was just enough to feed a family for a couple of weeks (Morris-Suzuki, 2006). As a result of this restrictive measure, many Koreans ended up returning to Japan but as illegal migrants for the borders between Japan and the Korean Peninsula had already been shut down by SCAP. The nascent constitutional democracy had to be insulated from regional instability.

¹⁰ There was some colonial in-migration from present day Taiwan as well. However, the number was comparatively limited. Therefore, my discussion here focuses on Korean migrants.

In 1951, SCAP issued the Immigration Control Ordinance (ICO), which later became the Immigration Control Act (ICA) at Japan's independence in 1952.¹¹ Drawing a parallel between the Japanese Constitution and ICO, Morris-Suzuki points out that both legal documents were the product of the post-war American Occupation and its close collaboration with the Japanese elite (Morris-Suzuki, 2006). ICO was drafted by a retired official of the US Immigration and Naturalization Service and closely mirrored the 1952 United States Immigration and Nationality Act. Some of the common characteristics included a clear framework for obtaining permanent residence status, highly-centralised immigration control and a wide range of discretionary authority entrusted in the hands of the Justice Minister or his US equivalent. In the Japanese case, however, SCAP reserved even stronger discretionary authority in order to shield Japan from communist infiltration.¹²

In the meantime, Koreans in Japan lived in a legal limbo and were ambiguously treated as Japanese nationals or Korean nationals depending on the circumstances. Their precarious status did not improve when the San Francisco Peace Treaty came into effect and Japan consequently regained sovereignty in April 1952. Former colonial subjects were unilaterally stripped of Japanese citizenship via an administrative circular issued by the head of the Civil Affairs Bureau (Kusaka, 2010, p. 121). This happened even though the Americans knew that the circular was in contravention of Article 15 of the Universal Declaration of Human Rights prohibiting arbitrary de-nationalisation (Morris-Suzuki, 2006).¹³ In any case, whether their immigration status would be managed by immigration law, by then ICA, was left to be resolved at a later date. In effect, the remaining Koreans, or *zainichi* migrants as

¹¹ ICA became ICRRRA when clauses related to refugee recognition were added in 1983.

¹² Based on the origin of ICO, Morris-Suzuki (2006) challenges a common belief that the restrictiveness of Japanese immigration policy can be attributed to the nation's xenophobia. Although she acknowledges that the ordinance was influenced by the Japanese elite's discriminatory attitude towards Koreans because the Americans drafted it in an unequal but collaborative relationship with the Japanese elite, she puts forward an alternative account that is more historically accurate than the above cultural explanation. I shall return to this point, or the relationship between immigration policy and national identity, in the penultimate chapter of the present thesis.

¹³ Article 15 of the 1948 Universal Declaration of Human Rights states that 'No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.'

they came to be called, were forced to continue living at the legal margin until Japan normalised diplomatic relations with South Korea in 1965.

As specified in Article 50 of ICRRRA which is the successor of ICA, the Special Permission to Stay is issued by the Justice Minister to undocumented migrants who have exhausted all options to appeal against a deportation order. The visa may be issued when the applicant already has permanent residence status in Japan; has had a registered address in Japan as a Japanese national in the past; has been held against her will in Japan, such as in the case of human trafficking;¹⁴ or has an exceptional reason deemed worthy of consideration by the Justice Minister (Immigration Bureau, n.d.). It was in accordance with the fourth condition that MOJ regularized a substantial number of illegal migrants who were crossing borders to reunite with their families in Japan and/or fleeing the destruction of the Korean War. According to Morris-Suzuki, 45,000 were granted the permission between 1952 and 1979 (Morris-Suzuki, 2006, p. 18). Kondo also mentions that approximately 2000 *zainichi* migrants were regularised every year between 1955 and 1965 (Kondo, 2009, footnote 5).

Back in the 1990s, the rejection of mass amnesty programmes stood in stark contrast to MOJ's increasingly liberal use of the Special Permission to Stay. In 1996, the unofficial assessment protocol was relaxed, and internal communications were circulated stating that the settlement of foreigners who are raising a half-Japanese child should be granted in the future (Asahi, 7 September 1996). Following this decision, the visa was issued to an unwed Filipino mother raising a Filipino child fathered by a Japanese man who had failed to acknowledge her as his legitimate child before birth (Asahi). At that time, a child born to an unwed foreign mother could obtain Japanese citizenship only if she had been acknowledged to be her biological father's legitimate child before birth.¹⁵ The mother's legal battle to win her daughter Japanese citizenship was rejected, but the two were given the Special Permission Stay instead.

¹⁴ This was added during the 2005 ICRRRA amendment.

¹⁵ This was later ruled unconstitutional in the 2000s, and the Nationality Act was subsequently amended.

As I have explained above, the late 1990s was when NPA began criminalising foreigners and MOJ launched a series of ICRRA amendments to combat illegal migration. Ironically, these coincided with a momentous event which stood diametrically opposite to the nascent xenophobic discourse. On 1 September 1999, four Iranian families, one Burmese family and two single men from Iran and Bangladesh surrendered themselves to the Tokyo Immigration Bureau and applied for the Special Permission to Stay. The group of 21 individuals included school-aged children who only spoke Japanese, a man requiring medical attention after suffering a serious industrial accident and another man fearing political persecution at home. The mass surrender to Japanese authorities was followed by two similar cases in December that year and July in the following year. The second group consisted of Iranian families, and the third group included families and a single man from Iran, the Philippines, Peru, Burma, Columbia and Bangladesh. In total, there were 51 illegal migrants applying for amnesty.

The Asian People's Friendship Society (APFS) played a central role in organizing the mass submissions and supporting campaigns. APFS is a migrant-supporting NGO which was established in 1987 by a Japanese man who learned of the plight of foreign workers from Bangladeshi migrants he met at a local bath house (Asian People's Friendship Society, n.d.a). The group started out by providing consultation services mainly to illegal migrants who had labour rights issues, such as claiming compensation for industrial accidents and unpaid wages (Mizukami T. , 2010). However, as illegal migrants started to form families with Japanese citizens and other migrants, the NGO started receiving queries regarding immigration amnesty and visa acquisition. Today, the organization commands 3500 members from 25 countries and gives advice on visas and social issues related to health, education and taxation amongst other things. The organization also conducts research work commissioned by private companies, including major multinational corporations, in order to raise funds (personal communication, 25 September 2012).

Prior to launching the mass submission campaign, APFS had been lobbying MOJ to adopt a mass amnesty program (Asian People's Friendship Society, n.d.b). Seeing that the prospect of such programs being implemented in the near future was grim, the organization started searching for an alternative way of regularizing illegal migrants within the existing legal framework. As explained earlier, the early 1990s witnessed cases in which illegal migrants married to a Japanese national were given the Special Permission to Stay by the Justice Minister. These administrative precedents prompted the organization to consult lawyers from the Tokyo Bar Association and called for members who were willing to try their luck by submitting applications in a group.

Once the 21 individuals of the first group finally made their decision to go through with the plan, the organization launched a campaign to galvanize the public into supporting their cause.

APFS believes that the only path to resolving [the problem of undocumented migration] is to lay social siege to the Ministry of Justice and the Immigration Bureau by making the public understand the meaning of this submission action and politicizing [the issue of immigration amnesty]. For this, we think that we must communicate, with our convincing words, that...this action is neither spontaneous nor incidental and is inevitably born out of the situation migrant workers face across the world (Asian People's Friendship Society, n.d.b).

As the passage shows, the organization positioned the campaign as a social movement within the wider context of undocumented international migration rather than narrowly focusing on individual cases as isolated incidents.

An Iranian man who was the appointed head of the first group as well as an amnesty applicant himself commented at a press conference before turning himself in to the Immigration Bureau that he decided to take action so that he could 'appeal to public opinion even if it meant that [he] had to sacrifice [himself] for those who may follow suit' (Asahi, 2 September 1999). To reiterate, the successful cases prior to the collective action involved illegal migrants who were married to a Japanese national or had given birth to a half Japanese child. Without similar administrative precedents of granting the permission to families only consisting of illegal migrants, the odds were against the APFS applicants. By

making themselves known to the Immigration Bureau, they were facing a high possibility of deportation when they could have chosen to lead a quiet life, albeit in constant fear of apprehension by Japanese authorities.

During the campaign, the organisation successfully politicised the issue by focusing on the rights of undocumented migrant children. The first group included three teenagers, two primary school children and three pre-school children, and their parents often commented that they were applying for amnesty in order to secure their children's future in Japan. APFS emphasized the innocence of children whose fate as undocumented migrants was not of their own choosing. The organization asserted that 'the children who were brought [to Japan] by their parents or were born in Japan cannot be punished' and posted testimonials written by some of the children in the group (Asian People's Friendship Society, n.d.b). For example, a girl in the sixth grade of primary school wrote the following in Japanese.

Because I don't have a visa, I can't even register for the National Health Insurance. When I catch a cold, I need to pay fees that are so much more expensive than what Japanese people would pay. As for my dad, he sometimes has no work twice a week or for a month when it is really bad because he does not have a visa. Please let me say this as my final words. We, children, have not done anything wrong. So please don't make us, children, cry (Asian People's Friendship Society, n.d.b).

Another facet of the campaign was the use of the mass media as a vehicle through which the cause was communicated to the wider public. Press conferences, a petition drive, a sit-in in front of MOJ and a demonstration march, all with the involvement of illegal migrants themselves, were reported by the media and gained national attention. The campaign was also strengthened by additional support from academia. Headed by Komai Hiroshi whose books on migrant workers have been published in English, a group of Japanese academics gathered 593 signatures from migration scholars in Japan and beyond, including such notable figures as Stephen Castles, Wayne Cornelius and Tomas Hammar (Researchers Demanding 'Special Permission to Stay' for Overstayers, 1999). Undocumented migrant children once again received special attention. The group warned that deporting socially- and linguistically-integrated children constitutes a violation of the United Nations Convention on the Rights of

the Child, citing a 1997 ruling made by the French Conseil d'État which annulled a deportation order given to an undocumented family with two under-aged children born in France for this reason.¹⁶

The highly-publicised campaign managed to produce a positive result for some amnesty applicants. According to one of the key participant in the lobbying activity organised by academics, the group's highlighting of concrete legal implications for children's human rights managed to soften the conservative attitude which had prevailed in the Immigration Bureau until then (personal communication, 3 March 2013). Justice Minister Usui Hideo revised the unofficial guidelines used to assess amnesty applications, and MOJ decided in January 2000 that children who have been raised in Japan and are expected to have difficulty adjusting back to their home country upon deportation should be allowed to remain in Japan (Asahi, 27 January 2000).

In accordance with the new unofficial guidelines, four Iranian families who had school-age children from the first group were given the discretionary visa whereas a Burmese family with a two-year old daughter and two single men from Iran and Bangladesh received a deportation order. MOJ apparently reasoned that a toddler would have little difficulty adjusting back to her home country compared to school-aged children. However, arbitrariness of assessment procedures surfaced when two Iranian families with 12-year old children from the second group received a deportation order as well. Activists and lawyers understood this judgment to mean that MOJ had unofficially set a rule to exclude children still in primary school for amnesty consideration. Moreover, the *Second Basic Plan for Immigration Control* published in the same year singled out illegal migrants married to a Japanese national as amnesty applicants who are worthy of special consideration, thereby underplaying the operational decisions to observe the human rights of migrant children (Ministry of Justice, 2000).

¹⁶ The Conseil d'État is the highest administrative jurisdiction in France.

Joppke (1999) demonstrates that judicial activism and domestic constitutions protecting human rights have contributed to the strengthening of foreigners' rights in the United States and Germany. National sovereignty and its prerogative to exclude non-citizens from the national community are constrained by institutions intrinsic to liberal democracy. In regards to the Japanese case, however, it has been commonly understood that judges have not been particularly active in protecting foreigners' rights despite the country being a liberal democracy (Gurowitz, 1999; Surak, 2008). The extent to which courts have played a role in expanding the number of permits cannot be determined without analysing relevant legal cases in a systematic manner. However, a cursory examination of media reports suggests that Japanese judges have indeed played an ambivalent role.¹⁷

For example, one Iranian family whose applications were rejected in the second mass submission took the matter to the Tokyo District Court which ruled in favour of the claimants commenting that the decision of the Immigration Bureau went beyond an acceptable level of administrative discretion (Asahi, 8 November 2006). However, the Immigration Bureau appealed the case, and the earlier ruling was overturned by the Tokyo High Court. The Supreme Court subsequently rejected the claimants' appeal, and the family was deported in 2006. By then, the eldest daughter, who was 12 at the time of the mass submission, had turned 18. A similar story unfolded when a Filipino family made an appeal after the Tokyo District Court ruled that all family members except for the eldest daughter, who was 16 at the time, should be deported (Asahi, 14 April 2005). The Tokyo High Court overturned the previous judgment by the district court and deported the entire family, including the eldest daughter. There have been other cases in which district court judges made rulings favourable to illegal migrants seeking to obtain the Special Permission to Stay although whether the Immigration Bureau subsequently appealed to a higher court needs to be investigated separately.

¹⁷ The conservative attitude of Japanese judges contrasts with the visible role of lawyers in advocating foreigners' human rights. The involvement of the Tokyo Bar Association in APFS's mass submission case is just one example attesting to this.

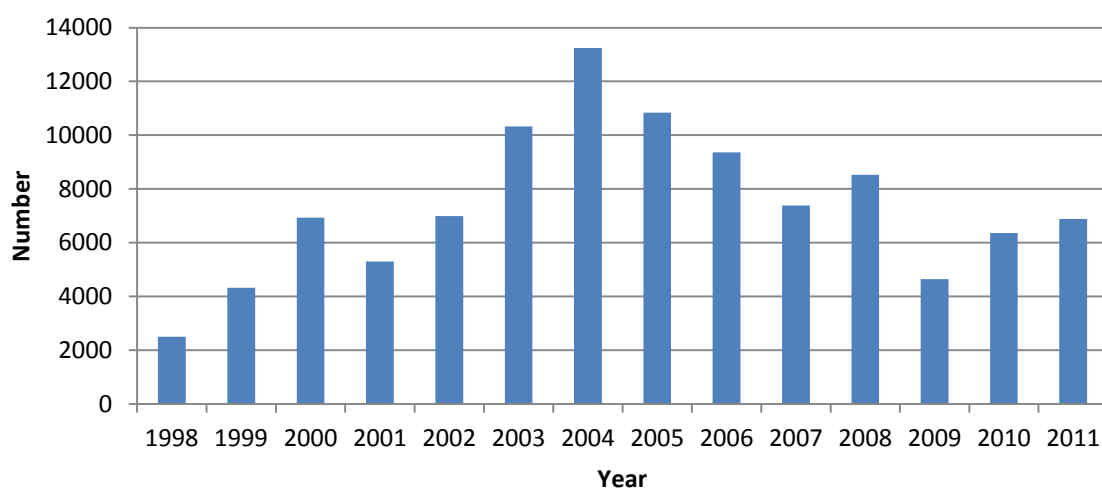
In any case, successful court cases merely result in remedial outcomes by annulling deportation orders and do not lead to a more fundamental change by altering the operational guidelines used by MOJ. On the other hand, the organisational effectiveness of APFS and the courage of the illegal migrants who surrendered themselves to authorities not only forced the ministry to alter the guidelines but also made this route to regularisation a publicly visible option to other illegal migrants leading a shadowy existence in Japanese society. This example of institutional layering, whereby existing operational rules were revised in order to regularise illegal migrants, shows that effective challenges could be mounted against MOJ by civil society groups and, more importantly, by illegal migrants themselves.

In 2004, Justice Minister Nozawa Daizō announced that he would be actively using the Special Permission to Stay to regularise illegal migrants who deserve humanitarian consideration (Asahi, 13 August 2004). In order to increase administrative transparency, 26 successful cases were made publicly available on MOJ's website, and 28 cases were added to the list in the following year. Furthermore, the *Third Basic Plan for Immigration Control* published in 2005 mentioned that MOJ would deliberate whether to set and publicise official assessment guidelines (Ministry of Justice, 2005). This was followed by a Cabinet decision to follow through with the above plan (Council for the Promotion of Regulatory Reform, 2006b). Consequently, the guidelines were published in 2006.

APFS' mass submission action had a substantial effect on the number of successful applications. It increased by 270% from 2,497 in 1998 to 6,930 in 2000 (see Figure 18). It is worth pointing out that the peak occurred in 2004 when Justice Minister Nozawa made his announcement to expand the use of the Special Permission to Stay and that the announcement followed the launch of the government-wide campaign to halve the number of illegal migrants. The timing, I would argue, was not coincidental. Between 2004 and 2008 whilst the government was driving the well-publicised campaign, MOJ quietly issued the Special Permission to Stay to 49,348 persons between 2004 and 2008. Since the ministry usually only issues the discretionary amnesty visa to overstayers and not to illegal migrants

apprehended for other immigration offences, such as illegal entry and landing, it is reasonable to believe that a substantial proportion of the reduction in the number of overstayers was achieved by regularising them. That the liberal issuance of the Special Permission to Stay contributed to the achievement of the campaign's target is arguably the most ironic and twisted story of Japanese immigration control in the 2000s.

Figure 18: Number of Visas Granted under the Special Permission to Stay



Sources: Ministry of Justice, 2003, 2008a, 2012b

Explaining Layering as the Dominant Form of Incremental Change

The introduction of a punitive measure against employers and job brokers abetting illegal employment of migrant workers with the amendment of ICRRA in 1990 was ineffective owing to the faulty design of the law and lack of administrative capacity to actually enforce the law. I argued above that the failure cannot be attributed to MOJ's lack of political will. Rather, it was the government which was divided on the issue as there were policy actors who had an interest in condoning illegal migration for economic reasons. More specifically, some elected representatives were able to ameliorate the impact of the amendment on employers by adopting a supplementary resolution which excluded those hiring existing illegal migrants. This was an instance of institutional layering whereby policy actors with an

economic interest in labour importation successfully subverted the dominant veto player, that is, MOJ, in the policy area of immigration admission.

For the rest of the decade, MOJ continued to combat illegal migration through operational means which were at their bureaucratic disposal. Restricting visa issuance for migrants originating from high-risk countries and for prospective entertainers proved effective to achieve this end. Concurrently, NPA attempted to present illegal migration as an ever so complex and expanding phenomenon by directing the public's attention to various types of transnational crimes.

It was not until the 9.11 attacks that the government as a whole strengthened immigration control in the name of counter-terrorism. This coincided with highly-publicised domestic incidents which heightened the public's sense of insecurity. Politicians, such as Ishihara Shintarō and Koizumi Junichirō, capitalised on these changing circumstances exogenous to immigration management and successfully re-invented illegal migration as a serious public safety issue in the first half of the 2000s. Having the backing of the incumbent political party and, at least in theory, the electorate helped to reinforce the dominance of MOJ.

The government's campaign to halve the number of illegal migrants was launched in 2004 and the target was met by the end of 2008. However, I have argued that the reduction in the number of overstayers was partly achieved by MOJ regularising them behind the scene. The use of the Special Permission Stay, to be sure, had precedents not only during the 1990s but also in the decades following the end of the Second World War. The unexpected settlement of contemporary illegal migrants eventually activated civil society groups, such as APFS, the Tokyo Bar Association and Japanese academics, as well as illegal migrants themselves. Through their organised political agitation, they were able to force MOJ to employ the administrative provision to regularise illegal migrants in the early 2000s by focusing on the rights of migrant children.

Ironically, this successful case of institutional layering was further expanded by none other than MOJ itself in service of the very campaign to combat illegal migration. The

Japanese government continues to ban unskilled labour migration and refuses to adopt mass amnesty programmes. Underneath the guise of institutional continuity, however, the liberal democratic country has dealt with the human consequences of its immigration admission policy in a way that is largely hidden from the purview of public scrutiny.

Chapter 5: Immigrant Integration Policy towards Economic Migrants

Until very recently, Japan's immigration admission policy did not encourage the settlement of migrant workers. Even today, only highly-skilled migrants are the target of settlement-oriented admission policies. Other *de jure* and *de facto* labour migrants are not expected to stay in Japan permanently although they are not barred from applying for naturalisation and permanent residence status as long as they meet a predefined set of criteria. In any case, the actual policy outcome is far removed from the policy principle to deter immigrant settlement. As I have explained in Chapter 1, the number of settled migrants has more than tripled in this non-immigration country since the amendment of ICRRA in 1990.

The present chapter examines the development of immigrant integration policy towards settled migrants since the 1990s. I define settled migrants as foreign nationals who legally reside in Japan on visas intended for the admission of those who have 'a special connection with Japan' as MOJ routinely phrases it. These visas are issued to special permanent residents, permanent residents, long-term residents, spouses and children of Japanese nationals and spouses and children of permanent residents. Since the present thesis is mainly interested in the policy development surrounding new economic migrants, I exclude special permanent residents when referring to settled migrants in the present discussion.

Before moving onto the main topic of the chapter, however, I briefly summarise the way in which non-citizens' rights were expanded in the context of the integration of *zainichi* migrants with the active involvement of local authorities in the 1970s and the 1980s. This had set a precedent for the subsequent integration of economic migrants in the 1990s and onwards. The second section explains how municipalities with a large foreign population rather opportunistically facilitated immigrant integration and subsequently began openly defying and challenging the national government by resorting to radical measures.

The third and penultimate section explains how the lobbying activity of some municipalities finally led to the foundation of immigrant integration policy at the national

level in the mid-2000s. Here, I spend some time unpacking the key policy concepts, 'foreigners as persons who live,' 'multicultural coexistence,' and 'coexistence' in order to interrogate the nature of the government's policy. The final section explains the incremental changes that have taken place in the policy area of immigrant integration. The crucial question is why and how immigrant integration was able to develop despite the strong preference of MOJ not to allow the settlement of migrant workers.

The Expansion of Non-Citizens' Rights

Before the new economic migrants, there were *zainichi* migrants. To a large extent the legal instruments and policy practices protecting foreigners' rights had developed in relation to *zainichi* migrants long before the settlement of new economic migrants became a salient phenomenon in the late 1990s. The South Korean government had actively pressured the Japanese government to give special consideration to the treatment of *zainichi* migrants ever since diplomatic relations between the two countries were normalised in 1965. For example, Article 1-1 of the 1965 South Korea-Japan Legal Status Agreement stated that South Korean residents applying for permanent resident status must be eligible for medical benefits (Takao, 2003, p. 538). This pattern of external intervention was later replicated in the 1991 South Korea-Japan Memorandum which urged the Japanese government to grant *zainichi* Koreans local voting rights and access to teaching jobs (Takao, p. 538).

As the above examples show, the transnational relationship between the South Korean government and its overseas citizens has been strong. In the decades immediately following the end of the Second World War, *zainichi* migrants generally intended to return to the Korean peninsula, and their political organisations focused on homeland politics (Takao, 2003, p. 537). They were mainly preoccupied with geopolitical issues in their now divided country instead of bettering their non-citizenship rights in Japan. Their activism, therefore, was driven by what Tai calls a 'sojourn discourse' (2009, p. 612).

Yearning for repatriation faded as the second generation came of age. Having decided to settle in Japan as an ethnic minority group, *zainichi* Koreans used litigation to remove discrimination and to demand socio-political incorporation. A law suit filed by Park Jon Suck against Hitachi, a major Japanese conglomerate, was the first case to challenge discrimination in the workplace (Takao, 2003, p. 547). In 1974, the court ruled in favour of the plaintiff who claimed that the prospective employer annulled a job contract upon finding out his *zainichi* status. Whilst litigation continued to be used by others seeking remedial action, supporters of the Hitachi case established the Council for Fighting against Ethnic Discrimination (Mintōren) in 1975 with the goals of asserting ethnic identity and advocating human rights (Chung, 2010; Tai, 2009).

The civil activism eventually culminated in a major national movement in the early 1980s when thousands of *zainichi* migrants refused to submit their fingerprints as mandated by the now defunct ARA. According to Article 1 of the law, its purpose was 'to establish fair control over aliens residing in Japan by clarifying matters pertaining to their residence and status and through the enforcement of the registration of such aliens.' The law was introduced in 1952 when there was a substantial number of illegal migrants from the Korean Peninsula (Chapter 4). Reflecting the historical origin of the law, it contained strict measures aimed at controlling illegal migration.

All foreigners staying in Japan for 90 days or more had to apply for an alien registration certificate which had to be renewed every five years. The registration and renewal process required foreigners to submit extensive personal information, including their fingerprints, as part of the registration process, and once registered they were required to carry around the certificate at all times. Failure to comply with the law was punishable by criminal, as opposed to administrative, penalties. *Zainichi* activists argued that finger printing constituted degrading treatment and violated the Japanese Constitution and international human rights law. Soon they were joined by non-*zainichi* foreign residents who willingly broke the law to show solidarity.

The act of collective defiance had set in motion a series of legal amendments spanning over more than a decade during which the contested practice was gradually abolished. With the 1987 amendment of ARA, the requirement to submit fingerprints was reduced to once at the time of registration, and paper certificates were replaced by laminate cards which were more portable. In 1992, the rules were further relaxed for special permanent residents only by allowing them to submit signatures instead of fingerprints. The South Korean government had demanded the fingerprinting requirement be dropped in the abovementioned memorandum in 1991. Finally, an amendment in 1999 abolished the practice entirely, thereby freeing all foreign residents from the much contested practice.¹

Scholars have identified two key factors behind the success of *zainichi* activism in expanding non-citizens' rights. First, international law has provided legal justification for the demands made by *zainichi* migrants. Starting in the late 1970s, Japan ratified a number of human rights treaties when internationalisation became the dominant political agenda. According to Gurowitz, signing the treaties was a way for Japan to transform itself into a legitimate participant of international society (Gurowitz, 1999). A series of ratification started with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1979, followed by the Convention Relating to the Status of Refugees (the refugee convention) in 1981, the Convention on the Elimination of All Forms of Discrimination against Women in 1985, the Convention on the Rights of the Child in 1994 and CERD in 1995.

In Japan, relevant statutory laws are amended in the legislature prior to ratifications of international treaties for the latter take precedence over the former. Ratification of the refugee convention and corollary changes of domestic legislation had an extensive implication on the provision of social benefits for foreign residents. In 1982, the government removed the so-called nationality clause (*kokuseki jōkō*) in the National Pension Act, the Child

¹ The practice of collecting foreigners' fingerprints was resurrected by the 2006 amendment of ICRR (see Chapter 4). However, this was an anti-terrorism measure and excluded *zainichi* migrants from the new rule.

Dependency Allowance Act, the Special Child Dependency Allowance Act and the Child Allowance Act (Gurowitz, 2006; Takao, 2003). This gave all foreign residents, including convention refugees, access to old age pension and child benefits.²

In contrast, it was decided that only refugees, as opposed to all foreign residents, would have access to the National Health Insurance just as *zainichi* South Koreans already did according to the 1965 agreement signed with their home government. For the time being, foreign residents other than convention refugees and *zainichi* South Koreans continued to have access to health insurance only if they resided in the jurisdiction of local authorities with a municipal ordinance granting the special provision (Asahi, 13 March 1981). However, the law was later amended to give universal coverage to all registered foreign residents in 1986 (Asahi, 14 January 1986). With the change, foreign residents gained complete access to social welfare made available to Japanese citizens with the exception of subsistence benefits guaranteed by the Livelihood Protection Act (Gurowitz, 2006; Takao, 2003).

Although Japanese judges were slow to embrace international law, *zainichi* migrants challenged existing policies and practices by appealing to the newly signed treaties (Gurowitz, 1999, 2006). For instance, a Korean man's claim that non-payment of old age pension benefits despite having made contribution violated ICESCR was initially rejected but was subsequently upheld by a High Court after the ratification of the refugee convention and the adoption of corollary changes of domestic legislation. Since the ruling, Article 25 of the Japanese Constitution guaranteeing the social minimum for all has been understood to mean all regardless of nationality (Gurowitz, 2006).

The second key factor leading to the expansion of non-citizens' rights was the growing importance of local politics. In fact, both Chung (2010) and Takao (2003) raise an

² Even before this, however, international human rights law was used to reinterpret the Japanese Constitution, resulting in the expansion of non-citizens' rights. In 1964, the Supreme Court stated that Article 14 of the Japanese Constitution guaranteeing equality before the law applies to Japanese nationals only if interpreted literally but ruled that, in practice, the article should be applied to all regardless of nationality in order to reflect the spirit of Article 7 of the Universal Declaration of Human Rights which also protects equality before the law (Gurowitz, 2006, p. 166).

important point that local-based initiatives preceded legal amendments based on international law and view local politics as the primary driver behind rights expansion. During the 1960s and 1970s, some local authorities actively engaged in innovative policy-making in areas overlooked by the national government and were becoming the heartland of progressive politics (Tegtmeyer Pak, 2000, p. 245). One strand of this was to introduce inclusionary measures which treated *zainichi* foreign residents as local citizens. According to this account, the domestic legal changes emanating from the ratification of international human rights treaties merely codified practices that had already been established at the local level.

In 1971, Kawasaki, Sapporo, Yokohama and other cities opened up access to the National Health Insurance for all registered foreign residents, including *zainichi* North Koreans whose legal status was not secured by the 1965 agreement signed with the South Korean government (Takao, 2003, p. 541). More importantly, this was done against the wishes of the central government (Takao, p. 541). Some local authorities also provided livelihood protection to foreigners regardless of their immigration status (Takao, p. 542). The operational practice apparently was a deliberate re-interpretation of the 1954 directives circulated by MOW instructing that requests for livelihood protection made by unregistered foreigners be rejected unless the situation was 'urgent and not negligible' (as cited in Takao, p. 541). Although undocumented labour migration had yet to develop, some local authorities with a high number of legal *zainichi* migrants had dealings with their undocumented compatriots and ensured their minimum subsistence by liberally interpreting the directives.

Some local authorities' effort to expand the rights of *zainichi* migrants went beyond the realm of social welfare. Kawasaki in particular became renowned for its progressive ethos. In 1985, the city's mayor defied the instruction of the national government and declared it would not report conscientious objectors refusing to submit fingerprints (Tegtmeyer Pak, 2000). The city was also one of the first local authorities to establish a deliberative assembly comprised of foreign residents and to open up access to public sector

employment (Kondo, 2001). Since then, other local authorities have established similar consultative institutions whilst others have granted the right to participate in local referenda (Kibe, 2006, p. 418). Sixteen local authorities passed resolutions to grant local voting rights to foreigners in 1993, and the number expanded to 174 in the following year (Takao, 2003, p. 533).³ According to Kondo (2001), about 30% of local authorities had abolished the national requirement for general administrative jobs in the public sector by 1992.

In sum, non-citizens' civil, political and social rights were gradually expanded with *zainichi* migrants' struggle for inclusion. Some progressive local authorities with a large *zainichi* population gave access to social welfare in the early 1970s, and this became codified at the national level when Japan ratified a series of international human rights treaties starting in the late 1970s. At least in a legal sense, non-citizens' social rights had been established before the settlement of new economic migrants became a reality in the 1990s. Furthermore, the local authorities went beyond the legislative changes made by the national government and pursued civic and political incorporation.

The Beginning of Immigrant Integration

The pivotal role local authorities played in expanding *zainichi* migrants' rights is amply evident, and some scholars argue that the experience left a lasting legacy for the future integration of new economic migrants. Chung (2010) claims that *zainichi* activism established a blueprint of pro-migrant movements for the new comers by focusing on local grassroots politics whilst Tegtmeier Pak (2000) writes that the experience of dealing with *zainichi* issues profoundly shaped the way local bureaucrats viewed themselves and their role as public officials in protecting the rights of non-citizens. Furthermore, some of the progressive local authorities became forerunners of immigrant integration policy which was

³ However, the Japanese government still has not legislated local enfranchisement of foreign residents.

later studied and emulated by others dealing with the arrival of foreign workers (Tegtmeyer Pak).⁴

The linkage between local authorities' prior experience with the *zainichi* population and the more recent handling of new economic migrants is a plausible one. Many of the policies, organisations and ideas established for *zainichi* migrants surely were applicable to other foreign residents as well. However, there is an enormous difference between the need of *zainichi* migrants and that of new economic migrants. By the 1990s, the former had been more or less socio-economically integrated into Japanese society, and their demands moved onto symbolic and political issues, such as local voting rights and maintenance of ethnic identity.

In contrast, new economic migrants were not politically organised and were dealing with quotidian and apolitical problems. Although foreigners' social rights had been formally secured, the new arrivals struggled to exercise them in a meaningful way in the presence of other non-legal barriers as I shall explain in the rest of the chapter. For now, it suffices to say that substantive equality in social welfare remained elusive without additional positive intervention by public authorities.

Without administrative pressure from the central government or political pressure from foreign workers themselves, some local authorities spontaneously brought in integration measures targeting new economic migrants. In fact, the trend advanced under the banner of internationalisation which had already prompted the central government to ratify international human rights treaties. In parallel with the effort to make the nation more outward looking, the political agenda also attempted to internationalise Japan from within. Local communities became the focal point of this endeavour called local internationalisation (*uchinaru kokusaika*) (Tegtmeyer Pak, 2000).

⁴ Aside from Kawasaki, Hamamatsu also became a famously progressive local authority active in the incorporation of foreign residents. The origin of their involvement, however, had little to do with *zainichi* migrants. Instead, it was started by a religious group which hosted Vietnamese refugees to settle in the city (Tegtmeyer Pak, 2000).

As the most outward looking bureaucratic organisation, MOFA was the first to enter the policy space of local internationalisation. It established a consultation centre providing useful information to sub-national governments interested in operating international exchange programmes (Lu, Menju, & Williams, 2005, p. 119; Tegtmeier Pak, 2000, p. 262). Subsequently, the Ministry of Transport and MITI also tried to monopolise the policy space, but the eventual winner was the Ministry of Home Affairs (MHA) whose responsibility was to oversee local governance (Tegtmeier Pak).⁵

In 1986, MHA circulated the Guidance for the Conduct of International Exchange by Local Government which provided the basic policy framework for local internationalisation (Lu, Menju, & Williams, 2005, p. 119; Tegtmeier Pak, 2000, p. 262). Three years later, the ministry circulated the Guidelines for the Local International Exchange Promotion Plan which requested local governments to set up international exchange associations (Lu, Menju, & Williams, 2005, p. 121; Tegtmeier Pak, 2000, p. 262). The Council of Local Authorities for International Relations (CLAIR) now a para-public organisation of MIAC, was established in order to provide information, guidance and financial support to local authorities for implementing local internationalisation programmes.

The primary goal of internal internationalisation was to promote cultural diplomacy through such things as sister city exchange and ethnic festivals, but some local authorities opportunistically expanded the new policy space in order to manage issues related to the settlement of migrant workers (Tegtmeier Pak, 2000). Primarily, efforts were directed at overcoming language barriers by offering lessons to adults and children, preparing multi-lingual pamphlets explaining local administrative matters and providing consultation services in foreign languages.

In some local authorities, generalist departments without predefined tasks, budget, or political clout experimented with the policy in an *ad hoc* manner. As local international

⁵ MHA merged with the Management and Coordination Agency and the Ministry of Posts and Telecommunications and formed MIAC in the 2001 administrative reform.

exchange offices were established across the country, some local authorities were able to deploy the new organisational capacity to launch and operate integration measures more programmatically than before. On the relationship between local internationalisation and immigrant integration, Tegtmeier Pak (2000) writes that policy measures arose out of ambiguity of goals, solutions and stakeholders surrounding the political agenda. Some local authorities took advantage of the fortuitous opening up of the new policy space and liberally re-defined local internationalisation to suit their governance needs for integrating foreign residents. This was a clear case of institutional conversion whereby actors subverted the original intention of rules through their interpretative enterprise.

Local authorities' appropriation of local internationalisation took a soft approach. I say soft because the initiatives were mostly aimed at providing support to overcome linguistic barriers and celebrate cultural differences albeit superficially. They took advantage of the government-wide political agenda in order to deal with or pre-empt the already manifest problems associated with the growth of the foreign population. However, local authorities did not fundamentally challenge the way in which the national government systematically neglected the day-to-day well-being of foreign workers and their families. In this sense, they acted more opportunistically than subversively. The new measures introduced under local internationalisation were politically innocuous and were not intended to undo, even covertly, the national government's obstinate refusal to afford room for migrants to exist not only as commodified temporary labourers.

In contrast, some local authorities became openly confrontational as they began experiencing new problems that could not be resolved only by taking the soft approach. When the Livelihood Protection Act was introduced in 1950, the law originally excluded foreigners from its coverage (Sellek, 2001). However, the aforementioned 1954 directives issued by MOW stated that unregistered foreigners should be excluded from the social

provision even though undocumented migrants could be legally registered under ARA.⁶ By taking advantage of this legal loophole, some local authorities utilised the livelihood protection scheme in order to finance emergency medical treatment provided to undocumented migrants who, strictly speaking, were not and could not be covered by publicly-funded health insurance schemes. As the magnitude of undocumented migration grew, the use of the scheme also expanded. In 1990, 31,615 foreigners received benefits under this arrangement (Sellek, p. 146).

In an effort to combat undocumented migration, MOW issued in 1990 administrative guidance which instructed local authorities to stop the pseudo-legal practice to finance undocumented migrants' medical treatment.⁷ The notice stated that the Livelihood Protection Act only applies to settled foreign residents, defined as permanent residents, spouses and children of permanent residents and Japanese nationals, and long-term residents. The definition, therefore, excluded not only undocumented migrants but also temporary migrants (Sellek, 2001, p. 147; Takao, 2003, p. 542).

In a related administrative memorandum, MOW explained that the 1954 directives provisionally included foreigners possessing an alien registration certificate in order to enable *zainichi* migrants to access livelihood protection to which they had been entitled until they were de-nationalised after the war (Sellek, 2001). It was also argued that the continued provision of benefits further encouraged illegal migration (Sellek). Following the issuance of the administrative memorandum, MOH further tightened undocumented migrants' access to medical care in 1992 by stipulating that only foreigners who are expected to reside in Japan for one year or longer are permitted to join the National Health Insurance (Gurowitz, 2006, p. 164; Sellek, 2001, pp. 147-148; Takao, 2003, p. 543).⁸ The decision newly excluded short-

⁶ As mentioned earlier, ARA was introduced to control and monitor illegal migration from the Korean Peninsula. Therefore, even undocumented migrants were supposed to register with local authorities and obtain the certificate by law so that the government could know their whereabouts.

⁷ The Ministry of Welfare merged with MOL and formed MHLW in the 2001 administrative reform.

⁸ In 1993, MOW also gave a verbal order to stop providing subsidies to undocumented migrants giving birth in hospitals (Sellek, 2001, p. 148).

term foreign residents who, up until then, had been eligible for the insurance scheme since 1986 when the nationality clause was removed from relevant laws (Takao, 2003, p. 543).

More crucially, the decision effectively excluded undocumented migrants, some of whom had access to the scheme in local authorities allowing this. MOW's decision was influenced by MOJ which argued that generous coverage would further encourage visa overstay (Takao, 2003). According to Takao (2003), most local authorities ignored the 1990 administrative guidance causing embarrassment for MOW. In response, the ministry hardened its stance by arguing that the practice constituted misappropriation of public funds. However, MOW's threat only emboldened sub-national governments as all 12 of the ordinance-designated cities collectively launched a formal call for the ministry to withdraw the administrative guidance (Takao).⁹

Faced with the restraining attempts, some local governments resorted to imaginative measures. In 1992, the Tokyo Metropolitan Government revived the use of the Sick Traveller Treatment Act which originally was intended to ensure that Japanese travellers falling ill or dying on the street received public assistance (Sellek, 2001, p. 148). The law had been out of use since 1969, but the local government resuscitated it to finance foreigners' unpaid medical bills. The Tokyo Metropolitan Government was followed by Saitama prefecture and Kanagawa prefecture.¹⁰ Another innovative measure was introduced by Gunma prefecture in 1993. The local government established a system to subsidise medical expenses of all foreigners with a registered address in the prefecture (Sellek, p. 151; Takao, 2003, p. 543). The practice spread to Kanagawa in 1993, to Hyogo in 1994 and then to Chiba, Saitama and the Tokyo Metropolitan Government in 1996 (Takao, p. 543). These local governments initiated the system as a transitional measure whilst awaiting some reforms to take place at the national level (Sellek, p. 151).

⁹ Ordinance-designated cities are major cities which are legally conferred a special legal status under the Local Government Act.

¹⁰ However, Sellek points out that the law only covered foreigners with an alien registration certificate and, therefore, excluded most overstayers (Sellek, 2001, p. 150).

MOW's attempts at shutting down two operational mechanisms for humanitarian assistance created financial chaos in hospitals. They now had to shoulder uninsured foreigners' unpaid medical bills since local authorities were no longer allowed to utilise the livelihood protection scheme to reimburse the costs (Asahi, 3 December 1990). In fiscal year 1994 alone, the total defaulted medical payments amounted to 162,414,000 yen (Sellek, 2001, p. 149).¹¹ As a result, some hospitals began refusing foreign patients in need of emergency care although doing so without a compelling reason was prohibited under Article 1 of the Medical Act (Sellek, p. 148).

Clearly, restrictive measures only exacerbated the on-going problem. MOW finally established the Ad Hoc Council on Foreigners' Medical Care to put forward more permanent solutions (Milly, 2006, p. 139; Ministry of Health, Labour and Welfare, n.d.b). The council's approach contrasted with the ministry's tough attitude which hitherto had attempted to deal with the problem by simply cutting off access. It recommended establishing a central fund to reimburse a portion of unpaid medical bills. The idea, which essentially mimicked the earlier initiative implemented by some local governments, was adopted by MOW in 1995. The fund covered approximately 130 emergency hospitals in the country (Milly, p. 139) and totalled 55,200,000 yen in fiscal year 1995 (Asahi, 21 December 1995).¹²

Another recommendation which materialised pertained to illegal workers' access to health insurance. In Japan, there are two main types of publicly-funded health insurance. The first scheme called the Health Insurance (*kenkō hoken*) is for full-time workers, part-time workers defined as those working two-thirds of full-time hours, and their dependents. Scheme takers are registered via their employers who must pay half the insurance contribution. The second scheme called the National Health Insurance (*kokumin kenkō hoken*) is for people who do not qualify for the Health Insurance. The scheme is administered by local authorities and is partially funded by the national government. As mentioned earlier,

¹¹ This is about 1 million British pounds using today's exchange rate.

¹² This is about 359,000 British pounds using today's exchange rate.

some local authorities allowed undocumented migrants to register for the second scheme on a discretionary-basis.

Needless to say, the *ad hoc* council did not support undocumented migration, and this was made explicit in the final report it published. At the same time, however, it made a surprising recommendation which implicitly allowed for illegal foreign workers' health insurance coverage in the following passage.

The Health Insurance is a scheme based on employment relationships. [Therefore], it is appropriate to register foreigners in full-time employment for the health insurance scheme through their employers (Ministry of Health, Labour and Welfare, n.d.b).

The recommendation did not specify the legal status of foreigners referred to in the text. In other words, it did not explicitly include undocumented migrants, but neither did it exclude them. The council put forward the recommendation as a means to solve the unpaid medical expense problem, and the ambiguous wording was reported to be intentional (Asahi, 25 May 1995; Nikkei, 27 May 1995). At the same time, extended coverage of the National Health Insurance was still rejected because the registration procedure required the applicant's immigration status to be verified by local authorities (Nikkei). Nonetheless, the inclusion of undocumented migrants in the Health Insurance system partially reversed MOW's previous stance which had been characterised by draconian restriction.

Whilst undocumented migrants' access to medical care was expanded, documented migrants' social security registration became more strictly enforced than before. Just as there are two main types of health insurance schemes, there are also two main types of old age pension schemes. The first type called the Welfare Pension (*kōsei nenkin*) is a company insurance programme akin to the Health Insurance. In fact, contributions for the Health Insurance and the Welfare Pension are linked to each other and are automatically deducted from the beneficiary's salary. The second type called the National Pension (*kokumin nenkin*) is for those not covered by the Welfare Pension. Similar to the National Health Insurance, the National Pension is administered by local authorities and is partially funded by the central government. Whereas the Health Insurance and the Welfare Pension had to be taken out

simultaneously, the National Pension and the National Health Insurance were not linked to each other.

Although the nationality clause had already been removed from the legislation governing the two public pension plans, many *nikkeijin* preferred not to be registered for the Health Insurance despite being full-time workers. In order to draw an income from the Welfare Pension, the beneficiary must be at least 65 years old and have a work history of at least 25 years. For migrant workers without a definite long-term plan to settle in Japan, paying contribution towards the pension plan was a waste of their hard-earned yen because the plan did not reimburse those who could not meet the eligibility criteria (Sellek, 2001, p. 152). In addition, employers were reluctant to register *nikkeijin* since passing on the non-wage labour cost to their wage would have prompted the geographically-transient foreign employees to search for a better-paying job elsewhere (Nikkei, 10 December 2010).

Consequently, *nikkeijin* simply chose to register for the National Health Insurance which, at the time, was not linked to a pension plan. The premium paid for the National Health Insurance is lower than that for the Health Insurance and does not collect employer contribution. Therefore, local authorities with a large number of *nikkeijin* struggled to finance the scheme. As a result, some local authorities, such as Hamamatsu and Toyohashi, started refusing applications made by legal full-time workers (Sellek, 2001, p. 153). Concurrently, the national government strengthened the guidance given to employers to register their foreign employees for the Health Insurance. This was a direct consequence of MOW receiving warnings from the Office of Administrative Audit in the Management and Coordination Agency. A survey on hospitals conducted by the agency had shown that only 53% of foreign patients had health insurance coverage (Nikkei, 3 February 1992).

Hortatory measures were not enough to persuade *nikkeijin* and their employers to register for the Welfare Pension. In 1994, MOW introduced partial reform of the National Pension Act in order to entitle foreign workers, who were unable to draw their pension, to a lump-sum payment within two months after departing from Japan (Sellek, 2001, pp. 153-

154; Gurowitz, 2006, p. 164). However, the maximum amount that could be reimbursed was only worth the amount of contribution accumulated over three years. According to Sellek, the number was chosen based on the data provided by the Immigration Bureau that 90% of foreigners stayed in Japan for less than three years (p. 154). In addition, MOW made the simultaneous enrolment of the National Health Insurance and the National Pension Plan mandatory in 1995 (Sellek, p. 154). The measure was meant to decrease *nikkeijin*'s incentive to apply for the National Health Insurance instead of the Health Insurance by increasing the aggregate contribution level.

The Entrenchment of Immigrant Integration

As the number of *nikkeijin* continued increasing throughout the rest of the 1990s, social security registration became just one of many challenges of immigrant integration. Some were minor problems related to *nikkeijin*'s unfamiliarity with unspoken communal rules, such as not having noisy social gatherings at night and in public space and putting out the right type of garbage on the right day of the week. Furthermore, I have already elucidated how the concentrated presence of *nikkeijin* in some localities led to conflicts between Japanese and Brazilian youths (Chapter 2). Juvenile delinquency undoubtedly was encouraged by the lack of support migrant children received in the Japanese education system. Towards the end of the decade, it became clear that an unspecified but considerable number of *nikkeijin* children were kept at home without receiving any form of education. Whether or not the central government was prepared for it, family migration had become a reality in the officially non-immigration country.

As a matter of fact, the national government was neither prepared nor willing to deal with the consequences of hastily admitting co-ethnic migrant workers. Rather remarkably, immigrant integration policy remained wholly absent at the national level until the mid-2000s. Against this background, some sub-national governments, for which daily exigencies of migrants created a more proximate reality, began networking with each other in order to

facilitate horizontal knowledge sharing and to engage in advocacy work targeting the national government.

Hamamatsu, a major manufacturing city where Honda was initially founded, became a local authority with the highest number of Brazilian residents in Japan during the 1990s. In 2001, the city initiated the creation of the Council of Local Authorities with a Large Number of Foreigners (CLALNF) with 12 other local authorities similarly experiencing a rapid growth of the *nikkeijin* population (Asahi, 8 May 2001). As of 1 April 2012, the council commanded the membership of 29 local authorities (Council of Local Authorities with a Large number of Foreigners, 2012b). The percentage of foreign residents in these local authorities is higher than the national average except for Soja city. Today, Oizumi town and Minokamo city have the highest concentration of foreign residents at 15.3% and 8.6% respectively amongst the council members.

Shortly after the council was established, the member municipalities put forward the Hamamatsu Declaration outlining the organisational mission which was to achieve 'local-based coexistence of Japanese and foreign residents' (*nihonjin jūmin to gaikokujin jūmin tonochiiki kyōsei*) (Council of Local Authorities with a Large Number of Foreigners, 2001). The word *kyōsei*, translated here as coexistence, originally means symbiosis in the study of biology (Chapman, 2006, p. 98). However, the term began to be used to describe the educational integration of disabled and non-disabled children in the 1970s and was subsequently appropriated by those promoting ethnic and gender equality in the 1980s (Chapman, 2006, p. 99; Tai, 2005, p. 43). As Chapman succinctly puts it, '*kyōsei* is often used to describe a state of harmonious existence that can and, in most discursive contexts, eventually will be achieved' (Chapman, p. 98). Indeed, it was the harmonious coexistence of Japanese citizens and migrants in a local community that the council strove to achieve.

The policy proposals contained in the declaration spanned over three main areas of education, social security and residence management. First, the council demanded the national government provide greater educational support so that migrant children do not fall

behind in or drop out of school. Second, the council proposed to encourage foreign workers' social security registration by decoupling the employer-based social and health insurance schemes, providing full reimbursements of insurance contribution and ensuring employers and work dispatching agencies register their foreign employees for the social security scheme. Finally, the council wanted the existing residence management system to be reformed.

The last point requires greater elaboration. At the time, foreigners' immigration status was governed by ICRRA and ARA. As I explained earlier, ARA placed a legal obligation on foreign residents to be registered with local authorities, and the Alien Registration System (ARS) was a mechanism through which MOJ monitored their whereabouts in Japan. However, local authorities departed from the original purpose of ARA and used the information collected for the system to deliver social services, such as sending out notifications for children's school registration and vaccinations, and to collect taxes and public insurance contribution. Strictly speaking, the use of the personal information to provide welfare to foreigners did not have any legal grounding except that the Local Government Act mandated local authorities to promote and ensure the welfare of all residents.

In any case, ARS was designed for the purpose of immigration control and was causing administrative difficulty for local bureaucrats. Many *nikkeijin* workers are temporary contract workers who are dispatched to different employers by temporary job agencies. This employment arrangement often requires them and their families to relocate in search of new jobs. Under ARA, foreign residents had to register themselves with a local authority but did not have to notify their relocation. Moreover, the law did not permit local authorities to close down individual registrations even if it became known that foreign residents in question had already moved out of the administrative area. As a result, local authorities with a large number of *nikkeijin* had to carry out administrative tasks related to foreign residents without accurate information on them. In order to solve the problem, the Hamamatsu Declaration

proposed to place a duty on foreign residents to notify relocation and to empower local authorities to use the collected personal information to provide social services.

The mayors of the 13 member local authorities took the declaration to MIAC, MOFA, MEXT, MHLW, MOJ and the Diet in an effort to demand policy changes (Council of Local Authorities with a Large Number of Foreigners, 2012a). A year later, the council also organised an open debate between the thirteen mayors and MIAC, MOFA, MEXT, MHLW, MOJ, the Agency for Cultural Affairs, and the Social Insurance Agency (Council of Local Authorities with a Large Number of Foreigners).¹³ Initiating the policy dialogue with the central government was a major achievement for the council. However, the dialogue also highlighted how local authorities on one hand and the national government on the other simply did not see eye to eye.

The exchange between some mayors and a bureaucrat from the Immigration Bureau epitomises the centre-periphery disconnect. When the mayor of Oizumi town proposed to improve ARS in order to ameliorate the administrative burden felt by the member local authorities, the bureaucrat retorted, 'Do you think it would be fine to make the system simple like the Basic Resident Register System (for Japanese residents)? How would you feel if some crazy foreigner (*wakeno wakaranai gaikokujin*) was living next to you?' (Asahi, 8 November 2002). To this, the mayor of Iwata city replied with the following comment.

All the negative is highlighted, but some say that they did not have to close down their factories because the Brazilians are here. Having foreigners in my town is an advantage, and we have to turn it into an advantage. In fact, education and health care issues are creating big obstacles to achieving this (Asahi).

The mayor's frustration neatly captures the double bind which paralysed some local authorities with a strong industrial base. The local economy was reliant on foreign workers, and yet local governance was hindered by their presence due to the central government's lack of support and involvement.

¹³ The Social Insurance Agency became defunct in 2009.

Whilst the council demanded the national government to step in, the national government left local authorities to their own devices acting as though immigrant integration was not a serious policy problem. In one meeting, a MIAC bureaucrat commented that the national government would be willing to come to rescue if there was a request from local authorities to do so (Asahi, 27 December 2004). This obviously misguided comment reportedly prompted the usually affable mayor of Hamamatsu city to comment that '[MIAC] has lost the ability to spot issues that will determine Japan's future' (Asahi). After the meeting, he added, 'The national government is also a responsible party (*tōjisha*). What I wanted to say was that we are not asking for a helping hand' (Asahi).

An incipient change was foreshadowed when MIAC established the Study Group for the Promotion of Multicultural Coexistence in 2005. In the following year, the working group submitted a report which identified key integration challenges, collated some examples of best practice at the local level and made policy suggestions to be implemented by the national government (Ministry of Internal Affairs and Communications, 2006b). In the report, multicultural coexistence was positioned as the third pillar of local internationalisation alongside international exchange and international cooperation which had been promoted since the late 1980s. The report was the first public policy document of the central government to refer to the term multicultural coexistence or *tabunka kyōsei* (Tai, 2009, p. 327), defined as a state in which 'people of different nationalities and ethnicities live together as members of local society whilst mutually acknowledging cultural differences and building equal relationships' (Ministry of Internal Affairs and Communications, p. 5).

The report's recommendations roughly reflected the demands that had already been made by CLALNF. They concentrated on four policy areas which were communication support, everyday life support, community building and institutional rearrangement. In the same month the report was published, MIAC circulated the *Plan for the Promotion of Multicultural Coexistence in Local Communities* (2006a) to ordinance-designated cities and local governments which were asked to relay the information to local authorities in their

respective jurisdictions. The plan was based on the working group's report and provided a framework within which sub-national governments were asked to establish and implement their own multicultural coexistence measures. In order to facilitate the process, the Multicultural Coexistence Office was newly established in CLAIR which, if one may recall, was originally created to facilitate local internationalisation. In short, pre-existing institutional arrangements to promote the political agenda which had been introduced in the 1980s were being extended to promote immigrant integration.

Yamawaki Keizō who is a prominent activist scholar of immigrant integration in Japan as well as the head of the working group writes that the report was significant for three reasons (Yamawaki, 2009). First, it established multicultural coexistence as the third pillar of local internationalisation. Second, it showed an overall picture of already implemented measures related to multicultural coexistence by gathering best practice examples. Third, and most importantly, it introduced a new discursive construction of migrants as 'foreigners as persons who live' (*seikatsusha to shiten no gaikokujin*). In English, the term is an awkward construction. In Japanese, however, 'persons who live' humanises migrants who are routinely viewed as workers and criminals by the central government. The term implicitly conveys that migrants too have needs beyond access to employment.

Notwithstanding Yamawaki's positive assessment of MIAC's initiative, I would argue that the circulation of the plan failed to address the most crucial problem that had plagued the members of CLALNF. Instead of providing greater financial support and making appropriate legal and institutional changes, MIAC now formally placed the onus of immigrant integration on sub-national governments. Seen from the perspective of local authorities with a large migrant population, they were being told to do what they had already been doing out of sheer necessity. Moreover, multicultural coexistence was to be achieved with increased involvement of civil society organisations and private employers of foreign workers. The central government was absent in this scenario except for MIAC's role in circulating the plan.

MIAC's multicultural coexistence report did propel forward the establishment of immigrant integration policy in an unintended way. In April 2006, the report was introduced to CEFP (Yamawaki, 2009) which at the time was discussing the government's strategy for globalisation. In the council, Prime Minister Koizumi Junichirō and Cabinet Secretariat Abe Shinzō acknowledged the need to improve the welfare of migrants (Asahi, 16 November 2006). Gaining visibility in the powerful supra-ministerial organ produced several important outcomes. First, the promotion of multicultural coexistence was included in CEFP's annual basic policy in July 2006 (Council on Economic and Fiscal Policy, 2006b, p. 8). This was one of the rare occasions on which a central government organisation that is not MIAC used the term in an official policy document. Second, the introduction of MIAC's report to CEFP led to Abe's decision to launch an inter-ministerial deliberation of immigrant integration (Council on Economic and Fiscal Policy, 2006a, p. 17).

Abe chose ICPRFW as the appropriate venue for this. One may recall that the inter-ministerial council was established in 1988 amidst the first immigration reform debate in order to explore possible amendments of ICRRA in the face of growing undocumented migration (Chapter 2). Even the name of the organisation, which to reiterate reads the Inter-ministerial Council for Problems Related to Foreign Workers, was an inappropriate fit given the aim of the new initiative. Put bluntly, the choice of deliberative venue was slightly amiss. However, the council was composed of senior bureaucrats from all the relevant central ministries, and other inter-ministerial organisations dealing with immigrant integration policy did not exist in the central government at that time. Given the organisational reality, ICPRFW's remit was thus expanded to include immigrant integration.

In December 2006, ICPRFW published the *General Policy for Foreigners as Persons Who Live* (Inter-ministerial Council on Problems Related to Foreign Workers, 2006b). The premise of the policy was explained as the following.

Our country must shoulder a certain level of responsibility regarding the living environment and treatment of foreigners who work and live in Japan; and must maintain an environment in which they as societal members can receive public

services [i.e. social services] just as the Japanese do (Inter-ministerial Council on Problems Related to Foreign Workers, p. 1).

Sixteen years after the doors were opened to *nikkeijin* foreign workers, the national government affirmed the equal guarantee of social rights granted to non-citizens and citizens as a matter of immigration management rather than that of international human rights commitment. As late as it might have been, the Japanese government finally gave birth to its first immigrant integration policy.

Specific policy measures were divided into four areas which were foreigner-friendly community building, foreign children's education, working conditions and social security, and residence management reform. Some of the measures merely offered renewed support for existing local initiatives which had already been highlighted in MIAC's earlier multicultural coexistence report and plan. Other measures, in contrast, were legally and financially major undertakings that could only be carried out by the national government. These included giving financial support to municipalities with a large foreign population through a local allocation tax grant (*chihō kōfu zei*), creating nationally-standardised curricula for children learning Japanese as a second language, promoting knowledge-sharing with sending countries, signing bilateral social security contribution exemption treaties to encourage insurance registration, legally obligating firms to account for their foreign employees, linking the fulfilment of citizenship duties to visa renewal and reforming residence management.

The progress made by ICPRFW was further accelerated by an unexpected event. On 15 September 2008, Lehman Brothers went bankrupt, finally engulfing Japan into the global financial crisis that had started earlier in the United States. The decline in the volume of trade negatively affected the unemployment rate particularly in the car manufacturing industry. This, in turn, resulted in a sharp rise of unemployment amongst *nikkeijin* as most of them worked in the industry. According to a figure cited by Roberts, more than half of workers in the manufacturing industry were laid off following the crisis (2012, p. 52).

The mass unemployment of *nikkeijin* precipitated by the so-called Lehman shock created serious repercussions in multiple directions. Once again, sub-national governments, not the national government, were the first ones to notice these. Approximately two months after the security broker became insolvent, CLALNF submitted a document demanding the implementation of emergency measures to MHLW, MEXT and the Japan-Brazil Alliance of Diet Members (Asahi, 17 December 2008). This was followed by Governor Furuta Hajime of Gifu, a prefecture with the highest concentration of foreign residents at that time, who phoned Obuchi Yuko, a minister newly appointed to deal with immediate problems arising from settled migrants' unemployment (Yomiuri, 7 January 2009).

The bottom-up lobbying by sub-national actors continued as the situation went from bad to worse. In February 2009, CLALNF also officially reiterated their messages to the Cabinet Office (Asahi, 24 February 2009). In the same month, the Conference for the Promotion of Multicultural Coexistence (CPMC), submitted its own emergency demands to the Cabinet Office, MIAC, MEXT and MHLW (Yomiuri, 4 February 2009). The conference, which is comprised of Nagoya city, Aichi, Gunma, Nagano, Gifu, Shizuoka, Mie and Shiga prefectures, was established in 2004 in order to promote multicultural coexistence and undertook lobbying activities similar to those by CLALNF. However, their presence had been in the shadow of CLALNF until it stepped up its lobbying activities around the time of the Lehman shock.

There were mainly three types of demands made by the sub-national actors. First, there was an urgent need to secure foreign children's access to education. Japanese law guarantees all children's access to public school education regardless of their nationality or immigration status. However, many *nikkeijin* children attended privately-run Brazilian or Peruvian schools but had to drop out because their jobless parents could no longer afford tuition fees. Governor Furuta explained that 400 of 1000 students attending international schools in his prefecture had to drop out for this reason (Asahi, 17 December 2008). Similarly, Mayor Watanabe Naoyoshi of Minokamo city, also in Gifu prefecture and a member of

CLALNF, voiced his concern when he commented that some students had to stop attending school in November without being able to finish the academic year (Asahi).¹⁴ Under such circumstances, CPMC and CLALNF demanded the government supply additional teachers specifically to support foreign children transferring into the Japanese public school system and to ensure that no children are kept at home without receiving any form of education (Asahi; Conference for the Promotion of Multicultural Coexistence, 2009).

Second, going home was one possible option for unemployed migrants and their families, but there were practical problems deterring this. Governor Furuta explained that flights to Brazil were fully booked for the next two months and wanted the government to request private carriers to operate additional flights (Yomiuri, 7 January 2009). CLALNF also suggested that the Japanese government should solicit support from sending countries to repatriate their nationals (Asahi, 24 February 2009). It is important to emphasise that these actors were not advocating involuntary repatriation of migrant workers. Rather, these measures were intended to assist those who wanted to go back home but could not for practical reasons.

Naturally, not all *nikkeijin* wanted to go home. Therefore, the government also had to implement measures to support reemployment if it did not want a large number of migrants to be on livelihood protection benefits, to which settled migrants were entitled. For many *nikkeijin*, finding alternative employment posed an enormous challenge since their level of Japanese language proficiency was not sufficient to hold a job outside of the manufacturing industry (Asahi, 20 October 2009).

Some of the specific measures suggested by the sub-national actors included increasing employment adjustment subsidies provided to employers who keep employees on stand-by or provide training instead of dismissing them (Asahi, 17 December 2008); expanding personnel dealing with foreigners' unemployment at local job centres (Conference for the Promotion of Multicultural Coexistence, 2009); and providing Japanese language

¹⁴ The academic year ends in March in Japan.

training to unemployed foreigners (Asahi, 17 December 2008). Moreover, both CPMC and CLALNF pointed out that the central government must disseminate the information on support measures in multiple foreign languages (Asahi, 24 February 2009; Conference for the Promotion of Multicultural Coexistence, 2009).

In contrast with the slow speed at which the national government embraced immigrant integration, its reaction to the sudden mass unemployment of *nikkeijin* was fairly swift. On 9 January 2009, less than three months after the Lehman shock, the Office for the Promotion of Measures for Foreign Residents was established under the Cabinet of Prime Minister Asō Tarō (Cabinet Office, 2009; Roberts, 2012, p. 52). In the same month, the office published a document containing immediate relief measures which were further elaborated upon in April by the Council for the Promotion of Measures for Long-term Residents (2009).¹⁵ This council dealing with problems related to migrants' socio-economic integration was comprised of vice ministers from all the key central ministries and was headed by a special cabinet office minister.

The policy package put forward and implemented under the guidance of the office and the council aimed to secure the well-being of *nikkeijin* and their families. Some measures were newly introduced whilst others made use of existing schemes, some of which were established under ICPRFW's immigrant integration policy. The emergency measures were divided into five main areas, namely, education, employment, housing, disaster and crime management, and repatriation, and more or less reflected the demands that were being made by sub-national actors.¹⁶

MEXT took the lead in the area of education by setting up the Rainbow Bridge Classroom to provide Japanese language education, providing extra support teachers and subsidising school lunch costs. The overall aim was to facilitate foreign children's transition

¹⁵ The council is now called the Council for the Promotion of Measures for Nikkei Long-term Residents.

¹⁶ The policy document also promised to disseminate information on relief measures in different foreign languages and to establish the Council for the Promotion of Measures for Foreign Residents.

into the Japanese public education system in case they had been schooled in private international schools. MIAC also provided subsidies to international schools via local authorities by increasing local allocation tax grants.

The measures to facilitate employment fell under the jurisdiction of MHLW. The number of personnel to support unemployed migrants at local job centres was increased, and the maximum period during which an income could be drawn from unemployment insurance was extended by sixty days. What was most interesting, however, was the way in which the ministry re-formulated vocational training for *nikkeijin*. First, Japanese language education was included in job training in order to enable *nikkeijin* to find non-manufacturing jobs. Second, the government attempted to divert *nikkeijin* labour away from manufacturing. For this, MHLW was to provide training in areas which were expected to experience labour shortages, and elderly care was highlighted as one example. Rather awkwardly, the Japan International Cooperation Agency, MOFA's para-public organisation, was also instructed to provide vocational training in order to make *nikkeijin* employable when they return to their home countries. Here, elderly care was once again singled out as the field in which they should be trained.¹⁷

Nikkeijin's housing was also a major issue. Many of them lived in company-operated accommodation, and dismissal meant homelessness (Roberts, 2012, p. 52). Therefore, the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) expanded eligibility criteria for public housing to include unmarried, single workers and facilitated access to private housing. Disaster and crime management was another policy area for which central ministries were supposed to strengthen pre-existing measures. For example, MIAC was to ensure that local authorities could protect foreign residents in case of natural disaster, and NPA was to continue providing crime prevention and road safety classes. A bureaucrat from the Office for the Promotion of Measures for Foreign Residents explained to me that foreign

¹⁷ I have not figured out why exactly the government thought it a good idea to train *nikkeijin* in elderly care so that they could be employed back in Brazil rather than in Japan. One explanation would be that Japan could benefit from the training should these migrants choose not to go home.

victims of crime may require special language support when making a report to the police (personal communication, 21 September 2012). However, it is still unclear to me how this was related to repercussions of the Lehman shock unless NPA was concerned that unemployed *nikkeijin* would turn to crime.¹⁸

The setting up of a vocational training programme in elderly care for *nikkeijin* seeking reemployment in their home countries was part of a wider policy to facilitate their repatriation. Surely, *nikkeijin*'s voluntary exodus was a simpler solution to the sudden unemployment problem as far as the government was concerned. Therefore, it was in the interest of the government to facilitate this as long as there were *nikkeijin* who were willing to return home. To this end, various central ministries pulled their weight. MOFA liaised with sending countries, METI with employers, and MLIT with commercial carriers. Finally, MHLW introduced the publicly-funded repatriation programme which was only added as an emergency measure in April (Chapter 2).

As the low take-up rate of the publicly-funded repatriation programme shows (Chapter 2), however, leaving Japan was the last resort for many *nikkeijin*, especially for those with children who had grown up in Japan (Asahi, 15 December 2009). Indeed, CLANF sent out a clear message in the *Ota 2009 Emergency Proposal* that the government should come to terms with the permanent settlement of *nikkeijin* and their families (Council of Local Authorities with a Large Number of Foreigners, 2009). The council argued that the national government should learn a lesson from the fact that *nikkeijin* did not leave despite having lost their jobs and seriously consider devising an immigration policy which treats foreigners as rights-bearing persons who live. The sobriety of the text transmitted CLALNF's deep disaffection.

The national government did respond to the strongly-worded demands, though perhaps not to the extent CLALNF had hoped for. In August 2010, the council published a

¹⁸ I also asked the same bureaucrat from the Office for the Promotion of Measures for Foreign Residents whether *nikkeijin* were more prone to becoming victims of crime, such as fraud, after the shock, and he said that was not the case (personal communication, 21 September 2012).

basic policy on the integration of *nikkeijin* specifically (Council for the Promotion of Measures Related to Nikkei Settled Foreigners, 2010). This was followed up by an action plan with detailed measures to implement the policy (Council for the Promotion of Measures Related to Nikkei Settled Foreigners, 2011). There is no need here to go through the measures as most of them were a continuation of what had been initiated by ICPRFW and the council itself. Instead, the stated premise of the policy is worth examining in detail for it was filled with words of atonement. After explaining how *nikkeijin* were admitted as co-ethnic migrants in the early 1990s, toiled to sustain the nation's industry and were driven to destitution after the shock, the council stated the following apologetically.

It can be said that the incomplete establishment of a system to admit *nikkeijin* settled foreigners as members of Japanese society caused this kind of situation. As long as their settlement continues to be permitted, there is a need to implement measures, as the nation's responsibility, to accept [*nikkeijin*] as members of Japanese society and make sure they are not socially excluded (Council for the Promotion of Measures Related to Nikkei Settled Foreigners, 2010, p. 2).

That the national government finally got itself involved in immigrant integration was not a minor achievement despite the fact that it should have done it long ago. However, the media was eerily uninterested in this policy shift. According to Aiden, the number of times multicultural coexistence appeared in two major Japanese newspapers, namely, Asahi and Yomiuri, were modest (Aiden, 2011, p. 222). The term appeared five times in Yomiuri and none at all in Asahi in 2006 which was the year MIAC and ICPRFW published their policy documents. The usage gradually grew but was still uncommon compared to that of the term internationalisation. Multicultural coexistence appeared less than 25 times whereas internationalisation appeared 125 times in Asahi in 2010 (Aiden, p. 222). Aiden concludes, 'it would be premature to say that multicultural coexistence is a new buzzword in the media' (p. 222). I also conducted a search in Asahi and Yomiuri attempting to find articles mentioning MIAC's multicultural coexistence policy and ICPRFW's policy for foreigners as persons who live in 2006, but nothing was found.

Multicultural coexistence never managed to catch the central government's fancy. Even CEFP which promoted it in 2006 never mentioned it again in the subsequent annual policy framework documents. In short, multicultural coexistence as an immigrant integration policy was initiated by local authorities and was endorsed by MIAC without fanfare outside of a small circle of academics and civil society groups. In contrast with the way in which internationalisation had the backing of a prime minister and subsequently became subject to attempts by various central ministries to monopolise the agenda in the late 1980s, multicultural coexistence did not become the object of such political struggle, not even mildly so. A MIAC bureaucrat I interviewed commented rather indifferently that multicultural coexistence is a term used by local authorities and that he 'certainly acknowledges' (*ichiō shōchi shite ite*) that central government organisations are using other expressions (personal communication, 21 September 2012).

When I asked bureaucrats of the national government why multicultural coexistence has failed to spread to ministries outside of MIAC, I was given two types of answers. The first was that the term is cryptic. A senior member of CLAIR's Multicultural Coexistence Office admitted to me that he himself had had a hard time explaining to people what the term meant.¹⁹ He said,

To begin with, *tabunka* (multicultural) does not make any intuitive sense to a large degree. It would be more understandable if it was *ibunka* (other-cultural). As in to understand other cultures, to mutually understand... I don't know who came up with the term, but I do feel at the very least that there must have been a more approachable, understandable way of saying this (personal communication, 24 September 2012).

The difficulty many Japanese may have with grasping the concept was apparent amongst some of the bureaucrats I interviewed as well. For instance, I had an informal opportunity to speak to a senior bureaucrat of a local government which has a multicultural coexistence plan but not a large population of foreign workers. When I mentioned multicultural coexistence whilst explaining my research, he asked me what the term meant

¹⁹ The fact that he is asked to explain the meaning of the term shows that the term has not gained currency in Japanese society.

and declared to me that he had never heard of it. When I pointed out that the office which published the plan was part of the department he oversaw, he was genuinely surprised. Similarly, an MHLW bureaucrat who dealt with foreigner policy in his ministry had never heard of the term and asked me if I had meant other-cultural which can also be written differently from *ibunka* but is pronounced the same as *tabunka* in Japanese.

The second reason was political. Most of the interviewees who were already familiar with the term implied that multicultural coexistence was too progressive a policy term to be used by the central government. When I asked a MIAC bureaucrat if the ministry had been pushing other central ministries to use the term, he replied as follows.

More often than not, this field (i.e. multicultural coexistence) is more advanced in local authorities on the ground [than in the national government], or rather was forced to be more advanced. As far as the national government is concerned, policy has to be uniform across the country. I do feel that to take a concept used by places (i.e. local authorities) that are advanced [in terms of immigrant integration] and talk about it with the same intensity at the national level is too much to ask for. To be honest, there aren't any discussions on things like immigration policy at all. There isn't a consensus amongst Diet members either. In that kind of situation, different ministries and agencies, in a nutshell, have their own position (*tachiba*) and have to come to a compromise [amongst themselves]. In that kind of situation, it is probably not possible to reach that level [of consensus] (i.e. propagating multicultural coexistence throughout the government) (personal communication, 21 September 2012).

The bureaucrat, thus, suggested that there were certain bureaucratic sections that may be inimical to the idea of multicultural coexistence and that the bureaucratic divide could not be overcome right now given the lack of political consensus on the future of immigration policy.

A bureaucrat from MOJ explained why multicultural coexistence can be such a threatening term. He said that multicultural coexistence sounds as though it permitted communities to exist fragmentarily. He continued as follows.

There are not any discussions on whether Japan is going to try to become like that (i.e. to permit the existence of fragmented communities)... The meaning of it (i.e. multicultural coexistence) is clearly different from an assimilationist society. There are not any discussions on whether Japan wants foreigners to assimilate or to accept multiculturalism (*tabunka shugi*), so it's strictly neutral there. I think, for now, we can at least say that we need a society in which Japanese and foreigners coexist (*kyōsei*) together (personal communication, 27 September 2012).

First of all, he too pointed out that multicultural coexistence is a step too far for the Japanese government. More interestingly, the use of the word *tabunka shugi* indicates that the bureaucrat was familiar with western academic literature on multiculturalism and equated multicultural coexistence with this.

Even though multicultural coexistence apparently remains a mystified idea for many, another bureaucrat from the Cabinet Office expressed a similar understanding of the term when he was explaining to me why the term is so controversial in the government.

There are some researchers who advocate [the transition] from multicultural coexistence to social integration. Some say [foreigners] need to be able to speak Japanese if they were going to live in Japan whilst others say Japanese language proficiency does not have to be required from [foreigners] since there are people with different roots. If we were to work this out, it would be pretty arduous (*kekko taihen na koto ni naru*). So we just leave it for now on purpose (personal communication, 21 September 2012).

Once again, assimilation and multiculturalism-like multicultural-coexistence were taken to be the two ideal types of immigrant integration, and it was suggested that the latter is too radical given the lack of consensus, though this time an academic one. What is also interesting is the juxtaposition of multicultural coexistence and coexistence. For the above bureaucrat from MOJ, coexistence is more innocuous than multicultural coexistence. The bureaucrat from the Cabinet Office also repeatedly used the word coexistence without hesitation during the interview. Coexistence means that foreigners and Japanese live harmoniously but without specifying the role of culture, whether in its differences or similarities. Culture is apparently a dangerous word for bureaucrats involved in the making of Japanese immigration policy.

Aside from the nebulous meaning and controversial nature of the term, I would argue that the limited usage reflects the low policy priority of multicultural coexistence for which MIAC is supposed to be the foremost advocate. To begin with multicultural coexistence does not have any legal basis. The Local Government Act obligates local authorities to ensure the welfare of all residents regardless of nationality, but it does not place a positive duty to go beyond providing foreign residents with social and administrative services that are already

available to Japanese citizens. Legally speaking, whether foreign residents are sufficiently familiar with the Japanese language in order to achieve substantive equality by being able to take full advantage of services they are legally entitled to is a concern neither of MIAC nor local authorities. The difference between the national and sub-national governments, however, is that the latter are impacted by the presence of foreign residents directly, immediately and sometimes fatally by virtue of proximity.

Without any legal foundation, MIAC's multicultural coexistence plan was nothing but hortatory guidelines. Whilst acknowledging that the growth in the number of local authorities with a multicultural coexistence plan had stagnated, the same MIAC bureaucrat did not seem overly concerned about this.

Basically [multicultural coexistence plans] are not something that has to be made according to law, so [MIAC] is not in the position to tell [local authorities] that they must make it no matter what [or that] they must make it. It may be that it would be especially nonsensical to tell places (i.e., local authorities) where not many foreigners live to make [a plan]. But at the local government level, there are quite a few places that do not have [a plan] even though the number of registered foreigners is high, like 3% or 5%. For places like that, they would become better organisations by making the arrangement (i.e., creating a plan) according to the original premise [of the initiative]. [MIAC] wants to persuade them somehow (*sōiu bubun niwa apuōchi shita*), and this is why [MIAC] conducts these surveys (personal communication, 21 September 2012).

The surveys the bureaucrat referred to are MIAC's unpublished annual surveys on the number of local authorities, ordinance-designated cities and local governments which have a multicultural coexistence plan in place.²⁰ The above passage shows the relative impotence of MIAC in making sub-national governments comply with the instruction. It seems that the most the ministry could do is to conduct the annual survey to make it known to sub-national governments that they are being monitored although the survey does not even act as a device of naming and shaming for it is not exposed to public scrutiny, that is, if the public cared at all.

²⁰ The MIAC bureaucrats I interviewed denied me access to the latest survey results which they had in their hands during the interview saying that the latest information was not ready to be publicised. However, when I asked if the previous results were publicly available, one of them told me that they sometimes showed up on the internet accidentally. I am still unsure as to why MIAC wants to hide the information.

Indeed, the above passage also shows that not all local authorities have a multicultural coexistence plan. When I asked why some of the local authorities with a large foreign population do not have a plan, both of the MIAC bureaucrats I interviewed explained that these municipalities often do not have the right organisational capacity (personal communication, 21 September 2012). A significant number of local authorities does not have a pre-established office or a department, such as an international exchange office, which could deal with problems related to foreigners and, thus, fails to establish a plan. Sub-national governments may have been ahead of the national government in meeting the needs of foreign residents. However, the local citizenship thesis put forward by scholars of Japan's immigration management seems to overstate the evenness and extent of immigrant integration at the local level.

Explaining Conversion as the Dominant Form of Incremental Change

Japan opened up the doors to *de facto* unskilled migration of *nikkeijin* and technical trainees and interns in practice whilst continuing to uphold the fundamental policy principle of immigration admission at least in rhetoric. In terms of immigrant integration, the same policy principle which also aims to deter the settlement of migrant workers was maintained not only in rhetoric but also in practice. The Japanese government remained oblivious to the human needs of the new economic migrants throughout the 1990s. Formal equality in terms of social rights had already been established by *zainichi* migrants' struggle for greater inclusion prior to the arrival of contemporary economic migrants, but the latter's ability to enjoy those in a substantive sense was severely curtailed by the lack of positive intervention by the national government.

Against this background, sub-national governments appropriated the national government's local internationalisation agenda to facilitate immigrant integration. This was an instance of institutional conversion by which a government policy was liberally re-interpreted in order to achieve goals that were not explicitly part of the political agenda. The

mode of incremental change was repeated when sub-national governments began acting in an increasingly subversive manner by intentionally misapplying pre-existing laws. More specifically, the directives circulated by MOW in 1954 allowing for foreigners' access to livelihood protection and the Sick Traveller Treatment Act were conveniently used by local authorities to cover unpaid medical expenses by illegal migrants who were not even supposed to be in the country.

MOW under the influence of MOJ attempted to deal with the misuse of public assistance schemes by simply cutting off illegal migrants' access to health care. However, it became apparent that the draconian measure ultimately exacerbated the on-going problem at a human cost, for hospitals began turning away foreign patients in need of emergency care. Although illegal migration was not to be encouraged, leaving local administration financially ill and illegal workers fatally ill was also not to be done. Thus, MOW had to make concessions by reimbursing unpaid medical expenses and giving undocumented migrants access to the company health insurance scheme.

As the number of *nikkeijin* increased exponentially after the amendment of ICRRA in 1990, challenges experienced by local authorities with a large number of foreign residents became full-blown problems of immigrant integration. What began as a narrow concern related to the financing of social insurance schemes came to include education of foreign children and general maintenance of communal harmony. More fundamentally, the use of information collected for the purpose of immigration control under ARA became an insufficient means to manage administrative tasks. This instance of institutional conversion, therefore, proved incapable of dealing with the magnitude of the problems at hand. CLALNF was thus established to step up lobbying activities targeting the national government. This marked the politicisation of immigrant integration as a public policy issue at the national level.

Whilst the national government generally remained unresponsive in the first half of the decade, MIAC's multicultural coexistence policy acknowledged that immigrant

integration was something that had to be managed. However, it was not until the policy gained visibility in a powerful supra-ministerial organ, namely, CEF, that the Japanese government as a whole deliberated immigrant integration policy. The result of this was ICPRFW's policy towards foreigners as persons who live. Although the radical implication of cultural politics, which naturally inhabits immigrant integration, was muzzled by moving away from multicultural coexistence, the policy was the first attempt by the government to acknowledge foreigners' humanity in the language of coexistence. These first steps towards the social inclusion of non-citizens were further strengthened by an unexpected economic downturn in 2008.

That the national government began devising measures for immigrant integration marks a significant policy shift. At the same time, however, little has changed in terms of law and bureaucratic organisations. The Office for the Promotion of Measures Related to Long-term Residents was established in the Cabinet Office to coordinate policies based on existing rules implemented by existing central ministries. Therefore, the changes at the national level have been qualitatively different from the sort of institutional layering which has characterised the policy area of immigration admission. Instead, the dominant mode of change has been institutional conversion whereby sub-national governments have liberally interpreted existing rules and procedures in order to deal with the integration of foreign residents. Although they may not have the strong enough political influence to introduce new rules to the institutional regime of immigration management, they have effected significant change in practice through imaginative and resourceful use of existing rules leading to the final effect of winning the national government's belated endorsement. Opportunism is apparently one form of power. In the Japanese case, it was enough to make the non-immigration country without immigrants establish an immigrant integration policy at last.

Chapter 6: The Fundamental Transformation of Immigration Management

The qualitative diversification and quantitative growth of new economic migrants since the late 1970s resulted in an enormous gap between the professed policy intention on one hand and the actual policy content on the other. To reiterate, the government's fundamental policy principle for immigration management remained unchanged before and after the amendment of ICRR in 1990. The admission of unskilled migrants continued to be barred at least in official rhetoric. However, unskilled foreign workers were admitted through side-door mechanisms, and their numbers generally increased throughout the 1990s and the 2000s despite the continuation of the policy principle (Chapter 2).

By the turn of the millennium, perverse consequences of the policy gap were hardly inconspicuous. Not only was there a substantial number of unskilled and, thus, ostensibly unwanted workers living and working in Japan, but their social rights were insufficiently protected in formal and substantive senses for trainees and *nikkeijin* respectively (see Chapters 2 and 5). In contrast, skilled workers, whose admission was welcomed and legal, were ever so miniscule in number whilst they chose other developed economies as their preferred countries of emigration destination (Chapter 3).

Against this background, two immigration reform debates emerged in the latter half of the 2000s. In the first of these debates, some LDP politicians and MOJ explored possible options for pursuing an expansionary admission policy towards workers, including lowly-skilled workers, who had not been admitted under the existing arrangement (Chiavacci, 2012, p. 28). The second parallel debate initially developed in direct response to the 9.11 attacks and the media's reporting on foreigners' alleged criminality (Chapter 4). The government followed LDP's lead and considered revising the existing residence management system in order to strengthen immigration authorities' capacity to monitor continuously foreigners' personal information after they enter the country.

The present chapter examines the contrasting fates of the two concurrent debates on the future of Japanese immigration policy. The following section details the reform debate on admission expansion which died off prematurely when Japan was hit by the so-called Lehman shock in September 2008. In the second section, I explain how the government's attempt to prevent international terrorism and undocumented migration culminated in the amendment of ICRRRA and the abrogation of ARA in 2009. In an unexpected way, what began as an immigration control measure ended up resulting in the transformation of Japanese immigration policy by incorporating foreign residents into the existing administrative system designed for Japanese citizens. In the third section, I analyse the mode of institutional change describing the failure and success of the two reforms and reflect on the cumulative effect of incremental policy changes which have taken place in the past three decades.

The Second Immigration Reform Debate

In 1989, Japan experienced the lowest birth rate ever since the government began collecting population statistics, an incident which came to be known as the 1.57% shock. The fertility rate continued to decline, and the government used the term *shōshika*, or trend of fewer children if translated directly, for the first time in a white paper which alerted society to a host of negative socio-economic implications emanating from the phenomenon (Economic Planning Agency, 1992). However, the government did not view immigration as a panacea despite the fact that the increasing visibility of *shōshika* coincided with the first immigration reform debate in the late 1980s. Instead, pensioners were asked to stay in the labour market whereas women were asked to do the same and bear more children.

Japan's total population peaked at approximately 127.79 million in 2004 and is currently projected to plummet to 91.93 million by 2055 (Ministry of Health, Labour and Welfare, 2012a, p. 5). Other demographic indicators projected for 2025 are equally ominous. The old age support ratio and the dependency ratio are said to reach, respectively, 39.4% and 51.2% by the year (Ministry of Health, Labour and Welfare, p. 5). On the other hand, the

fertility rate, which was 1.26% in 2004, is expected to rise to 1.35% (Ministry of Health, Labour and Welfare, p. 5). However, the slight increase will not make a meaningful difference given the unprecedented speed of population ageing Japan is experiencing. The inevitability of a severe demographic crisis has become a widely acknowledged fact in Japan.

The alarming reality was internationally highlighted in a report on replacement migration published by the United Nations Population Division (2000). In the report, the organisation argued that both Japan and Italy require significant increases in immigration compared to other low-fertility countries. The report's prognosis that Japan will need 553 million immigrants by 2050 in order to maintain the working-age-to-retired-age population ratio received ample media coverage (United Nations Population Division, p. 54). Around the same time, Prime Minister Obuchi's 21st century commission report and Sakaiya's economic pseudo-plan viewed immigration as a possible solution to demographic decline (see Chapter 3). Soon immigration management was back on the political agenda producing what Chiavacci calls the 'second reform debate' on admission expansion which lasted from 2004 to 2008 (2012, pp. 28-31).

Both Vogt and Chiavacci attribute the reform debate to the aforementioned demographic factors (Chiavacci, 2012; Vogt, 3-6 September 2009). As I will explain shortly, various proposals put forward by Keidanren, MOJ and LDP Diet members indeed linked demographic challenges and immigration reform around the time of the debate. However, I would argue that the above understanding of the origin of the debate ascribes too much policy foresight to the behaviour of business organisations and politicians. In fact, replacement migration was never seen as the main solution to the impending demographic challenges by policy-makers or academics (Roberts, 2012). It was clear to everybody that the volume of immigration the United Nations Population Division's report projected to require would not be achievable. Instead, policy actors used the demographic prognosis to frame their proposals in order to respond to more immediate policy needs.

First, beginning in January 2002, Japan entered the longest phase of post-war economic expansion which lasted for 69 consecutive months (Kojima, 2009, p. 16). Unsurprisingly, demand for foreign unskilled workers grew during this period as demonstrated by the number of trainees hosted by small- and medium-sized companies (Chapter 2). However, it was not just the increase in labour demand which reignited the immigration reform debate. The relatively good economic climate made it politically safe for policy makers to raise admission expansion as a policy issue. Without this specific context of political economy, they would not have been able to press for expanded admission with the level of intensity which characterised the reform debate. Conversely, the onset of a renewed recession in late 2008 suddenly halted the debate despite the fact that macro-structural conditions which motivated the debate remained in place. Neither the dualised labour market's reliance on migrant workers nor the impending demographic crisis had magically disappeared.

Second, a process of policy learning kicked in. Various proposals which surfaced during the debate often focused on the admission of migrants with 'a certain skill level.' What that actually constituted was different for different advocates, but it was clear that they were all referring to low-to-medium skilled workers whose admission was barred by ICRRA. Ishii (2007) argues that these attempts at reforming the existing immigration policy reflected how policy makers were learning their lessons from the past mistake which was that the government carelessly admitted *nikkeijin* and trainees without thinking much about post-arrival ramifications. By the time of the debate, the prolonged stay of *nikkeijin* and their families had produced integration problems in local communities (Chapter 5), and the technical trainee programme was subject to rampant abuse by unscrupulous employers (Chapter 2). When these negative and unexpected policy consequences started attracting criticism from domestic and international actors, time was ripe for bringing closer the rhetoric and the reality of immigration management by liberalising the admission of lowly-skilled workers.

The precursor of the debate was Keidanren's policy proposal on immigration admission. Despite being the most influential business organisation in Japan, Keidanren had been mostly silent on the issue until 2003 when it published a long-term economic vision for the country (Keidanren 2003b).¹ The key theme of the proposal was 'dynamism and creativity arising from diverse values' (*tayō na kachikan ga umu dainamizumu to sōzō*) part of which was to open up the doors to foreign workers. However, the document did not elaborate on the idea, and the latter had to be picked up in another policy proposal solely focused on immigration admission in the following year.

In the new proposal, Keidanren (2004) made its position amply clear that the organisation is not advocating replacement migration. Instead, it argued that the decline in the potential economic growth rate would be limited to 0.2% according to its own calculation and that this could be overcome with the right technological innovation. For this, foreigners were said to be needed so that they could heighten 'individual Japanese citizens' "value-add creativity" by diversifying the work force (Keidanren, para. 1). Rather paradoxically, however, Keidanren also advocated the expanded admission of lowly-skilled workers. After admitting that facile reliance on cheap foreign labour would dull business competitiveness in the long run, the proposal invited the readers to acknowledge that foreigners, as a matter of fact, were already doing jobs shunned by native workers. The invitation was presented with a likely scenario that Japan would experience labour shortages in the elderly care sector and primary industries even if the government managed to maximise the labour power provided by women and the elderly. The proposal, thus, concluded, 'we cannot keep deferring any further the issues surrounding the admission of foreigners working on the ground (*genba de hataraku gaikokujin*)' (Keidanren, para. 8). 'Foreigners working on the ground' was the expression Keidanren used to refer to lowly-skilled workers.

¹ The version of the document cited here is a summary of the original. At the time of the writing, the full-length version had been taken off the internet. There is an English translation of the full-length version available on the internet. However, I decided to rely on the Japanese summary version since the translated version puts emphasis on different parts of the document, thereby ultimately changing the nuance of the text.

As for specific measures, Keidanren firstly urged the government to establish provisionally a Cabinet headquarter for overseeing both admission and integration policies comprehensively (Keidanren, 2004).² Furthermore, it was advised that the government should eventually adopt a Basic Law on the admission of foreigners and establish a central organisation to be called ‘foreigner agency’ or ‘multicultural coexistence agency’ to replace the headquarters. In sum, Keidanren argued that the central government should coordinate policies horizontally involving relevant ministries and agencies and vertically with local authorities by making these institutional changes.

In order to alleviate labour shortages in the care sector, Keidanren also recommended the government to relax the admission criteria for the nursing visa and admit care takers using the skilled labour visa. Admission of health care workers through EPAs had not yet materialised at that point. Furthermore, it was suggested that existing visa categories and introduction of labour market tests should be considered in order to admit other foreign workers in a qualitatively and quantitatively controlled manner. A follow-up document published in 2007 carried forward the proposed measures but was more specific in its prescription (Keidanren, 2007b). Keidanren identified chronically understaffed sectors as manufacturing, construction, machine assembly and ship building and proposed to admit workers with a sufficient level of Japanese language proficiency and vocational skills through the use of the skilled labour visa and bilateral immigration agreements with select sending countries.

Keidanren’s lead was followed by unlikely policy actors. When the latest demographic figures were made available by MHLW in December 2005, Justice Minister Sugiura Seiken instructed Justice Vice Minister Kōno Tarō to establish a project team to review and discuss the government’s immigration policy (Asahi, 23 September 2006; Vogt, 2007).³ The opening

² Keidanren’s suggestions in regards to the admission of skilled workers and international students as well as immigrant integration have been mentioned in Chapter 3.

³ Kōno Tarō later started preparing a bill to legalise dual citizenship when he was heading the LDP’s Legal Council in 2008 (Nikkei, 2008). The bill never materialised.

line of the resulting policy document went straight to the point. It explained how population decline began one year earlier than projected and pointed out that the shrinkage of the working age population had already been happening for ten years (Project Team for the Future Admission of Foreigners, n.d.). The project team did not even pretend to meet the targets put forward by the United Nations Population Division, but immigration was suggested as a partial solution to the impending demographic crisis. Furthermore, the authors asserted that it was time for Japan to come face to face with 'the estrangement of real intention and stated reason' (Project Team for the Future Admission of Foreigners, para. 3). The estrangement, of course, was referring to the policy gap that had arisen in regards to the admission of trainees and *nikkeijin*. The proposal, therefore, was an attempt to rectify the past mistakes in the context of all too visible demographic decline.

Some of Kōno's proposals could have dismantled MOJ's long-cherished policy principle from within had these actually materialised. Here I only touch upon items that are related to the expansion of immigration admission. First, the project team proposed to expand admission until the number of foreign residents, excluding special permanent residents, reaches 3% of the national population. Second, the trainee and intern programmes would be reformed in order to admit migrants with some Japanese language proficiency as workers starting at the point of entry, thereby effectively abolishing the existing programmes. Once they reached a certain level of vocational and language skills, the 'moderately-skilled labourers' (*chūkan ginōsha*) would be allowed to continue working for the same employer. The new system would only be allowed to operate in sectors which had failed to attract native workers even with the government's support. More importantly, the project team suggested that those who stay in Japan for a certain period of time should be allowed to invite family members who would also be required to acquire some Japanese language proficiency.

The proposals put forward by Keidanren and MOJ's project team headed by Kōno aimed to admit legally those workers who had been excluded from the existing arrangement.

At the same time, both of them had enough political tact to use euphemisms, such as 'foreigners on the ground' and 'moderately-skilled workers' when referring to new prospective migrants. The unspoken rule, however, was broken by LDP's Nagase Jinen when he announced his personal plan to replace completely TITP with a temporary foreigner employment system (*tanki gaikokujin shūrō seido*). The announcement was made doubly surprising by the fact that Nagase, at the time, was the incumbent Justice Minister. The aim of the system was to admit unskilled workers and did not pretend to do otherwise by discursively redefining their skill level. However, Nagase did emphasise that they should not be permitted to settle and should only be admitted on a three-year-rotation-basis, hence the name of the proposed system.

Many people in the policy-making circle knew that Nagase, in fact, was an ex-bureaucrat of MOL and had an extensive knowledge of the trainee and intern programmes (Nikkei, 30 June 2007). A senior bureaucrat from MOJ was reported saying that Nagase was only trying to galvanise the on-going debate on programme reform between METI and MHLW (Nikkei, 30 June 2007), thus suggesting that his proposal should not be taken too seriously. Whether personal or not, Nagase had not consulted the plan with his own ministry, and bureaucrats of the Immigration Bureau were particularly 'bewildered' by the sudden announcement (Nikkei, 16 May 2007). Other influential expansionist actors also showed negative reaction to the plan. Keidanren commented that the Minister was getting ahead of himself (Nikkei, 30 June 2007). When Nagase was replaced by Hatoyama Kunio a couple of months later, the successor explicitly stated in his inaugural press conference that the proposal was Nagase's personal idea only (Chiavacci, 2012, p. 42).

The immigration reform debate reached a new height when a group of approximately 80 LDP politicians led by Nakagawa Hidenao put forward a fairly shocking proposal (Nikkei, 5 May 2008). The group was received advice from Sakanaka Hidenori, a well-known figure in the policy-making circle, who used to head the Tokyo Immigration Bureau before starting his own think tank conducting research and advocacy work on Japan's immigration policy

(Roberts, 2012, p. 59). Sakanaka is famous for his support of the idea to turn Japan into a fully-fledged immigration country arguing that this is the only viable option if Japan was to survive the demographic decline. In an earlier interview with Nikkei, Sakanaka had already foreshadowed the overall framework of Nakagawa's proposal (Nikkei, 3 July 2007).

The document published by Nakagawa and his LDP colleagues read as though it was meant to be a harbinger of a new epoch in Japanese history for the authors sprinkled the text with catchy expressions, such as 'opening up of human resources' (*jinzai kaikoku*) and 'nation-building based on immigrants' (*imin rikkoku*), which implicitly harked back to the country's earlier period of modernisation (Liberal Democratic Party Alliance of Diet Members for the Facilitation of Foreign Human Resource Exchange, 2008). This was the first time a major policy proposal spoke of immigrants as opposed to foreign workers since Obuchi's 21st century commission report in 2000. Overall, the LDP members advocated what it called the 'Japanese-style immigration policy' (*nihongata imin seisaku*) which aimed to foster, not poach, human resources from abroad, and invited Japanese people to get ready for creating a multiethnic co-existence society (*taminzoku kyōsei shakai*) (Liberal Democratic Party Alliance of Diet Members for the Facilitation of Foreign Human Resource Exchange, p. 2).

Specific measures included the following. First the document proposed to establish an agency of immigration as well as a Basic Law on admission, integration and anti-discrimination in order to manage immigration comprehensively. Second, the government would establish a training programme for foreign youths. Graduation from the programme would lead to the award of the skill labour or long-term resident visa. Under a similar training arrangement, nurses and caretakers would be given a newly proposed medical/social welfare visa or the pre-existing long-term resident visa. For the admission of these health care workers, the document set a target of 300,000. Third, and perhaps most notably, the LDP members proposed to grant automatically Japanese nationality to children of permanent residents, thus changing Japan's *jus sanguinis*-based nationality law to include a

jus soli provision. Through these measures, the proposal aimed to admit ten million immigrants in the next 50 years.

Nakagawa's proposal was immediately followed by Nagase's proposal which was more formal than his previous personal plan but mirrored the latter. He and his LDP peers, including Kōno, suggested introducing a temporary guest worker programme to replace TITP (Liberal Democratic Party National Strategy Headquarters, 2008). By the time the proposal was published, neither Nagase nor Kōno was in positions of leadership in MOJ.

In retrospect, the second immigration reform debate was characterised by three factors. First, the proposals were put forward by politicians rather than bureaucrats. Aside from Kōno's project team sitting under MOJ, others involved in the debate were LDP politicians and Keidanren which, in any case, has a strong connection with the party. Second, the politician-led debate called for fundamental reform, not incremental adjustments, of immigration policy. More specifically, the proposals were aimed at admitting hitherto excluded workers, albeit in a controlled manner, with their permanent settlement in mind in some cases. Nakagawa's LDP proposal even suggested amending nationality law which had generally remained a sacrosanct policy area immune to political challenges.

Third, the interlocutors of the debate attempted to re-define the idea of unskilled workers. By the mid-2000s, unskilled workers had been thoroughly criminalised, and simply advocating their expanded admission was not politically viable regardless of the economic climate. Therefore, various euphemisms, such as moderately-skilled workers and workers on the ground, were introduced approximately a decade after the Economic Planning Agency failed to do so back in 1999 (Chapter 2). These newly desired workers were said to be neither highly-skilled nor unskilled, but their skill levels still varied. Nurses, for instance, could be considered skilled in a relatively straightforward way, and a work visa for their admission, albeit with strict professional criteria, had already existed outside of EPAs. Caretakers, on the other hand, did not have a legal migration channel outside of EPAs, and their skill level was slightly more ambiguous given the lack of professionalization in the field.

In the case of migrants who were proposed to work in primary industries as well as manufacturing and construction, they were now subtly reconceptualised as skilled labourers as opposed to skilled workers or unskilled workers.

After Nagase and his LDP colleagues published their proposal on the temporary guest worker programme, the second immigration reform debate suddenly halted.⁴ Chiavacci (2012) attributes the failure of the reform to the lack of consensus amongst policy makers. Indeed, the proposals never managed to gain support of LDP as a whole, let alone the government. In 2006, MHLW created a project team comprised of vice ministers from relevant ministries to discuss the future of admission policy (Project Team on Foreign Workers, 2006), but nothing new materialised owing to the on-going bureaucratic division (Ishii, 2007).

Notwithstanding the above explanation, I would also argue that the debate was cut short before it even got to a stage where relevant actors could engage in dialogue with opposing forces when Japan was unexpectedly interrupted by the global financial crisis. The effects of a liquidity crisis in the United States had already been felt in other parts of the world, but it was not until the bankruptcy of Lehman Brothers on 15 September 2008, two months after Nagase's proposal came out, that Japan was properly embroiled in the global recession (Kojima, 2009). According to Roberts, Nakagawa who is a neoliberal ideologue commented in an interview with her that he still stands by the proposal despite having become a target of attacks by right-wing bloggers (2012, p. 59). Perhaps, others involved in the various proposals feel the same for ideological reasons. However, the onset of a renewed recession rendered supporting the expansion of immigration admission a political suicide for all parties concerned.

A senior member of Keidanren, for example, said that the organisation would be unwise to talk about immigration lest the building be surrounded by protesters (personal

⁴ Kōno's and Nagase's proposals, for example, have been taken down from the internet. The former can be accessed as a meeting input material from the Cabinet Office, and the latter from the Japan Institute for Labour Policy and Training.

communication, 20 September 2012). He also added that the organisation must also be mindful of the ruling DPJ's interest (personal communication, 20 September 2012). This was something mentioned by others I interviewed. Some bureaucrats stated that DPJ do not push for expanded admission in the economic climate especially given the party's heavy reliance on the Japan Federation of Trade Unions for its members' votes (personal communication, various dates). Indeed, DPJ argued for the protection of foreigners' rights during the Diet debate on the ICRRA amendment in 2009, but the party's members did not propose a fundamental overhaul of immigration admission policy even when the debate was still alive.⁵

The Reform of the Residence Management System

Until the amendment of ICRRA in 2009, 'residence management' did not exist as a policy term in Japanese law and was referred to using more generic expressions (Mizukami Y. , 2012, p. 62). Kondo, for instance, points at Article 1 of ARA which stated that 'The purpose of this Act is to establish fair control over aliens residing in Japan by clarifying matters pertaining to their residence and status and through the enforcement of the registration of such aliens' (Kondo, 2009, p. 12). Mizukami also mentions how the 1990 amendment of ICRRA introduced Article 61-10 which states that '[t]he Minister of Justice shall formulate a basic plan for the control of the entry and residence of foreign nationals (hereinafter referred to as the "Basic Plan for Immigration Control"), in order to allow the exercise of equitable control over immigration affairs' (Mizukami Y. , 2012, p. 62).

As the text cited above shows, residence management denotes the process through which MOJ monitors foreigners after they enter the country by collecting their personal information, such as home address, occupation, marital status and even fingerprints at least until 1999. The ministry collected the information when foreigners applied for and renewed visas and registered themselves with a local authority as stipulated by ICRRA and ARA respectively. Although the Japanese government officially translates the Japanese term *zairyū*

⁵ See Roberts (2012) for DPJ proposals from the time.

kanri as residence management, it is more aptly described as ‘residence control’ as the Japan Federation of Bar Associations does (Japan Federation of Bar Associations, 2009).

The call for fundamental reform of residence management was first voiced by LDP’s Policy Affairs Research Council in a proposal on immigration management which was put forward in 2005 (Liberal Democratic Party Policy Affairs Research Council, 2005). LDP, once again, positioned visa overstayers as the hotbed of crime and demanded the government amend the Alien Registration System. More specifically, it was proposed to issue foreign residents with residence management cards with a chip containing personal and biometric information. Card holders would report any changes in personal details, and employers and educational institutions would provide information on foreign employees and students in order to enable the government to secure accuracy of immigration records. As with the Alien Registration Certificate, the new card was to be carried around at all times. However, LDP excluded special permanent residents from the proposed system altogether presumably to pre-empt criticism from *zainichi* organisations and its pro-*zainichi* coalition partner CGP.

One month after the publication of the report, the Cabinet Council on Crime Measures, which was created in 2003 based on LDP’s election manifesto promise to restore public safety as mentioned earlier (Chapter 4), decided to establish a working team for designing a new framework of residence management through which accurate records on foreigners could be collected and maintained for the purpose of immigration control (Cabinet Council on Crime Measures, 2005).⁶ The group consisted of bureaucrats from NPA, MIAC, MOJ, MOFA, MOF, MEXT, MHLW, METI and the Ministry of Transportation. According to Mizukami, it was around this time that *zairyū kanri* became a familiar term (2012, p. 12).

In June 2006, the working group submitted an interim report which spelled out problems with the existing system, inputs provided by group members and future points of

⁶ One specific task the group was assigned to undertake was to study the practice of other countries. According to an interview with bureaucrats from the Ministry of Justice, the working group examined immigration management systems in the United States, United Kingdom, France, Germany, South Korea and Ireland. It is interesting to see that the Japanese government is now looking at examples from new immigration countries not only in Western Europe but also East Asia.

discussion (Cabinet Council on Crime Measures, 2006). Four main problems were identified. First, residence management was bifurcated between ICRRRA implemented by MOJ and ARA implemented by local authorities on behalf of the ministry. This resulted in the discrepancy between the information held by MOJ and the details recorded on alien registration certificates issued by local authorities. Second, the Immigration Bureau could carry out checks for residence management only at the time of visa application and renewal. Any changes in personal information in between the procedures could not be detected and monitored. Third, illegal migrants could legally obtain an alien registration certificate which could be used to give the false impression that they were legal migrants. Fourth, information on foreigners' addresses and employment was not sufficiently accurate.

The comments anonymously summarised in the interim report reflected different ministries' idiosyncratic interests. For instance, one comment highlighted that the Alien Registration System was used by local authorities to provide social services, but this was being done inefficiently because the system was set up for the purpose of residence management in the first place. It is likely that the view was expressed by MIAC. Somebody else observed that a mechanism to gather information on foreigners from employers and educational institutions was lacking. A system similar to this, of course, was something MOL wanted to but subsequently failed to introduce after losing a bureaucratic turf war with MOJ in the late 1980s (Chapter 2). Yet another comment suggested reviewing *nikkeijin's* admission rules. A similar point had been made in the *Third Basic Plan for Immigration Control* published in the previous year (Ministry of Justice, 2005).⁷

As future points of discussion, the working group suggested enabling information-sharing within the government so that appropriate organisations could cross-reference data to ensure accuracy and use the data to provide social and administrative services to

⁷ MOJ had amended visa renewal rules to this effect before the publication of the final report and, thus, the Cabinet Council on Crime Measures' final report completely dropped the tightening of *nikkeijin* admission as a point of consideration. This corroborates my point that the third comment was made by a group member from MOJ.

foreigners efficiently. The working group also proposed to collect information on foreigners from employers and educational institutions although it acknowledged that this might be administrative onerous for those having to provide the information. More importantly, the working group suggested that the accuracy of data be maintained with the help of local authorities. This was a logical suggestion given that local authorities are the first ones to find out any anomalies in personal records when they try to deliver social and administrative services to and collect taxes from foreign residents.

In relation to the last point, the report stated that the future discussion should be aligned with ICPRFW's concurrent deliberation on the policy for 'foreigners as persons who live' (Chapter 5). The inter-ministerial council had been preparing Japan's first social integration policy and published its own interim report on the very same day as the working group on residence management did (ICPRFW, 20 June 2006). ICPRFW's report mentioned that the Cabinet Council on Crime Measures' working group had been looking into the reform of residence management and made policy recommendations based on an explicitly stated assumption that the collection of accurate information would be enabled by a new system in whatever shape or form (ICPRFW, p. 7).

It is clear from the mutual referencing between the Cabinet Council on Crime Measures' working team and ICPRFW that a loose consensus had been formed between them. The new residence management system was to achieve the twin purpose of admission control and social integration despite the political origin of the reform project. By the end of 2006, ICPRFW's final document clearly expressed that residence management should be reformed in order to improve the delivery of social and administrative services by allowing local authorities and other public organisations to share and cross-reference information on foreign residents (Inter-ministerial Council on Problems related to Foreign Workers, 2006, pp. 10-11).

Around the same time, CLALNF stepped up lobbying activities in an effort to realise finally what it had demanded for some time. The council submitted regulatory change

requests, including for residence management reform, to CPRR between the late 2005 and 2006 (Council for the Promotion of Regulatory Reform, 2005c, 2006d).⁸ CLALNF's demands were clearly heard by CPRR for its report, which was submitted to the Cabinet in December 2006, recommended ARA to be amended in order to improve local authorities access to information on foreign residents (Council for the Promotion of Regulatory Reform, 2006c, pp. 125-126).

The *CPRR Three-Year Plan* (2005b) had already included increased post-admission monitoring specifically in regards to employment, address registration, social security registration and children's school attendance. In contrast, the report submitted to the Cabinet made it abundantly clear that the primary goal of the reform was to improve service delivery at the local level both qualitatively and fiscally.

[T]he regulations related to the status or residential permit should be concentrated into the embarkation control and refugee recognition laws in principle, while local authorities should have a legal basic resident register for non-Japanese residents in reference to Basic Resident Register system in order to possess the accurate information of non-Japanese as residents and establish the legality to keep the residence status under the current alien registration system by mitigating the fiscal burden of national and local governments (Council for the Promotion of Regulatory Reform, 2006c, p. 126, original translation).

The report went onto say that the new system should achieve 'improvement of convenience to use public services as well as for rationalization of administrative services' (Council for the Promotion of Regulatory Reform, p. 126, original translation).

That residence management should be reformed in order to ensure the welfare of foreign residents and to cut down administrative costs had already been made clear by CLALNF and ICPRFW. In contrast, the novelty of CPRR's report was its explicit assertion that admission control and social integration should be institutionally divorced. In essence, what was envisaged by CPRR fundamentally challenged the existing post-war system of immigration management in which local authorities relied on information, which was collected on behalf of MOJ for the purpose of immigration control, in order to carry out

⁸ See Chapter 2 for a detailed explanation of CPRR.

administrative tasks without having any legal basis for doing so. In June 2007, the Cabinet approved the new *Three-Year Plan* and ordered MOJ to submit a bill to authorise information-sharing between local authorities, MOJ and other central ministries and to create a basic resident register system for foreign residents by the 2009 Diet session at the very latest (Council for the Promotion of Regulatory Reform, 2007c).

The top-down decision to achieve the twin aim of improving both admission control and social integration with one comprehensive legal amendment was reflected in the final report submitted one month later by the working group to the Cabinet Council on Crime Measures. The proposed design of the new system took into account the need of local authorities (Cabinet Council on Crime Measures, 2007). First, the Justice Minister would have an integrated and continuous view of information on foreign residents. Therefore, foreign residents would need to report any changes in personal information to the Immigration Bureau without delay, and failure to do so would negatively impact the outcome of the next visa renewal. Second, the accuracy of the information would be ensured by gathering information from employers, cross-referencing it with the information held by other public organisations and empowering the Justice Minister to carry out investigation on suspicious cases. Discussion on finer details of the system was already underway in the Fifth Ad Hoc Council on Immigration Control Policy, a personal advisory body of the Justice Minister (Fifth Ad Hoc Council on Immigration Control Policy, n.d.).

At the same time, the new system was designed to facilitate social integration of migrants as well. The working group's final report suggested that the Justice Minister share certain types of information with local authorities so that they could efficiently carry out administrative tasks related to foreign residents. However, how the information should be shared with and managed by local authorities was not explained. With this silence, the conclusion of the report effectively implied that the reform of residence management necessitated another parallel reform pertaining to the local governance of foreign residents. Unlike the discussion on immigration control by the Justice Minister's ad hoc council,

discussion on this second possible reform was still underdeveloped. Therefore, the working group suggested that MIAC, MOJ and other relevant ministries work out further details under the coordination of the Cabinet Secretariat.

Starting at this point, the creation of this nameless and only vaguely-specified system, where immigration control and immigrant integration were to meet each other, was supposed to become a collaborative project between MIAC and MOJ. As the central ministry coordinating activities for sub-national governments, MIAC was expected to take leadership. At the same time, the design of the new system required the involvement of MOJ as it was the ministry's information that was supposed to be fed into the new system set up for local authorities. Making the two ministries work together, however, proved to be difficult.

After CPRR's *Three-Year Plan* received cabinet approval in June 2007, MIAC, MOJ and the Cabinet Secretariat were required to report progress to CPRR once in August and once in October. The publicly-available minutes of the meetings convey the lack of consensus between the two bureaucratic actors as well as the frustration of the two councillors. At the beginning of the first meeting, Councillor Aritomi Keiji, Chairman of Yamato Holdings which owns a major courier company, highlighted the absence of dialogue between the two ministries.

The point is, let's make something good. But according to some stories from last time (referring to an earlier CPRR meeting where ministries were asked to review the progress on the *Three-Year Plan*), there is still a wall between the ministries (i.e. MIAC and MOJ), and it feels a little bit like both sides are not being frank. Maybe you (i.e. bureaucrats in the meeting) would disagree, but I just wanted to add that's how I felt (Council for the Promotion of Regulatory Reform, 2007a, p. 2).

Councillor Iguchi Yasushi, a prominent scholar of immigration policy, echoed Arimoto's criticism of the silo working. Iguchi was confrontational as much as Arimoto was and did not hesitate to draw attention to hidden agendas of the ministries despite, or perhaps because of, the public nature of the meeting. He was the main author of a CPRR proposal which suggested establishing a basic resident register for foreigners akin to the existing register used by local authorities for Japanese citizens. The information needed for the

register was proposed to be held in the government's new on-line data system called *jūki netto*, a short-hand for the Basic Resident Register Network in Japanese, through which local authorities can access the name, address, date of birth, gender and unique registration ID of an individual resident. Adding foreigners' information to the newly established system was said to cost less than establishing a whole new on-line system. The back-and-forth between Iguchi and the bureaucrats was mainly about this proposal.

Iguchi first pointed out that MOJ failed to become more involved in the design of the new register for foreigners.

In regards to the jurisdiction over the register system, maybe it is that MOJ is pushing back thinking it's none of their business. In the opinion of MOJ, maybe it is that many problems arise because MIAC does not account for foreigners by using the Basic Resident Register. But I know myself that it's not that easy. We cannot simply turn the Alien Registration [System] into the Basic Resident Register. We cannot create a basic resident register for foreigners without some ingenuity, and that's why we are asking for your suggestions (Council for the Promotion of Regulatory Reform, 2007a, p. 4).

Iguchi was equally dissatisfied with MIAC which was hesitant to expand the usage of *jūki netto* given that the ministry at the time was being sued in court for allegedly infringing on the right to privacy.

[O]n one hand, MIAC has kindly put forward a proposal for the multicultural coexistence programme, and it is the understanding of local authorities that MIAC is in support of these measures. On the other hand, I have heard from people from local authorities that, when they talk about how *jūki netto* should be utilised in order to set up a foreigners' register system, it is pointed out [by MIAC] immediately that *jūki netto* is being contested in court and that the ruling has not been reached yet. It is nearly impossible to have a discussion [on this with MIAC] (Council for the Promotion of Regulatory Reform, 2007a, p. 4).

Despite Iguchi's criticism, the MIAC bureaucrats refused to budge. One of them explained that, since the number of foreigners varied across local authorities and the latter had already developed their own system for accounting for foreign residents, what was needed was to improve the accuracy of information they held rather than creating a new nationally-unified register for foreigners. Another bureaucrat added that the solution was to simply adjust ARA rather than scrapping the law. One bureaucrat in particular repeatedly pointed out that using *jūki netto* was out of question. Sounding slightly annoyed, the

bureaucrat implied that adding foreigners' information onto *jūki netto*, a highly protected network with important privacy implications, would be illegal.

To get to the point, what I want to say is that this is not about the system or technical matters, but the Basic Resident Register Network System can only transmit certain information within a limited range using a dedicated and closed place (i.e. data server). The law is set up like this, the law was made based on a discussion like this. So it's not a question about whether or not this would be technically feasible. It's been decided that this cannot be done (*yatte wa ikenai to natteiru wakedesu*) (Council for the Promotion of Regulatory Reform, 2007a, p. 18).

The argument was interrupted by a bureaucrat from MOJ who cunningly sided with Iguchi and CPRR and put MIAC on the spot again. Despite acknowledging that the two ministries were working towards the same goal, which was to create a register for foreigners, the MOJ bureaucrat's proceeding comment was laced with criticism of MIAC's reluctance.

Public administration is founded on law, and [bureaucrats] carry out tasks based on law, so silo management is inevitable. In terms of creating such a register, [the Alien Registration] is legally delegated administration (i.e. a task delegated to local authorities by the national government or *hotei jutaku jimu*) arising from something for which the Ministry of Justice is responsible. We have explored various options to make that (i.e. the Alien Registration System) into something close to a register so that local authorities can use it, but there is a wall that cannot be overcome no matter what, there is some difficulty (Council for the Promotion of Regulatory Reform, 2007a, p. 19).

Councillor Aritomi clearly wanted to cut through the bureaucratic speak and asked him whether what he really meant was that ARA should be scrapped. In response, the MOJ bureaucrat did not directly answer his question and instead unequivocally asserted that his ministry was not advocating adding foreigners to the existing Basic Resident Register for Japanese citizens. The answer to the question, therefore, seemed to have been yes. In fact, Justice Minister Nagase had already commented a few months before that there was an option to combine the registries for foreigners and Japanese (Nikkei, 3 July 2007).

As far as the meeting minutes show, making MOJ and MIAC coordinate was like forcing two estranged brothers speak to each other. Of course, the former was the older authoritative one, and the latter the younger reluctant one. Frustrated by the delay caused by the inability to reach a consensus, the two councillors more or less decided by themselves that the next reporting meeting should be an open debate between MIAC, MOJ and the

mayors of CLALNF with the latter attending as the evaluators of the ministries' respective proposals. When the coordinating bureaucrat from the Cabinet Secretariat intervened arguing that it would be difficult to prepare for the next meeting scheduled to take place just in a month, Councillor Aritomi remarked sardonically,

I know that, but if we keep going like this, I feel like [you] will just dilly dally (*dara dara suru*). In a way, it feels like we are about to get trapped by the bureaucracy's signature trick (*kanryō no tokui waza*). So let's just do it once. Well, in any case, I think we (i.e. the council) have the right to convene [the meeting] (Council for the Promotion of Regulatory Reform, 2007a, p. 21).

Above I recounted at unusual length the discussion which took place between MIAC, MOJ and CPRR in order to illustrate the kind of bureaucratic negotiation that went on behind the twin reform. To summarise, the discussion on residence management began in 2005 when the Cabinet Council on Crime Measures created the working group. Since then, the group went through a series of deliberations. Months before the two ministries were called in to report the progress to CPRR in October 2007, MOJ had been able to consolidate a rough design of the new residence management system in its preferred image, which was to collect all the information needed for immigration control and to feed parts of it to local authorities for the governance of foreign residents.

Furthermore, the above discussion shows that MOJ wanted greater involvement of local authorities in maintaining the accuracy of information on foreigners. Local authorities, after all, were the ones who needed the information for administrative purposes, and yet ARA only allowed them to collect information from foreigners on behalf of the Justice Minister but not for themselves. For instance, local authorities did not have the mandate to close down or to investigate the accuracy of a registration record even if they came to suspect, through their day-to-day administration, that the person in question may no longer reside in the jurisdiction. Moreover, without a nationally-unified system to keep foreign residents' information for service delivery and tax collection, local authorities with a large number of foreign residents had to devise their own makeshift systems. This was inaccurate and

inefficient. Therefore, MOJ and CPRR wanted MIAC to take forward the reform in order to control immigration data and public finances.

The open debate went ahead in November 2007 but without the mayors of CLALNF. Unsurprisingly, the two ministries still had not figured out a detailed plan despite knowing that they had to submit an amendment bill to the Diet well before January 2009 as stipulated in CPRR's plan. The coordinating bureaucrat from the Cabinet Secretariat both boasted and belittled their recent achievement when he explained that they finally managed to coordinate a meeting between section managers from the two ministries but also acknowledged that it may seem as though this could have been done much earlier (Council for the Promotion of Regulatory Reform, 2007b). Despite the sluggishness of the progress, however, they did at least come to an agreement that a basic resident register for foreigners should be created. Considering MIAC's obstinate attitude from just one month before, this was a sign that the two ministries were starting to share the same understanding. Four months later, MIAC and MOJ jointly published the basic framework for none other than a foreigners' basic resident register (Ministry of Internal Affairs and Communications and Ministry of Justice, 2008). *Jūki netto*, however, disappeared from the discussion and the framework altogether.

In March 2008, the Justice Minister's ad hoc council submitted its final report (Fifth Ad Hoc Council on Immigration Control Policy, 2008). One month later, the Internal Affairs and Communications Minister's ad hoc council on foreigners' basic resident register met for the first time (Ad Hoc Council on the Foreigners' Register System, n.d.) and submitted the final report in December that year (Ad Hoc Council on the Foreigners' Register System, 2008). Both proposals resulted in a simultaneous amendment of ICRRA and abrogation of ARA for MOJ on one hand and the amendment of the Basic Resident Register Act (BRRA) for MIAC on the other.

Justice Minister Mori Eisuke introduced the bill to the Legal Council in the Lower House in April 2009 (Lower House Legal Council, 24 April 2009). The proposal to amend ICRRA contained a wide variety of immigration rule changes in order to correct the perverse

effects of the immigration policy instituted in the early 1990s. These changes included bringing trainees under the coverage of labour law (Chapter 2), creating a fixed visa category for technical interns (Chapter 2) and extending the maximum visa period to five years (Chapter 3).⁹ The reform of residence management was a major component of this omnibus bill.

Under the new residence management system, the Immigration Bureau would issue foreigners legally staying in Japan for 90 or more days with a residence management card containing basic personal information, such as name and address, as well as immigration status. As it was the case with alien registration certificates, the card must be carried around at all times. Foreign residents must report their address to the Justice Minister via local authorities within 90 days of landing, and failure to comply may result in deportation. Changes in other information, including place of employment, education or training, dismissal from these institutions, marital status, death of the spouse, must also be reported to the Justice Minister without delay. Employers and educational institutions would be obligated to report their foreign employees and students, and Immigration Bureaus would be empowered to investigate the veracity of information by holding interviews and asking for additional documentation. The entire system was designed to exclude special permanent residents who would be issued with their own certificate.

In contrast, the bill introduced by Internal Affairs and Communications Minister Hatoyama Kunio¹⁰ three days later was simple or, in fact, much simpler than what was envisioned in the MIAC ad hoc council's proposal (Lower House Internal Affairs Council, 28 April 2009). The bill to amend BRRRA proposed not to create a new basic resident register for foreign residents but to include them in the existing Basic Resident Register for Japanese

⁹ In addition, the amendment abolished the need to obtain a re-entry permit if re-entering within two years for special permanent residents and within one year for other legal residents with a valid residence management card. It also established the Deportation Centre Monitoring Committee.

¹⁰ Hatoyama Kunio was the Justice Minister until August 2008. Even during the Diet debate, his good knowledge of the new Residence Management System was obvious. It would be interesting to know whether having Hatoyama as the new head of MIAC made any difference in preparing the bill.

citizens by adding foreigner-specific information, such as nationality and immigration status. This also meant that the information on foreign residents would be included in *jūki netto* and that they would be issued with a *jūki netto* card. The integration of records on Japanese and foreign residents into *jūki netto* last appeared in Iguchi's CPRR proposal. Even there, however, *juuki netto* was supposed to feed information to two separate registers, one for Japanese and the other for foreigners, and it was never envisaged to include foreigners in the existing registry for Japanese citizens. In fact, the idea to utilise *jūki netto* did not even appear in the MIAC ad hoc council's proposal which, as a matter of fact, also suggested creating parallel registries for foreigners and Japanese.

When I asked a MIAC bureaucrat what led to the sudden change of heart, he pointed at Article 6-1 of BRRA which states that individual registrants must be organised into a household unit (personal communication, 21 September 2012). He then explained to me that by incorporating foreign residents into the existing system it would be possible to track information on mixed-nationality households accurately. Indeed, the difficulty local authorities had with carrying out administrative tasks for these households, such as calculating subsidies and tax credit, was discussed extensively by MIAC's ad hoc council. Without a uniform and integrated system for Japanese and foreign residents, it was cumbersome to tell if a foreigner was in a familial relationship with a Japanese national who may be a spouse or a child. Therefore, the bureaucrat's explanation was full of good sense. However, I am yet to understand what exactly changed so quickly and so dramatically during the four months between the submission of the ad hoc council's proposal and the submission of the bill.¹¹

The multi-bill reform was met with criticism from civil society groups, including the Japan Federation of Bar Associations which had been a long-time advocate of foreigners' rights (Japan Federation of Bar Associations, 2009). The federation argued that the obligation to carry around the residence management card at all times should be dropped; the

¹¹ One council member I spoke to did not know the reason either.

protection of foreigners' privacy must be strengthened since the unique ID would be visible on the surface of the card; collection of information from employers and educational institutions may lead to further state intrusion into foreigners' private life; and foreign spouses who are victims of domestic violence and infidelity may not be able to report their change of marital status within three months as specified by the ICRRA bill. On a positive note, the federation commended the government for including not only foreign residents but also people on a temporary asylum permit or provisional stay permit in the basic resident register and demanded illegal migrants on bail, if not all undocumented migrants, to be included as well.¹²

All the above points were debated in the Diet, and the two bills were amended prior to adoption (Lower House Legal Council, 19 June 2009). First, the obligation of special permanent residents to carry around the registration certificate was dropped from ICRRA. Second, it was decided to issue a new unique ID at every renewal of the residence management card in order prevent private parties from producing a sellable database. Third, the obligation of employers and educational institutions to provide information on foreigners was downgraded to an 'obligation to make an effort' (*doryoku gimu*) which meant that failure to comply would not result in a penalty. Fourth, a clause was added to stipulate that the Justice Minister must not collect and retain information beyond what is required for residence management. Fifth, the deadline for reporting the change in marital status was extended from three to six months for those who are on the spousal visa. Sixth, an exemption from possible deportation was made for those who fail to report the address within three months as stipulated but are under extenuating circumstances.

One demand which had been made by the Japan Federation of Bar Associations was debated especially fiercely so much so that it stopped the debate in both councils for a month to allow MIAC and MOJ to coordinate their responses. Under ARA, illegal migrants were able

¹² A representative from the federation was invited to express his opinion in front of the Diet (Lower House Legal Council, 2009).

to obtain legally an alien registration certificate from local authorities. This meant that local authorities had sufficient administrative information for providing illegal foreign residents with social services that are legally open to all irrespective of immigration status, such as public school education and infant vaccinations. In both Houses of the Diet, all the major opposition parties, namely, DPJ, JCP and the Social Democratic Party, protested that the proposed reform would effectively cut off illegal migrants' access to basic welfare services and demanded something be done about this. DPJ's Furumoto Shinichirō also argued that the loss of alien registration certificates, which illegal migrants were often using to open a bank account, would force them to wire remittances through money laundering organisations (Lower House Legal Council , 8 May 2009).

The debate resulted in unexpected gains for those supporting the rights of illegal migrants. The bill to amend ICRRA was revised to include the following points of consideration (Lower House Legal Council, 19 June 2009). First, MOJ must devise a plan to collect addresses and other personal information of illegal migrants on bail before the law comes into effect so that they can continue to receive social services. Second, the Justice Minister must implement measures to encourage illegal migrants to come forward, such as improving the administrative transparency for issuing the Special Permission to Stay. The bill to amend BRRA was also revised accordingly (Lower House Internal Affairs Council , 19 June 2009). It placed a duty on the government to consider possible ways in which all illegal migrants, including those on bail, could continue receiving social services. Both bills were voted for by the ruling LDP and CGP as well as DPJ in opposition.

Explaining Displacement as the Dominant Form of Incremental Change

For some, the 2000s was a decade of atonement. Keidanren, Kōno and his project team in MOJ, and groups of LDP politicians attempted to close the gap between policy rhetoric and policy output by opening up legal channels to admit lowly-skilled migrants as *bona fide* workers. The relatively sound economic climate between 2002 and 2008 made it less

politically costly to voice support for the expansion of immigration admission, and policy proposals were often framed in the context of the imminent demographic crisis.

To reiterate, the fundamental policy preference of MOJ is to bar the admission of unskilled migrants and to deter the settlement of all migrants. Had any of the proposals materialised, it would have displaced immigration admission rules reflecting the ministry's policy preference. Keidanren as well as Nagase and his LDP colleagues wanted to liberalise the importation of unskilled labour, though to varying degrees, without any possibility of settlement. On the other hand, Kōno and his team as well as Nakagawa and his LDP colleagues were ready to pursue a settlement-oriented low-skilled migration policy. The debate, however, was cut short by the unexpected interruption of the global financial crisis which reached Japan in September 2008.

The second immigration reform debate can also be analysed as a counter-factual case. What if Lehman Brothers had never gone bust? The explanatory model of incremental change I presented above would predict institutional layering with MOJ as the veto player with a strong preference for the status-quo. With the challenges in regards to demographic decline and the dualised structure of the labour market unchanged, new channels for lowly-skilled labour migration would have been incrementally added to the existing admission channels. However, there could have been an alternative scenario in which the preference of MOJ mutates. The fact that Kōno's project was an initiative of MOJ hints at this possibility. Underneath the steely façade, the ministry has been known to be internally divided between progressive and conservative forces.¹³ Had that scenario materialised, the policy network of immigration admission would have given rise to a new configuration of bureaucratic power.

On the other hand, the twin reform of residence management and local governance of foreign residents did happen. In a CFP meeting on 22 June 2006, Takenaka Heizō mentioned

¹³ For instance, both Sakanaka Hidenori and Mizukami Yōichiro, whose article on the residence management reform is cited in this thesis, used to head the Tokyo Immigration Bureau and are known for their open criticism of the government's immigration policy. Also, it is worth remembering that MOJ and its para-public organisation were exploring means of admitting unskilled workers back in the 1980s.

that the discussion on the new residence management system was taking place in the Cabinet Council on Crime Measures 'by accident' (*tamatama*) to imply that it was not just an immigration control measure (Council on Economic and Fiscal Policy, 2006, p. 17). Even when the bill to amend ICRR was introduced to the Diet by Justice Minister Mori, he explained that the purpose of the amendment was to achieve better immigration control and administrative incorporation of migrants. However, the origin of the reform undoubtedly was crime management via immigration control. Rationalisation of local administration, which had been demanded by CLALNF, made it onto the agenda belatedly and from an obtuse angle through CPRR.

After years of institutional conversion, during which local authorities used the information collected on behalf of MOJ under ARA to carry out administrative tasks related to foreigners, the mode of incremental change shifted to displacement with the multi-bill amendment in 2009. Once the number of new comers reached a certain level, the political calculus of local authorities with a large migrant population shifted. More specifically, the mounting difficulty associated with the growing number of foreign residents made local authorities feel more restricted by ARA which did not empower them to investigate or close down alien registration records. In the policy network of immigrant integration, the veto power of MOJ had always been weak for the real site of integration always was in local communities. Therefore, that the demand of CLALNF made it into the Cabinet Council on Crime Measures' reform agenda may have been unexpected in the beginning, but that it did make it into it was a likely occurrence given the institutional configuration of actors.

The multi-bill reform of residence management marked a fundamental transformation of Japanese immigration management. For the first time in post-war history, immigration admission and immigrant integration were bureaucratically severed. Local authorities were finally given a legal basis for collecting and retaining information on foreign residents to facilitate their social integration. This departed dramatically from the previous arrangement where local authorities had to utilise opportunistically the personal information

collected on behalf of MOJ first and foremost for the purpose of immigration control. Moreover, the incorporation of foreigners' information into the Basic Resident Register and *jūki netto* not only improved administrative efficiency for local authorities but also expressed the Japanese government's incontrovertible admission that foreign workers had become settled migrants. After three decades of economic migration, the underlying logic of the institutional regime of immigration management finally shifted. At least administratively, foreign residents are now fully incorporated into Japanese society. The self-description of non-immigration country is starting to ring hollow.

Chapter 7: The Ethics of Japanese Immigration Policy

I began the present thesis by examining the existing literature on Japanese immigration policy. A rather crude causal explanation which has been put forward by some scholars is that the prevalence of ethno-cultural nationalism has produced a restrictive immigration policy which deters the entry of unskilled migrants and the settlement of all migrants at least in principle. Moreover, what lies in the shadow cast by this particular understanding of the policy is a normative judgement that the Japanese practice of immigration management is unfit for meeting internationally-accepted standards of ethics which ought to guide the treatment of non-citizens by a liberal democratic regime.

Against these interrelated explanatory and normative claims, I have attempted to demonstrate in the foregoing chapters that causal factors driving the evolution of Japan's immigration policy are multiple. Not only ethno-cultural nationalism but also other considerations, such as economic survival, public safety, administrative efficiency and rights protection, enter the calculus of policy actors. At the same time, the combined effect of these disparate motivations has been to open up the country to non-citizens not only by admitting them in greater numbers but also by facilitating their integration and settlement.

These empirical observations hint at the following normative questions. How should the conflicting goals of an advanced liberal democracy be reconciled with each other when formulating an ethical immigration policy? In particular, is there an ethical role to be played by nationalism in immigration management? In order to explore some possible answers to these questions, I survey two schools of political thought, namely, liberal cosmopolitanism and liberal culturalism which, in turn, can be divided into liberal multiculturalism and liberal nationalism. This is followed by three sections on immigration admission policy, immigrant integration policy and citizenship acquisition policy in which I highlight ethical merits and shortcomings of Japanese immigration policy as it exists today.

The Two Liberalisms

In 'Aliens and Citizens: The Case for Open Borders' (1987), Carens introduces his claim that no liberal democracies can justifiably close their borders to non-citizens. He writes, 'Citizenship in Western liberal democracies is the modern equivalent of feudal privilege – an inherited status that greatly enhances one's life chances' (Carens, p. 252). So long as the state believes that all moral persons ought to be free and equal, the fate of human beings cannot be determined by something as arbitrary as citizenship. Carens reaches this conclusion by relying on three major intellectual approaches in modern political thought, namely, Nozickean libertarianism, Rawlsian liberalism and utilitarianism of various anonymous variants.

Here I need not rehash Carens' argument in detail, and it is sufficient for the present purpose to say that the particular way in which he applies the three approaches leads to a justification of open borders. To this, Carens adds a qualification that immigration can be constrained in order to secure the long-term viability of equality and freedom. Accordingly, he suggests three morally justifiable examples of immigration restriction: maintaining national security, preserving liberal democratic values assuming that immigrants do not share them, and safeguarding liberty-protecting infrastructure assuming excessive immigration will overwhelm it. However, these restrictions should not be subject to expansive interpretation. Carens emphatically states that the negative effects of immigration cannot be merely hypothetical and that restrictions cannot be used to achieve hidden sinister goals.

Whilst making the claim, Carens acknowledges that the three approaches prioritise the individual over the community. Therefore, he attempts to further strengthen his claim, which, to reiterate, is that closed borders cannot be morally justified, by engaging directly with Walzer's communitarian argument (Walzer, 1983). In short, Walzer claims that the nation-state can rightly deter non-citizens from entering its territory because the political community has the right to self-determination. However, action of the sovereign entity is

constrained in some important ways. First, the state must help needy migrants, such as refugees, by admitting them when this can be done without incurring an unreasonable cost. Second, once admitted, immigrants' access to citizenship must be secured. Third, the state must not expel its inhabitants.

Although Carens does not object to these qualifications *per se*, he does point out that these are liberal constraints that arise from liberal political traditions embedded in liberal national history. What if a political community based on the right to self-determination chooses to be illiberal, he asks? In this case, the three qualifications would become irrelevant. Turning Walzer's moral particularism on its head, Carens argues that restricting immigration goes against the western cultural tradition which is putatively egalitarian and individualistic. He writes,

The enormous intellectual popularity of Rawls and Nozick and the enduring influence of utilitarianism attest to their ability to communicate contemporary understandings and shared meanings in a language that has legitimacy and power in our culture. These theories would not make such sense to a Buddhist monk in medieval Japan. But their individualistic assumptions and their language of universal, ahistorical reason makes senses to us because of *our* tradition, *our* culture, *our* community. For people in a different moral tradition, one that assumed fundamental moral differences between those inside the society and those outside, restrictions on immigration might be easy to justify. Those who are *other* simply might not count, or at least not count as much. But we cannot dismiss the aliens on the ground that they are other, because we are the products of a liberal culture (Carens, 1987, p. 269, original emphases).

For Carens, states cannot legitimately restrict immigration at least in principle as long as they subscribe to a belief that all persons must be free and equal. More importantly, this remains paradoxically true even if countries were to choose an immigration policy through a culturally- and historically-embedded style of moral reasoning so long as they are built on the western philosophical tradition.¹⁴

¹⁴ In 'Migration and Morality: A Liberal Egalitarian Perspective' (1992), Carens further develops his defence of open borders and understands freedom of movement to be both intrinsically and instrumentally good. Aside from the feudal privilege argument which I have already explained, he presents his claims that the right to exit is meaningless without the right to entry and that freedom of movement is recognised domestically as a fundamental right.

Justice, the way Carens conceives it, requires freedom and equality to be realised on a universal-basis, and the basic principle of immigration admission must be to keep borders open in order to attain this moral ideal. The position reflects the underlying philosophy of liberal cosmopolitanism which Kymlicka contrasts with liberal culturalism (Kymlicka, 2001, pp. 203-220). He writes, 'Cosmopolitans are, almost by definition, people who regret the privileging of national identities in political life, and who reject the principle that political arrangements should be ordered in such a way as to reflect and protect national identities' (Kymlicka, p. 204).

On the other hand, liberal culturalism, as the name suggests, accords greater intrinsic importance to culture. Whereas the liberal multiculturalist variant defends the cultural right of non-national minority groups, such as immigrants and religious minorities, who should eventually be integrated into the dominant culture of the nation-state, its liberal nationalist cousin justifies the cultural right of national groups, such as majority and minority nations as well as indigenous peoples, who aspire to achieve and/or preserve political self-determination (Kymlicka, 2001, pp. 39-42). Despite the difference in emphasis, both liberal multiculturalism and liberal nationalism are premised on a moral claim that individual autonomy cannot flourish in abstraction. Culture provides contexts and meanings to one's conception of the good life and is inherent to one's status as a moral being. Put differently, liberal culturalism explicitly views individuals to be relational rather than atomistic.

For liberal nationalism, culture also plays an important instrumental role in modernity which is characterised by the entrenchment of liberal democracy as the dominant and legitimate form of governance (Kymlicka, 2001, pp. 221-241). The reason for this is twofold. First, having a national culture is a fundamental requirement for achieving social justice through the maintenance of modern institutions which protect social and economic rights. Without a common sense of belonging to a national community, it is difficult to imagine why better-off people would make sacrifices for their worse-off compatriots by redistributing resources. Without a common national language, it is difficult to ensure equal

access to socio-economic institutions which create an enabling environment for individuals to exercise their rights in a substantive way.

Second, national culture provides a crucial context in which democracy as a political system can meaningfully function. For Kymlicka, meaningful liberal democracy needs *Politics in the Vernacular* (2001). A people must make decisions collectively, and the process involves formal political participation which requires citizens to possess a certain level of competence, such as basic literacy in the national language and the ability to understand technical rules of political processes. The need for such competence is obvious if one considers a simple example of voting. Citizens must be able to understand who the candidates are, what they stand for and how they are chosen before casting a vote. Equally crucial in the collective endeavour is a more substantive political habit of mutual deliberation. Without a sense of national solidarity, few people would be willing to listen to each other attentively and to accept outcomes of decision-making in good faith.

If the value of national culture in facilitating the functioning of liberal democracy is accepted, it may then follow that nation-states which are liberal democratic may legitimately promote their national cultures. Based on this understanding, the preservation of national culture can be the basis upon which states justify immigration policies. Kymlicka aptly summarises the point in the following passage.

At the moment, immigrants are almost always a source of enrichment, both culturally and economically, to national societies. But that is because the numbers of immigrants are limited, and those who are admitted are encouraged to integrate into the existing national culture. A policy of open borders, however, could lead to tens of millions of new immigrants entering a country, exceeding the capacity of existing national institutions to integrate them. [...] On the liberal nationalist view, states have a legitimate right to limit the numbers of immigrants, and to encourage their integration, in order to protect the viability of existing national cultures (Kymlicka, 2001, p. 219).

A cosmopolitan would object to the above position on the grounds that liberal nationalism merely reifies the status-quo by failing to challenge the nation-state system as it exists today. Culture flourishes at multiple levels, such as in local communities, regional areas and indeed the globe itself, and there is not an intuitive reason why nation-state as a unit of

analysis should be privileged over other types of collectivity. In other words, liberal nationalism could be limiting its transformative potential as a normative theory by giving primary importance to national culture just because the world is currently organised into nation-states. Carens implicitly makes this point when he writes that 'Free migration may not be immediately achievable, but it is a goal toward which we should strive. And we have an obligation to open our borders much more fully than we do now' (Carens, 1987, p. 270).

As the passage suggests, Carens is obviously aware that the world is nowhere close to the ideal of open borders he argues for, but it is exactly this distance between the ideal and the reality that he wishes to problematise. The mileage of Carens' social criticism, however, also remains limited in its own way. For example, Miller points out that constructing a theory of justice which excessively abstracts itself from reality merely ends up a speculative exercise (Miller, 2007). Therefore, even if the world is moving towards a new historical period in which national boundaries are absent, liberal cosmopolitanism does not provide answers to moral questions which vex us here and now as long as international law and morality recognize that nation-states have the right to impose border controls.

Carens' argument for cultural preservation is illustrative of this point. Although Carens' basic position is that states should abstain from restricting immigration, he explores other normative issues in a counterfactual world in which states enjoy comparable levels of economic and political development so that international migration is not an epiphenomenon of pre-existing global inequalities (Carens, 1992). In this hypothetical thought experiment, refugees do not exist, and economic migrants relocate to improve their lives only in a marginal way. He then presents Japan as a country with 'a distinct culture or way of life' which its citizens sincerely want to preserve and fear that it may be eroded by immigration (Carens, p. 25).¹⁵ To reiterate, Carens is not jettisoning his defence of open borders. Rather

¹⁵ In his original defence of open borders, however, Carens seems to suggest that immigration cannot be restricted on the grounds of cultural preservation. He mentions how Rawls rejects the principle of perfectionism which requires public institutions to be arranged in a way to maximise human excellence irrespective of its effect on equality and liberty. The principle is rejected because the

this particular argument of his operates on a different theoretical plane in order to identify cases in which some closing of borders may be morally justified.

He writes, 'From a liberal egalitarian perspective this concern for preserving Japanese culture counts as a legitimate interest, assuming (as I do) that this culture is compatible with respect for all human beings as free and equal persons' (Carens, 1992, p. 37). Whether the desire morally justifies a closed immigration system, on the other hand, depends on why non-citizens want to enter the country. Family reunification, for example, overrides the need for cultural preservation even in this hypothetical situation. In other words, Japan cannot rightfully close the doors to migrants who want to join their spouses and parents. In comparison, economic migrants do not have the same moral claim. Given that discernible income disparities are hypothetically absent, Carens thinks that restrictions on economic migration for cultural reasons are permissible.

To state the obvious, Japan does not inhabit the hypothetical world based upon which Carens constructs his argument. On the contrary, the majority of migrants who arrive in the country are from neighbouring Asian countries and Latin American countries where the level of economic development is substantially behind that of Japan.¹⁶ Back in the real world, Carens only says that Japan must admit refugees although it may be acceptable to select the ones who are culturally compatible.¹⁷ The moral obligation to attend to the needy, in other words, generally overrides Japanese people's collective desire to keep a closed immigration system for the sake of cultural distinctiveness.

That liberal democracies should admit refugees is a point which liberal nationalism too accepts although there may be some disagreement on zero-sum situations where the

person behind the veil of ignorance would not endorse this in case the resulting arrangement may be incompatible with her needs and proclivities in the real world. Applying this to the question of territorial boundaries, Carens argues that cultural preservation, which can be one of such perfectionist goals, will not be chosen by the worst-off in the world. Therefore, 'restrictions on immigration for the sake of preserving a distinctive culture would be ruled out' (Carens, 1987, p. 262).

¹⁶ An important exception to this is South Korea.

¹⁷ Carens also says that *zainichi* Koreans deserve special treatment for integration given the historical background. However, I do not address this here in order to concentrate on questions related to admission policy.

interest of refugees and that of the receiving nation are in direct conflict. An important question, then, is how liberal democracies ought to admit economic migrants and treat them once they are admitted. In order to answer this question, one must start with a premise that the world as it exists today with nation-states and economic inequalities is going to persist for the foreseeable future and attempt to locate ethical principles which can guide immigration management in this specific temporal context. As I shall show later, Carens himself brackets off his ideal principle of open borders and explores the ethics of immigration policy based on an assumption that states can legitimately control national borders.

What, then, does an ethical immigration policy fit for liberal democracy look like in a world divided into rich and poor nation-states? In practice, immigration policy in western liberal democracies is said to be on the path of convergence. Joppke, for instance, has argued that nation-states are caught in between countervailing imperatives of popular sovereignty and human rights, and of nationhood and liberalism (Joppke, 1999, 2005). Despite the internationally-accepted prerogative to control national borders unfettered by others, states are constrained by liberal norms which condemn racially-discriminatory admission policies. Even co-ethnic migration policies have come under greater scrutiny. Once non-citizens pass through the gates of admission, states can require them to adhere to civic principles and to acquire the national language but nothing more. The practice of cultural assimilation has given way to that of civic integration.

Where liberal nationalism as a normative theory departs from the general description put forward by Joppke is the emphasis it puts on the role of national culture in the formulation of detailed rules of immigration management. On immigration admission, Miller, for example, argues that refusal to admit immigrants must be accompanied by 'an adequate explanation' which 'links immigration policy to the general goals of the society in question' (Miller, 2007, p. 223). Moreover, 'These goals will reflect existing national values and will ideally be set through a continuing process of democratic debate' (Miller, p. 223). The goals

he refers to may be diverse, ranging from economic needs to environmental conservation. However, Miller concludes that the desire for national autonomy does not extend to form a strong enough rationale for a culturally-discriminatory admission policy because today's national culture, in any case, is overwhelmingly civic.

On the other hand, the state can legitimately require immigrants to integrate into its national culture. This is where liberal nationalism and liberal multiculturalism meet to form a coherent liberal culturalist position on immigrant integration for both theories explicitly or tacitly endorse the state's authority to 'nationalise' prospective citizens. Veracity of the claim aside, multiculturalism as a public policy prescription is understood by some to be socially divisive by allowing ethnic minorities to lead an insular community life. At least in theory, however, multiculturalism attempts to ensure 'fair terms of integration' into the existing national community (Kymlicka, 2001, pp. 162-172).¹⁸ Any accommodation the state makes for new arrivals is intended to serve this overarching goal.

What is fair is not always straightforward but nonetheless implies that integration must be a process of mutual concession between the receiving state and immigrants. The relationship can thus be understood as 'quasi-contractual' whereby 'each side claims certain rights against the other, and acknowledges certain obligations in turn' although the relationship is not purely legal (Miller, 2008, p. 372). Given the important instrumental value of national culture in liberal democracy, the state, for instance, may legitimately require immigrants to adhere to civic principles, such as acceptance of the rule of law, and encourage them to participate in formal political processes.

As Joppke's convergence thesis shows, civic integration is already a common practice in western liberal democracies. However, liberal nationalists would argue that states often do and can rightly require immigrants to demonstrate their cultural competence which goes

¹⁸ I limit myself here to the discussion on immigrants. Kymlicka's liberal multiculturalism accords stronger political claims, including the right to self-determination, to other minority groups, such as national minorities and indigenous peoples, within an overarching structure of federalism (Kymlicka, 2001).

beyond the mere adherence to civic values. Despite the predominantly civic nature of national culture in today's liberal democracies, there are some nationally-idiosyncratic components, such as language and historically-institutionalised public customs. Indeed, passing of citizenship tests which assess immigrants' knowledge of these markers of integration have become increasingly common. However, what is required of immigrants' cultural competence must be actually connected to the functional need of citizenry (Miller, 2008). Moreover, ethnicity and religion, for instance, cannot be used to define a national culture, and this is what differentiates liberal nationalism from illiberal nationalism (Kymlicka, 2001, p. 40).

For liberal cosmopolitans, making access to citizenship conditional upon integration is patently unjust. When Carens operates his theory in the real world by reluctantly accepting the continuation of closed borders for the foreseeable future, he argues that the only condition for naturalisation should be the length of residence (Carens, 2005). More specifically, he criticises often-used criteria on language skills, economic viability, civic knowledge and serious criminal convictions. Although he acknowledges himself that his claim departs significantly from the existing practice in western liberal democracies, he defends it on the grounds that a democracy cannot impose a pre-defined idea of how a citizen should be or what she should know. According to Carens, having such criteria for naturalisation would 'undermine the very idea of democracy as an inclusive form of political community' (Carens, p. 39).

As I have explained above, Carens qualifies his ideal principle of open borders by defending the right of states to restrict immigration if there was a reasonable expectation that it could jeopardise national security, liberal democratic institutions and law and order. I question why Carens is willing to forego readily his concern for protecting liberal democracy when access to citizenship in the real world where borders are closed is concerned. Of course, the difference between admission and access to citizenship is that the migrant has already spent a sufficient amount of time generating social ties with the host community by the time

she becomes eligible for citizenship. Therefore, there is a stronger claim to becoming a full member of the community when the person is a naturalisation applicant than when she is only a prospective migrant. However, the claim is not strong enough to override the need to preserve liberal democracy and its background conditions which are necessary for securing freedom and equality of all persons, including the immigrant herself. It then follows that the state can legitimately require the prospective citizen to demonstrate a certain level of cultural integration.

Alternatively, it could be argued that immigrants would voluntarily learn the national language and other cultural knowledge out of self-interest making formal assessments redundant. Therefore, Carens would argue that the most the state is morally permitted to do is to request or exhort the prospective citizen to make every effort to become the ideal citizen. Indeed, Carens makes a distinction between requirements, expectations and aspirations when renouncing the use of naturalisation criteria other than the length of residence (Carens, 2005). To require something of someone, then, means to compel the person to act or think in a certain way with a threat of negative consequences, or not granting citizenship in the context of the present discussion.

On citizenship acquisition of children of immigrant parents, Carens writes that its conferral must be automatic and that children should not be subjected to tests of adaptation because there is a reasonable expectation that they will spend their formative years in the host country where the state can exert an enormous influence on them through compulsory education (Carens, 2005, p. 37). Elsewhere, he underlines the state's moral responsibility to provide education to children regardless of their immigration status, noting that 'To refuse to educate a child in the modern world is to condemn that child to a life of very limited possibilities' (Carens, 2008b, p. 170).

The possibilities, I would add, are not just economic but also political. Many liberal democracies do teach the virtues of citizenship to children because these are not always transmitted without systematic intervention, and a similar case can be made in regards to

immigrants (Miller, 2008). The state can rightly subject immigrants to tests of integration as a condition for acquiring citizenship because it has not previously had an opportunity to instil in them requisite skills, knowledge, and values in a compulsory manner and because these attributes are necessary for them to participate in community politics in a meaningful way. However, whether citizens of immigrant origin choose to use and embody these attributes of citizenry is ultimately up to them as it is for native citizens. In other words, this is where requirements turn into expectations and aspirations.

In return for accepting the integration requirements, immigrants can expect the state to treat them as prospective citizens who are entitled to most of the rights available to native citizens. This is because excluding a group of people from welfare provisions does not mesh very well with equality norms in liberal democracy even if those who are excluded are non-citizens (Miller, 2008). Furthermore, the impermissibility of exclusion is not confined to social rights. In a democracy, it is also anomalous for an individual to be subject to the law that is not of one's making on an on-going basis (Miller). Therefore, non-citizens who reside in the host country for a reasonably sufficient length of time should have access to a full range of rights through the acquisition of citizenship.

Immigrants can also ask the receiving state to make special accommodations, some as transitional measures and others as permanent measures. Under the banner of multiculturalism, liberal democracies implement a wide range of policies, such as using affirmative action and quotas, reflecting cultural diversity in school curricula, granting leave of absence on religious holidays not recognised by the state, funding cultural events and providing administrative services in foreign languages (Kymlicka, 2001, p. 163). Which of these policies works in practice is largely a matter of empirical investigation. However, the guiding principle ought to be that these policies actually facilitate the integration of immigrants into the existing public institutions in the long run.

In this section, I have summarised two contrasting liberal positions on the ethics of immigration management. The liberal cosmopolitanism expounded by Carens defends open

borders as an ideal principle which may not be realised immediately but nonetheless is something one should espouse. In a counterfactual world where political and economic inequalities are hypothetically absent, states can legitimately restrict economic migration in order to preserve their national cultures. However, the world is nowhere near this ideal state. Nor is it likely that the nation-state system will wither away any time soon. Reluctantly embracing the predicament, Carens accepts states' general right to control borders for the sake of argument but still rejects their right to require immigrants to integrate into existing national cultures, civic or otherwise.

I have argued that liberal cosmopolitanism suffers from its radical transformative capacity because, by abstracting itself too much from reality, it fails to answer some of the pressing ethical questions related to immigration admission faced by contemporary liberal democracies which can expect the nation-state system and economic inequalities to persist at least for the time being. On the other hand, the liberal culturalism presented by Kymlicka and Miller defends closed borders on the grounds that liberal democracy requires a more or less culturally-bounded polity for it to flourish meaningfully. For the same reason, liberal culturalists advocate fair terms of integration which are best envisaged as a pseudo-contractual relationship of mutual concession. Whilst cultural criteria cannot be used for immigration admission, integration of immigrants into national culture is morally justified within a prescribed range of options. In return, immigrants can rightly expect the receiving state to make accommodation to facilitate their integration.

Below I assess the moral justifiability of Japanese immigration policy seen through the lens of liberal culturalism, that is, states can legitimately keep borders closed and require immigrants to integrate into national cultures. I should clarify at this point that I will continue to rely on Carens' works in some parts. Overall, liberal culturalism is more suitable than liberal cosmopolitanism at suggesting practical ethical standards given the state of the world that liberal democracies inhabit today. Unlike liberal cosmopolitanism, liberal culturalism also acknowledges the importance of national culture and justifies its protection

in the state's management of immigrant integration. At the same time, however, there are some important points of convergence between the two approaches when liberal cosmopolitanism theorises in the real world. As I shall demonstrate shortly, Carens' views on co-ethnic migration policy and the rights of foreigners are consistent with the theoretical premises of liberal culturalism. Since these are topics which have been underexplored in liberal culturalism, Carens' works are thus applicable to and useful for the present inquiry.

Immigration Admission Policy

Japan's immigration admission policy deters the entry of unskilled workers and facilitates that of skilled workers. Is this morally objectionable considering that the country is a liberal democracy? Since nation-states have the right to restrict immigration based on their national goals, selecting migrants on the basis of occupational skills is not a morally repugnant practice. What may be considered problematic, however, is that *nikkeijin* unskilled workers are admitted exceptionally through a co-ethnic migration channel. Is this an unjust practice which amounts to a culturally-selective admission policy? The migration channel is indeed culturally-selective, but I would like to question whether all such policies are inherently unjust.

Going back to Miller's earlier argument, the reason for disallowing culturally-specific admission criteria is because national culture is predominantly civic. Therefore, the preservation of national culture cannot be the basis upon which certain migrants can be turned away at the point of admission. In any case, familiarity with the non-civic, idiosyncratic elements of national culture can be tested when immigrants wish to become citizens through naturalisation. Miller also points out that culturally-discriminatory admission policies are incompatible with the way in which liberal democracies treat different cultural groups which are already present in the territory (Miller, 2008). Since discriminatory treatment of existing minority groups is prohibited, the internal norm must be reflected in the state's selection of prospective migrants.

Japan does not fit Miller's description of liberal democracies. At least in official rhetoric, there are no ethnic minorities in Japan. To be sure, this is a post-war myth. Like many other nation-states, the modern Japanese nation-state developed by subjugating and assimilating those who do not belong to the titular ethnic group. Okinawans in the south are a national minority, and the Ainu in the north are an indigenous people, not to mention *zainichi* migrants who have formed a permanent foreign community since the end of the Second World War (Lam, 2005). However, ethnic minorities are recognised neither in law nor in popular imagination (Lie, 2001). In that sense, Japan lacks the internal rationale which discourages other liberal democracies from having a culturally-discriminatory admission policy.

At the same time, however, Japan's co-ethnic migration policy does not turn away migrants for not sharing the ethnic affiliation and merely grants *nikkeijin* preferential treatment. This point which may be subtle but not at all trivial is well illustrated by none other than Carens. Once he suspends his ideal principle of open borders and assumes that states can generally restrict immigration, he is surprisingly supportive of an immigration policy which gives preference to co-ethnic migrants so long as it meets the following two conditions. He writes, 'Taking linguistic and cultural compatibility into account does not seem objectionable if it is not a disguised form of racial or ethnic prejudice and if the cumulative effects of such policies by different countries do not leave out some groups altogether' (Carens, 1992, p. 44). Here I choose to ignore the second criterion because if every country in the world had a co-ethnic migration policy, it would not lead to the sort of exclusion Carens disallows except for the anomalous cases of stateless peoples, such as the Romani. With this clarified, I ask whether Japan's preferential admission policy for *nikkeijin* is an instance of illiberal discrimination.

To determine if a policy is 'a disguised form of racial or ethnic prejudice' requires a careful appraisal of the individual case. Carens helpfully provides and compares four actual examples: The British revocation of citizenship for members of the commonwealth except for

those whose grandfather was born in the United Kingdom; the Irish provision of citizenship to those whose grandparent was born in Ireland provided that applicants will live in Ireland; the German provision of citizenship for descendents of ethnic Germans regardless of when their ancestors actually lived in Germany provided that applicants will live in Germany; and the Israeli provision of citizenship for any Jew who wants to live in Israel (Carens, 1992).¹⁹

According to Carens, the British policy is nothing but thinly disguised racism intended to shut out non-white commonwealth immigrants. On the other hand, the Irish policy is completely acceptable as its goal is to welcome back ethnic brethren. The last two policies from Germany and Israel are morally ambiguous for the special treatment of co-ethnics, namely, Germans and Jews, contrast markedly with the treatment of other migrant groups. For example, Turks in Germany and Arabs in Israel may have a deep connection with the host society through immigration, and yet their access to citizenship is restricted compared to that of migrants belonging to the titular ethnic group regardless of the latter's actual familiarity with the national culture.

Is Japan's co-ethnic migration policy morally objectionable? To recapitulate, Japan does not admit unskilled workers in principle and admits *nikkeijin* and their families as co-ethnic return migrants. The long-term visa which is awarded to them is indefinitely renewable, thereby making the acquisition of permanent residence and Japanese citizenship theoretically possible, but *nikkeijin* are not automatically entitled to Japanese citizenship in the way foreign-born ethnic Germans and non-Israeli Jews are in Germany and Israel respectively. Below, I compare the status of *nikkeijin* with that of other potential unskilled migrants on one hand and *zainichi* migrants on the other in order to determine whether the policy results in the sort of *de facto* discrimination Carens prohibits.

First, it is reasonable to assume that the overwhelming majority of potential unskilled migrants who may want to enter and work in Japan but are not presently permitted to do so

¹⁹ Carens wrote this in 1992. Since then, Germany's co-ethnic migration policy has become increasingly restrictive. See, for example, Joppke (2005).

live in non-Western, developing countries. Therefore, it is possible to view the *nikkeijin* policy as a way to shut out migrants who are not of European origin. However, when the policy was introduced in 1990, it was not intended to exclude specific racial or ethnic groups. Rather, the goal of policy actors who had an economic interest in expanding admission was to seek out easily assimilable unskilled workers from the rest of the world population. This suggests that the policy is a case of positive inclusion whereby co-ethnics are given special treatment. The practice contrasts with negative exclusion by which migrant workers who belong to a certain ethnic or racial group are discriminated against. In short, I argue that the *nikkeijin* policy neither emanates from objectionably illiberal motivations nor results in objectionably illiberal outcomes given that the state has the right to control its own borders.

Second, *zainichi* migrants had already settled in Japan either as permanent residents or naturalised Japanese citizens before the mass arrival of *nikkeijin* starting in the early 1990s. The status of *zainichi* non-citizens, however, did not deteriorate comparatively with the introduction of the new co-ethnic migration policy. To reiterate, the *nikkeijin* policy does not give automatic access to Japanese citizenship. Therefore, both *nikkeijin* and *zainichi* migrants must go through the same procedures to become citizens of Japan. Moreover, it is worth remembering that MOJ intended the opening up of the co-ethnic migration channel to produce a state of parity between the two groups (Chapter 2). If anything, the immigration status of *zainichi* special permanent residents remains more privileged than that of *nikkeijin* long-term residents for the former are excluded from the new residence management system (Chapter 6) and are not required to submit biometric information when passing through immigration control (Chapter 4). In short, Japan's co-ethnic migration policy is morally permissible.

Aside from *nikkeijin*, the other major group of *de facto* unskilled workers are those admitted through the foreign technical trainee and intern programme (Chapter 2) which is similar in many ways to the now defunct European guest worker programmes as well as contemporary temporary migration programmes in western liberal democracies. The

programme lasts for three years, of which one year is spent on training and two years on internship. It is during the first year that migrants receive vocational as well as language instructions by their employers before moving onto the internship phase during which they put their newly-acquired skills into use.

Is it justifiable for the Japanese government to admit unskilled workers on a temporary-basis? As long as the workers enter the country knowing that the length of their stay is limited, barring permanent settlement is not morally problematic. To put this into context, foreigners must live in Japan for five and ten years before applying for naturalisation and permanent residence status respectively at least in principle, and to give technical interns access to settlement in just three years would create a strange sort of legal inconsistency. Moreover, three years seems like a permissible length of time during which migrants can be subject to the law of the receiving country without having a say in its design by participating in formal politics. I acknowledge that it is difficult to arrive at an absolute threshold beyond which political exclusion becomes morally indefensible. However, three years is definitely more acceptable than a timeframe spanning over three generations, for instance.

Immigrant Integration Policy

So far I have assessed Japan's immigration admission policy and have shown that the policy is not as unethical as some scholars have suggested. Now I turn to immigrant integration policy to explore how ethical it is by examining the legal rights granted to non-citizens in the country. There are different groups of non-citizens depending on their immigration status, and the strength of their moral claims is variegated across the groups. Below, I will first tackle the easy case of legal settled migrants before moving onto harder cases of temporary workers and undocumented migrants.

In the Japanese case, there are three main kinds of legal settled migrants who are closest to the 'immigrants' liberal culturalists discuss in their arguments.²⁰ Aside from ordinary permanent residents, there are special permanent residents who are former colonial migrants and their descendents (Chapter 5). Furthermore, long-term residents who usually are *nikkeijin*, regularised migrants and Indo-Chinese refugees are also considered settled migrants in the government's policy taxonomy. Unlike special and ordinary permanent residents, long-term residents must renew their visa periodically until they can apply for permanent residence or naturalisation should they choose to do so. However, the extent of their legal rights is much wider than that of other migrants and is virtually identical to that of other settled migrants.

In terms of social and economic rights, the distance between legal settled migrants and Japanese citizens substantially narrowed with ratification of international human rights conventions starting in the late 1970s (Chapter 5). However, there still remain four areas where inequality persists. First, foreigners' access to livelihood protection is maintained only operationally, and it is not protected as a formal legal right. Therefore, the provision for settled migrants is not as secure as it is for citizens. Second, access to public sector employment is limited because non-citizens, regardless of immigration status, are not allowed to take up management roles. Third, legal settled migrants, as well as other non-citizens, are not entitled to vote or run for office. Fourth, the 2006 ICRRA amendment re-introduced the collection of foreigners' fingerprints, except for special permanent residents', at immigration control (Chapter 4). It could be argued that this violates their civil rights especially because the practice only targets foreigners.

I would argue that the lack of legally-guaranteed livelihood protection is morally indefensible especially for special permanent residents some of whom are third and fourth generation *zainichi* migrants. Because there is a reasonable expectation that they will remain

²⁰ For liberal culturalists, immigrants are admitted with their settlement in mind. Therefore, their claim to legal inclusion is much stronger than that of temporary migrants.

in Japan for the rest of their lives, they should be entitled to access to the redistributive social programme. On the other hand, public sector employment and formal political participation require a certain level of cultural integration in regards to both its civic and nationally-idiosyncratic elements. Therefore, it seems permissible to reserve these rights to citizens, including foreign-born citizens who have naturalised. Indeed, these restrictions are commonly practiced in other liberal democracies. Finally, the collection of fingerprints is straightforwardly objectionable. The primary justification for introducing the measure was to combat international terrorism, and national security is a legitimate concern of every state. However, the practice presupposes all foreigners to be security threats whereas a terrorist can be a citizen or a non-citizen. Quite simply, this violates the principle of equality without providing a reasonable justification.²¹

The level of rights protection for legal settled migrants seems imperfect but not egregiously so. Is it possible to say the same about that of temporary and illegal migrants? The restrictions on public sector employment and political participation are justifiable and the collection of fingerprints indefensible for the same reasons I have given above for legal settled migrants. However, the claim of temporary and illegal migrants to social and economic rights is weaker because they are not expected to remain in the country forever or at all. Here I mainly rely on the standards set by Carens who once again provisionally accepts that states can keep their borders closed for the sake of argument. In any case, there are not any fundamental conflicts between his position and what a liberal culturalist might say on the point.

According to Carens, temporary workers' claim to social and economic rights depends on the nature of the rights. Rights which are guaranteed in order to maintain a certain level of working conditions, such as health and safety and minimum pay, should be protected regardless of the worker's citizenship status. This is because these rules 'reflect a

²¹ I am not suggesting here that biometric information should be collected from citizens as well as non-citizens in order to make the practice morally permissible.

political community's understanding of the minimum standards of acceptable working conditions within its jurisdiction' (Carens, 2008a, p. 425). Therefore, who is working does not matter as much as where the person is working.

Equal protection in the workplace applies to undocumented migrants as well but with an additional requirement based on what he calls the firewall argument (Carens, 2008b, p. 167). Carens points out that legal equality does not automatically lead to substantive equality in this instance because undocumented migrants would hesitate to report any labour law violations to authorities lest they get deported. Therefore, enforcement of immigration law must be functionally severed from protection of human rights by imposing a strict rule on confidentiality on those dealing with reports made by undocumented workers.

Carens is slightly more ambivalent about other types of social and economic rights. Examining work-related programmes which are usually based on employee contributions, Carens argues that temporary foreign workers should be either included completely or excluded with refunds (Carens, 2008a). The type of programmes includes unemployment insurance as well as old age pension that are not funded by general revenues. An exception to the rule is workers' accident insurance in which all workers should be included for the harm concerned is immediate.

The immediate harm argument means that undocumented migrants should be included in workers' accident insurance also (Carens, 2008b). However, Carens thinks that their claim to refunds for pension contributions only grows with time and that their claim to unemployment insurance is even harder to defend (Carens, pp. 180-181). Finally, Carens thinks that new arrivals can be legitimately excluded from social programmes with a redistributive dimension, such as income support, since they cannot be considered members of the host society just yet (Carens, 2008a, p. 430).

As I already noted above, foreign residents in Japan, except for legal settled migrants, do not have access to livelihood protection. The programme, however, is redistributive in the sense that it is not contribution-based. Since its operation relies on a shared sense of

belonging and reciprocity, it can justifiably exclude temporary migrants whose duration of stay is too short to give them a claim to be part of the national community and illegal migrants who are not supposed to be in the country at all.

In contrast, all workers, regardless of immigration status, are protected by labour laws ensuring a certain standard of working conditions. Undocumented workers' labour rights are substantively protected by having the sort of firewall Carens deems necessary as well. Personnel of labour standard offices and human rights advisory offices are exempted from civil servants' obligation to report on undocumented migrants. The protection of trainees was also strengthened with the ICRRA amendment in 2009 by finally acknowledging them as *bona fide* workers entitled to consonant legal protection, including minimum wage regulations (Chapter 2).

In addition, all workers, again regardless of immigration status, are included in old age pension and health insurance, which I have already discussed at length (Chapter 5), as well as unemployment and workers' accident insurance. This does seem like an odd arrangement given that temporary migrants are admitted only for a short period and undocumented migrants are not supposed to work at all. However, contributions towards pension and health insurance schemes as well as towards unemployment and workers' accident insurance schemes are made in two sets via automatic salary deduction. Put differently, the worker cannot apply for the health insurance scheme without the pension scheme or vice versa, or for the workers' accident insurance without the unemployment insurance or vice versa. Moreover, foreign workers are now entitled to a lump-sum refund of their pension contributions upon leaving Japan (Chapter 5).

In general, the level of labour rights protection is high, and eligibility of social programmes is generous even when assessed against Carens' standards. In this sense, immigrant integration policy in Japan can be considered ethical even towards temporary migrants and illegal migrants. However, I am unsure as to what extent there is a bureaucratic firewall between immigration law enforcement and welfare administration in general. This is

something which remained unclear to me even during my field interviews for most bureaucrats gave obscure answers or ignored my questions altogether. Eventually, one interviewee told me that relevant central ministries discreetly instruct sub-national organisations to treat cases involving undocumented migrants ‘with care’ (*hairyo suru*) but that none of them would admit to the practice publicly. The bureaucrat added, ‘there are situations in which keeping things quiet is best for the person involved...’²²

All this is to say that there might be a gap between the government’s stated stance on undocumented migrants and how civil servants deal with the matter on a daily basis. Therefore, it would be unsurprising if some undocumented migrants have been able to claim insurance benefits without being reported to authorities. However, this does not constitute the sort of firewall Carens deems to be essential because the existing practice which may be protecting undocumented migrants’ rights has not been established by a legal guarantee. Without severing the organisational linkage between the two bureaucratic functions of immigration control and welfare provision in a formal and rights-conscious manner, it is unreasonable to expect undocumented migrants to come forward to claim due compensations.

Citizenship Acquisition Policy

Achieving legal parity between citizens and non-citizens becomes complete when the latter acquire citizenship of the host country. In Japan, naturalisation is not exceptionally onerous except for the requirement to renounce one’s first citizenship. Under Article 5 of the Nationality Law, the applicant must meet the following criteria: five-year continuous residence, 20 years of age or older, good character, financial viability, renunciation of the first nationality and respect for the constitution. Aside from fulfilling the predefined criteria set by law, the applicant must pass an interview during which her level of integration, most notably

²² Unlike other information extracted from my interview notes, I have chosen to keep this source anonymous as much as possible in order to protect the person’s identity. Therefore, I do not supply the individual’s affiliation or the date on which the interview was conducted.

Japanese language skills, is assessed. Ultimately, the outcome of an assessment depends on the interviewer's administrative discretion. In other words, naturalisation in Japan is a privilege, not a right.

According to Surak, citizenship acquisition is the only policy area in which Japan has not joined the liberal democratic convergence whereby a *jus soli* provision and dual nationality are becoming increasingly common (Surak, 2008). As I have tried to demonstrate throughout the present thesis, Japanese immigration policy is the product of a series of incremental changes that the country has witnessed in the past three decades. More importantly, the direction of change has generally been towards the achieving of legal parity between non-citizens and citizens. This is explained by the fact that the policy has developed in the confines of liberal democracy. Within this liberalising context, the country's citizenship policy could also be expected to move towards the liberal position by introducing a *jus soli* provision, dual citizenship and as-of-right naturalisation.

Although political discussion on citizenship policy is markedly absent in Japan, there have been some changes which could foreshadow future changes. An administrative requirement for the naturalisation applicant to adopt a Japanese name was dropped when the Nationality Law was amended in 1984 (Kondo, 2001, p. 13). This could be considered the first legal step towards the symbolic decoupling of Japanese ethnicity and citizenship. More recently, a link between the new economic migration and a possible need for citizenship reforms was made for the first time in the second immigration reform debate in the late 2000s (Chapter 6). The second immigration reform debate was cut short when Japan was drawn into the global financial crisis in 2008, but nothing precludes future changes especially in light of the fact that incorporation of second and third generation immigrants is bound to enter the political agenda in the near future.

At the same time, there is a separate question of whether the existing naturalisation criteria are appropriate for the immigrant-receiving country that Japan has in practice become. To make my position clear from the outset, I contend that the Japanese government

can require a greater level of cultural integration from prospective citizens than it does now as long as it is within a range permitted by liberal culturalism. I argue this by highlighting the functional need of liberal democracy to be concretely enacted by member participants. Put differently, procedural and substantive principles of liberal democracy are neither self-evident nor self-executing. Instead, these require to be interpreted and instantiated by citizens positioned in a particular cultural context. Therefore, what Kymlicka calls 'politics in the vernacular' may have a deeper meaning than the one he suggests.

Being a non-occidental, established liberal democracy, Japan is an apposite case to illustrate this point. Applying Migdal's state-in-society approach which puts an analytical emphasis on process and practice (Migdal, 2001), Haddad explores the generational change in Japanese democracy (Haddad, 2010, 2012). Through her enquiry, she demonstrates that the post-war generation exhibits liberal democratic values and consonant political behaviours more than the previous generation does. More importantly, the post-war generation has managed to produce a distinctly Japanese variant of democracy which is connected to indigenous values, most noticeably derived from Confucianism.

The title of Haddad's work *Building Democracy in Japan* departs from a functionalist view of democratisation and, instead, embodies her central claim that today's Japanese democracy has been developed and consolidated through a process of iterative contestations. Once the democratic institutions were set up after the Second World War, Japanese people modified democratic values to accommodate traditional values and vice versa. In this iterative circle, institutions came to reflect the bidirectional value transformation. For instance, one of the notable features of Japanese democracy, according to Haddad, is an understanding of freedom and equality which situates individuals in a relational context. Contemporary political institutions are, therefore, marked with hybrid social values, such as inclusion and respect, through which western liberalism and Asian Confucianism have been rendered compatible.

I think that the indigenisation which Haddad describes reflects a deep need of liberal democracy for the sort of contextual embeddedness I described above. Notwithstanding Carens' point that liberal democracy is a political system of inclusion, democracy, as pointed out by Kymlicka and Miller, also requires a certain level of community cohesion based on which citizens can collectively deliberate political decisions. In this sense, democracy contains an inherent tension between inclusion and exclusion (Taylor, *The dynamics of democratic exclusion*, 1998). Undoubtedly, this community cohesion, or what I may cautiously call nationalism, is a social construct (Anderson, 1991). However, the imagination is bounded and is filled with an admixture of accumulated myths, facts, beliefs and sentiments which enable a people to exist in a spatial and temporal association stretching over their national territory and national history; and it is within this association that liberal democratic politics takes place. I would further note that the cultural need marks all liberal democracies whether occidental or otherwise. Indeed, Haddad explicitly notes that the political process of cultural synthesis she describes is not unique to Japan or to Asia.²³

At present, naturalisation procedures in Japan do not routinely require applicants to demonstrate their level of integration other than Japanese language proficiency. What I am arguing for here is that the government can rightly require more from prospective citizens. However, I am aware of the practical difficulty associated with objectively gauging naturalisation applicants' familiarity with the contextual elements of liberal democracy. The stuff which produces a sense of national cohesion, a culturally-inflected understanding of liberal democracy being a constituent element, is often malleable, incoherent and transient.

At the same time, the stuff does exist in a form however imperfect and provisional and is regularly inculcated into citizens through various means. During compulsory education, for instance, children are taught their national history as well as meanings of their public institutions. Such knowledge helps a people understand why their political community exists the way it does today and fosters their ethical commitment not to this or that

²³ See Favell (1998) for western examples of this from France and the UK.

community but to their community (Miller, 1995). In a similar vein, demonstrable knowledge of national culture can be used to promote naturalisation applicants' identification with their adopted country.

If the Japanese government introduced a test on the sort of knowledge I just described, it would be bound to cause social controversies. The country's modern history is fraught with instances of imperial aggression, and existing public institutions, such as the imperial household, have not been exonerated from the past mistakes in many people's minds. The discomfort is exacerbated by the fact that some mainstream politicians make no secret of their historical revisionist agenda and that the Japanese government has accredited a history textbook which underplays Japan's imperial past (Nozaki, 2002). In this context, being required to learn Japan's national history and institutions may be symbolically injurious to immigrants who originate from neighbouring Asian countries. More generally, the dominant national culture tightly binds up the nation with the titular ethnic group, so much so that it morally delegitimises the identity not only of the new arrivals but also of the existing ethnic minorities (Lie, 2001).

Japan's national culture as it exists today harms ethnic minorities by not providing the recognition which is morally owed to them,²⁴ but this does not discount its role in binding the national community. Rather, it generates an obligation on the state to narrate its national history in a way that is more inclusive towards those who do not belong to the titular ethnic group. Similarly, the state must be open to challenges raised by citizens with an immigrant background who may feel disadvantaged by existing institutional arrangements and make transitional and/or permanent accommodations to facilitate their integration into the host society. After all, the purpose of having integration requirements for naturalisation is to ensure that newly-inducted citizens have appropriate skills, knowledge and values to engage in a deliberative dialogue with other community members some of whom may already share the same view or be willing to change their views in light of new arguments and information.

²⁴ See Taylor (1994) for why people have the right to recognition.

In this way, the character of the national community will continue to evolve by trading old elements for new ones, as will the cultural inflection of liberal democracy.

More generally, fair terms of integration cannot be established without explicitly acknowledging immigrants as future citizens. Kymlicka warns of the following:

‘Multiculturalism without the offer of citizenship is almost invariably a recipe for, and rationalization of, exclusion’ (Kymlicka, 2001, p. 171). This may indeed be the case for Japan. As I have shown earlier, the country’s fledgling immigrant integration policy has been flimsily built on fleeting policy terms, such as ‘multicultural coexistence’ and ‘foreigners as persons who live’ (Chapter 5). The government now recognises foreigners not only as migrant workers but also as human beings with welfare needs and provides special support, such as offering administrative information in foreign languages and job retraining opportunities. However, the main aim of the policy is to contain social problems arising from the presence of ‘foreign workers.’ Without an overarching goal of making Japanese citizens out of settled migrants, or indeed immigrants, these policy measures may result in a permanent foreign community, a situation Japan is all too familiar with and should not tolerate as a liberal democracy.

Chapter 8: Conclusion

To be sure, there has been a certain level of interest in the topic within disciplines, such as Sociology, Cultural Anthropology, Economics and Law, but I think that research by political scientists has been relatively sparse. The entry and settlement of foreigners have become a 'reality' in the labour market and local communities. Moreover, certain legal adjustments, including the amendment of the Immigration Control and Refugee Recognition Act, have been made, and administrative adjustments have also been made mainly by local authorities. However, it is still difficult to say that something that deserves to be called national-level 'comprehensive foreigner / immigrant policy' (*kokka reberu no 'sōgōtekina gaikokujin/imin seisaku'*), which is premised on the future vision of Japanese society, has been established or implemented. In my opinion, perhaps this is why, outside of a select circle of researchers, it has been deemed premature for political scientists to focus proactively on foreigner/immigrant policies towards newcomer foreigners in Japan as their research topic (Ishii, 2007, p. 126).

Ishii's assessment of the state of scholarly research on Japanese immigration policy equally applies to works written in the English language. It is only recently that Anglophone political scientists have started examining the topic.²⁵ More generally, the above passage also inadvertently hints at the prevailing analytical lens employed by social scientists. Put bluntly, people like to read and write about spectacular events like wars and revolutions. Changes without sudden dismantling of an existing institution are often considered too minor a topic to deserve one's attention.

In this light, the present thesis too may seem unexciting to many at first. After all, Japan continues to be a self-conscious non-immigration country without a dramatic break in its fundamental policy principle. However, I have shown in the foregoing pages that the content and practice of Japanese immigration policy not only belies its self-description but also beguiles scholars into believing that very little has changed. The expression Ishii employs above, that is, 'foreigner/immigrant policies,' captures the very confusion and ambiguity which characterise Japanese immigration management.

In the present thesis, I have argued that much has changed behind the façade of institutional continuity. Today, Japan is a non-immigration country living with immigrants. Below I summarise my overall argument by way of conclusion. Following this, I end the thesis by carving out a possible area of future research.

²⁵ I have already noted some examples of the recent scholarly development in Chapter 1.

Summary of the Thesis

How can one detect and understand change in the face of apparent continuity? This is the question that is asked by the institutionalism literature focusing on incremental change. One way of answering the question in the absence of exogenous shocks is to treat change as minor adjustments implemented in order to boost the viability of institutional continuity. Another way is to make analytical room for endogenous change as a cause of an institution's gradual transformation.

The approach to institutional change proposed by Thelen and her colleagues explores the latter possibility which, in fact, is a type of change that is more widespread than its politically-tectonic opposite. The stock-taking exercise by Streeck and Thelen focused on empirical evidence of liberalisation in advanced political economies. Since then, the approach has been applied to cases from both developed and developing countries and from different realms of the social world.²⁶ The present research adds another example in support of the general theoretical claim by examining the development of immigration policy in Japan from the last three decades.

Based on the categorisation developed by Streeck and Thelen (2005) and subsequently elaborated upon by Mahoney and Thelen (2010), there are four modes of incremental change which are layering, drift, conversion and displacement. Which type of incremental change an institution exhibits depends on the strength of veto possibilities held by the status-quo defender and the range within which the status-quo challenger can exercise discretionary enforcement and interpretation of institutionalised rules. I have applied this framework to the case of Japanese immigration policy and have constructed a set of two hypotheses.

In the policy area of immigration admission, the strong veto possibilities held by MOJ in the making, enforcement and interpretation of institutionalised rules will produce layering as the dominant mode of institutional change. In the policy area of immigrant integration, the

²⁶ See the edited volume by Mahoney and Thelen (2010).

absence of MOJ as a veto player and the weak oversight capacity MOJ has in regards to the enforcement and implementation of institutionalised rules will give rise to conversion as the dominant mode of institutional change.

Even today, Japan does not have any immigrants (*imin*) or an immigration policy (*imin seisaku*) as far as the government is concerned. In this sense, Japan officially continues to be a non-immigration country. However, the country has witnessed successive arrivals of a wide variety of economic migrants since the late 1970s. The contemporary inflow started with the entry of South East Asian female entertainers. This was followed by male and female economic migrants from the rest of Asia and Iran. Ample job opportunities which were available in the latter half of the 1980s undoubtedly facilitated the phenomenon which, in turn, gave rise to the first immigration reform debate on whether to legalise unskilled labour migration. However, MOJ and its allies prevailed over the reformist camp who had failed to win the support of powerful, business-oriented actors, such as Keidanren, LDP and METI. The ICRRRA amendment bill which eventually resulted from this debate introduced punitive measures against abetting illegal employment. Unskilled labour migration remained banned after the 1990 ICRRRA amendment. Continuity of the institutional regime of immigration management was, thus, preserved.

Underneath the apparent continuity, however, the current was shifting. In the generous economic climate, MOJ still had to accommodate the need of small- and medium-sized employers and policy actors representing their interests. Given MOJ's strong veto possibilities over the design and implementation of immigration admission rules, some LDP members, business associations and other ministries were able to graft new rules onto the existing ones in order to open up side-door mechanisms to admit *nikkeijin* and technical trainees and interns. These instances of institutional layering created endogenous dynamics for change by planting the seeds for unexpected policy consequences.

Contrary to the government's initial expectation, *nikkeijin* prolonged their stay in Japan, and problems with their social integration began appearing. Strictly speaking

immigrant integration is not a bureaucratic concern of MOJ which, in any case, has preferred to deter the settlement of economic migrants in general. However, even MOJ had to give into the pressure exerted by CPRR to link *nikkeijin*'s demonstration of social integration with their visa renewal, thereby inadvertently taking part in their further settlement. Around the same time, the abuse of the trainee and intern programme surfaced, and Japan was exposed to international and domestic criticism. In the end, MOJ had to accept MHLW's proposal to admit trainees as *bona fide* workers. This glaringly contradicted the government's policy principle not to admit unskilled workers.

Another institutional change through layering was effected by the most marginalised group of economic migrants and their supporters in civil society. Because the 1990 amendment of ICRRRA continued to bar unskilled labour migration, many foreign workers lived and worked in Japan as illegal migrants. The first instance of layering occurred when MOJ changed its unofficial guidelines for granting the Special Permission to Stay and issued the visa to illegal migrants in a familial relationship with a Japanese national in the 1990s. Towards the beginning of the 2000s, migrant families solely consisting of illegal migrants and their Japanese supporters in civil society successfully forced MOJ to expand the operational guidelines to award amnesty to those with school-aged children. When the government-wide campaign to halve the number of illegal migrants began in 2004, MOJ surreptitiously used the Special Permission to Stay to regularise a substantial number of overstayers and achieved the campaign target by the end of 2008. In effect, the instances of institutional layering produced an outcome, that is, routine regularisation of illegal migrants, which stands in stark contrast with the government's outwardly tough stance on illegal migration.

The obverse side of banning unskilled migration was to facilitate the admission of skilled and professional migrants. This policy principle was consistently maintained throughout the post-war era, and the 1990 amendment of ICRRRA further eased their access to the Japanese labour market by multiplying the number of visa categories and simplifying administrative procedures. Policy actors who wanted to expand the admission channel for

skilled and professional migrants did not have the same kind of difficulty experienced by those pressing for the expansion of unskilled migration because skilled migration was legal in the first place. However, institutional layering was also conspicuous in the development of skilled migration policy in the 2000s.

When the global war for talent intensified around the turn of the millennium, the Japanese government began pursuing knowledge workers with the intensity which was not present in the 1990s. CEFPI and CPRR backed by business-minded Keidanren and METI continuously pressured MOJ to relax visa criteria. When it became apparent that this was a measure insufficient to attract the globally-coveted workers who have no shortage of destination countries, the alliance of forward-looking actors introduced the idea of admitting highly-skilled workers as potential permanent residents. This led to the creation of the first ever points-based admission system which rewards various immigration privileges, including relaxed access to permanent residence, to highly-skilled migrants. It was change of this incremental manner that led to the creation of a settlement-oriented immigration policy in this putative non-immigration country.

Global economic competition also expanded the admission of skilled migrants when Japan began signing bilateral free trade agreements with Asian countries in the early 2000s. In exchange for access to the market in developing countries, Japan had to open up access to its labour market. In order to accommodate the request made by the Filipino government and to expedite the treaty negotiation process, METI and MOFA attempted to convince MHLW and MOJ to admit nurses and caregivers who until then were practically and legally barred from working in Japan. In the end, the status-quo challengers were able to effect incremental change by packaging the EPA admission programme as a foreign trade policy, as opposed to an immigration policy, and by positioning the migrants as skilled workers. Although the size and impact of the programme have so far been limited due to the low admission quota and difficulty with passing the national examinations, the EPA admission of nurses and caregivers has created a *de jure* route for these workers to obtain permanent

residence status in Japan. In short, these migrant workers are immigrants who are able to settle in the country.

At first glance, the policy area of immigrant integration also appears to be characterised by institutional continuity. When immigrants are absent in the official policy rhetoric, the term immigrant integration is a misnomer. However, the earlier decision to admit *nikkeijin* unskilled workers through a co-ethnic migration channel resulted in an unexpected policy consequence. *Nikkeijin* and their families began settling in Japan in a large number, and they proved to be not as culturally assimilable as some policy actors had initially imagined. The situation created an inescapable reality for some local authorities which had to face *nikkeijin*'s integration problems. In the absence of the national government's involvement in the policy area, these local authorities had to deal with the problems at hand through administrative improvisation. Here, the dominant mode of incremental change was institutional conversion whereby local authorities with a large migrant population liberally and opportunistically interpreted and re-interpreted existing policies and rules nominally unrelated to immigrant integration in order to incorporate migrants as members of local communities. Eventually, the local-level practice was endorsed by MIAC and ICPRFW, resulting in an immigrant integration policy based on the notion of co-existence (*kyōsei*) at the national-level. The sudden unemployment of *nikkeijin* precipitated by the Lehman shock further entrenched this policy in Japanese immigration management.

If I had simply enumerated all the incremental changes pertaining to Japanese immigration policy, the present thesis indeed would be a boring read. Instead, what I explored above was a mechanism through which incremental changes cumulatively became something that is deserving of the name of gradual transformation. I have argued that this moment arrived when the 2009 amendment of ICRRA abrogated ARA and revised BRRA which now added foreign residents to the pre-existing Basic Resident Register for Japanese citizens. The change, which was implemented in 2012, was nothing short of extraordinary for

it finally gave formal administrative recognition to foreign residents as members of Japanese society with attendant rights and obligations.

I have argued that the 2009 amendment was the only instance of institutional displacement in the case presently examined. The Alien Registration System which was established in the immediate post-war decade was wholly replaced by the Basic Resident Register as a means to collect and retain information on foreign residents for the purpose of their social integration. If the dominant modes of change were layering and conversion in the policy areas of immigration admission and immigrant integration respectively, how did these switch to displacement towards the end of the 2000s?

One important factor was the functional exhaustion of the Alien Registration System which was originally designed to account for illegal *zainichi* migrants amidst the chaos following the end of the Second World War. When public safety and foreign criminality popped up on the political agenda in the early 2000s, immigration control became a hotly politicised issue. This exposed the inadequacy of the Alien Registration System at monitoring the whereabouts of foreigners after they enter the country. The timing of the exposure was fortuitous for sub-national governments some of which had been struggling to integrate foreign residents with the limited information made available by ARA. The actors, therefore, rode the momentum to push through their separate policy agenda which was to reform the existing arrangements of residence management.

In the beginning, the dominant coping strategy of local authorities with a large number of foreign residents was institutional conversion as I have summarised above. The strategy switched to displacement, however, when the actors began pressing for the inclusion of foreign residents into the Basic Resident Register. The switch was facilitated by two factors. First, local authorities experiencing integration problems engaged in coalition-building first amongst themselves by establishing CLALNF and then with pro-reform, supra-ministerial organisations, such as CEFPP and CPRR. Second, the cost of working within existing rules progressively increased as the number of *nikkeijin* grew and the problems of

integration became complex particularly with the appearance of second generation immigrant children. This tipped the balance of political calculus for these local actors so much so that they began agitating for a more drastic change in an overtly confrontational manner.

My examination of the case also explained how the above incremental changes were effected by actors whose policy preferences were disadvantaged under the pre-existing institutional arrangements. In some cases, the disadvantage of some actors was locked in by an earlier policy event. For instance, the outcome of the first reform debate in the late 1980s consolidated the dominance of MOJ over MHLW, as well as the dominance of the two ministries over MOFA and METI. Put differently, the decision to continue barring the admission of unskilled workers at the time had set up the position of the latter two actors as status-quo challengers in the policy area of immigration admission. It was based on this configuration of power that many of the policy issues were fought over in the ensuing decades.

At the same time, the present research has showed that membership in the institutional regime has been fluid because changing circumstances external to immigration policy give rise to new actors. For example, disparate factors, such as a buoying economy, international terrorism, global competition for talent and neoliberal reforms, in the first half of the 2000s expanded the role of LDP politicians, CFPF, CPRR and Keidanren in the making of immigration policy. Similarly, new actors stepped onto the stage as part of an unintended consequence of earlier policy decisions. The continued banning of unskilled migration, for instance, gave rise to advocacy for amnesty and foreigners' rights by civil society organisations. More dramatically, the systematic admission of *nikkeijin* in 1990 led not only to an explosive growth in their number but also to their settlement which, in turn, posed integration problems. Under these circumstances, sub-national governments represented by CLANF as well as national actors, such as MIAC, ICPRFW, and CPMFR, have become central players in the policy area of immigrant integration.

Theoretically speaking, one lesson that can be drawn from the case of Japanese immigration policy is that the actor's strategy for challenging the institutional status-quo is not fixed over time. The cost of open confrontation with those supporting the existing regime can be lowered by allying oneself with others sharing the same concerns or are sympathetic towards them. In addition, changing circumstances may more or less force the actor to switch gears by shifting the relative balance of cost and benefit associated with outward compliance and inward subversion characterising institutional conversion.

Future Areas of Research

Generalising the theoretical claim. The present thesis has focused on the case of Japanese immigration policy and has attempted to explain its change over time by employing the theoretical framework of incremental change. One question which arises from my findings is whether the framework can explain important and yet hardly noticed changes which may be taking place in other areas of policy-making in contemporary Japan. Vogel's study on Japanese political economy has already applied the framework to demonstrate that liberalisation has advanced incrementally in labour relations and financial systems (Vogel, 2005). If the wider application of the framework is indeed appropriate in the Japanese case, one could also explore a general configuration of institutional actors which makes a certain mode of incremental change a likely outcome in different policy areas.

Alternatively, the generalisability of the theoretical claim put forward by the framework of institutional change could be tested by applying it to the making of immigration policy in other advanced liberal democracies. More specifically, I am interested in examining whether the kind of discrepancy between policy rhetoric and policy practice has arisen in the so-called new immigration countries in Europe and East Asia where nation-building has not relied primarily on the tradition of immigrant settlement. It is possible that the incremental manner in which Japanese immigration policy has become increasingly settlement-oriented despite the official policy principle is not unique to the country.

Citizenship acquisition. In the present thesis, I have argued that the development of immigration policy in the past three decades has made Japan a non-immigration country with immigrants. This raises a question of whether Japan will ever become a self-professed immigrant-receiving country. The answer to the question very much hinges on the future development of citizenship policy which, at present, prohibits dual nationality, does not contain any *jus soli* provisions and awards Japanese nationality as a matter of privilege rather than right.

The institutional context in the policy area of citizenship acquisition resembles that of immigration admission. MOJ is at once the sole custodian of the Nationality Act and the dominant veto player. Therefore, any changes in the future can be expected to take a form of institutional layering, whereby new rules are gradually added to existing rules. However, I admit that at present the institutional configuration of actors in the policy area is unclear to me.

During its coalition years with LDP in the 2000s, pro-*zainichi* CGP actively pushed for local enfranchisement of foreign residents (Day, 2009; Strausz, 2010). However, as yet it is not apparent to me who the relevant constituents and policy actors are as far as citizenship reforms in relation to new economic migrants are concerned. The only evidence I have come across has been an ephemeral and isolated discussion on the issue within LDP during the second immigration reform debate in the late 2000s. Otherwise, citizenship has remained sacrosanct in the policy discussion on immigration management.

Perhaps citizenship reforms will be triggered through an endogenously-induced mechanism similar to the one I have illustrated in the present research. The coming of age of third generation immigrants, yet another consequence of preceding policy decisions, is sure to invite new actors to enter the institutional regime of immigration policy. If this happens, Japan will finally become an immigrant-receiving country with immigrants.

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