
The Economic Crisis and Foreign Workers in Japan: Why Does Japan Treat Migrant Workers as Second Class Citizens?*

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The global recession has been affecting the Japanese economy since the fall of 2008. When the problem of “*haken-giri*” (the layoffs at temporary staffing agencies) made headlines in Japan, the issue of unemployment among foreign workers of Japanese ancestry also began to attract attention. Although unemployment among irregular workers has been put under the microscope, recruiting activities for jobs in Japan continue in Brazil. In this paper, the author first presents, how Japanese factories use foreign workers as a convenient work force, and then presents the quality of life of foreign workers. The purpose of this paper is to reveal the realities of foreign workers’ lives in Japan. Focusing on the position of foreign workers continue as irregular workers and have unstable status in Japan, the author discusses why it is not possible for Japanese society to accept foreign workers, even though they provide indispensable manpower.

I. Introduction

Japanese society entered 2009 with a harsh employment environment. Even Japan, which had until this time felt the financial instability originating in the USA to be someone else’s problem, was unable to escape the fallout of the crisis. In October and November 2008, layoffs of employees dispatched to major manufacturing companies by temporary staffing agencies drew attention, and the issue of *haken-giri* and measures to deal with it began to be debated seriously in the Diet. Naturally, issues related to foreign workers made up large part of debate. Foreign workers of Japanese ancestry are the only foreign workers who can legally be employed in Japan as unskilled labor. They are dispatched to factories by service contractors (including temporary staffing agencies specializing in the manufacturing sector). These foreign workers work and live in an unstable labor environment, and will continue to do so until the distant future.

In this unstable labor environment, major differences between foreign workers and Japanese nationals in irregular employment have become apparent. This is because those with rights (Japanese nationals) are in a very different position from those without rights (foreigners), even if they are in the same form of irregular employment. The author believes the cause of this inconsistency to be the fact that the Japanese socio-legal system does not accommodate foreign workers in the law. Accordingly, in this paper, the author would like to consider what kind of transformation is required if Japan hopes to be able to depend on

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foreign workers as a part of its manpower.

II. Labor Demand for Foreign Workers in the Context of the Global Recession

Between September 2008 and February 2009, the author conducted surveys through interviews with the management executives of 32 offices in which foreigners were working, as well as those in charge of labor management at those offices. During this time, the global recession was deepening by the day; therefore one cannot simply compare the responses received from offices where interviews were conducted in September 2008, with those received in December 2008 or February 2009.¹ However, there are a few conclusions that can be reached. This paper will begin by considering the changes in the status of foreign workers in the context of this global recession.

First, when Japanese and foreign nationals in irregular employment were employed in the same workplace and it became necessary to lay someone off, there was little sign of foreign workers being chosen intentionally. Rather, it appeared that it the Japanese workers were more likely to be dismissed. This is likely because when it is necessary to assign an order of precedence for laying off workers from the same place, the simple economic principles of productivity and cost are implemented thoroughly. More Japanese workers are let go because their hourly wage is higher, but their productivity is not correspondingly higher.

Secondly, the just in time production methods that have been developed, primarily in the automotive industry, have reduced the need of for permanent staff. Just in time synchronizes production activities by gaining an accurate understanding of the quantity of orders and sharing information about orders from the parent company through to the subcontractor at the very end of the chain. Using this method, it is possible to operate the production system without delays, while keeping redundancy to the absolute minimum. As a result, since production activities increase or decrease according to demand, manpower needs vary significantly. If only permanent employees undertake all production activities, it becomes necessary to employ staff on the basis of benchmark of the busy period, but if the company were to do this, it would be saddled with workers who were not working during the slack period. In contrast, if the company employed staff on the basis of benchmark of the slack period, it would be unable to meet demand during the busy period and would lose business opportunities. Thus, if the company employs permanent employees on the basis of benchmark of the slack period and uses irregular employee to make up the difference during the busy period, it can reduce redundancy as production activities are synchronized with demand.

¹ The time period differs slightly, but Tanno (2009b) considers the problem of irregular employment from a different perspective that of foreign workers on the basis of responses from 29 offices from September 2008 to December-end 2008.

Just in time production activities are said to involve subcontractor companies that produce only the required quantity of their product as indicated by the *kanban* (cards or signboards used to signal the need for an item) from the parent company. However, this is the principle; in fact, subcontractor companies actually hold three to four days' worth of components in stock, in anticipation of orders from the parent company. As a result of the rapid expansion in the scale of automotive companies from 2002 onwards, immense component stocks were built up among the subcontractors. As the number of cars produced by the parent company increases, the quantity of stock required to cover three or four days also has to rise. It was at a point when stocks had become quite large that the decrease in production began suddenly. The decline in the operation rate of parent companies' production lines may only have been a decrease of around 5% initially, but this grew each month, and as of the end of February 2009, the capacity utilization rate of automotive manufacturing factories such as Toyota, Honda, Nissan of had fallen to a level 70% lower than the average. With this operation rate, the three to four days' worth of stock with which the subcontractors were saddled became two to three weeks' worth of stock, depending on the type of car being produced, and they were forced to halt the production lines. The foreign workers from temporary staffing agencies focused on the manufacturing sector or service contractors who were working in those sectors lost their jobs, and their departure from the labor market continues. This departure will likely continue until the workforce reaches the level required by the smaller scale of production.

Third, despite this new reality, demand for foreign workers of Japanese ancestry is not declining. This is because demand for cheap labor that can be laid off easily is stronger than ever. With a sudden expansion in the scale of production in the automotive and electronics sectors, parent companies actively undertook the updating not only of their own plants, but also of the plants and production facilities of subcontractor companies, providing financial support for the upgrades. The subcontractor companies also responded actively to requests from their business partners. As a result, the break-even point for Toyota vehicles, for example, has been set on the basis of premise of nine million Toyota vehicles being produced worldwide. This means that if worldwide production drops to seven million, the capital investment in the expansion of plants will not be recouped. If the scale of production shrinks while there is excess production capacity at plants that does not correspond to the scale of production, the break-even point inevitably shifts.

Due to the aforementioned three factors, demand for cheap, convenient manpower is becoming stronger than ever. While the number of positions advertised in the *International Press*, a Portuguese-language newspaper published in Japan, is decreasing, it shows clearly that job advertisements are not disappearing completely, and as of March 2009, travel agencies focused on migrant workers were still handing out leaflets in Liberdade Square in Sao Paulo, aiming to recruit workers to come to Japan. According to a consular official in charge of issuing visas, "Until August 2008, I was issuing 100 long-term residence visas every day. From the fall, this began to decline gradually, but until November, I was still issuing around

90 visas a day. There has been no big decrease. In December, the number fell by about 50% compared with the previous month and I was issuing around 45 visas each day, but this is in line with typical years.”² The influx of migrant workers to Japan continued even during the period when the layoff of employees dispatched to companies by temporary staffing agencies due to the global recession continued to make headlines on television and in newspapers and weekly magazines. On the other hand, most of the prefectural and municipal government employees interviewed by the author responded that, “hardly any foreign residents of Japanese ancestry have returned home.” Just as water always comes out of a tap when you turn it on, demand is brisk for foreign workers of Japanese ancestry who can conveniently be scooped out of the pool of labor, and we now have an environment in which workers can be scooped out of the pool of domestic and foreign labor even more flexibly than before.

III. The Reality of the Lives of Foreign Workers

This section examines how the foreign workers employed in Japan are actually working. Beginning in December 2005, the author conducted interviews with a worker from Bolivia, concerning his employment situation since he came to Japan with his wife and began work. At these interviews, the worker showed the author his monthly payslips. Table 1 is his payslip for February 2006. This payslip contains various hidden meanings.

This worker said that he “was employed on an hourly rate of ¥1,200.” There is no doubt that his payments are calculated on the basis of an hourly rate of ¥1,200. However, his hourly rate of ¥1,200 consists of base pay of ¥900, to which a good attendance bonus of ¥300 is added if he works all of the working days stipulated by the employer. The reason for this wage structure is that if the worker is absent from work without leave or refuses a request from the employer to work on the worker’s day off, that worker’s pay can be reduced to ¥900 as a punitive measure. The ¥1,200 is not an amount determined as a commitment between the employer and the worker, but an amount that can be received *ex post facto*, if the worker works as instructed by the employer.

Looking at Table 1, one might think that if this worker receives a considerable amount of money. The ¥375,180 received by this individual is higher than the average Japanese factory worker receives. However, although employment insurance, which is the equivalent of unemployment insurance, is deducted from his pay, there are no items corresponding to health insurance or pension. This means that he is left with risks if he becomes ill or when he becomes older. Moreover, he is single-handedly taking on the risks relating to

² Interview conducted on March 11, 2009, at the Sao Paolo Consulate. The number of days on which the consulate is open varies slightly according to Brazilian and Japanese national holidays, but it is around 20 days each month. If there were 100 visas each day, that would mean that around 2,000 long-term residence visas were being issued each month.

Table 1. Payslip

year/month: February 2006			
Name: S. K.			
Base pay			¥900
Good attendance bonus			¥300
Total			¥1,200
	Hourly rate (¥)	Hours	Subtotal (¥)
Full-time (daytime)	1,200	88	105,600
Overtime	1,500	28	42,000
Late-night shift	1,200	28	33,600
Overtime on late-night shift	1,500	124	186,000
Work on days off (daytime)	1,500	8	12,000
Work on days off (nighttime)	1,500	9	13,500
Special allowance	30	285	8,550
Total			401,250
Employment insurance			¥3,210
Income tax			¥21,860
Advance			¥1,000
Income after deductions			¥375,180

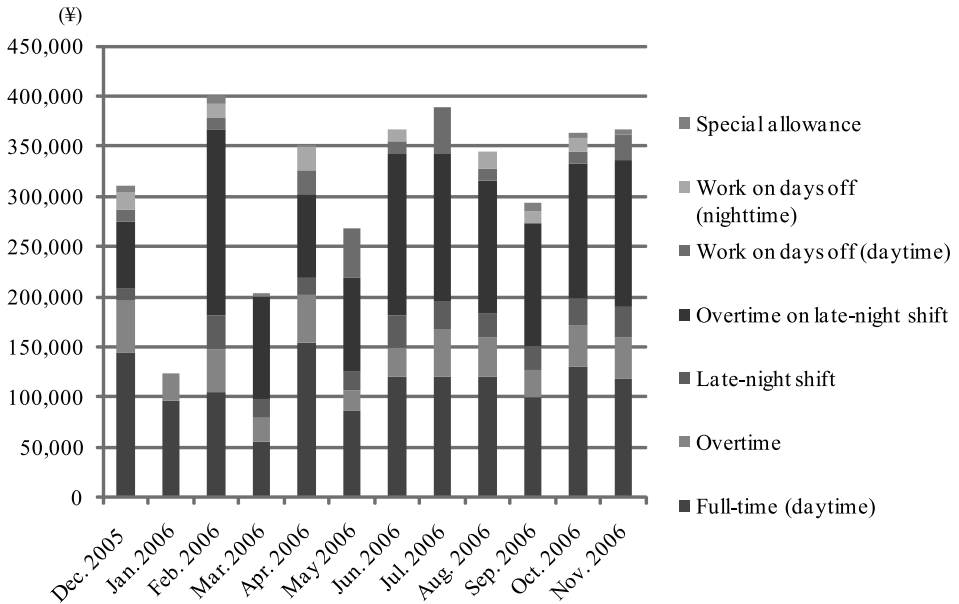


Figure 1. Breakdown of Changes in the Pay Received by One Foreign Worker of Japanese Ancestry

changes in the factory where he works. This is shown in Figure 1.

During the period indicated in Figure 1, one service contractor to a company manufacturing automotive components dispatched this worker.³ In January 2006, the month before he received ¥375,180, he was paid no more than ¥117,750. His pay was not reduced because he missed work without permission or because he refused his employer's request to work on a holiday. It was simply because the operation rate of the automotive component plant was low and there was no late-night overtime work.

The fact that this worker's income conditions depend on the operation status of the plant can easily be seen from the changes in the proportion of his income accounted for by the full-time portion paid as wages for work carried out between 09:00 and 17:00. The only month in which the pay that this worker, who has a wife and two children, received for work during ordinary full-time hours exceeded 50% of his monthly income was January 2006, which was the month when his pay was lowest. His lifestyle is such that during the months when he had time to spend with his family, he was only barely able to meet his living costs, while during the months when his pay was in excess of ¥300,000, he was working night and day and did not have time to see his children. In January 2007, he took paid leave to attend a class observation day at his children's school. As a result, his hourly rate was ¥900 for the entire month. When he complained about this, he was sent to a different factory. Then, in March 2007, his employment was terminated.

The moment that he exercised his right to paid leave, his wages were cut. Then, because he complained about this, he lost his place of employment and ultimately faced unemployment. If a worker asserts his or her rights or complains, that worker cannot continue working. Why has this kind of situation arisen?

IV. Foreign Workers as a Redundancy Problem

Unlike a socialist society, which uses a planned economy, in a capitalist society, the state does not control demand and supply. While there is unemployment, there is no forced labor. In addition, it is not possible to avoid economic fluctuations. However, the state may implement systematic techniques are implemented aimed at linking demand and supply in a harmonized fashion, which mitigate these economic fluctuations. The development of this kind of social system has shaped the system called the welfare state.

While the management side was securing a rise in productivity and the labor side was securing an increase in wages concomitant with the increase in productivity, these were carried out through labor negotiations that had become systematized within a country, the wel-

³ In January 2007, there was a change in the factory to which he was assigned, while in April 2007, the worker went to work for a different service contractor dispatching company. Consequently, the focus of the comparison here is limited to the period when he was dispatched to the same workplace by the same dispatching agency.

fare state system functioned well, thereby resulting in an expansion in production capacity and an increase in the standard of living. However, when rises in productivity began to peak, this suddenly resulted in a conflict. In order to restore productivity, the management side, which disliked rigid labor-management relations, began to transplant factories overseas and promote the introduction of foreign labor (Sassen-Koob 1983; Sassen 1988). Globalization became the focus of attention perhaps because through its implementation, the motivation to accumulate capital, which is a foundation of the capitalist system came to be in direct opposition to the guarantee of a certain standard of living for the populace, which is another foundation of capitalist state's existence (In the sense that the welfare state has to secure tax revenue as long as it depend on such revenue, the motivation to collect capital is also a foundation of the existence of welfare state; as long as welfare state is democratic, if capital is accumulated but welfare disparities increase, political regime change could take place democratically.) (Offe 1985). Above all, the problem of foreign workers has been recognized as one that concretely indicates that the welfare state is collapsing from within. If one thinks about this, one can see that the problem of foreign workers (= the issue of immigration) is one that has existed from the outset, as a problem of redundancy in the socio-economic system.

Incidentally, the problem of redundancy in the labor market is dealt with better in countries that have constructed a new mechanism, on the basis of the welfare state's social system. This is the case in the Netherlands, which has developed a system that has been taken up in Japan as the Netherlands model; Denmark, which has a system that has been taken up in recent years as a flexicurity model, probably falls into this category as well. In both the Netherlands and Denmark models, companies are made to bear the burden of social security costs in the form of part-time permanent employees, and the state or society takes on the task of assisting the unemployed discharged from those companies in acquiring the skills that they need to be reemployed, this leads on the one hand to flexibility and on the other hand to stabilization in periods of unemployment and the development of workers' skills during these periods (Madsen 2002). Furthermore, since these models guarantee the flexibility of employment, mechanisms for a society in which those discharged from the labor market do not become immobilized at the bottom develop, creating security for workers (Madsen 2003).

In the case of Japan, the burden of the employment flexibility required by companies was borne by the external labor market. This trend became particularly pronounced after the collapse of the bubble economy. The social convention of equal pay for equal work, as seen in Europe, did not become established, in Japanese corporate society. Since manufacturing in Japan takes place on the premise of a wage disparity within the subcontracting system, which could be called a dual structure, if one seeks employment flexibility, the whole production system, has to exhibit flexibility. In addition, one cannot avoid the necessity of some kind of mechanism to bring about employment flexibility that can be utilized throughout the subcontracting system. In Japan, this function was specifically fulfilled by

the expansion of service contractors (= in-house contractors).

However, from the outset, there was no thought put into developing the skills of workers employed in this sector. Consequently, within the companies, no skills development took place (either within the service contractor organizations or within the companies to which such workers were dispatched). Moreover, since workers were made redundant, the national and social systematization of skills development did not spread across Japan. As a result, employment in this sector became unable to escape the tendency to lead to immobilization at the bottom of the labor market. The problem was localized as long as economic activities were vigorous. Foreign workers fulfill temporary employment, according to the subcontracting structure of Japanese corporate society.

V. Why Are Foreigners Still Workers without Rights?

Japan still adheres to a stance of not permitting the acceptance of unskilled foreign labor. However, anyone can see that trainees, those enrolled in on-the-job training programs, and the foreigners of Japanese ancestry who come mainly from Latin America are engaged in unskilled labor. Nevertheless, under the Immigration Control and Refugee Recognition Act, trainees are not defined as workers, because they are at the stage before they become workers. A foreigners of Japanese ancestry has, the visa status of “long-term resident,” this means that he/she is designated as person who lives in Japan rather than as a person who works in Japan. In a Diet debate on the 1990 revision to the Immigration Control and Refugee Recognition Act, the discussion clearly demonstrated that foreigners of Japanese ancestry were expected to join the workforce. Nevertheless, foreigners of Japanese ancestry from countries such as Brazil and Peru were accepted as long-term residents.

It is often said that foreigners of Japanese ancestry were permitted to work as a result of the 1990 revision to the Immigration Control and Refugee Recognition Act, however strictly speaking, this is not correct. The Matter to Provide for Status Described in the Right-hand Column under “Long-term Residents” of Appended Table II of the Immigration Control and Refugee Recognition Act Pursuant to the Provisions of Article 7, Paragraph 1, Item (ii) of the Said Act (Public Notice of the Ministry of Justice No. 132 of 24 May 1990) (hereinafter referred to as the “Public Notice on Long-term Residents”), which was published about six months after the revision to the Immigration Control and Refugee Recognition Act, only announces that (i) spouses of second-generation Japanese (Public Notice on Long-term Residents, item [iii]); (ii) third-generation Japanese (biological child of a biological child) (Public Notice on Long-term Residents, item [iv]) ; (iii) spouses of third-generation Japanese (Public Notice on Long-term Residents, item [v]; and [iv]) fourth-generation Japanese who are minor, unmarried, and are dependent on their parents (Public Notice on Long-term Residents, item [vi]) can receive the “long-term resident” residence status.

The public notice was no more than a document publishing an interpretation of the operation of the law by government ministries and agencies, and the instructions for admin-

istrative handling based on this interpretation, it certainly is not the law. There are similar documents called circular notices. The difference is that, while circular notices can only be checked by those within government ministries and agencies, public notices are widely published. However, populace is not constrained by public notices; their effect is limited to those within governmental organizations.⁴ Given this fact, it is certainly not correct to say that foreign workers of Japanese ancestry have been permitted to work since 1990, under the Revised Immigration Control and Refugee Recognition Act; it might be correct to say that, in the operation of the Revised Immigration Control and Refugee Recognition Act, no restrictions were placed on labor by foreigners of Japanese ancestry. This makes it possible for Japan to hold a national policy of not accepting unskilled labor without any contradiction, enabling Japan to maintain the interpretation that it has accepted not workers but residents with no labor restrictions. However, has Japan left foreigners who have come to Japan for the purpose of living here, without a place within the socio-legal system of Japan?

Toshio Hironaka's *Outline of Civil Code* (2006) has many suggestions at this point from the Hegelian point of view. First, let us look simply at the essence of Hironaka's theory. He perceives civil society from the perspective of three orders. The first order is "the order of goods." Civil society is supported by "the social process whereby the exchange of goods supports the existence of the whole of society," and "a social awareness that perceives as legitimate a mechanism whereby various kinds of goods are assigned to various individuals and can be transferred to another person according to the wishes of the party holding ownership of those goods arises among the component members of that society (Hironaka 2006, 3)." "A mechanism for assigning the ownership of goods to individuals and the transfer of goods based on the wishes of the owning party" is required in order to establish this kind of awareness. The former is "the order of goods ownership," while the latter is "the order of transfer of goods," and together they comprise "the order of goods."⁵ This order of goods is also "a process for the exchange of goods that is based on an awareness by others that the agent of private ownership is the agent of private ownership and the agent of intent, and the relationship between these." It is precisely the substantive interpersonal and social relation-

⁴ In this sense, substituting the term "public notice" for the term "circular notice" in the quotation from Hiroshi Shiono used below makes no difference whatsoever to the meaning. "As interpretative criteria, circular notices constrain lower-level governmental institutions. However, the effect of circular notices is restricted to this, and they are not used as criteria in court in relation to the populace. In this sense, they do not have any external effect (Shiono 2005, 94)."

⁵ The order of goods ownership forms the origin of private ownership, while the order of transfer of goods prescribes the process for the exchange of goods. However, in prescribing the process for the exchange of goods, it is not sufficient only to ensure the intention relating to the transfer of goods; "order of competition" is also required, for the parties exchanging goods to exchange them as equals. In addition, this "order of competition" requires mechanisms to avoid competitive situations or the concentration of unlimited goods that are contrary to securing "competition." Hironaka calls this "the outer order encapsulating the order of goods." More specifically, the elimination of monopolies and the right of workers to organize is equivalent to this. (Hironaka 2006, chap. 1, subsec. 2)

ships in the process for exchanging goods that should be called “civil society,” and the concept of citizens as the owners of goods is now also expanded to citizens as the owners of the good known as labor (= wage labor).⁶ The second type of order emerges here. This is because the realization of the order of goods necessitates the formation of an “order of individuality” in which citizens respect each other’s individuality. According to Hironaka, the right to daylight and the problem of pollution came to be recognized as social problems because they were perceived to infringe on the order of individuality.

However, the order of goods that forms a process for the exchange of goods, and the order of individuality that forms interpersonal social relationships for the order of goods are not things that naturally develop and can be maintained simply as a result of the existence of citizens. It is precisely because the interests of citizens collide that state power always emerges in the form of joint management to which all citizens can consent, and that a third order that stipulates the relationship between citizens and the state has to be formed: the “order of power.”

By looking again at civil society from the perspective of social order, through positioning people as living beings in the arrangement of links between the aforementioned three orders, Hironaka tries to identify mechanisms for securing the dignity of the individual, while conflicts arise among individuals and between individuals and the state. This author would like to think about how foreign workers are positioned in Hironaka’s theory and what is lacking in relation to the welcoming of foreign workers to Japan.

VI. Foreign Workers: Between the Economy and the Law

Hironaka’s relationship between civil society and the law as set forth above has not been discussed as a concept. He clearly takes Japan since the 1960s as the period that can be perceived through his own schema. This is because the “dignity of the individual,” which is the most important tenet of the post-war constitution, is alive and well in Japanese society, and the modern society has been formed on the basis of this concept. Since he reconsidered the Japanese socio-legal system from the viewpoint of the actual situation of Japanese society, he rejected the distinction between public law and private law, as well as rejecting the classification of civil law (a form of private law), from the perspective of “property law and family law.” He classifies the relationship between orders as part of the whole wherein the

⁶ “In a social infrastructure wherein people sell the goods they own and become the agents of intent that purchase as consumers various materials required for their lives, all people will come to be perceived as personalities.... [section omitted] Individual people will be viewed as agents of ownership of the moral rights that are conditions for the survival and individuality of each person, such as life, physicality, freedom, honor, etc. [section omitted] A social awareness will become established among the component members of society whereby all individual humans will be recognized as the agents of ownership of moral rights, which should be protected from infringements of the ownership of those moral rights [emphasis is author’s own]” (Hironaka 2006, 12).

order of law is achieved because he believes that positioning individuals in the arrangement of links among the order of law is important to the achievement of value in the constitution, in the form of the “dignity of the individual.”

Can the 1990 revision to the Immigration Control and Refugee Recognition Act be evaluated from this perspective? If the law sought to eliminate the inconsistencies in the actual situation, then even if it had abolished restrictions on working through the operation of the law, the Revised Immigration Control and Refugee Recognition Act would have been designed to ensure the acceptance without inconsistency of migrant worker families who were already living here. However, this gap between the law and reality was perceived solely as a problem of the Immigration Control and Refugee Recognition Act. The question of how foreign migrant workers and their families were positioned in the order of the overall socio-legal system of Japan, transcending the Revised Immigration Control and Refugee Recognition Act, remained vague. If people live as families, then issues inevitably arise, relating to their children’s education, healthcare for the family, and housing, and as their stay becomes long-term and the migrant workers begin to grow older, the questions of pensions and nursing care for the elderly begin to emerge. There is also the problem of unemployment insurance if they lose their jobs, and if the unemployed person has a family, whether they qualify for public welfare benefits. It was only natural that if foreign workers stayed long-term, needs would arise for them as citizens, but the question of to what extent they can demand their rights in relation to those needs remains exceedingly ambiguous.

Since these needs were not being supplied by the public sector, the private sector, in connection with the labor market, came to play an important part in supplying the social services required by foreigners of Japanese ancestry. More specifically, service subcontractors and ethnic businesses fulfilled this role. Housing and health insurance (overseas travel accident insurance was common) was prepared by the service subcontractors, while ethnic businesses supplied educational opportunities, pension services, international telephone services, and community media in the form of newspapers and radio, all in the native tongue.⁷ Such ethnic businesses also gave rise to services that would have been unthinkable if the labor market consisted solely of Japanese workers. A typical example is health insurance for families left behind in Latin America.⁸ This is because cross-border families are created when migrant workers come to Japan, and therefore, health insurance is also required for the family left behind in Latin America. Brazilian and Peruvian schools accredited by the

⁷ The fact that foreign workers of Japanese ancestry did not know much about the insurance system in Japan is strongly related to this, and when I initially conducted a survey in Hamamatsu, it was clear foreign workers misunderstood their insurance type. Many were enrolled in overseas travel accident insurance, but misunderstood it as being social insurance, because they had enrolled in it through their workplace.

⁸ It is possible, of course, to enroll in such insurance services in Brazil as well. The largest player in such services is NIPOMED. A first-generation Japanese from Okinawa, who emigrated after the World War II, founded this company.

Table 2. Comparison of Japanese Workers and Foreign Workers of Japanese Ancestry as Shown in a Pamphlet Produced by Service Subcontractors

		Full Employee Costs	Outsourced Employee Costs
Wages	(100)	¥299,500	¥300,000
Bonus	(33.3)	99,833	0
Legal Welfare Expenses	(15.2)	45,524	0
Discretionary Welfare Expenses	(5.2)	15,574	0
Labor Management Costs	(2.0)	5,990	0
Retirement Benefits, etc.	(7.2)	21,564	0
Total	(163.0)	¥487,985	¥300,000

Source: Hayashi (1995).

governments of those countries are also included in the niche businesses aimed at foreign households. It is not commonly known, but the increase in Brazilian and Peruvian schools in Japan is closely related to the travel agencies for foreigners of Japanese origin and migrant workers, which gather workers for Japan in Latin America.⁹ In any case, it is a fact that the public goods of health insurance, pensions, and schools are being swallowed up by the logic of the labor market.

The employment of foreigners of Japanese ancestry found meaning in the fact that it enabled companies to escape from social insurance and pensions, the burden of which they would have had to bear had they hired direct employees (Table 2 is used by a certain service subcontractor in its sales activities, but it clearly shows the object of this comparison). A contradiction inevitably arises from the demand for the burden of insurance and pensions in the employment that develops in order to evade legally prescribed welfare expenses. Moreover, while the failure of foreign children to attend school is deemed to be a problem, one of the biggest factors in the failure of the national and local governments to take action is the attitude towards the compulsory education of foreign children that, “it is not a problem for local authorities to accept those who have asserted their right to receive education” when it comes to foreign residents. Despite the fact that they plan to live in Japan for a long period (or despite the fact that they could live here for a long period), the criteria on which the rights of these children are based are different from those on which the rights of Japanese citizens are based.

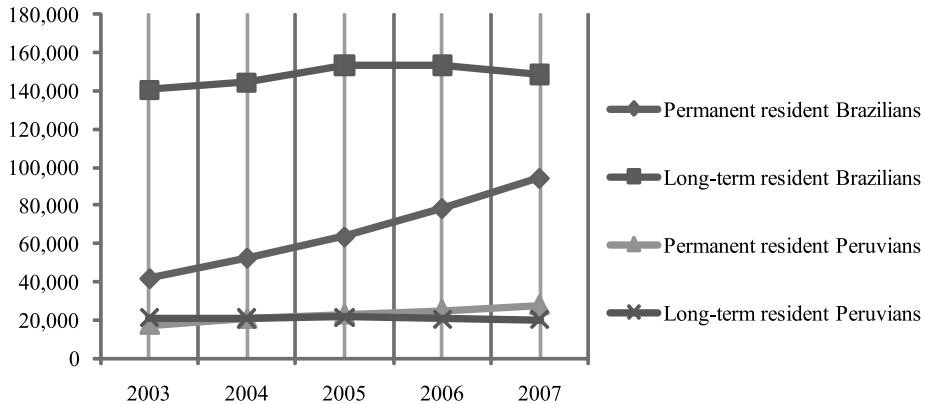
Hironaka brings up the order of individuality as an issue because of his stance that, “What is sufficient as the agent of rights is, in the first place, people (humans).... [section omitted] All people, from the moment they are born, actually begin to possess the rights that

⁹ A detailed explanation of this point can be found in Tanno (2009a).

contain the enjoyment of life and physicality (= health) (the rights that form the core of personal rights), under the Interpretation Guidelines for Article 2 of the Civil Code (guidelines that should be interpreted as aiming for the “dignity of the individual”); in addition, they acquire the qualifications for enjoying various rights (the ability to have rights). Furthermore, ‘unless otherwise provided by applicable laws, regulations or treaties, foreign nationals shall enjoy private rights apart from in cases where it is prohibited under the prescriptions of laws or treaties, (Article 3, Paragraph 2).’ (Hironaka 2006, 98). Seigo Hirowatari actively praises this way of understanding of the order of individuality in Hironaka’s work, saying, “This means that humans not only have freedom and rights as ‘agents of the exchange of goods,’ but also, transcending this, can be perceived as more comprehensive, integrated entities, as ‘entities whose dignity should be guaranteed.’” (Hirowatari 2008, 67).

The Hironaka’s work set forth the social order that would inevitably emerge when people lived in the same society long-term and when the foundations for civil society to exist or civil society itself have become established. As shown in the previous quotation, Hironaka’s arguments that, “apart from in cases where it is prohibited under the prescriptions of laws or treaties, foreigners enjoy private rights (Article 3, Paragraph 2)” certainly does not mean that foreign citizens are excluded from Japanese civil society. What should be important is that foreigners also “enjoy private rights.” If this is the case, the “dignity of the individual” must be recognized as a matter of course in relation to those living in Japanese society in the long term, and even if they cannot be treated in exactly the same way as Japanese nationals, they must be positioned within the order of individuality. If this is not the case, then it creates amongst the people living in the same society “first-class citizens (Japanese nationals)” and “second-class citizens (foreigners living in Japan long-term).”

However, if one looks at foreigners of Japanese ancestry, although they are residing in Japan in the long term under the status of “long-term resident” or “permanent resident,” their enjoyment of life and health as the source of the order of individuality has not been considered. Apart from the problem of education, nothing has been done about the fact that, by being in this employment system that evades insurance and pensions, these people are falling through the gaps of the insurance and pension system. Even among the local authorities that comprise the Council for Cities of Non-Japanese Residents (*Gaikokujin Shuju Toshi Kaigi* in Japanese) which lobbies the government on issues relating to foreigners, there are those who reject outright applications for public welfare benefits from foreigners of Japanese ancestry. Whereas there were 316,967 Brazilian residents in Japan at the end of 2007, only 94,358 had permanent residence (Of the others, 67,472 held the status “spouse, etc. of Japanese national,” while 148,528 held the status “long-term resident”). At the same time, whereas there were 59,696 Peruvians resident in Japan, only 27,570 had permanent residence (Of the others, 5,928 held the status “spouse, etc. of Japanese national,” while 20,255 held the status “long-term resident”). Thus, quite a large number of foreigners of Japanese ancestry have permanent resident status, and, as shown in Figure 2, there has been a rapid increase in the number of such people becoming permanent residents. The fact that even the



Note: Figure 2 was compiled from each year's editions of *Statistics Concerning Resident Foreigners*, published by the Japan Immigration Association.

Figure 2. Trends among Foreigners of Japanese Ancestry in Recent Years, as Seen from Status of Residence

applications for public welfare benefits of these people are rejected is proof that, despite the fact that they are accepted without restrictions relating to work or the residence of their families, foreign workers are not positioned within the legal order in Japan.

VII. Conclusion

The author's point in this paper is that, in the legal order in Japan, even if a foreign worker and his or her family reside in Japan for the long term, that worker can barely secure the income from work that is a necessary order of goods for that individual to live in society, and nobody has ensured education for them, as a means of forming personality in the order of individuality. Thus, they are placed in a situation where their freedom is greatly limited. With regard to this viewpoint, Takashi Miyajima has pointed out that, "Today, one of the major points of contention in considering the direction of foreign workers of Japanese ancestry is... [section omitted] what possibility there is for them to live in Japan in the long term. With regard to the question of whether this problem can be resolved by approaches concerning the labor market or the employment system, I will not say that there are no doubts.... [section omitted] However, it is not easy to say whether or not someone is a long-term resident, without seeing their lifestyle and activities outside of the workplace. One such element is their behavior in relation to their family, particularly their children. Today, the proportion of the Brazilian population in Japan aged under 15 has reached 16%, many of them have become Japanized, they attend Japanese schools and are losing the ability to speak their native language. Many parents are uncertain whether they can return home

and readapt.... [section omitted] One has to estimate the possibility of long-term residence in terms of this aspect.” (Miyajima 2009, 55). I completely agree with Miyajima with regard to his awareness of the facts. However, whether long-term residence is recognized, if it is, then, whether it is being maintained, depends greatly on whether long-term residence is accepted and whether residents are positioned in society as residents. For example, with regard to the current problem whereby many Brazilian and Peruvian schools are going bankrupt because of the growing number of students who are unable to pay the fees even those students who pay their fees are being deprived of educational opportunities, one cannot understand why this is happening it, given that, long-term residence is actually increasing. The author’s position is that the setting of social conditions that establish facts should be scrutinized, rather than the problems relating to the fact.

The status of residence “based on position or identity” of foreigners of Japanese ancestry ensures freedom in selecting employment, in this sense, the point of departure for the order of goods has certainly been assured, but in reality, most foreigners of Japanese ancestry only have a fixed-term contract of employment, irrespective of whether they have been employed via intermediate employment through service subcontractors, or they are directly employed. Now, more than ever, it is clear that the employment and social environments are not those in which the “dignity of the individual” through which the legal order functions, is must be guaranteed. The fact that only the Immigration Control and Refugee Recognition Act, which is a special law, forms the legal order is a problem. Looking at it from this perspective, although it seems that a revision to the Immigration Control and Refugee Recognition Act will soon be enacted, aiming to unify the management of the status of residence of foreigners, this revision is unlikely to make it possible to normalize the problem of foreign workers.

As observed in the first chapter, production activities are contracting as a result of the global recession, and the surplus workforce is being discharged as unemployed workers. Nevertheless, new immigrants continue to arrive because foreigners of Japanese ancestry are replacing other foreigners of Japanese ancestry. Most of the job advertisements appearing in Brazil in March 2009 were for work in boxed lunch factories, delicatessen factories producing ready-prepared side dishes, and workplaces with low wages.¹⁰ Such low-wage workplaces often recruit workers overseas rather than within Japan. There are costs involved in recruiting workers from overseas, but those costs fall upon the workers as debts because the companies are able to impose constraints on workers.¹¹

¹⁰ Wages at boxed lunch factories and delicatessen factories producing ready-prepared side dishes are below ¥900 an hour, this is the same, for low-wage workplaces for foreigners of Japanese ancestry.

¹¹ Under the travel system called “*finanziamento*,” there is no need for the migrant worker to bear any costs at all when they travel to Japan. The cost of their plane ticket and employment placement fee (as of March 2009, this was between about \$3,300 and \$3,500 in total) is paid through automatic deduction from the worker’s pay, over the course of around five months in the case of a male worker and about six months in the case of a female worker. For further details of the actual situation with

Despite the fact that those who have become unemployed as a result of the recession are remaining in Japan, companies are not recruiting from the Japanese domestic labor market, but rather seeking cheap labor from overseas. As a result, the replacement of labor among foreign workers of Japanese ancestry gives rise to an endless influx of workers from overseas. In addition, precisely because everyone from parent companies to subcontractors is suffering from excess capital investment as a result of the expansion in the scale of production, a more flexible workforce is required and only once such a workforce exists will it be possible to adjust inventory in the extremely short term. With regard to this point, no matter the degree to which “*haken-giri*” has become a problem, it is unlikely that demand for workers in irregular employment, in the form of workers dispatched to major manufacturing companies by temporary staffing agencies and contract-based workers, will weaken. If we are facing globalized corporate activities, the flexibility that irregular employment brings about cannot be completely ignored.

However, when foreign workers are sought in order to bear the burden of this employment flexibility, this is another matter. As shown by the Netherlands and Denmark models, if a good social mechanism is created, it might be possible to identify a means through which the problems of employment flexibility and security could be resolved simultaneously. Even in Japan, a similar system could be considered, and it is precisely because of this that work sharing is now becoming an issue. Giving workers complete freedom to choose employment and giving them rights as citizens, such as the right to receive education, will facilitate a path on which, even if a worker temporarily falls to the bottom of society, he/she will not become stuck there. Moreover, because it is possible for most developed Western countries to recognize citizens’ rights as being separate from nationality, it is possible to incorporate foreign residents in social policy and to do something for them. To put it in the terms of the Hironaka’s work, this is a mechanism by which the order of goods, the order of individuality, and the order of power function well and the people living within those orders exist as citizens.

Unfortunately, with regard to this point, the socio-legal system in Japanese civil society cannot incorporate foreigners into the logic of civil society, to the extent that Western countries do. In light of the fact that one has to think about foreign workers within the framework of this kind of socio-legal system, the situation in which foreign workers had no choice but to work in a sector where regulations were relaxed should have been avoided. This is because it was inevitable that the protection of workers would become extremely difficult. The current situation is that foreign workers have congregated in precisely this sector. One cannot turn back the clock. Precisely because of this, in the future, foreign workers must be positioned in the order of individuality, around the core of the “dignity of the individual.” Above all, these foreigners with the “long-term resident” and “permanent

regard to this *finanziamento* system, please see Tanno (2007, chap. 10).

resident” visa statuses, who are planning to remain in Japan for the long term, must not become entrenched as second-class citizens just because they are foreign.

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