

***External Autonomous, but Internally Deadlocked***

***The Gap between Foreign Worker Policy  
and Real Development in Japan***

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## 1 Introduction

In recent years, social scientists have noted an increasing gap between official foreign worker policy and real development in many advanced industrial economies (Bhagwati 2003; Cornelius et al. 2004).<sup>1</sup> Although advanced industrial economies are officially curtailing immigration and strengthening immigration control, an unabating inflow of immigrants is continuing, especially of non-highly skilled foreign workers. The ability of a nation-state to regulate the inflow of foreign immigrants seems decreasing. After 9/11, the ability or inability to monitor the national borders and to control immigration has gained a new relevance. It is increasingly considered a question of national security (Monahan 2006; Rudolph 2003). Especially conservative commentators regard immigration as a fundamental challenge to the nation-state.

Foreign and Japanese researchers have pointed out a notable discrepancy between official immigration policy of Japan and real immigration movements into Japan (Douglass and Roberts 1999; Higuchi 2001; Kajita 2001, 2002; Tsuda and Cornelius 2004). In the case of Japan this gap seems rather surprising. Following the seminal work of Chalmers Johnson (1982), Japan is often regarded as a prime example of a strong state. According to this view, the Japanese state administration has a comprehensive autonomy vis-à-vis economic interests groups as well as civil society. The Japanese state is said to have a strong ability to develop independently long-term policies in what it perceives as Japan's national interest.

The topic of this paper is to analysis foreign worker politics in Japan in comparative perspective with advanced industrial economies of Western Europe and North America. The main focus is an analysis of the factors that lead to the gap between official policy and real development in a perspective of political sociology. The main argument of the paper is that not external factors like the international human rights regime, particular interests of economic actors, changes due to globalization and/or regional integration or the influence of right-wing movements result in the significant gap between official policy and real development in Japan. The main factor for the gap is internal, i.e. the institutional setting of foreign workers policy that leads to a deadlock between ministries and state agencies.

The paper has the following structure. First, the gap between the official foreign worker policy and the real development in advanced industrial economies is outlined. Secondly, the external factors that are identified in the literature are discussed and their relevance in the case

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<sup>1</sup> Foreign worker policy consists of two aspects: (a) border and immigration control and (b) integration policy of foreign residents. Although both aspects are, of course, interconnected, this paper is primarily concentrating on the aspect of border and immigration control of the foreign worker policy.

of Japan discussed. In the fourth section, the internal dilemma of the Japanese foreign workers policy is analysed. The focus of this analysis is on the institutional setting of the policy-making process and ideational differences in the perception of foreign worker policy between involved actors. Afterwards, the current tendencies in the Japanese foreign worker policy will be discussed. Finally, the main findings are summarized in the concluding remarks. Also, the question will be raised if a move towards a coherent foreign worker policy is discernable in current Japan.

## **2 The Gap between Official Foreign Worker Policy and Real Development**

In recent years, the foreign worker policy of advanced industrial economies is characterized, in a very general perspective, by a dichotomisation. The main trend among advanced industrial economies is to differentiate their immigration policy regarding the skill level of foreign workers. Highly skilled foreign workers are generally welcome in advanced industrial economies. Competition for highly skilled labour is even increasing among advanced industrial economies (Mahroum 2001). By contrast, foreign workers policy in most advanced industrial economies is also characterized by increasing restrictions regarding the inflow of all those foreign workers that are not considered highly skilled. Moreover, an extension and institutionalization of integration policies can also be noted in advanced industrial economies, especially in those that regarded themselves for many years as non-immigration countries despite ongoing immigration. These increasing efforts for a better integration of foreign workers and their relatives are also accompanied in many advanced industrial economies by an anew turn toward assimilation instead of a multicultural integration policy (Back et al. 2002; Brubacker 2001; Joppke and Morawska 2003; Soininen 1999; Vasta 2006). The official foreign worker policy of Japan fits these general tendencies among advanced industrial economies. According to the basic stance of the Japanese government policy, which has been confirmed for several times in recent years, only highly skilled foreign workers are accepted in Japan. In addition, in view of the increasing numbers of foreign residents, local and municipal governments have increased their integration efforts and an urge for a national integration policy is gaining momentum (Yamawaki 2005).

### **New Legislation in Switzerland**

An example for the bifurcation of the foreign worker policy is the new immigration legislation in Switzerland. In a popular referendum in September 2006, the voters have accepted a new legislation concerning immigration policy with a two-thirds majority (*SwissInfo* 2006). Regarding foreign workers, this new legislation includes a simplified acceptance of highly skilled foreign labour as well as new restrictions concerning non-highly skilled foreign labour. It defines also a set of basic goals in the integration policy of foreign residents in Switzerland. All the more tellingly, these changes concerning the framework of foreign worker policy were generally well accepted. Strong criticism on the new legislation arose because of planned changes in the Swiss refugee policy (see e.g. Schertenleib 2006). The proposed tightening in the refugee policy was also the main reason that several political parties and non-governmental organizations (NGO) enacted a referendum about the new legislation. Hence, not only was the new legislation welcomed by a strong majority of the voters, but only the changes concerning the refugee policy were contended and resulted in significant opposition to the new law. The new basic policy concerning foreign workers of opening the Swiss labour market for highly skilled foreign workers, tightening the Swiss labour market for non-highly skilled foreign workers and establishing a general framework for the integration of foreign residents was generally undisputed.

However, despite the general tightening of immigration policy in advanced industrial economies for the large majority of potential foreign workers that are considered to not be highly qualified, international migration movements are not decreasing. The inflow of non-highly skilled foreign workers is even increasing in a number of advanced industrial economies. This results in a broadening gap between official policy and real development in many advanced industrial economies.

In the mass media, migration is often highlighted as a major issue for national policy. Even in scientific publications drastic statements about migration are appearing from the second half of the 1990s onwards. For example, according to Joppke (1998b) migration is a “challenge to the nation-state”, Sassen (1996) asks if the state is “losing control?” or Weiner (1995) identifies a “global migration crisis”.

For over a decade, the analysis of the factors leading to a gap between official policy and real development has become a crucial topic in international migration analysis.<sup>2</sup> After 9/11, the debate about state ability and immigration has gained a new edge. Control over immigration is now also regarded as an important national security issue.

### **Prime Example USA**

The prime example for an increasing gap between official immigration policy and real development is the USA. According to estimates based on national population surveys, the number of undocumented immigrants in the USA has more than doubled in the last decade from about 5 million in 1996 to between 11.5-12 million in 2006. Since 2000 the average annual growth of the undocumented population is more than 500,000 (Passel 2006). Immigration policy and policy concerning the undocumented population has become a major issue in US-American politics and public debate. Some people have even argued that the undocumented (Hispanic) population poses a “threat” for the unity and identity of the US-American society and nation (Huntington 2004a, 2004b). The Bush administration has reacted to the rising number of undocumented immigrants with an array of policy initiatives, which should include a new and comprehensive immigration reform bill and a new US border fence. While the immigration reform bill is currently still under discussion, the US border fence has been signed into law in October 2006. Although it will be over 1,100 km long and be equipped with hi-tech surveillance equipment, its effectiveness has been questioned. Moreover, the policy initiatives including the new border fence have met strong resistance and criticism (e.g. Jonas 2006). The Mexican President Fox compared the new fence to the Berlin Wall, and during spring 2006 undocumented immigrants and supporters organized mass demonstrations all over the USA.

The research agenda and theorization on immigration policy is strongly influenced and maybe even dominated by the US example. In fact, it has been argued that in many advanced industrial economies in Europe the gap between official policy and real development is not as huge as it may seem on the first look (Lahav and Guiraudon 2006b). Moreover, according to Thränhardt (2006), Japan is a prime example for an advanced economy that is still controlling immigration very efficiently.

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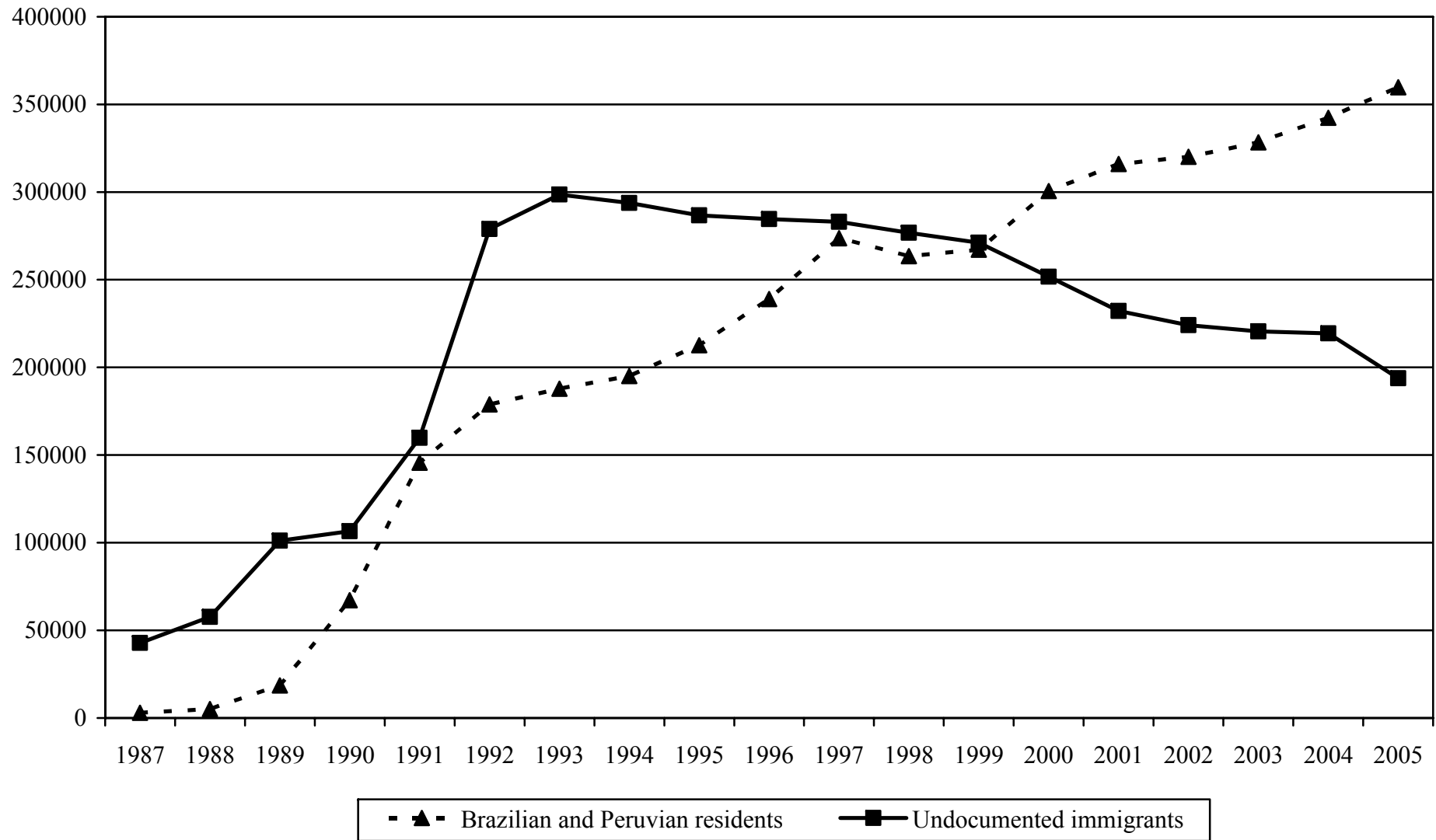
<sup>2</sup> An overview about new research concerning the gap between official immigration policy and real development is given by Cornelius et al. (2004) as well as Lahav and Guiraudon (2006a).

However, the large majority of foreign and Japanese researchers see also in the case of Japan a growing gap between official immigration policy and real development (Douglass and Roberts 1999; Higuchi 2001; Kajita 2001, 2002; Tsuda and Cornelius 2004). After a long and heated debate on immigration in the late 1980s because of the rising number of irregular immigrants, the basic positions of the postwar immigration policy were reconfirmed in the revision of the Immigration Control and Refugee Recognition Act that was implemented 1990:

1. Japan is only accepting highly skilled foreign workers in certain occupational areas explicitly defined by the law.
2. The immigration of non-highly skilled foreign workers or “simple” foreign workers, as they are often called in Japan, is not recognized and is to be prevented.

However, in reality, non-highly skilled foreign workers have immigrated in large numbers to Japan after the revision. In the early 1990s, during the last year of the so-called bubble economy, the number of undocumented immigrants strongly increased (see figure 1). Parallel to the economic stagnation of the so-called lost decade the undocumented population stagnated and began to decrease. Recently, efforts to deport undocumented immigrants have been strengthened and the number of irregular immigrants has fallen again below 200,000. Moreover, foreign and Japanese commentators have pointed out that Japan has kept the front-door locked, but has opened some side-doors for non-highly skilled foreign workers. Two main side-door policies can be identified: Japanese emigrants and their descendants (*Nikkeijin*) and the foreign trainee program. In the revision of the Immigration Control and Refugee Recognition Act, Japanese emigrants and their descendants up to the third generations were granted the right to come to Japan with a renewable working visa without any reservations regarding occupational area. The changes in the immigration law resulted in a fast and strong increase of *Nikkeijin* returning to Japan. Especially the number of return migrants from South America increased even during the economic stagnation. This is visible in the number of Brazilian and Peruvian residents in Japan, the two, by far, most important countries of origin of returning *Nikkeijin* (see figure 1). In 2005, their number reached nearly 360,000.

Figure 1 Undocumented Immigrants as well as Brazilian and Peruvian residents in Japan, 1987-2005

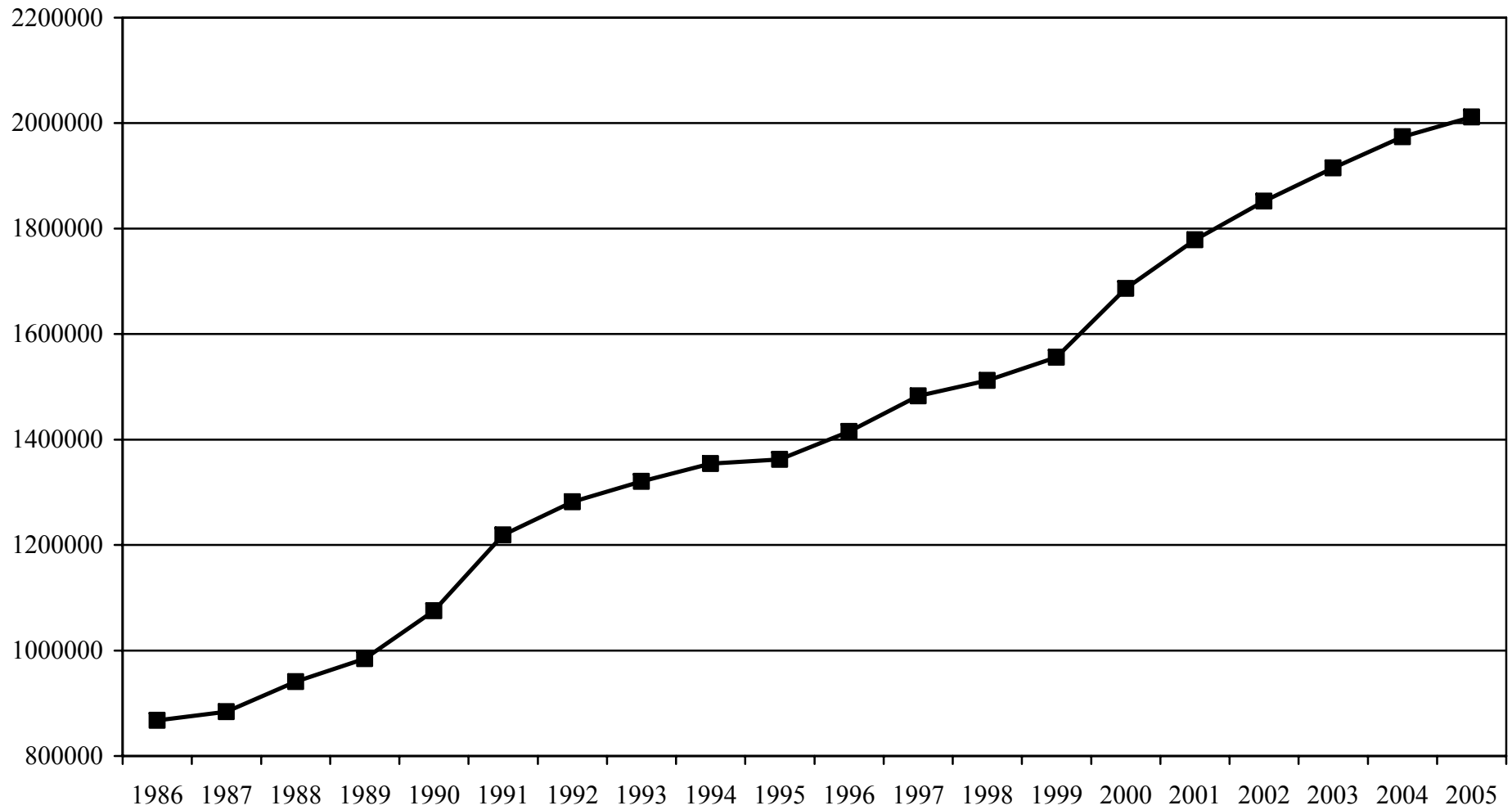




The trainee and technical internship programs for foreign workers are the second important side-door policy of Japan. In the early 1990s, the former trainee program for foreign workers was reorganized and expanded. The JITCO (Japan International Training Cooperation) was funded through which also small and medium enterprises (SME) could gain access to foreign trainees. These programs are officially part of the Japanese ODA (oversea development assistance) efforts and should enable know-how and skill transfers to the countries of origin of the trainees. Still, they have been severely criticized in Japan as procurement programs for cheap foreign manpower and have been shaken by several scandals (see Kajita 2001: 204-206; Kawakami 2001). Since the late 1990s, the number of foreign trainees and interns working in Japan under these programs has strongly increased and has reached nearly 100,000 in the year 2005 (JITCO 2006).

Overall, the number of foreign workers and residents has significantly increased in the last two decades. Since the late 1980s the number of legally registered foreign residents has more than doubled and reached over two million in the year 2005 (see figure 2). Two crucial discrepancies between the official immigration policy and the real development in Japan can be identified. First, although officially only highly skilled foreign workers are accepted in Japan, the number of foreign workers in non-highly skilled jobs, as defined by the law, has strongly increased in recent years and is by far larger than foreign workers in highly skilled jobs. Secondly, despite the Japanese administration still insists that Japan is not a country of immigration; Japan has de facto become a country of immigration. The percentage of foreign population is still small in international comparison with most advanced industrial economies in the West, but the number of new long-term immigrants in recent years is among the highest of all OECD countries (OECD 2006). Foreign workers are today a crucial factor in the Japanese labour market. Research shows that important export industries and some service industries are structurally dependent on foreign manpower (Kajita, Tanno and Higuchi 2005; *Nikkei Business* 2006). The problems in the field of immigration are, of course, not of the same magnitude as in the USA or some South European countries, but also in Japan a clear gap between official policy and real development cannot be denied.

Figure 2 *Legally Registered Foreign Residents in Japan, 1986-2005*



### **3 External Factors as Explanation for the Gap**

In recent years, migration specialists have mainly identified four external factors as reasons for the gap between official immigration policy and real development in advanced industrial economies:

1. International human rights regime and national justice system;
2. Particular interests of economic actors;
3. Globalization and/or regional integration;
4. New xenophobic movements and right-wing political parties.

In the following, the main argument for each of the four external factors is shortly outlined and its relevance in the case of Japan is discussed.

#### **International Human Rights Regime and National Justice System**

In the postwar era, the international human rights regime has been established. Foreign residents and foreign workers are also covered by the human rights regime. Hence, the treatment of the foreign population is no longer solely up to the discretion of a nation-state. It is expected that every nation-state is granting and protecting the basic human rights of its foreign population.

A number of authors have argued that the international human rights regime is de facto limiting the state authority and its policy options regarding foreign residents and immigration. Moreover, because of the international human rights regime the importance of citizenship is said to have diminished. Foreign residents have as denizens a number of rights that they can defend through the independent justice system, at least in liberal nation-states (Jacobsen 1996; Sassen 1996; Soysal 1994; Weiner and Teitelbaum 2001: 101). From the late 1960s onwards, immigrants and their support groups have successfully enforced their claims based on the international human rights regime through legal actions. Through the decisions of independent courts, the executive and legislative branches of liberal nation-states have partly lost their authority and their ability to control immigration (Cornelius et al. 1994: 9-11).

Still, other authors have strongly criticised such a view of the strong influence of the international human rights regime. Joppke (1998a: 291), for example, has bluntly called the international human rights regime “perhaps the single most inflated construction in recent social science discourse.” He and others strongly question the impact of the international

human rights regime on the enforcement of national migration policies, even in liberal nation-states. In fact, the empirical study of Koopmans and Statham (1999) shows little support for a strong impact of an international human rights regime in Germany and the United Kingdom. The main source for the rights and protection of foreign residents and foreign workers in liberal nation-states is not the international human rights regime, but national legislation and national justice systems. Furthermore, it can hardly be argued that an international migration regime is enacted today.<sup>3</sup>

Still, in the case of Japan, the international human rights regime has been very influential regarding the rights of the foreign population (Gurowitz 1999). The signing of several international conventions by Japan has resulted in new legislations and improved legal positions of foreign population. For example, because of the ratification of the international human rights convention in 1979 and the Geneva refugee convention in 1981, the Japanese nation-state ended a number of discriminating practices against foreign residents and granted them the same rights as the Japanese populations (Kondo 2001: 17). However, the relevance of international norms in Japan is primarily an indicator for the relative weak position of foreign residents in the national legislation. This is clearly in evidence through a comparison of the role and the influence of national legislation and the justice system in Germany and in Japan.

The basic philosophy of the postwar German constitution, after the dictatorial Nazi regime, is the protection of individual rights vis-à-vis the nation-state authority. The constitution guarantees to every resident this protection regardless of a German or foreign nationality. Moreover, the German constitutional court (*Verfassungsgericht*) has been very influential in postwar Germany. It has closely monitored over the compliance of national legislation and state policy with the spirit of the postwar constitution. In its activities, the constitutional court played a central role in the policy concerning foreign residents and foreign workers. Several times the constitutional court has granted ample rights to foreign residents before the government had formulated a policy in these fields (Joppke 1998a: 283-287). A prime example is the extensive right of family reunification that was granted by the constitutional court and not by the German government. This extensive right led to chain migration as foreign workers started to bring their families to Germany.

In contrast in Japan, the governmental authority is not significantly limited or challenged by the justice system. The post-war Japanese constitution is not containing an article regarding

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<sup>3</sup> On the possibilities of an international migration regimes and its importance see Ghosh (2000). For a critical view of these proposals see FFM (2004).

the rights of foreign residents (Kondo 2001: 10). Moreover, a court that would be the equivalent to the German constitutional court and that would actively enforce the spirit of the constitution does not exist in Japan. Japanese courts have very rarely challenged the authority of the government. Hence, in Japan, an unequal treatment of foreign residents and Japanese nationals has not been regarded to conflict with the post-war Japanese constitution. In Germany and most other liberal states, such an unequal treatment of foreign and national population is clearly conflicting with the national legal foundations.

Overall, it can hardly be argued that the international human right regime or the national judiciary system is significantly challenging the authority of the Japanese state concerning foreign worker policy. In contrast to many liberal nation-states in the West, the Japanese constitution and the Japanese courts have not limited the ability of the Japanese state to formulate and implement a foreign worker policy. Changes in the policy due to the signings of international conventions are primarily an indicator for the weak protection of foreign residents in the national legislation. But even after the signing of several international conventions, the Japanese state has still a large array of policy options from which it can freely chose.

### **Particular Interests of Economic Actors**

Powerful economic interests groups and their strong influence on state administration are seen as a second factor that is inhibiting the independent formulation and implementation of the foreign worker policy (Miller 1994). In his seminal article Freeman (1995) has formulated the theoretical framework of this view.<sup>4</sup> According to his perspective the gap between official policy and real development regarding immigration into advanced industrial economies is due to the unequal distribution of profits and costs of international migration. While the costs of immigration are widely spread on the whole receiving society, the profits are concentrated among a small number of economic actors that, as employers of foreign workers, gain from immigration. They have strong incentives to influence the national immigration policy and to shape it to their own advantage. Therefore, immigration of non-highly skilled foreign workers might not be part of the official foreign workers policy, but because of the influence of economic interests groups the non-immigration policy of non-highly skilled foreign workers is not at all or only partly implemented. In other words, undocumented non-highly skilled foreign workers are tolerated.

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<sup>4</sup> For an updated version see Freeman (2006).

A prime example for the ability of economic interest groups to usurp the foreign worker policy is the USA (Calavita 1992; 1994). Because of the strong lobbyism of employers, the ordinances regarding undocumented foreign workers are very weak and are not fully implemented. Although the US-American state is putting a large effort into controlling its borders and inhibiting undocumented immigration, effective sanctions against employers of undocumented foreign workers are not applied. The steady demand for non-highly qualified foreign workers results in a persisting inflow of undocumented foreign workers, especially through the southern border with Mexico. The result is a large gap between the official immigration policy and the real immigration flows.

How is the situation in Japan? Economic interest groups are surely also in Japan influential in the policy-making process. The revision of the Immigration Control and Refugee Recognition Act introduced strict penalties for employers of undocumented foreign workers, but only a small number of Japanese employers have been convicted for such an offense. Cornelius (1994: 391-392) speaks of a “symbolic” implementation of these new regulations for employers in Japan. However, the Japanese foreign worker policy is surely not dominated by economic interest groups. With the Ministry of Justice (MOJ) and the Ministry of Health, Labor and Welfare (MHLW), central actors in the policy-making process in Japan are “immune” to economic interest groups. This is for example visible in the unilateral cancellation of the visa exemption agreements with Pakistan and Bangladesh (January 1989) as well as Iran (April 1992). Through these cancellations, the Japanese state effectively stopped the undocumented immigration from these countries. In recent years, the MOJ has increased its efforts to find and deport undocumented foreign workers, which has been an important factor for the significant fall in the number of undocumented immigrants (see figure 1). Economic actors surely have an influence in the Japanese foreign worker policy, but the gap between official policy and real development in Japan is not primarily due to these influences of particular economic interests that would have impeded an implementation of the official foreign worker policy.

### **Globalization and Regional Integration**

A third perspective sees the gap between increasing restrictive official policy and the increasing international migration movements as a side-effect of economic globalization and regional integration processes. Stronger economic and political ties between nation-states include also stronger transnational links on the sub-national level that pave the way to new

migration movements. In this view nation-states can no longer fully control these sub-national links and the resulting migration movements (Massey 1998; Sassen 1996, 1998). Transnational connections on the meso-level in the form of social networks and/or of the transnational migration industry are, in this perspective, identified as the core elements of international migration movements (Faist 1997, 2000; Higuchi 2002). Economic regional integration like the European Union (EU) or the North American Free Trade Area (NAFTA) are accompanied by new migration movements that seem to undermine the ability of nation-states to control autonomously immigration.

A regional or transnational perspective makes a crucial contribution to the study of foreign worker policy. As the name says it, *international* migration is an international phenomenon. In order to fully understand foreign worker policy and its success or failures, one has to study not only the policies of countries of destination, but also the policies in countries of origin and the transnational links between origins and destinations. This is also obvious in the case of Japan.

Several authors stress the influence of globalization in the case of new migration movements to Japan (Sassen 1993; Sellek 2001). More precisely, the timing of the new international migration movements to Japan is embedded in the development of an East Asian migration region (Chiavacci 2005). The sharp and sudden increase of *Nikkeijin* coming from South America after the revision of the Immigration Control and Refugee Recognition Act shows the crucial role of transnational links on the meso-level (Higuchi 2001; Tsuda 1999). Furthermore, the boom of bilateral economic partnership agreements (EPA) and bilateral free trade agreements (FTA) in East Asia and South East Asia are sometimes interpreted as a possible first step for a fuller economic integration in East Asia (Kohara 2005; Nakagawa 2006; Taniguchi 2004; Yoshino 2005). Although the number of foreign workers foreseen in the EPA/FTA that Japan has concluded with regional partners is very limited, these agreements form the first bilateral agreements of Japan regarding migration in the region. If strong economic integration in East Asia or even an East Asian community would really materialize, one can also expect migration movements in the region of a completely new magnitude.

However, for the time being, it can hardly be argued that the control of the Japanese borders is undermined by strong transnational links or the economic embeddedness of Japan in East Asia. To begin with, border control in the case of Japan is significantly simplified by its peripheral position at the edge of Asia as island. While a long land border is very difficult to

control even with high-tech equipment, an open sea as natural border simplifies the task significantly.<sup>5</sup> Second, the strengths of transnational links of foreign workers in Japan to their countries of origin are very weak due to the limited rights of foreign workers in Japan. Most notably the right of family reunification leads to strong transnational links and chain migration. But because of the nearly complete absence of the right of family reunification for non-highly skilled foreign workers in Japan, transnational networks and/or the international migration industry are not really challenging the authority of the Japanese state. The only exemption from these strict rules is the case of the *Nikkeijin* who can bring their family with them to Japan. Third, the current immigration movements are still relative small in size, a circumstance that also simplifies the control of immigration for the Japanese state. And finally, the regional integration in East Asia is still in an early stage. A multilateral agreement in the form of an East Asian migration regime is currently not foreseeable. The International Organization of Migration (IOM) has tried through the Manila process to start a stronger consultation regarding migration among state of origins and state of destination in East Asia, but the process has currently completely broken down. Overall, Japan's ability to control immigration is hardly challenged by a regional integration process or transnational links.

### **Xenophobic Movements and Right-Wing Political Parties**

New xenophobic social movements and political parties have been identified as a fourth external factor that leads to a rising gap between official foreign worker policy and real development. Through the pressure from ultra-right-wing movements and political parties, nation-states have been forced to formulate a more restrictive foreign worker policy, but because of the three other external factors, as discussed above, the nation-state is not able to really realize this more restrictive foreign workers policy. This may lead to a further strengthening of xenophobic movements and right-wing political parties that leads again to a restriction of the foreign worker policy (Freeman 1998: 87).

In Western Europe in an increasing number of countries, xenophobic ultra-right-wing parties are playing an important role in national politics by gaining a large percentage of the popular votes. For example, in the recent national elections in Austria in October 2006, the two ultra-right-wing parties won together over 15% of the votes: Bündnis Zukunft Österreich (BZÖ)

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<sup>5</sup> For example, although the USA are often identified as prime example for a weak liberal nation-state that is no longer able to control migration because of the unrelenting irregular immigration flow from Mexico, it has to be noted that the immigration movements over the open sea from Cuba and Haiti to the USA have effectively been stopped in recent years (Guiraudon and Joppke 2001: 4).



4.2% and Freiheitliche Partei Österreichs (FPÖ) 11% (BMI 2006). Moreover, the two parties are the result of a split of the FPÖ that led to a weakening of the ultra-right in Austria. In a former national election back in 1999, the FPÖ was able to attract over a quarter of all votes and was the second-strongest national party (McGann and Kitschelt 2005: 147).

Since the 1990s, the influence and impact of the radical right in the foreign worker policy is notable in many advanced industrial economies. However, no significant xenophobic social movement or ultra-right party exists in contemporary Japan. Frictions between the foreign population and Japanese in everyday life have been reported (see e.g. Tsuzuki 1998; 2000), but up to now the Japanese state is not significantly under pressure from right-wing movements or parties concerning the foreign worker policy.

#### **4 The Internal Dilemma of Foreign Worker Policy**

The four external factors behind the gap between the official foreign worker policy and the real development, which are identified in the literature, have been discussed above. However, none of these four factors can explain the gap between official policy and real development in the case of Japan. The Japanese state has not lost its ability to control the inflow of foreign workers due to external factors. Hence, the gap between official Japanese policy and real development is due to internal factors of the Japanese state. In order to understand the gap between policy and reality, the Japanese foreign worker policy-making process has to be analyzed. In such an analysis, two factors are identifiable as the main internal factors for the gap between policy and reality: the institutional setting of the foreign worker policy and the discursive background of the foreign worker policy.

Regarding the institutional setting of the state administration in Japan, scholars have pointed out the pronounced vertical integration of ministries and agencies and the “sectionalism” between them (Imamura 2006; Lehmbruch 1995; Muramatsu 1997).<sup>6</sup> The vertical integration of national ministries and agencies and their competition for resources leads to a shortcoming in coordination and cooperation among the institutions of the Japanese state. This segmentation between Japanese ministries and agencies is further strengthened by the rigid differentiation of authority and the continuity of their responsibilities. Struggles for

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<sup>6</sup> In Japan, the vertical integration of ministries and agencies and the resulting non-cooperation and conflicts between them are described as “sectionalism” (*sekushonarizumu*), but in the administration studies in English language this term is not used for describing the separatism among state organizations.

competences between state institutions are quite frequent and can be very fierce. Especially, if a ministry or agency tries to extend its competences at the cost of another administrative institution, normally a long and often openly fought conflict results (for examples, see DeWit and Steinmo 2002; Johnson 1989). The institutional segmentation is further strengthened in the field of foreign worker policy by the discursive background. Ministries and agencies that are involved in the foreign worker policy making have completely different perspectives about the issue.

### **Revision of the Immigration Regulation**

In order to illustrate the influence of internal segmentation and “sectionalism” in the foreign worker policy, the basic revision of the immigration regulation in the late 1980s and early 1990s is shortly discussed. In the view of the rising number of undocumented foreign workers a debate about a basic reformulation of the foreign worker policy started in the later 1980s. Several ministries and agencies proposed at the time new basic foreign worker policy principles and a revision of the Immigration Control and Refugee Recognition Act. After the then Ministry of Labor (MOL) had published its proposals in a report in 1988 (MOL 1988), a heated conflict started between the MOL and the MOJ about the foreign worker policy. Although both ministries had a relative close position and favored a continuity of a restrictive foreign worker policy, they engaged in a turf war. The MOJ was upset about the proposal of the MOL to introduce a new work permit scheme for foreign workers, which the MOJ regarded as an invasion of the MOL into the immigration policy as the MOJ’s sphere. Finally, the MOL “postponed” its idea of a work permit for foreign workers (*Mainichi Shinbun* 1988).

The MOJ prevailed in the conflict with the MOL, but business-friendly political actors reinterpreted its proposal to grant Japanese emigrants and their descendents up to the third generation a residence visa in Japan without constraints regarding working activities. The commission of the MOJ had in mind an equal treatment of Japanese emigrants and their descendents with the long-term foreign residents in Japan and their descendents, for which a permanent visa was introduced with the revision (Kajita 2002: 21-25). However, business-friendly agencies and part of the Liberal-Democratic Party (LDP) saw in the residence visa for *Nikkeijin* a possibility to introduce cheap foreign workers to Japan. It was hoped at the time that the *Nikkeijin* would easily integrate into the Japanese society thanks to their cultural proximity (Nojima 1989). A similar process can also be noted in the case of the revision of foreign trainee program in the early 1990s. This time the MOL could prevail with its proposal

of extending the foreign trainee programs over the MOJ that had rejected this proposal. However, the MOL wanted to enhance the know-how transfer to industrializing Asian economies and empowering their economic development with these new foreign trainee programs in order to reduce the economic gap between industrializing Asian economies and Japan. It was hoped to reduce the migration pressure through these programs. But during the formulation of the new foreign trainee programs, business-friendly policy circle regarded the new programs basically as possibility to provide SME with cheap foreign workers and were able to alter the design of the new foreign trainee programs for this goal against the opposition of the MOJ and MOL (Koike 1996: 24-26).

Overall, the crucial reform years in the foreign worker policy around 1990 were not only characterised by a turf war between the MOL and the MOJ despite basically similar positions, but also through a hijacking of the policy proposal of the MOL and the MOJ by business-friendly ministries and LDP politicians. The result of this fragmented and conflictive policy-making process was a policy of the least common denominator, in which an increasing gap between the official goals of the policy and the real development was pre-programmed in the policy itself. Japan officially maintained a very restrictive foreign worker policy, but in reality it opened a side-door to foreign workers in low-skilled occupations by accepting *Nikkeijin*. The foreign trainee program was officially part of the Japanese overseas development aid (ODA), but it was de facto primarily a possibility for SME to gain access to cheap foreign workers. Although Japan officially maintains to be a non-immigration country, it has de facto become an immigration country after the revision of the immigration regulation in the early 1990s. This resulted in another gap between official policy and real development. Although no official integration policy has been formulated on the national level, an increasing number of foreign workers and their families reside in Japan.

## **5 Current Developments in the Foreign Worker Policy in Japan**

The gap between official policy and real development has not gone unnoticed in Japan, but after the end of the bubble economy, the debate about the foreign worker policy had cooled down during the economic stagnation of the 1990s. However, because of the looming demographic development of Japan a new debate about the necessity and/or desirability of an active foreign worker policy has started, which has been called the second debate about immigration (Iguchi 2001). Is the foreign worker policy currently undergoing a significant

change? Can it be expected that the internal problems of the foreign worker policy making will be overcome in the near future? This section tries to give a preliminary answer to these questions based on an overview of new developments as well as continuities in the foreign worker policy in Japan on the discursive, institutional and policy level.

### **Discursive Level**

In comparison to the debate in the late 1980s, a number of new developments can be noticed on the discursive level in the current debate on foreign workers in Japan. First of all, immigration policy and foreign worker policy is no longer simply regarded as a problem, but is increasingly discussed as an issue (Hirowatari 2005). Foreign workers are no longer only a problem, with which Japan is confronted and to which it has to react, but foreign workers are seen as a factor for shaping Japan's future.

The context for this new perception of foreign workers and immigration is, on the one hand, demographic change. In view of the decreasing population, the birth-rate far below reproduction and a fast ageing society, foreign workers are identified as one possible remedy to a looming labor shortage. On the other hand, immigration and foreign workers are also discussed in the context of a possible regional integration process in East Asia.

The current discussion about foreign worker policy is, however, also characterized by strong continuities. Major actors position the foreign worker policy in the same context as in the first debate back in the late 1980s. The MHLW and Rengô, the by far most important national umbrella organization of Japanese labor unions, discuss foreign workers primarily concerning their impact in the labor market and on the working conditions for Japanese workers. The Ministry of Economy, Trade and Industry (METI) and some other business-friendly agencies as well as business organizations are primarily concerned with the role of foreign workers for the economic development of Japan. The future of the Japanese nation-state and its assumed homogenous ethnic composition are primarily the focus of conservative politicians when debating on foreign workers and immigration. The Ministry of Foreign Affairs (MOFA) refers to the foreign workers issue primarily in the context of the international reputation of Japan. For the National Police Agency (NPA) and the MOJ, the main points of reference in the foreign worker debate are national security issues and (potential) criminal activities of foreign residents. Although this list of standpoints in the debate is by far not concluding, it shows how the discussions on foreign worker issues in Japan are still very fragmented and missing a main

focus, despite the new perspectives in the age of an ageing Japanese society and regional integration processes in East Asia.

### **Institutional Level**

Significant new developments have also occurred on the institutional level. First, an important new actor has appeared. Nippon Keidanren, the Japan's most important and influential business organization, has published in April 2004 a proposal for a more active and comprehensive foreign worker policy (Nippon Keidanren 2004). This standpoint is in sharp contrast to the passive positions of Keidanren and Nikkeiren back in the late 1980s and early 1990s.<sup>7</sup> While only SME and their interest organizations clearly favoured a more open foreign worker policy at that time, today also large corporations, which are generally very influential in the Japanese policy-making process, are arguing for a broadening of the Japanese foreign worker policy. A second important change has been the administrative reforms from the later 1990s onwards. This resulted not only in the first comprehensive reorganization of the national administrative since the end of the Allied occupation, but strengthened also the position and leadership of the Prime Minister in the policy-making process (Shinoda 2003; Takenaka 2006).

Still, like at the discursive level, the institutional level of the foreign worker policy is also characterized by strong continuities. "Sectionalism" between ministries and agencies is still very pronounced in the policy-making process. The communication and cooperation between actors is, at best, suboptimal. The institutional background of the foreign worker policy making is still very complex.

Overall, the foreign worker policy making is marked by a continued antagonism between a first group of actors (MOJ, MHLW and Rengô) favoring a restrictive immigration policy and a second group of actors (METI, MOFA and Keidanren) favoring a more open immigration policy. Such a split concerning the foreign worker policy is also visible in the LDP and other political parties.

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<sup>7</sup> In May 2002, Keidanren and Nikkeiren merged to form Nippon Keidanren.

## Policy Level

On the policy level three new developments have marked the foreign worker policy. Japan had come under strong pressure by the USA concerning human trafficking. In the 2004 Trafficking in Person Report of the U.S. Department of State (2004), Japan had been included in the special watch list of tier two countries. The Japanese government under the leadership of the MOFA has implemented in reaction to this criticism, among other actions, a new and stricter policy concerning the entertainer visa. This has led to a substantial drop of foreign entertainer coming to Japan. The second significant change has been the inclusion of a foreign worker accord into the new FTA/EPA with South Asian economies. Despite strong internal resistance from the MHLW, MOJ and Rengô,<sup>8</sup> these agreements have been pushed through by METI and MOFA thanks to the strong support by former Prime Minister Koizumi who regarded them as a crucial project for Japan. Although the number of foreign workers intended in the first signed EPA with the Philippines is with 1,000 health workers very limited, these agreements are the first bilateral treaty concerning foreign worker policy that go beyond an unilateral foreign worker policy of Japan. The third area of change is the policy concerning highly skilled foreign workers that has been broadened in the hope to attract more highly skilled foreign workers to Japan.

These examples show that in the case of foreign pressure or leadership by the Prime Minister a policy change is possible. In the case of highly skilled foreign workers a consensus among all important actors in the foreign worker policy making for an active promotion policy can be noted. However, in other areas a number of policy ideas have been proposed, but no clear direction is discernable. These areas of deadlock include the questions of a reform of the foreign trainee programs in view of their current serious problems and of a revision of the policy concerning *Nikkeijin* in view of their integration problems. Some actors favoring a restrictive immigration policy would like to tighten the foreign trainee programs and *Nikkeijin* policy by introducing new strict regulation for the foreign trainees and a Japanese language test for *Nikkeijin* (e.g. MOJ 2006). Actors favoring a more open foreign worker program have, on the other hand, proposed to significantly broaden the job fields in which foreign workers are accepted in Japan. They argue that in view of the demographic development also “semi-skilled” foreign workers are needed in Japan in the near future (e.g. METI 2005).

Although in some areas significant change has occurred in the foreign worker policy in Japan, the general direction of the foreign worker policy is still not clear. The fragmented

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<sup>8</sup> The supporters of these agreements had also to overcome the strong resistance from the Ministry of Agriculture, Forestry, and Fisheries (MAFF) and agricultural interests groups.

institutional framework combined with different perspectives on immigration leads, at least for the time being, to a deadlock regarding the basic direction of the Japanese foreign worker policy. This fragmentation of the foreign worker policy is not limited to ministries and interests groups; also the LDP and other parties are split concerning the foreign worker issue. No strong leadership is exerted by the current top politicians of the LDP.

## **6 Final Remarks: Towards a Coherent Foreign Worker Policy in Japan?**

What would be needed to overcome the gap between official foreign worker policy and real development in Japan? First of all, very strong political leadership of top politicians is indispensable to overrule the institutional segmentation and “sectionalism” that is currently still dominating the policy-making process. The politicians should also assume the responsibility to set strategic goals for the Japanese foreign worker policy. Based on these strategic goals a new and coherent institutional setting for the formulation and implementation of the foreign worker policy should be established. If the main strategic goal is to pursue the hitherto official restrictive foreign worker policy, especially regarding non-highly qualified foreign workers, then the current setting with the MOJ in charge of the foreign worker policy is still functional. If the main strategic goal is a more open and active foreign worker policy, then comprehensive institutional reform of the foreign worker policy with the formation of one comprehensive national agency in power of formulation and implementation of the immigration and integration policy is needed as has been called for by different sides in recent years (e.g. Kondo 2002; Nippon Keidanren 2004, Tezuka 2005). The concrete policies and measures derived from the strategic direction should be based on the analysis of the real developments and problems in the foreign worker policy in the last 20 years. If a restrictive strategy is chosen then the foreign trainee program should be cancelled in today’s form and the residence visa for *Nikkeijin* abolished. If an extensive strategy is taken, then a comprehensive national integration policy for foreign residents has to be formulated and realized.

How probable is it that a strategic policy will be formulated in Japan in the near future? Unfortunately, the likelihood seems rather low. Foreign worker policy is a very thorny issue and politicians are rather reserved to pick it up. The current problems and costs inflicted on the Japanese society are still rather low so that the issue is still avoidable for the *classe politique*. Despite strongly increasing numbers of foreign workers and foreign residents, Japan

may still be able to sustain the grand self-delusion to be a non-immigration country. Because of the very complex and fundamental discursive background as well as of the fragmented institutional framework, the Japanese foreign worker policy might also in the near future be in a deadlock that will result in a policy of the least common denominator instead of a strategic and comprehensive policy.

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