

‘Embedded Racism’ in Japanese Law: Towards a Japanese Critical Race Theory

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Abstract

Critical Race Theory (CRT), grounded in American legal theories of power and dominance, has been increasingly applied to other countries to analyze racialized power relationships between social groups. Applying CRT to Japanese society, where ‘racism’ is denied as a factor in the systematic differentiation of peoples into a dominant majority and disenfranchised minorities, nonetheless reveals racialized paradigms behind deciding who is a ‘member’ of society (as in a citizen), and allocating privilege to people with ‘Japanese blood’. This article focuses on Japan’s Nationality Law, where biologically-based conceits give advantages to ‘*Wajin*’ (i.e., Japan’s dominant social group with ‘Japanese blood’) over ‘Non-*Wajin*’. It concludes that ‘interest convergence’ (where the interests of concerned parties to an issue converge enough for the powerful to concede some power to the less powerful) for changing this racialized status quo will not happen: Minority groups in Japan are so systematically disenfranchised that they are rendered *invisible* under a hegemonic national discourse of ‘racial homogeneity’, underpinned by Japan’s laws. This research concludes that the broader lessons of CRT and Whiteness Studies may be expanded and applied to a society without a white majority.

Keywords: Japan; racism; Nationality Law; Critical Race Theory; *Wajin*; Whiteness Studies

Introduction

In terms of analyzing societies in terms of social hierarchies and power relations, Critical Race Theory (CRT), an analytical framework that first appeared in American legal academia, may offer fresh insights when applied to other countries. CRT sees racism as a study of power relations within a society, particularly in terms of how people are rendered into hierarchical categories of power, social dominance, and wealth acquisition (cf. Delgado and Stefancic, 2001; Crenshaw *et al.*, 1995). Fundamental theories synthesizing economic and postcolonial arguments have a long history, going back to W.E.B. DuBois (1905, pp. 233-4). DuBois linked the abolition of American slavery with the convergence of white economic and postcolonial interests, as opposed to the narrative of American society being convinced by ‘moral good’ and ‘just society’ arguments. CRT first appeared in the 1970s in response to perceived shortcomings within the American Civil Rights Movement, grounded in minority frustrations at being underrepresented within American public discourse and academia (Crenshaw *ibid.*, pp. xxii-xxvii). Incorporating various criticisms from Ethnic Studies, Women’s Studies, Cultural Nationalism, Critical Legal Studies, Marxism and Neo-Marxism, and Internal Colonial models (Solorzano and Yosso, 2001, p. 474), CRT has expanded out of deconstructing legal and judicial processes and into other fields, including deconstructions of education, public discourse, gender, ethnicity, class and poverty, globalization, immigration and international labor migration, hate speech, the meritocracy, and identity politics. CRT has also been expanded beyond America’s borders to examine postcolonialism and power structures in other societies, including Great Britain, Israel, and Europe (Delgado and Stefancic, 2012; Möschel, 2011; Sakata, 2012). This article will similarly expand CRT into Japan.

Applying CRT to Japanese society is not difficult: In terms of analyzing the racialized structural relationships of social power, CRT may be applied to any society. CRT starts from the fundamental standpoints (cf. Delgado and Stefancic, 2001, 2012; Matsuda, 1987) that, *inter alia*, 1) 'race' is purely a social construct without inherent physiological or biological meaning, so it is open to the same perceptual distortions and manipulations as any other social convention or ideology; 2) the prejudicial discourses about human categorization and treatment are so hegemonic that they become part of the 'normal' in society; that is to say, so embedded in the everyday workings of society that they give rise to discriminatory actions (both conscious and unconscious), resulting in discriminatory public policies and laws regardless of policymaker intentions; 3) such illusory perceptions of 'race' are in fact the central, endemic and permanent driving force behind organizing the scaffolding of human interaction, categorization, and regulation, both at the individual and more poignantly the legislative level; 4) 'race' thus fundamentally influences, even grounds, the formation, enforcement, and amendment process of a society's laws; 5) those who best understand this dynamic and its effects are the people disadvantaged within the racialized structure of power and privilege, and thus are necessarily excluded from the discourse regarding the organization of society; and, consequently, 6) one must also recognize the power of minority narratives as a means to allow more minority voices and alternative insights into the discussion, to expose the realities present for the unprivileged and underprivileged.¹

The dynamic of racism under CRT is one of power and self-perpetuation of the status quo. Racism is seen as necessarily existing to advance and promote, both materially and psychologically, the interests and privileges of members within the dominant power structure. In America's case, CRT helped foster 'Whiteness Studies' to examine the power and preference (e.g., material wealth, prestige, privilege, opportunity, etc.) that both naturally and not-so-naturally accrues to the white majority or elite. Due to the 'normalization' of this dynamic, it becomes self-perpetuating, where even the most well-intentioned members of the elite will have little awareness or incentive to eliminate this system (due in part to 'structural determinism' (Mone, 2008) i.e., the milieu in which people have been raised and live their lives necessarily makes them blind to the viewpoints and needs of people who have not). The only time there may be power ceded to non-dominant peoples is when there is 'interest convergence', i.e., when the dominant majority and minorities both stand to gain from a policy shift; then current racial paradigms will be discarded and shifted instead to disfavor another weakened, easily-targeted disenfranchised minority (Bell, 1980). In this sense, racisms and racialisms will shift over time, but they will nevertheless continue to exist and remain a fundamental ordering force within a society (Miles, 1997).

Although these analytical paradigms have been applied primarily to the American example, this article argues that the same dynamics can be seen in the Japanese example by substituting 'white' with 'Japanese' (Levin, 2008). However, it is not an exact match: 'Japanese' as a term is confusing, as it can mean both 'a Japanese citizen' (a legal status which can include people of different races and ethnic backgrounds), and 'a Japanese by blood' (a racialized paradigm that can include people who do not have Japanese citizenship, such as *Nikkei* imported workers from South America). The term also ignores those who are 'Japanese' (such as the *Burakumin*, Japan's historical underclass) and have citizenship, not to mention acculturation and phenotype by which they can normally 'pass' as 'Japanese,' yet suffer from discrimination by descent and social origin (such as the Ainu, Okinawans, or Japanese children

of international relationships). So a new term is necessary, called '*Wajin*' for the purposes of this research.

'Wajin': The Dominant Majority Group in Japan

Wajin is a term used in contemporary scholarship on Hokkaidō's indigenous people, the Ainu, to differentiate them from their nineteenth-century Japanese colonizers and present-day "Japanese" (Kramer ed., 1993; Sjoberg, 1993; Siddle, 1996; Hardacre and Kern, 1997; Kayano, Iijima, and Suzuki, 2003; Weiner, 2009). *Wajin* has also been used by the Japanese government (Ministry of Foreign Affairs, 1999) as a self-identifier, a racialized term to divide 'Japanese' into two putative races, 'Ainu' and '*Wajin*', even though Okinawans and 'most naturalized Japanese... would probably not choose to classify themselves as "*Wajin*"' (Wetherall, 2008, p. 272). It is a word based upon birth, not legal status.

This article will use the term *Wajin* for two reasons: 1) it is a legitimate, non-pejorative word in modern Japanese language long used to describe Japanese people, even before Japan as a nation-state (or proto-state) began colonizing others; 2) it enables the author to define its meaning under new and flexible paradigms. Just as the term 'white' can be made useful as both an indicator of social status and as a visual identifier/enforcer of those who have that social status (and allow for flexibility of 'shades of white' as people attempt to 'pass' as 'white' in order to gain power or privilege), *Wajin* will also underscore the performative aspect of the process of differentiation, a) allowing for visual differentiation between people who 'look Japanese' and 'do not look Japanese', and b) allowing for 'shades' as people 'pass' or 'don't pass' as 'Japanese', finding their status, privileges, and immunities affected when they are suddenly revealed as 'Non-*Wajin*'.

The 'Embedded Racism' within Japan's Nationality Law

In every society, laws frame, codify, and legitimize how people will be treated in the modern nation-state. If the laws themselves are racialized, then, due to the 'performative' aspect of race and law, people will be similarly codified and singled out for differential treatment due to their racialized characteristics. Let us apply CRT methodology as per Lopez (1996), who asserts that, 1) a biological determination of national membership within the law abets the racialization of a society, as it limits the degree of reproductive options, and thus precludes the possibility of people of different appearances mixing to create more phenotypical diversity; 2) law couched in racial paradigms has multiplier effects, by legally delineating and reinforcing the categorization of individuals by differences in physical features and ancestry; and 3) these laws convert the categorization into material differences between people in society, reinforcing the future application of race as a means of determining who gets what. Put more concisely: Law artificially and by design a) decides who gets what by b) influencing who associates with whom and c) establishing and perpetuating those divides between people as legally tenable and justifiable.

This dynamic is made fundamentally clear within Japan's racialized Nationality Law (*kokuseki hō*), in which biology and state membership are explicitly linked. This law defines 'a Japanese' (*kokumin*) in terms of *Wajin* rights, privileges, and immunities with regards to Japanese citizenship. For example, Article Two requires that a person have one 'Japanese national' (*kokumin*) parent in order to qualify for Japanese citizenship (*kokuseki*). Citizenship is

thus officially conferred through *jus sanguinis* (law of blood), i.e., not by dint of being born in Japan (*jus soli*). In application, this means a child born in Japan to two non-nationals, even if they were both born in Japan, is still a non-national – for, as we shall see below, an indeterminate number of generations. Amendments have made the Nationality Law less restrictive (see below), but the preponderance of the law still focuses on blood ties as a condition for most people qualifying for Japanese citizenship.

Historical Ethnic Cleansing through the Nationality Law: *Jus sanguinis* and Postwar *Zainichi* Legal Exclusion

One reason why Japan's *jus sanguinis* construct for citizenship is problematic is due to Japan's history. Between 1895 and 1945 Japan was a colonial power, where subjects of the Japanese Empire, including Koreans, Chinese, and present-day Taiwanese, were considered Japanese subjects with Japanese citizenship (Myers and Peattie, 1987; Ching, 2001; Morris-Suzuki, 2010). This conferred certain citizenship privileges and duties to Non-*Wajin*, such as the privilege to reside and work in Japan indefinitely without a visa (notwithstanding those who came to Japan or its colonies as forced labor), and the duty to serve in the Japanese military. However, after Japan lost its colonies following World War II, Japanese citizenship was stripped away from its Non-*Wajin* subjects; this was due both to complicated endogenous factors and contemporary geopolitics (Iwasawa, 1998; Levin, 2001, p. 500, Footnote 288; Ōguma, 2002, p. 341; Shin, 2010, p. 327), but the point is that these former subjects of empire legally became 'foreigners' again in Japan. By 1950, under the revised Nationality Law, those who elected not to leave Japan were registered by the state and tracked under the new Foreign Registry Law (*gaikokujin tōroku hō*) as 'foreigners' (i.e., 'Special Permanent Residents' (*tokubetsu eijūsha*), or *Zainichi*), meaning they would be frequently fingerprinted, forced to carry officially-issued identification at all times, and legally subjected to instant police questioning at any time or place without probable cause. Four generations later, according to the Ministry of Justice, a full 18.7 per cent of all registered foreigners in Japan as of 2011 are still ethnically-cleansed *Zainichi* – meaning they remain generational 'foreigners' by dint of blood, without the right to vote, contribute to political campaigns, hold administrative jobs in many branches of Japan's civil service, or run for public office.²

Naturalization: The Racialized Process of Becoming a Japanese Citizen

Nationality Law Articles Five through Nine state that it is legally possible to become a Japanese citizen through naturalization. Characteristic of most naturalization processes into a nation-state, there are significant barriers to entry, including an extensive application process, officially-certified documents to retrieve and translate at cost, intrusive information about family history, income, and personal stability, and proof of non-criminality under paradigms set by the government. Japan's specific requirements for qualification are that the candidate: a) currently reside in Japan continuously for five years (with some exceptions made for spouses and children of Japanese nationals who do not hold Japanese citizenship themselves); b) be an adult (age twenty in Japan) and without criminal record in the country of current citizenship; c) be of 'upright conduct' (*kōdō ga sokō de aru*), however defined; d) have the wherewithal to support oneself and dependents; e) renounce other nationalities (with some exceptions made with permission of the Minister of Justice); and f) uphold and not advocate the overthrow of the Japanese Constitution or Government. There are some exceptions made for applicants who: a)

were born in Japan but are stateless by birth; b) are former Japanese citizens who 'lost' their citizenship but live in Japan; c) have been adopted as minors by Japanese citizens; d) have been married to Japanese for three years, and living in Japan for one to three years; and e) have done 'meritorious service to Japan'.³ However, it is still possible to become a Japanese citizen, and around 14,000 people (mostly Koreans and Chinese) per year are successful in this quest (Ministry of Justice, 2011).

However, a closer look at Japan's Nationality Law reveals not only the potential of arbitrary or racialized enforcement, but also evidence of how the naturalization process is systematically racialized. According to interviews I have conducted with successful and unsuccessful naturalization candidates (see also Higuchi and Arudou, 2012), there was an initial interview at the Ministry of Justice that functioned as a preliminary screening; potential candidates are told, after about an hour of questions about vital statistics, contributions, and commitments to Japan, immediately whether or not they may proceed to the next step of retrieving substantiating documents. Although the Ministry of Justice reports that most candidates who complete the full process receive Japanese citizenship, it is unclear how many of them are rejected at the first screening, due to, say, a lack of abovementioned 'upright conduct' adjudged *prima facie*. There is, moreover, no right of review or appeal – only re-application at a later date. Thus there is much ministerial latitude for personal bias in pre-selecting candidates.

One interviewee reported that he was told during his screening that because of his length of time in Japan, secure job, and fluent Japanese, he qualified for citizenship. However, subsequent interviews during the next year of collecting overseas documents, many questions to him (and other candidates) were intrusive. Questions included what their families eat, where and how they sleep, and what toys their children play with. Candidates are required to provide the police with photos of and hand-drawn maps to home and workplace. The application also had a personal survey of relatives (siblings and parents) asking whether they approved of their naturalization ('for Korean applicants,' an official at the Ministry of Justice told the author). Officials may also visit candidates' *Wajin* neighbors to inquire about how 'Japanese' they thought the candidates were (which means that other *Wajin*, whose only qualification to determine 'Japaneseness' was their own *Wajin* status, had input into the process). When Ministry of Justice representatives were asked what being 'sufficiently Japanese' entailed, e.g., wearing Japanese-style clothes or successfully ingesting some of Japan's more challenging delicacies, they answered, 'Just don't inspire a 'feeling of incongruity' (*iwakan*) in our officers.'

Candidates from Asian countries allegedly experienced even more intrusive procedures, such as home visits and refrigerator inspections from ministerial officials; two Filipina candidates said they were asked about their previous sexual partners. A second-generation *Zainichi* Korean in his fifties was allegedly rejected for citizenship because he had a history of parking tickets. Thus, the screening process was open to personal and racialized discretion, enabling anonymous bureaucrats to select for whatever arbitrary qualities would in their view suit the Japanese State.

Legal Renunciation/Revocation of Japanese Citizenship and *Wajin* Privilege

Japan's Nationality Law also allows for renunciation and unilateral revocation of citizenship. For example, dual nationality is not permitted. According to Articles Fourteen through Sixteen, if a child (of, for example, an international marriage) has two nationalities, the child must have surrendered one of them with written proof to the Ministry of Justice within two years of reaching adulthood; if not done promptly and correctly, criminal penalties, including

revocation of Japanese citizenship, can apply if the law is enforced. Also, according to the law, Japanese citizens who take out (or choose) another citizenship must also declare it to the government and renounce Japanese nationality.⁴

However, *Wajin* enjoy significant advantages under the Nationality Law. Notwithstanding the entitlement-by-blood privileges that are the definition of a *jus sanguinis* system, foreigners with Japanese blood ties (as in, *Nikkei* diaspora Japanese from overseas) get a faster track for obtaining nationality (Article Six), as do former citizens (Article Seventeen; this is not possible, for example, in the United States).⁵ *Wajin* children of international marriages often keep dual nationality beyond the age of twenty due to unenforced regulations; moreover, those who lose nationality can petition to have it reinstated. Furthermore, under Article 2.3, babies born in Japan whose nationality is unknown, or whose parents are unknown, are by default Japanese nationals (which leads to a conundrum when visibly Non-*Wajin* babies are left in the hospital ‘baby hatches’ for abandoned children, operating in Japan since 2007; incidentally, this loophole is the only way Japanese citizenship may be technically acquired by *jus soli*).⁶

An Example of *Wajin* Privilege under Japan’s Nationality Law: The Alberto and Aritomi Fujimori Cases

A clear case of *Wajin* privilege under the Nationality Law, according to Anderson and Okuda (2003), is that of former Peruvian President Alberto Fujimori, born in Peru to two Japan-born émigré *Wajin* parents. Fujimori was reportedly a dual citizen of Japan and Peru due to his parents registering him in Kumamoto from within Peru as a child. In 2000, after a decade in office laden with allegations of corruption and human rights abuses, Fujimori infamously resigned his presidency via a Tōkyō hotel room fax and declared himself a Japanese citizen. Despite holding public office overseas, in contravention of Nationality Law Article 16.2, Fujimori received a Japanese passport a few weeks afterwards (when most applications take a year or two to process).⁷ Then, despite international arrest warrants, Fujimori lived a luxurious lifestyle, free of the threat of extradition, with his fellow naturalized brother-in-law Aritomi⁸ in Tōkyō’s high society until 2005 (Anderson and Okuda, *ibid*, pp. 308-10).⁹ Although the media assigned cause to political connections, e.g., ‘favorit[ism] among conservative politicians... enamored with the idea of a man with Japanese ancestry reaching political heights abroad,’¹⁰ Fujimori’s case is nevertheless one of *Wajin* privilege. This is in contrast to scenarios under Japan’s nationality regime where even half-*Wajin* children caught in bureaucratic registration dilemmas (such as being born of one North Korean parent)¹¹ have been rendered *stateless* due to geopolitical conceits, without legal protections of any country.

Japan’s Registry Systems and the Potential Exclusion of Mixed-Blood Citizens

Japan’s registry systems have also presented a barrier to children being listed on a Family Registry (*koseki*), an act required for Japanese citizenship. Until 1985, citizenship could only pass through a Japanese-citizen father, not a Japanese-citizen mother, which disqualified all children from relationships between non-citizen men and Japanese-citizen women. After 1985, the Nationality Law was amended to allow any children born to Japanese-citizen mothers to have Japanese citizenship automatically conferred.¹² For Japanese-citizen fathers, however, getting official recognition of paternity remained an issue, as illegitimate children (*hi chakushutsu ji*)

born out of wedlock to non-citizen mothers either had to have Japanese paternity formally acknowledged by registry at a government office before birth, or within 14 days of birth¹³ as per Article Forty Nine of the Family Registry Law.¹⁴ If not, the child would not be legally recognized as a Japanese citizen. Modern methods independent of the state used to establish paternity, such as DNA testing, are still not officially recognized.¹⁵ Further complicating matters is Article Twelve of the Nationality Law, which states that a Japanese national born in a foreign country acquiring foreign nationality by birth shall be denied Japanese nationality, unless properly registered at a government registry office within three months of birth, as per Family Registration Law Article Forty Nine. Thus, bureaucratic registry convenience is legally given priority over biological fact, providing a special hurdle for mixed-blood *Wajin* children – for if both parents giving birth overseas were Japanese citizens only, Article Twelve would not apply.¹⁶

Supreme Court 2008 Interpretation of the Nationality Law: Citizenship Required for Human Rights in Japan

Other recent developments have made clear that human and civil rights in Japan are predicated upon having Japanese citizenship. Japan's Supreme Court, in a landmark decision in June 2008, declared unconstitutional a clause in Article Three requiring acknowledgment of *Wajin* paternity through marriage. That is to say, enforcement of the Nationality Law could no longer deny Japanese nationality to a child of a non-citizen woman and a *Wajin* man who had been born out of wedlock (or else had not been properly registered before birth).¹⁷ The Supreme Court's express legal reasoning behind declaring this situation unconstitutional was, *inter alia*, that a lack of Japanese nationality is the cause of discrimination, and that obtaining Japanese nationality is essential for basic human rights to be guaranteed in Japan.¹⁸ This systematic linkage between rights and citizenship has also been performatively reaffirmed in pinpoint examples, such as the government's biased Prime Ministerial Cabinet surveys of human rights in Japan that portrays rights for 'foreigners' as optional;¹⁹ and, famously, a police prosecutor in Saga Prefecture admitting, in 2011, 'We were taught that... foreigners have no human rights' when under police detention and interrogation.²⁰

Effects of Racialized Citizenship Laws: Human Rights in Japan are Predicated on the Idea that Some People are Not 'Human'

It is important to emphasize what the Supreme Court has clearly stated above: *Human rights in Japan are not linked to being human; they are linked to holding Japanese citizenship.*²¹ That is the crux of this article. Therefore the process of granting, restricting, or denying citizenship to select people is the chokehold the nation-state regime has over the enforcement of civil and political rights and privileges in Japan.

Consequently, the requirement of racialized *Wajin* blood ties in order to be a citizen (thus treated as a human, with equal protection under the laws and the Japanese Constitution) is at the root of Japan's hegemonic discourse of homogeneity and monoethnicity. When 'Japan' claims that it contains 'ethnically pure people' (*tan'itsu minzoku*), it is denying the existence of domestic diversity (even officially stating to the UN that ethnically-diverse people in Japan are not citizens (Ministry of Justice, 1999)), thus justifying the unequal legal treatment of non-'Japanese' in society. It is thus the embeddedness of this notion – an 'embedded racism' – that

establishes, legally enforces, and constantly reaffirms ‘Japaneseness’ through a systematized process of differentiation, ‘othering’, and subordination. From this arises the racialized mindset that *Wajin* ‘look’ a certain ‘Japanese’ way, and therefore people who don’t ‘look Japanese’ must not be ‘Japanese’. This in turn justifies the mindset that ‘foreigners’ will not only be treated differently in a legal sense, but also *ought* to be treated differently in a normative sense. For ‘Japanese’ children of international marriages, who may or may not ‘look Japanese’, this situation exposes them to possible racialized and subordinated treatment as phenotypical ‘Non-*Wajin*’.

This racialized dynamic has other legal effects on the status of minorities in Japan. In fact, it has only been since the end of World War II that Japan has claimed its society is ‘monoethnic’ and ‘homogeneous’ as part of its national narrative (Befu, 2001; Ōguma, 2002). Counterevidence to this claim is officially downplayed: Japan’s National Census (*kokusei chōsa*) only measures for citizenship (Arudou, 2010) – not ethnicity or national origin (which renders *Wajin* of diverse backgrounds as invisible). Japan’s demographers and population scientists do not count ‘foreigners’ or consider ‘immigration’ (*imin*) as part their policy proposals (Arudou, 2009; Yoshida, 2010). Despite at least three cases of adjudged ‘racial discrimination’ (*jinshu sabetsu*) in Japan’s courts (i.e., the Ana Bortz Case (Webster, 2007a), the Otaru Onsens Case (Webster, 2007b), and the Steve McGowan Case (Webster, 2007c)), due to ‘Japanese Only’ signs and rules up on businesses throughout Japan that exclude even Japanese citizens by phenotype,²² the government still states that nobody in Japan is covered by the UN Convention on Racial Discrimination (Ministry of Foreign Affairs, *ibid*). It was not until 2008 that Japan’s parliament acknowledged Hokkaidō’s Ainu as an indigenous people in Japan.²³ Japan has no law against racial discrimination in its Criminal or Civil Code (Arudou, 2006), and no laws against hate speech (*ken’o hatsugen*) (Ministry of Justice, 2001) to protect people from racialized abuse. Thus, minorities and non-citizen residents are not merely disenfranchised in Japanese society, *they have been rendered officially invisible in Japan* in terms of Family Registry, Resident Registration (*jūmin kihon daichō*) (until 2012: Higuchi and Arudou, 2012), National Census, demographic science and even local population tallies.²⁴ This ‘hegemony of homogeneity’ in Japan (Befu, *ibid*) creates a milieu that is generally closed to minority voices, where the *Wajin* majority, largely ignorant about the realities of life for Japan’s ‘invisibilized’ minorities, generally view Non-*Wajin* residents as elements exogenous to Japanese society. These issues will be the subject of future articles by the author utilizing CRT as a theoretical framework.

This degree of disenfranchisement is arguably more dramatic than issues of ‘race relations’ seen in other societies, because Japan officially states (Ministry of Foreign Affairs, 2001) that since there are no other races in Japan to have ‘relations’ with, *ergo* there can be no racism in Japan. In this context, CRT, when applied through the lens of ‘*Wajin* Studies’, becomes valuable as an analytical paradigm to expose Japan’s legally-grounded dynamic of ‘embedded racism’.

Conclusion

As this article argues, the reason for the disenfranchisement to the point of invisibility for minorities in Japan is the normalization of ‘embedded racism’ within Japanese society, beginning elementally with Japan’s Nationality Law, and, according to CRT, percolating through Japanese society’s power structures to the point where stratification and disenfranchisement of minorities are what make Japanese society ‘work’ (Delgado and Stefancic, 2001). The

overwhelming dominant position of *Wajin* in society has created hegemonic discourses of Japan's homogeneity, and the racialized legalization of this discourse has made Japan unable to protect Japanese society from racial discrimination – even if the victims happen to be Japanese citizens. The Japanese who come into contact with Non-*Wajin* soon become aware of this dynamic. According to interviews by the author and eyewitness accounts, quiet warnings against international marriage on the interpersonal level (found in many experiences of expressed trepidation by *Wajin* families facing a marriage proposal from a 'foreigner') include considerations of how complicated 'mixed-blood children' (*konketsuji*, *hāfu*) may find life growing up in Japan – for better, as 'cute'; for worse, as bullied *gaijin* (the racialized common-use term for 'foreigner').²⁵ In either case, people who fall into the Non-*Wajin* category in Japanese society will perpetually be made self-conscious for being 'different', set apart from 'normal' society as 'special', and vulnerable to being treated differently, even adversely, with insufficient legal protection from unequal treatment.

Viewing such issues through a CRT lens, this research currently finds no resolution to this situation. Minorities made invisible within a society's power structure will also have their interests made invisible. Under CRT's concept of 'interest convergence', where the interests of concerned parties to an issue converge enough for the powerful to concede some power to the less powerful, it remains unclear when, or even if, the potential interests of *Wajin* and non-*Wajin*²⁶ could ever converge to compel *Wajin* to cede some degree of privilege, and to allow Non-*Wajin* to enjoy anything beyond perpetual 'outsider' status. Thus there will be no civil or criminal law passed outlawing and punishing racial discrimination, and the abovementioned 'Japanese Only' signs and rules will remain extant in Japan – since there is neither legal sanction nor sufficient social opprobrium to force them down.

This is probably not sustainable, due in part to demographics. Japan's aging society needs people regardless of phenotype to keep Japan's economy vital and solvent (Sakanaka, 2007). Although CRT dictates that racism is 'the usual way society does business', what makes a society 'work' (Delgado and Stefancic, 2001, p. 7), in Japan's case, 'embedded racism' will be what makes Japanese society 'not work'. It is only a matter of time before the situation reaches a tipping point, as Japan's economy continues to shrink, and its Asian neighbors increasingly outcompete Japan in its traditional export markets. However, it is unclear when 'interest convergence' will come, and if it will come in time to pull Japan up from an impending economic tailspin. In sum, Japan's 'blind spot' towards accepting 'outsiders' will mean that its perpetual policy failure in countermending 'embedded racism', by not acknowledging and effecting long-overdue legal protections for Japan's minorities, will continue for the foreseeable future.

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Notes

¹ There are, naturally, other tenets in CRT's very broad spectrum of disciplines, but the above are the tenets germane to this article. Given its roots in dissent and diversity, CRT as a multidisciplinary umbrella theory is flexible enough in its application within academic disciplines to allow for a selection of approaches.

² The conditions of Japan's *Zainichi* are an instructive illustration of Japan's perpetual and self-sustaining 'othering' dynamic. Although naturalization for *Zainichi* is an option, there are still stigmas attached both by *Wajin* (including media which speculates on which Japanese celebrity or sports figure is 'really a Korean', with careful considerations of semi-established 'Korean' phenotypes), and by the *Zainichi* communities themselves; many of the older generations consider naturalizing to be an insult given their colonial contributions to the former empire, or to be an identity sacrifice, since Japan does not permit dual citizenship; consequently they would have to give up their Korean citizenships, many cultural affiliations, and (for decades after the war) even the expression of their names. Another reason for not naturalizing is inertia: living as a disenfranchised segment of Japanese society has simply become 'normalized' for many *Zainichi*. A brief discussion of the reasons why *Zainichi* are disinclined to naturalize is at Morris-Suzuki (2010, pp. 233-5). A tangentially-related but illuminating discussion of how 'ethnicities' in general are self-policing communities that not only 'other' and racialize themselves, but also do so under incentive systems created by the hegemonic majority in a society, can be found in Balibar and Wallerstein (1998), Chapter 4.

³ These odd loopholes allow for fast-track exceptions, such as for Nobel Prize winners and imported athletes representing Japan in the Olympics, in the name of recognizing *Wajin* roots and allowing for the political externalities of national pride.

⁴ William Wetherall disputes this interpretation of 'renunciation'

(http://members.jcom.home.ne.jp/yosha/yr/nationality/Dual_nationality.html, accessed 25 July 2012), saying for example that the converse, dual nationality, is 'not forbidden, unpreventable, and tacitly permitted,' because the government works under a 'pragmatic recognition of its inability to force Japanese nationals to renounce other nationalities'. He disputes the government's power of revocation under the Nationality Law between the semantics of 'abandoning' (*hōki*) versus 'revoking' (*ridatsu*) versus 'choosing' (*sentaku*) Japanese nationality. In other words, in Wetherall's read, as far as the government is concerned, the only issue is the 'choice' or 'revocation' of Japanese nationality, not the 'revocation' or 'abandonment' of foreign nationalities, so the government has no power to force dual nationals to 'abandon' foreign and 'choose' Japanese. That said, the Nationality Law nevertheless officially demands the 'choice' of Japanese nationality only, and does not allow citizens to 'choose' other nationalities without (in principle) 'losing' (*sōshitsu*) Japanese nationality. Parts of this law are backed up by criminal penalties for noncompliance (Article Twenty) and direct permissions and punishment by the Minister of Justice (e.g., Article Sixteen), meaning that whether or not the government chooses to enforce the Nationality Law remains at their 'discretion' (*sairyō*). However, Japan's administrative branch has great extralegal power to 'clarify' laws through ministerial directive (Johnson 1994). This enables bureaucrats, acting on behalf of the Minister of Justice, to activate or strengthen formerly dormant sections of the law given the exigencies of current political policy.

⁵ United States Department of State, personal communication, January and March 2011.

⁶ See 'Foreign baby left at 'baby hatch'.' Kyodo News, 8 September 2008; '*Akachan posto ni gaikokujin no kodomo: Kumamoto-shi no Jikei Byōin.*' 47News.jp, 8 September 2008. Vaguely, the 'foreignness' of the baby was determined by the media as due to the unknown parents reportedly being *Zainichi*.

⁷ The government expedited the process by claiming the 'Master Nationality Rule', an interpretation of Article Four of the League of Nations Convention (1930) on *Certain Questions Relating to the Conflict of Nationality Laws*, where a state has the option to recognize a dual national as a sole national if it so chooses, as long as the person in question has the nationality of that state. The Japanese government chose to recognize only Fujimori's 'Japanese nationality', based upon childhood family registration in Kumamoto from abroad, which is also in contravention of the Nationality Law. The government also claimed that under the 1985 revision of the Nationality Law, which permitted citizenship to pass through the Japanese mother's blood as well as the father's, that children with multiple nationalities had until the end of 1986 to declare or forfeit Japanese nationality; those who declared nothing would be assumed to have retained Japanese nationality and forfeited all others. Since Fujimori had not declared either way, he was reportedly grandfathered in. See 'The many faces of citizenship.' Japan Times, 1 January 2009. See also Anderson and Okuda (*ibid*), who conclude that Fujimori's Japanese citizenship was legally binding, as he had never notified the Japanese government of his intent to give it up, and the Japanese government had declined to notify him that he had lost it.

⁸ See also Calvin Sims, 'Fugitive Fujimori relative is shielded by Japan,' New York Times, 19 July 2001, regarding the case of Fujimori's brother-in-law and former Peruvian Ambassador to Japan Victor Aritomi Shinto's expedited naturalization into Japan. Although Anderson and Okuda (*ibid*) conclude that Fujimori's Japanese citizenship was

not necessarily a politically-motivated move (albeit one of government 'discretion' not to *a priori* notify Fujimori of his lost citizenship), since he legally retained it by not giving it up, the authors also conclude that Aritomi's example was of dubious legal standing, since it was a naturalization procedure (not a latent holding of Japanese citizenship) that a) took only six months, much less time than average, and b) was awarded despite an outstanding international arrest warrant, in violation of the Nationality Law's requirement for 'upright conduct'.

⁹ There is an even more curious epilogue. Reportedly bored with his Tōkyō lifestyle, Fujimori renewed his Peruvian passport and flew to Chile in 2005 to stand for election *in absentia* in Peru, whereupon he was immediately put under arrest pending extradition. He lost the Peruvian election, but was able to run for election *in Japan* in absentia in 2007 (where he lost again). Then Chile extradited Fujimori to Peru, where he was ultimately sentenced to prison for 29 years for *inter alia* abuses of power, murder, and kidnapping.

¹⁰ See "Fujimori dismisses Interpol notice." Associated Press, 30 March 2003.

¹¹ See '24 defectors from DPRK still stateless: Prejudice rife in catch-22 situation', Yomiuri Shimbun, 13 June 2007.

¹² Another important amendment to the Nationality Law took place in 2008, when the Supreme Court ruled that nationality could be conferred even when the paternity of a child of international marriage was not recognized by a *Wajin* father before birth, or when paternity was not properly registered after birth. Children born to *Wajin* mothers, on the other hand, have since 1985 been automatically granted Japanese citizenship, regardless of the nationality of the father or their marital status. See 'Top court says marriage requirement for nationality unconstitutional,' Kyodo News, 4 June 2008.

¹³ Acknowledgment of Japanese paternity after birth is a relatively new development, for until 2008, Japanese fathers of illegitimate children with non-citizen mothers could only register their children as their own if they acknowledged paternity before birth. A Supreme Court judgment on 4 June 2008 declared that this was an unconstitutional violation of their human rights. The Nationality Law was amended accordingly later that year. That said, the window was extended to only fourteen days after birth, with further disqualifications placed upon children with non-Japanese citizenships added through a 2012 court decision, ostensibly due to a "false paternity" media scare in policy circles during 2008. See "Citizenship for kids still tall order." Japan Times, 5 November 2008; "Steps mulled for preventing false paternity." Yomiuri Shimbun, 26 November 2008; and "Nationality Law tweak lacks DNA test: critics." Japan Times 27 November 2008.

¹⁴ The procedures for this are the Japanese citizen father must take a signed and translated acknowledgment of paternity from the non-citizen mother to a Ward Office and submit a form for "Recognition of an Unborn Child" (*taiji ninchi*). The Ward Office will issue a "Certificate of Acceptance of the Recognition of an Unborn Child" (*ninchi todoke juri shōmeisho*). Once the baby is born, the father must take the birth certificate (translated if from overseas) and get an official registered Japanese birth certificate (*shusseidoke*). See *inter alia* Higuchi and Arudou (2012, pp. 270-3).

¹⁵ Japan's Civil Code Article 772 establishes that any child born within 300 days of a legal divorce is still legally considered as fathered by the ex-husband (regardless of nationality), without regard to actual paternity, meaning mothers must settle the often complicated process of divorce before starting families anew. See "New divorcees push for DNA testing to be allowed to prove paternity of newborn children." Mainichi Daily News, 8 January 2007; also "Nationality Law tweak lacks DNA test: critics." Japan Times, 27 November 2008. For more information on divorce proceedings in Japan, see Higuchi and Arudou (*ibid*, pp. 256-71), and Fuess (2004).

¹⁶ Several children with one Japanese parent claimed in Tōkyō District Court that Article Twelve of the Nationality Law was unconstitutional if their parents had been unaware of this requirement. On 23 March 2012, the court declared Article Twelve constitutional. This put a boundary on the abovementioned 2008 Supreme Court decision ruling the denial of Japanese citizenship was a violation of the human rights of Japanese citizens. See "Court rules nationality law on foreign country-born children legal." Asahi Shimbun, 25 March 2012.

¹⁷ See 'Top court says marriage requirement for nationality unconstitutional,' Kyodo News, 4 June 2008.

¹⁸ See also Iwasawa (1998, pp. 303), and Bryant (1991-2). Bryant's discussion of how the very definition of 'Japanese citizenship' (i.e., official *koseki* family registration) creates discrimination towards children born out of wedlock or insufficiently registered is enlightening.

¹⁹ See 'Human rights survey stinks: Government effort riddled with bias, bad science.' Japan Times, 23 October 2007. Mentioned therein is also a survey carried out every five years by the Ministry of Justice's Bureau of Human Rights, which asks leading questions that casts doubt on foreigners' grounds to have human rights, and consequently got responses indicating that a majority of the Japanese public 'does not believe that foreigners should have the same human-rights protections as Japanese.'

²⁰ See 'For the sake of Japan's future, foreigners deserve a fair shake', Japan Times, 6 December 2011; 'Schizophrenic Constitution leaves foreigners' rights mired in confusion', Japan Times, 1 November 2011; 'Yakuza

to gaikokujin ni jinken wa nai to oshierareta, *moto kenji ga bakuro shita odoroku beki 'shinjin kyōiku' no jittai*, Niconico News, 23 May 2011.

²¹ Doshisha Law School Professor Colin P.A. Jones concurs: '[T]he Japanese Constitution speaks of defining equality and 'fundamental human rights' as being conditioned on nationality rather than being human.' See 'Schizophrenic Constitution leaves foreigners' rights mired in confusion.' Japan Times, 1 November 2011.

²² See "The Rogues' Gallery of Exclusionary Establishments." Debito.org, at <http://www.debito.org/roguesgallery.html> (accessed November 20, 2012).

²³ See *inter alia* "In landmark move, Japan to recognize indigenous people." AFP, 4 June 2008; "Japan's new Ainu hope new identity leads to more rights." Christian Science Monitor, 9 June 9, 2008.

²⁴ See Tōkyō Nerima-ku Ward Office's population tally which excludes 'foreign' residents online (<http://www.city.nerima.tokyo.jp/shiryo/jinko/data/area/200810.html>, accessed July 23, 2012).

²⁵ See Japan Times, 'The case for *gaijin* as a racist word', part one 5 August 2008, and part two 2 September 2008.

²⁶ The most effective tool has been international pressure, known as *gaiatsu*, where international public shame has occasioned many a domestic law (albeit mostly without enforcement mechanisms therein, *cf.* the Equal Employment Opportunities Law of 1985, which has no criminal penalties). See Peek (1991, 1992). Moreover, debate about Japan's aging society and demographic crisis, where there are too few young people to pay taxes and support of an elderly society, have happened for more than a decade in Japan, with no perceptible shift towards favoring immigration. See 'Demography vs. demagoguery', Japan Times, 3 November 2009.