

A Thesis Submitted for the Degree of PhD at the University of Warwick

Permanent WRAP URL:

<http://wrap.warwick.ac.uk/107791>

Copyright and reuse:

This thesis is made available online and is protected by original copyright.

Please scroll down to view the document itself.

Please refer to the repository record for this item for information to help you to cite it.

Our policy information is available from the repository home page.

For more information, please contact the WRAP Team at: wrap@warwick.ac.uk

**THE BRITISH LIBRARY
BRITISH THESIS SERVICE**

COPYRIGHT

Reproduction of this thesis, other than as permitted under the United Kingdom Copyright Designs and Patents Act 1988, or under specific agreement with the copyright holder, is prohibited.

This copy has been supplied on the understanding that it is copyright material and that no quotation from the thesis may be published without proper acknowledgement.

REPRODUCTION QUALITY NOTICE

The quality of this reproduction is dependent upon the quality of the original thesis. Whilst every effort has been made to ensure the highest quality of reproduction, some pages which contain small or poor printing may not reproduce well.

Previously copyrighted material (journal articles, published texts etc.) is not reproduced.

THIS THESIS HAS BEEN REPRODUCED EXACTLY AS RECEIVED

Citizenship and Nationality in Britain and Japan:
A case study of the position of former empire subjects

By

MOEKO WAGATSUMA

A THESIS SUBMITTED TO THE FACULTY OF SOCIAL STUDIES
OF
THE UNIVERSITY OF WARWICK
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

Centre for Research in Ethnic Relations,
October 1998

Table of contents	
ACKNOWLEDGEMENTS	vii
GLOSSARY	viii
ABSTRACT	ix

Chapter 1: Introduction

1.1 Terms of reference	1
1.2 Hypotheses	2
1.3 Background	5
1.4 Multinational state vs nation-state	7
1.5 Subject status and holding of an empire	13
1.6 Tradition of holding monarchy	15
1.7 Learning from experience	17
1.8 'Minorities' in Japan	20
1.9 Summary	22
1.10 Construction of the thesis	23

Chapter 2: Literature Review on Citizenship and Nationality

2.1 Introduction	26
2.2 Citizenship	28
2.3 Citizenship and nationality	42
2.4 Nationality	48
2.5 Nationalism theories	52
2.6 The concept of nation in Britain	55
2.7 The concept of nation in Japan	58
2.8 Conclusion	60

Chapter 3: Method and Methodology

3.1 Introduction	63
3.2 Comparative studies in general	63
3.3 Comparative studies of Britain and Japan	68

3.4 Common law/continental law	72
3.5 Codified/uncodified constitutions	74
3.6 'Race' vs <i>kokuseki</i>	77
3.7 The role of the courts	85
3.8 Impact on public policy	86
3.9 Translation note	90
3.10 Method in practice	93
3.11 Summary	96

Chapter 4: Rights and Residence - Britain

4.1 Introduction	98
4.2 Nationality rules	100
4.3 Race relations and nationality	106
4.4 Immigration and rights	111
4.5 Public funds	114
4.6 'Ordinary' residence	116
4.7 A comparison with Japan	122
4.8 Conclusion	126

Chapter 5: Rights and Residence - Japan

5.1 Introduction	129
5.2 A demographic overview	131
5.3 The historical background	136
5.4 1952 San Francisco Peace Treaty	137
5.5 The 1965 <i>Kyotei eiju</i> (agreement permanent residence)	140
5.6 The removal of nationality criterion in 1982	141
5.7 Fingerprinting and alien registration	142
5.8 The Special Immigration Law, 1991	146
5.9 When is <i>teiju gaikokujin</i> ?	148
5.10 Son Jin-du case and social rights	151
5.11 Chong Hyang-kyon case and political rights	157
5.12 Chong Hyang-kyon(1996/5/28) case	161

5.13 Conclusion	164
-----------------	-----

Chapter 6: Patriality - Britain

6.1 Introduction	168
6.2 Comparative aspect	169
6.3 The areas of patriality	171
6.4 Patriality: context and background	175
6.5 Patriality and Citizenship	186
6.6 The role of courts in Britain	190
6.7 Claims to patriality	191
6.8 Decolonisation	192
6.9 Commonwealth citizens	193
6.10 Secondary immigration	195
6.11 Spouses	197
6.12 Adoption and the case of children	199
6.13 Conclusion	201

Chapter 7: Patriality - Japan

7.1 Introduction	206
7.2 Birth and nationality statistics	211
7.3 Naturalisation	211
7.4 Marriage	214
7.5 The function of <i>koseki</i> , its backgrounds and effects	215
7.6 Attempts to restore 'ethnic names'	222
7.7 Recognition of Japanese nationality suits-why these are in question	225
7.8 Former empire subjects	227
7.9 War-displaced women and war orphans	228
7.10 Stateless children	229
7.11 Some suits on recognition of Japanese Nationality	230
7.12 Case 1	231
7.13 1994 Recognition of Japanese Nationality suit	235
7.14 Conclusion	240

Chapter 8: Conclusion

8.1 Summary	244
8.2 Discussion	247
8.3 'Race' vs <i>kokuseki</i>	248
8.4 Social vs legal discrimination	250
8.5 Denizenship and patriality	251
8.6 The impact on public policy	256
8.7 Significant cases	256
8.8 The role of courts in Japan	258
8.9 The role of courts in Britain	259
8.10 In terms of policy	259
8.11 Impact of 'withdrawal from empire and the post-colonial adjustment' to citizenship and nationality legislation	260
8.12 Impact on the concepts of citizenship and nationality in Britain and Japan	261

Appendixes

Appendix 1: Letter to Mr. Hondo	264
Appendix 2: Chronology of Japanese citizenship and nationality legislation	268
Appendix 3: Chronology of Japanese dynasties	270
Bibliography	271

Tables and charts	
Table 4.1 Acceptances for settlement	123
Chart 4.1 Acceptances for settlement 1979-91	126
Chart 5.1 Permanent residents	132
Chart 5.2 Alien Registration	132
Chart 5.3 Numbers of ex-Japanese subjects	133
Figures 5.1 Registered alien distribution by nationality, sex and age	135
Figures 5.2 Entitlement and restriction 1	143
Figures 5.3 Entitlement and restriction 2	144
Chart 7.1 Japanese emigrants	209
Table 7.1 Naturalisation of Koreans	213

ACKNOWLEDGEMENTS

I would like to express my gratitude to everyone who helped me to complete this thesis.

Thanks to...

My supervisor at Warwick, Prof. Zig Layton-Henry, for his encouragement and support;

and also Prof. Robin Cohen for his advice;

My teachers in Japan, in particular, Prof. Tanaka Hiroshi, at Hitotsubashi University, for Japanese materials;

also, Mr. Kim Kyeong-duk and Mr. Hondo Ryoichi in Japan for their expert information;

My editor Ms Caroline Gifford, for English correction;

My parents and my brother for their continuous support;

My friends at Warwick and Warwick graduates for their time with me,

and finally...special thanks to my close friends at CRER and freddy-san.

GLOSSARY: LIST OF JAPANESE WORDS

<i>ainu</i>	Indigenous people in Japan
<i>burakumin</i>	Hamlet people, outcasts
<i>ie seido</i>	House system
<i>kihonteki jinken</i>	Basic human rights
<i>kokuseki</i>	Japanese legal nationality
<i>kokuseki joko</i>	Nationality clause
<i>koseki</i>	House registry
<i>koseki ho</i>	House registry law
<i>kyoteki eiju</i>	Agreement permanent residence, by 1965 Act
<i>nihonjinron</i>	Discussion on Japanese
<i>nikkeijin</i>	Japanese descendants
<i>sakoku</i>	Seclusion
<i>teiju gaikokujin</i>	Settled aliens
<i>tenno</i>	monarchy
<i>tokubetsu eiju (sha)</i>	Special permanent residence, by 1991 Act
<i>tokurei eiju</i>	Exceptional permanent residence, by 1981 Act
<i>tsuu mei</i>	Japanese style name
<i>uji</i>	Surname

In the main text, Japanese and Korean names are put in customary order:
surname first, forename last, except those works written in English.

ABSTRACT

This thesis aims to draw a comparison on Britain and Japan on issues of citizenship and nationality for the former empire subjects. In multi-national state Britain, those of New Commonwealth immigration issue is mainly conceptualised as 'racial' topics, while in nation-state Japan, Koreans and Taiwanese or aliens' issue is mainly conceptualised as legal 'nationality' topics.

The framework is set from the Japanese 'nationality' perspective, in order to point out what are missed in the 'race' framework, in particular, when they are applied to the Japanese context. Discussion of formal rights in Japan is divided in two as rights with regard to residence, and their right for citizenship status. In chapter 2, I discuss that the former is similar to denizenship discussion while the latter is similar to patriality topic.

The methodology section explores what is the best way to conduct a comparison between Britain and Japan on these citizenship and nationality issue, as well as considering what are the main factors in each country to make some impact on public policy of the government. I consider court cases are important tool for minorities in Japan, while in Britain, pressure through the parliament seems much more influential.

The research chapters explore the topics of denizenship and patriality of each country, the British chapters examine the impact of the 1971 Immigration Act, while the Japanese chapters examine the impact of the 1952 San Francisco Peace Treaty and the following circular, and see whether minorities formal rights has been changed after since or not.

The conclusion examines whether the withdrawal from empire had some significant impact of citizenship and nationality legislation as well as the concepts in Britain and Japan. It argues that the impact of the former empire subjects on legislation has been slow and continuous in Britain, while in Japan there was a major change once for all, but the results are continuous. The two concepts are slowly converging in Britain, while in Japan, they are gradually diverging.

Chapter 1: Introduction

1.1 Terms of reference

In the modern world, nationality and citizenship are crucially important issues. They are concerned with an individual's identity and membership in a national community as well as giving them a legal relationship with a state. To be stateless is to be without security and rights - almost to be a non-person. Certainly, citizenship and nationality have enormous effects in the international politico-legal community: for instance, when we travel abroad, a passport or internationally accepted identity documents are essential to certify who we are, and where we come from. In addition, such documents prove that we have rights of residence, or entry to a state and the right to protection. However, some people may migrate from one country to another and remain there for the rest of their lives. Others might be born in a country to which they do not belong, and in the worst case, may be treated as 'aliens' from birth. But to what extent, can these systems or regulations of state affect individuals? And how important are they in practice? Some authors argue that, 'globalisation will proceed in "internationalising" economies and the movement of people, but the framework of laws lag behind' (discussion in *Horitsu Jiho*, 1985). States are still powerful actors on the world stage. They decide the legal framework for migration and citizenship laws.

In this study, the main focus is on the treatment of 'former empire subjects' by the governments of Britain and Japan. They are sometimes described as 'minorities' in host societies. These 'former empire subjects' have stronger ties with the mother/host country than so-called guestworkers who are labour migrants recruited by advanced

industrial countries to meet labour shortages. They have a common history, language and education and often acquire a common citizenship although that may be temporary. For instance, in the British case, Miles (1993:132) argues that New Commonwealth migration, which began in the late 1940s is 'anomalous' since at 'the time that it began, it was a migration of British Subjects'. This was similar to the Japanese situation, where Onuma states that 'when Koreans came to Japan, it was internal movement within the Japanese territory' (Onuma, 1979a:110).

The migration of British colonial subjects is clearly a different case from other European countries and in particular, the case of guestworkers. However, in the gradual post-colonial adjustment such as voluntary abolition of an empire, or like Japan, as a result of losing a war, former empire subjects have been treated on the same level as guestworkers or aliens. Apart from that, the experience of holding an empire or of having former empire subjects may involve the problem of so-called second-class citizenship. Bearing these points in mind, I shall conduct a comparative study of Britain and Japan on citizenship and nationality issues.

1.2 Hypotheses

The major hypothesis of this study is as follows. The withdrawal from empire by both Britain and Japan which occurred after the World War II and the subsequent 'post colonial adjustment' has had a major impact on legal, political and popular definitions of citizenship and nationality.

In the case of Japan, the withdrawal from empire was rather precipitous owing to defeat in the war and the resulting loss of overseas territories. In Japan, the Peace Treaty of 1952 and the subsequent internal legislation was an immediate and critical blow to colonial subjects acquired by Japan, particularly Koreans and Taiwanese. In the British case, the withdrawal from empire began soon after the war in 1948 but was a prolonged process. In Britain a series of events and legislative acts have had a large cumulative effect on the citizenship and nationality of colonial subjects and especially on their immigration rights.

With this hypothesis, this thesis will address a number of questions. Firstly, matters relating to former empire subjects are conceptualised in Britain, as 'racial' issues, while in Japan, such matters are connected with '*kokuseki*' (legal nationality). The term 'former empire subjects' means exclusively 'those of different ethnicity' (Kibata, 1992); in the Japanese context, mainly Koreans and Taiwanese, while in the British case, people from New Commonwealth countries. The question then is, to what extent, this 'race' and '*kokuseki*' framework of Britain and Japan is useful in understanding the specific relationship of 'citizenship' and 'nationality' in each country?

The results of withdrawal from empire on the status of former empire subjects were, in the British case, the creation of 'second-class citizenship', while in the Japanese case, the creation of 'aliens'. Most of those who were influenced by the withdrawal, in the British case, remain outside Britain, while in the Japanese case, the majority have remained inside Japan. The result of this is that, the status of former empire subjects in Britain is inextricably connected with the issues of 'entry control' (immigration) in

Britain, while in Japan, is connected with 'internal control' such as alien registration and naturalisation, a nationality issue.

Then, how is the process of the withdrawal from the empire comparable between Britain and Japan? What are the impacts of the withdrawal from empire on citizenship and nationality, and how can we observe these impacts? In this study, the above questions are tackled from the Japanese perspective. Discussion of those former empire subjects in Japan concerning their political, legal and social rights are divided into two areas: rights and residence and the acquisition or non-acquisition of Japanese nationality. In Japanese literature, the first topic examines the function of '*kokuseki joko*' (legal nationality criterion), while the latter topic considers the function of *koseki* (house registry), which has a function to identify those who are Japanese nationals. This approach is called functions of nationality (see Onuma, 1985). In English academic discussion, the issues are more likely to be rights of permanent residence and rights of descendants, or denizenship and patriality. Denizenship is defined as rights and entitlements of long-standing residents, regardless of their citizenship status, while patriality is defined as a right which comes from lineage and descent from formal citizens. Denizenship acts as a concept which separates citizenship from nationality, while patriality acts to connect citizenship and nationality. The importance of denizenship is growing due to the process of globalisation. On the other hand, the rights of patrials are continuously secured by many countries, including some European countries. This goes in the opposite direction of uniting two concepts of citizenship and nationality.

In order to make a comparison both simple and manageable, this study will focus mainly on the 1971 Immigration Act in Britain¹ as a central focus for comparison with the 1952 peace treaty and following legislation in Japan. As both series of legislation are concerned with the principle of *jus sanguinis* and have had a significant impact on the status of the former empire subjects of different ethnicity, this comparison should be worthwhile.

In addition, from a methodological point of view, the study will also pay attention to the utility of legislation as well as case laws in solving the problems of majority-minority relationship in society, such as what kind of discussions took place during the process of preparing legislation—and what sort of problems were expected or not expected to occur following implementation of legislation.

1.3 Background

This section aims to put the thesis into context as well as to provide justifications for the research. As a background for contemporary study, it will be necessary to explore historical issues which relate to the formulation of citizenship and nationality in Britain and Japan. Firstly, Britain and Japan share historically important similarities such as insularity, which has given rise to notions of self-distinctiveness and geographical particularity (Shipman, 1971). Both of the countries under review have a similar geographical situation, lying off large continents, and share the notion that islands or

¹ I am aware of the importance of the 1962 as well as the 1968 Commonwealth Immigrants Acts, as the 1962 Act firstly restricted the entrance of Commonwealth Immigration, and had 'a decisive impact on the pattern of migration' afterwards (Anwar, 1986:9) and the 1968 Act firstly introduced the grand-parental clause for the further restriction. However, to make the comparison simple and manageable, I shall concentrate on the 1971 Immigration Act as a focus.

territories are protected and separated from the continents by the natural border of the sea. The sense of insularity has been increased by the unlikelihood of invasion from outsiders. In the British case, there has been no serious invasion since the Norman conquest in the eleventh century, while Japan had a long period of being closed to outsiders from the seventeenth century to the middle of the nineteenth century.

Secondly, Britain and Japan have strongly developed overseas trade (Shipman, 1971). Both have developed through maritime-mercantile-manufacturing endeavour and the service industries. In the Japanese case, shortage of natural resources such as oil led to development of trade and its main exports have long been manufactured goods. Furthermore, both countries are relatively densely populated. According to Norton (1994:6), the density of England in 1987 is higher than that of Japan. Due to the pressure of population and demand for resources, emigration from Britain in search of new sources of wealth had already started in the seventeenth century. In the case of Japan, during the Meiji period as well as just after the Second World War, there was substantial emigration overseas.

Religion has also played an important role in the history of both countries. In Britain, Protestantism has had an important influence in the creation of an English national identity, by excluding Catholics from the main political as well as economic arenas. The two revolutions in the seventeenth century were among the first in the world to limit the power of the sovereign. In the Japanese case, Shinto came to the main stage after Meiji restoration, in order to justify the monarchy's rule as well as later, to mobilise people. It was officially the state religion until Japan lost the war.

However, there are also significant differences between Britain and Japan. While Japan had an experience of seclusion from most parts of the world, Britain did not. While Britain was one of the victors of the Second World War, Japan was one of the losers. Sometimes, differences between subjects for comparison can illuminate similarities and both remain useful for comparison. For instance, even though Britain did not have a period of seclusion, it was the only country within Europe which was not defeated or directly occupied by another country during the two World Wars. Besides, Britain has avoided military invasion since 1066, which was greatly helped by its island situation. In other words, without the experience of seclusion or occupation by a foreign power, its experience provided a 'continuity of the regime' (Kavanagh, 1996:9) as well as sense of strong insularity, factors which have influenced Japan, too. As a preliminary discussion, let us look at the distinctive ways of nation-building in Britain and Japan, and in particular, its relation to nationality and citizenship issues.

1.4 Multinational-state vs nation-state

When we consider the process and style of nation-building, we can call the UK² a multi-national state, while Japan is more like a nation-state. In the case of the UK, most often 'the nation' is understood in the context of each of four nations--England, Scotland, Wales and Ireland.

² I am aware of the difference between 'the UK', which includes Northern Ireland, and 'Britain', as England, Wales and Scotland. In addition, I am also aware of the difference of its institutions in Scotland. However, as I am going to discuss 'immigration law', enforced in the UK, and 'British' nationality law at the same time, in the following, I shall use 'the UK' and 'Britain' interchangeably, when it is necessary.

The creation of 'Britain', as distinct from England, is well explored in Colley (1992), who argues that forging the British nation was completed between 1707 and 1837, with the link of 'mass allegiance' and 'the invention of Britishness', by wars against outsiders (mainly France) as well as a common religion - Protestantism. Colley also contends that 'Great Britain was an invention forged above all by war... time and time again, war with France... whether they hailed from Wales or Scotland or England,... into confrontation with an obviously hostile Other and encouraged them to define themselves collectively against it' and, 'increasingly as the wars went on, they defined in contrast to the colonial peoples they conquered, peoples who were manifestly alien in terms of culture, religion, and colour' (Colley, 1992:5).

Before then, England itself was unified in the eleventh century. Anglo-Saxon monarchs were established in the tenth century, and the monarchy was consolidated by the Normans. In 1707 the union of England (which had already united with Wales in 1277) and Scotland was achieved. Scotland had been an independent state for several centuries before, and the union was voluntary. Although the Scottish parliament ceased to exist, other institutions such as separate legal and education systems and church remained as they were. This was different from the Welsh case. Wales was incorporated into Britain earlier after gradual invasion, and Wales did not have a unified government before its Union with England (Birch, 1989:77).

Meanwhile, there were other important milestones. A strong monarchy was established during the Tudor period in the sixteenth century. In 1534 Henry VIII set up a national Church of England, subordinate to the state, and eliminated the role of the Roman

Catholic Church. There were two famous revolutions and the English civil war established its supremacy of parliament and this was confirmed by the constitutional settlement at the end of the seventeenth century, despite an attempt by groups to re-establish the divine Right of Kings, and in 1688, the constitutional revolution took place by which Britain enjoyed a constitutional monarchy and sovereignty lay in the hands of parliament (Kavanagh, 1996:5).

From 1707 onwards, British boundaries seemed settled and clearly marked out. The making of Britain was completed in 1837 when the external wars against France and Spain ended. Furthermore, these victories and the consolidation of the Empire reinforced the strong sense of pride as Britons - except for relations between Britain and Ireland, which remained complicated and controversial. Ireland never achieved acceptance as an equal part of Great Britain due to the dominance of Catholicism which has made Ireland suspect as a potentially disloyal ally. Ireland was 'never able or willing to play a satisfactory part in the invention of Britishness' as religion and war played an important role in forming the British national identity, and since religious antagonism was partially exploited politically (Colley, 1992:8). The Irish were regarded as 'exceptionally poor and backward' by English landowners (Birch, 1989:96), and at the time of the Glorious Revolution, Roman Catholic Irish, together with France, fought against the newly-crowned English (Protestant) king, which made English people hostile to the Irish. Some authors have argued that Ireland was treated as an 'internal colony' (Hechter, 1975) even after its formal union with Britain in 1801.

Japan, as stated earlier, is considered to be more of a nation-state. There are two views regarding when Japan was unified or created. Some consider that the period of seclusion (*sakoku*) from foreign countries in the seventeenth century at the time of Edo Shogunate (for instance, Oishi, 1977) was critical in providing relative stability and homogeneity thereafter until the nineteenth century. Others consider that the Meiji Restoration in the mid nineteenth century created the modern Japanese nation (for instance, Yamamuro, 1990). This study favours the second position, as concerning issues of citizenship and nationality, in which the systematic integration and incorporation of 'nation' (territory and people) was achieved during the Meiji period, and later by war. Moreover, the territory of Japan was clarified to the north as well as to the south during the Meiji period.

After the seventeenth century, the centralised Edo *Bakufu* (Shogunate) was established and a policy of seclusion was later introduced to preserve national unity and to maintain a stable regime by monopolising foreign trade. While this provided an environment for the formation of a 'unitary' culture compared to other countries, it led to a certain stunting of economic and military development. In 1854, the Japanese seclusion policy was firstly breached by the United States, and in its wake an 'expel the barbarians' movement arose. This was, however, crushed due to the inequality of military power. Then, each *han* (domain) started a modernisation programme, which led to the overthrow of the Shogunate and the restoration of *tenno*, the monarchy. The feudalistic structure was broken and the new centralised administrative and political system was established.

The *tenno* was restored in 1868, although the *tenno* himself had little direct impact on the process of transformation, for he was fifteen years old at that time (Lehmann, 1982:178). The ex-lower class of *bushi* (warriors) mainly from Choshu and Satsuma domain played an important role in this restoration. They had received a Confucian-oriented education, and the majority had also been educated by the previous shogunate school of western learning (Inoue et al. eds., 1991).

As the Meiji government was introduced by a military coup d'etat, it had to consider its legitimacy. The Meiji government brought the *tenno* who had kept silent for centuries and created a governing system 'according to' the *tenno*'s will. The *tenno* was placed above all people, and people were all equal under him (Inoguchi, 1993:52-3). The new government, which was composed from advanced domain leaders was authorised by the Meiji *tenno*, started to modernise the military, the constitution and the system of government and encouraged national integration through a programme of encouraging literacy and State Shinto-ism.

Regarding the territorial determination of Japan, in 1869 the northern parts, Hokkaido, began to be cultivated. Gradually the settlement of mainlanders went forward. In 1886, the whole of Hokkaido was put under the control of the 'Hokkaido agency', as one of prefectures of the Meiji government. Speaking of Hokkaido, Tamura (1992:99) regards it as an 'internal colony' because of its role as the destination for emigration as well as its abundant coal and marine products. With regard to the south, the Ryukyu was subject to both Satsuma domain and China (the Ching dynasty) until the Meiji period. In 1879, Ryukyu was abolished and was re-named as the Okinawa prefecture,

also under the control of the Meiji government. The belonging of 'Okinawa' was clarified by the Sino-Japan war later in 1895.

Since the Restoration, though Japan was not directly colonised by western countries, her economic subordination seriously compromised internal structures such as traditional industries. Given that the first aim of the Meiji government was to revise the unequal treaties, all reforms, starting from the modernisation programme, were directed to this effort. At that time, the 'national' slogan was, 'enrich the country and strengthen the army', which itself, implies its imperialistic connotation. Countries such as Britain, benefited from ensuing trade, and did not allow Japan to revise the treaties, especially on tariff autonomy. The only option that appeared open to Japan was to pursue an imperialist policy of its own by seeking colonies. Gradually, from the 1870s, Japan had small conflicts with China and Korea, and made Korea open the country, and later made Taiwan and Korea its overseas territories. This was the beginning of the incorporation of former empire subjects.

Internally, one of the important systems established was *koseki*. *Koseki* (house registry, or census registry) records private information such as individual and familial relationships for official purposes. It had an important role since the Meiji Restoration. By *koseki*, the traditional family system was given legal status. The values of loyalty, obedience and piety incorporated in this family system were sustained and used to define the relationship between individual and the state as symbolised by the 'Emperor' (Shipman, 1971:218). A family as a private unit suddenly became a unit of public institution. Conscription and suffrage were imposed according to this *koseki* registry.

This system has been used indirectly to check and exclude persons of different origin, and its function and significance will be described later in detail. In some ways, this institution is said to support the notion of 'blood', as a means of belonging to the nation, to the *tenno*, and to the legitimate regime.

1.5 Subject status and holding of an empire

Both Britain and Japan had the experience of holding an empire and of ruling, or being responsible for, their colonial subjects. Of the 'ethnic minorities' or, 'aliens' in the Japanese case, within Britain and Japan, a large proportion are from the former empire subjects. This point is quite important, as these former empire subjects should merit better treatment and as well should have received separate discussion from other guestworkers, who in many respects had weaker connections with their host countries.

Subject status prevailed over nationality during the imperial period. Usually, subject status can have a positive effect during the imperial period, since it can include non-nationals much more easily than nationality status can. However, once the empire was lost or declined it became just an image and a negative effect of subject status appeared in order to clarify 'subjects' and 'aliens'. Subject status did not necessarily mean equality for all. The idea of subject status in Britain is that the individual primarily owes allegiance and obedience to the crown rather than being an active citizen in charge of the political system (Kido, 1982:49).

British subject status, described by this allegiance of an individual to the British crown continued until 1948. The 1948 Nationality Act did not change the existing subject

status within the legislation. Until the 1960s, Britain was accepted as a homogenous society with a common set of values and historical continuity (Urwin, 1982:21). The feudal relationship based on the land became the source of Common law. The idea of 'historic right' (Imai, 1982:115) is bound up with 'vindicating and asserting their ancient rights and liberties' (Bill of Rights, 1689, quoted in Lively and Lively eds. 1994:177). The tradition of Common law is still influential in the former British territories. In case of England, legislation consistently 'opposed the categories of *subject* and *alien*, although the former category can be considered to embody the meaning of nationality' (Miles, 1989:428).

In Japan, subject status was lost by colonial people in the Peace Treaty of 1952 which ended the World War II. In the case of Japan, after the Meiji restoration in 1869, the feudal status of warriors, farmers, artisans, tradesmen and, outcasts (later, referred to as Burakumin) was normalised into two classes of peerage and commoners. The latter class included all those under farmers. However, status discrimination remained in practice. In particular, after the enforcement of the *Koseki* Act in 1871, the distinction of 'new commoners' for Burakumin, and 'ex-indigenous' for Ainu on the registry remained controversial. *Koseki* registration was initially conducted to restrict Christianity during the Edo period. First, the registration was organised by temples, then by shrines. In the Meiji period, the government established *koseki* as a centralised system.

The Meiji Constitution was promulgated in February 1889 by the Meiji *tenno*. The Meiji Constitution took Prussia as its model, which had the strong prerogatives of

Emperor. The Meiji Constitution's first article starts with 'the Great Japanese Empire is governed by the Emperor in perpetuity' (Article 1). Under this constitution, the people are referred to as 'subjects' (*shinmin*).

1.6 Tradition of holding monarchy

Almond and Verba (1963:37) see British people as accepting authority from above as well as having a participatory tradition, while Americans are much more active citizens (see also Turner, 1992). Both Japan and Britain have retained the monarchy in the course of their history unlike countries with a populist tradition such as France and the USA. In the British case, apart from the brief period 1649-60, England has had a monarchy since the tenth century, and the monarch used to have a real power. However, it is now 'a constitutional monarchy' which mainly has a ceremonial role. Naim (1988:9) argues that the 'British monarchy is genuinely important for British nationalism', because of the monarchy's continuation, popularity, and also because of its significant position for 'British national existence'. Naim explains:

...a personalised totemic symbolism was needed to maintain the a-national nationalism of a multi-national (and for long imperial) entity; and the 'crown' could effectively translate identity onto that 'higher plane' required by a country (heartland England) which has since the seventeenth century existed out of itself as well as in' (1988:11).

In relation to colonies, the role of monarchy was crucial. For instance, at the time when British colonies were considering independence, the Colonial office was attempting to keep them inside the Commonwealth. In order to 'make the colonial people want to remain within the Commonwealth' (CO875/50/3 160802), they should take every opportunity to use 'the links of tradition which bind the colonies to Britain and most

clearly show in the loyalty and respect of all the colonial peoples for the Royal Family' (ibid.)

In the Japanese case, the title of '*tenno*' (monarchy) was first used in the beginning of the seventh century (Inoue et al. eds, 1991). The importance of *tenno* increased after the Meiji restoration, when the new administration claimed its legitimacy through *tenno* after overthrowing the previous regime. During the Meiji period, translations of official documents used the term 'head of the state' instead of *tenno*. Later the Meiji leaders changed this into 'emperor' because they thought that, to foreign leaders, the word 'emperor' would conjure up images of pomp and the public display of immense wealth and power, both quite antithetical to the role and functions of the *tenno* throughout most of Japanese history (Smith, 1983:13).

In the case of Japanese colonial policy, at the institutional level, the relationship between the colonies and the Japanese mainland was the compromise between the British and French systems. For instance, Chen (1984) argues that Japan 'developed a complex legal compromise between the British which had various status/systems of overseas territories and French systems especially that in Algeria regarding relationships between metropole and overseas territories'. We can see similar kinds of treaties between 'colonies' and the mainland in the following:

'His Majesty the Emperor of China cedes to Her Majesty the Queen of Great Britain, & c., the island of Hong Kong, to be possessed in perpetuity by her Britannia Majesty, her heirs and successors...' (Ratification exchanged at Hong Kong, 1843)

and

His Majesty the Emperor of Korea makes complete and permanent cession to His Majesty the Emperor of Japan of all rights of sovereignty over the whole of Korea' (Treaty of Annexation between Korea and Japan, 22/8/1910, Article 1)

Since Japan lost the war, the Japanese monarchy has played only a symbolic role³. On the other hand, at the level of ideology, it was mainly an 'assimilationist policy', similar to that of France, attempting to extend the idea of the Japanese subjects. For instance, Premier Hara made a statement that 'Korea is a part of Japan, not a dependent territory, nor a colony, but an extension of Japan' (19/8/1919, quoted in Hatada, 1969). This was reported on the same day as the *tenno* made a famous Imperial rescript of '*isshi dojin*' which asks Koreans to be Japanese in practice (ibid.). Therefore, the level of institution and administration and that of ideology were mismatched.

1.7 Learning from experience

By finding common elements among two countries, a comparative study can promote mutual understanding. Japan in the nineteenth century attempted to use Britain as its role model. The Japanese were aware of becoming like the British and as early as 1891 it was said 'Suppose the English had been stuck in the mainland, there would have been no British Empire'⁴.

We can also read statements like this as an expression of Japan's insularity. During the Meiji period, the idea of Japanese insularity is regarded both as a positive feature supporting homogeneity as superior as well as a negative one, and something to be

³ Nakamura (1989:179) argues that when the Allied Force discussed the new status of *tenno* as distinct from 'emperor', the word 'symbol' used in the present constitution might come from the Charter of Westminster in 1931: 'the Crown is the symbol of the free association of the British Commonwealth of Nations...'

⁴ 'Igrisujin ga hongoku no shima ni tojikomotte ireba daiteikoku ha nakatta dearou' (Taguchi Ukichi) quoted in Oguma (1995:45).

overcome in order to achieve expansion. There were some Japanese who thought that they could learn the colonial experience from Britain. At the time of the colonial administration, the previous experience of Britain, combined with that of France was always an issue of serious concern for Japan. For instance, often quoted Yanaihara Tadao, the famous scholar on colonial policy argues:

At this moment when we examine the status of Dominions within the British empire, it seems that the stronger the political connection with the mainland, the more similar the compositions of ethnic groups which the Dominions have...however, it seems that in Ireland this political connection is weak (and it narrowly remains in the state of Dominion after it paid enormous sacrifice to suppress the independence movement). Then, the case of our Taiwan and Korea seems to be, above all, closest to the experience of Ireland' (1926:360-1).

His words come in the context of examining whether to allow colonies to send representatives to the imperial Diet or whether to let them have a separate colonial assembly, and he compared the relationship between its colonies and Japan to the relationship between Ireland and the British Empire.

Another example of the Korea-Ireland comparison is also drawn from Soejima Michimasa on the administration of Korea, who was at that time the president of a newspaper company in Korea. He criticises the government policy of extension of the mainland to Korea in 1926, saying that 'the cultural sphere which Koreans created are too substantial to erase by political assimilation. It is as if the island of Ireland keeps Irish culture forever' (quoted in Ubukata, 1964:12). Another author, Calman (1992) also admits this point and says, 'Korea was Japan's Ireland' (p.196) and sees strong similarity between Japan and Korea from 1875 to 1945 and Irish history of the sixteenth and the seventeenth centuries.

Within my study, however, there is no direct comparison between Korea and Ireland, as the focus is on the institutions of the former mainland — Britain and Japan after the Second World War. At the same time, there is a significant difference between the status of Ireland (a Dominion) which, for all practical purposes was an independent state after 1921, and Korea (a colony). Nevertheless, the example is worth examination as it shows that Japan was interested in learning from the experience of the British empire system.

After World War II, the insularity of Japan and also of Britain became an issue. In the Japanese case, the experience of losing the war influenced its people greatly. It had to give up overseas territories such as Korea and Taiwan. This renunciation and subsequent post-war adjustment, such as the repatriation of ex-colonials re-established the idea of Japan as a 'unified nation'⁵, though just after the war the significance was not recognised. In the 1970s and 1980s, the idea of a 'unified nation' came under the spotlight. The idea of insularity appears in politicians' statements such as 'since Japan is a unified nation, education is relatively easy'⁶. This invited criticisms from Ainu in Japan as well as from the United States, for its narrow conception. This statement is often referred as '*tan'itsu minzoku hatsugen*' (the mono-race statement), which is often quoted in the context of the discussion of the post-war 'mono-ethnicity' of Japan. However, a similar statement was made as early as 1975 by the then prime minister Miki: 'Japan has a high standard of education, and does not have racial

⁵ According to Oguma (1995:7) on *Origins of the myth of homogeneous nation* in Japan, he argues that a 'unified' state (*kokka*) and a 'homogeneous' nation (*minzoku*) are not distinguished by those who discuss these ideas.

⁶ Former prime minister Nakasone at the House of Representatives of the Diet on 25/9/1986: '*Nihon ha tan'itsu minzoku dearunode hikakuteki kyoikuha okonai yasuku...*', quoted in Sapporogakuin Daigaku America Kenkyukai (1989).

problems, nor civil wars. If we cannot construct a model country, the politicians are responsible' (1/11/1975, in Nihon Shakaito, 1989). This statement was also raised at the House of Councilors's committee, with relation to Ainu in Japan (6/11/1975, *ibid.*).

In the case of Britain, statements concerning insularity often appear in the context of immigration discussion. Gradually, immigration from Commonwealth countries (especially the New Commonwealth) became so great that the ties between Britain itself and other Commonwealth countries were considered as a burden. Thus, statements like this appear in the House of Commons debates: 'The British people will in time be supplanted by aliens and British people will gradually disappear from those islands' (J.Stokes, Commons, debate, vol.997, col.988, 28/1/1981). There is also an often quoted statement by Margaret Thatcher in 1978, who indicated that 'people are really rather afraid that this country might be rather swamped by people with a different culture' (Grenada Television programme, 'World in action', 30/1/1978). Within this context, she implies a restriction on immigration for which a parallel cannot be found in the statements of Japanese politicians.

1.8 'Minorities' in Japan

This is a difficult question, since there is no consensus in Japanese administrators, scholars and society, as a whole about what constitutes its 'minority issues' in Japan. For instance, Japanese sociologists have been researching, as more or less socially disadvantaged groups, such as people as Koreans, Ainu, Ryukyuans, new migrants from other Asian countries and Latin America, and to a lesser extent, Burakumin.

However, academics treat these people separately from each other, and hardly refer to them collectively under the name of 'minorities in Japan'.

Reports published by international organisations, in particular ones that are prepared by 'specialist' groups, follow the line of these works published in English, and often refer to Koreans, Ainu, Ryukyu and Burakumin as minority groups. However, this is quite a different view from how academics in Japan understand the situations of these people in Japan.

In English literature, there are four kinds of groups which are often referred to as 'minorities in Japan' (for instance, De Vos, 1983). They are, Ainu, Burakumin, Koreans and Ryukyans. Ainu are indigenous aboriginal groups who live in the northern part of Japan, and who have their own distinctive language and culture.

Ryukyans, a territorial group, live in the southern part of Japan, the islands of Okinawa. It was an independent kingdom until around the seventeenth century and under a separate administration between 1952 and 1972. It was the only place within the Japanese territories under the occupation of the United States. Ryukyans have a distinctive culture and language.

Burakumin (outcast people) are one of the most notable groups in English literature. Historically they were people who were involved in specific occupations such as leather workers or work linked to religious activities or funerals, which were regarded

as 'dirty' by the traditions of Buddhism and perhaps also for the justification of the feudal rule.

Koreans in Japan are those descendants of former empire subjects most of those migrated to Japan forced or economically before and during the Second World War. Most of them remain as 'aliens', instead of naturalising.

1.9 Summary

This chapter has discussed some historical similarities between Britain and Japan. These are; geographical insularity, the experience of maintaining an empire and a long-standing monarchy. In addition, Japan in the past has regarded Britain as its model, and politicians and intellectuals sometimes make telling comparisons. Although the experiences of Britain as a multi-national state, and a relatively unitary Japan are quite different in some ways, both countries had a past which united internal minorities first, then in the similar way, incorporated other colonial or imperial subjects.

In the following chapters research will focus on 'Citizenship and Nationality' in Britain and Japan with reference to the former empire subjects. One important source of data for me is its analysis of court cases brought by those former colonial subjects. The analysis is mainly based on post-war and more contemporary situations showing what sort of status these former subjects have within these countries.

1.10 The construction of the thesis

Chapter 2 discusses themes of nationality and citizenship, and theories of citizenship and nationality in British and Japanese contexts. As these terms (citizenship and nationality) have distinctive meanings in Britain and Japan, the chapter needs to provide background information, and a tentative definition of citizenship as a legal institution and nationality as national identity. The distinction between the two concepts of 'nationality' and 'citizenship' has not been deeply explored, and this equation emerged only after the modern period when theories of nationalism proposed that each nation should have its own state, whose members should be deemed to have the same status. Then, this study will include two indicators: denizenship and patriality, and will consider the inter-relation of these two indicators as well as citizenship and nationality.

Chapter 3 considers method and methodology and will examine different types of comparative studies and the kinds of comparison which can be applied within this research. Within this process, I shall look at literature on topics such as industrial relations and education, which include direct and indirect comparisons of Britain and Japan. Then, I shall consider the kind of areas which I intend to compare such as minorities, politics and law, and examine the possibility of the application of comparative method (or style) to this research area.

Chapter 4 examines rights and residence in Britain. It will explore rights regardless of immigration status in Britain after the 1971 Immigration Act and also examine the function of the word 'nationality' arising from the citizenship law context. In this

section, court cases and other materials will be used to consider settlement, ordinary residence, and nationality rules.

Chapter 5 then examines rights and residence in Japan. It will look at the status of 'settled aliens', of whom most are Koreans in Japan. It will consider the extent to which rights in Japan can be entitled to those without Japanese nationality, most of whom are long-standing aliens.

Chapter 6 looks at patriality in Britain and examines the importance of 'the status of patril' within the 1971 Immigration Act and the sort of role it played in practice. It will look closely at the debates on the 1971 Bill and see what kind of points were raised, and how they related to later events. In addition, it will also see how, by the incorporation of a lineage clause in immigration legislation, the nationality status of Britain changed.

Chapter 7 considers patriality in Japan. This section considers whether *koseki* in Japan is comparable with British 'patriality', and how it relates to nationality status in Japan. It will look at the debates around *koseki* first, to see what kind of issues are regarded as problematic and then examine the various court cases in which *koseki* was discussed, to see what sort of significance it has had.

Chapter 8 is the final discussion on the findings of this research. Here, the connection or distance between nationality, citizenship and *jus soli*, which can be drawn from the denizenship argument and *jus sanguinis*, by the patriality argument can be examined to

see how important these areas are for status. The two different types of legislation tradition, as *jus solijus sanguinis* have influenced the way these two countries distinguish outsiders.

Chapter 2: Citizenship and Nationality - a literature review

2.1 Introduction

It is impossible to do justice to the vast literature on citizenship and nationality, as these are themes on which much has been written. I shall start with citizenship theory. Within the section on citizenship, there are two areas I am particularly keen to explore: first, the concept of 'denizenship', and second, the areas of distinction and convergence between citizenship and nationality. These two themes relate closely to the chapters which explore 'right and residence' and 'patriality'.

The ideas of 'denizenship' and 'patriality' are closely connected to theories of citizenship and nationality. If, tentatively, we define citizenship as a legal institution and nationality as a psychological identity, the discussion of denizenship is about how to 'separate' citizenship from nationality. The main point of denizenship is how to acquire rights by the fact or the length of residence for people - usually immigrants- in countries of settlement, but without acquiring the host country's citizenship. To migrants, the idea of denizenship provides the distinction of what kind of rights are available to them without acquiring the citizenship where they settled. On the other hand, the discussion on patriality follows a different direction; how to connect 'psychological belonging' (nationality) with legal institution (citizenship). Since patriality is about rights of descent, it follows that only members are entitled to specific rights, such as the right to enter his/her own country or automatic transmission of citizenship in

some countries. By considering both the kinds of rights that are only reserved for descendants, and the kind of rights that are open to long-standing residents, it will provide a useful illustration on the different histories of Britain and Japan. In a sense, this is an attempt to reconsider the relationship between *jus soli* and *jus sanguinis* principles and is therefore an important area for a review of literature on both citizenship and nationality.

However, as we will see later, literature and materials on 'rights and residence' and 'patriality', the latter in particular and some part of the debate on denizenship, mainly exist in factual and specific contexts rather than in theoretical considerations, and they are in general not well researched areas. Hence, some aspects of 'patriality' and 'rights and residence' will be dealt with in the research chapters rather than here.

In the following, I will examine the concept of 'denizenship' (Hammar, 1990) and the Japanese concept of '*teiju gaikokujin*' (settled aliens) first. Regarding the discussion or activities of *teiju gaikokujin* in Japan, the circumstance of Britain and its Commonwealth immigrants is often given as a good example to compare with the Japanese context (for instance, Komai, 1993). This chapter will also address the relationship between citizenship and nationality in general, then discuss theories of nationality, the application of these and finally concepts and theories in the specific situations of Britain and Japan. Discussion in relation to Britain and Japan will appear towards the end of this section.

Since the definition of the words citizenship and nationality may differ in the British and Japanese contexts, it is important to avoid confusion as much as possible. Although 'citizenship' and 'nationality' were defined earlier, it is not always possible to apply these terms directly in the research chapters. This arises from the practical difficulty, largely in the Japanese context, where citizenship and nationality as concepts are hardly distinguished. A further complication arises from the fact that, within the British Nationality Acts, the terms 'citizenship', 'citizen', and 'nationality' are often (and confusingly) used within a single legal document. Nevertheless, consideration of political and sociological arguments on citizenship and nationality will emerge later when the contexts are studied in which these words are used and applied in practice.

2.2 Citizenship

There are a large number of works written on this subject, as citizenship has become one of the most fashionable concepts of the 1990s, not only for political science and sociology, but also in political debates, and in particular, in Britain. At the same time, citizenship has been used quite loosely to cover a large number of different situations. Referring to this diversity and difficulty, Blackburn has argued that 'Citizenship means different things to different people' (Blackburn, 1993). Whilst this may be an exaggeration, it is not so easy to summarise the idea of citizenship overall.

The meaning of 'citizenship' is given in a dictionary as: 'the relationship between an individual and a state, defined by the law of that state with corresponding

duties and rights in the state' (*Encyclopaedia Britannica*, p.352). This is a traditional and basic definition of citizenship. However, in recent debates, the focus is on the contents of rights and duties as the issue, and not just to the state. This is due to the development of globalisation of super-state connections and the movement of migrant workers as well as autonomy for regional movement within a state. Or put a different way, the weakening of the function of nation-states (Held, 1991).

One way of classifying citizenship, depending on the types of political community, is as a relationship between a state and a citizen, or a member, defined as contractual or communal (McInnes, 1996; Oldfield, 1990). The contractual perspective emphasises the individual perspective, and focuses on the obligations of the citizen, in return for which the citizen receives entitlements. This has roots in the thoughts of Hobbes and Locke. The communitarian view expresses the idea of community, encouraging participation and co-operation for mutual benefit. This view comes from the philosophy of Rousseau. In other words, the former emphasises rights and obligations, while the latter emphasises active participation. However, in practice, these two theories often coexist.

A second way of dividing citizenship is to distinguish on the one hand between state citizenship, which is a formal legal status, and on the other hand democratic citizenship, which is a sharing membership of a political community. The latter is not necessarily binding to a state, but also binds to a regional community as well as transnational organisations, such as the European Community (Stewart, 1995;

Kymlica and Norman, 1994:353). The idea behind this division is that the communitarian view of citizenship is more flexible in connecting different levels of community, and could involve multiple citizenships. Within Kymlica and Norman's argument, along with the development of the welfare state and the notion of social citizenship, they emphasise the latter conception of citizenship as a desirable activity.

Since this study chiefly focuses on questions of status, I shall mainly consider citizenship in its institutional form, in relation to a state. The problem here is that such citizenship is connected with legal status, and is often identified or confused with 'nationality'. This is because modern states are often considered or regard themselves as 'nation-states' (idea-typical), where membership of the state is supposed to be identical with membership of a nation, and its status is referred to as citizenship. The problem of legal status, or coincidence of nationality and citizenship has attracted attention because of the increase in foreign migrant workers, who do not have full citizenship status but gradually come to be members of the host society. In the words of Hall and Held (1989), 'the main arena in which questions of citizenship have remained alive until recently, at least in the West, has been in relation to questions of race and immigration- in other words, questions which have challenged both the identity and the boundaries of 'the community' in relation to both nations and states' (quoted in Yuval-Davis, 1997:73).

In this respect, citizenship consists of different kinds of rights, and the question of which rights one should be entitled to, is one direction for discussion. Citizenship in the British arena often starts from Marshall's '*Citizenship and social class*' in 1950 (Marshall, 1950). Marshall offers the classical theory of citizenship in Britain. Apart from legal citizenship, he applies the concept of citizenship to describe inequalities between classes within a state. He defines citizenship as 'a status bestowed on those who are full members of (the) community. All who possess the status are equal with respect to the rights and duties with which the status is endowed' (Marshall and Bottomore, 1992). Then, they divide citizenship rights into three parts:

- civil rights which are 'necessary for the individual freedom, liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts and the right to justice', achieved in the eighteenth century,

- political rights which are 'to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such as body' achieved in the nineteenth century,

- social rights which are 'a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in the society' achieved in the twentieth century (ibid., 1992:18).

In Marshall's conception, civil rights and political rights are bestowed to each individual already, and the extension or contents of 'social rights' (or so-called

equality in practice) is mainly contested. In other words, in the British situation, formal or legal equality among members is assumed to be already achieved. Simultaneously, because of the historic notion of the British subject which used to ensure the equality to all British subjects, that is, colonial and Commonwealth citizens, this also helps the understanding of equality issues (Marshall and Bottomore, *op.cit.*).

The main criticisms of Marshall are firstly, that there are many different types of inequalities apart from class, such as those which are based on race or gender. Secondly, his conception is mainly applicable to the British situation, hence his emphasis on the evolutionary perspective. In other words, questions are raised on the content of 'citizenship' status or who has equal status, which at the same time, depends upon each country's history. For instance, Barbalet (1988) proposes to extend Marshall's work in aspects of the relationship between the different elements of citizenship with the role of state, and the relationship with struggle and repression as well as with increased rights (p.108). From a gender perspective, Young (1989) argues that the idea of universal citizenship has to include the idea of group representations or group differentiated rights so as not to impose homogeneity or equal treatment from a majority perspective.

Bendix (1964:74) relates 'citizenship' to 'nation-building', saying that citizenship is 'the rights and duties of all adults who are classified as citizens', and it is the 'core element of nation-building as its codification matters whether exclusively or inclusively defined.' Recently, Marshall's theory has been expanded and

related to other countries' situations, by, for instance, Mann (1987) and Turner (1993). Mann (1987) considers Marshall's model as anglocentric and evolutionary and he stresses the importance of geo-politics and war. He defines 'state-centered' citizenship in five typifications, as 'ruling class strategies' including 'from constitutionalism to liberalism (Britain)' and 'from absolutism to authoritarian monarchy (Japan)' (pp.129, 133). Turner (1993:2,9) defines citizenship as a 'set of practices' (judicial, cultural, political and economic) and proposes different versions of citizenship in different social and cultural traditions, following the idea of Mann's citizenship as 'ruling class' strategies. At the same time, Marshall's theme is expanded to other areas of inequality existing in Britain including discussion of active participation. As 'active participation' means bottom-up direction of participation, and relates moral obligation of individuals. Marshall's theory which includes three kinds of rights (civil, political and social) is useful when studying the entitlements to rights for immigrants in different countries.

In addition, there is some legal literature on citizenship in the British context. For instance, there is the research done by Blackburn ed.(1993); Juss (1993); Dummett (1976); and Dummett and Nicol (1990). Blackburn ed.(1993) is a collection on '*Rights of Citizenship*', and includes different kinds of rights from civil rights such as freedom of expression and political rights to social and economic rights such as racial equality. This attempts to extend Marshall's conventional definition of citizenship rights. Dummett and Nicol (1990) are often cited on the historical development of British nationality and immigration law.

The characteristics of the British situation is that citizens and citizenship became sub-categories of 'nationality' acts, as British subject status was ensured to all colonial and Commonwealth citizens living inside and outside the British Isles; since 1962 this has been gradually re-defined in terms of immigration rights to Britain, but detailed of this will follow in later chapters.

Let us now consider the discussion by Hammar (1990) on denizenship, and by Baubock (1994a) on immigration and citizenship. These relate their discussion in particular to more recent issues of migrants who have begun to settle in their host countries and it is of interest to see whether it is possible to relate their views to the situation in Japan, and to citizenship issues of former empire subjects.

Hammar (1990) defines citizenship as formal membership of a state and 'substantive citizenship' as the possession of a number of rights and duties in the state. He deals with the formal as well as the relationship between the formal and the substantive (p.3). He proposes to use the term 'denizen' to signify 'persons who are foreign citizens with a legal and permanent resident status' (p.15) in their countries of residence, but not their home countries. His terminology is particularly applicable to migrant workers who entered western Europe during the 1960s and 1970s, and remained in their host country after these countries stopped recruiting migrant workers. The status of denizen is somewhere in between the status of citizens and aliens, depending on the accessibility of rights. There are three 'gates' which all states use to control immigration into their

territories: the first controls initial admission, the second controls permanent residence, and the final gate allows access to naturalisation i.e. access to citizenship. Foreign citizens, who have passed through the first gate hold temporary permits with insecure status and unless they comply with the regulations, there is the possibility of deportation. Once they have stayed for a while and are accepted as permanent residents, these foreign citizens become 'denizens', who have substantial civil and social rights such as family unification and free employment permits. When these permanent residents apply for and are accepted for naturalisation, they become citizens of their country of residence and acquire full rights including political rights (Hammar, 1990:22-1; Layton-Henry ed., 1990:13).

Hammar's discussion considers two key issues, namely the possibility of entitlement to political rights for these denizens, and the ease with which qualification for naturalisation or acquisition of full citizenship can be gained by denizens. As a background, he sees a potentially unstable situation developing in nation-states due to the large population of 'non-citizens' within their territory. He then poses two important questions. First, 'the extent to which political rights should be given to those who are not formal citizens' and second, 'the extent to which, and the conditions upon which, formal citizenship should be given to foreign residents with a long period of residence' (p.3). In his view, 'domicile' and 'residence' seem to be the key. 'Residence is the real situation, while domicile is a legally tolerated or granted residence' (p.195). 'Residence is exclusively determined on factual criteria, domicile also implies some kind of

legal relationship to the state' (p.192). In this case, a person can choose his or her residence, but *domicile* has to be granted or recognised by the authority. In addition, this means that in some circumstances, the acknowledgement of a previously accepted domicile could be withdrawn, as in the case of Koreans in Japan. Hammar gives us an example: 'as a requirement, a foreign citizen shall have obtained at least a temporary residence, for if he has not, his stay and his relationship to the state is not legal. An illegal immigrant could in other words be a resident but he could not be domiciled in the country he has illegally entered' (p.194). For a resident to be a domicile, it seems to be sufficient that the person holds a temporary permit; however, if he intends to prolong it, and the state has no such intention then he might lose his domicile status.

I will explore Hammar's arguments in two respects. First, I think the main reason why the issues of easing naturalisation and entitlement to political rights (especially suffrage) are difficult is that both of these relate to the issue of identity or nationality. However, Hammar omits the concept or the fact of 'nationality' as a cultural identity to be seen alongside present political and legal status. He ignores the congruence between nationality and citizenship within the nation-state (ideal-type), even though he sometimes uses 'nationality' or 'national' as synonymous with citizenship of a country (pp.32, 199). However, he admits the difficulty in defining 'nation', and treats it indirectly with regard to conflict (pp.37-9). It seems that Hammar follows the liberal model of citizenship as a legal and contractual membership of a state and avoids the problems of communitarian citizenship which involves membership of a national community

as well. Furthermore, with reference to immigration and the naturalisation of foreign residents (p.51), given that citizenship and nationality within a nation-state is of prime importance, the relationship between nation and state has not been well explored. This problem of the distinction between citizenship and nationality is a large one, so I shall refer to it later separately.

Second, Hammar omits the circumstances of Britain from his examples of denizens. He considers that the New Commonwealth and Irish immigrants are rather like 'de facto citizens rather than denizens' (p.23-5). The part of inapplicability comes from the fact that his theory does not include 'subjecthood' since his citizenship is mainly attached to the modern nation-state (Joppke, 1995). He does not discuss the 'absence of state derived concept of citizenship' as it is developed in Britain (Stewart, 1995). His theory cannot incorporate 'alienisation of immigrants' (Lee, 1995), who came to the host country as citizens (or at least, subjects), but have insecure status compared with other citizens, or in some cases are treated as 'alien citizens'. In the following section, I will discuss this issue mainly in relation to these two points in order to connect with other areas of the literature.

For the second point, I would like to relate this to the discussion in Japan on *teiju gaikokujin* (settled aliens). It is said that the Japanese situation of foreign workers is 'twenty years behind those of Europe' (Kajita, 1994:15), as it was not until the 1980s when foreign guestworkers coming to Japan increased significantly. Mori, H.(1996) evaluates this situation as 'achieving economic

growth without attracting foreign workers' (p.32). The tight immigration law, which is modelled on the United States, excluding regulations on immigration visas does not accept 'immigration as permanent residence' as a system (Hirowatari, 1992:70-1), and this could be another reason.

Therefore, the issue of 'Koreans in Japan', or the former empire subjects continuously residing in Japan, have been the most important case relating to aliens in Japan. Most of them came to Japan before and during the Second World War as Japanese subjects, but later lost their Japanese status. Regarding the discussion of denizenship and *teiju gaikokujin* discussion in Japan, Cohen (1991) mentions a possible analogy between the discussion of 'denizens', with the long-standing community of Koreans. Given this background, the discussion on *teiju gaikokujin* as between citizens and aliens, is targeted mainly on these Koreans in Japan, while other aliens are termed 'new comers' or migrant workers. There are, of course, some *teiju gaikokujin* who are not 'old comers', so these descriptions are far from precise.

The term *teiju gaikokujin* was firstly used by So as early as 1977 for 'those who have their living base in Japan, with a social/cultural relationship with Japanese society, but without legal status as Japanese' (So, discussion in *Horitsu Jiho*, 1985). This term gradually came to signify Koreans in Japan, in order to distinguish them from other aliens, who came to Japan more recently. However, the key point in this definition is that these *teiju gaikokujin* are those who acquired their Japanese nationality regardless of their will before the war and lost

it due to the 1952 San Francisco Peace Treaty, again regardless of their will. However, the term *teiju gaikokujin* is not a concept used in law. It is 'an established fact' in statutory law but not in the constitution (Annen, 1993:168). Put another way, this *teiju gaikokujin* can be seen as a conceptual term developed through the activities of Koreans in Japan in order to claim their rights in Japan, as we shall see later. However, there are other quite similar terms to *teiju gaikokujin* used in statutory law, such as *tokubetsu eijusha* (special permanent residents) or *teijusha* (settlers). It is therefore important to distinguish this academic concept of *teiju gaikokujin* from other technical and legal terms.

The background is as follows. In 1979, Japan ratified the International Convention of Human Rights, and in 1981, the Refugee Treaty and the protocol, which obliged the Japanese government to alter domestic legislation, especially on social security matters such as pensions, public housing, and child allowances. Until the ratification, these 'social rights' (meaning in this context, the right to receive services from the state) were regarded and interpreted as only applicable to Japanese nationals. However, as we shall see later, some political rights and social rights are still closed to aliens. This alteration came about owing to the sudden flow of refugees, but incidentally improved the status of Koreans in Japan.

Onuma, an international law scholar who has been researching the status of Koreans in Japan since the 1970s, proposes in his article that a distinction should be made between general aliens, settled aliens who have resided in Japan more

than five years, according to his definition, and refugees, by the criteria of having membership of a society (1983:370-1).

Recently, this discussion on *teiju gaikokujin* has been connected with aliens' suffrage issues in Japan.¹ The characteristic of such Japanese discussion is that this debate on *teiju gaikokujin* concentrates on legal issues and compared with reality, the legal theory is regarded as far behind. Therefore, re-interpretations of words used in constitution have been proposed and discussed widely. For instance, Kondo (1996a) suggests proof of entitlement to *teiju gaikokujin* suffrage using the words 'future generations', as used in the United States.

The definition of *teiju gaikokujin* as a concept, and the application of this concept in real contexts is a matter of dispute, as we shall see later. For instance, Takasaki (1995:17) and Nakahara (1993:58) consider the 1965 Japan-South Korea Treaty, which 'formulates the categories of 'permanent resident aliens' and other general aliens' as the key document, while Ebashi (1995a) focuses on the 1991 Special Immigration Act, when a new category of 'special permanent resident' (*tokubetsu eijusha*) integrated all those existing categories of Koreans of south as well as north. These 'special permanent residents' are statutory defined as 'children and grandchildren of those who lost Japanese nationality by the 1952 San Francisco Peace Treaty 'Heiwa Joyaku Kokusekiridatusha no sison' in the 1991 Special Immigration Act.² This is because the previous law of

¹ See for instance, So ed. (1992), Kondo (1996a), Li (1993) amongst others.

² (*Shutsunyukoku Kanri Tokureihou*), the formal name is '*Nihonkoku to no Heiwajoyaku ni motozuki Nihon no Kokuseki wo ridatsushita monotouno Shutsunyukoku kanri ni kansuru Tokureihou*' (Act on Exceptional Entry-Immigration Control for those who lost Japanese Nationality by the Peace Treaty

1952 is only applicable to first and second generations of Koreans in Japan, since its need for expansion they are distinguished from other 'permanent residents' (*cijusha*) defined in other immigration acts, who do not have historic ties with Japan.

Apart from this debate, there is also growing interest in Hammars' 1990s concepts of citizen, denizen and foreign nationals amongst scholars in Japan (Komai, 1994; Lee, 1995; Kondo, 1996a). Ashibe (1993:190) regards 'permanent residents' (*cijusha*) as well as 'special permanent residents' as *teiju gaikokujin*. The difficulty arises in that 'settlers' and 'permanent residents' are statutory terms, and the criteria of 'permanent residents' in Japan are strict (Kondo, 1996a:152-3). However, for a long time, the campaigns by Koreans in Japan have been focused on achieving 'secure permanent residence' (Tanaka, 1975:97). For those involved in these campaigns, it was and is important to oppose the government viewpoint which tends to equate *teiju gaikokujin* with historic ties to Japan alongside other new comers within one single category of 'aliens'. The present situation of Koreans in Japan and the problems associated with them will be investigated later, as the debate on *teiju gaikokujin* is concrete and practical rather than theoretical.

Baubock (1994a) proposes 'immigration citizenship' with reference to the development of European integration or globalisation. He regards citizenship as membership of a political community as well as a bundle of rights (1994a:19),

with Japan), 1991. Here after, 'Special Immigration Law 1991'. Apart from this, there is a (normal) Immigration Control Act enacted in June, 1989 (revised Entry-Immigration Control Act, 1989).

and defines the former as 'nominal membership' and the latter as 'substantial membership'. This is similar to Hammar's definition. With reference to resident aliens in European countries, Baubock pays attention to the significance of rights of residence and at the same time, to the distinction between the status of citizens and those of aliens, especially on political rights (1994b:203). He proposes his theory of citizenship in relation to liberal democracy (1994a:35), which has as its major principle on the ideal of equality. Baubock emphasises societal memberships, rather than territorial sovereignty and nominal citizenship, and attempts to apply the norm of equality onto the base of societal membership. Such membership (libertarian, contractarian, republican, and nationalist (1994b:215), Baubock regards libertarianism as the best norm for the inclusion of resident aliens.

However, in Baubock's theory, the configuration between nationality and citizenship is unclear, as he equates nominal citizenship with nationality, but does not relate it to his substantial membership. Moreover, as he regards nationality membership as merely one element of societal membership, his theory of international organisation or legal scope is rather superficial as he does not account for the fact that the present international system relies on 'nation-states' as an ideal type construction.

2.3 Citizenship and nationality

Although it is quite permissible to omit the discussion of 'nationality' within the discussion of 'status' and 'citizenship', in order to avoid confusion it is

worthwhile examining the relationship between citizenship and nationality. This will be the background to the 'patriality' debate which follows later.

Patriality can be defined as 'of or belonging to one's native country' but it is a very recently created concept used in law, and not written about theoretically nor thematically. However, the importance of patriality lies in two aspects. First, this is a legal concept as well as a psychological concept relating to identity and emphasising descent. In other words, patriality connects citizenship and nationality. Second, it is of relatively recent origin but is acquiring increasing importance despite the development of globalization, or relative open access to borders. It also has implications for gender relations because rights connected with descent involve the 'family', and are not just 'ethnic', as we can clearly see in the case of Japan.

The distinction between citizenship and nationality is not always clear, as this topic has not been well explored. The function of the nation-state (ideal type) is described by Heywood (1994) as offering 'the prospect of both cultural cohesion and political unity. Where a group of people who share a common cultural identity gain the right to self-government, community and citizenship coincide' (p.63). In other words, both types of 'nations' have to come together to claim status as a nation-state.

Brubaker (1989) defines the modern nation-state as membership organisation and territorial organisation (p.14). He also categorises six norms of membership

relating to citizenship in the ideal typical nation-state. In this ideal type citizenship is: egalitarian - status of full state membership, sacred - obligatory, national - nation and state should coincide, democratic - encourage active participation, unique - exhaustive and mutually exclusive and socially consequential - membership linked to important privileges (ibid., 3-4).

Joppke (1995:171) points out that 'the crucial distinction between citizenship and subjectship disappears when defining citizenship as Brubaker does, so broadly.' And that it 'blends citizenship and national identity', especially, Brubaker's criteria of 'sacred, national and unique' (Layton-Henry, 1999:10). Brubaker's point that membership should be socially consequential, is also important when we consider the relationship between nationality and citizenship because it is worthwhile: it cannot be guaranteed to everyone except members, and implies the closure of membership.

Brubaker describes citizenship in the modern sense as general membership of the state, and entitlement to citizenship for foreigners considered on a reciprocal basis (1992:87). He argues (1992:30) that 'citizenship is a formal construct, in principle, nothing to do with ethno-cultural nationality. But formal closure against legal non-citizens may overlap with informal closure against ethno-cultural non-nationals. Citizenship as social closure means social rights against non-citizens'. His main argument is that nationhood in Germany is an ethno-cultural fact, whilst in France it is a civic political fact. Therefore, in France,

nationhood and statehood are fused, while in Germany they are sharply distinct (ibid.,).

Joppke (1995:169) evaluates Brubaker's way of conceptualisation as fruitful. To conceptualise a modern state as 'membership organisation', 'helps to link it to the analysis of nations and nationalism'. He points out, however, that 'it has failed to spell out the infrastructure of nations, most notably the conception of membership as citizenship'. This point will be revisited later.

It is increasingly likely that the traditional concept of citizenship will become outmoded as more people have dual nationality. The growth of transnational communities has led to the acquiring of multiple citizenships as people decide that dual nationality is advantageous. It may be that they are increasingly using citizenship in an instrumental way rather than as an emotional and 'sacred' attachment.

Soysal (1996) criticises Brubaker's idea of differentiation, rights on the one hand and identities on the other, but considers both as components of national citizenship. She regards citizenship as 'national citizenship' exclusively, and considers that rights and identity are increasingly de-coupled by the globalisation of labour markets, the development of multi-level politics and the spread of the idea of the universal human rights by international organisations. Against this background, she sees no significance in citizenship in relation to the status of post-war immigrants to western Europe.

In his essay '*Citizenship and National Identity*', Habermas (1994) distinguishes citizenship which he relates to democracy, from nationalism which has to do with political integration. He argues: 'The notion of citizens does not derive its identity from common ethnic and cultural properties but rather from the praxis of citizens who actively exercise their civil rights' (p.23). He sees the role of nationalism as a 'modern phenomenon of cultural integration' (p.22) which lays 'foundations for cultural and ethnic homogeneity' (ibid.,) and for nation-state formation. His views are based on observation of the unification of Germany and the break-up of the USSR. He seeks to develop the idea of European citizenship (Habermas, 1994, Meehan, 1993), as a new kind of citizenship that is multiple, that is neither national nor cosmopolitan but is multiple in identities, rights and obligations.

In a similar way, Heater (1990) explores the historical dimensions of citizenship. He writes of the distinction between citizenship and nationality and community solidarity. Citizenship is, according to him, political identity while 'nationality' is 'a feeling of cultural togetherness'. It is different from nationalism which is derived from a political ideology and from nationality which is to do with legal status (p.185). But at the same time, he expresses the political importance of conflation as 'nationality became associated in the ideology of nationalism with the doctrine of popular sovereignty; it became important that cultural nationality and legal citizenship should correspond' (p.185).

However, not all researchers share this globalised citizenship. Aron (1974) considers the possibility of 'multi-national citizenship', and then rejects it. In other words, he considers 'national citizenship' as directly linked and inseparable from an individual state. His reasons are that in order to claim 'rights', one has to belong to one state, and 'the nation-state' has authority to let others agree, and that historical connection between citizenship, in particular political rights, and conscription, are 'in no way interdependent' (p.281).

This point is similar to Lee's. Lee (1995) criticises recent citizenship rights literature, arguing that 'they quite often detach citizenship from democracy, consent or recognition of homogeneity' (pp.58-9). The exclusion of aliens is often based on the desire for social cohesion and homogeneity. In addition, the will of the electorate may not wish membership of its national community to be granted too easily to aliens. This is the reason for the exclusion of aliens as well as the distinction between aliens and citizens/nationals. Lee's other criticism on citizenship theory is of 'the power of the state or formal authority which makes the final decision such as controlling borders or considering immigration laws. His explanations and criticisms are based on the Japanese experience and he also criticises Marshall's evolutionary theory as the order of subject status and nation-state. For instance, in the Japanese case, the history of citizenship and nationality is very different from Britain. The historical background to the development of Japanese citizenship legislation includes the creation of the modern nation-state, the expansion of empire and the defeat and occupation after the World War II.

At the same time, Lee modifies Marshall's theory to include the 'alienation of immigrants' to Britain after the 1971 Immigration Act.

The descent principle retains important rights, such as the right to return to the territory (immigration rights) or automatic transmission of citizenship. These are crucial elements of citizenship rights. At this moment, some European countries such as Italy, Germany, and Greece maintain an extreme principle of *jus sanguinis*. In these countries, people who have ancestors of the same national origins in the past, can return and claim the right of entry and citizenship purely on the basis that they have Italian, German, or Greek ancestors. In the British case, patriality is connected with immigration and nationality laws, while in the Japan, nationality laws relate to a different national 'registration' law, which specifies the familial lineage, and citizenship. What is emphasised here is 'opening the border' while simultaneously 'tightening up the immigration control'.

2.4 Nationality

Let us now look at some definitions of nationality. Nationality is 'national quality, nation, existence as nation, ethnic group or fact of belonging, to a particular nation or ethnic group, cohesion due to common history etc., a person's status as a member of a nation, alterable by legal process' (*Oxford New Dictionary* Vol.II, 1987). In this definition, the meaning of nationality is not itself clear, since it uses 'nation' or 'national' in its description. In other definitions, nationality has two kinds of meanings. The first refers to the

'cultural, linguistic, and ideological status of an individual or group', while the second refers to 'membership in a sovereign state, in particular with reference to international law' (*Encyclopaedia Americana*:3). This offers two forms of belonging. One is cultural/ethnic, and the other is political/legal. In this definition, 'ideological' can include emotional or psychological feeling which has generated a sense of community or identity. However, it is equally important who decides and how it is determined.

It is also appropriate to look at some definitions in Japanese. In the *Kenkyusha New English-Japanese Dictionary*, nationality is translated and explained as 'national identity, character (*kokuminteki, kokuminteki no kannen*), nationalism (*kokka-shugi*), nationality, belonging to a state (*kokuseki, kokka-shozoku*), national independence (*kokuminteki dokuritsu*), nation, state (*kokumin, kokka*), race, ethnicity (*minzoku*). The interesting point is that it includes a very broad meaning--even race or ethnicity. Moreover, all these words include 'koku' (which signifies states in one sense). These terms in Japanese are therefore slightly different from 'nationality' in English. Membership of a nation is not always the same as membership of a state, and is unclear in the Japanese context (Stronach, 1995:89).

Let us now look at how the concept of 'nation' has emerged in Europe. The word's origin comes from 'nasci' (to be born in Latin) meaning a 'group of people born in the same place, whether that place was thought of as a few dozen or any thousands of square miles' (Yabuki, 1990:88). It was very much a social

or communal connection. European feudal territories had a certain level of political autonomy. At the same time, the linguistic community which existed across an area was more important than the groups within the area, since areas consisted of different groups who spoke different languages.

In medieval universities, students who came from the same linguistic background across feudal territory were also a 'nation'. By the eighteenth century, linguistic and historical factors were included in the idea, tying those educated in a universal Christian culture, while others were in the social (feudal) hierarchy of land (Kasama, 1992:242). Ethnic factors of nation gained significance after that time, especially in England and France. According to Hobsbawm (1992), before the French Revolution, 'nation' was nothing to do with territory nor people under the same sovereignty. Nation was seen as a social and cultural group formed together with a common identity, usually language. Ethnic factors of nation had gained significance after the eighteenth century.

It is often said that nation as a political community emerged with the French revolution, at the time of the birth of the modern-state. First, the basic idea of the French revolution is 'people's sovereignty'. Until that time, under the Ancient Regime, sovereignty was in the hands of the king. During the process of the revolution, the Third Estate overthrew the sovereignty of monarchy, and insisted on the sovereignty of the 'people', claiming that the nation is sovereign (Llobera, 1994:183). Second, the French revolution 'equates nation with the entire people

or citizenry' (Connor, 1994:39), at least in theory. All 'people' under the same sovereignty were identified with 'nation' itself.

Finally, nation has come to be associated with a fixed boundary, which determines a territory. Territorial states had existed in Europe by the time of the French Revolution, but there were anti-revolutionary movements inside and outside France too, and the concept of nation is employed to utilise the power of people and to call for 'nationalism' (Yabuki, 1990:99). In western Europe at least, 'nation' implies 'consolidation of territorial control, differentiation of governments from other organisations, and the acquisition of autonomy and mutual recognition by some governments' (Tilly, 1975:70-1). Wars between states and the recognition of boundaries helped to create allies and enemies (Lee, 1995), i.e. citizens and foreigners. The modern 'nation-state' consists of three principles - territory, sovereignty and people obeying the rules (citizen subjects).

However, there are limitations within the parameters of a nation. As Yabuki (1990:107) argues: the basic meaning of 'nasci' is sharing a common characteristic of birth, and this has been the basis of the concept 'nation'. Furthermore, despite its image of unity, a group named 'nation' has not always been composed of homogeneous members. Some members of nations have been treated in an inferior way because they are minorities or because they have been poor or female. Indeed Olympe de Gouges in Paris was executed because she contended that women should have equal rights with men in 1793 (Ogosi, 1996:34).

2.5 Nationalism theories

As we have seen, historically, 'nation and nationalism were western concepts and western formations' (Smith, 1986:144). Nationalism, as a political ideology, can be distinguished from nationality, defined as a membership of nation. It is helpful to look at theories of nationalism in order to contrast different views of nations in Britain and Japan, as well as the conflation and distinction of nationality and citizenship.

According to Smith (1995) and Guibernou (1996), there are two ways of viewing 'nation'. Namely, whether nation and nationalism are modern phenomena (the modernist position) or whether the nation is something natural (the primordialist position). In addition, there is a position which stands in between these two. Smith (1995) considers 'ethnies' to signify an ethnic group and sentiments which existed before the modern nation-states, in order to connect the idea of nation.

Primordialist works include Geertz (1963), van den Berghe (1978). Geertz considers blood, 'race' and language etc. as primordial attachments and emphasises that they arose 'from a sense of natural affinity than from social interaction' (p.31). Van den Berghe (1978) starts from a socio-biological perspective, and believes that 'ethnic and racial sentiments represent an extension of kin selection', whose congruity is 'real enough to become the basis of the powerful sentiments such as nationalism' (p.99). However, both take their

examples of primordial ties from 'new states' but not from old states such as those in Europe.

The modernist position of nationalism theories often serves as a basis for citizenship theories in relation to the nation-state. For instance, Hammar (1990) defines 'nationality' as ethnicity and national identity, given that nationalism can invent a nation, as a political movement. The idea mainly springs from Gellner (1983) and Anderson (1983) (Hammar, 1990:60-68). Gellner (1983) defines nationalism as 'primarily a principle which holds that the political and national unit should be congruent' (p.1). Hobsbawm (1992:9) and Breuilly (1985:3) agree with his perspective. In Gellner's definition, the state is defined as 'an institution or set of institutions specifically concerned with the enforcement of order' (1983:4) within a given territory, following the definition by Weber. By considering its boundaries and/or the distribution of power, he argues that 'nationalism emerges... in which the existence of state is already taken for granted', and 'the problem of nationalism does not arise when there is no state' (ibid., pp.4-5). He considers that nationalism makes nations, rather than the other way round (op.cit., p.55).

From an anthropological perspective, Anderson (1983) defined the nation as 'an imagined political community, imagined both as 'inherently limited and sovereign' (pp.6-7). He describes the factor of 'sovereign' or being a sovereign state as a 'nation's dream, after Enlightenment and Revolution'. He explains the concept of the community (nation) as 'regardless of actual inequality and

exploitation that may prevail in each, the nation is always conceived as a deep, horizontal comradeship' (p.7). Within these theories, what is emphasised is the power of nationalism - which tries to equate 'nation' and 'state', and helps to draw the line between members and non-members. Whether this is the way that 'cultural' nations emerged or integrated with the idea of political nations, in Europe, depends on individual countries and the meaning of 'nation'.

On the issue of the relationship between nation and nationality in east and west, Kohn (1946) and Smith (1991) give us some implications. Kohn's (1946:77, 331) famous distinction between 'western' nationalism with its national and civic character and bourgeois social base, and the nationalism of 'east', which is found in the cultural field, community-based, held together by traditional ties of kinship and status. Kohn argues that contemporary Germany owes its often 'authoritarian, mystical, and organic character to the leadership of a small stratum of intellectuals, in the absence of a bourgeoisie' (1946:77). Regarding this point, Smith (1991) theorises western nations 'owed much less to nationalism as a movement to create a nation where none existed' than non-western nations where a 'nationalist element as an ideological movement assumes greater importance' (p.110). He conceptualises two ideal types of nations, namely, a western, civic-territorial model and a non-western conception, ethnic-genealogy model (pp.9, 11). Smith argues that in the western conception of nation, legal and political rights are an integral part of the nation (p.10), while in the non-western conception of nation, the emphasis is on common descent and culture (p.11). Thus we see the resemblance between the communitarian and

liberal theories of citizenship so that western conceptions of citizenship are closer to the liberal-contractual ideal type while non-western conceptions are closer to the communitarian ideal. In addition, this shows the closeness of citizenship theories to nationalism theories.

2.6 The concept of nation in Britain

Although, it is a superficial way of viewing this area, 'nation' seems to be accepted more as cultural community in the case of Britain, compared with Japan. As Britain is an old state, the formation of state preceded that of the nation (Tilly, 1975:70), although, the concepts of nation and state themselves have changed over a long period of time. It is not that the nature of the 'nation' is purely cultural, rather that there is a clear division of political identity as British and other 'regional' (or 'national') or cultural identities, such as Welsh, Scottish English and Irish. The UK is a multi-national state in this sense.

According to Urwin (1982), Britain was accepted as a homogeneous society until the 1960s because of; the nationwide two-party system, a common set of values and a historical thread of continuity (p.19), and because 'class divisions [are] considered to be stronger than other regional cultural differences'. In the 1970s, Britain's character as a 'multinational state' became clearer, because of the rise of nationalist parties in Scotland and Wales and the renewal of IRA campaigns in Ulster. This was reflected in academic writings such as Rose's (1971) book *'Governing without Consensus'*; Hechter's (1975) book *'Internal Colonialism'* on English domination; and Nairn's (1977) book on *'The Break-*

up of Britain' focusing on the territorial dimension. There is discussion on the coexistence of long-established democracy, and heterogeneity in terms of nationality which claimed that the UK did not form a classic nation-state. In addition, immigration from the Commonwealth in the post-war period has added a new dimension to the UK as a nation-state.

Rose (1971) regards nationality as a form of national identity which emphasises 'cultural differences concerning religion and identification within peripheral communities' (p.70). He emphasises that national identity is a social psychological phenomenon, defined by the way people feel about each other and about their government' (p.203). In his definition, he has in mind of contemporary Britain, in particular the Northern Ireland situation, where he points out the lack of a secure, homogeneous, political identity. The problem in Northern Ireland is that the two main communities have two separate and distinct national identities as British and Irish.

The case of Britain's process of national integration can be described as 'untidy and as historical'. Birch (1989) explains that 'British nationalism is essentially a development of the nineteenth century that grew out of English nationalism, which is much older. English nationalism is thought by most historians to have been development of the sixteenth century: it had been awakened by the hundred years war with the French and was consolidated by the commercial success of the Tudor period, by the cultural triumphs of the Shakespearian era, by the break with the Roman Catholic church and by the defeat of the Spanish

Armada' (Birch, 1989:135). In contrast to English nationalism, British nationalism in the nineteenth century was created and consolidated by victory over France in the Napoleonic wars and Britain's imperial adventures and successes.

Rokkan and Urwin (1982) considers the nation-state of the twentieth century as 'a norm of territorial organisation' (p1). This is not true for Britain. Urwin (1982) defines the UK as a 'Union state' where territorial space is stronger than membership space, or where several nations coexists within a state. In the British case, the difference between state-building and nation-building is often clearly distinguished. Brubaker (1989:10-1) argues that in Britain there is no clear conception of nationhood nor citizenship. There was 'the absence of a state-derived conception of citizenship' (Stewart, 1995:1). Part of the reason for this was the experience of two revolutions in the seventeenth century. It is a country where rights are considered as historic, and in fact are considered privileges granted by parliament. In conclusion, Britain cannot be considered a typical European nation-state, because of its multi-national character and its experiences of Empire which are not common. Also Britain's non-republican tradition by which its people whether inside the UK or in the Empire, were regarded as British subjects, again distinguished itself from other European countries which were more influenced by the republican tradition established by the French Revolution.

2.7 The concept of nation in Japan

The concept of 'nation' as a political/legal community is accepted in Japan. In terms of nation-building, the Japanese situation has seen two phases - one during the Meiji Restoration when the modern state was formed, and the second in 1945 when Japan lost the World War II and its empire and was then reduced to a 'nation-state'. The modern nation-state in Japan started with the Meiji Restoration in 1868 (Oishi, 1977; Yoshino, 1992). In the pre-Meiji period, the Edo Shogunate carried out a policy of seclusion, to restrict trade and exchanges with certain countries. This helped to construct Japan as an 'ethnic' state with a high degree of 'ethnic sentiment', at a time when most of Japan was united as a territorial entity (Smith, 1986).

After the Meiji Restoration, the nation in Japan emerged. *Koseki*, the official registration of familial relations, helps to identify who is Japanese. Modern institutions such as constitution and government were established, following the style in Europe. The imposition of unequal treaties in 1854 and 1858 led to the rejection of the previous regime, and 'rich country, strong army' became the national goals in order to revise the unfair treaties. Gellner (1983:57) argues that 'nationalism, is essentially, the general imposition of a high culture on society, where previously low cultures had taken up the lives of the majority, and in some cases the totality of the population'. This is a good description of what occurred in Japan. Thus Japan, was recognised as separate from foreign countries.

This position of Gellner's and, Anderson's (1983) notion of 'official nationalism' are regarded as appropriate to explain the Japanese process of modernisation (Yoshino, 1992:10). Seton-Watson (1977) originally suggests a concept of 'official nationalism' (p.148) as a basis of government legitimacy, and distinguishes this from the previous 'dynastic loyalty' as a 'moral duty to impose their nationality on all their subjects of whatever religion, language or culture...by drawing these people upwards into their own superior culture, they were conferring benefits on them, while at the same time, they were strengthening their state by creating within it a single homogeneous nation'. However, Ikegami (1995:188) guards against a 'too simplistic' explanation of what really occurred.

The modern Japanese state was established to protect the country from foreign pressure so that modernisation came from above, and was intended to keep its own independent state framework against outsiders, unlike in the French Revolution. After the World War II, the word 'nationalism' in Japan is often identified with fascism and militarism. A cultural (ethnic) factor of nation or nationality implied a taboo of pre-war and wartime experience. In addition, overseas territories had been lost, and only mainland Japan remained. Territory and nation seemed to coincide once again. Yoshino (1992) explains that the majority of Japanese are 'not actively conscious' of territory (p.68). After the 1952 San Francisco Peace Treaty, those Japanese colonial subjects, who had the status for about 50 years lost their Japanese nationality, on the basis of *koseki*. In 1945 around 2 million Koreans were in Japan, and it is said that one third of

them remained resident in Japan. At this time, the allied forces conducted a process of democratisation of Japan, a new Constitution was enforced in 1947, then the Immigration Order in 1950 and Alien Registration Act in 1952 and the Japanese Nationality Act in 1950 were imposed one after the other. It was the most successful case in creating a modern nationalism by the imperial route (Smith, 1991:105). Howell (1994:93) argues that 'because the juxtaposition of Japanese and non-Japanese ethnicities was so important to the pre-modern order, ironically, homogeneity is so central to the contemporary political order' in Japan. As we saw, nation and nationality are used and implied now only as legal/institutional term. The institution operates with the people taking it for granted. In the case of Japanese modernisation, state and nation (ethnicity) cannot be easily divided from each other.

2.8 Conclusion

This chapter began with an examination of theories on citizenship as seen in the literature. If we compare the concepts of citizenship and nationality in Britain and Japan, it is important to take a look at the historical background of nation in these two countries. In Japan, 'there is no idea of citizenship, only nationality', defined as state-belonging (words by Takeda, in *Shiso no kagaku*, 1995), while in Britain, 'citizenship in the UK is another country's nationality' (Dummett, 1976). As we explored earlier, discussions on citizenship in Britain and *teiju gaikokujin* in Japan, are historical and contextual rather than theoretical. These points will be revisited in detail in later chapters. At this moment, it is not easy to define nationality or citizenship in such a way as to make it equally applicable in

Britain and Japan. For instance, in the Japanese case, nationality is considered a universal or neutral concept, as nationality originated and developed in various historical backgrounds. Hence the legal concept intertwined with imperial domination, becomes unclear (Kasama, 1992:262). In the British case, there is no sense of legal nationality in the British mind, but nationality appears rather as cultural/ethnic concept, suggesting one belongs to a specific national group. However British nationality is in fact used in legal literature, although not until 1981, when Britain had a 'national, post-colonial citizenship' (Brubaker, 1989:11).

In both countries, there was an empire with large overseas territories, and subject status was common. However, there was a different development of the nation-state in both countries' history, and the different processes of the disassociation of empire meant that the matching of people and rights developed differently.

In Britain we can describe citizenship as a legal status, and nationality as an individual or group ethnic or cultural identity. In the case of Japan, too, citizenship and nationality (ethnicity) are confused, although this is considered as false in academic circles, it exists still in the construction of institutions. Nationality is mostly used as a legal status as well as an ethnic-cultural phenomena.

Within Britain, people speak of citizenship rather than nationality since in reality it is clearly divided from ethnic/cultural or national identity. In Japan, people

prefer to use nationality in order to describe a legal status as well as ethnic or cultural membership, instead of citizenship.

I would like to say a few words in favour of incorporating the term 'nationality' as a legal status used in the following chapters. 'Nation' originally meant a group of people who shared a certain level of commonality, such as language, or where they were from. Nation could be a reason to include some people, but also to exclude others. After the birth of modern nation-states, this character became clear. The modern nation-state emerged due to threats that nations felt cultural groups attempting to protect their identity, economic interests, religious traditions and language, by demanding that their nations have states, such as territory, by replacing the nation with a state, so they could govern themselves, defend their interests and protect their territory. In other words, a nation-state clearly unifies the ideal of a cultural nation and that of a political nation. At this stage, the modern concept of 'nationality' is membership of a state (Hosokawa, 1990:190). However it is also useful to use the term nationality as a legal concept when we need to clarify the difference between nationality and citizenship.

Chapter 3: Method and Methodology

3.1 Introduction

The aim of this chapter is to explore methodological issues and to indicate similarities and differences between Britain and Japan. Firstly, I shall consider comparative studies in general, then examine problems of application. After that, I shall contrast the similarities and differences between Britain and Japan, and discuss whether 'comparative analysis' can be applied fruitfully in the context of Britain and Japan. Finally, I shall discuss the actual research techniques which will be used in this study.

3.2 Comparative studies in general

There are a great many books and articles on comparative studies, and the way the term 'comparative' is used among academics varies considerably. Moreover, the meaning of 'comparative' is fairly ambiguous. For instance, Vedung argues that 'comparison seems to denote an extremely general human activity and that it makes it very difficult to give the term a more specific connotation which would be particularly fruitful in a methodological perspective' (1976:201). Furthermore, comparative study sometimes means the study of other countries. For instance, in Britain, the study of American politics is classified as part of comparative politics, and in the United States, the study of British politics then becomes comparative (Rose, 1991:446). Hereafter, the term 'comparative studies' will be used to denote 'comparative method'.

Secondly, there are a few direct comparative studies (i.e. with comparative methods) between Japan and Britain despite the fact that these two countries share many similarities. However, as we shall see later, there are some works on comparative governments or policies which include both Japanese and British chapters, as well as comparison on specific topics such as education or industrial relations. It is therefore worthwhile discussing the relevance of the comparative method to this research and whether it can be applied in practice.

There are several advantages in comparative studies. For instance, knowing a country in depth is only possible by contrasting it with others; unless we are aware of what happens elsewhere, we are unable to claim what is unique to the country under study. Comparison gives us the potential for prediction. It enables us to draw some lessons from other countries' experiences. Comparative studies can 'look beyond the single case, the formal institution, and beyond the countries of Western Europe' (Verba, 1967). In the case of Britain and Japan, the merit of comparison is considerable, since these two countries have had experience of learning from each other through history. Therefore, the contrast should be significant. In addition, comparative studies allow us to test general hypotheses. Although by comparing only a few countries, the generality of the hypothesis may be low, comparison improves our classifications of political processes (Hague, Harrop and Breslin, 1992; Sartori, 1994).

Nonetheless, there are some problems with comparative studies. Firstly, comparative studies do not necessarily undertake 'comparative methods'. Comparative study indicates 'the *how*' but does not specify the *what* of the analysis' (Lijphart, 1971:682). Lijphart even states that comparative method is a basic and simple approach and that the methodology of comparative political analysis does not exist. Secondly, there seem to be two kinds of approach for comparative method. One is exploring similarities and differences throughout the analysis, and to stress the in-depth description and understanding of various nations taken at a particular period of time' (inductive). The other is to explore the 'same phenomenon', subject to the similarities and differences which are given (words by Kohli at symposium in *World Politics*, 1995:48).

An example of the former can be found in Bendix (1978:15):

'Comparative analysis should sharpen our understanding of the contexts in which more detailed causal inferences can be drawn. Without a knowledge of contexts, causal inference may pretend to a level of generality to which it is not entitled. On the other hand, comparative studies should not attempt to replace causal analysis, because they can only deal with a few cases and cannot easily isolate the variables (as casual analysis must)' (quoted in Axtmann, 1993:69).

Bendix investigates the same or at least similar questions in very different contexts and thus allows for divergent answers, in order to preserve a sense of historical particularity while comparing different countries (ibid.,). This approach stresses contextualisation. The problem of this approach is that it tends to deny the feasibility

of generalizing, since it places greater emphasis on uniqueness while stressing the specific context. In particular, when the cross-national comparison is conducted, this contextual approach leans towards a description of each country's specific situation rather than offering general concepts across national borders (Mayer, Burnett and Ogden, 1993:2).

The latter approach is to 'transform the field into one with scientific respectability, stress the effort at generalizing across national and cultural boundaries as defining what comparative politics has to contribute to political science...in order to develop cross-nationally a valid explanation of political phenomena' (ibid., p.2) An example of this approach can be found in what Przeworski says (symposium at *World Politics*, 1995:17). He tries to 'emulate experiments by finding 'matches', between cases that are 'comparable'. For instance, Przeworski suggests that to 'find cases that are as similar as possible, in as many aspects as possible and then find a crucial difference that can explain what one wants to explain' or find most different cases and do the same. This is much more quantitative, as contrasted with experimental or case studies and statistical methods (Lijphart, 1971).

The problem with this type of comparative method is that there are 'many variables', and only 'small numbers' of cases to compare (ibid.). Within political science, we cannot control all of the variables as we can do in natural science. Furthermore, the 'same' phenomenon can have different meanings in different countries. This makes it

difficult to compare like with like. Moreover, problems of bias and political values arise when looking at politics in contrasting countries (Hague, Harrop and Breslin, 1992). These are related to the selection of countries for testing initial questions, and more substantially, problems in defining what is similar or different. For instance, as Sugimoto and Mouer (1995) note, there is always a danger that culture may be easily used for both an 'explanatory factor as well as issues to be explained'.

Problems of non-comparability are well-defined in Sartori(1994). They are:

- parochialism, which 'ignore the categories established by general theories and/or comparative frameworks of analysis',
- misclassification, when classifications are not 'orderings derived from a single criterion',
- degreeism, which 'the abuse of the maxim that differences in kind are best conceived as differences of degree, and that dichotomous treatments are invariably best replaced by continuous ones',
- conceptual stretching, or definition without a clear standard (ibid., pp.19-21).

Additionally, there are two different kinds of comparison: simultaneous, varying in places at the same time and historical, varying in period/time. In their attempt to integrate two different types of comparative approaches, Mayer, Burnett, and Ogden (1993:8) propose organising the country studies into common topics and to use some common concepts in order to facilitate comparison, although they rather

favour the conceptualising approach. This common topic with a common concept for different countries is accepted by other authors, such as Harrop ed.(1992) on power and policy or Roskin (1995) on 'what people quarrel about' in different countries, which is his definition of politics. He considers three factors, namely, 'the impact of the past', 'key institutions' and 'political attitudes'. He then analyses 'patterns of interaction' and finally 'what people quarrel about'.

The approach taken in this study will be closer to that of Bendix, since the number of countries relevant to the study is limited to two. In this case, it will take a more flexible and contextual approach instead of scientific, quantitative approach, but at the same time, the study will be aware of 'common topics with common concepts' being the principle.

3.3 Comparative studies between Britain and Japan

This section considers similarities and differences found in recent literature, in other words, academics' view of similarities and differences existing between Japan and Britain. Before doing that, it may be helpful to briefly point out similarities and differences between Britain and Japan in popular discourse and historical context. Similarities shared by Britain and Japan are insularity, the notion of self-distinctiveness of popular discourse and geographical location, experience of imperial tradition with subject status, and emphasis on overseas trade. Although both countries are island nations with limited resources, they both shared a great

vision of empire. Historically, there was a significant role played by the elite from religious circles and the monarchy. In addition, at the institutional level, these two countries share the character of a 'centralized state' with parliamentary democracy as well.

Significant historical differences between Britain and Japan exist in the experience of 'seclusion' (*sakoku*, closure of Japanese territories during the Edo period) and the outcome of the Second World War. There are also significant differences between the relationship between the individual and the state (Harrop ed., 1992:9). These major differences do not mean they cannot be compared, however. Britain was once a model for Japan after the Japanese opened up the country in the nineteenth century. Here is a clear example: with reference to Japanese overseas expansion, Kume Kunitake made a telling comparison: 'Japan has sufficient power to become the Britain of the East'¹. Regarding this point, Japan was the first 'non-western' country which went through the process of modernisation as well as westernisation, and apart from war-time and just after the war, it has been relatively successful.

When comparative studies are conducted, they are frequently limited to countries within Europe. The United States or Japan are usually not included and until very recently, Japan was treated as 'incomparable', because it was seen as alien (Rose, 1991) in English political science literature. However, as mentioned above, there are some works which do not use comparative methods, and which include chapters on

¹ *Toyo no cikoku to naruni fusoku ha nashi*, in *Shimaguni Konjo* (Insularism) quoted in Oguma (1995:93-4).

both Japan and England². Harrop ed.(1992) discusses four areas of public policy in industrial, health, ethnic minorities and law and order within four countries (France, Japan, the United States and the United Kingdom), which for the purposes of this study on ethnic studies issues and politics, is quite useful.

Moreover, 'homogeneity/uniqueness of Japanese' (termed *Nihonjinron*) which prevailed in Japan until the 1980s and has exaggerated the 'incomparability' of Japan with other countries. It may be useful to discuss 'Japanology' a little in this section. There is a significant amount of Japanese literature which emphasises Japanese uniqueness/ homogeneity, which is quasi-academic but popular such as Nakane (1967); Doi (1971). Gradually, around the late 1970s, critics of *Nihonjinron* appeared (see for instance, Sugimoto and Mouer, 1995; Dale, 1988), including some criticism on *Nihonjinron*'s ideological position, which is mentioned in the introduction to this study. Furthermore, as Yoshino (1992) reveals, even this idea of 'uniqueness' of Japanese has some similarity with the idea of 'race', which is a familiar topic in British literature. Nowadays, Japanese political scientists as well as 'foreigners' are prepared to write about the political system using generic concepts or comparative methods.

Apart from that, there are some comparative studies covering Britain and Japan which were conducted in the 1960s. There are, for instance, Bendix (1964) on

² See for example, Moore (1966); Pye and Verba eds.(1965) on modernisation; Castles ed.(1989) on the history of political economy; Kotkin(1992) on ethnic groups and globalisation; Jones (1993) on welfare state and social policy.

modernisation, Shipman (1971) on education; and Dore (1973) on industrial relations. As in earlier works of comparison which include Japan, Bendix(1964) compares Germany with Japan in its experience of transformation. He starts his analysis from the experiences of Western European societies, including Britain, and the developmental view is explored in Japanese 'preconditions of political modernisation'.

In contrast, in the field of industrial relations, there are a number of good studies from different comparative perspectives from the opposite direction- Japan to Britain. In the 1960s and 70s, manufacturing exports from Japan to the United States and to Europe increased. During the 1980s, in order to avoid trading conflicts and to find cheaper production costs, the establishment of Japanese factories overseas accelerated. Along with this economic situation, Dore (1973) contrasts Japanese success with British decline, and considers the possibility of Britain adopting the Japanese model in future, thus reversing the earlier situation when Britain was Japan's role model. In the 1970s, Dore was convinced that the Japanese model was understandable as well as efficient, provided that its cultural and historical scene were taken into consideration. Sugimoto and Mouer (1995) support Dore's work in refuting the 'uniqueness' theory. Adaptation of the Japanese model in other countries has been examined recently and termed 'Japanisation' in some works (Elger and Smith eds., 1994) and in other fields (for instance, Gould, 1993 in social policy). In Jones's view (1993:198), the increasing attention paid to Japan on

welfare issues has arisen because Japan 'commands serious attention as an economic success story because, for all the prosperity, its government still spends proportionately too little on welfare to be accorded a western-style welfare state'.

In the education field, British academics show a keen interest in the educational system of Japan. They assume that there is a strong correlation between Japanese economic prosperity in the post-war period and the high standard of general education, and attempt to learn from the Japanese experience (see for instance, Howarth, 1991; HMSO, 1991; and Goodman, 1993). This interest now appears to have an additional impact in that a Japanese scholar informed me that 'education in Britain is now a fashionable topic for Japanese scholars of British studies'. The following section considers specific areas of similarities and differences between Britain and Japan, which may be relevant to the fields of law and politics in particular. Some of these examples are found in 'comparative politics' or 'sociology of law' fields, as well as in comparative legal literature.

3.4 Common law/continental law

Ehrmann's (1976) comparative legal cultures classify four different cultures from a western point of view working on the assumption that law emerged from the 'west'.

They are:

- Romano-Germanic family
- the family of Common Law

-the family of Socialist Law,

-the non-Western legal family including Japan, as a country of Confucian thought.

He describes Japan, since the beginning of the Meiji Era in 1868, as having the most thoroughly westernised law. This is not surprising since the body of law has been frankly based on French, German, and lately Anglo-American law (p.18). The first contrast between constitutional law in the Roman continental system and the English judge-made law within the common law tradition was provided by Weber (1978). In his view there is a dichotomy of common law which he describes as 'irrational' and Continental (codified) law as 'rational' but this view is too simplistic, and for instance, Turner (1992) points out that Weber overlooked common law's common nature approach to (individual) rights.

Yet the framework of Continental law vs Common law is still useful for understanding the relationship between law and society. The field of the sociology of law 'seeks to discover patterns from which one can infer whether, and under what circumstances law affects human behavior and conversely how law is affected by social change, whether of a political, economic, psychological or demographic nature - to discover causal relationship between law and society' (Zweigert and Kotz, 1992:10). Although it is still weak as a theory, it is of some use for comparative studies.

Common law has several meanings: it denotes the totality of the law of the Anglo-American legal family, as opposed to 'civil law' which denotes the law of Continental legal systems, influenced by Roman sources. In a narrower sense, it refers only to that part of the law which was created by the King's court in England, as opposed to 'statute law'-'equity' and the enactment of parliament' (Zweigert and Kotz, 1992:195). Hereafter unless stated, I use the word common law in the former, broader sense.

3.5 Codified-Uncodified constitution

Blondel (1995) states that: 'constitutions have introduced ideas and precepts about the organisation of governments which have deeply affected both theory and practice, even where there is no formal constitution. Constitutional developments which have occurred since the end of the eighteenth century have resulted in a universal debate about the principles of the organisation of governments and about how best to implement those principles' (p.217).

When we talk of rights and entitlements, one important aspect is to consider what is the last resort for their guarantee, namely, parliamentary sovereignty and the rule of law for Britain, and the Constitution for Japan. The difference between a codified constitution and one which is uncoded (and partly written) is certainly one of interest. The British uncoded constitution appears to offer less protection to individual rights, although the case is not straightforward. In Britain, constitutional

debate is explained as historical rather than legal. This can be found for instance, in Dicey (1885): The rights are based not upon abstract constitutional statements but upon the actual decisions of the courts' (in Lively and Lively eds., 1994). In comparison with Belgium (the Continental system), the same author writes:

In Belgium, individual rights are deductions drawn from the principles of the constitution, whilst in England the so-called principles of the constitution are induction or generalization based upon particular decisions pronounced by the courts as to the rights of given individuals (Dicey:1885, quoted in Lively and Lively eds., 1994:180).

Although these statements are rather old and may not be strictly applicable to the present English system, especially when we consider the expansion of administrative work since the war, nevertheless, the relationship between the uncoded constitution and the guarantee of individual rights in Britain offers an interesting comparison with the Japanese system. This point is elaborated by some Japanese researchers of English law, such as Ito (1963) or Kuramochi (1995), in order to draw comparison. In particular, works of Dicey are often referred to by Japanese scholars for their comparative ideas with Japan.

After the Meiji Restoration, the modern Japanese legal system borrowed a number of ideas from different European countries, for instance, the Meiji Constitution from Prussia, the Civil Code from France and the cabinet system from Britain. After the Second World War, common law especially that of the United States had influence upon Japanese law, for instance, upon the present Constitution and Immigration law.

The Japanese post-war written Constitution is an enlightened document in some ways (Ito, 1963). Since there is no revolutionary struggle for individuals' rights against authority, the passive nuance of rights as 'given from above' is quite strong. It is difficult for imported legislation to become living law and to become embedded. With this background, unlike Britain, without the tradition of the 'rule of law', it makes the role of the (codified) Constitution important for the guarantee of rights in Japan (Kuramochi, 1995) especially after the war. Therefore, the comparison seems to be between the codified constitution which emerged as a *fait accompli* in Japan, and a wealth of historical background in Britain which has no single constitutional document (Kuramochi, 1995).

A further point which singles out the British system from others is that 'virtually all British civil liberties stem from a fundamental principle: that people may do what they like so long as no law prevents them' (Coxall and Robins, 1994:316). This is in contrast to continental countries where people are prohibited from actions unless the law permits them (Owers, 1994).

There is another major difference between Britain and Japan in the relationship between the constitution and international aspects. The supremacy of European Community Law to Britain (over domestic law) has no equivalent in Japan. Nor is there a similar body to the European Court of Justice for Britain in Japan, in the sense that its judgment has direct effect. On the other hand, the effect of the

European Court of Human Rights (ECHR) on British judgment has some similarities with the ICCPR (or Human Rights Committee of United Nations) for Japan. With relation to ECHR:

Unlike the other countries who have signed the document, it has never incorporated the convention into British Law. British citizens cannot use the Convention to appeal to British courts when their rights are infringed. They can appeal to the European Court, but only after they have tried and failed to find remedies in the British court (Coxall and Robins, 1994:327-8).

In general, the courts in Japan are said to be not so sympathetic to international conventions. Choe Chang-hwa, who was active on Koreans' rights in Japan, recalled that he was advised to bring the issue to the attention of the United Nations Human Rights Committee after he had tried all the court procedure in Japan. This was done finally in 1979 (Choe, 1995:54).

3.6 'Race' vs *kokuseki*

Issues relating to the former empire subjects- Commonwealth citizens in the British case and Koreans and Taiwanese in the Japanese case, are often described and conceptualised as 'race' in Britain and as 'nationality' (*kokuseki*) in Japan respectively, as we saw in the discussion on 'nationality' of Britain and Japan in the previous chapter. With regard to the 'race vs *kokuseki*' perspective, Neveu (1989) points to a similar comparative perspective between France and Britain. She considers that the experience of maintaining an empire affects the issue of citizenship and nationality in France and Britain. She argues that they 'have built such considerable empires overseas and for which those empires played a very important

role for their societies at large, reaching all parts of the population and giving birth to specific ideologies and policies (p.6), that this also influences the two countries afterwards. Neveu describes two indicators of difference between Britain and France, namely, 'immigration rules and the legal rights available to ethnic minorities' and 'the way relationships were to be built with them' (p.7), in other words, ideology and institution. In the British case, 'the fact that ethnic minorities from the Commonwealth enjoy civil rights in Britain is due directly to the existence of the category of 'British Subject' (p.7) on the one hand, while on the other, to 'the development of the use of such terms as 'black' and 'white' to designate people' or 'racialisation' (p.8). Neveu (1989:6, 8) points out that the reason for distinction by 'race' largely depends on the fact that everyone (British or Commonwealth citizens) is (or was) given 'equality before the law', even though in practice, 'it is not really taken into account' (Neveu, 1989:6). In the French case, at the institutional level, 'in spite of some feeble attempts to integrate colonies into the mainstream political system, colonies and their inhabitants have always had a second-class status as far as citizenship was concerned' (p.7), and at the present ideological level, 'the terminology used is not a racially connoted one, but one in terms of 'French' and 'immigrants', partly because 'the line was clearly drawn between those who were French nationals and had rights, and those who were not and had no rights' (p.8). In this respect, the Japanese experience is similar to that of France, and similar points have been noted during comparisons between Japan and Britain.

In his chapter called '*The attempt to integrate the Empire*', Chen (1984:241) contends that Japan, as a late-industrialized and late-expanded empire, developed a 'legal compromise between the British and French systems regarding relationships between the mainland and overseas territories', and tried to accommodate the assimilationist style of France and the differentialist style of Britain. This has resulted in a gap between 'consciousness' and 'the institution'.

On the ideological level, Oguma (1995:364) highlights an interesting issue on the difference between western (colonial) thought and that of Japan, saying that there is no representation of the 'Other' in the case of Japan. Rather, within Japanese thought, 'the Japanese do not want to make the existence of the Other, who is different from them' (p.368) in their Japanisation. He bases his arguments on the fact that Japan extended into surrounding areas and colonised them, and these areas had a similar cultural and religious background and their people looked similar to the Japanese. Because of this, it was possible to see these colonized people, mainly Koreans and Taiwanese as 'members of the family', or as 'adopted members' (p.372). Once the war ended, and the empire was dissolved, the line was drawn between those who were Japanese and those who were not, based on *koseki* (the house registration).

Therefore, in the Japanese case, with regard to the former empire subjects, a statement such as 'despite their former status as empire subjects...' makes sense and

has significance in the historic context to argue for the improvement of rights for these former empire subjects. Moreover, there was no 'equality before the law' before or after the Second World War with the Koreans and Taiwanese. In order to argue against their existing (legal) inequality, which is explained at present as the distinction between 'aliens' and 'nationals', the above statement is useful (for instance, Tanaka, 1974). In other words, the statement of 'racism' is not effective enough to argue against the present situation.

Furthermore, the application of the concept of 'race' has not paid enough attention to the difference between Japan and other countries. For instance, the application of 'race'³ cannot explain well the difference between 'race' which is visible, or need not to be contested, or 'race' which is invisible and needs to be contested to be recognised as a 'minority'. As far as these works are concerned, the emphasis is on the deconstruction of the myth of the Japanese 'race' or homogeneity (for instance, Armstrong, 1989, and Weiner ed., 1997). However, the critique of the myth of homogeneity starts as early as the late 1970s (such as Ubukata, 1979; Onuma, 1986). In addition, application of 'race' issues to the Japanese context seems to be concentrated before the war (such as Abe, 1989; Weiner, 1994), and has not expanded to the 'post-war' period. But as Yoshino argues, on 'ideological discourse, there is clear division between pre-war and post-war' (Yoshino, 1992).

³ Armstrong (1989); Weiner (1994) on Koreans; Siddle (1996) on Ainu; De Vos and Wagatsuma (1966) on Burakumin, for instance.

As the link between 'racism and nationalism' in the Japanese case is not similar compared with the British case, clearly there is a perspective which cannot be explored in 'race' discourse (Kasama, 1988). For instance, Howell (1996) admits that 'Racism' is not as serious a problem in Japan as it is elsewhere. Japanese society is in no immediate danger of collapsing under the weight of ethnic conflict, nor are minorities the targets of the sort of raw hatred and physical brutality seen so disturbingly throughout much of the world in recent years... it also reflects the fact that most minority individuals are not readily recognizable as such upon incidental contact'. However, significantly, 'ethnic and racial discrimination is institutionally sanctioned to a degree in Japan that would be unacceptable in most western countries' (1996:185).

In Japan, groups such as Burakumin, Ainu, and Ryukyuans were incorporated as Japanese subjects in the same way as other 'Japanese' after the modernisation period and kept their status as Japanese nationals. Because of this, at least from the Japanese government point of view, it is not easy to recognise these groups as 'minorities', as mentioned before. Therefore, we can say that there are two types of groups in Japan. The first has to do with people who are 'equal before the law' but not in practice, that is Japanese, Ainu, Burakumin, Ryukyuans, and women. However, in case of Burakumin, there is debate about whether to 'preserve distinction' or to aim for complete assimilation within the mainstream. The situation for these groups is similar to groups who experience 'social discrimination' in

Britain. The second type is excluded from the notion of 'equality before the law', and covers aliens including Koreans, the former empire subjects. In the latter case, discussion on the grounds of 'nationality' in law makes sense, since the problem will depend on whether, or to what extent, this 'inequality' before the law is 'reasonable'.

Neary (1992) attempts to compare 'ethnic minority' issues in the United States, Japan, Britain and France. He contrasts 'immigrants' in Britain and France and 'the former slave group' in the United States and 'Burakumin' in Japan. In relation to minority administration policy, he defines the first two countries as 'anti-discrimination' type, while the last two as 'affirmative action type', according to the nature of their legislation. Burakumin are not the focus of this study, and not all types of minorities fall into this classification (for instance, Koreans in Japan do not have 'affirmative action type' privilege and the Race Relations Act 1976 in Britain has only just been extended to Northern Ireland). Yet his indirect comparison of the 'race-relations' issue in Britain with 'affirmative action' in Japan together with its constitutional reference is helpful for the framework. The idea of 'affirmative action' with relation to Burakumin in Japan is initially found in (Upham, 1987), in which he thinks the closest analogy of the programme for Burakumin are the programmes administered by the 'Bureau of Indian Affairs' in the United States.

Without specific anti-discrimination legislation, the Constitution (Article 14: equality before the law) is the general protection clause for equality in Japan. However, as

will be explained, in relation to Koreans, the former empire subjects, this clause is not automatically applicable, as 'nationality' is not included in the clause itself.

In the case of Britain, with relation to the Race Relations Act, a statute law, Lester and Bindman (1972) argue that common law does not provide enough protection for equality before the law, and that the Race Relations Act was a positive attempt to change this situation. 'The Race Relations Act was a significant step in that direction - an attempt to influence social behaviour and attitudes by a statutory declaration that everyone in Britain was henceforth to be treated on the basis of individual merit, irrespective of colour or race, and to provide an effective legal remedy for the most unfair and degrading types of discrimination' (ibid., p.15). They regard the concept of equality before the law as also being limited by common law.

As a result of colonialism and also in order to justify it, some British writers developed 'the concept of "race" into racist theory', and 'it purported to offer an explanation of and justification for the subordination of blacks by whites in terms of those origins' (Mason, 1986:95-6). A pioneer of British 'race' issues, Banton (1977) argues that 'racial doctrine' was formulated in the 1850s, when 'the growing and the rather diverse utilization of the race[sic] idea has to be set against the whole social background of Victorian England' (p.169). He places emphasis on the 'significance of psychological and cultural determinants of racial 'visibility' (1967:368), saying that 'British colour values have been heavily influenced by the country's imperial

experience, post-war immigration has occurred in an era of decolonisation when people have been much more conscious than before of the international implications of racial issues' (ibid., p.368) and that the 'implications of racial difference cannot be disentangled from the aspects that stem from the newcomers' handicaps and reception as immigrants' (ibid.,). However, historian Rich (1986) is rather cautious regarding the influence of imperialism on the post-war 'immigration/racial' issue. He argues that while it is possible to establish some continuity both in imperial ideas and policy in the field of 'race' and colonial development, the tradition was by no means absolute (1986:10). He does not, however, completely deny the effect of Victorian thought.

In the critique of 'new racism', which relates to immigration issues after the 1970s, Miles (1989) explains the difference between 'nationalism' and 'racism', as lying 'in between the former's additional claim that the 'nation' can only express itself historically where it occupies exclusively a given territory wherein the 'people' can govern themselves. No similar political project is explicit in the ideology of racism' (p.89). In the case of Europe, 'the discourse of Europeans to define an Other beyond the boundary of Europe as biologically inferior was first used by certain political forces within Europe to differentiate populations, to constitute Self and Other dialectically as separate nations'...(p.113). By understanding 'racism' broadly, he points out the utility of the concept as well as a danger that everything can be conceptualized as 'racism'.

3.7 The role of courts

Courts and legal systems are consistently given the least attention by introductory texts and comparative studies of political science in Britain. However, within legal studies, the neutrality of law is presupposed and these tend to focus on mere law-interpretation (Fitzpatrick and Hunt eds., 1987). For instance, in Hague, Harrop and Breslin (1992) out of more than 400 pages on "comparative government and politics", only 6 pages are about the judiciary. Mahler (1995:128) admits that courts maybe the most system specific, by which he means the most unique institutions in a country, and the generalizability is therefore low, since in many political systems, courts are excluded from the political arena. Even a political scientist deplores the distinction between legal and political studies in Britain, and suggests browsing among those journals classified as legal' (Drewry, 1991).

Nevertheless, the role of the courts is important for maintaining individuals' rights, resolving conflicts between different institutions or levels of government, and what is more, for judicial review - 'ruling on whether specific laws are constitutional' (Hague, Harrop and Breslin, 1992:282). Due to its tradition of parliamentary sovereignty, British judges cannot decide that legislation is unconstitutional like in other countries. Rights are secured, at least in theory, through the representation of interest in a democratic parliament, elected by universal suffrage (Meehan, 1993:38). Yet, judicial review offers remedies for individuals.

Judicial intervention in Britain has been subject to greater scrutiny recently, with a positive change being noted (Mahler, 1995:136). Judicial review, however, is most influential in some other countries, including the US and Japan, with respect to certain minority groups, who lack electoral strength and also find it more profitable to resort to litigation rather than legislation (Ehermann, 1976:10). However, there is also the case that when litigation goes to the upper part of the court structure, judges limit themselves and are reluctant to intervene in the work of administration. Furthermore, both Britain and Japan are centralised states, which 'concentrates power in either the legislative's hands or the executives' and so 'the broader the range of governmental intervention, the more numerous the occasions in which disputes between citizens and government arise...the more disputes involve governmental agencies, the greater the potential involvement of courts or court-like tribunals in the political arena' (Jacob et al., 1996:9).

3.8 Impact on public policy

In order to analyse case laws, this study will incorporate literature on the impact upon public policy. In the area of public policy, comparison can help to expand policy options and give clues about what might work elsewhere (Harrop ed., 1992:4). The merit of learning comparative public policy is that 'it illuminates the various and subtle ways in which politics works to produce choices of a collective and social nature' (Heidenheimer, Hecllo, and Adams, 1990:2). There are good

comparative studies between Britain and the United States on immigration (Legomsky, 1987), and racial discrimination in the UK (Lustgarten, 1980) seen from a legal perspective. On politics and law, although not comparative studies, there are some good examples for analysing court cases. Meehan (1993) investigates European citizenship by court decisions as well as legal documents. Griffith (1991) explores the relationship of judges and politics by citing judges' statements of court cases.

In the literature, it seems that the role of courts is represented in two ways: the first approach regards courts as an integral part of government, and the second regards courts as marginal to governmental structures, the court as 'legal institution' as distinct from 'political institution' (Wasby, 1970:16). Being politically neutral, for example, the court is able to arbitrate in political disputes. In the former case, consideration or analysis of impact is concentrated in the decision of court rulings while in the latter case, the effect of court rulings depends on other governmental bodies such as the legislative and the administrative (Grant, 1995).

Literature on the 'impact of public policy' is found in pressure group politics and also in some aspects of public law and the sociology of law. A pressure group is roughly defined as 'an organisation which seeks as one of its functions to influence the formulation and implementation of public policy. Such public policy represents a set of administrative decisions taken by the executive, the legislative, the judiciary, and

by the local government and the European Union' (Grant, 1995:9). Within the literature on pressure group politics, traditionally most research is from the United States while the British contribution towards this area, is less significant (Jacob et al., 1996). Scheingold (1974), in the context of the United States in the early 1970s, points out that litigation as a pressure group activity has only limited effect. In addition, pressure politics concentrates on pressures on the legislative and the administrative, and in most literature, the judiciary is considered as too unimportant in the power making process to be a target for pressure group activities (Allum, 1995:248).

In the case of Japan, Upham (1987) considers the impact of group litigation for social change including the areas of discrimination against minorities. He argues that litigation plays important role for social change in Japan, but also argues that 'bureaucratic informalism' (ibid., p22) the way which the Japanese government deals with important social change when it faces a problem. Rikumoto (1991) agrees with his view. Apart from that, there is a good report by Kobayashi (1996) who himself supported an HIV court action (*yakugai aids sosho*) with the help of the media.

There are, however, a number of problems in applying these methods. Firstly, it is difficult to measure impact (Grant, 1995, Wasby, 1970), although some of this could be measured by interviewing those involved in disputes. Secondly, specifying 'groups' as representatives sometimes causes difficulty. For instance, in this study,

the fieldwork chapters dealt with 'individual status for one chapter and with 'entitlements', which are more like group rights for the other chapter. It is also the case that the researcher may 'either theorise at a level so general for application or theorises produced are a form of premature generalisation' (Lustgarten, 1980:xi). Discussions on group actions are difficult to maintain in this case, since it does not focus on groups, but on the broad category of 'the former empire subjects', and in the section of patriality, the targeted law suits are more individual-based, which makes it difficult to categorise them as a group. Moreover, in addition to the limited effect of courts, there are already many negative results reported for the court case strategy, in particular within British contexts. In Britain, especially in the social securities and immigration cases, going to court does not help improve the situation. As Prosser (1983) says: 'The most important problem in bringing British test cases, particularly in the field of homelesses and supplementary benefits where a case which might have created a precedent unfavourable to the administration could be neatly headed off by giving the individual affected accommodation, so preventing any more general effects' (p.10). There are also key differences between Britain and Japan in legal and governmental structures, as we saw earlier.

For this study, the area of public policy focused on in Japan should be internal control, while in the UK, the corresponding part of public policy should be immigration policy, where the issue is whether to accept immigrants as future

citizens. There are also different styles of post-colonial administration, as discussed in the previous chapter, and parliamentary sovereignty vs separation of powers.

It would appear that there are more differences than similarities prevailing in the context of this study. Whilst dependent on the level of analysis, similarities found above and in previous chapters, relate more to ideological and historical issues. In this section, the differences found relate more to institutional/systematic issues. As the main chapters focus on the impact of politics, it is more appropriate to adopt a flexible approach and search for 'contrast' between the areas of study.

3.9 Translation note

In discussing comparative studies, Jones (1985:7) argues that no one comes 'culture-free' to comparative studies and we need to decide whether 'to ask our own' or 'other people's questions'. The framework here is set from the Japanese perspective, which places a strong emphasis on '*kokuseki*' (nationality) as a legal concept. Although Jones (ibid.,) refers to the context of 'social' policy exclusively, as a frame of reference, there are methodological issues to be considered on this, as 'cultural factors deriving from varying histories are extraordinary difficult to manipulate'(Lipset, 1994:210). In this study, I will 'ask my own questions', therefore, the comparison perspective is to analyze the British situation from the Japanese perspective, rather than applying a British viewpoint to the Japanese situation.

One of the problems here is that there may be limitations in applying the Japanese perspective to the British context, as there may be issues which are difficult to explain clearly. For instance, 'racial' issues are not significant nor theoretical issue in Japan compared with the British context. Nonetheless, applying the Japanese perspective to the British case is worthwhile. It will offer a different comparative perspective and help bridge the gap where the British perspective is inadequate, and therefore, contribute to mutual understanding between Britain and Japan.

Secondly, regarding the target of comparative study as well as the positions of the researcher and researched, as Ota (1994) points out, we need to clarify whether we are 'critiquing Japanese society or western discourse on such construction'. In the former case, my main materials on Japan, for comparative purposes will be ones written and spoken in Japanese. Therefore, in order to 'compare British and Japanese issues in 'English', I regard translation as an important part of my methodological problem. Translation involves 'the transfer of 'meaning' with a 'whole set of extra-linguistic criteria' (Bassnett, 1980:14). Firstly, the context between these two countries is quite different compared with the comparative studies within European countries. We need to compare relationships and change over time within and across systems and to seek out theoretical equivalence in comparing the behaviour of whole system (Teune, 1990:54). There are different kinds of equivalences namely:

- the lexical meaning of words
- the syntactical content of words
- the availability of translated words
- the cultural context of words, all of which can be divided as 'functional' and 'formal; equivalence (Marsh, 1967:272-3).

For instance, a pair of (counterpart) words with surrounding connotation has similarity and dissimilarity between two languages (Uchida, 1977:16). Bearing this in mind, I need to harmonises the translation of words as much as I can. It is not a matter of wrong or right specifically, but to what *extent* is it wrong or right. Secondly, there is a contextual problem. It is a difficult task to keep the sharpness of the concept as well as keeping the specific contextual connotation (Uchida, 1977:35). Moreover, not all words in a language are translatable into another language. We need to compromise somewhere to make the translation meaningful and comparable in English, as well as to create 'unnatural' English to retain the Japanese connotation (Inoue, 1990).

Therefore, I shall keep the definition of the concept as simple as possible, and try to show the Japanese corresponding word with possible synonyms. In addition, I shall look at Japanese documents as much as English documents written on Japan, in order to avoid variation of meanings, and in the case of English materials on Japan,

be conscious of the difference of translation of Japanese to English and where necessary, show my own alternative translation.

In comparative studies, the way we choose the relevant variables is also an important methodological problem, in addition to data collection. In order to make simple comparisons, I will consider variables as 'differences' between the two countries. In this case, variables are based on contract/communitarian tradition, variations in Continental and common law, and historical experience. In the area under study here, all three variables, relating to culture, the application of the law and historical experience will have an effect direct or indirect on nationality and citizenship.

3.10 Method in practice

The following four research chapters explore two kinds of topics, 'rights and residence', and 'patriality' in Britain and Japan. As mentioned in the previous chapter, the 'rights and residence' chapters correspond to the examples of separating the concepts of citizenship and nationality, while the 'patriality' chapters set out to connect the two concepts.

In the 'rights and residence' chapters, I shall discuss to what extent the status of permanent residence is stable in Britain and Japan, and assess the criteria of entitlement to rights. In the 'patriality' chapters I shall discuss what kind of rights or

privileges are attached to the 'right of descent'. This framework comes from what is called 'the function of nationality' (*kinouteki kokuseki*) in Japanese. This divides 'functions of nationality' between its function as a criteria entitling various rights and its function as entitling state membership or citizenship itself (Onuma, 1979b, 1985, Kidana, 1996). This method of distinction is shared by other Japanese authors (such as Tanaka, 1974, Kondo, 1996a). There are two premises for this approach. First, there is a clear distinction between the statuses of aliens and citizens. Second, having citizenship status in the Japanese case, 'Japanese nationality' is important as an entitlement to rights and duties. This is not necessarily true in the British case.

In the British case, it would be difficult to use a clear-cut distinction between 'alien' and 'national'. For instance, the object of external control (immigration) and the object of internal control (alien registration) does not coincide. Furthermore one of the crucial differences between Britain and Japan is that in the latter case, most of the former empire subjects in question are already resident in Japan and became the target of alien registration/immigration control; in the British case, the former empire subjects were domiciled outside the British Isles. However, it is also true that immigration and nationality issues are strongly connected in the British case.

The research techniques I shall use are secondary sources (library work) such as books and official publications, and some primary sources such as law reports, newspaper archives, and some supplementary interviews by those who are active in

disputes or specialist academics where possible. In order to select similar cases between two countries, the style is likely to be similar to 'case studies'. In the following, I shall examine the use of law reports and how to select or match similar cases in particular.

There are useful frames of reference on impact analysis by Wasby (1970), who divides areas into; the legal systems and political culture, the power of interest groups, and court and communication (media reports) (p.58). This study will examine the last two sources in particular. On case selection, the study will refer to the criteria set by Legomsky:

...whether the issues were reasonably susceptible to differing solutions, whether the language of the opinion reveals useful information, whether the decision is representative or aberrational, and whether the problems posed by the various cases are sufficiently similar to permit the spotting of patterns (1987:8).

As I mentioned above, my contrasting perspective is set out from the Japanese perspective and I shall bring it into the British context. Firstly, on the Japanese part, I consulted publications on 'aliens' in Japan and their legal status. There, I listed the most important and relevant cases regarding Koreans and other former empire subjects. Then I collected some information about those cases from authoritative digest such as; *Jurisuto*, for the up-date and short-note information, *Horitsu Jiho* (Japanese monthly legal periodicals), and law reports such as *Hanrei Jiho*, and *Hanrei Taimuzu* (hereafter, *Hanji*; *Hanta*), as well as newspapers, and whenever

possible, obtain first hand materials and information from some lawyers involved and academics.

For the British case, I also consulted literature on immigration and nationality issues first, then identified important cases. I then collected information about those often-cited or well-known cases from law reports, newspapers and periodicals, and at the same time, some official publications. Regarding the characteristics of 'parliamentary sovereignty' of Britain, I referred to parliamentary debates which was not necessarily the case in the Japanese context, in order to provide a better understanding of Britain.

3.11 Summary

This chapter has discussed comparative methods and methodology. It explored comparative studies in general, comparison of Britain and Japan and then examined similarities and difference between Japan and Britain within the literature related to this field. Given a number of similarities and differences, it then considered whether comparative methods could be applied in a strict sense, or as a more flexible methodological approach. The similarities can be found in historical and ideological issues, while the differences are found at an institutional level. While there are a number of works which include chapters on Britain and Japan respectively regarding a topic, not many consider the comparative method. In this case, it is not possible to attempt to establish scientific/proper comparison, due to the many differences in

institutional/organizational levels. However, as the focus is about impact on public policy by the minority litigations, it will set out to contrast the effect or style of influence which emerged in both countries.

This chapter also examined methodological issues such as the limitation of scope and problems of translation which are related to these comparative studies. Finally, it noted that in adopting the style of comparing 'case studies', there may be some bias in selecting and matching 'similar' issues. Wherever necessary, the study will provide an explanation as to why it is appropriate to compare and contrast the evidence selected.

Chapter 4: Rights and residence - Britain

4.1 Introduction

In the following four chapters, I shall explore case studies for Britain and Japan in order to compare the issues relating to citizenship and nationality. In this chapter, a couple of themes will be explored. They are: the meaning and significance of 'nationality' in the British context, immigration status as a major criterion for entitlement to rights and residence, so as to compare with the Japanese situation, as well as examining the significance of the concept of 'race' in the British context.

In addition, the meaning and function of nationality in both countries, together with the stability of the status of permanent residence will be examined. As the focus of this study is on the former empire subjects - in Japan, they are treated as 'aliens' altogether, while in Britain, although they have citizenship, because of discrimination, they are treated as 'second-class' citizens. Thus, it is not easy to make a precise comparison between the legal or formal status and the actual situation in Britain and Japan; it is more effective to explore what kind of rights and duties exist in these countries which depend on a residence criterion, and to explore which groups of people are affected by them, and the implications of this situation.

This chapter thus explores issues of 'rights and residence' in Britain and is in two parts. Firstly, it examines the meaning and function of the term 'nationality' in

Britain in particular, as indicated by an analysis of domestic legislation, and whether nationality in Britain is linked with rights and duties. In Britain, it is said that 'civic privileges do not stem directly from the law of nationality' (Cmnd.6795, 1977:22), but from the status of being a British subject. In addition, with reference to the existence of different ethnicity or nationalities within Britain, the meaning of 'nationality' is often strongly linked to the idea of 'race' rather than to 'citizenship'. Nevertheless, it is beneficial to discuss the meaning of 'nationality' within Britain, as this term sometimes plays a role of exclusion, and it will help provide a good comparison with the Japanese case, where the 'functions of nationality' or linkage between nationality as a status and entitlement of rights has been quite a significant issue, as we shall see later.

Secondly, this chapter briefly considers the status of 'settlement' in comparison with the 'alien' status in Japan. As the status of permanent residence is both stabilised and has substance in the British case, the emphasis will be mainly on the comparative points with the Japanese case. Also considered are the kind of criteria that are linked to the entitlement of rights in Britain. The examples taken here are 'political rights', namely the right to hold public office, voting rights in elections etc. and 'social rights', social benefits and other entitlements which are also explored in the following chapter on Japan.

4.2 Nationality rules

First of all, let us start by exploring the issue of nationality rules which exist in the recruitment for the civil service, and which seem to have a similar criteria to the recruitment and selection of public servants in Japan.

'Nationality rules' can be found in the published Civil Service Commissioner's reports, within the General Regulations under the Order in Council from time to time when they are revised. The historical circumstances around nationality rules during and just after the war are well explored by Harris (1991), in particular, the question of to what extent the idea of nationality rules is close to the idea of 'race'. According to the Order in Council (1920), which made a 'nationality rule' in order to clarify the eligibility of becoming civil servants after the British Nationality and Aliens Status Act (1914), 'every candidate must a) be a natural-born British subject, b) have been born within the UK or within one of the self-governing Dominions, to parents both of whom were also born within the UK or one of the self-governing Dominions'. Before and during the Second World War, only the service departments and the Foreign Office required both parents to be natural born British subjects while other departments only required one parent to qualify. At that time, the Dominions were predominantly the white dominions of South Africa, Canada, New Zealand and Australia. However, during the war, this rule was gradually relaxed. After 1940, aliens were permitted to take temporary positions as technicians and scientists (T215/709, 19/10/1946), and there were two revisions of this rule in 1944 and 1946, so that in 1946, 'naturalised British Citizens may...be appointed to permanent appointments in the

Civil Service on the same terms as other British subjects....except for appointments to the Foreign Service, Admiralty, War Office, Air ministry or Ministry of Supply...' (T215/709, 19/10/1946) which also applied to non-whites resident and born in Britain.

Following the end of the Second World War, some problems arose with the nationality rule. For the enactment of the 1948 British Nationality Act, the nationality rule had to be relaxed. Colonies like India, Pakistan and Sri Lanka became independent and joined the Dominions. Some of those working in civil service positions in these countries wanted to gain similar work in civil service in Britain. Among those, there were 'Anglo-Indians with British Nationality, who had been recruited to the Indian civil service', or 'Indian and Pakistani candidates who sought to enter the civil service posts by competition in Britain' (Harris, 1991: 6-7).

According to Harris (1991), the contradictory factors at play were the need to keep India and Pakistan within the western or within the Commonwealth circle, as they insisted on equal treatment (p.7) while some departments did not want to have a rapid increase of coloured civil servants within Britain. For instance, the service departments argued against the appointment of 'citizens of India or Pakistan', because of their 'the conflict of loyalties' (T215/710, 7/1/1949).

An interesting point for the comparison with Japan is that the qualification of wives for those serving in the Foreign Office at this time, required the service to

'veto 'unsuitable' wives because they regarded the representational side of diplomatic work as a man-and-wife job' (E.6869/8, T215/709, 9/10/1945). In Japan, until very recently, those employed in the Ministry of Foreign Affairs had to have a 'Japanese spouse', so that for instance, when a prospective wife was a non-Japanese, either she was asked to naturalise or he had to resign the job. Perhaps the idea of this 'Japanese spouse' rule may come from the similar idea of the 'man-and-wife' job in Britain, though in the latter case, this was the position before and just after the war.

While waiting for the 1948 Act, the revised regulations included the nationality rule published in September 1947. It referred specifically to candidates for the Foreign Office and service departments that they should be natural-born British subjects and born within the United Kingdom or in one of the self-governing Dominions, of parents also born likewise - except with justifiable circumstances.

Since the nationality rules had been published, the rules were clear. There were, however, several ways of practising indirect discrimination. As for instance, 'any overt discrimination against Indians or Pakistanis might cause great political embarrassment and might well be unacceptable. We feel that much the simplest solution would be to prevent the appointment of 'natives' of India or Pakistan to the Admiralty by covert administrative action...' (CSC 5/918, quoted in Harris, 1991:7). The Civil Service Commissioners 'should preserve their [i.e. the Civil Service Commissioners'] impartiality (and their reputation for impartiality) in selection to public appointments on the question of colour no less than those of

politics or religion.' (CSC 27453/49, 25/10/1951 in DO 35/2593). It was also a matter of giving the appearance of consistency with the 1948 British Nationality Act and the nationality rule, relating to equal citizenship of Britain and the Colonies and the Commonwealth, while in practice attempting to exclude some of those.

In time, the nationality rule changed the form of discrimination from that on the grounds of 'citizenship' to the grounds of 'race'. As Harris (1991:10) argues, 'the shift from de jure to de facto discrimination had now been achieved through 'the mystic link between colour and security''.

The case was quite different from that in Japan, where the concern for loyalty had great importance because of the threat of communism and the need to maintain the integrity of the regime just after the war. The pressure for naturalisation for those who 'recovered' their original nationality was encouraged by the nationality criterion not only for civil service entrants but also in the many entitlements of rights. As we shall see later, however, the civil service 'nationality criterion' in Japan was created after it lost the war. In Britain, concern for loyalty was of minor significance, compared to the issue of race (for instance, T215/710, 7/1/1949, and CO886/82/71794/110772). In the case of Japan, due to its assimilation policy, there were Taiwanese and Koreans in the civil service at the end of the war, but when Japan restored sovereignty, they were asked to 'naturalise' if they wanted to keep their positions. In Japan, the *de*

jure discrimination factor is still predominant over the *de facto* discrimination, while in the case of Britain, it seems it is the opposite.

In the 1983 Civil Service Commissioner's report, advertisement of recruits declared that the Civil Service is an 'equal opportunities employer' (1983:13). After the 1968 Race Relations Act, the government formally adopted the policy of equal opportunity, the report specifically mentions the promotion of the recruitment of ethnic minorities in 1986 (1986:7). In 1991, some posts within the civil service were opened to EC nationals in line with the Article 48 of the Treaty of Rome.

With regard to political rights in Britain, these entitlements are linked to the status of British subject, and these have not been significantly changed even after de-colonisation or restrictive immigration and citizenship law enforcement. It is worth looking briefly at the 'nationality' criterion after the 1981 British Nationality Act in the following. The White paper (Cmnd.7987, 22/7/1980) says that 'establishing a British citizenship will make available a ready definition by which those duties and entitlements may be defined in the future. It would not necessarily follow that these would always be attached to the holding of British citizenship, there might be instances in which the present wider definition would remain desirable' (Section 110). Following the enactment of the 1981 British Nationality Act, are there any entitlements linked to the status of 'British citizen'? Nicol (1993) cites three areas where nationality in the British context

matters: 'immigration control, eligibility for jury service and government positions'.

In the case of the diplomatic services, it is explicitly stated in the nationality rules after January 1983 that a candidate has to be a British citizen. In the case of the right to vote, the Representation of the People Act 1983 maintains the existing rights of Irish and Commonwealth citizens (i.e. former British subjects) after the promulgation of the 1981 Act:

'we feel that there is an important distinction to be made between preserving the existing rights of Irish and Commonwealth citizens, which arise out of the historic links between their countries and our own, and conferring new rights on those who have never been regarded as British subjects... we do not think it is unreasonable to insist that, if they wish to enjoy all the rights and privileges afforded to British subjects, they should still be required to apply for naturalisation' (HC32-I, 1982-3, quoted in Lardy, 1997:79).

The newly created right to register for overseas voting which was effected in 1985, is limited to British citizens (Lardy, 1997:79). Until this time, overseas voting was limited to 'service voters', who were members of 'the armed forces and their spouses, Crown servants mainly in diplomatic services, and employees of the British Council and their spouses' (Tether, 1994). Another area in which the status of British citizen matters, is the right of free movement, and the right to look for a work in the European Union.

The status of British citizen is significant in a few areas, but not many. In addition, existing rights are reserved in political rights. This stance is quite different from that of the Japanese government position, as it removed voting rights and eligibility from the former empire subjects just after the war, and has maintained this position ever since.

4.3 Race relations and nationality

In this section, we will examine the importance of 'nationality' in other areas. We will examine one court case which discusses the definition of national origin or nationality. It clarified whether 'national origin' in the previous 1968 Race Relations Act includes 'nationality' in the sense of 'citizenship' or not. Furthermore, this 'Ealing' case [1972] AC 342 has been frequently mentioned by Japanese authors when comparing 'nationality discrimination issues' in Britain with those of Japan, so that it is worth consideration here.

Mr. Zesko was a Polish national who came to Britain in 1939, joined the Polish Air Force and fought in the Second World War. Since then, he has lived in Britain. Later, he married a Polish woman, and they had lived together in the Borough of Ealing for 14 years. He submitted a housing application to the council in 1966 and again in 1968, but his name was not transferred from the register to the housing waiting list, as rules for transfer from the register to the housing waiting list stated that 'an applicant must be a British subject within the meaning of the British Nationality Act 1948'. Through the association of Polish Air Force Veterans, he was notified that his application was rejected, as he was

not a British subject. The association complained to the then Race Relations Board, and the RRB considered that Ealing Council 'had unlawfully discriminated against him on the ground of his "national origin", which was prohibited in the 1968 Race Relations Act section 1 (1). The council disagreed and sought judicial review (ibid.,).

One of the points presented in the Ealing case is whether the terms 'national origin' in the 1968 Act section 1 (1) includes the meaning of 'nationality' in the sense of citizenship or not, as the rule restricted the waiting list for council housing to British subjects. The judgement of the court was that 'the council is not discriminating against such foreign nationals 'on grounds of their national origins' (ibid., 1972:367) and that it should 'be recognised that 'nationality' and 'national origins' do not have the same meaning' (op.cit., 1972:360). As Griffith (1991:171) argues, this approach was quite 'linguistic and formalistic'. During the proceedings, he made an application for naturalisation as a British subject, and was successful. In this case, if the appeal had been dismissed, Mr. Zesko's application will have to have been treated as if 'he had been put on the waiting list when he first applied' (p.355), rather than when he was naturalised. However, Mr. Zesko lost his case. In order for him to qualify for a council house, he would have to become a British subject. This is an unusual case in Britain, for many social welfare entitlements, permanent residence is all that is required.

Two points are indicated by Hucker (1975) on the Zesko case. In his view, it shows that:

'an insistence on possession of British nationality as a pre-condition would, if generally adopted, exclude from council housing a significant class of persons - non-British immigrants who had retained their alien status. The fact that other, more germane, criteria might have highlighted an entitlement to such accommodation among many members of this group was ignored by judicial recourse to formalistic techniques of statutory construction, which obscured rather than illuminated the social dimensions of the issue presented' (p.299).

Hucker also states that 'it is difficult to see why the functionally irrelevant criterion of nationality should have operated *per se* to exclude a particular group from access to a basic commodity. In particular, is this the case when the disqualification was imposed at the municipal level by an authority whose familiarity with the policies underlying nationality laws was likely to be peripheral at best' (1975:303). In comparison with Japan, these two remarks suggest the following one, that nationality as a criterion in domestic legislation is generally irrelevant in Britain, and two that, 'aliens' in the sense of British legislation always means non-British subjects, which is quite different from that of Japan, where 'aliens' include the former Japanese subjects of Koreans and Taiwanese.

In the context of comparison with Japan, Ogawa (1978a) cites the Zesko case and compares it with the case of Mr Shiomi, a naturalised Japanese, who claimed the national pension, but was refused because of two nationality criteria, which

state that firstly, a claimant 'must be a Japanese national at the time when the necessity of pension arose, and secondly, 'when s/he receives it'. Although the restrictions on the grounds of 'nationality' had existed both in Britain and Japan, in the Japanese case, the restriction was further tightened up by including the criterion of nationality 'at the time when the necessity arose', which was hard enough for the newly-naturalised, and impossible for long-standing 'formerly, resident aliens'. Yet at the same time, as Ogawa (1978a:258) concludes, the equal protection of social rights should have been considered for aliens as well as Japanese nationals, particularly when those Koreans in Japan as well as other aliens in Japan are assimilated into Japanese society.

In the 1975 White Paper (Cmnd.6234) *Racial Discrimination*, this restrictive definition of 'nationality' was taken into consideration and it proposed to the inclusion of 'unlawful discrimination' that was conducted on the grounds of nationality and citizenship (col.57). It gave the reasons as:

'it is not unlawful to discriminate against someone because he is an Indian national but it is unlawful to discriminate against him because he is of Indian national origins (i.e. of Indian descent). It is contrary to the Treaty of Rome to discriminate against an EEC worker or his family on the basis of nationality. It is unclear to what extent the courts would regard a person's place of birth as constituting his national origins. Moreover, the distinction between nationality and national origins creates obvious pretext for discriminating on racial grounds' (1975:col57).

At the same time, it made clear that 'there will be appropriate exceptions where a person's nationality or citizenship is a justifiable ground for consideration' (ibid.). The 1976 Race Relations Act includes the term 'nationality' in the definitions of 'racial grounds' and 'racial group' (Section 3 (1)), and provides the definition of 'nationality' in Section 78 (1) as including citizenship but maintains discrimination on the grounds of nationality or citizenship with justifiable reasons.

One of the exceptions placed on the extent of the effect of the 1976 Act is that in which 'discrimination on the basis of that other's nationality or place of ordinary residence or the length of time for which he has been present or resident in or outside the United Kingdom or an area within the United Kingdom', is related to the acts concerning a minister of the Crown' (Section 41 (2)). Immigration status has been an important condition, in practice, for the application of Race Relations Act.

As we saw above, 'nationality' in Britain cannot be a crucial or restrictive criterion by itself most of the time. However, what about other criteria such as residence? Or on what occasions, will nationality and ordinary residence help to clarify other qualifications for entitlements? In the following, we shall turn to the immigration issue, and see when it, in particular the 1971 Immigration Act, has had a combined effect on civic entitlements and privileges.

4.4 Immigration and rights

Before we start looking at the relation between rights and residence in Britain, it is helpful to look first at the importance of the 1971 Immigration Act. First, by the creation of 'patriality' status, it made clear who was free to enter and those who were subject to immigration control, depending on their connection with Britain, in particular, their descents and residence. In the 1971 Act, immigration status and qualification to entitlements began to be linked, since it imposed some restriction to entitlements on those who were not free to enter, depending on the stability of their immigration status, even when these people were not aliens.

In the 1971 Act, apart from the most important 'patriality' clause, it added specific meaning to the question of residence within the UK. In the text originally enforced, it said: '... references to a person being settled in the UK and Islands are references to his being ordinarily resident there without being subject under the immigration laws to any restriction on the period for which he may remain' (Section 2-3-d, later as Section 33-2A). Here, *ordinary residence* is defined as 'settled', or without any immigration restrictions (or) specific provisions of immigration regulations. Moreover, there must not have been a breach of immigration laws at anytime prior to registration (Section 33-2), for instance, in the case of *Marqueritte*[1983] QB 180 : 'when the words of ordinary residence were first used in the 1948 Act, there were no such persons in existence such as 'illegal entrants' or 'overstayers'.

As the issue of 'the right of abode' or patriality will be the topic in the following chapters, I shall concentrate on the aspect of the relationship between immigration control and rights. In general, social security regulations have a strong correlation with the criterion of 'residence' as well as immigration status, since the source of these welfare benefits comes from the taxpayers' contributions. In Britain, regarding immigration status, the most important criteria is the right of abode, rather than 'nationality'. While private relationships within the UK depends on 'domicile', such as marriage or inheritance, on the other hand, ordinarily residence is an important criterion for social benefits qualification, where s/he stays within the UK. But this ordinary residence has different meaning in the different statutes. In relation to immigration status and social benefits entitlement, two concepts are said to be formally important: 'public funds' and 'ordinary residence' (Takegawa, 1991:192). The former concept relates condition of asking social benefits to a requirement of immigration control, while the latter concept is a criterion for receiving social benefits.

According to Gordon and Newnham (1985:6), immigration control which firstly aims to prevent immigrants from accessing social benefits goes back to the introduction of the 1905 Aliens Act. The Act, responded to the mass inflow of Jews from Russia in the 1880s and 1890s, by making it clear that 'the intention was to allow aliens to come to Britain to work, but that if they became a burden on the rates or on relief from the local parish, they should leave' (ibid., p5). In the 1919 Alien Restriction Act, it states that 'permission to enter the country was

not to be given to an alien unless 'he is in a position to support himself and his dependants' (Article 1) and in Article. 12, he could be deported when he had been in receipt of 'parochial relief or been found wandering(i.e. homeless), without ostensible means of subsistence' (p.6). However, 'immigrants who were British subjects were not, subject to immigration control or deportation if they became a 'burden on the state', until the Commonwealth Immigrants Act of 1962 (p.6). Since the 1962 Act, entry of Commonwealth citizens' was subject to immigration control. This is the tradition of excluding immigrants from recourse to public funds. In the 1971 Act, an important criteria for those without right of abode in Britain is, that s/he shall be 'without recourse to public funds', where a qualification of (the traditional) social benefit entitlement met a specific immigration condition of 'without recourse to public funds'.

Now we shall move on to some court cases concerning the entitlements of rights in Britain, relating to 'public funds' and 'ordinary residence', according to the framework given above by Takegawa (1991). Here, although it is clear that discussion can be expanded not only to those settled in Britain, but to asylum-seekers as well as illegal immigrants, in order to make a simple comparison with the Japanese case, it is more appropriate to concentrate mainly on those who are in Britain already and their rights and residence, rather than those who are attempting to become immigrants.

4.5 Public funds

People who visit the UK for a limited period are not entitled to claim state benefits if they are admitted on the condition that they will not have 'recourse to public funds' (HC394, para.38). However, the specific details of 'public funds' were only defined in the 1980s. This point was argued in court in 1981 in the case of *Ved* (*The Times*, 14/5/1981). Within this judgement, the judge separated two kinds of state aid, on the one hand was classified 'matters of public funds such as employment benefit, supplementary benefit (income support), while on the other hand, facilities provided by the state, such as state-aided education, a result of compulsory education, and the NHS, which could not be regarded as 'recourse to public funds in any fair case'. However the judge added that it also depends on 'people resident in Great Britain and Northern Ireland and the claimant's immigration status or citizenship'.

For instance, people with a right of abode in the UK are eligible for full income support, but people subject to immigration control 'may still' have full entitlement if they are legally 'settled' in the UK and have indefinite leave to remain' (OECD, 1997:394). However, the meaning of 'public funds' is becoming clearer, as well as more restrictive to those who want to claim. According to Shutter (1997:180), the contents of 'public funds' were first listed in 1985 as, 'income support, housing benefit, family credit and housing as homeless persons'. Since April 1994, council tax benefits and other allowances were added to the list, and in November 1996, child benefit, 'part II housing', and income-based jobseeker's allowance are included in the meaning of 'public funds'.

Changes after April 1994 were enacted as part of the policy to cope with the increasing number of asylum-seekers.

The 1996 Asylum and Immigration Act includes as part of its aim 'to reduce economic incentives, which attract people to come to this country in breach of our immigration laws', and will 'provide powers to restrict entitlement to housing assistance and child benefit' (Michael Howard, Commons, vol.268, col.699, 11/12/1995). Within this Act, is a restriction of entitlement to 'housing accommodation and assistance, child benefit, income support and other social security benefits'. Because of the expected effects of the Bill on the entitlement of welfare benefits to asylum-seekers as well as to those who have a restriction on their immigration status, the government met with strong opposition. For instance, the House of Lords defeated the government four times. Since the context of the 1996 Act and changes to the asylum law were discussed in Stevens (1998), it is not necessary to repeat the details but just highlight the point relevant to this discussion.

There is one amendment concerning 'immigrants' which it is worthwhile looking at here, as its possible impact would have been not just upon asylum seekers, had it been enforced. In the original Bill, Clause 8 (criminal sanction against employment of 'immigrants' who is not entitled to work in immigration law), and Clause 9 (restriction to entitlement to housing accommodation and assistance), Clause 10 (restriction to entitlement to child benefit), used the word 'immigrant', who may be subject to restrictions. The definition of the word was given in

clause 12 (2) as 'a person who under the 1971 Act requires leave to enter or remain in the United Kingdom (whether or not such leave has been given)'. As the Bill defines 'an immigrant in that broad way' (Lord McIntosh, Lords, vol. 571, col. 1785, 2/5/1996) people would 'mix up legal and illegal immigrants', and 'have sensitivities about it' (Baroness Garder, Lords, *ibid.*, col. 1788). Later, the word 'immigrant' was amended to 'person subject to immigration control', in the sense of the 1971 Immigration Act. JCWI evaluates this change as 'the definition [which] makes clear that settled people and those with refugee status or exceptional leave to remain are excluded [from the restriction]' (*JCWI Bulletin*, 1996/summer).

By the third reading of the Bill, the Court of Appeal ruled on a court case, which argued that the validity of the regulations which removes the entitlement of income-related benefit, was judged as *ultra vires* (*The Times*, 27/6/1996). The effect was therefore nullified by the government's later amendments (*JCWI Bulletin*, 1996/summer).

4.6 'Ordinary' residence

The term 'ordinary residence' is not given clear definition within statute law, unlike the term 'right of abode' which is clearly defined in the context of citizenship, nor 'settlement' or 'indefinite leave to remain' of 'specific provisions' of Immigration Act (Macdonald and Blake, 1995:116). But it plays quite an important role in immigration status.

'Ordinary residence' featured first in the Income tax Act in 1806. Not surprisingly, without a fixed definition, the interpretation of 'ordinary residence' is the task of courts, since in Britain, case law is part of British law. The meaning of ordinarily resident therefore varies from case to case, and Supperstone reminds us that 'decided cases give broad guidance, but are not to be regarded as 'decisive precedents' (Supperstone, 1994:14).

In relation to issues of nationality and immigration, the 1948 British Nationality Act, refers to 'ordinary resident' as a condition of acquisition of nationality (such as 6-I-a-1). In the Commonwealth Immigrants Acts of 1962 and 1968, these include the term 'ordinarily resident', but this did not yet have specific connotations with immigration. These acts used this clause as a reason for 'exemptions from the deportation (such as 1962 Act 7-2-a), or exemption from the refusal of admission (such as 1968 Act 2-2-a), but neither has restrictive direction. Neither provided a definition for 'ordinary residence'.

After the enforcement of the 1971 Act, most immigration cases on ordinary residence, were about the relationship to 'illegal entrants' or 'illegality' where the discussion of those former empire subjects really became the 'former' or were placed in the same category as aliens.

In relation to the entitlement of rights and ordinary residence, there is a case on educational grants in *ex parte Shah* [1983] 2AC 309. Although the context and the case itself was extensively discussed in Beale and Paker (1984), it is worth

considering along with the following, as it offers a good example of rights in relation to immigration status, and that it may be helpful to consider comparison with the Japanese case. The point of dispute in this case was the meaning of ordinary residence in the UK, for the 1962 Education Act and Awards Regulation (LEA awards Regulations, p.8) indicating 'wholly or mainly education purpose' can or can not constitute ordinary residence for the purpose of LEA awards. The phrase in Section 1 of the 1962 Act and regulation 13 of the 1979 Regulations made no reference to any restriction on the award of grants based on an applicant's place of origin, domicile or nationality.

In this case, three students were citizens of the UK and its colonies, one was from Kenya, one from Bangladesh and the other from Pakistan, and all had student visas. Another was a citizen of Iran, who was granted indefinite leave to remain when he was in preparatory school. All of them had been in the UK more than three years prior to their entrance into higher education. All of them were immigrants, and none of them was a national of a member state of the EC ([1983]2 AC 312). The High Court dealt only with the first two students, the Court of Appeal and House of Lords dealt with six students and the conjoined appeals.

By distinguishing 'resident' from 'ordinary resident', the local authorities' attempted to apply a 'real home test' for ordinary residence, trying to connect it with domicile. They argued, that 'it does in fact, have the same meaning for both the Immigration Act and the Education Act', but they said it was not part of the

respondent's argument (ibid., p.319). The students' argued that 'there is no justification in linking the concept of ordinary residence under the Education Act and regulations with concepts of presence, either free from control or with unlimited leave under the Immigration Act of 1971 or indeed, its predecessors (op.cit., p.313). Residence, they argued, included being resident in the UK, as well as wholly or mainly for the purpose of receiving education as well.

In the lower courts, only the claim of students with indefinite leave to remain was allowed, and the requests of others were dismissed due to their restricted immigration status. The High court held, 'Why is he in this country? to be a relevant question. If the answer is for a specific or limited purpose, rather than for the general purpose of living here, he will not be fall within the meaning of this award regulation ([1980] 3 All.ER.685). The Court of Appeal (1982) affirmed this decision and stated that a student cannot be entitled to a grant in the UK unless he becomes entitled to remain in the UK indefinitely: 'He will not cease to be an overseas student or become ordinarily resident in the UK unless and until he becomes entitled to make a home in the UK' ([1982] 1 All.ER. 729).

However, the House of Lords allowed all students' appeals and dismissed the government appeal. A speech delivered by Lord Scarman criticised the judgement of the courts :

"They attached too much importance to the particular purpose of the residence, and too little to the evidence of a regular mode of life adopted voluntarily and for a settled purpose, whatever it be, whether study, business, work or pleasure. in

so doing, they were influenced by their own views of policy by the immigration status of students, ([1983] 2AC 348).

Therefore, students who came to Britain for educational purposes, and resided in Britain for at least three years immediately before entering a higher educational institution, could qualify since immigration status had no direct connection with this (*The Times*, 17/12/1982).

According to Beale and Parker (1984:2), before this case came to court, there had been some attention paid to the idea of 'ordinary residence', in relation to the applicability of the 1976 Race Relations Act. By applying Section 40 (1) and 41 (2) of the 1976 Act, the DES attempted to prevent claimants bringing the cases to court by declaring themselves exempt from 'discriminating on the basis of 'nationality or place of ordinary residence' or the length of time someone had been 'present or resident in or outside the United Kingdom'. It also attempted to draw a distinction between 'residence' and 'ordinary residence' for fees and admission purposes by DES Circular 8/77.

The Shah case proceeded to court in January 1983 at the time of the enactment of the 1981 British Nationality Act and in the process of adjudication in parliament of the Nationality Bill. After the enactment of the 1981 Act, residence was connected with the 'right of abode', and disputes also appeared in relation to nationality status. Although the Shah case was limited to the definition of ordinary residence for the purpose of educational grants, its influence on other areas was significant. To the specified exclusion areas, overseas student fees was added alongside NHS charges for overseas visitors which had just been

introduced in October 1982. The former exempted a number of students from health charges introduced in 1982 for overseas students 'on the first year of the course' (*THES*, 24/12/1982). In the NHS (charges to overseas visitors) Regulations 2 (1989 SI/306), 'overseas visitors' are liable to be charged after October 1982. Usually hospitals interpret the term 'overseas visitors' to mean people who intend to remain less than six months (Shutter, 1995: 180).

The case of *Orphanos* [1985] AC 761 is another which went to the House of Lords. After the *Shah* case, it was uncertain whether this precedent would apply to 'tuition fees as well as to awards', since grants are subject to LEA's regulations, and governed by an Act of Parliament, whereas fees have no such legal basis' (*THES*, 21/1/1983). *Orphanos* was a Greek Cypriot who had been in England since 1979 and was a postgraduate student when he filed his suit. When he entered college, he registered as an overseas student and paid the overseas rate. He paid the first half of his fee at the overseas student rate in October 1982, and after the *Shah* ruling, he was not required to pay the second instalment of the overseas fees for that year, but he was not reimbursed any part of the fee which he had already paid. His LEA later gave him an award in July 1983, and he received it for the academic year 1982-3. The court held that the later established meaning of 'ordinary resident' did not affect the contract between himself and the college regarding his overseas student status and dismissed his contractual claim to be reimbursed the difference between the two fees, as the college had proved that the initial residence requirement had not been applied with the intention of treating him unfairly ([1985] AC 762-3).

4.7 A comparison with Japan

One of the significant differences between Britain and Japan is whether the relationship between immigration and nationality is or is not, easy to separate, and the contents of immigration disputes in that these are largely designed for internal (residential) control, as Britain focuses mainly on immigration control. Interesting issues on internal and immigration (external) control can be found in Gordon and Newnham(1985). In his 1985 work, he pays attention to who is 'illegal' and the definition of illegality but not the definition of legal and its control. In the UK case, residence and patriality are related.

In the Japanese case, the former empire subjects are a quite distinctive group in relation to the descendants or relatives of Japanese emigrants who went outside the empire at different periods. As regards the control of people who were 'already inside' Japan, the country used immigration law as well as alien registration law. In Britain, the control of people coming from outside Britain is regulated by immigration law and rules and later by nationality law so that the areas of settlement or other entry classifications as well as citizenship categories are quite important for patriality.

Lastly, let us consider the status of 'settlement' in comparison with the status of aliens' in Japan. This perspective was first indicated by Ishida (1985) in which she introduced the issues of 'racial discrimination in Britain' to Japan. According to Ishida (1985), 'the status of settlement' is fairly close to the ideal status of

Koreans targeted in Japan which they have sought for a long time' (p.201). She gave the reason for this as the status of settlement in Britain permits people to keep their original citizenship, yet places no restriction on their right to remain in Britain or to work. Furthermore, in the case of Commonwealth citizens, they are entitled to full political and civil rights (p.201). The status of settlement means, 'being ordinarily resident without being subject under the immigration laws to any restriction on the period of stay' (Macdonald and Blake, 1995:98). The advantages of having a settlement status include a right to permanent residence in the UK, liability to deportation in only limited circumstances, a right to register or to be naturalised, the ability to change jobs without permission, and full benefits of the welfare state unless waiting for family unification' (ibid., 99-100). In 1995, about 56,000 people were accepted for settlement, and more than 80 percent of them were dependants and spouses of residents or citizens of the UK (as show in Table 4.1), and were accepted as they complete qualifying periods of residence in the UK (OECD, 1997:167).

Table 4.1 Acceptances for settlement

	1993	1994	1995	1996
Acceptances for settlement (000s)	55.6	55.1	55.5	61.2
<i>By region of origin</i>				
European Economic Area	1.4	0.6	0.2	0.1
Other European countries	3.6	4.0	4.0	7.4
Americas	7.6	7.9	8.2	8.5
Africa	10.9	11.9	12.0	13.0
Indian Sub-continent	14.1	14.1	14.5	14.6
Middle East	2.8	2.6	2.9	4.8
Remainder of Asia (mainly East Asia)	8.9	9.2	9.0	9.5
Oceania	2.7	2.9	3.5	3.5
Other	3.6	1.9	1.3	1.4
<i>By category of acceptance</i>				
Accepted in own right	7.3	7.8	6.4	6.7
Spouses and dependants	44.3	43.4	44.9	48.6
Other	4.0	3.9	4.2	5.9

OECD (1997) *SOPEMI, Trends in International Migration*

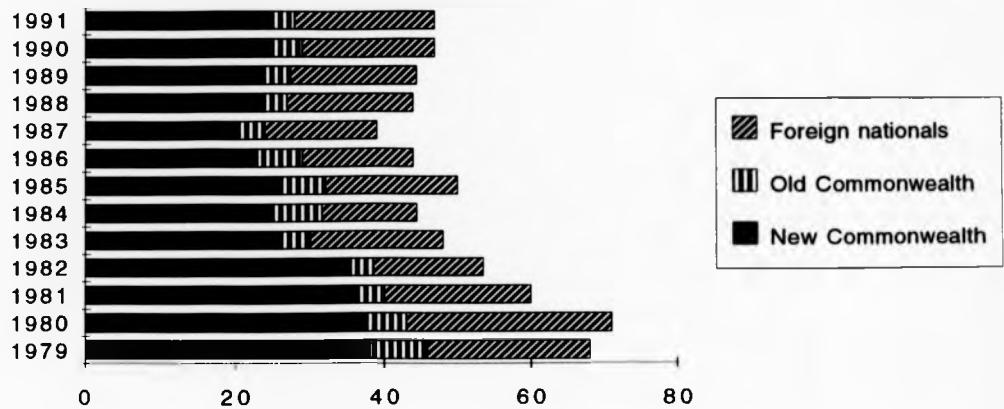
The differences between the status of 'settlement' and 'patrial' and right of abode are that in the case of settlement status, people could be deported in certain circumstances, and are not able to be absent from the UK for longer than two years (Cohen, 1981:12). However, not all patrials had a right of free movement in EU countries, only British citizens. In the 1972 Declaration of the definition of 'nationals' for the treaty, it included 'patrial citizens of the United Kingdom and Colonies, patrial Commonwealth citizens without the citizenship of the United Kingdom or any other Commonwealth country, and Gibraltar citizens of the United Kingdom and Colonies' but did not include 'patrial citizens of independent Commonwealth countries' (Evans, 1982:512). After the 1981 British Nationality Act was enforced, this was changed to 'British citizens, British subjects with right of abode in the UK, and British Dependent territories Citizens by a connection with Gibraltar' (1983, Declaration), which, Simmonds (1984:686) describes as '(again) an ad hoc statement to the Community'.

As we see later, by the mid 1980s in Japan, there was no coherent status for those Koreans and Taiwanese in Japan as 'permanent residents', which recognised their historical ties with Japanese society. Rather, they had a segmented status which politically distinguished *kyotei eiju* as well as *tokurei eiju* and other categories. Even with the status of *tokubetsu eiju* in the 1990s, though there is no limitation on their leave to remain in Japan, alien registration is required which used to include compulsory fingerprints. In Britain, the degrading act of finger-printing became obligatory for asylum seekers in 1993, 'for the

purposes of identification, of asylum-seekers and their dependants, in order to tackle the problem of multiple social security applications made by asylum seekers who arrive with unsatisfactory documentation' (HC Official Report, SC A col.193, 19/11/1992).

In Japan, only permanent residents are now exempt from finger-printing. However, the nationality criterion restricts their occupation, and political rights are still withheld even from those former empire subjects. On the other hand, in Japan, rights related to immigration are fairly relaxed compared with those in Britain. The right to return to Japan lasts for up to five years in the case of *tokubetsu cijusha*, compared with up to two years for those with settlement status in Britain. Today, to acquire the status of *tokubetsu cijusha*, permission for descendants is ministerial, compared with the discretionary grant for those in Britain. Both countries do share the restriction of deportation for limited circumstances. In a sense, it appears that Japanese immigration measures against Koreans and Taiwanese living in Japan are not as severe or restrictive as internal controls, but they are treated less as 'citizens' than those permanent residents in Britain. Of considerable significance is the difference between Britain and Japan in relation to 'permanent residence': the second generation of 'settlement' can acquire the status of citizen in Britain, while in Japan, they still remain as aliens. (see Chart 4.1 for settlement by region of origin in Britain).

Chart 4.1 Acceptances for settlement 1979-91



OECD (1997) *SOPEMI, Trends in International Migration*.

4.8 Conclusion

In this chapter, the theme has been the distance between citizenship and nationality, and to what extent these two can be separated in practice. Prior to the independence of India and Pakistan, nationality meant almost the same as 'citizenship status', but since then, nationality has changed through a connotation with 'race', clearly shown in the preference given to the white dominions as well as the redefinition of citizenship status by the 1948 British Nationality Act. However, as the definition of nationality was clarified in 1972, and later incorporated in the 1976 Race Relations Act, it seems that discrimination on the grounds of 'nationality', has not yet developed as a serious issue as it has in Japan.

Compared with the Japanese nationality criteria, the qualification of 'residence' in the UK seems to be rather open. However, as Takegawa argues, when the

residential criteria are joined with the broadness of those holding British nationality because of its imperialistic history, this residential criterion restricts the numbers of those who qualified for social benefits. At the same time, when the restriction of 'without recourse to public funds' is placed on Immigration Acts, it 'excludes immigrants from social securities' (1991:211), Takegawa argues, 'the purpose of entry as well as the country where s/he is from (ethnicity in practice) has important indicators for entitlements as a result (ibid., p.212-3).

Touched upon briefly has been the question of whether the status of 'settlement' (in the sense of immigration) is comparable with the status of 'aliens' in Japan. It appears that those with 'settlement' (immigration) status with some citizenship (ex-British subjects, for example) status have more rights than those with *tokubetsu eijusha*, and political rights in particular. However, the linkage between rights and legal status (of British citizenship) which gradually began after the 1981 British Nationality Act appears to be heading in a different direction. In addition, the protection and privilege to which EC nationals are entitled from the Treaty of Rome works both against those former empire subjects of different ethnicity as well as for them.

According to Brubaker's model (1989), the socially consequential principle can be fitted to the nationality rule, and the egalitarian principle can be fitted to the stability or substance of permanent resident status. Furthermore, to a limited extent, the democratic principle can be related to the entitlement of political rights. In a rough comparison with the Japanese case, the socially-consequential

principle is less significant while the egalitarian principle is more conspicuous in the case of Britain. The democratic principle, for political rights, is affected by EU issues, which are broader than the UK's concern. The contrast between the situation in the UK and Japan is explored further in the following chapter.

Chapter 5: Rights and Residence - Japan

5.1 Introduction

This chapter will explore the 'nationality clause' (*kokuseki joko*) in Japan, its varieties and impact on former empire subjects, namely Koreans and Taiwanese. It will give some idea of what it means to be an alien in Japan, and also what 'post-war colonial adjustment' meant in practice. By doing so, we shall explore the distance between the two concepts of citizenship and nationality in Japan.

In the Japanese context, the so-called 'nationality clause' existed within most entitlement legislation for a long time, and there is still some entitlement legislation which is closed to aliens. It is easy to miss the historical perspective when we discuss rights relating to immigration status in the Japanese context. This is because, firstly, former empire subjects were not 'immigrants' when they came to Japan, and immigration control was imposed on them long after their entry. The status of Koreans and Taiwanese since 1952 has been based on a 'special' law, instead of ordinary immigration law. Although alien registration law is applied to Koreans and Taiwanese by regarding them as 'aliens', the Japanese government could not apply the Immigration Order to them directly (Onuma, 1986). However, once Japan restored its sovereignty, immigration control was applied to Koreans and Taiwanese 'in Japan' as well as those seeking 'entry to Japan' after the war. 'Immigration' means in the Japanese context, 'new comers', who in most cases entered Japan after 1980s. For former empire subjects in Japan, the immigration policy through which they are affected, is 'internal control' (alien registration), as

well as 'nationality criterion' existing in entitlement legislation. In addition, there is a strong acceptance of the distinction between aliens and the Japanese, though historically, most of Japan's aliens are Koreans and Taiwanese. They are the former empire subjects, who became Japanese and lost their nationality regardless of their wishes. Therefore, to treat all aliens as immigrants, was at least, from the perspective of Koreans and Taiwanese, not acceptable. Moreover, most of the time, these former empire subjects and other aliens are regarded as a single category of aliens.

Until recently, the main campaigning aim of these former empire subjects' was to remove the nationality clause which restricted them from receiving various entitlements. A number of books have been written in Japanese on how and why the 'nationality criterion' came to exist and whether it could be removed or has already or retained in various entitlements legislation. In this chapter, I shall explore rights of entitlement regardless of status, in comparison with the British case. This means examining cases or problems where restrictions are imposed when there is no explicit nationality criterion, and considering to what extent the restriction or prevention could be removed. I shall examine this in connection with the discussion on '*teiju gaikokujin*' (settled aliens), to see whether this academic category is significant, or whether it blurs the distinction between aliens and Japanese nationals. I will then examine some Japanese court cases where the disputed legislation does not directly include a 'nationality criterion'.

It is helpful to look at the San Francisco Peace Treaty of 1952 and the impact that it has had on subsequent events and on functional nationality. In order to describe '*teiju gaikokujin*' as a historical issue, we need to take a brief look at the history of subsequent events after 1952, such as the San Francisco Peace Treaty, the problems with taking fingerprints of aliens, and 1991 Special Immigration Law. By discussing this in relation to '*teiju gaikokujin*', it will also provide some background to the Son and Chong cases which are discussed in detail later. The Son Jin-du case of 1978 can be seen as a focus for social rights and the Chong Hyang-kyon case of 1976, as one which highlights political rights. Son is an 'illegal entrant' from Korea who was a victim of the atomic bomb at Hiroshima, where he worked during the war. He filed for the right to receive free medical treatment in Japan, as his right to 'state compensation'. Chong is a second generation Korean in Japan. She works for a local government office but was refused permission to take examinations for a managerial post. She filed for the right to take the exam, as part of her right to choose a job. While related legislation in both cases does not have a 'nationality' restriction, the results of these two files are significantly different. The two cases are themselves useful for highlighting the kind of problems that are now posed for former empire subjects in Japanese society.

5.2 A demographic overview

Charts 5.1, 5.2 and 5.3 provide some current figures concerning the number of Koreans in Japan. Historical statistics on Koreans in Japan can be found in Morita (1996).

Chart 5.1 Korean population

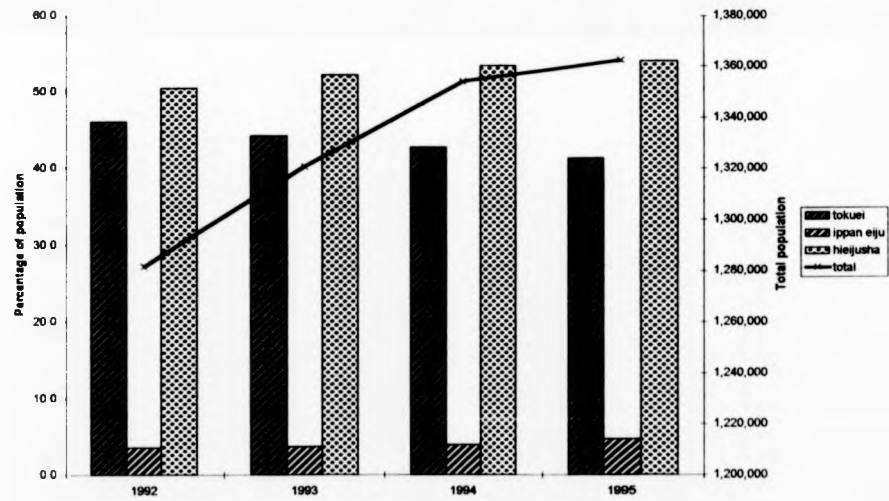
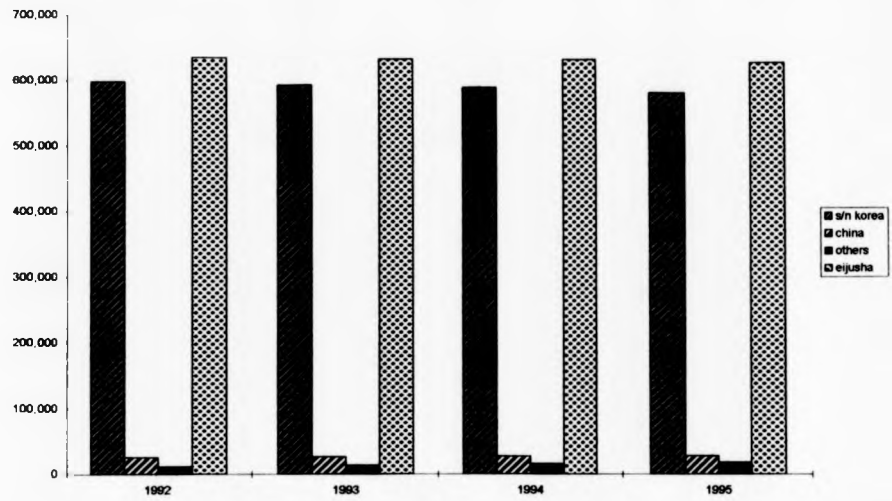
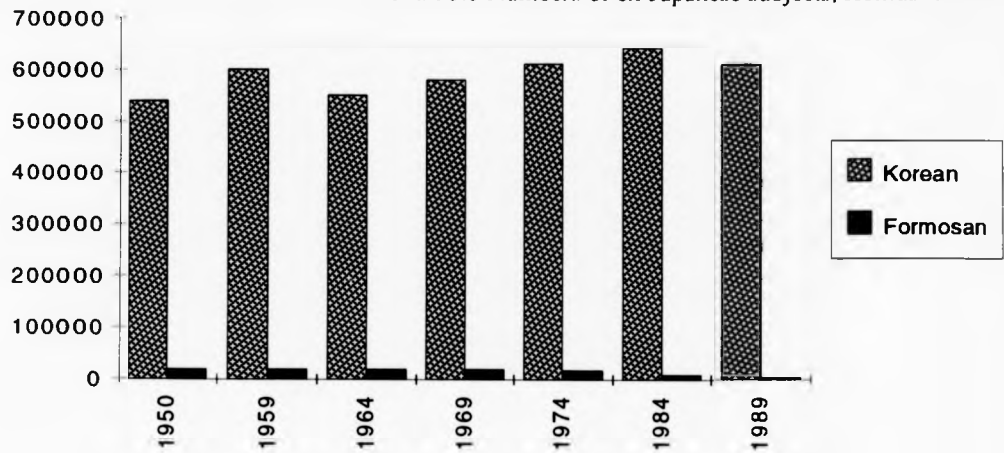


Chart 5.2 Alien Registration

Source: Homusho(1997) *Zairyu Gaikokujin Tokai*

Chart 5.3 Numbers of ex-Japanese subjects, Homusho:1991



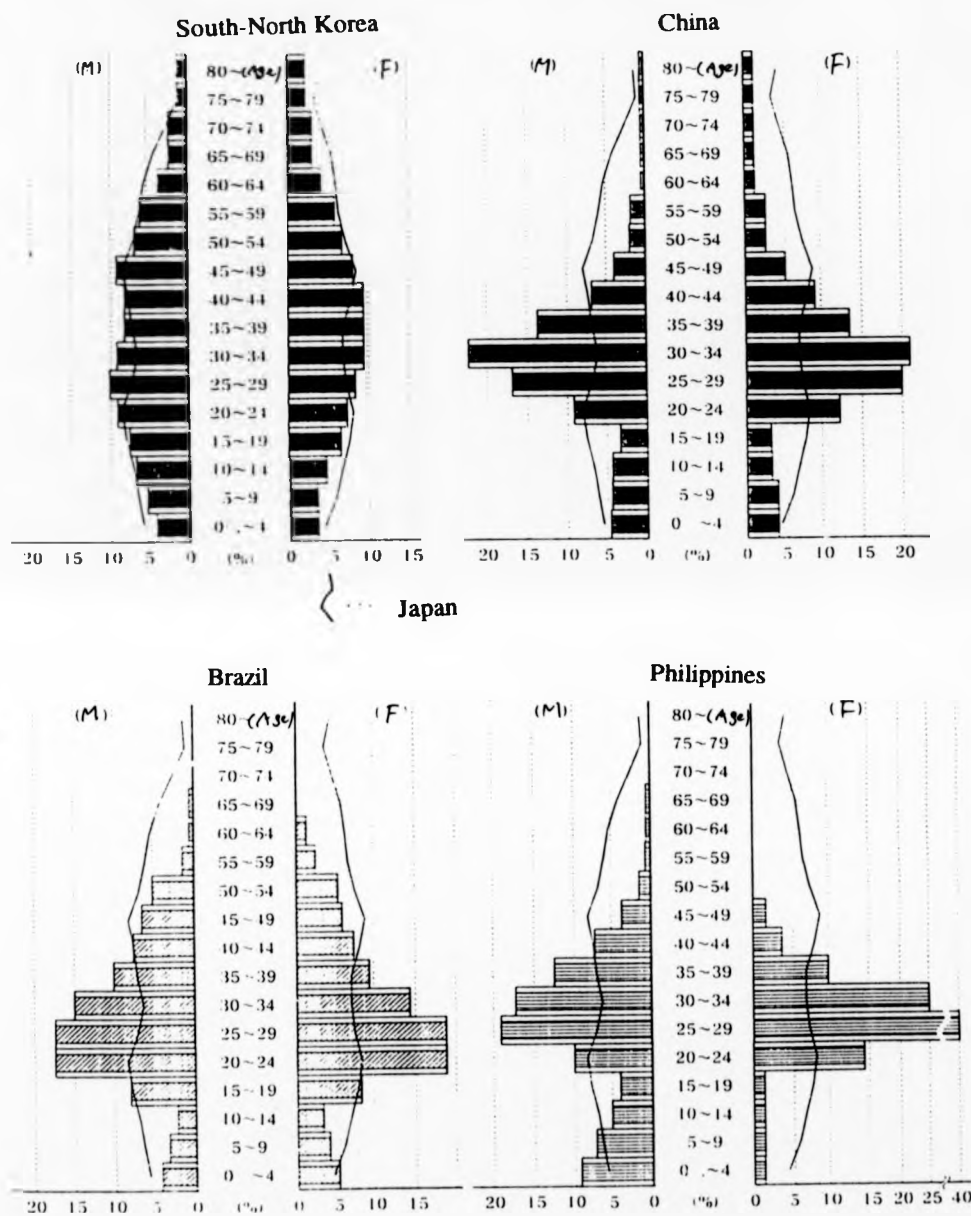
Aliens are required to register at the municipal office within 90 days after arrival in Japan or within 60 days after birth. Koreans and Taiwanese have been regarded by the Japanese government for the purpose of this alien registration, as 'aliens' since 1947 (when the initial Alien Registration Order was enforced) even though they were still Japanese nationals. The total alien registered in 1995 was 1,362,371, around 1.08 percent of total population of 125,668,504. It is said that there would be around 300,000 overstayers and clandestine workers. Among those aliens registered, 48.9 percent (666,376) are nationals of North or South Korea, although the percentage of Koreans among all those registered has been decreasing yearly as shown in Chart 5.1. Although there are no diplomatic relations between Japan and North Korea, Korea was divided after many Koreans in Japan came to Japan (as former empire subjects), and some of them have become affiliated with North Korea since then.

In addition, there are also significant numbers of Chinese (222,991) and Brazilian (176,440). They are referred to as 'new comers' and have increased their numbers since the 1980s. The age distribution of aliens in Japan is shown in Figures 5.1. As it shows, the structure of the South/North Korean in Japan is similar to that of the Japanese shown by the line and is a stable population. Other nationals show a higher concentration on working age¹.

Of the 1,362,371 aliens registered in Japan, 626,606 (around 46.0 percent) are 'permanent residents'. Of these permanent residents, Koreans account for 92.6 percent (580,122). Amongst those with permanent resident status (626,606), there are 563,050 who have 'special permanent resident' status: Koreans and Taiwanese and their children who have been in Japan before the Second World War (regulated in Special Immigration Act, Law 71 1991). Of this group holding special permanent resident status, Koreans make up the overwhelming majority (557,921 out of 563,050). The percentage of non-permanent residents is increasing yearly, 54.0 percent (735,765) were non-permanent residents in 1995.

According to the *Annual Report of Statistics on Legal migrants* (Homusho, 1996c), the number of aliens who entered Japan in 1995 was 3,839,240. Among those, 798,022 were 're-entry' (those with re-entry permission). In contrast, the number of Japanese going overseas was 15,298,125 (both long and short stay). When the Immigration Control Order was enacted in 1950, its model was the

¹ *Zairyu Gaikokujin Tokai*, Statistics on aliens in Japan, Homusho, 1996c:22-3.



Figures 5.1 Registered alien distribution by nationality, sex and age,

Homusho (1996b)

United States, which incorporates 'immigration control' to screen its future citizens (see Hirowatari, 1992). At that time, most of the aliens (so regarded) were Koreans and Taiwanese, both of whom were still former subjects of the Japanese empire, but the object of alien registration was clearly targeted towards Koreans in Japan, especially those who were affiliated to the communists. The target of internal control (by alien registration) was matched by the target of immigration control (external).

5.3 The historical background

We now need to explore the '*teiju gaikokujin*' (settled aliens) issue further with regard to its context and the contents of this discussion, so that it can be compared with settlement status in Britain, which was covered in the previous chapter. As explained in the literature review section, the definition of who may be counted as '*teiju gaikokujin*' is subject to change. Nor is there an exact translation which can be distinguished from the existing legal terms in immigration legislation. This is partly because the word '*teiju gaikokujin*' was originally used by an academic on behalf of Koreans who were trying to achieve a better status. Therefore, although '*teiju gaikokujin*' is quite weak as a concept, it has emerged and developed over time.

It is now helpful to consider a number of events which have had an effect on '*teiju gaikokujin*' in order to provide some background information on Koreans in Japan.

These events were:

- the period in 1952, when the San Francisco Peace Treaty became effective

- the Japan and South-Korea Agreement of 1965
- the ratification of international conventions in the 1980s
- the partial abolition of fingerprinting in 1993
- the 1991 Special Immigration Law

5.4 The 1952 San Francisco Peace Treaty

When we discuss the status of former empire subjects in Japan, the most important event to date is the 1952 San Francisco Peace Treaty (28/4/1952). Through this, Japan recovered its sovereignty and renounced its overseas territories so that, for instance, in the Japanese government's view, Korea became independent within international law. At the same time, the Japanese government circulated a circular (*Minji Ko* 438, 19/4/1952) which explained and gave internal effect, inside Japan to the renunciation of the former territories which made non-Japanese empire subjects aliens in Japan. Strictly speaking, this process of deprivation of the nationality process by the *koseki* (house registry) system is much more complicated and meant that the system of dual nationality which prevailed between the United Kingdom and the newly independent countries after the World War II did not occur in Japan, although the possibility was discussed. The idea behind this Japanese decision was stated by Premier Yoshida (29/10/1951, quoted in Tanaka, 1991) so as 'not to leave an unwanted minority problem for the future'. An alternative interpretation is that the Japanese government wanted to wait for conclusion to bilateral treaties, but the real reason for not offering the former Japanese subjects their choice of nationality is not known.²

² In his study of the Japanese government policy (Ministry of Foreign Affairs) on San Francisco Peace treaty, Matsumoto (1988) argues that one of the background of the restoration

A number of important pieces of legislation were enforced one after another around this time: Alien Registration Order in 1947 (revised in 1949), Nationality Act in 1950, Immigration Control Order in 1951 and Law No.126 in 1952. This is often referred to as 'the 1952 regime' (Onuma, 1986). Koreans and Taiwanese residing in Japan became subject to the Immigration Order 1951 on 28 April 1952, when the Peace Treaty came into effect. However, their status was not as 'permanent residents' as regulated in the order. Instead the provisional Law No.126 (the Law for Disposition of orders under the Ministry of Foreign Affairs based on the Imperial Orders concerning the Orders to be issued in Consequence of the Acceptance of the Potsdam Declaration' (hereafter Law No.126) was effective. This law gives the continuous effect of the 1951 Order, which was originally enforced as Potsdam provisional Order after 28 April 1952. It states under article 2-6, that Koreans and Taiwanese and their children who were continuously resident in Japan before the surrender could reside in Japan without specifying the status of residence under the Immigration Order, 'until another act is passed', that is, until an agreement was reached between Japan and South Korea/Taiwan. However, the talks between Japan and South Korea were broken off several times, concerning other issues of post-war adjustments, such as war reparations. As a result, the conclusion of the agreement was not reached until 1965, and the status of Koreans was not changed until that time (see, Iwasawa, 1986).

of their original nationality and encouraging their naturalisation was to 'restrain the activities of Koreans in Japan who were at that time predominantly regarded as Communists' (p.675). See also, footnote 10.

Since the making of Koreans and Taiwanese aliens in 1952 comes the starting point for the area of immigration control and alien registration and the rise of substantial entitlement legislation. The dichotomy of aliens and Japanese was established and at the same time, a 'subtle erasure of history' (Tanaka, 1991:68) took place. In practice, the 'nationality clause' or '*koseki* clause' in most entitlement legislation has the function of excluding aliens from its entitlement conditions. This formalistic/legalistic attitude of the Japanese government has been accepted by most people.

An often quoted example is the 'suspension' of the suffrage right in December 1945. The revision of the Election Act of the House of Representatives was proposed to the then Imperial Diet in November. The Minister of Home Affairs, Horikiri, explained the proposal that with the acceptance of the Potsdam Declaration, Korea and Taiwan would soon be detached from the Empire, thereby losing Japanese Nationality, and we should not allow them to participate in elections as imperial subjects. However, he said, 'until the San Francisco Peace Treaty, they are still regarded as holding Japanese Nationality... therefore until their Nationality is fixed under international law, we shall suspend their suffrage right for the time being...' (*Gikaiseido 70 nenshi, shiryō-hen*, 1960:281). In the 'additional clause' of that Act, it had read : 'if the *Koseki* Act is not applied, the voting and eligibility rights to those who it does not refer to, shall be suspended for the time being'.

5.5 The 1965 *Kyotei eiju* (Agreement permanent residence)

As far as Koreans in Japan are concerned, the 1965 Agreement¹ was the first time that their status as 'permanent residents' was secured, although partially. By way of the Japan-South Korea agreement, Koreans in Japan who applied for 'South Korean' nationality, were allowed ministerially 'agreement permanent resident' (*kyotei eijusha*) status, if they were first and second generation (South) Koreans in Japan and had resided continuously in Japan prior to 15 August 1945. Neither those who were affiliated with North Korea, nor those who came in after 1945 or went back and re-entered Japan, nor those from Taiwan were given this permanent resident status (Yamazaki, 1991). At that time, issues relating to Koreans in Japan were mainly treated as diplomatic (that is, inter-state) issues. A registration period was granted, from 1966 to 1971, and about 250,000 Koreans had achieved this status. However, there were many who were left out or not willing to take this status. By 1989, there were 446,389 permanent resident status holders following this agreement (Homusho, 1991).

Apart from the status itself, the main privileges allowed to these 'agreement permanent residents' were the application of the National Health Insurance Law, the Livelihood Protection Law, and relaxed conditions of application against deportation.

¹ *Nihonkoku ni Kyojusuru Daikanminkoku kokumin no hoteki chii oyobi taiguni kansuru Nihonkoku to Daikanminkoku tonu aida no kyotei*, 1965 (Agreement between Japan and South Korea on legal status and the treatment of South Korean Nationals in Japan)

5.6 The removal of the nationality criterion in 1982

At the end of the 1970s, there was a considerable flow of refugees from Vietnam to Japan, and Japan ratified the International Convention on Human Rights in 1979. In 1981 the Revised Immigration Law created the status of 'exceptional permanent resident' (*tokurei eiju*) for those first and second generations of Koreans in Japan, including those from Taiwan and North Koreans who did not acquire South-Korean Citizenship in 1965. The registration period for this exceptional permanent resident status was set for five years from 1 January 1982. With the creation of this *tokurei eiju* status, there were three different types of status for Koreans in Japan with the same historical circumstances - those with Law 126, '*tokurei eiju*' and '*kyotei eiju*' existing for the status of Koreans in Japan (Yamazaki, 1991:6).

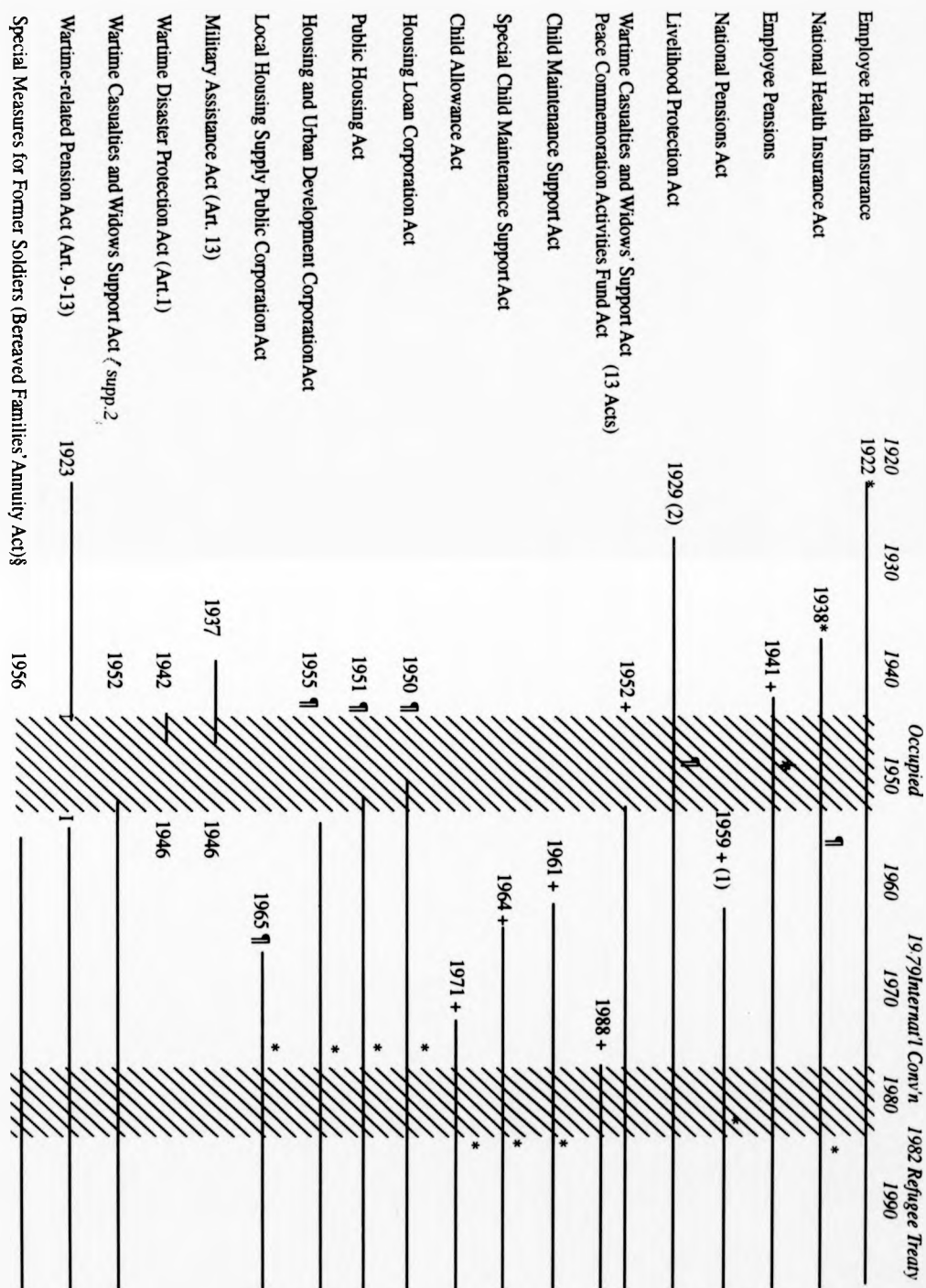
In 1982, Japan ratified the Refugee Protocol. As this obliges equal treatment for refugees as for nationals in host countries, Japan had to alter domestic legislation. The amendment had also necessarily to apply to Koreans in Japan, and in this way, most nationality criterion was removed. At the same time, this shows how incomplete the status of 'agreement permanent residents' was. There are, for instance, some cases before 1981 relating to eligibility for the national pension scheme which included the Japanese nationality criterion. Unaware of the nationality criterion, Koreans joined this scheme for more than 10 years, only to find when reaching pensionable age, that they were ineligible as they were not Japanese nationals (cf. *Hanji*:1092:31). In these cases, courts ruled in favour of the Koreans, but there was still a problem to be solved. As, seen in Figures 5.2 and

5.3, the National Pension Act did not include any transitional measures for those Koreans in Japan until 1985, except in case of Okinawa residents, who were incorporated in 1972, and for whom transitional measures were included, there had been some who were left out. The status of '*tokurei eiju*' grants the same status of permanent residence set in the (ordinary) Immigration Act (4-14) to certain Koreans and Taiwanese with continuous residence in Japan (other than those who re-entered Japan after the war) but they have fewer privileges compared with the '*kyotei eiju*' status holders (Tokoi, 1981). Within five years of registration, around 270,000 acquired this status, and by 1989, there were 275,626 with this '*tokurei eiju*' status (Homusho, 1991).

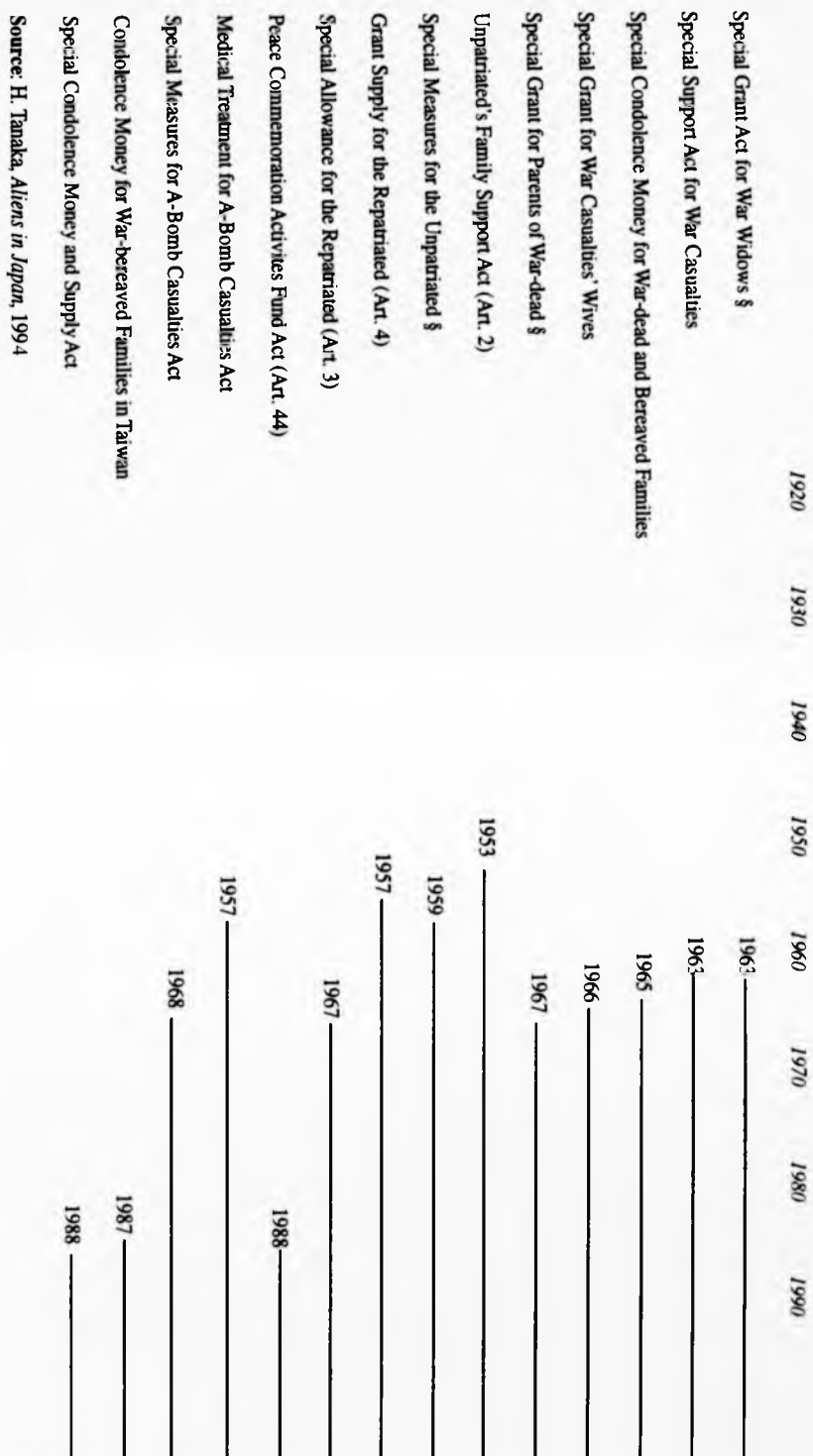
5.7 Fingerprinting and alien registration

By the beginning of the 1980s, after the removal of the nationality clause and the achievement of various 'social rights' entitlements, the main point of dispute for Koreans in Japan shifted toward the registration of aliens which included controversial fingerprints.

The requirement for aliens to register their fingerprints was first included in the Alien Registration Law enforced on 28 April 1952, on the same day as the San Francisco Peace Treaty, when Japan recovered its full sovereignty. In practice, the requirement of fingerprinting began three years later, delayed by massive opposition. Since 1956, every three years these aliens (mostly Koreans and Taiwanese) had to present themselves to the immigration authority to renew their alien registration card as well as give new fingerprints.



Figures 5.2 Entitlement and restriction 1



Source: H. Tanaka, *Aliens in Japan*, 1994

Key: *No Nationality clause, and open to aliens

¶ No Nationality clause, but in practice closed to aliens

+ Nationality clause which excludes aliens

§ No direct clause on Nationality, but Act applied on a nationality criterion

(Art.) Nationality clause

1) Although the Nationality clause was abolished, insufficient transitional measurement left some without any pensions.

2) Aliens are not allowed to make complaints against unfavourable decisions.

Figures 5.3 Entitlement and restriction 2

In 1980, for the first time a man refused to give his fingerprints. He is a first-generation Korean in Japan, who refused to provide fingerprints at time of renewal of his registration. Prior to 1980, he had renewed his registration and his fingerprints several times. Han Jong-sok was prosecuted for what was deemed a criminal offence (i.e. refusal to give his fingerprint), but thereafter, many aliens began to refuse to submit to fingerprinting. Interestingly, it is said that this is the first time the word '*teiju gaikokujin*' (settled aliens) appeared in the court judgement (Imamura, discussion in *Horitsu Jiho*, 1985). Han's counsel used the word '*teiju gaikokujin*' in order to argue that fingerprint obligation is unconstitutional in that it is forced against those '*teiju gaikokujin*' who are 'Koreans in Japan, yet born in Japan, lead a life like Japanese, bear the same burden of taxation etc. with Japanese, and entirely become members of Japanese society' (*Hanji*: 1125:103).

The Alien Registration Law was revised several times and in 1982, the renewal needed to take place every five years, and the required age was raised from 14 to 16. In 1987, a further revision meant that those aliens who stayed more than a year needed to be fingerprinted just once, when applying for first-time registration (Homusho, 1992). Fingerprinting is to restrict the freedom of 'aliens' as well as to link their 'immigration status' with their 'residence in Japan'. In other words, on the application of fingerprints (and alien registration), the Japanese government is able to identify those Koreans and Taiwanese and other newcomers alike, and does not consider the former's closeness to Japanese society. Since the autumn of 1982, if aliens refuse to submit to having their fingerprints taken, they may face criminal

punishment as well as refusal of a re-entry permit (so that, while they can go overseas, they may not be allowed to come back to Japan). For instance, in May 1994, a '*kyotei eijusha*' who refused fingerprinting, could not obtain her re-entry permit to Japan. She went overseas to study, and when she came back, she lost her status of her '*kyotei eiju*' but was given a less secure immigration status (Honda, 1994). Another '*kyotei eijusha*' who refused to give his fingerprints, was arrested and imprisoned, though he had no intention of escaping; however, at his appeal against the decision, the judge ruled that to sanction criminal punishment for a fingerprinting offence is, as far as it is applied to the Peace Treaty relating to those who lost Japanese nationality (i.e. *tokubetsu eijusha*) 'might be unconstitutional', which was an unusual event (*Hanji*:1513:71). This measure received great opposition, including opposition from other countries until eventually, in January 1993, after the Japan-Korea Memorandum, fingerprinting was partially abolished. Those who have the status of special permanent resident and permanent resident are not obliged to provide fingerprints, but now have to provide registration with photos, signature and familial registration. After the struggle over fingerprinting, there is in one sense a clear division within the previous-single 'aliens' category.

5.8 The Special Immigration Law, 1991

As the 1965 Japan-South Korea agreement only included the first and second generation of (South) Koreans in Japan, it required re-negotiation 25 years later with South Korea. The new agreement was reached in January 1991, and includes the following points:

- 1) To ease the processing of permanent resident permission

- 2) The further limitation of deportation practices
- 3) The extension of re-entry (up to 5 years)
- 4) The abolition of finger-printing for the third generation onwards as well as the first and second generations (Homusho, 1991).

In the same year, Japan regulated a special immigration law which was exclusively for those Koreans in Japan, or those who lost their Japanese Nationality by the 1952 Peace Treaty. Within the Special Immigration Act 1991, the category of the special permanent resident (*tokubetsu eijusha*) was integrated ministerially with all the existing categories of Koreans (South as well as North) which related to permanent residence (Law 126-2-6; *kyotei eijusha*; *tokurei eijusha*; and persons who 'left' the Japanese nationality for peace treaty [*heiwa joyaku kokuseki ridatsusha*]) and they were granted a single '*tokubetsu eijusha*' status.

The advantage of this '*tokubetsu eijusha*' status compared with other immigration status (permanent residence) or Korean-related status, is that it entails less strict deportation (for public safety only), and a privileged period of permitted re-entry (up to five years, compared with up to two years for others). In addition, those special *tokubetsu eijusha* as well as other permanent residents (in the ordinary immigration law category) are exempted from fingerprinting for their alien registration. The status of Koreans and Taiwanese are based on 'special' law, instead of ordinary immigration law since 1952.

5.9 When is *teiju gaikokujin*?

There are some specific factors that should be borne in mind in considering Japanese court cases. Firstly in Japan, court cases are only examples of interpreting statutory law, but not law itself. As mentioned above, there exists a so-called 'nationality clause' for most of the entitlement legislation and when law suits come to court, they are mostly rejected because of the existence of this clause.

Although there are many books and articles in Japanese on rights and residence, especially on 'settled aliens' (*teiju gaikokujin*)⁴, the definition of '*teiju gaikokujin*' is not always the same. This is not itself a legal concept, but an established fact in statutory law, and not used in the constitution (Annen, 1993:168). Furthermore, in order to discuss this concept, the emphasis is on the 1965 Japan-Korea Legal Status Treaty (Takasaki, 1995:17), which 'formulates the categories of 'permanent resident aliens' and other 'general aliens' (Nakahara, 1993:58) and was the first time the category of permanent residents was applied in relation to Koreans. However, the number of those who have this '*kyotei eiju*' category is restricted, and what is more, this agreement is quite political.

More substantially, Ebashi (1995a) argues that the period when the 1991 Special Immigration Act was enforced is the most significant period for the existence of '*teiju gaikokujin*', as the special permanent resident (*tokubetsu eijusha*) integrated all the existing categories of Korean (South as well as North) related to permanent residence as one. Alternatively, it is possible to consider the Japanese joining the

⁴ see for instance, So ed., 1992; Kondo, 1996a; and Ashibe, 1993 for the leading academics on this issue.

international conventions (in 1979 and 1982) as the most important period as shown above, when most social rights were granted to aliens in Japan.

As we saw, the actual point when the distinction between *teiju gaikokujin* and other aliens began is disputed even among academics. It is important to realise that the terms 'settled aliens' (*teiju gaikokujin*) and 'permanent resident aliens' (*eijusha*) are not interchangeable (Kondo, 1996a) as they might be in European countries. In addition, the Japanese government's reluctance to create 'permanent residence' for Koreans and others in Japan, and the struggle to achieve secure permanent residence which has lasted for more than 40 years, shows in part, the distinction between aliens and nationals in Japan. Some academics are wary of adopting the concept of '*teiju gaikokujin*' as it can easily omit the historical connection between those Koreans and Formosans in Japan with Japanese society (see for example, Tanaka, 1996).

When we compare the development of *teiju gaikokujin*'s status in Japan with those 'settlement status' in Britain, it seems that the substance of entitlements and the stability of permanent residence in Japan moved from the initial precarious stage to that of a stabilised status gradually. Besides, the Japanese emphasis on control over aliens is based on internal rather than external or immigration controls, unlike in Britain.

Having considered the historical development, the focus now moves to current issues which *teiju gaikokujin* or those with permanent residence have at this

moment, by looking at some court cases. As mentioned in Chapter 3, to bring a case before the court is potentially effective for aliens, especially former empire subjects in Japan who do not have any other form of legal protection. The first case and the first successful one, which was argued by Koreans after the Second World War, was that of Park Jong-sok, who in 1970 went to court against employment discrimination (Yokohama District Court, 19/6/1974, *Hanji*:744:29). Park Jong-sok is a second generation Korean in Japan, who was born in Japan and resident there. He applied for a job in a large company, was short-listed and then received informal notification of his success. Throughout the application process, he used his 'Japanese' name, and gave a false domicile and address. As he was about to move into the company-owned accommodation, he was asked to submit the copy of his *koseki* (house registry), but was unable to do so as only Japanese nationals have this (as will be explained in Chapter 7). When he told the company that he didn't have a *koseki*, he was dismissed. He then brought his case to the court and won. Although there had been many discriminatory incidents before 1970, Park's case is considered significant (Kim, 1996, lecture) as he was the first to bring a discrimination case before the court, and he showed that it was worth doing so. In addition, his case is noted because many Japanese supported his suit and there was organised 'grass-roots' activity against the national discrimination which it engendered. These groups support law suits in various ways, such as encouraging people to 'watch trials, write to mass media, exhibit videos, and fund-raising' (1995, *Minzoku Sabetsu to Tatakau Renraku Kyogikai*, founded in 1974).

Next, it is worth examining two court cases which mainly concern rights in relation to residence but not directly to nationality. One is Son Jin-du case of 'illegal entrant's social rights, the other is Chong Hyang-kyon case of '*teiju gaikokujin*' and political rights. Each of these is a leading case in the field.

5.10 The Son Jin-du Case (30/3/1978) and social rights

This case, heard in the Supreme Court, is often cited as the first case concerning the equality of Japanese and non-Japanese social rights. It is covered in many books and articles as an example of 'alien' and social rights (cf. Minami, et al. eds., 1996 and as an example of 'state compensation'⁵). The information on this case was obtained from materials presented at court, an interview with a witness, and related books and articles.

Between the end of the Second World War and 1982, most social security legislation was not applicable to aliens as shown before in Figures 5.2 and 5.3. During this period, 'the Law for the medical treatment of atomic bomb victims (*Genshibakudan Hibakusha no Iryo tou ni kansuru Horitsu*) enacted in 1955 was a rare act in allowing aliens to receive benefits. The purpose of this Act was to offer necessary medical benefit to atomic bomb victims from public funds. The precondition for receiving treatment was a victim's pass book, which required official recognition as an atomic bomb victim in meaning of the 1955 Act.

⁵The concept of state compensation is contended in the ruling, but this does not have fixed legal definition and is theoretical. See Ogawa (1978b), Hokama (1979) for the case reference, or Uematsu (1981), Yamamoto (1985) for the background of the case itself.

Son Jin-du is a Korean who lives in South Korea. According to his plea, he was born in Japan in 1927, graduated from school, and worked until he was injured. In 1951, he was charged with an offence under the Alien Registration Law, and was deported to Korea. His father died in Japan in 1948, his sister and mother still live in Korea. They are also A-bomb victims and suffer sequelae. Son attempted to enter Japan illegally several times and again in 1970, he became an illegal entrant and was accommodated in a deportation camp. His application for an A-bomb victim's pass book was refused, due to his illegality. He filed suits for his right to receive the medical benefit as well as the cancellation of the deportation order in Japan.

Those who live in Japan continuously, can receive free treatment regardless of their nationality, if they can prove they are victims of the atomic bomb. Within the 1955 Act (3-2), no qualifying requirements were included vis-à-vis the applicability of that legislation to aliens except that applicants should have Japanese residence. Therefore, it was fully accepted that the 1955 Act was open to aliens. The extent of the application was contested. The points of dispute were first, whether this legislation belongs to the fields of 'social security' or 'state compensation', and second, whether the entitlement criterion in the Act, 'must have residence' includes illegal entrants or not. In his oral pleadings, Son's side contended that :

- his illegal entry was a response to the government's oppressive deportation policy (22/5/1973)

- South Korea restricts emigration in order to save foreign currency, and it is almost impossible to enter Japan in a regular way' (29/1/1974)

- by immigration procedure, the Japanese government does not allow entry for the purpose of medical treatment under the atomic bomb legislation. Moreover, the Immigration Order (1950) 5-1-3 expressly forbids entry of a person 'being a burden of the country or the local authority on one's life' (Son's argument, 15/2/1974).

The government argued that for the A-bomb legislation to apply, applicants must have residence in Japan legally and they should live life as 'a member of Japanese society' (the government's argument, 24/1/1974).

If the main purpose of the Act was social security, as the government contended, then free treatment was only appropriate to people who were lawfully resident in Japan. The idea that aliens' social securities were the responsibility of 'the countries where they have their citizenship prevailed, at this time. If, on the other hand, the principle of the Act was state compensation, as Son's side argued, it should be applicable to anyone who was a victim of the bombings, whatever is his/her status.

The District (30/3/1974, *Hanji*:736:29) and the Appellate Courts (17/7/1975, *Hanji*:789:11) ruled in Son's favour to receive medical treatment. In fact after these two judgements, the Ministry of Welfare changed its policy and offered medical treatment to those who enter Japan 'legally' but not directly for the purpose of 'medical treatment (*Asahi Shinbun*, 2/9/1975). The Supreme Court reaffirmed the lower courts' judgements: 'Although the appellant is an illegal

entrant, as long as he is a victim of atomic bombing, the 'Law for the treatment of the A-bomb' should be applied' (The Supreme Court judgement, 30/3/1978).

Within the judgement, the purpose of legislation was considered as humanitarian. But at the same time, with regard to illegal entrants (i.e. immigration control's concern) economic consideration was also shown in the ruling as 'the burden for the economy is but only a small number (of illegal entrants), which the state can ignore'. The immigration control issue was considered but 'Even if the application of that is allowed to A-bomb victims who are illegal entrants, the deportation order (the remit of immigration control) is not touched' (ibid., p.5). In this case, the deportation order was cancelled after the Supreme Court's ruling for Son.

Two interesting points are made by Araki (1975) after the Appellate Court judgement. Firstly, the area of social rights was quite new at that time in Japan, and it is dubious to emphasise residential qualification for its applicability without a close definition/limitation of that content. Secondly, for the purpose of this case (as humanitarian support), it was not important whether this 1955 Act was a social security act or not. Apart from a strategy to be used in the court; the point of dispute is whether 'social security' or 'state compensation' itself signifies the influence of Japanese xenophobia at that time. There was an interesting debate at the Social-Labour committee at the House of Representatives (8/8/1972), when the Son case was argued in court. A Member of the Diet pointed out to the government that 'A man who was born in Japan and had worked in Japan altogether for more than 20 years, had been deported to Korea, then he re-entered

Japan illegally. Only because of that, can you say that he doesn't have any relationship with Japanese society?'

With regard to this judgement, the result was 'rarely perfect' (compared with other suits brought by Koreans in Japan) (interview with a witness, November 1996). As part of post-war compensation trials, this case opened the way for victims outside Japan to claim medical treatment. For example, in 1979 an agreement was made between the Japanese and South Korean (leading) political parties for the A-bomb victims in Korea. In 1990, after the A-bomb compensation claims from Korea, the Japanese government decided to pay substantial money to the victims (Takasaki, 1995:21). In 1994, the Special Measurement Act (1968) and the Medical Treatment Act (1955) were replaced by A-bomb Victims Support Act (*Hibakusha Engo Ho*) (*Asahi Shinbun*, 7/8/1994, and a recent article written in English by Weiner, 1995).

Soon after this judgement, social rights for aliens in Japan were secured by international conventions (Human Rights in 1979 and Refugee Protocol in 1982) as explained above. Much social rights legislation became applicable to aliens after 1982, such as a national pension, national health insurance and some child allowance acts, as we saw before. In other words, residential criteria has increased its importance compared with the 'nationality' requirement in social rights in general, through the unexpected flow of refugees and other international pressures such as conventions.

However, at present there is still some social security legislation which is not open to aliens, including the former empire subjects. This includes *Seikatsu Hogo Ho* (the Life Maintenance Act, which includes application on an unequal basis) and several different *Engo Ho* (Assistance Acts, which often involves post-war compensation-related legislation). As shown on Figure 5.3 before, the nationality clause still work on these.

Therefore, the central issue for the former empire subjects has shifted from the field of 'social rights' to 'political rights', unlike in Britain. Additionally, cases of social rights concerning former empire subjects have now been extended to Koreans/Taiwanese living in Japan to those living outside Japan. These disputes concentrate on what is called *sengo hosho* (post-war compensation)⁶. Yet social rights for those who are not lawfully resident in Japan are still not allowed (such as 1995/9/27, on Health Insurance⁷. Rights relating to immigration qualification,

⁶ Recently, former empire subjects who were forced to act as military sex-slaves, labourers and soldiers (and civilian employees) filed for post-war compensation against the Japanese government as well as companies. The Japanese government sought a diplomatic solution for the compensation for former empire subjects. That is, in relation to Korea, the Mutual Treaties in 1965, in relation to China, the 1972 Joint Communiqué. According to the Japanese government, this is why most legislation have included Japanese nationality criterion. *AERA* (18/12/1995) shows a view that in order not to intervene domestic affairs of another country, the Japanese government avoids the post-war compensation issue.

However, with regard to Taiwanese and Koreans in Japan, they have been left out of diplomatic treaties (apart from whether this diplomatic solution was sufficient for former empire subjects or not). The first series of post-war compensation suits was begun by Sakhalin Returnees (brought in 1975), and Taiwanese soldiers/civilian employees' wartime claims (brought in 1977). In a recent judgement within these series (the Osaka District Court, 1/5/1995), the notorious 'nationality/house registry' criterion was for the first time after the war, judged as 'heavily discriminative and against the constitution Article 14 (equality before the law), within the context of post-war compensation legislation. However, the claims of the plaintiffs were rejected. It took more than half century for a Japanese court to accept 'alien' as 'the former empire subjects' and as 'equal with Japanese' (see Hanta:901, *Japan Law Journal*:1995:vol.8-6). cf., Onuma (1993), Takano (1995).

⁷ The only criterion for entitlement is 'being a resident' in Japan. Illegal entrants are not 'residents' for the purpose of Health Insurance. In this case, the plaintiff was told that until her status is regularised, she cannot be a 'resident' (The Tokyo District Court ruled that 'regarding

including legal/illegal, permanent residence and other restricted status are considered in Ebashi (1995b).

Apart from that, at the time of the Son case, there was no disagreement over his description as an 'Alien A-bomb victim', or a 'South-Korean A-bomb victim'; no attention was paid to his status as 'a former empire subject' or the connection between him and Japanese society, except one plaintiff argument. Obviously, in Son's case, he could not be called a '*teiju gaikokujin*' at the time of the case since he had repeatedly re-entered and been deported. Equally, however, he was not a complete alien who had no ties with Japanese society at all. The fact that the framework of state or inter-state relations came first for the consideration (even in a dispute of nationality-free entitlement legislation) shows the strong influence of nationality-oriented ideas at the time. We shall see how this changed or did not in the second case on political rights in 1990s.

5.11 Chong Hyang-kyon case and political rights

When political rights are broadly defined, they can include voting rights, standing for political office, becoming a civil servant and sometimes such quasi-political rights as the rights to receive some forms of state compensation. Here, we shall see a case on the right to be a public servant and some debates about political rights.

National Health Insurance system as mutual assistance and social solidarity, the automatic membership is at least conditioned as a member of our society...' (*Hanta*:901:153). Although it is regarded that 'leave to remain' and aliens' residence maybe irrelevant in other legislation (*ibid.*). The point of disputes argued in this case is similar to that of Son's suit.

The right to be a public servant is quite an important matter in Japan⁸. There is no legal restriction which prohibits an alien from becoming a public servant in the constitution nor other statutory legislation. Restrictions may be placed by 'Orders', however, in application forms for recruitment examinations. The exception is the Diplomat Act (*Gaimu Komuin Ho*, 1952) and indirectly, for specific occupations such as members of the Diet. The guideline (from the Cabinet Legislation Bureau) which bars aliens from being government officials, is the requirement that Japanese nationality is necessary for 'exercising public power or participating in the formulation of state will' (25/3/1953, Takatsuji answer). This is called *Komuin ni Kansuru Tozen no Hori* (Natural legal theory on public servants). As background, this was the answer to a question asking 'among those who lost their Japanese Nationality, whether they also lose their status as public servants or not'. In practice, the Koreans and Taiwanese already in those public servant positions at national level, were asked to naturalise around 1952 (*Tong-Ii-Ii Pao*, 19/3/1996). The problem begins when this answer is generalised and extended to actual facts. According to Okazaki (1996), after the 1965 Agreement, nationality criterion was included in the National Personnel Authority's rule (*Jinjin kisoku*) 8-18, 8. This says that those who do not have Japanese Nationality, cannot sit for the (national level public servants') recruitment examinations. For the local level, when a kindergarten employed a Chinese national in 1973/5, the Ministry of Home Affairs replied to a prefectural authority that 'when the job involves to the exercises of public will of local authorities, aliens should not be permitted to sit for the

⁸ On the right to be a public servant, Okazaki (1978,1996) has worked with this from the earliest time, especially on the employment of alien lecturers in public/national universities. This is achieved in 1982, by special measurement legislation. historical background and other court cases such as the right to sit for teacher's qualification exams can be found in Nakahra (1993) and Nakai (1989).

recruitment tests (Okazaki, 1996, Chong's argument, 22/3/1995). The employment of aliens at municipality level varies. In particular, administrative jobs are in most cases closed to them (above that level) after that⁹.

First, of direct significance is that the central/local government as well as its related organisations offer many work opportunities, often very good ones. For instance, jobs as law practitioners (1977), Japan Telecom and Telecommunications and in nursing (1982) originally had a nationality clause for their employment or some restriction but later the condition was removed (Nakahara, 1993). Moreover outside Tokyo, officials in local authorities are regarded as having the same status as central government officials. Second, of indirect significance is the fact that the restriction of government-related work opportunities discourages and even justifies the private companies' discrimination against aliens. A good example of a court case on private company employment discrimination against a Korean is Park Jong-sok's case, mentioned above. According to Kim Kyeung-duk (1996) who became the first Korean lawyer in Japan, the reason why Park's employment discrimination case (1974) could win was because it was after 'informal notification' (*saiyou naitei*) which the plaintiff received and was promised already, but if it had been before that notification (i.e. before the company's decision had been taken or if the decision had not been delivered to him), he would lose even today (November 1996, lecture).

⁹ At the time of my writing (10/96), there are two popular ways to employ aliens at the local level which try to work within the principle. One is Kawasaki city style, which opens its employment to aliens for most kinds of jobs (for instance, firebrigade) but restrict arrangement and promotion (*Yomiuri Shinbun*, 13/5/1996). The other is Kochi Prefecture's style which restricts the nature of jobs which aliens' can be employed in, but in principle open for their promotion after that (*Tong-Il Il Pao*, 14/3/1996, *Asahi Shinbun*, 27/4/1996). However, this Kochi style has not yet put into practice. This classification is that of Okazaki (1996).

Finally, as the right to hold public office is regarded as part of suffrage in the broader sense, this will have an impact on voting right of aliens, a subject on which the Supreme Court offered judgement (28/2/1995, Saikosai ruling)¹⁰. Although similar suits on suffrage also brought by a Briton (firstly in November 1989), it seems that the courts distinguish 'those with a historical connection with Japan' and 'others', and their reasoning on this case is less enthusiastic. The suffrage of Koreans was first 'halted' (but not 'abolished') after the war (December 1945, alteration of the Election Act of the House of Representatives¹¹, as mentioned). In other words, the first entitlements which the former empire subjects had lost after 1945 was suffrage¹². In that sense, political rights are the last ones to 'recover' symbolically¹³. However, not everyone shares the desire for suffrage. Of those who support the North Korean Government, for example, Kim Chang-son (1986) thinks that as the right to live in Japan but retaining ethnicity (i.e. being different from the Japanese) has not been secured, to ask for suffrage might lead to ultimately to assimilation. In addition, North Koreans considers themselves as aliens(Koreans

¹⁰ The importance of this judgement is that although it rejected the claims of appellants, it went further and said that 'for those aliens who have close connection with local authorities, it is not prohibited in the constitution to legislation and entitle voting rights in order to reflect(those aliens') will... however, whether to react or not is within the authority of legislative power' (*Hanji*:1523:51). This ruling is accepted positively in general (*Asahi Shinbun*, 1/3/1995). After this judgement, some political parties started to consider the possibility of entitling suffrage to aliens at local level. (*Teiju gaikokujin no chiho sanseiken wo motomeru renraku kyogikai*, 1995).

¹¹ According to the recent study by Mizuno (1996), it is likely that the Japanese government halted Korean and Taiwanese suffrage (by inserting a *koseki* criterion within the revised act) in order to preserve the monarchy. Mizuno found a presentation paper in 1945, which showed concerned about the communist influence on the Japanese regime. (reported in *Asahi Shinbun*, 5/2/1996).

¹² However, Tanaka (1974) sees the suffrage rights entitled to former empire subjects as much lighter and rather symbolic compared to the obligation (such as conscription) imposed on them.

¹³ In the 1990s, the political rights of aliens' is a timely topic and the recent discussion on '*teiju gaikokujin*' given the above, concentrates on suffrage, in particular at local level. These academics take part in (or influence) actual suits directly as well as indirectly.

Overseas) with their independent home country and at least, they are given a chance to raise their opinions in their home country.

5.12 Chong Hyang-kyon(1996/5/28) case

As mentioned above, Koreans can take exams for certain specific jobs for local authorities. In spite of the direction of the Ministry of Home Affairs, some local authorities are gradually trying to open up posts to aliens. The case of Chong Hyang-kyon is the first suit relating to an administrative post for an individual already working for a local authority. A ruling was made by the Tokyo District Court, against her. Chong appealed to the Tokyo Appellate Court, and she won. The government side appealed to the Supreme Court in time, but the final outcome is not known yet.

The plaintiff is employed as a full-time public health nurse. A *tokubetsu eijusha*, she was the first Korean employee for that position in the Tokyo Metropolitan Office (local authority) after the 'nationality' criterion was removed from the job application form in 1988. After she was promoted to the present position, she received an application form for a management position. However, she was even refused permission to submit her application form, let alone take the examination itself, as she was told that she does not have Japanese nationality (an important condition for the Ministry of Home Affairs, which supervises local authorities' matters). She filed a suit for recognition of her right to take the examination for managerial posts (this suit only asks for 'recognition of the right to sit the

examination', i.e. she has not yet taken it or been discriminated against by way of the result).

The plaintiff's side argued that the right to take the exam was part of the (civil right) to choose an occupation, according to Article 22-1, the Constitution. Chong contends the following:

-There is no Japanese nationality restriction clause in the present public servants' act (at state or local level) and therefore, to prevent aliens becoming managers by 'the principle' is unconstitutional. Furthermore, this rejection of the exam application is contrary to the right to choose an occupation and against the equal protection of law, according to Articles 22-1 or 14 of the Constitution.

-Many 'special permanent resident' (*tokubetsu eijusha*) status holders like herself have exactly the same life-style as Japanese nationals, and have a closeness to Japanese society, which are not taken into account.

-Judging from the Supreme court ruling on voting rights on 28/2/1995, new legislation (or revision) is needed to extend entitlement to aliens. Regarding the right to work as a public servant in local authorities, there is no clear restriction of aliens within the related acts, and therefore the new legislation is not required, entitlement to hold public office should be easier to obtain than suffrage (*Hanji*:1566:23).

-Furthermore, the defendant (Tokyo Metropolitan Office) does not indicate that it considers alien managers to be unsuitable for managerial posts (in the local authority), nor does it express any argument that the nationality criterion is necessary and a minimum condition for holding managerial positions (argument,

22/3/1995). The defendant's side argues that the issue is one of 'political right'. It says that according to the principle of the exercise of public will ('local authorities have many (state level) delegation jobs,) with regard to aliens' employment, has no rational reason to distinguish local level from the national level (argument, p29).

The result of this case was entirely unlike that of the Son case. The Tokyo District Court dismissed Chong's demand and ruled in favour of the Tokyo Metropolitan Office (and also the Ministry of Home Affairs). The ruling says that 'the Constitution requires that those working in the position of public servant (which is related to sovereignty) must hold Japanese nationality...' (the judgement, 16/5/1996: 43).

Although the point of dispute was similar to the Son case (in the way that there is no clear requirement which refers to Japanese nationality), the Chong case was dismissed on the grounds of the circular issued by the Ministry of Home Affairs, which prohibits 'exercises of public power and participation for the formulation of public will. The evaluation of this judgement is however, accepted 'within the framework' of the 28/2/1995 judgement on suffrage (*Asahi Shinbun*; Mori Yasunori, verbal communication, 1996). Part of the reason for the difference in the ruling between the Son and Chong cases may lie in whether 'judges have historical recognition of Koreans' existence in Japan at present' (Azusawa, 1996); other reasons could depend on the extent of the importance to sovereignty, or the question of how many people share the same situation with those who make complaints. Chong argued at the court as '...Neither at the time I was offered this

job nor after starting to work, I have ever been explained (about my Korean Nationality). And one day, when I work in the same way as others do, all of a sudden, I am told that I am a foreigner and that the labour conditions are different from others. I cannot agree with it.' (argument, 6/12/1995). Chong's case received the Appellate Court ruling in November 1997, which she won. It has now gone to the supreme court for further ruling.

Before the Chong case, there were a couple of court cases which focused on the right to take the 'employment selection' exam. For instance, there is an examination to be a postman, and until 1984, when it was withdrawn, there was a nationality criterion on the qualification to sit for the recruitment exams. Until 1991, aliens could not sit for the examination to be a teacher, because there was a nationality criterion for the qualification for the examination guidelines, as mentioned above. In 1991 March, after Japan-South Korea Memorandum, this criterion was removed from the examination application forms. Nowadays, aliens can sit for entrance exams to enter the teaching profession, but without promotion. These were regulated by the National Personnel Authority's rule 8-18, which only speaks of restriction for 'qualification for entrance examinations', but not mentioning of nationality clause.

5.13 Conclusion

This chapter has explored, to what extent rights and nationality in Japan can be separated. It has looked at the gradual development or emergence of '*teiju gaikokujin*' and at the many nationality clauses which restrict the right of

entitlement to aliens. Though these have in some cases been transitional measures, in most cases pending diplomatic negotiations or agreements, they have helped to exclude aliens. In addition, although these nationality clauses have gradually been abolished, we see by the two cases detailed here that it is quite hard to argue on behalf of (settled) aliens even when there is no explicit nationality clause.

We have also seen that the concept '*teiju gaikokujin*' is historic, gradual, and grass-roots orientated, and that it has not yet been accepted as an official concept. At the same time, it has taken quite a long time to have substantial permanent resident status, to become those 'special permanent residents (*tokubetsu eijusha*)'. It signifies that different categories of 'permanent residence' had been insecure for a long time and shows that the dichotomy between aliens and nationals in Japanese society is quite strong. In the Son case, for instance, his previous ties with Japan are completely forgotten by the fact of his illegal entry from South Korea.

Furthermore, when it comes to making a distinction, most of the time the dividing line falls between nationals and aliens, rather than between nationals, settled aliens and other aliens. This partly comes from the weak concept of aliens' rights within the theories. There is clearly a mismatch between the traditional framework of state vs state (or Japan vs Korea or China, for example) and legislation which recognises the existence of *teiju gaikokujin* to some extent.

The two cases discussed in this chapter are about social rights and political rights (the classification of political/social is the Japanese concept) and both concern

former empire subjects. Where 'nationality clauses' survive in Japanese society, there can be different interpretations over their continued existence. The most benign view is that requirements for 'nationality clauses' were intended to promote the naturalisation of certain aliens in Japan, such as Koreans and Taiwanese ex-subjects who were already working in central government just after the war. Or, the menace against *tenno* was a real issue, in particular, when communists activities were dominant just after the war. However, after aliens are settled, or become 'denizens', nationality clauses or the difference of citizenship status is the only thing which can distinguish those *teiju gaikokujin*, in particular, *tokubetsu eijusha* (special permanent residents) and Japanese nationals.

As a short summary of Chapters 4 and 5, in these two chapters, the theme was the distance between the two concepts of citizenship and nationality. Concerning issues around 'nationality', such as the meaning or significance of a nationality criterion, it appears that the areas in which nationality matters are much broader, and that the meaning is more fixed in Japan than in Britain. On issues of permanent residence, however, internal entitlements are overall more stable in Britain than in Japan, while notably, rights of permanent residence relating to immigration is relatively more tolerant in Japan than in Britain. This may be due to the different emphasis on policies within Britain and Japan, the former focusing on immigration, while the latter focuses on internal control; in Britain, issues relate to 'citizens', while in Japan, they relate to 'aliens'. In regard to the status of former empire subjects, it appears that in Japan, whilst legislation was originally lacking, the situation for

aliens is improving, whilst in Britain, measures are becoming increasingly restrictive, as it tries to rid itself of the legacy of the empire.

When we attempt to apply these issues to Brubaker's six ideals of nation-state membership models (1989), nationality criterion can be regarded as a 'socially consequential' aspect, the stability of permanent resident status as 'egalitarian', and entitlement of political rights as a 'democratic' aspect. In the case of Japan, it appears that, as far as this chapter is concerned, aspects of social-consequence are very much dominant, while democratic and egalitarian aspects are less clear, in comparison with the British case. It is also quite symbolic, though that the rights of eligibility as well as past conscription compensation are still matters of dispute in Japan. In the British case, it seems that egalitarian and democratic aspects are much stronger than the socially consequential aspect.

Chapter 6: Patriality - Britain

6.1 Introduction

This chapter and the one following examine how close the concepts of 'citizenship' and 'nationality' are, by examining the issue of 'patriality' and its relationship to the status of full citizenship. In the British section, the discussion will be centred on the patrial clause in the 1971 Immigration Act and the transition of its status until the enforcement of the 1981 British Nationality Act. The comparative Japanese section will focus on *koseki* (house registry) and its relationship with the status of Japanese nationality. As we have seen before, in the case of Britain, the emphasis is derived from aspects dealing with immigration, while in Japan, the emphasis is on 'nationality', so that direct comparison may be complex. Having said that, as the 'patrial' and *koseki* issues in Britain and Japan involve post-colonial adjustments which relate to issues of both immigration and nationality, it is hoped to show some similarities in both countries.

Firstly, let us start by examining the literature which relates to patriality. This covers the 1971 Immigration Act as well as the 1981 British Nationality Act, so that issues of 'immigration policy' can be considered as well as 'nationality' issues such as self-identification. We will then turn to parliamentary debates, as well as some court cases, and explore the nature and characteristics of British patriality and how it works in practice.

6.2 Comparative aspect

The concept of patriality is critically important in any analysis of citizenship and nationality. All countries have legislation defining who "belongs" to the country, who has nationality or citizenship and who are aliens or foreigners. Given the importance of patriality, it is surprising how little this concept is defined, analysed and discussed. The concept of patriality provides an important way of comparing citizenship and nationality issues in Britain and Japan. It will highlight areas of contrast as well as similarity.

First of all, having a patrial status or having a *koseki* is the important prerequisite of having nationality status (that is, being a British citizen, or a Japanese national). According to Fransman (1989), 'patriality' (the immigration status), and 'Citizen of UK and Colonies' (the citizenship status, hereafter CUKC), were the two prerequisites of the acquisition of British Citizenship. It 'determined those who were free to enter and settle in the UK ...but... also it will generally continue to govern the rights of entry of certain existing Commonwealth nationals' (Fransman, 1989:115). In the Japanese case, depending on the status of *koseki*, nationality status was clarified after the 1952 Peace Treaty and the circular.

In addition, Fransman (1989) gives the actual effect of the 1971 legislation and emphasises the importance of the patriality clause. In drawing the line between patrials and non-patrials, Britain succeeded to draw lines similar to other countries' distinction between 'nationals/aliens' (ibid., p121). Until then, there

was a traditional distinction between British subjects and aliens, but since 1962, some British subjects have been subject to entry control and lost their right of abode in the UK. The function of the 1971 Act, in particular the patrial clause, appears to be similar to the deprivation of Japanese nationality from those former empire subjects who had acquired Japanese nationality through colonialism, by way of the 1952 Peace Treaty. Therefore, the effect of the 1971 Immigration Act which created the status of patriality is similar with the Japanese arrangement after 1952.

Secondly, both being a patrial and having a *koseki* is related to the principle of *jus sanguinis* (right of descent). Some Japanese academics indicate, however, that it is possible to contrast the period of the 1948 British Nationality Act and the 1952 Peace Treaty to argue the difference of post-colonial adjustment of subjects' status (Tanaka, 1991:64, Kibata, 1992:283). However, as a turning point, it seems fairly clear that the 1971 Immigration Act is also important, when we think of the fact that the Japanese system of nationality is mainly based on *jus sanguinis*, patriality can offer a good criterion for comparison. At the same time, before the grand-parent clause was introduced for the first time in the 1968 Commonwealth Immigrants Act, the predecessor of the patrial clause was introduced, British immigration and nationality were traditionally based on the principle of *jus soli*. Therefore, as a framework for comparison, the emphasis on the 1971 Immigration Act is not irrelevant.

With regard to this point, the significant difference between Britain and Japan maybe that the overwhelming majority of those affected by the arrangement (i.e. those directly affected by the 1971 Immigration Act and the 1952 (Japanese) Peace Treaty is that, in the former case, most were outside mainland Britain, while in the case of the latter, the majority affected were within mainland Japan. That is why, the issue of 'post-imperial' or the adjustment of the former empire subjects is discussed mainly in connection with immigration in Britain, while in Japan, it is mainly dealt with as an issue of nationality. In addition, in the British case it was claimed that 'half of the population of the British Commonwealth are Indian' (Reginald Maulding, 30/3/1971¹) while in Japan, the majority of 'aliens' have been, Koreans. This, as mentioned previously, is a difference which the effect of, is hard to measure: the issue of colour and race, a matter which could not be concealed in relation to Britain's former colonies in the Asian subcontinent, is in strong contrast to Japan, where the presence of Koreans does not reveal itself in the visible form.

The following section examines the relationship between 'patriality' and 'British citizens' and considers whether it is parallel to the relationship between '*koseki*' and 'nationality' in Japan.

6.3 The areas of patriality

To begin, it is worthwhile taking a look at the secondary literature to find out how the experts regard patriality. Firstly, a patrial clause can be an important part

¹ Standing Committee B, Official Report, Session 1970-1, col.163

of immigration policy. In other words, patriality can link the immigration policy and population policy of a country, by giving preference to people who are descendants of existing citizens. This can be seen as a strategy to maintain its physical and cultural attributes of the population in a conservative way. It is perhaps only likely to be successful in countries from which substantial emigration has taken place, so there is a large external group some of whom may be attracted to return to the country which was the homeland of their ancestors. Here, the relationship between patrials and non-patrials can be seen as that of 'ethnic migration' and of the 'guestworker system', or one group has privileges and the other is subject to strict control (Sivanandan, 1982:131-2). The requirements of ethnic migration are usually: first, sufficient connection of ancestry, second, an idea of belonging, such as sufficient knowledge of language etc., and third, a question of loyalty (Groenendijk, 1997:479-80). In some countries where they impose strict immigration control as well as conditions which restrict the right to work or the right to settle, ethnic migration can offer a flexible labour reservoir - which is easy to handle by the host country's authorities, as well as less likely to expect conflict with host society citizens. In this way, you are ensuring that the ethnic composition of the population stays the same or changes slowly. This links with the European view of countries as nation-states. For instance, 'ethnic migration' exists in other European countries such as Germany, Greece, and Italy, as I mentioned before. These countries allow people whose ancestors were of the same national origins the right to return and to regain the citizenship of their forebears. A significant proportion of post-war migrants to these countries have been 'patrials' in this sense. In the

Japanese case, to a limited extent, *nikkeijin* (descendants of Japanese emigrants) is a kind of 'ethnic migration' (for instance, Kajita, 1998). Although as will be explained later, they are also regarded as part of a 'legally introduced labour force' when Japan's economy was expanding, and *nikkeijin*'s ties with Japan - language or frequency of contacts - was not strong initially.

However, in the British case, the government's intentions in this area were unclear. During the 1960s and 70s Britain was in recession, and the introduction of the 1971 Act brought about a contradictory result: it 'increased the total number of people with the right to enter Britain quite independently of economic considerations' (Miles and Phizacklea, 1984:70). Furthermore, as far as immigration policy is concerned, Britain may be regarded as having lacked a coherent 'immigration policy' and its legislation having been enacted in an ad hoc manner. In addition, compared with the other European countries, the definition of 'ethnic factors' for 'ethnic migration' has been a difficult topic for Britain for a long time, partly because of its imperial past.

Thirdly, there is an aspect of exploring patriality relating to the topics of 'racial discrimination' and 'nationalism'. Both need to be examined since the distinction between them is often unclear. The 'patrial clause' of the 1971 Act was intended to give precedence to people with a close connection to the UK, in practice this meant white people over all non-white settlers who were the majority of British subjects. For instance, Goulbourne (1991:118) points out the function of the patriality clause as discriminating between 'people outside Britain who were able

to claim close connection with the UK by virtue of having had a grandfather who was born in this country, and could gain entry, while people outside the UK who could not make this claim but held British passports, could not automatically gain entry'. Goulbourne also attempts to explain that 'nationality and immigration laws in the perceptions of the British nation are articulated by politicians rather than in the legal provisions *per se*' (ibid., 1991:90). His basic argument is that post-war Britain gradually achieved 'post-imperial' (nation-state) by removing the right of settlement/entry of new Commonwealth immigrants, a process which was completed by 1981 British Nationality Act. In a similar way, Miles (1993:74) argues that this post-imperial adjustment process can be read as a 'nationalistic' framework as well as 'racist', since specific categories of 'British subject' are often chosen by colour to constitute membership of an 'imagined community' of the nation.

Dixon (1983) explores the construction of British national identity within the context of British Nationality Bill debate and observes that 'the 1981 Act... is designed to define a sense of belonging and nationhood which is itself a manifestation of the sense of racial superiority created along with the Empire, while simultaneously it cuts the ties of citizenship established in that same historical process'. When we think of the fact that the basis of the 1981 Act, British citizenship was formed at the time of the 1971 Act of patrial status, these insights are useful in setting the history of 'patriality' in context.

This frame of reference for emphasising 'nationalism' as a style of 'post-imperialism' is quite useful, as it facilitates comparison with the Japanese experience after 1952, which quite often focuses on its 'nationalistic' framework rather than the framework of 'ethnic migration' or 'race' which often lack the sense of historical connection.

6.4 Patriality: context and background

Now, let us examine the background and the context of 'patriality' as a concept. In Britain, the concept of 'patriality' is relatively new in immigration and nationality law. 'British subject' status prior to 1949 arose by virtue of a connection with the Empire as a whole. It was linked to birth on the territory rather than descent from earlier generations of British subjects. Everyone who owed their allegiance to the Crown was a British subject until the 1948 British Nationality Act came into force. The 1948 Act created the status of 'Citizen of the UK and Colonies' which arose by a connection with the 'UK and Colonies'. This status was separate from that of the citizenship of an independent Commonwealth country, but citizens of both categories constituted British subjects. There were no immigration restrictions posed by the Act. In the 1948 British Nationality Act, Clause 5 allows citizenship by descent in limited circumstances, mainly for the first generation by paternal descent. In other words, lineage had only a limited significance until the series of immigration control was enforced.

By the 1962 Commonwealth Immigrants Act, entry control was imposed for the first time on Commonwealth citizens, depending on the kinds of passports they held. Those not subject to immigration control were:

- 1) those born in the UK,
- 2) those holding UK passports issued by the UK government,
- 3) those included on the passport of a person exempt from immigration control under 1) or 2).

The government would be able to deport Commonwealth citizens from the UK if they had lived in the UK for less than five years and had a criminal record. Similarly, the right not to be deported from their home country became restricted for the first time (Ishida, 1985). Those immigrating for the purpose of employment but subject to control had to obtain an employment voucher first and issuing the vouchers became the main criterion of immigration control. Foot (1965: 140-1) considers that unemployment was not the reason for control but fear of the escalating cost of social services. However, the employment voucher was regarded as the only acceptable excuse which the government found possible (Foot, *ibid.*). This was the basis of the first Commonwealth Immigration Act but in practice, it was said that its implementation was fairly relaxed. Foot (1965:253) estimates that from July 1962 to December 1964, 49,915 voucher-holders were admitted to the UK.

In the 1968 Commonwealth Immigrants Act, 'the grandparental connection clause' or the first lineage restriction clause was introduced in order to restrict the immigration of British Asians from Africa. This was a kind of a population policy.

Although restriction of British subjects/Commonwealth citizens had already begun with the 1962 Commonwealth Immigrants Act, in the case of the African Asians, their connection to the UK arose by the independent arrangement after the 1962 Act. As Lester (1975) notes, 'they are not connected by birth, descent, marriage or residence here, but the independence arrangements made by the British Government in East Africa, and their reliance upon the rights conferred by those arrangement, made them 'belongers'' (p.11). Under the 1968 Act, the linkage with the UK was prioritised - the distinction was drawn within UK passport holders: those for whom at least one of their parents/grandparents had been born, naturalised, registered or adopted in the UK, were exempted from control. Under pressure in parliament and from society, the 1968 Act 'broke the promise' and thereafter they were British citizens in a legal sense, but citizens now reduced to second-class status formally, because of their lack of a close connection with the UK, but in reality because of their colour (Lester, 1975:12-3) and fears that they would be difficult to integrate and assimilate with the host population. They were only allowed to enter Britain under the 'special voucher scheme' thereafter, which was controlled and regulated by means of a voucher granted at administrative discretion under a world-wide quota and other conditions of eligibility determined by the UK government from time to time (Shah, 1994:62). This was only issued to the 'head of household', which by and large meant, men. By inserting this grandparental connection to the Immigration Act, 'citizenship of the UK and colonies is separated from 'right of entry' and 'right of abode' (Ishida, 1984).

Apart from this emergency measure, until 1964, traditionally the conflict or confrontation on immigration policy had been understood as the framework of the 'Little England policy', which opted for immigration restriction and for European co-operation and 'the preservation of the British empire' between the two parties (Rose et al., 1969). In particular, the subject of immigration policy was a sensitive one within British politics (*ibid.*) and until the first piece of legislation (the 1962 Act) was introduced, there was much confrontation. However, just before the election of October 1964, the Labour government clearly shifted towards a tougher line on immigration control, which was later spelt out in the 1965 White paper.

The 1965 White paper (Cmnd.2739, August/1965) was the first indication of the Labour government's opinion on immigration policy, and was controversial because of its unexpected tough line, but welcomed by the Conservatives. It proposed significant steps removed from the 1962 legislation, namely, reducing the number of vouchers (and abolition of unskilled category C), possible future restriction of dependants, suggestions of a repatriation scheme, police registration for Commonwealth citizens, and the increased power of the Home Secretary for deportation. After the White paper, 'Commonwealth immigration' means particularly those from the New Commonwealth countries', who are subject to restriction (Dummett and Nicol, 1990:194). The 1971 Immigration Act was also very much a political Act and was not a response to economic circumstances or to a thought out labour position or population policy, but was a response to Enoch Powell's anti-immigration campaign.

The 1971 Immigration Bill was brought to the Parliament in February 1971. In the following section, two areas need to be explored:

- a) the question of who, within the debate, was defined as being a 'patril', which may be found through an analysis of Hansard, i.e. how extensively can *jus sanguinis* be applied and who may be considered 'patrials' in practice.
- b) what effects the Act made to non-patrial, patrials and aliens. This point will connect later to the discussions of some well-known cases, when the Act was put into practice.

Particular attention needs to be paid to Clause 2 of the Bill - the definition of patriality. The question arises as to why it was included in the Immigration Act, but not in the Nationality Act. It is also necessary to examine the extent of patriality and which groups were explicitly considered as non-patrials.

The meaning of patriality, according to Fransman (1989), is 'those with a 'right of abode' in the UK, who are '...free to live in, and to come and go into and from, the UK without let or hindrance except such as may be required under and in accordance with this Act to enable their right to be established' (1971 Immigration Act, Section 1(10)). It includes UK citizens and Commonwealth citizens born to, or adopted by, a parent who, at the time of the birth or adoption, had UK citizenship by virtue of their own birth in the UK (1971 Immigration Act, Clause 2).

Those who were not patrials but intended to work in Britain, were required to obtain a work permit (which was renewable, subject to conditions) first. This 'work permits' replaced the employment vouchers which existed previously. Without the right of permanent residence or the right of entry for dependants', the rights of non-patrials, who were Commonwealth citizens were greatly reduced. Non-patrials could only enter and '...live, work and settle in the UK by permission and subject to such regulation and control... as is imposed by this Act...' (Immigration Act 1971, Section 1(2)). The 'patril' clause therefore provides a clearer definition of patriality and nationality compared with the 'grandparental clause' in the 1968 Commonwealth Immigrants Act.

Reginald Mauding attempted to justify the introduction of the 1971 Immigration Bill on the grounds of 'the existence of a problem of community relations'. 'Free admission of Commonwealth citizens over generations' lasted, he stated, so that 'control became quite necessary, because of the scale of immigration which took place, because of the speed at which it took place, and because of the way in which it was concentrated in certain areas where whole districts changed their character rapidly' (Commons, vol.813, col.42-3, 8/3/1971).

Rose (1973a, 1973b) analyses three reasons for the introduction of the 1971 Bill. First, there was a need for the fulfilment of the Conservative party's manifesto for the 1970 election which promised 'no further large-scale permanent immigration' (Rose, 1973a:184); in other words, there was a continuation of the 'numbers game' as part of the election strategy. This point was emphasised in the debate:

'...there should be a further reduction in the number of unskilled and semi-skilled people coming from all sources for permanent working immigration here. Under the Bill the total who come in future will be such as will carry out our undertaking of the election that there will be no further large-scale permanent immigration' (Reginald Maulding, Commons, *ibid.*, col.56, 8/3/1971).

Second, in Rose's view, there was a need for preparation in joining the European Economic Community. 'Britain's responsibilities to those placed in untenable positions by the liquidation of her colonial role which is what the now difficult combined citizenship reflects must be accepted - and have to be accepted also by Britain's European partners in the context of the Community's policy on the free movement of labour' (Rose, 1973a:193). Although within the debate, the European issue was not significant, some authors think that the introduction of the patriality provision at this time coincided with Britain's access to the European Economic Community (Dummett and Nicol, 1990:219, for example). Most members of the EEC had similar ethnic migration provisions in their citizenship legislation, so while European Community membership was not a key factor, the change of legislation could be more easily defended as a necessary form of harmonisation with its European Community.

Finally, there was in Rose's view a need for the unitary immigration control of aliens as well as (new) Commonwealth citizens (Rose, 1973a:186), so that the distinction was made between patrials and non-patrials regardless of their citizenship status. For example, Richard Sharples, the Minister of State at Home

Office stated that '...the whole complex of law [relating to alien and Commonwealth immigration] should be brought into harmony in a single piece of comprehensive and permanent legislation' (Commons, *ibid.*, col.155, 8/3/1971). Until this point, there had been the 1914 Alien Act, the time-limited 1962 Commonwealth Immigrants Act, and its amendments of the 1968 and 1969 Acts which coexisted. This meant in practice, that matters were 'seen as an individual issue, and a matter of the 'levelling down' of the rights of immigrants', to the level of permission and to the level of rules (Rose, 1973a). For instance, the introduction of 'alien registration' for Commonwealth citizens was considered in the original draft of the 1971 Immigration Act, but soon removed by the opposition from pressure groups (Moraes, 1993). This is noteworthy when the purpose of the 1971 Immigration Act was to distinguish patrial from non-patrial, or more symbolically, belongers from non-belongers.

In the initial Bill, 'patrial' is explained as conferring 'the right of abode on citizens of the United Kingdom and Colonies who themselves are connected with the UK by birth, adoption, naturalisation or registration; who have a parent or grandparent with such a connection; or who have been lawfully settled (i.e. ordinarily resident without any restriction on their period of stay) in the UK for five years, and on other Commonwealth citizens who have a parent or grandparent born in the UK' (Immigration Bill, 23/2/1971, p.1).

According to Reginald Maulding, it can 'accord [to those] who have a family connection with it a particular and special status' (Commons, *ibid.*, col.46,

8/3/1971), and 'there is a precedent of the 1968 Act which defined those who belonged to this country as those citizens of United Kingdom and Colonies who had a parent or grandparent born in this country' (ibid.). Therefore, the definition of 'patrilal' is much clearer than that of grandparental clause in the 1968 Act. The definition of 'who has the right of abode' was quite complicated, and many questions were posed on this point at the Committee stage. For instance, Enoch Powell, who made a significant impact on the immigration debate, asked 'why it was a Bill about immigration and not about citizenship' (E.Powell, ibid., col.76, 8/3/1971), and stated 'I do not believe.... that one can tear one aspect of citizenship (immigration) apart from another and give people piece of it' (ibid., col. 81). The reply from the government was : 'It would be very agreeable if one could draw up a simple Bill tying up the concept of citizenship and basing immigration control on that concept...However...there are many serious practical difficulties which have prevented successive Governments from proceeding with a simple citizenship Bill' (R.Maulding, Commons, Standing Committee B, Official Report, Session 1970-1, col.152, 30/3/1971).

Next, it is worth examining some points posed in the Standing committee amendment requests, as there was substantial discussion of Clause 2, the definition of patriality (some points posed in this stage will see later on the court cases as well). Within Clause 2, together with the lineage connection (parental/grandparental) which had its roots in the 1968 Commonwealth Immigrants Act, the connection with Britain arose also by 'birth, adoption, naturalisation, registration', which was included in the British Nationality Act,

and 'settlement' from the immigration provision. Among the amendments proposed to the Bill, were questions relating to the definition of patriality.

One of the most important of these came from Enoch Powell, who requested the important amendment which enables the restriction of patriality to the first generation only, for both 'Citizens of UK and Colonies' and 'Commonwealth citizens', so that 'the distinction between citizenship and immigration get clearer' (ibid., cols.127; 136-7, 25/3/1971). The result was that within the provisions, the qualification of Commonwealth citizens' descent was reduced to the first generation (ibid., cols.247-8; 275-6, 6/4/1971). However, the government later received criticism on this point from backbenchers whose constituents had relatives living abroad often in 'Old Commonwealth' countries, and it was defeated in November 1972 in the debate on the Immigration Rules. This point is explored in detail by Norton (1976) that the government was forced to back down and restore the grandparent clause.

Norton (1976) regards the defeat of the 1972 Immigration Rules as one of the most important government defeats in post-war British parliamentary history (p.413), and explores why the original rules were opposed. He argues how and why the government needed to re-insert the grand-parental clause in the 1972 Immigration rules because of the pressure from white constituents on their Conservative MPs. These constituents wished to protect their rights but more importantly their emigrant children's rights of return and access to Britain and British citizenship.

Due to the combined results of the 1971 Immigration Act and the Treaty of Rome, 'the Rules were the preference which EEC nationals were to enjoy in entering the country by comparison with non-patrial Commonwealth citizens' (Norton, 1976:405). This left a number of Conservative MPs unhappy: '... Had that [originally proposed patriality provision] been accepted and not struck out of the 1971 Bill, practically all Canadians, Australians and New Zealanders of British stock could have been accepted.' (Bernard Braine, Commons, vol 846, cols.1404-5, 22/11/1972). Therefore, as Norton quotes, 'In the opinion of this House, the citizens of Australia, Canada and New Zealand ought to enjoy full freedom of entry as visitors and rights of residence and employment in the United Kingdom not less favourable than the nationals of the Member States of the European Communities' (1972/3. No.119, John Briggs-Davison, Dec./19 quoted in Norton, 1976) and a motion was tabled and the grandparentage clause was put back in the immigration rules.

Under the 1971 Act, the traditional distinction between British subjects and aliens was replaced by a much more complicated set of arrangements by which the most privileged category was patrial British subjects, followed by a range of categories of people subject to immigration control and without the automatic right of abode. These categories include

- 1) non-patrial Commonwealth citizens
- 2) EC citizens
- 3) citizens of British Dependent Territories

4) British Protected Persons

5) aliens.

But the major distinction after the 1971 Act was between patrial British subjects and the rest. The Act was a step towards making a completely new political status for Commonwealth subjects, categorising them as aliens.

The complexity of the second-generation clause has continued, however. In the 1981 British Nationality Act, Section 14 (definition of British Citizen by descent) is, according to Baker (1982:788), 'a new and lengthy definition... one of the most complex, tortuous and badly drafted in any Act of Parliament'. Citizenship by descent status naturally imposes a restriction on its transmission to further generations. Dummett (1981:238) provides a rough summary as: 'Citizenship by descent will pass automatically only to the first generation born overseas, and in the second and subsequent generations will be available automatically only to Crown servants' children and children of parents in 'designated employment' or by registration to the children of certain businessmen or business women'. Clearly, the shift towards a principle of *jus sanguinis* in citizenship legislation is very complex.

6.5 Patriality and Citizenship

This section examines the impact of 'the patrial clause' of the 1971 Immigration Act on nationality law, and in particular, on the characteristics of British citizenship and the subsequent change in the 1971 Immigration Act.

After the 1971 Immigration Act provided the substantial distinction between patrials and non-patrials as argued above, the next intention of the government was to clarify its nationality law. The Green paper (Cmnd.6795, April 1977) suggests possible changes. It says: 'because Britain is no longer an Imperial power the all embracing concept of nationality associated with this role, including the CUKC, is no longer appropriate...the present CUKC, as its name implies, relates both to the UK and overseas territories, it does not identify those who belong to this country and have the right to enter and live here freely, in consequence it prevents the UK from basing its immigration policies on citizenship' (p.4). It assesses the impact of the 1971 Act on the nationality issue thus: 'The Immigration Act 1971 increased the confusion, since not only did distinctions within the citizenship of the United Kingdom and Colonies continue, the right of entry was also conferred, to a limited degree, on certain citizens of other Commonwealth countries' (Section 10).

The main intention of nationality reform was to replace the existing 'Citizens of UK and Colonies' with a 'British Citizenship' for those who had close ties, and a 'British Overseas Citizenship', for the remainder, who did not have a close connection with Britain. On evaluating the Green paper, the Conservative Political Centre (1980) offered its support, stating the view that the 1971 Immigration Act had become 'so entangled with the law of the nationality and the law relating to immigration that it is no longer possible to consider one without referring to the other'. and that 'in future immigration policies... must be founded on a separate citizenship of the UK and that it is therefore essential that a

reformed law of nationality should, for the first time, make clear just who are the 'citizens of the UK' (1980:9).

In July 1980, when the White paper (Cmnd.7987, July 1980) was published, the Home Secretary William Whitelaw stated: 'The first point of simplification is the main purpose of full British Citizenship...A British Citizen is a person who belongs to this country and has full rights here', adding that it was a 'considerable advance to have immigration controls based on nationality and citizenship' (*The Guardian*, 31/7/1980).

The White paper describes the characteristics of British citizenship as giving 'the status of people closely connected with the United Kingdom, conferring on the holder of it the right to enter and remain in the country without restriction', and making available 'a ready definition of those people who have a close connection with the United Kingdom' (Sections 37 and 38) - in other words, privileges in immigration (border) control and definition of those people governed by it.

So, what was to be changed from the 1971 Immigration Act? The White paper stated that, 'Much of the amendment will consist of the replacement of the term 'patrial', by reference to British citizens. The effect of these provisions will be that in the long term, the right of abode in the UK will depend exclusively on the possession of British citizenship. Transitional arrangements will be made for those Commonwealth citizens who at the time of coming into force of the Act

have the right of abode, but who do not become British citizens, under the transitional provisions, of the Bill, will have that right preserved' (1980, p.23).

However, consideration of the connection between British nationality and citizenship rights was avoided in both the documents. The Green paper says, 'Civic privileges do not stem directly from the law of nationality and that this was the reason they were not dealt with. In this country the common status of British subject held in our law not only by Citizen of UK and Colonies (CUKC) but by all other Commonwealth citizens carries voting and other privileges. There are also special arrangements for citizens of Irish Republic' (April 1977, Section 66, p.22). 'The term 'British subject' is pursued in a number of other UK statutes to define certain rights and privileges...the (1981 British Nationality) Bill will provide that where a statutory duty or entitlement is expressed in terms of British subject, it should be continue to have the meaning as it had under the 1948 Act. But the Bill, by establishing a British citizenship will make available a ready definition by which those duties and entitlements may be defined in the future. It would not necessarily follow that these would always be attached to the holding of British citizenship, there might be instances in which the present under definition would remain desirable' (30/7/1980, sec110). As civic rights are not considered in the White paper, the main emphasis was again on 'immigration', the right to enter the territory, and remain in the country.

Not surprisingly, the White paper met with disapproval in some quarters: '[It] failed to grasp that nationality was a major constitutional question involving

allegiance to and protection by a system of law and clearly defined rights and duties defined from the law and enforceable in the courts' (Prashar, S. in *Runnymede Trust Bulletin*, no.123, September 1980). 'On the whole the white paper is an insular document, very tightly drawn which disregards, Britain's imperial responsibilities and international obligations' (ibid., December 1980, p.17).

As Brubaker (1989:11) points out, 'Lacking national citizenship until 1981, Britain lacked a clear criterion for deciding whom to admit to its territory' with the result that 'while other countries were debating the citizenship status of immigrants, Britain was debating the immigration status of citizens' (Dummett, 1976, quoted in Brubaker, 1989:11). Paradoxically, therefore, immigration rights are the only subject in Britain which 'sticks only to the UK proper' (Lord Denning, at ex parte Phansopkar) until that point. The confused relationship between immigration and citizenship only became clear in relation to the nationality issue in 1981.

6.6 The role of the courts in Britain

The role of the courts as guarantors of minority rights in Britain is not as significant as it is in Japan. The reasons for this are partly that in Japan aliens have to seek the redress for their grievances in the courts as they have only limited access to the political process and even then this is indirect often through their homelands' governments. In Britain, Parliamentary sovereignty means that legislation is more important than Court decisions as there is no written

constitution guaranteeing minority rights and enhancing the political position of the courts. Also minorities do have political rights and so can lobby politicians directly. In Britain, it is more efficient to influence legislation and gain assistance from bodies like the CRE rather than try to expand minority rights through litigation. As we shall see, the courts in Britain tend not to interfere the legislative policy, and they allow rights only when they are clearly laid down by Parliament.

6.7 Claims to patriality

In this section, we shall see how the points referred to in the debates remained (during) the implementation of the 1971 Immigration Act. Within the original clause on patriality prior to the 1981 British Nationality Act, 'patrial' is defined in a number of different ways as: 'personal UK connection' (1971 Immigration Act section 2-1-a), 'first generation UK ancestry' (section 2-1-b-i), 'second generation UK ancestry' (section 2-1-b-ii), 'five years residence in the UK' (section 2-1-c), 'Commonwealth citizens' (section 2-1-d), 'married women (section 2-2) (see Fransman, 1983). Conditions of being a patrial include types of connection with the UK, such as birth, adoption, naturalisation, registration, ancestry, settlement or marriage. With regard to patriality, the points of dispute in case law seem to be entry claims and claims of right of abode in borderline examples. In addition, among patrials, there are patrials whose status has to be proved by way of certificate, and those who need not. As the definition of patrial in relation to the right of abode in the UK was replaced by the status of British Citizen (and Commonwealth citizens who have a right of abode before the 1981 Act), in order to simplify the discussion, the main attention will be on the

cases before the enforcement of the 1981 British Nationality Act, or when the 'paternal' clauses were valid, although some cases are after the enforcement of the 1981 Act.

6.8 Decolonisation

It was the process of decolonisation combined with immigration from the colonies and newly independent Commonwealth countries which forced British politicians to confront the issue of who belonged to the UK, who should belong to the UK and how this should be legislated for in British citizenship legislation. The decolonisation issue relates to the discussion of the definition of 'the UK' and what it meant, in practice, as the definition grew narrower with the development of immigration legislation. This topic is therefore a good example of how the question of who belongs to 'the UK itself' is defined. As mentioned above, narrowing the definition of the UK started as early as the 1962 Commonwealth Immigrants Act. There was a test case in the High Court by the Home Office (*The Times*, 12/8/1967).

This found that a citizen of the UK and Colonies, a Mauritian who held a passport issued in the colony was not a holder of a UK passport within the meaning of Section 1 of the 1962 Act, and was, accordingly, unless born in the UK, subject to the provisions of that Act. After the 1968 Act introduced the grandparental connection, the relationship between 'UK passport' and 'where it was issued' were further complicated.

Within the debate on the 1971 Bill, in order to enable the right of abode to 'those UK passport holders', there was a suggestion to delete grandparent or parental connection to the UK (David Steel, Standing Committee Official Report B, Session 1970-1, col.82, 23/3/1971), which was rejected. After the 1971 Act was enforced, this point still continued to be a point of dispute. For example, two cases can be listed in this section as 'immigration into Britain itself' or 'the effect of naturalisation'. In the first, *Keshwani v SSHD* [1975] Imm.A.R.38, it was contested as whether 'naturalisation in the UK' included the former British protectorate of Uganda in 1956 and whether (that) 'citizenship by the naturalisation in the UK', gave the right of abode as a patrial. The claim was dismissed. The judge said: 'It was submitted that any naturalisation must be in the UK. But if that were a correct interpretation of Section 2(1)(a) 1971 [Immigration Act], the reference to 'the islands' would be otiose' (p.41). Similarly, in *ex parte De Sousa* [1977] Imm.A.R.6, it was argued whether a 'British protected person naturalised in Kenya', was recognised as naturalised in the UK and therefore conferred the right of abode in the UK or not. The interpretation hinged on whether it was the governor's function to naturalise citizens, or the UK Secretary of State (p.8). These cases highlight the development of the UK as 'a territory' after its decolonisation, and how the definition of belonging (patriality) became clearer.

6.9 Commonwealth citizens

By the introduction of the patrial clause, the category of 'Commonwealth citizens' had considerably changed. 'Commonwealth citizens' were divided into

who has connection to the UK, and who does not, or in other words, the category of 'Commonwealth citizens' were not any longer useful as it was, in relation to immigration status. Therefore, the requirements are connected with 'citizenship' status in part as well as with pragmatic 'immigration' categories. To contrast with the Japanese situation, in the following, we shall see where the line was drawn.

In relation to the debate on the 1971 Immigration Bill (Clause 2) and the 1973 Rules, the entitlement of right of abode to second-generation Commonwealth citizens was controversial. When it came to its application in practice, issues arose from those Commonwealth citizens who did not have a connection with the UK as patrials. Non-patrials (or those who need to claim their patriality), were subject to immigration control.

As Britain accepts immigrants as 'future citizens', some categories such as settlement are necessary for consideration of patriality. In addition, as the work vouchers were repealed and the system of work permit introduced, it is also possible to enter with a temporarily permit for students, for example, as well as those on business and then to claim settlement (and ultimately to the right of abode) several years after entry.

Immigration law in the UK defines three categories of settlement. These are, 'temporarily purpose', 'marriage, business' and 'settlement'. The people under the first two categories can claim settlement when the condition of stay is lifted.

For people in the third category, the entry as settlement has to be accepted. Conversely, even if an applicant seeks entry for a temporarily purpose, it could be rejected on the grounds that his/her entry is not genuine. (see for example, *Kawaja v SSHD* [1983] 1 All.ER. 765). Once settlement has been allowed, the way to (important) civil rights, such as the right to enter the territory and the right of abode, is opened to the candidate. However, as we have seen above, some rights, especially access to social services are increasingly linked to the immigration status, that is the right of residence and settlement in the UK, while for other entitlements, the condition depends on British subject status most of the time, rather than on British citizenship.

6.10 Secondary immigration

The following section considers 'secondary immigration', for comparison with Japanese issues. This is because most status disputes in Japan are brought by 'aliens' within Japan, and the formulation of nationality/immigration policy has occurred after their entry to the country.

Some 'secondary immigration' has been indistinguishable from primary immigration, such as *ex parte Ruhul* [1987] 3 All.ER. 705, where the son of a Commonwealth citizen (settled) applied for settlement and was refused as they must be qualified for themselves. Referring to the 1971 Act, the judge implied that similar treatment prevailed for aliens and Commonwealth citizens alike.

There are quite a large number of cases connected with this topic. These section provides some examples of adoption of foreigners or other minors and entry as a spouse. These are particularly interesting from the point of view of 'patriality', as they involve not only the status of entry-seekers but also the status of the sponsor. In addition, adoption and marriage involve family law issues, too.

In one case, Christodoulider [1985] Imm.A.R.179, a British Overseas Citizen in the UK renewed her passport (which was originally without any restrictions), and it came back as being subject to immigration control. The point of dispute was 'the right of abode, formerly called patriality'. 'It was not something which could be conferred, it was something which a person either was or was not entitled to...' (ibid, p.182) and the judge stated in her case, it (having been) 'granted', 'she should not now be denied it'. Similarly, in *Menon v ECO* [1993] Imm.A.R. 577, a citizen of Malaysia, ordinarily resident in the UK for five years, claimed CUKC in December 1982 and the right of abode in the UK. The grounds of his claim were that the place where his father was born was a part of a 'British possession' (an Indian native state) at that time. His request was rejected owing to 'the difficulty stemming from the historical uncertainty as to the effect of the relationship between the Indian native states where he was born and the UK on the concept of national of this country. They are not part of the dominions but for the international purpose from the national point of view, nor so recognised (p.580)'.

Babies born in the UK are British only if one of their parents is British or settled here at the time of their birth. Prior to 1981, birth in Britain could confer a status of citizen. In *Minta v SSHD* [1992] Imm.A.R.380, it was found that where a person born in the UK travelled by British Visitor's Passport, and was refused to enter on his return, neither a British Visitor's Passport nor birth certificate are proof of their status as a British Citizen.

6.11 Spouses

In the initial 1971 Bill, the existing statutory rights of dependants were in effect withdrawn, remaining only in the immigration rules which 'may be altered... at any time, by the Home secretary' (James Callaghan, Standing Committee B, *ibid.*, col.289, 6/4/1971). It was suggested by Merlin Rees that these rights be reinstated (col.276, 6/4/1971) at the Committee stage, and although they remained withdrawn at that stage, the statutory rights of wives of Commonwealth citizens were put back by a Lords Amendment. Merlin Rees also commented that if Britain join the EEC, 'under Article 48 of the Treaty of Rome, there will be freedom of movement for workers, to come into this country, with their families', so that Bill should include the right of aliens as well' (*ibid.*, col.277-8, 6/4/1971).

Within the cases which came to court, there was an interesting distinction by which the entry of a wife depended on the status of her husband, between 'patrial' and 'settled'. Later, the statutory right itself was repealed. In *ex parte Phansopkar* [1976] QB 606, a judicial review case, the wife of a patrial (CUKC)

husband resident in England required a certificate of patriality (Section 3(a)) to get entry to the UK. She was in India, but the queue to obtain certificates was long and she decided to apply directly to the Home Office in Britain. She had been refused entry because she did not hold an entry certificate. However, within the judicial review, Lord Denning stated: 'By being registered as 'CUKC', not only he himself, but also his wife become a patrial with the right of abode automatically. The only thing she needs to do is to prove that she is his wife by way of obtaining 'certificate of patriality'. 'There is nothing in the Act or the rules to tell us what the machinery is... therefore, she was entitled to apply to the Home Office in England for a certificate of patriality' (p.621). The Home Office of London cannot be 'justified in refusing the application simply because they are jumping the queue, they are entitled as of right and not by leave' (p.622). The Director of Runnymede Trust commented that the case was a 'profound development for the humane administration of the immigration laws' (*The Times*, 12/7/1975).

In the case of a wife of a settled person, the case was different. In *ex parte Bibi* [1976] 1.W.L.R.879, the wife of a settled Commonwealth citizen in the UK from Pakistan came to the UK and claimed entry, but was refused as she did not have an entry certificate from Pakistan. After Pakistan left the Commonwealth, 'anyone coming from Pakistan must comply with the rules relating to a non-Commonwealth citizen' (p.984). And 'the wife of a Commonwealth citizen was not free to come into this country unless she was in possession of a current entry certificate granted to her'(p983, Lord Denning). In *ex parte Ullah* [1988] 3

All.ER. 1, regarded as a test case, the husband, a British citizen argued his right to bring his wife who did not have the right of abode for herself to the UK based on his right of abode 'without let/hindrance', but was unsuccessful (Juss, 1988).

In relation to a husband's entry, settled wives in Britain contended that their spouses could not gain entry or were refused to remain because of discrimination on the grounds of sex and race, and a case went to the European Court of Human Rights. It was held that it was discrimination on the grounds of sex, in *Abdulaziz, Cabales and Balkandali vs UK* [1985] 7 EHRR 471. But after this judgement, by the enforcement of the 1988 Immigration Act, the government removed the existing 'right of certain wives to join their husbands in the UK' so that there was no longer an absolute right of entry for the spouses of British citizens and Commonwealth citizens (Dummett and Nicol, 1990:230; WING, 1985).

6.12 Adoption and the case of children

Children's status in relation to patriality involves factors such as their domicile, ancestry, legitimacy of marriage and adoption (lineage), so that the disputes can be quite complicated. In the 1971 Immigration Bill debate, issues of adoption as well as legitimacy were questioned at the Committee stage. For instance, David Steel questioned why in the initial Bill, the statement '...a person who has been legally adopted shall be regarded... as being the child of his adopter or adoptee as well as that of the natural parents' was included (Standing Committee B, *ibid.*, col.347, 20/4/1971), as for instance, non-patrials could adopt a child of patrials, and that child then become non-patrial. Concerning legitimacy, Jill Knight

proposed including the word 'legitimate', in order to stop claims of patriality by an illegitimate child who has a British father (ibid., col. 248-251, 1/4/1971). In the Act, it stated clearly that 'parent' referred to illegitimate mothers only.

In the courts, in the case of adoption, in *Re W* [1985] 3 All.ER. 449, a foreign minor, a Chinese national from Hong Kong came to the UK as a student, and his aunt a British citizen wanted to adopt him. His application was refused. The ruling shows the criteria of adoption as: 'in the context of (adoption of a foreign minor by a British citizen) its relationship with the immigration law, there are two significant effects; first, it confers on the adopted child 'British citizenship as from the date of the adoption order', second, it confers on the adopted child the right of abode in the UK' (p.452). In the application of a 'foreign national's case, national securities are not overlooked'. Therefore, when 'the application is based on the desire to nationality and the right of abode rather than the general welfare of the minor, the adoption order should not be made' (*Re H* [1982] 3 All.ER. 84). Besides, 'it is a matter of balancing welfare against public policy, and in the wider aspect less weight maybe attached to the aspect of the welfare of the particular individual' (ibid., p.94).

Finally, an interesting aspect of the distinction between 'existing adoptee seeks entry', where the main issue is settlement and 'prospective adoptee', in the first instance, on adoption order can be found in *R v SSHD, ex p Khan* [1985] 1 All.ER. 40. When the factor of where to claim the adoption (i.e. the distinction of domicile) is added, the issue becomes more complicated. In *Re Y* [1985] 3

All.E.R. 33, where questions arose whether persons who were residents abroad but domiciled in the UK could apply for an adoption'. By adoption, one can bring adopted children to the UK, as mentioned above. This case was contended mainly on the residence case, but avoided immigration issue, and implies '...if the children were to be adopted, they would be entitled to British passports'.

In case of legitimacy, in a very early case, *C v Entry Clearance Officer, HK* [1976] Imm.A.R. 165, an illegitimate child of a CUKC, whose father was in the UK, but mother was without the right of abode in the UK was refused entry as a student. Her initial application of entry was refused as they were 'not satisfied that ...she intended to leave the UK'. Within her argument, she contended that she should be granted indefinite leave to remain even if she does not qualify as a 'patrial', but the case was rejected because of her illegitimacy.

In comparison with Japan, in terms of children's status, British cases are much more complicated, since in Britain not only are immigration and nationality topics related, but also, principles of *jus sanguinis* and *jus soli* are applied in a much more complicated way.

6.13 Conclusion

This section has explored British patriality. Starting from areas which offer comparison with Japan, it then looked at literature to see how patrial issues are discussed. It also explored the debate on the 1971 Immigration Bill, and the implementation of the Act by case law assessing how far the problems expected

in the debates became real issues in the courts later. It has also considered what the unitary system of control of commonwealth citizens as well as aliens has meant in practice.

The Patriality clause was drawn up for two main reasons: firstly, to protect the rights of people of British descent who had settled overseas, especially those in the Old Commonwealth and secondly, to restrict entry of people without a close connection with the UK and especially, those who were non-white. The notion of patriality is complementary to the nation-state model of citizenship where it is argued that the state-membership ideal is based on nation-membership so that the political community should be simultaneously, a cultural community (Brubaker, 1989:11). Nation membership in this model is earned through assimilation and also achieves this goal by preference to those with patril status. Although Britain is not a typical nation-state, imposing the restriction on immigration from New Commonwealth countries as well as from former colonies provided gradual steps for a redefinition of itself as a nation-state or at least, to have a 'national' citizenship as Brubaker argues. However, as we have seen, the 'patril clause' was the product of a political compromise of people with different interests, and is not as straightforward as in Japan.

Within the perspective of comparison with Japanese issues, this study attempts to draw an analogy between patriality and *koseki* as relating to 'British citizenship' and 'Japanese nationality'. Both patriality and *koseki* are the criteria which

establish subjects and aliens/nationals from others, although not citizenship or nationality in themselves.

With regard to the actual cases of those excluded from the patrial status, the cases of adoption, the status of wives or decolonisation are similar to the problems that have arisen in the Japanese context, although the fact of domicile or residence is not as complicated in the Japanese case as it is in the British. In contrast, with regard to settlement, those seeking entry as settlers as well as those claiming settlement after entry, cannot be found in the Japanese context. This is because in Japan, immigration and nationality are not linked as in Britain, where settlement cases are much more related to deportation issues or when settlers need to claim naturalisation. Therefore, in addition, rights are linked predominantly to nationality in the Japanese case and a move to the gradual linkage with settlement, while in the case of Britain, some rights are gradually linked to immigration status and to citizenship.

In order to compare Britain with Japan, Britain has been considered as a territory as well as the concept of patriality, through the topics of adoption, settlement, conflict of laws, naturalisation and decolonisation. Some of those are associated in some cases. On the relationship between immigration and nationality, the most important thing in the British context has been the separation of 'right of abode' and 'right of entry' from British nationality. Legislation has imposed immigration control on the former subjects so that their claims have been tacitly converted

from a 'right' to enter into 'leave' to remain in the UK. However, unlike Japan, Britain still accepts immigrants as future citizens.

On secondary immigration, the assurance of entry for members of a family has arisen mainly because of the significant effect of the Commonwealth - UK relationship. When ties were broken, the basis of claims to enter Britain as a son/daughter/wife of 'Commonwealth' citizens was lost, as aliens have no right to bring anyone into the UK, having qualified his/herself for immigration control. Besides, unlike Japan, the UK was traditionally based on the *jus soli* principle at least until around 1962 and there is no direct co-relation between family law and national law.

Decolonisation arises in immigration control and naturalisation the effect of narrowing 'the territorial concept of Britain'. However, one underlying fact - the choice of nationality - was often left open to people in newly independent countries, which is a difference between the UK and Japan. Although technically it is quite accurate to call people from Pakistan or Hong Kong 'foreign nationals', this attitude is quite similar to the attitude of the Japanese when they are referring to Korean residents in Japan as 'foreign nationals'.

Concepts of patriality, nationality, and citizenship are considerably more complex in the UK compared with Japan - to the British as much as to foreigners. Sood commented that 'In the British case, patrial connects to descent, adoption, settlement...and even to domicile and residence... the things are so complicated...

sometimes unnecessarily' (oral communication, April, 1997). Even the Times has commented that 'Citizenship is a field in which a minor error in legislation becomes a major wrong to the individual' (*The Times*, 30/7/1980 commenting on the White paper).

Chapter 7: Patriality - Japan

7.1 Introduction

This chapter considers issues relating to 'patriality' in Japan. As it is predominantly based on a *jus sanguinis* principle, and as Japan has relatively tight control of immigration, this chapter will consider 'patriality' as a kind of exclusive form of categorisation against aliens and other groups who are resident in Japan, through the function of *koseki* (house registry). In other words, '*koseki*' will be considered as a means of 'patriality', and be examined alongside the relationship between nationality and ethnicity, as these relate to the Japanese case. These concepts will be explored through court cases, as mentioned in a previous chapter. For aliens in Japan, going to court is the most effective strategy for getting rights granted. These provide the most important evidence for those wishing to gain a clear understanding not only of ethnicity and nationality, but also as an aspect of the close relationship between citizenship and nationality in Japan.

The chapter will look at the statistics related to marriage, birth and naturalisation to provide evidence of alien populations. Then it will move on to a discussion of *koseki*, its historical background, how it works and what its effects are, illustrated by an examination of the most important court cases. The main focus will be on two court cases which are called *Kokuseki Kakunin Soshō* in Japanese (Recognition of Japanese Nationality Suit). In order to give a better idea of how *koseki* works, it will refer to other court

cases for example, those which refer to the restoration of 'names' as well as some up-to-date discussion concerning *koseki* in newspaper articles.

The claims of Recognition of Japanese nationality suits are mostly brought by former mainland Japanese women. These court cases are contested as a result of the 1952 circular, which provided guidelines on who 'belonged' to Japan, Korea or Taiwan. Regarding the 1952 San Francisco Peace Treaty and the circular, briefly discussed in Chapter 5, in Japan, *koseki* and nationality are often the major criteria for entitlement to various rights. This chapter will investigate the inter-relationship between Japanese nationality (*kokuseki*) and *koseki* and the importance of *koseki*'s impact upon *kokuseki*. Although 'nationality' in a legal sense is again the main concern, by looking at *koseki* and its associated issues such as 'naturalisation' or 'names', this will highlight the relationship between 'nationality' and 'ethnicity' in Japan. This will also help to make some comparisons with 'nationality' in the British sense.

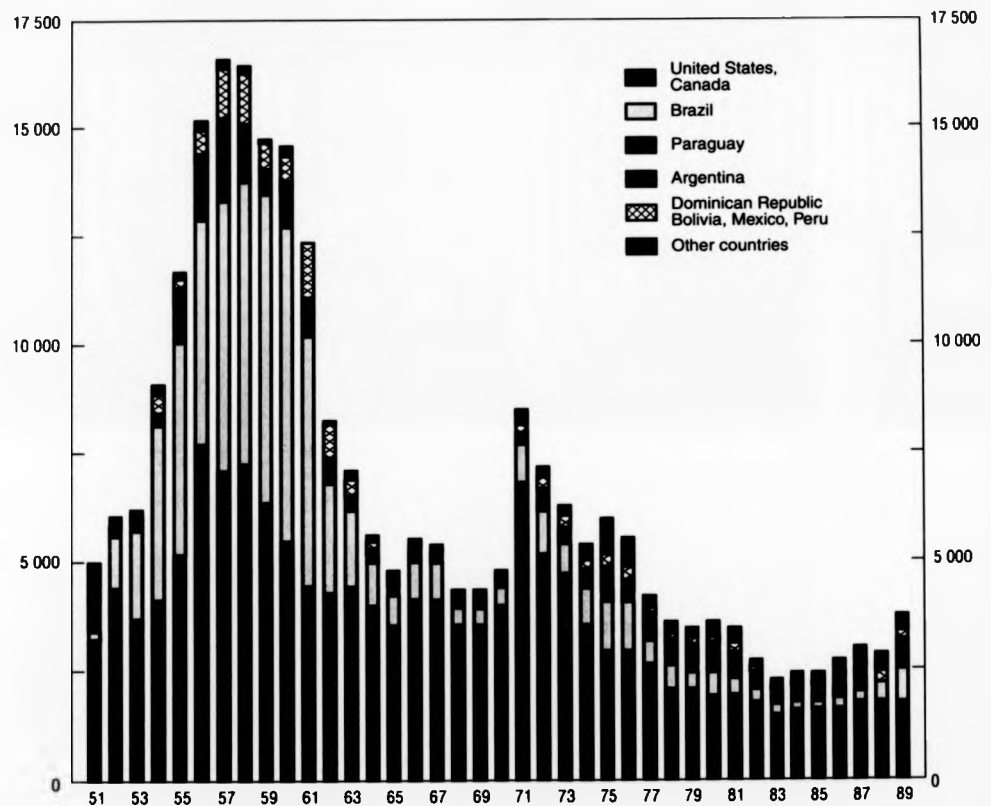
Patriality means 'of or belonging to one's native country' (Oxford New English Dictionary). One way we can tackle 'patriality' in Japan is through the Immigration Law of 1989, which enlarged ways of entering Japan to persons of Japanese descent (*nikkeijin*) up to and including the third generations of Japanese and their spouses, mainly through the categories of '*Nihonjin no haigusha tou*' (spouse and children of Japanese), and '*teijusha*' (settlers). People entering under these two categories are different from those

with permanent resident status. Under these two categories, people can stay in Japan initially up to three years.

Nikkeijin are descendants of people who emigrated from Japan to overseas destinations from 1868 onwards. After 1868, the destinations of Japanese emigrants were initially to Hawaii and the South Pacific islands, then to North America (particularly between 1900 and 1920). When restrictions were placed on their migration to North America, Japanese people migrated to South America. Between 1900 and 1942, some 626,000 people emigrated from Japan. Just after the Second World War, there was considerable repatriation as well as a shortage of food and work, and the Japanese government attempted population control in various ways, including encouragement of overseas emigration. However, by the early 1960s, the economic expansion had improved living standards as well as created a shortage of labour, and Japanese emigration declined. Between 1951 and 1989, around 260,000 emigrated (OECD, 1994:58, Ninomiya, 1983: 281). The destinations for emigrants after the war are shown on Chart 7.1. Among those who emigrated to North and South America and China, *nikkeijin*, which is referred to in relation to immigration law in Japan at present, are only descendants of people from South America (such as Peru or Brazil). Those South Americans of Japanese descent increased after 1990 when Japan modified its immigration law.

However, Japan is not a *jus soli* country, that is, it does not have a principle of accepting immigrants as future citizens; being of Japanese descent does

Chart 7.1 Japanese emigrants



OECD (1994) *SOPEMI, Trends in International Migration*

not ensure any automatic entitlement which Japanese nationals can enjoy as a matter of course. Moreover, there has been little discussion on the reasons for introducing a Japanese descendants clause in the Immigration law (Tanaka, 1991, Komai, 1993), nor is it possible to find any representative court cases which focus on these new Japanese descendants in particular. At the same time, Sellek (1996:263) who has researched *nikkeijin* in Japan regards *nikkeijin* (in this context meaning South American of Japanese descents exclusively) are much more alike to 'foreign workers' than 'ethnic immigration', due to the distance in terms of language, no previous contact with Japan, and residence in a different continent. Yet, 'as a labour reservoir, the *nikkeijin* community is too small' (Kura, 1991:142). The Ministry of Foreign Affairs estimates that there are still some 1,280,000 people of Japanese descent in Brazil, 80,000 in Peru and 30,000 in Argentina (OECD, 1994:61), but when considering those allowed to come to Japan up to the third generation, their spouses and those who are able to work, Kura and others (for instance, Cornelius, 1994:397) think the calculation by the Ministry of Foreign Affairs is an overestimate.

Rather, by focusing on 'recognition of Japanese nationality suits', it is possible to examine part of the patriality concept or belonging to Japan, since those who attempt to restore their nationality, their ties or connection to Japan or Japanese society are much closer than those *nikkeijin*, even though, they do not have formal Japanese nationality. This may, however, be only part of a state-defined (top-down) view of patriality. Fukuoka (1993) and

Kajita (1998) describe these Koreans in Japan as 'sociological Japanese', who do not have legal status but share other aspects of culture with the Japanese. But why and how does this formality matter? As mentioned before, as in the British case, formality or the issues concerning legal status do not seem to create a significant problem, compared with the issues of social discrimination in practice, while in Japan, it may be the other way round. In the following sections, the need to consider the importance of legal or formal distinction or discrimination in Japan must be borne in mind.

7.2 Birth and nationality statistics(related to naturalisation)

As compared with 'registered aliens (discussed in Chapter 5), the figures shown below are connected with 'ethnic Koreans' (Japanese nationals with Korean ethnicity). According to Kim Kyeung-duk (1996, lecture), there are between 500,000-600,000 Korean Japanese (half-naturalised, half nationals by descent through having a Japanese parent). This situation is analysed in more detail below.

7.3 Naturalisation

In Japan, naturalisation statistics are closed to the public. The Ministry of Justice does not announce numbers of naturalisation applicants, nor the criteria for granting permission (*Tong-Il-Il Pao*, 28/1/1994). However, the yearly figures giving permission can be found in *Hosojiho* (Ministry of Justice, civil affairs bureau jurisdiction, Hosokai ed., monthly), and *Tong-Il-Il Pao* also presents the total every year. Early academic work on Koreans'

naturalisation was carried out by Kim Yong-dal (1990) who himself experienced this process and this is still the main work on the naturalisation of Koreans. He explores and compares the view which (encouraging) Korean naturalisation as Japanese government policy and at the same time explores the views of those who went through the process of naturalisation.

As we see in Table 7.1, among those naturalised, more than 70 percent are of Korean origin. In 1995, a total of 14,104 were granted Japanese nationality through naturalisation and 10,327 of them were Koreans (*Hosojiho*, 1996:48:7:32). In 1984, the Japanese Nationality Act was revised and for the adjustment procedure (transitionally those under 20 who had a Japanese mother and came under the certain conditions of parents' lineage), acquisition of nationality by registration was regulated. There were 1,715 acquisitions of nationality by this act in 1995. The naturalisation rate of Koreans seems higher than the total aliens' naturalisation rate. The numbers naturalised has been increasing, especially since 1992 (after the Special Immigration law 1991, which secured the status of Koreans in Japan more than ever, as we saw in Chapter 5), and this is shown in Table 7.1. The total number of Koreans naturalised between 1952 and 1995 is 197,479 (Morita, 1996:182).

Although permanent resident status has not been secured for some time, in practice, many permanent resident status holders (at least those of Koreans and Taiwanese and their descents) have formed the majority of the registered population of aliens. When compared with other countries, the naturalisation

rate is not so high, however. The reasons for the low naturalisation rate are firstly because upon naturalisation the Koreans believed that they must become Japanese 'wholeheartedly' as implied by the Japanese authority (for instance, Bridges, 1993:120). A further aspect is the view that 'some parts of the society of Koreans in Japan discriminate against those naturalised, such as spreading false rumours that 'those naturalised will be written down as 'new Japanese' on their *koseki*' (Kim Yong-dal, 1990:270). However, when we consider the fact that to many Koreans in Japan, 'keeping their nationality as Korean is an important part of maintaining their identity' and a focus for protest (words by Bae, debate in *Sekai*, 1994:146), these sentiments are quite understandable.

	1989	1990	1991	1992	1993	1994	1995
Total permitted	6089	6794	7788	9363	10452	11146	14104
Koreans permitted	4759	5216	5665	7244	7697	8244	10327
Acquisition by report*	1426	1924	1962	2078	2041	1715	?
Total aliens registered	984455	1075317	1218891	1281644	1320768	1354011	1362371
Percent naturalised against all residents	0.62%	0.63%	0.60%	0.77%	0.78%	0.82%	1.00%
Koreans naturalised vs Koreans registered	0.70%	0.76%	0.82%	1.01%	1.13%	1.22%	1.55%

* Naturalisation acquired by transitional means (maternal lineage allowed) or by marriage (recognition after birth)

Table 7.1 Naturalisation of Koreans

OECD (1997) *SOPEMI, Trends in International Migration*, Tong-II-II Pao, 28/1/94,
Homusho (1996, 98) *Hosojiho*:47:6:118 and 48:7:32

7.4 Marriage

Marriage and birth statistics can be found in *Jinko Dotai Tokei* (Vital statistics of Japan, 1995, Ministry of Health and Welfare). Marriages between aliens are not listed in these statistics, although births may be roughly estimated from alien registration statistics. For instance, according to Morita (1996), marriages between Koreans in 1993 numbered 1,781 couples. In 1993, the number of children born of Japanese fathers and Korean mothers was 3,704, while the number of children born of Korean fathers and Japanese mothers was 3,249. The total number of children born between Japanese and foreigners was 18,632, while children born to marriages where both parents were Japanese were 1,169,650 (vol.1). Unfortunately, it is not possible to establish the number of children born of Koreans and Japanese with Korean nationality (the figures shown above include 'reserved' Japanese nationals, i.e. dual nationality holders).

Until 1984, children with a Korean father and Japanese mother could not receive Japanese nationality by virtue of their birth. This changed with the incorporation of the United Nations Convention on the 'Elimination of all forms of discrimination against women', and the Ministry of Justice revised its Nationality Law in 1984. In 1993, the total number of marriages between Japanese couples was 766,001, while those between a foreigner and a Japanese national were 26,657. Among those, Japanese husbands with Korean wives numbered 5,068 and Korean husbands with Japanese wives were 2,762 (vol.2.table:8). Koreans here include new comers such as short

stayers as well as permanent residents; some Koreans choose their spouses from Korea, and Korea liberalised its passport regulations for overseas travel in 1988 and this increased this flow. In the Japanese case, *koseki* (national registration) and *kokuseki* (Japanese nationality) are closely connected: being a Japanese national, you have to have *koseki* as an essential proof of your Japanese nationality.

7.5 The function of *koseki*, its background and effects

Next, we shall examine *koseki*. As described in the introduction, *koseki* (or house registry) has its origin in 1871, during the Meiji period. According to the Ministry of Justice, *koseki* initially exists for 'police, finance and criminal administration purposes, in order to check the familial-relative communal life of nationals', but after the enforcement of the Meiji Civil Code, it was transferred to an official registration and institutionalised (1986:199). In other words, *koseki* is connected with the period of modernisation, and national registration when the new Japanese government attempted to clarify the number and status of its citizens.

Why is this important? As we saw briefly in Chapter 5, *koseki* and nationality are criteria for the entitlement to rights. Secondly, as an institution and also as an ideology, the function of *koseki* is problematic. The notion of the pre-war 'family state system' has been described as 'racial mythology' in Weiner (1994:19), but it was not possible without the institutional existence of the Meiji Civil Code (which regulated 'house' in law) and its procedural registration,

koseki. Concerning *koseki*, there has been a couple of research from legal (mainly family law) aspect, including a work on court cases and law by Bryant (1991). However, there is not much written on *koseki* in English and Bryant's work seems to emphasise its effect on minorities, and indirectly put the blame on them. It is therefore helpful here, to consider some up-to-date issues with respect to *koseki*.

Regarding *koseki* and Civil Codes, there have been several disputes in the past. Toshitani (1995) points out two major disputes: one in the Meiji period, and one just after the war. When it was compiled in 1871, *koseki* was in a conflict with the new Civil Code, which was strongly influenced by French law. The 1890 Civil Code assumed the registry of self-identification instead of house registration (*koseki*), which is centred on the head of the household. Because of this, it caused a debate. Mizukuri, one of the drafters of the new Civil Code, argues that '*koseki* is a kind of Oriental distinctive thing', which was only necessary during the feudal period. Therefore, after the enforcement of the new Civil Code, which requires a self-identification card, *koseki* will no longer be of use. Watanabe, a civil servant, has supported the continuing necessity of *koseki*: 'The purpose of *koseki* is that where there is a house, there is a head of the house, and he should have responsibility for taking care of the whole family, elders as well as infants, maintaining ethics, and shelters (without the help of the state), everyone can have things to eat and wear.'

(*Genrouin kaigi*, quoted in Fukushima and Toshitani, 1957:317)

In this context, Hozumi Yatsuka, a legal scholar wrote a famous article entitled 'the Civil Code appears and loyalty and filial piety disappears' (*Minpo idete chuko horobu*, 1891). He argues: 'Our country is that of ancestral worship, the home of house system, power and law were born under 'house' (ibid., 223). This showed an ideological argument of 'house' and 'family' in Japan as well. In the end, the Civil Code concerning the family and assets was re-drafted so that it fitted with *koseki*.

In addition, the disputes concerning *koseki* and the Civil Code arose just after the war. After Japan lost the War, the Occupational Powers required the Civil Code to be revised in order to fit in with the 'equality between both sexes' in the new Constitution. This time, the erasure of the clause concerning the head of household and the family in the Civil Code was the topic. While one side argued the importance and the continuation of the 'house system', the other side opposed this view as the present system of the house was no longer adequate for the present situation. As there was not enough time to revise the new Civil Code, before the enactment of the new constitution, the modification was minimal. The *Koseki* Act was also revised, and instead of 'family', those who shared the same surname (*uji*) became the unit of a household (Wagatsuma et al. eds., 1956).

Since 1991, discussion has again arisen concerning the revision of the Civil Code, which has some impact on the *koseki* system as well. Public attention focuses exclusively on the possible inclusion of a clause which allows

different surnames for a married couple (*Fufu bessei*) (*Yomiuri shinbun* 27/2/1996). At present, a married Japanese couple have to have a unified surname (*uji*), which is registered and written in *koseki*. In most cases, the woman changes her maiden name. But in daily life, if these married women (and some men who changed their surname) want to continue to use their birth surname after their marriage, they might be or might not be allowed¹. Some argue that different surnames spoil the totality of a family, while others argue that they do not want to lose their identity. As those sharing the same surname consist of a unit of a *koseki*, at this moment, the revision will affect the present system of *koseki* as well. This is quite different from the situation in Britain, where it is possible to change a surname quite easily without wider social effects.

Next, let us turn our attention to the function of *koseki* in relation to citizenship status. The function of *koseki* is critically examined by Tanaka (1980) first, as an 'invisible tool of national integration'. He explores the works written by the officials of the Ministry of Justice, which holds jurisdiction and the local authorities where they carry out the practice of law. He cites the work of Tashiro (1972, 1975) as Tashiro includes some comparisons with other countries on *koseki*. According to Tashiro and Kozuma (1980), in countries where *jus sanguinis* prevails, a newborn baby acquires its father's or mother's nationality, and therefore these countries need law which regulate parent-child relations. Among these, countries

¹ In Japan, it is rather common to call each other by his/her surname, unless they are very close. And that the change is very obvious and easily recognised.

which take the principle of paternal priority need the law to recognise the father/child relationship legally, as this relationship is difficult for the state to confirm objectively. In this case, marriage law becomes important, and family law inevitably develops. The Japanese nationality law had paternal priority until 1984. Secondly, *koseki* confirms those who hold Japanese nationality as it only keeps records of those who are domiciled in Japan. The relationship between house registration (*koseki*) law and nationality (*kokuseki*) law is that the former is procedural law and the latter is substantive law. However, within the actual process of registration, house registration precedes nationality registration (Tashiro, 1972). This system is in fact, regarded by officials as an effective way of ensuring comprehensiveness. The problem is that regulation of the procedural law often binds and restricts substantive law such as Conflict of laws or Civil Codes (Ishiguro, 1992:82) which we will see in cases later. By drawing on these works, Tashiro (1980) attempts to make comparison with other countries' registration processes.

In this regard, *koseki* is a national registration for identification as well as familial status registration, and extended both to public and private law. In countries where *jus soli* prevails, there is no need to consider familial relations but only domicile status in order to establish to where a person belongs (Tashiro, 1972). In comparing Japan's situation with Britain, he considers that maintenance obligation belongs to social security (public law) in the UK while in Japan these obligations depend on private (familial

obligation regulated by the Civil Code). *Koseki* provides perfectly for this purpose (Tashiro, 1975:14-7).

Koseki is not pure *jus sanguinis* nor *jus soli*. it is *semi-jus sanguinis* or domicile (Kuwata, 1961:663). This comes from its connection with the 'house system'. The purpose of registration is firstly for the status registration of who belongs to which house. For instance, *koseki* is organised by household, and embraces the head of the household and his family. *Koseki* is also connected to familial status registration (such as the beginning of a relationship or its alteration). After status registration began in the 1898(M31) Civil Code (kinship and succession), the purpose of *koseki* has changed. In 1886 (M19) the purpose of *koseki* was to assist a census, together with control by the authorities but by the 1898 Civil Code, *koseki* began instead to focus on the house system (Tashiro and Kozuma, 1980:108).

The kinds of registration necessary for reporting are; birth, acknowledgement, adoption, marriage, divorce, death, succession, naturalisation, acquisition of Japanese nationality, alteration of family name or given name, change and establishment of new domicile etc. (29 topics are given in *Hosojiho* (1996, 48:7:32). The compulsory registration include birth, death, divorce by court order, renunciation, loss or change of nationality, naturalisation and establishment of a new domicile status. Options are

marriage, divorce by mutual agreement, adoption, and voluntary acknowledgement etc. (Homusho, 1986).

Many scholars agree that, as a registration system, *koseki* is very effective (Tanaka, 1980; Matsuo, 1990), in the sense of giving authorities detailed information and control over the population. As shown above, it is an official view of house registry, but there are other problems associated with this registration, as I roughly touched on this in chapter 3 (method and methodology) and also in chapter 5 (rights and residence-Japan, on Park's employment discrimination case). Sato (1997:25-29) defines *koseki*'s five different functions of 'discrimination' as being:

- 1) differentiation: nowadays, only the Imperial family and aliens fall within different systems of registration, but in the past, groups such as indigenous Ainu and Burakumin who were put into separate sections of house registry,
- 2) labelling: the registry includes personal information, such as adoption etc.,
- 3) tracing: it is possible to research a person's record and find out where s/he originally came from. This makes it possible to identify Burakumin, for example who are discriminated on the basis of where their families originate from,
- 4) comprehension: by emphasising 'house', individuals are connected as a family, and things like the Japanese-style surname or closeness to the Imperial family are valued. This aspect also relates to the above-mentioned issue of the different surnames of a couple.

5) certification: which means *koseki* registry is not impossible to look up, so that everyone can check on other's personal details when they want to, for the purposes of marriage, employment etc.

Sato (1997) regards the last function (certification) as the most significant, as it is crucial in relation to discrimination. Taken overall, the effectiveness of institution(*koseki*) all the more binds and controls the Japanese people's lives. However, as this registry seems 'so natural that it is hard to notice its problems' (Tanaka, 1980).

The following section looks at cases of 'names' and naturalisation, partly to show some examples of the problems associated with *koseki*. Although this is not directly connected to recognition of Japanese nationality suits, it relates to 'nationality' in the Japanese sense and 'ethnicity', so it produces useful comparisons with 'nationality' in the British sense.

7.6 Attempts to restore 'ethnic names'

In order to discuss these court cases, it is necessary to start from the problem of the Japanese colonial policy and to be aware that there is still social discrimination which forces many Koreans in Japan to hide their ethnic origin. During the period of the Japanese Empire, a policy called 'policy for assimilation of empire subjects' (*kominka seisaku*) was implemented. It was a twofold measure, firstly prohibiting the use of non-Japanese languages such as Korean and Chinese, and secondly, under *sousi kaimei* it created a 'family'

surname and altered given names. Traditionally, in Korea unified family names for a household do not exist: married women retain their familial name after marriage. Koreans were ordered to choose one family name per household and at the same time to change their Korean ethnic name into a Japanese style name².

According to Kim Kyeung-duk (23/10/1996, lecture), at present, out of roughly 660,000 holders of Korean nationality in Japan, only 10 to 20 percent of them use their real (Korean) name (this figure, includes 'new comer' Koreans). Korean-Japanese (that is, those of Japanese nationality but with a Korean ethnic background) are estimated to number between 500,000 and 600,000, and 99 percent use their *tsumei* (common Japanese) name at present. Most of these need to use their Japanese style name in order to avoid social discrimination within the society, and this may lead over time to assimilation and naturalisation in Japan. Discrimination also works in both ways: the 'Korean-Japanese' and 'dual nationals' are not fully accepted by either Japanese society or Korean society, according to Kim Kyeung-duk (*ibid.*), even though, the naturalisation rate is not very high in Japan.

Until the revision of the 1984 Japanese Nationality Act, the guidelines for the application of naturalisation included the need to have a Japanese-style name for the purpose of *koseki* registration. Until 1952, 'Japanese (subjects)' should belong to a house and have a unified Japanese-style family name. This

² Takasaki, 1995:71; Maher and Kawanishi, 1995; Sugihara, 1993; see in detail Miyamoto, Kim, and Yang, 1990 or Kim, 1978.

custom remains in the practice of *koseki* and a belief exists that 'only Japanese nationals have a family name within Japanese domestic law' (*Kasai geppo*, 1981:33:5:94, quoted in Ishiguro, 1992).

In November 1982, it was reported that a Vietnamese (naturalised Japanese) successfully restored his real name Tran Din Ton after being given a Japanese name. Within this judgement at a family court, the judge criticised the naturalisation policy of the Ministry of Justice which 'forces the applicants to hold Japanese-style names', quoted in Yoshioka and Yamamoto (1986). Since then, some Korean-Japanese (including those who have been naturalised as well as those born a Japanese national through mix-parentage) have individually requested family courts to restore their ethnic name. After their first claim was rejected (on grounds of needing to maintain 'stability of the language of naming, and 'nationalism is not accepted as a reason for change' (Maher and Kawanishi, 1995), they formed a group dedicated to restoring ethnic names in 1985 (*Minzokumei wo torimodosukai*, 1990). In a TV interview in December 1996, a member of that group, Park Sil spoke of his experience of naturalisation and the restoration of his ethnic name. In his case, naturalisation was recommended by his fiancée's parents for their condition of marriage. His second request to revert back to his ethnic Korean name was allowed in June 1987 at a family court.

The belief that when you speak your name, people can tell your nationality (Tanaka, 1991) is gradually changing. However, although the requirement to

hold a Japanese-style name in order to achieve naturalisation was cancelled after the revision of the 1984 Act, problems remain with its 'pronunciation', as a name must be written in Japanese letters (Sato, 1993). It is worth noting that 'to hold Japanese-style name' and 'to have a *koseki* as a 'Japanese national' is closely connected and still remains in the *koseki* registration and other administrative practices.

7.7 Recognition of Japanese nationality suits- why these are in question

This section describes other suits regarding recognition of Japanese nationality which will not be examined in the main part. According to the supreme court decision on the famous Maclean ruling in 1978, depending on the nature of rights, aliens also have basic human rights (*Hanji*:903:3). However, within the Japanese constitution, the actual wording says nothing of aliens' rights, as previously discussed in Chapter 3. Although most 'basic human rights' (*kihonteki jinken*) except political and some economic rights are nowadays ensured to aliens, the problem lies in the fact that the discussion of aliens' rights often *starts from* the point that 'aliens are not guaranteed equal protection of the law, citing Article 14 of the Constitution (for instance, *Gaimusho*, 1965). In this context, it is worth stating agreement with Hideo Tanaka in his view that 'the word '*kokumin*' is more properly translated as 'nationals' rather than 'the people', which is the term used for the official English text (Tanaka, 1976:721), especially when it comes to its application and interpretation. For the difference between the English 'original' text and the Japanese version ('proper' text), see Furukawa (1986).

Furukawa (1986) considers that the equal protection clause included originally the words, 'regardless of nationality' within the Constitutional draft, but later 'regardless of nationality' was removed. Tanaka's (1976) discussion only relates to Article 14 on the 'equal protection of the law', and quite often this '*kokumin*' means Japanese nationals only. However, according to Mori Yasunori (verbal communication, 25/10/1996), the main consideration at the time of drafting the new constitution was whether or not to include 'monarchy' (*tenno*) within '*kokumin*', rather than focusing on 'aliens'. In relation to the condition of being '*kokumin*', the English text uses the term 'nationals'. Hereafter unless stated, I shall use 'nationality' for the legalistic meaning, in order to deal with court cases as well as contextual consideration.

Suits for Recognition of Japanese nationality are brought by those who have lost or do not have Japanese nationality for some reason, and wish to gain it as of right. Those who have brought these suits are ex-Japanese wives married to foreigners before 1952, former empire subjects such as Koreans and Taiwanese, stateless children and war-displaced persons.

There are several reasons for focusing on these Recognition suits. There are many cases of this nature and they address key questions relating to the nature and extent of Japanese nationality. Exploring these cases also provides an opportunity to elaborate surrounding issues around Japanese nationality such as *koseki*, naturalisation and 'names', and help to paint a picture of the

official view of Japanese nationality. It is impossible to understand the 'official' view of Japanese nationality or membership of the Japanese national community merely by examining legal documents or constitutional law. It is also necessary to consider other criteria which may even include such issues as 'mentality or people's sense' (Nakagawa, 1994).

7.8 Former empire subjects

There are a number of cases brought by former empire subjects. Among those Koreans in Japan, Song Tu-hoe first brought his case to a court in October 1969 (*Hanji*:1010:139). He was born at a time when his parents had Japanese subject status but with Korean *koseki*. He thereby acquired Japanese subject status but lost it in 1952. He argued that he was still a Japanese national, and therefore set fire to his alien registration card and did not renew his 'alien registration' nor his condition of stay in Japan.

In another case, a second-generation Korean living in Japan, Cho Kon-chi filed for his 'recognition of Japanese nationality' (in this context, 'first generation' means those who came to Japan before the war and those who were born in Japan between 1945-71, while 'second generation' refers to their children). Cho's parents had come to Japan before the war. He asked for reconsideration of deprivation of Japanese nationality on 1952 by the effects of the peace treaty (this point is made by Onuma, 1979b). This case includes a noteworthy judgement (*Hanta*:761:166) saying that 'it is true that in spite of the historical circumstances of Koreans in Japan... they are placed in an

inferior status compared to the Japanese, by way of discrimination... but it is not because Koreans do not hold Japanese nationality, but because the fallacious Japanese legislative policy which was inconsiderate to the Japanese past colonial policy and did not give equal status to Koreans as to the Japanese.' Cho Kon-chi's claim itself was dismissed. The comment in the legal digest is also worth quoting, as it clearly indicates the aim of this suit: 'The case filed for the recognition of Japanese nationality to be argued in court, but his real intention seems to be rather to criticise the Japanese government policy over Koreans in Japan until now' (ibid.,166).

7.9 War-displaced women and war orphans

In this context, war-displaced people are regarded as 'may be holding Japanese nationality without domicile' (Kidana, 1996). They are those who migrated overseas, to China for example, during the Japanese empire, but when Japan lost the war, they could not go back or in the case of children, their parents left them, and they remained outside Japan.

For instance, there is a case reported in the *Japan Law Journal* (1994:7:4) that after repatriation, the plaintiff's Japanese nationality was revoked as she was married to a Chinese national. She moved to north-east China when she was 10, was left behind after the war, and was raised by Chinese foster parents. She then married a Chinese man, and had children. She returned to Japan with her children in 1983. She applied for her daughter's naturalisation, and was eventually rejected by the Ministry of Justice which argued that she

herself had become an alien. It is reported that this is the third case filed by war-displaced Japanese women, and the two previous plaintiffs won their cases. It is said that many war-displaced women have been naturalised after their repatriation to Japan. There is even a case reported that a war-displaced Japanese woman filed against the invalidity of her naturalisation (*Yomiuri shinbun*, 3/9/1996).

7.10 Stateless children

Apart from these recognition of Japanese nationality suits, there is another different type of recognition of Japanese nationality suits filed by stateless children in Japan, which is not related to the 1952 issue. A woman from South-East Asia (possibly the Philippines) gave birth in Japan. The child, Andre, was passed to an American couple, who were pastors. The mother disappeared, and his father was unknown. Later, the American couple adopted the child, but his status was left as stateless. This case was widely covered by the newspapers and according to their reports, after the Appellate Court ruling when the government's appeal was allowed and his claim was rejected, 25,000 signatures were collected and submitted to the Supreme Court for reconsideration of this case (*Asahi shinbun*, 6/9/1994). According to the Ministry of Justice, there were 138 stateless children (less than four years old) at the end of 1992 (*Nihon Keizai Shinbun*: 27/1/1995). It became a celebrated case in 1995 at the Supreme court (27/1/1995), which overturned the Appellate Court ruling and allowed Andre his Japanese Nationality. It has also had a great impact on the practice of the Ministry of Justice, as it very

rarely used to allow Japanese nationality to stateless people. For this case, the supreme court allowed exceptional application of *jus soli* for the acquisition of Japanese nationality, saying that in order to prove 'neither of parents unknown, the claimant should only prove that s/he 'cannot specify' the parents' (*Asahi Shinbun*, 27/1/1995). Although this is not connected to the 1952 issue, it is included here as it has something in common with other suits over the point that the intention of the Japanese government to interpret narrowly the definition of 'nationals', and protests from claimants, who are not fixed in that framework.

7.11 Some suits on Recognition of Japanese Nationality

case 1(5/4/1961, Minshu:15:4:657)

Most of the Recognition of Japanese Nationality suits are filed by former mainland women (that is, those who were born Japanese, married to former empire subjects moved into their *koseki*, and thereby lost Japanese nationality in 1952) (Tameike, 1993).

There were two kinds of Japanese empire subjects - one was 'mainlanders' (born Japanese) and the other was 'hinterlanders' (acquired Japanese). The two *koseki* registries were kept strictly separate, except in the case of marriage, which meant incorporation into a different household for women.

This is the first Supreme Court judgement on the effect of the 1952 Peace Treaty (and directly, to the 1952 Minji Ko 438 circular) for deprivation of

Japanese nationality of a Japanese-born woman (who married a Korean man before the World War. II) which was approved (Egawa, 1961:92; Onuma, 1979b, 96:3:267) and it is a leading case in the recognition of Japanese nationality suits. Furthermore, this ruling influences on the result of other recognition of Japanese suits filed by Japanese as well as former empire subjects later on.

Japan acquired its overseas territories after the enactment of the Meiji Constitution. As there was no statement within the Meiji Constitution on the acquisition of territories, overseas territories are regarded as different legal entities from mainland Japan. The Common Code (1898) was enacted in order to arbitrate disputes between mainland Japan and its overseas territories. In relation to house registry, the Common Code Article 3-1 says: 'One who gets in a house in an area shall leave the house in other area.' This article connects to house registry and to the house system regulated in the Meiji Civil Code. However, this Common Code lost its substantial effect after the Potsdam Declaration and later, the Meiji Civil Code (the part related to kinship and succession) and the Meiji Nationality Law were repealed after the enforcement of the present Constitution.

7.12 Case 1

A Japanese-native born woman was married to a Korean man in 1935. However, she was divorced (by court approval) in November 1952. Her divorce registration to the municipal office was not accepted as she was told

that she had lost her Japanese nationality after the 1952 San Francisco Peace Treaty therefore, she became an alien. She filed a suit against the state to recognise her holding Japanese nationality.

Tokyo District Court (27/2/1954) ruled that she keep her Japanese nationality. 'Mainland woman loses her Japanese nationality if she marries a Korean (acquired Japanese) before the 1952 Peace Treaty, and also live with him at that time in Korea as residents, husband and wife will lose their Japanese nationality by the enforcement of that Treaty. In this case, however, at the time of the 1952 Treaty enforcement, the couple had already separated and she lived independently in Japan with reasonable (divorce) reason. Therefore, she is not immediately denationalised. Furthermore, within the present Nationality Act, a wife does not lose her Japanese nationality when her husband loses his...' (Tameike, 1995).

The Tokyo Appellate Court (30/3/1955) overturned this judgement. It stated that: 'by the former (before annexed) Korean law, an alien woman who marries a former Korean man shall acquire Korean nationality. According to the previous Japanese Nationality Law, a native Japanese woman who marries an alien man and acquires his nationality shall lose her Japanese nationality (Article 18). If there had not been the annexation of Korea... it is clear that a Japanese woman who got married to Korean man would acquire the former Korean nationality and shall lose Japanese nationality' (*Saikosaibansho Minshu*:693).

At the Supreme Court, the appellant argued that first, the Appellate Court judgement was against the (present) Constitution and the Nationality Law. In addition, there was no consideration of the fact that if Korea had not been annexed, there would be no marriage between the appellant and her ex-husband. Second, on the interpretation of the effectuation of the 1952 Treaty, it is impossible as well as unreasonable to estimate renunciation of rights in person (of Japanese), who became the wife or the adopted children of Koreans from the section which states the renunciation of Korean sovereignty by Japan. Third, the appellant is born Japanese and has already had a divorce order and is settled in Japan, therefore she is disqualified from the criteria of deprivation of Japanese nationality (the reason of appeal, 1961:675-6).

After 9 years of dispute, the supreme court finally dismissed her appeal. The reasons were: first, there is no regulation of alteration of nationality by the alteration of territorial jurisdiction within Japanese Nationality Law. There is no clear principle for this in international law, and it depends case by case on the individual treaty expressly or implied, (therefore, there is no reason for this to be against the Constitution nor the application of the Nationality Law). Second, the interpretation of the 1952 Treaty Article 2-a) 'Japan, recognising the independence of Korea, renounces all rights, title and claim to Korea...', is to abandon the Japanese jurisdiction over people who belong to Korea, and that they shall lose Japanese nationality. Third is the extent of 'who' belongs to Korea, it means people who hold legal status as Korean after the annexation within Japanese domestic law. Those who receive the application

of Korean House Registry Order, were registered in Korean House registry accordingly. Koreans and Japanese clearly belonged to a different house registry system as well as to a different legal system. By the Common Code Article 3-1 (shown above), a Japanese will become part of a Korean household by adoption or by marriage, when they are legally treated as Koreans. Concerning her divorce and her nationality, as she was married to a Korean man, her divorce cannot be established by the fact, but by court order. Since her divorce was granted in October 1952 after the 1952 Peace Treaty, it will not change the situation regarding deprivation of Japanese nationality (Judgement, p.3). This ruling was done by all 15 judges, including 3 concurring opinions and 1 dissenting opinion, about the reason for deprivation of Japanese nationality and the exact point of when it happened. This judgement confirmed at the same time the present practice of house registry administration.

Asahi shinbun reported that 'more than 10,000 of people were estimated to be in the same position as this woman applicant. By this judgement, it became clear that they cannot expect their nationality restoration by lawsuits' (5/4/1961). I found Egawa's comment (1961:93) particularly interesting. He agrees with the supreme court judgement, and said 'after the Korean Annexation, Korea became part of Japan, and Koreans were also given Japanese nationality *within an international law* sense. However, within the *Japanese domestic law*, Koreans and Japanese were strictly distinguished. It is reasonable to understand the alteration of nationality after the 1952 Peace

Treaty according to this distinction' (emphasis added). There was no strong opposition against this supreme court judgement. Despite Japanese and Koreans having shared the status of Japanese subjects, the distinction based on house registry was strictly enforced.

7.13 1994 Recognition of Japanese nationality suit

This case has just received a judgement from the Supreme Court in March 1998. Although this is regarded as a 'very rare case' (*Hanta*) in terms of its factual situation, nevertheless, it received attention as the appellate court ruling in 1994, did not concur with the 1961 judgement (given above) the first time round.

The plaintiff is a child born of a Korean man and Japanese woman. Firstly, her mother filed for invalidity of their marriage and after she won it (mother filed that the initial registration was against her will). The order was made as void in December 1989 Dec. (*Hanta*:824:120). Her mother and her younger sister (who was born after the 1950 new Nationality Act) restored their Japanese nationality accordingly. Then, this case is filed by her, requesting that although she is currently registered as an alien, her mother and her sister recovered their Japanese nationality, and she wants to live as a Japanese national (written answer from Mr. Hondo, spokesman, 7/1/1997).

The fact is that she was born after the present Japanese constitution and the revised civil code, but before the enforcement of the 1950 Nationality Law.

Her birth registration (house registration), which is the precondition to acquiring nationality both in Korea and Japan was not sent to Korea nor received in Japan. She was born and lives in Japan. The point is, 'how to interpret subordinate legislation when the old constitution is replaced by the new constitution (ibid.,).

The issue for the Osaka District Court is whether the 'acknowledgement' by her Korean father, established the birth registration, and whether she lost Japanese nationality by the Peace Treaty. The judgement was as follows: first, the birth registration of the plaintiff had been submitted by her Korean father, second, this registration had the effect of 'acknowledgement' even though Korea and Japan belonged to different legal entities at that time. When the birth registration was reported, the house system terminated (within mainland Japan) by the enforcement of the Japanese constitution and the revised Civil Code. However, the Common Code Article 3 was effective by the fact that even the house system terminated within the mainland, and Korean customary law existed in those days as well as the Meiji Japanese nationality law Article 23, the criteria for the common code is satisfied (*Hanta*:824:122-3). This clearly follows precedents so far and the position of the Japanese government (the Ministry of Justice).

The Osaka Appellate Court overturned this ruling. The issue was on the 'acknowledgement effect' of birth registration under the new Constitution and the Civil Code. The kind of legal effect that 'acknowledgement' had

depended on the applicability of the Common Code Article 3. The judges divided the period in two: the first period is before 3 May 1947 when the new Constitution and other legislation is enforced (until this point, Meiji Civil Code was effective): the second period is after 3 May 1947. When the present Civil Code and the new *Koseki* Act became effective, the appellant's birth certificate was reported on 17/6/1948. The Common Code is enforced in order to adjust conflict of laws between different legal entities. The actual law for the private law case is *Horei* (the Law for the application of laws, M31), defined in the Common Code. As the marriage registration of their parents' became void, her birth registration became that of an illegitimate child. In this case, the registration of birth has the effect of 'acknowledgement'. Having established the division date of 3 May 1947, the legal effect of 'acknowledgement' can now be checked. The key factor is the applicability of the Article 3 of Common Code. The interpretation of 'house' in that article is the same 'house' regulated in the Meiji Civil Code. It means the acquisition and loss of domicile (i.e. 'area and registry' (*chiiki-seki*)). For the effect of 'acknowledgement' in this case, at that time Korean Civil Code and custom was still applicable. However, as it is also based on the 'house' system and is therefore against the new Constitution principle. At the time of 'acknowledgement' the Meiji Nationality Law is still effective which regulates denationalisation by 'acknowledgement'. However at that time in Korean legislation, the illegitimate child of a Korean father cannot acquire Korean nationality and that Meiji Japanese Nationality Law (Article 23) is not

applicable correspondingly (*Hanta*:875:257-8). The Appellate Court allowed her Japanese nationality.

The Appellate court ruling has taken the approach of conflict of the law (international private law) perspective, while the first ruling was done from the domestic (Nationality Law and the interpretation of the Peace Treaty) perspective (*Hanta*:875:250). According to Mr.Hondo, this approach has not appeared before.

He assumed that quite many people were in similar position to her. Although as the Ministry of Justice is reluctant to permit recognition of Japanese nationality, and as this kind of suits is quite difficult to win, most people reject the court process in their attempt or acquire Japanese nationality through naturalisation (*ibid.*). The problem of this judgement lies in the interpretation of Horei. Whether the judgement considered Korea's public policy or not. (Samura, 1994). This is the only comment for this ruling. The Japanese government appealed to the Supreme Court afterwards. The content of deprivation of Japanese nationality by the 1952 Treaty is not statutory but is passed by way of the administrative interpretation (*koseki*) shown in the circular 438. And the circular influences important matters like deprivation of nationality (*ibid.*, 447).

After this high court judgement, the plaintiff answered at a press interview: 'Although I am a Japanese, without holding Japanese nationality, I always

feel I lack something... I hope the state will not appeal and I have an easier life.' (*Asahi Shinbun*, 26/2/1994). However, the appeal was allowed, and she lost the case (*Asahi Shinbun*, 13/3/1998). In a sense, the Supreme Court kept to the line of the 1961 ruling.

When I compare these two suits, which relate to 'marriage/divorce' for one and to 'recognition of birth' for the others as well as *koseki* and nationality for both, I agree with Moriki (1995), who explores the different examples of marginality associated with Japanese nationality. She states simply, 'the recognition of nationality suits are difficult things to understand', because of legal complexities of when one act is repealed or when the effectuation is valid appears to us for an instance. It is also quite notable and odd to see that this incident around 1952 remains an important point of dispute in Japan. Although Japan is regarded as following the *jus sanguinis* principle, the role that *koseki* plays is not addressed in English academic literature.

As a source of defining patriality, the *koseki* system certainly qualifies as an important institution which connects rights (citizenship) and identity (nationality). It is naturally a legal institution and also has the important function of constructing and preserving the way the Japanese see 'themselves', or perhaps, the way the Japanese government defines who are 'the Japanese'.

7.14 Conclusion

This chapter has examined Japanese patriality -in terms of *koseki*- with particular attention to its relationship with nationality status, as well as ethnicity. In order to understand the closeness of the concepts of citizenship and nationality in the Japanese context, we have to note that the *koseki* system is one of the key issues. *Koseki* influences all Japanese as well as minorities who are partially or totally excluded from the registry, and at the same time, its historical importance and continuity, as it has existed since the Meiji period. As we saw above, since its compilation during the Meiji period, it has caused controversy, and its problems have not yet been totally solved.

Those affected by the descent clause are few compared to the British case, but those influenced by *koseki* are many, including 'aliens' who continuously live in Japan or have close connections with Japan, but are not included in that registration. For those who are considering the possibility of naturalisation, achieving *koseki* may be a symbol of Japanese nationality, which connects the status of 'citizenship' with ethnic values, as shown clearly in the emphasis on having a 'Japanese-like' style of name.

This chapter also discussed cases of the recognition of Japanese nationality suits brought by former empire subjects, stateless children, war-displaced persons, and former mainland (i.e. Japanese) women. With regard to those married to Koreans before the war, and those who stayed in Japan after the war, whether or not they were included in *koseki* was the grounds for their

loss of nationality in 1952. As this was not purely a *jus sanguinis* nor a *jus soli* principle, this left some people in between. Those war-displaced persons, in particular, had some difficulty in returning to Japan, because of the replacement of *koseki*.

It seems that the recognition of Japanese Nationality suits have a common characteristic. The plaintiffs' 'ethnic origin' or 'ethnicity' do not coincide with their legal status (or 'state membership'), or they are reproached for this by the Japanese government, in a way either implied or openly expressed. This seems to be a common reason why these cases are filed by the claimants.

After the war, it was considered reasonable to limit those who hold Japanese nationality, e.g. by removing this status from Chinese, Koreans and Taiwanese. Also, perhaps the Japanese government did not wish to be accused of stealing their citizens. Also, at this time there was little status in having Japanese nationality. However, as the Japanese economy has developed and prospered after the post-war period, and as Japan had become the important global state, so the status of being a Japanese national has become a valuable asset and privilege which more people wish to achieve. At least in this sense, from the government point of view, there is a reason to keep a tight population control policy.

In addition, the practice of *koseki*, a procedural legislation, strengthens the effect of substantive law, such as the Civil Code. In some cases, keeping

koseki consistent is valued, for instance, in the debate of differentiation of surnames, and places obstacles against those who suffer from it. Moreover, because of the rigidity of *koseki*, it prevents the Japanese government (or the Ministry of Justice) from being flexible in defining 'nationality'. This partly accounts for the reason why these suits resulting from the effect of the 1952 Treaty are still being filed. As a result, the extent of Japanese 'national' status is defined narrowly, and the distinction between aliens and Japanese is emphasised.

When we compare Japanese *koseki* with the British 'patrial' clause, they are found to be quite different: one relates to border control (immigration), while the other relates to internal control (registration and nationality). However, both help to differentiate aliens from citizens, and help to connect the concepts of 'citizenship' and 'nationality'. In the British case, the emphasis is on 'ethnic' migration, while in the Japanese system, these concepts are brought together by the registration of Japanese nationals.

When considering the application of Brubaker's model of nation-state membership (1989), in the Japanese case, by considering exclusion of those outside Japan, and assimilation pressure of those inside Japan, 'national', nation membership and state membership should coincide, and should be 'unique' as well. In other words, membership of the state and nation should coincide. These principles are important. In the British case, the 'national'

principle is valued, but not as a 'unique' principle. This may be a consequence of the fact that Japan is closer to the prototype of a nation-state than Britain.

Chapter 8: Conclusion

8.1 Summary

The withdrawal from Empire by both Britain and Japan had major consequences for their colonial subjects. In the case of Britain, the consequences were very gradual as the ties between Britain and its former colonies were severed slowly. Independence for colonial territories transformed colonial British subjects into citizens of independent Commonwealth countries, but they did not lose their status as British subjects. It was only in 1947 that the first Commonwealth country, Canada, introduced its own citizenship, independent of British subject status. New Zealand did not introduce its own citizenship until 1975, after Britain had joined the European Economic Community.

In the British case, it was the gradual introduction of immigration controls against British subjects from the colonies and independent Commonwealth countries which opened up the issue of British citizenship. The status of British subjects which included millions of people all over the world was appropriate for an imperial power with global interests and resources. It was not appropriate for a European country nervous about its ability to maintain its position as a leading European country.

The introduction of immigration controls and the right of deportation of colonial and Commonwealth citizens meant that British subjects without a close link to Britain were treated more like aliens than people with citizenship rights. In a real

sense the pressure for immigration controls against Commonwealth and colonial British subjects resulted in a rethinking of the nature and content of British citizenship which led to the 1981 Nationality Act and the attempt to define precisely who had the right of entry and permanent abode in the UK. The process of defining who is a British citizen is still continuing, as the recent decision by the British government to extend British citizenship to the remaining citizens of British Dependent Territories shows.

In the Japanese case the historical circumstances could not be more different. Japan lost her empire as a result of defeat in the Second World War in 1945. Immediately after the war, former colonial subjects, mainly Koreans, started voluntary repatriation. But gradually, when the tougher situation of the peninsula was realised, the move slowed down, and many decided to remain for the time being. By 1952, the Korean war had already broken out, and the diplomatic considerations of international circumstances determined most of the conditions for restoring Japanese sovereignty. There was no voluntary, nor any arrangement with Korea, or China/Taiwan for the arrangement of former empire subjects. The Peace Treaty of 1952 forced Japan to relinquish her Empire. Under the guidance of the United States, Korea was not even given a chance to represent their opinions at the treaty. As a result, former colonial subjects became 'citizens of independent countries' overnight, without their ties with Japan being recognised by the Japanese government. The consequences of this were most 'adverse' for former colonial subjects resident in Japan, though most people (including Koreans themselves) thought that they would return eventually. Former colonial

subjects were not allowed any kind of special status or dual nationality in recognition of their previous historic links with Japan, unlike in the British experience.

With regard to Koreans in Japan, the Japanese side had the principle of 'peace-at-any-price' and 'leave to take its own course', and the government could not plan a comprehensive policy to Koreans in Japan on time, which made the issues more complicated. Although more than 90 percent of Koreans came from southern part of Korea initially, in 1957, more than 73 percent chose to register their origin as 'Korea' (*Chosen*, which did not necessarily mean they belonged to North Korea), instead of 'South Korea' (*Kankoku*) (Tsuboi, 1959:794). For the Koreans' side, they were also reluctant to request their rights in Japan despite their historic ties. This meant that the rights of Koreans and Taiwanese in Japan were more precarious than those of former British colonial subjects resident in Britain, and remained so for quite a long time after the war.

The very different histories of the British and Japanese colonial subjects has, inevitably, had different consequences. In Britain, colonial and New Commonwealth immigrants were quickly accepted as ethnic minorities and as full British citizens, even though in practice they might be subject to racial discrimination and treated as second-class citizens. In Japan, former empire subjects, especially of the second and third (and even fourth) generations, are in no way distinguishable from Japanese nationals, unless they show their passports, alien registration cards and other official documents. Discrimination against them

is therefore on the grounds of their legal status, as aliens, rather than their ethnicity as Koreans.

In order to defend and expand their rights and situation, former colonial subjects were forced to adopt different strategies in the British and Japanese political systems. In Britain, former colonial subjects could involve themselves directly in the political process by lobbying MPs, going to MP surgeries, standing for local councils and even for Parliament. Involvement in anti-racist or anti-deportation campaigns with sympathetic trade unions or political groups were common. In Japan, former colonial subjects did not have political rights as they were aliens, so that in order to advance their rights they had to use the courts. Direct political activity would not have brought results as their political power was limited and their potential allies within Japan were few. They could expect some support at the international level from their 'home' governments, or by going to international organisations like the United Nations. However, for various reasons recourse to courts has been a popular strategy.

8.2 Discussion

The hypothesis proposed in the introduction was that 'the withdrawal from empire by both Britain and Japan after the World War II and the subsequent 'post-colonial adjustment' had a major impact on legal and political definitions of citizenship and nationality'.

Themes discussed in the main part of this study were:

- 1) Issues relating to former empire subjects can be categorised in Britain as 'racial', while in Japan, as '*kokuseki*' (legal nationality) issue.
- 2) 'Denizenship' and 'patriality' are two key concepts to measure the relationship of the two concepts of 'citizenship' and 'nationality', as well as important indicators of the status of 'former empire subjects' on citizenship and nationality legislation.
- 3) For those former empire subjects, the best way to make some impact on the government policy is to go to courts in the case of Koreans in Japan, while for ethnic minorities in Britain, it is to engage in party politics and press for parliamentary legislation.

8.3 'Race' vs. *kokuseki*

This study has examined the importance of these concepts in each country's context. Why is 'race' more important in Britain than in Japan? Or, why 'nationality' is more important in the Japanese context than in the British context?

In the British case, there was a long experience of empire which imprinted the British with feelings of supremacy over people in Africa and Asia. The period of holding empire had been long as well as spread in many different regions. This means that in the British case, there were chances to meet people from various cultural backgrounds, from all parts of the world. Contact with people from non-European regions as empire subjects usually had Europeans in positions of supremacy even after the empire was given up. Post-war migration of

Commonwealth people again initially had newcomers in worse jobs and housing and so confirmed the superior-inferior relationship.

While in the case of Japan, the period when it held the empire was short - only for 50 years, and they were just the neighbouring areas. The Japanese colonial system was more suited to incorporating people who shared similar cultural settings from near geographical areas. That is why, in the Japanese case, the imposition of the mainland system to the colonies and an assimilation policy were possible, while in the British case, where the difference was significant, 'indirect' administration was the only viable alternative.

Regarding the debate on colonialism, Oguma once argued (1995) that 'separation is suitable for a society where equality within a same race is established', and that 'within the same race, if they consist of a hierarchical order, within families or by elders, they do not need to have a separation' (as order exists naturally), by which he means, the difference of the Japanese case from western cases.

In the context of the post-war period, in the British case, the gradual process of decolonisation allowed former subjects to keep their status as British subjects as well as rights attached to the status until 1962. In this situation, formal equality is taken for granted. While in the Japanese case, the rapid decolonisation stripped former empire subjects' status and made them mere aliens. Therefore, without a

visible difference, it created a clear division of status between Japanese nationals and Koreans and Taiwanese.

8.4 Social vs legal discrimination

Regarding the 'race' vs. '*kokuseki*' framework, in Britain, as well as most countries in western Europe, discussion on discrimination is mainly about the quality or the level of social rights of ethnic minorities (*de facto* discrimination), while in Japan, discussion is about the dimensions of discrimination on formal rights (*de jure* discrimination) yet these remain in relation to those former empire subjects.

In the Japanese case, for instance, a former mainland woman's comment, 'without Japanese nationality, I have been feeling lacking something...' or Chong Hyang-kyon's comment as 'when I am working in the same way as others, *all of a sudden*, one day I am told that I am a foreigner...' would never be made unless legal discrimination matters to them greatly in Japan. The core of discrimination against Koreans and Taiwanese is the *kokuseki* as well as the *koseki* criterion. This emphasises how formal rights in relation to former empire subjects are still important in Japan. It illustrates the point that Iyotani (1992:129) argues, namely, in Japan, 'even in the area relating to basic human rights, for instance, education and medical treatments, formal equality has not yet been achieved'. This we can see in the examples of court cases challenging restrictions on rights to hold public office and the right to receive medical treatment. The situation which Iyotani (*ibid.*) argues is that 'achieving formal equality should be first and

foremost rather than abolishing social discrimination', and this still remains with regard to former empire subjects. Conversely, statements like: 'there is no serious racial hatred existing in Japan, but ethnic and racial discrimination is institutionally sanctioned to a degree in Japan that would be unacceptable in most Western countries' (Howell, 1996:185) must be understood in this context.

In the British context, the situation is the other way round. As we saw, most rights are not linked to citizenship status, but to British subject status, which most former empire subjects have once they entered Britain. However, their immigration status became not only a condition upon which to enter and settle, but also to receive certain kinds of entitlements. Clearly, discussion of entitlements is not the significant issue by itself.

8.5 Denizenship and patriality

Regarding 'rights and residence', as we saw in earlier chapters, the stability of the status of permanent residence is much more secure in the case of Britain than any permanent resident status in Japan. In Britain, rights have not been the significant issue for those former empire subjects already in Britain, since rights depend on British subject status, but it has mattered to those who have come to Britain after the substantial immigration control began. In addition, because of its principle of *jus soli* in nationality legislation, the status of 'settlement' for the second generation and beyond can be changed easily into citizenship.

The importance of 'nationality' as status, is more significant in Japan compared to Britain. The requirement of being a British citizen is limited to some areas, such as the service in the Foreign Office or registration of overseas voting, but these conditions have only been required after the 1981 British Nationality Act. In Britain, 'most of the immigrants already enjoy a secure residence status and broad economic and social rights that differ only at the margins from those of citizens' (Brubaker, 1992:181). The main criteria for access to entitlements are residence and immigration status for new entrants, as well as recently settled people. In Japan, until the ratification of international conventions, in particular the 1981 Refugee Protocol, nationality criterion in most entitlements legislation remained, and as we saw, there are still some 'nationality' criterion remaining in such as political rights and some post-war compensations.

The immigration issue in relation to 'rights and residence' is more dominant in the British context than in the Japanese context. As we saw, though Koreans in Japan are treated as 'aliens', their status as 'immigrants' seldom comes to the point of discussion, in terms of 'settlement', or 'deportation'. Instead, it is always about 'rights in Japan' as well as their 'historic ties with the society'. While in Britain, though 'rights' seldom come into the question, in comparison with 'immigration' status, and these two debates are indistinguishable, while in the Japanese case, they can be distinguished. This is because as we saw, the overwhelming majority of those affected by the arrangement were mostly outside mainland Britain, while in contrast, most were within mainland Japan. So that, the issue of 'post-imperialism' or the adjustment of the status of former empire

subjects is discussed mainly in connection with immigration in Britain, while in Japan, mainly dealt with as an issue of nationality. As we saw, discussion of denizenship, proposed by Hammer (1990) is more applicable to the case of Koreans in Japan, although in a sense, they do not have 'immigrant' characteristics.

Regarding 'patrality', although it is not a well-covered topic, we have seen that there are many issues and problems connected with patrality, and show the increasing importance of this topic. In particular, to non-native minorities, 'patrality' is one of the main sources of insecurity, because of its substantial link with lineage. Moreover if patrality is incorporated into legislation, it defines people of native descent as those who really belong to the society both in fact and in value. Patrality helps to differentiate not only citizens from aliens but the included and the excluded. You may be an alien in terms of citizenship but welcome because you are a patril. This is clear in the case of the 1981 British Nationality Act and the 1971 Immigration Act. In addition, patrality helps to keep the population homogeneous directly by immigration control in Britain, but indirectly by rigid *koseki* registration in Japan to its nationals, so that the country is not too diluted by foreigner intrusion, by certifying who belongs to the country.

In the Japanese case, *koseki* forces people to clarify their status and belonging. Those with Japanese lineage who went overseas are rather discarded (Moriki, 1995:8) or at least, discouraged from returning to Japan, as shown in the war-

displaced women and children's case and also in the reluctant acceptance of *nikkeijin*. If you are included in the *koseki* registry, there are some attributes which are preferable than others. We saw that registration of *koseki* has an oppressive impact on minorities. It does not only have 'facts records' but also the 'value' which are attached to it, such as by differentiation, tracing, and certifying functions. However, as this is the registration of 'Japanese nationals' only, and as those who are thereby privileged do not protest against it (Bryant, 1991), the importance of its nature or discriminatory points are relatively inconspicuous. *Koseki* registry includes much important personal information, and although access to the registry has been restricted nowadays, however, through some professionals, such as judicial scriveners, it is possible to obtain such information. When aliens are applying for naturalisation, they may be instructed to change their name into a Japanese-style name. For a married woman, alteration of her surname is a serious problem, as people could easily see the change. Former empire subjects as well as former mainland Japanese women were deprived of their Japanese nationality by their replacement of *koseki* registration.

In Britain, the imperial legacy which kept British subject status for a while, has resulted in a lack of clarity between those who are British citizens and those who are not at a later stage. While in the case of Britain, the ties of ex-patriates who have emigrated abroad seem to be maintained, and they are welcome to come back to Britain. These contacts and the strength of its ties can be seen in the lobbying of conservative MPs in the battle over the Immigration Rules in 1973.

The origin of patriality goes back to 1968, when the lineage connection was introduced in relation to immigration control. The turning point was at the time of the 1971 Immigration Act. At that time, the connection to the Old Commonwealth was favoured compared to the European Community, while the New Commonwealth connection was left out. Later, patrial status was linked to nationality status, by the 1981 Nationality Act. As Anthias and Yuval-Davis argue, patriality laws which began with the 1968 Act 'constructs a legal boundary between colonisers and colonised, something for which there was no need in the earlier period of imperial glory' (1982:45).

Apart from the legal implication of being a national, what did patriality create? Oguma (1995:372) and Moriki (1995:265-6) contend that the Japanese do not want to have 'grey zones' in between alien and nationals, so that those who look alike and have been living in Japan for so long, such as Koreans and Taiwanese, are encouraged to be Japanese, while those who are not, are left to remain as aliens. But, on the other hand, this point is also affirmed by Korean states with their own. Ryang (1997) points out, in part, that the identity of 'Koreans in Japan' is 'political' rather than 'ethnic'. The formation of South and North Korea took part after they came to Japan. Because of that, the emphasis on Korean activities, was over whether they wanted to identify with western South Korea or communist North Korea rather than emphasising whether to become Japanese.

While in the British case, the favourable treatment to emigrants coming back to Britain, as well as the imperial tradition of British subject status, has meant that

the distinction between aliens and nationals are not as clear as in Japan, and it is regarded as not as important as in Japan either. Instead, the idea of 'race', or the conflation between 'race' and 'nation' is considered as more important (Gilroy, 1987).

By attempting to apply Brubaker (1989)'s principles of nation-state membership into 'patriality' and 'settlement' legislation in Britain and Japan, we can see that Japan is closer to the nation-state ideal-type than Britain.

8.6 The impact on public policy

In Britain, former empire subjects are ethnic minorities, so that they have direct access to the political process and can engage in all forms of political activity. While in Japan, Koreans and Taiwanese are aliens, therefore, so the only way they can address their problems is to go to courts.

8.7 Significant cases

As we have seen, in the Japanese context, there were many court cases brought by Koreans which have had some impact on Japanese government policy. Cases like Chong's on 'the right to hold public office', brought with it, some expectation that it could be easier than the suffrage suit, which was ruled as requiring some legislative amendment. However, as we saw, it was not so easy. The distinction was made to clarify the entitlement to rights, again between Japanese and aliens, and that the ties between the special permanent resident status holders and the Japanese society, or the fact that they are in no way,

'aliens', is obscured. Apart from that, a clear standard has not been set, namely, to which level aliens are allowed or not. At this point, the decisions of politicians or bureaucrats are the key, though they are yet bound by the notion of 'Koreans' as aliens.

Regarding the recognition of nationality suits for those former empire subjects as well as for the former mainland women, the arrangement after the 1952 San Francisco Peace Treaty was the key. Instead of applying for naturalisation, there are many people who were 'deprived of' their Japanese nationality, and wish to get them back 'as of their right'. Being categorised as an alien overnight, without knowing it, as in the case of former Japanese women who married colonial subjects, has in fact, left them as 'stateless'. But the status of 'stateless' is not even recognised, and they are left in limbo between Korea and Japan, their status is undecided. Recognition of the Japanese Nationality suits for those new comers like the child in the 'Andre' case, the courts showed liberal opinion in favour of decreasing statelessness. As the arrangement of 1952 in the circular (restoration of original nationality as well as denaturalisation of Japanese subject status) has never been ruled as unconstitutional, it is difficult for each individual to restore their previous status by courts. Regarding 'names' or *koseki*, when tradition or direction is firmly established, it is hard for them to have a favourable judgement so easily. The functions of *koseki*, for those not included in the registry, are very significant, as we have seen.

8.8 The role of courts in Japan

In general for the socially disadvantaged groups in Japan, courts are useful but for former colonial subjects, it is the most useful tool, since through their status as aliens they have only limited access to the political process. The results could be oppressive, as in the recognition of Japanese Nationality cases from mainland Japanese women, but could be liberal, such as the case on suffrage rights of former empire subjects. At the same time, by bringing cases to the courts, minorities can appeal to a certain degree for international support, like in post-war compensations cases.

In Japan, because of their status as 'aliens', some Koreans and Taiwanese have used the courts extensively since the 1970s and have achieved or restored(regained) some of their rights since 1970s. In most cases, they argued that because of their historical connection with Japan, their history as former empire subjects, the courts should distinguish them from other 'aliens'. For minorities or at least, for former empire subjects, it is more beneficial to go to the courts in Japan, as a form of 'protest litigation', and it can create a political, social movement, if it is successful (Upham, 1987:216). For Koreans and Taiwanese, going to court has proved useful since without political rights and given an unsympathetic Diet, the administration treat them as the objects of alien control. But through the courts, though the results are not consistent, they have been given a chance to give voice to criticise the Japanese government practice on Koreans in Japan.

8.9 The role of the courts in Britain

The role of the courts as guarantors of (minority) rights in Britain is not as significant as it is in Japan. The reasons for this are partly that in Japan aliens have to seek redress for their grievances in the courts as they have only limited access to the political process and even then this is illiberal often through their homeland arguments.

In Britain, parliamentary sovereignty means that legislation is more important than court decisions as there is no written constitution guaranteeing minority rights and enhancing the political role of the courts and also minorities do have political rights and so can lobby politicians directly. In Britain, it is more efficient and effective to influence legislation and gain assistance from bodies like the CRE rather than try to expand (minority) rights through litigation. As we saw in some of court cases as in education grants or asylum seekers, when courts intervene it is often in a restrictive way, though not always, and court decisions can force parliament to change legislation. It could allow the legislative to clearly change the results.

8.10 In terms of policy

The status of former empire subjects in Britain is as 'ethnic minority' citizens while in Japan, they are 'aliens'. Therefore in the case of Koreans and Taiwanese in Japan they are 'objects of control but not the factor of policy' (Crowley, 1994), as we saw in the *teiju gaikokujin* discussion.

The framework of the 1971 Immigration Act vs the 1952 San Francisco Peace Treaty as an ending of post-colonial adjustment of Britain and Japan, in a broad sense, connects the relationship between 'immigration policy' and 'integration policy' of each country. Clearly, the 'race relations' policy or the integration policy in Britain, has not existed with regards to Korean and Taiwanese in Japan. Regarded as aliens, they were expected and indirectly encouraged to go back to Korea or to go for naturalisation so as to be integrated in Japan. At the same time, as there is no single government office which deals with minorities issues in Japan, the treatment of Koreans and Taiwanese - as there is nothing like 'policy on minorities' in existence - is awkward.

8.11 The impact of 'withdrawal from empire and the post-colonial adjustment' on citizenship and nationality legislation of Britain and Japan

With regard to the context of post-colonial adjustment, in the British case, the withdrawal from its empire was rather awkward, gradual and mainly voluntarily. While in the Japanese case, loss of empire resulted directly from the defeat of the war, and post-colonial changes occurred suddenly as well as radically.

The result in the British case was that there was a long process of adjustment which gradually led to the defining of the status of British citizen, similar to the citizenship legislation existing in other countries. While in the Japanese case, in 1952 there was 'complete negation of the past' (Tanaka, 1974), as almost all entitlements were removed from the former empire subjects living in Japan. This

permitted Japan to make a clear distinction between aliens and nationals, in legislation as well as in people's minds.

Though the process and the style is different, both resulted in erosion of rights for the former empire subjects. In Britain, by placing immigration control in favour of patrials and then by the alteration of its nationality legislation, in fact the guarantee of rights was limited to those people residing in Britain. Even then, they maybe discriminated against in practice, for example, through legislation which is linked to the access of their relatives to Britain. While in the Japanese case, erosion of right occurred by making former empire subjects 'aliens', and after that indirectly encouraging them to apply for naturalisation, was done by way of the reluctant recognition of substantial 'permanent resident' status.

Further research could be done in the area of new immigration - such as guestworkers or refugees. As Japan may encounter the similar experiences which Britain faced after the Second World War, we might see the issue of new migration as a common topic for many countries in the future.

8.12 Impact on the concepts of citizenship and nationality in Britain and Japan

As we have seen, in Britain, 'nationality' is rather a 'relative' concept. Being a multi-national state, 'national' is often understood in the context of 'ethnicity', such as English, Scottish or Welsh. At the same time, as we saw in the sections on rights and residence in Britain, compared to the Japanese context, there are

fewer occasions when the legal status, or 'British nationality', becomes the prime importance for the entitlement to rights.

While in Japan, 'nationality' is still an absolute concept, but has some importance on its own, as we saw the exclusion of Koreans to entitlement to rights by way of the *kokuseki* as well as the *koseki* clause. In academic debate, 'Japan is not homogeneous' is becoming common sense. Though at the level of daily conversation, there are still occasions which remind us of the importance of 'nationality' in the Japanese context. For instance, what is known as a 'mixed marriage' in English is in the Japanese context, called 'international marriage' (*kokusai kekkon*) including even those between a former empire subject, namely a Korean and a Japanese, which is the major combination of couples. If these Koreans in Japan go abroad and come back, their 'returning to the country' (*kikoku*) are referred to as 're-entry to the country' (*sai nyukoku*). A 'nationalistic' view of nationality still prevails in Japan, and to some extent, 'nationality' as a concept is still quite close to 'citizenship' and also 'ethnicity', unlike in Britain.

'Citizenship' as rights, is different from 'nationality' as status in Britain. However, these are getting gradually divergent in Japan as well. Separation of 'citizenship', or rights from 'nationality' is through the recognition as well as emergence of *teiju gaikokujin*, from aliens to denizens in Japan. Removal of the *kokuseki* clause from entitling criteria, omission of fingerprinting to permanent residents, and the movement to enable suffrage to Koreans and Taiwanese are all

parts of the move towards this. As Kang and Kim (1994) argue, multicultural society in Japan will only be achieved when '*kokuseki*' - nationality has become a relative concept.

Judging from the trend in its citizenship and nationality and court decisions, at first, the situation was quite the opposite: in the Japanese case, most entitlements had a nationality criterion, while in the case of Britain, the criterion was on residence so that those within the territory were officially covered by those rights. Now, it seems that the relationship between nationality and citizenship in Japan is gradually diverging, while in Britain it is slowly converging.

APPENDIX 1: LETTER TO MR.HONDO,

Plaintiff side's lawyer for case 2, 15/12/1996 (original in Japanese)

The reason I am interested in the recognition of a Japanese Nationality suit is that I can explore the idea/contents of 'the Japanese' by examining the relationship between 'house registry' (*koseki*) and nationality (*kokuseki*), and at the same time, question cases from around the 1952 period are still in dispute within Japanese society.

Questions

- 1) When and how did this 'Recognition of Japanese Nationality Suit' come to court? (direct causes)
- 2) Is there any grass-root organisation to back up this plaintiff/appellant? Recognition of the Japanese nationality suits were filed by 'born-(ex) Japanese', Stateless people and the former empire subjects. Do you think that appeals by 'born-Japanese' are rather easily allowed by courts?
- 3) Are there many people who are in the same situation as this appellant? i.e. received 'acknowledgement' by Korean father, and lost his/her Japanese Nationality after the Peace Treaty)
- 4) What is 'new' within this case, i.e. Why is it brought to the Supreme court? Is it because of the 'conflict of laws' approach taken in the high court judgement,

or the combination of acknowledgement plus other change of legislation and the Peace Treaty with the interpretation of the 438 Circular?

5) I would like to ask you about the different approach between the first and second rulings. In the first ruling, the 'public' law perspective such as administrative law seems to be emphasised. While in the second ruling, individuality, such as status, common code, and the Application of Law etc. had greater emphasis. Is it your strategy to win the case? In particular, when and where does the perspective in the second ruling come from?

Answer from Mr. Hondo (7/1/1997)

1) 'Invalidity of marriage' suit

This case begins with an ex (born) Japanese woman, who had an alien registration (at the time of suing), saying that she is Japanese but is treated as if she is an alien, and she wants to be recognised as Japanese. By my fact-finding, I found out that her marriage was reported during the post-war confusion, and that she did not have any intention to marry nor to register it. She filed for a suit against the invalidity of her marriage (recognition) on 1989/9/18 to Osaka District Court, and it was recognised on 1989/12/1 (decree nisi), and decree absolute on 1989/12/19.

Then this case (recognition of Japanese Nationality 1994), is filed by her child, saying that although she is registered as alien, her mother recovered her Japanese Nationality, and that she wants to live as Japanese.

2) I am not quite sure whether a grass-root organisation exists or not. There is no organisation which supports this case. Concerning the 'recognition of Japanese Nationality Suits', it is reported in newspapers that a War-orphan from China won. However, it seems that the Ministry of Justice does not easily allow Japanese Nationality recognition, as it is quite difficult to win these cases.

3) I do not know the exact numbers, but I assume there are quite many. Although these people want to recover their Japanese Nationality, it is difficult to win these cases and, they might give up as a lost cause. It seems that these people often acquire Japanese Nationality through naturalisation. Besides, my office receives another similar kind of person's case, and at present this is pending at Osaka District Court.

4) This case itself is not unique (new) in particular. As each case has its individuality, this will require different interpretation of legislation according to its individuality. If there are many different cases, there will be many different styles of interpretation accordingly. Then, I will just try to understand these each interpretation of the law which has its standing by the efforts of predecessors. In this case, the problem is how to interpret subordinate legislation when the Meiji (Old) Constitution is replaced by the New Constitution. For instance, was Korea regarded as a 'foreign country' or a 'quasi-foreign country' before the peace treaty', or how should I interpret legislation under the new constitution in the sense of 'conflict of laws', the Common Code, within the domestic law, and the

Korean Civil Code etc. There are many things to consider, like these. But at the same time, within the judgement, there are various Supreme Court judgements, thus it is rather difficult to know how to interpret/combine these.

5) I have not changed my argument through the first and second rulings. Just in order to win the case, I keep the same argument. Looking for the judgements, certainly in the first ruling, it seems that the perspective of 'public' prevailed. I think this was the same with the position of the state on the recognition of Japanese Nationality suits, and also the case laws by now, i.e. the position of the courts. In this sense, I appreciate the second ruling, as it contents with the principle of the new Constitution. Speaking of the second ruling, and its Conflict of laws approach, this is also how to put into practice interpretation of the legislation with the principle of the new Constitution. It shows the 'new' judgement which has not appeared before.

APPENDIX 2: CHRONOLOGY OF KEY LEGISLATION/EVENTS
RELEVANT TO JAPANESE NATIONALITY LAW

Meiji 5	Jinshin koseki
m22.2.17	Meiji Constitution
m28(1895)	Sino-Japanese Treaty
m29.4.1.	Law concerning on ordinances to be enforced in Taiwan (Law 63)
m31(1898)	Meiji Civil Code(Kinship and Succession Section) Koseki Act, Horei(Law11), Conflict of Laws
m32	Nationality Act(Law 66); Imperial Ordinance 289 Enforcement of Nationality Act to Taiwan
m41(1908)	Taiwan Civil Code
m43(1910)	Annexation of Korea
m44.3	Law concerning on ordinances to be enforced in Korea(Law 30)
m45	Korea Civil Code
Taisho 3.3.31(1914)	Koseki Act
t7.6.1	Common Code(Law 39)
t10	Common Code Art.3. enforced
t22	Korea Koseki Ordinance(Chosen Sotokuhu Ordinance 154)
Showa 20.7.26(1945)	Potsdam Declaration
s20.8.15	Potsdam Declaration accepted
s20.10.15	Minji Ko 452(circular), 'Prohibition of sending koseki to overseas territories'
s21.6.22	(disposition of Nationality of Overseas Taiwanese)
s22.5.3	Japanese Constitution; Law 74 'tentative measurement of Civil Code'; Law 229 'Revision of Civil Code' (kinship and succession section), Alien Registration Order (Imperial Ordinance 207)
s22.12.22.	Koseki Act
s23.5	(South Korea Transitional government Law)
s23.9	(Independence of North Korea)

- s23.12.20 (South Korea Nationality Act)
- s24.5.4 Minji Ko 2699
- s24.10 (People's Republic of China)
- s25.7.1(1950) Japanese Nationality Law(Law 147)
- s25.1.6 Minji Ko 3069, 'Prohibition on alteration of Koseki by parental acknowledgement'
- s26.11 Immigration Ordinance(seirei, Cabinet order, 319), applied to Koreans and Taiwanese from 28/4/1952
- s27.4.19(1952) Minji Ko 438, 'Disposition of Nationality and Koseki of Koreans and Taiwanese after effectuation of the Peace Treaty'
- s27.4.28 San Francisco Peace Treaty; Law 126, 'Measurement of Foreign Ministry related orders for the acceptance of Potsdam Declaration' (allows Korean and Taiwanese who have been in Japan before 1945 to remain without residential qualification regulated in Immigration order)
- s40(1965) Japan-South Korea Legal Status treaty; Law 146 'Special Immigration Law for South Koreans in Japan, Legal status and their treatment by the 1965 treaty' (kyotei eiju)
- s57.1.(s56 Law 85)Law revising part of Immigration order (tokurei eiju)
- s59(1984 Law 45)Revised Japanese Nationality Law; Revised Koseki Act
- heisei 1(1989) Revised Immigration Law (enlarged 'settlers' category to include more Japanese descendants)
- h3(1991, Law 71)Special Immigration Order for those who left Japanese Nationality by the Peace treaty(tokurei eiju)

APPENDIX 3: JAPANESE DINASTIES IN CHRONOLOGICAL ORDER

(jomon period)

(yayoi period)

Nara(710-794)

Heian(794-1192)

Kamakura(1192-1333)

Nanbokucho(1333-1393)

Muromachi(1335-1576)

Sengoku(1500-1576)

Azuchi - Momoyama(1576-1603)

Edo(1603-1868)

Meiji(1868-1912)

Taisho(1912-1925)

Showa(1925-1988)

Heisei(1988-

Bibliography

- AERA(1995), 'Nihonjin ga wasureta mouhitotsu no izoku' (Those war bereaved who the Japanese forgot), special edition, Dec./18
- Allum, P.(1995), *State and Society in Western Europe*, Cambridge: Polity, chapter 6
- Almond, G. and Verba, S.(1963), *The Civic Culture: political attitudes and democracy in five nations*, Princeton: Princeton University Press
- Anderson, B.(1983), *Imagined Communities: reflections on the origin and spread of nationalism*, London: Verso
- Annen, J.(1993), 'Gaikokujin no jinken saikou'(Reconsideration of aliens' human rights), in Higuchi, Y. and Takahashi, K. eds., *Gendai Rikkenshugi no Tenkai, Jo*, (The development of contemporary constitutionalism, 1), Tokyo: Yuhikaku, pp.163-81
- Anthias, F. and Yuval-Davis, N.(1992), *Racialised boundaries: race, nation, gender, colour and class and the anti-racist struggle*, London: Routledge
- Anwar, M.(1986), *Race and Politics: ethnic minorities and the British political system*, London: Tavistock publications
- Araki, M.(1975), 'Kankokujin hibakusha to genbaku iryo'(Korean A-bomb victims and their medial treatment), *Jurisuto*, Oct./15, no.598
- Araki, M.(1977), 'Kankokujin hibakusha to genbaku iryo'(Korean A-bomb victims and their medical treatment), *Bessatsu Jurisuto*, no.56, pp.200-1
- Armstrong, B.(1989), 'Racialisation and Nationalist Ideology: the Japanese case', *International Sociology*, 4:3, Sept., pp.329-343
- Aron, R.(1974), 'Is Multinational citizenship possible', in Turner, B. and Hamilton, P. eds. (1994), *Citizenship* vol.II, London, Routledge, pp.279-291
- Ashibe, N.(1993), *Kenpo II Kihonteki jinken* (Constitution II basic human rights), Tokyo: Yuhikaku Sosho
- Axtmann, R.(1993), 'Society, Globalization and the Comparative Method', *History of the Human Sciences*, Vol.6.no.2, pp53-74
- Azusawa, K.(1996), 'Kenpo to gaikokujin no jinken' (The constitution and aliens' human rights), in *Hogaku Seminar*, Oct.
- Baker, P.(1982), 'A note on the British Nationality Act 1981', *Commonwealth Law Bulletin*, vol.8(2), Apr., pp780-794
- Banton, M.(1967), *Race Relations*, London: Tavistock

- Banton, M.(1977), *The Idea of Race*, London: Tavistock publications
- Barbalet, J.(1988), *Citizenship: rights, struggle and class inequality*, Milton Keynes: Open University Press
- Bassnett, S.(1980), *Translation Studies*, London: Methuen
- Baubock, R.(1994a), *Transnational Citizenship: membership and rights in international migration*, Aldershot: Edward Elgar, chapters 2, 8
- Baubock, R.(1994b), 'Chapter 12 Changing the boundaries of citizenship: the inclusion of immigrants in democratic polities', in Baubock, R. ed. *From Aliens to Citizens: redefining the status of immigrants in Europe*, Aldershot: Avebury, pp.199-232
- Beale, J. and Parker, A.(1984), *Overseas Students: grants and Fees*, London: Runnymede Trust
- Bendix, R.(1964), *Nation-building and Citizenship: studies of our changing social order*, Berkeley: University of California Press
- Bill of Rights(1689), in Lively, J. and Lively, A. eds.(1994) *Democracy in Britain*, Oxford: Blackwell, pp.175-178
- Birch, A.(1989), *Nationalism and National Integration*, London: Unwin Hyman, chapter 7
- Blackburn, R. ed.(1993), *Rights of Citizenship*, London: Mansell
- Blackburn, R.(1993) 'Introduction', in Blackburn, R. ed. *Rights of Citizenship*, London: Mansell, pp.1-11
- Blondel, J.(1995), *Comparative Government: an introduction*, 2nd ed. London,
- Breuilly, J.(1985), *Nationalism and the State*, Chicago: University of Chicago Press, Introduction
- Bridges, B.(1993), *Japan and Korea in the 1990s: from antagonism to adjustment*, Aldershot: Edward Elgar, chapter 7
- Brubaker, R.(1989), 'Introduction', in Brubaker, R. ed. *Immigration and the Politics of Citizenship in Europe and North America*, Lanham: University Press of America, pp.1-27
- Brubaker, R.(1992), *Citizenship and Nationhood in France and Germany*, Cambridge, Mass.: Harvard University Press
- Bryant, T.(1991), 'For the sake of the country, for the sake of the family; the oppressive impact of family registration on women and minorities in Japan', *UCLA Law Review* Oct.: 39: no.1, pp.109-68

- Calman, D.(1992), *The nature and origins of Japanese Imperialism*, London: Routledge, chapter 8
- Castles, F.ed.(1989), *The Comparative History of Public Policy*, Oxford: Polity
- Chen, E.(1984), 'The Attempt to Integrate' in Myers, R. and Peattie, M.eds., *The Japanese Colonial Empire, 1895-1945*, Princeton: Princeton University Press, pp.240-274
- Choe, C.(1995), 'Tomo ni ikiru tameni' (to live together), in *Seppyoru*: Aug/25, pp.35-55
- Cohen, R.(1991), *Contested Domains: debates in international labour studies*, London: Zed, chapter 9
- Cohen, S.(1981), *The Thin End of the White Wedge: the new nationality laws, second class citizenship, and the welfare state*, Manchester: Manchester Law Centre
- Colley, L.(1992), *Britons: forging the nation, 1707-1837*, New Haven: Yale University Press
- Connor, W.(1994), *Ethnonationalism: the quest for understanding*, Princeton: Princeton University Press, chapter 9
- Conservative Political Centre(1980), *Who do we think we are?*
- Cornelius, W.(1994), 'Japan: the illusion of Immigration Control', in Cornelius, W., Martin, P, and Hollifield, J. eds.(1994), *Controlling immigration: a global perspective*, Stanford: Stanford University Press, pp.375-410
- Coxall, B. and Robins, L.(1994), *Contemporary British Politics: an introduction*, Basingstoke: Macmillan
- Crowley, J.(1994), 'The theory and practice of immigration and 'race-relations' policy, some thoughts on British and French experience', in Carmon, N.ed. *Immigration and integration in post-industrial societies*, Houndmills: Macmillan press, pp.227-247
- Dale, P.(1988), *The Myth of Japanese Uniqueness*, London: Routledge
- De Vos, G. and Wagatsuma, H. (1966), *Japan's Invisible Race*, Berkeley: University of California Press
- De Vos, G.(1983), *Japan's Minorities: Burakumin, Koreans, Ainu and Okinawans*, London: Minority Rights Group
- Dicey, A.(1885), 'The Law of the Constitution' in Lively, J. and Lively, A. eds.(1994), *Democracy in Britain*, Blackwell, pp.178-180

- Dixon, D.(1983), 'Thatcher's people: the British Nationality Act, 1981', *Journal of Law and Society*:10:161-80
- Doi, T.(1971), *Amaeno kozo* (Anatomy of Dependence), Tokyo: Kobundo
- Dore, R.(1973), *British Factory-Japanese Factory: the origins of national diversity in industrial relations*, Berkeley: University of California Press
- Drewry, G.(1991), 'British Law Journals as a Resource for Political Studies', *Political Studies*, Vol.XXXIX, no.3, pp.560-7
- Dummett, A. and Nicol, N.(1990), *Subjects, Citizens, Aliens and Others: nationality and immigration law*, London: Weidenfeld and Nicolson
- Dummett, A.(1976), *Citizenship and Nationality*, London: Runnymede Trust, Sept.
- Dummett, A.(1977), *British Nationality Law-Runnymede guide to the green paper*, London: Runnymede Trust
- Dummett, A.(1981), 'The New British Nationality Act', *British Journal of Law and Society*, vol.8, no.2, Winter, pp.233-41
- Ebashi, T.(1995a), 'Gaikokujin no sanseiken' (Aliens' suffrage rights) in Higuchi, Y. and Takahashi, K. eds., *Gendai Rikkenshugi no Tenkai, Jo* (The development of contemporary constitutionalism, 1), Tokyo: Yuhikaku, pp.183-200
- Ebashi, T.(1995b), 'Gaikokujin to tomoni atarashii nihon wo tsukuru' (Making a new Japan with foreigners), in *Gekkan Shakaito* (Monthly Japan Social-Democratic party): no.482, pp.57-9
- Egawa, H.(1961), 'Chosenjin no tsuma to natta nihonjin no heiwayoyaku hakkougo ni okeru kokuseki no kizoku' (case study, on 1961 recognition of Japanese nationality case), *Jurisuto* 231:93-4
- Ehrmann, H.(1976), *Comparative Legal Cultures*, Englewood Cliffs: Prentice-Hall
- Elger, T. and Smith, C. eds.(1994), *Global Japanization?: the transnational transformation of the labour process*, London: Routledge
- Encyclopaedia Britannica* (1992), Chicago: Encyclopaedia Britannica Incorporation
- Encyclopedia Americana* (1968), New York: Americana Cooperation
- Evans, A.(1982), 'European Citizenship', 45 *Modern Law Review*, pp.497-515
- Fitzpatrick, P and Hunt, A.eds.(1987), *Critical Legal Studies*, Oxford: Blackwell
- Foot, P.(1965), *Immigration and Race in British Politics*, Harmondsworth: Penguin

- Fransman, L.(1983), 'Patriality: its redeployment as British Citizenship under the British Nationality Act, 1-4' in *New Law Journal* 15/August - 22/Sep
- Fransman, L.(1989), *Fransman's British Nationality Law*, London: Fourmat
- Freeman, G.(1979), *Immigrant Labor and Racial Conflict in Industrial Societies: the French and British Experience, 1945-1975*, Princeton: Princeton University Press
- Fukuoka, Y.(1993), *Zainichi kankoku/chosenjin-wakai sedai no aidentiti*(South/North Koreans in Japan-identity of young generation), Tokyo: Chuko shinsho
- Fukushima, M. and Toshitani, N.(1957), 'Meiji igo no kosekiseido no hattatsu' (The development of koseki system after Meiji period), in Nakagawa, Z. et al. eds. *Kajisaiban-kazokumondai to kazokuhou, VII*, (Family disputes and family law to courts), Tokyo: Sakai shoten. pp.299-349
- Furukawa, J.(1986), 'Gaikokujin no jinken(1) - sengo kenpo kaikaku tonon kanren wo megutte' (Aliens' human rights(1) with relation to post-war constitutional reform), in *Tokyo Keizaidagaku kaishi*, (Journal of Tokyo Keizai University), no.146, pp.63-80
- Geertz, C.(1963), 'Primordial and Civic ties', pp29-34, in Hutchinson, J. and Smith, A. eds. (1994), *Nationalism*, Oxford: Oxford University Press
- Gellner, E.(1983), *Nations and Nationalism*, Oxford: Blackwell
- Gikaiseido 70 nenshi, shiryohen*(1960), (70 years of the Diet System, materials), Tokyo: Okurasho Insatsukyoku
- Gilroy, P.(1987), *There ain't no Black in the Union Jack: the cultural politics of race and nation*, London: Hutchinson, chapter 2
- Goodman, R.(1993), *Japan's 'International Youth': the emergence of a new class of school children*, Oxford: Clarendon Press
- Goodrich, P.(1986), *Reading the Law: a critical introduction to legal method and techniques*, Oxford: Basil Blackwell
- Gordon, P. and Newnham, A.(1985), *Passports to Benefits?, racism in Social Security*, London: CPAG and Runnymede Trust
- Goulbourne, H.(1991), *Ethnicity and Nationalism in Post-Imperial Britain*, Cambridge: Cambridge University Press
- Gould, A.(1993), *Capitalist Welfare Systems: a comparison of Japan, Britain and Sweden*, Harlow: Longman
- Grant, W.(1995), *Pressure Groups, Politics and Democracy in Britain*, 2nd ed., New York: Harvester Wheatsheaf
- Griffith, J.(1991), *The Politics of the Judiciary*, London: Fontana Press, 4th edition

Groenendijk, K.(1997), 'Regulating ethnic immigration: the case of the Aussiedler', in *New Communities*: vol.23:no.4:Oct, pp.461-82

Guibernau, M.(1996), *Nationalisms: the nation-state and nationalism in the twentieth century*, Cambridge: Polity Press

Habermas, J.(1994), 'Citizenship and National Identity', in Bart van Steenberg ed. *The Condition of Citizenship*, London, Sage: pp.20-35

Hagino, Y.(1996), *Hanrei kenkyu-gaikokujin no jinken: kokuseki/shutsunyukoku/zairyusengo hosho* (Case laws on aliens' human rights), Tokyo: Akashi shoten

Hague, R., Harrop, M. and Breslin, S.(1992), *Comparative Government and Politics: an introduction*, Basingstoke: Macmillan, 3rd ed.

Hammar, T.(1990), *Democracy and the Nation-state: aliens, denizens and citizens in a world of international migration*, Aldershot: Avebury

Harris, C.(1991), 'Configurations of Racism: the Civil Service, *Race & Class* 33:1, July-Sept., pp.1-30

Harrop, M.ed.(1992), *Power and Policy in Liberal Democracies*, Cambridge: Cambridge University Press

Hatada, T.(1969), *Nihonjin no Chosenkan* (The Japanese view on Korea), Tokyo: Keiso shobo

Heater, D.(1990), *Citizenship: the civic ideal in world history, politics and education*, London: Longman

Hechter, M.(1975), *Internal Colonialism: the celtic fringe in British national development, 1536-1966*, London: Routledge and Kegan Paul

Heidenheimer, A., Hecllo, H. and Adams, C.(1990), *Comparative Public Policy: the politics of social choice in America, Europe, and Japan*, New York, St. Martin's Press: Macmillan, 3rd ed.

Held, D.(1991), 'Between State and Civil Society: Citizenship' in Andrew, G ed. *Citizenship*, London, Lawrence and Wishart, pp.19-25

Heywood, A.(1994), *Political Ideas and Concepts: an introduction*, Basingstoke: Macmillan

Hirowatari, S.(1992), 'Gaikokujin ukeireno houteki ronri' (The legal framework of accepting foreigners) in Iyotani, T. and Kajita, T. eds. *Gaikokujin Rodosharon*, (Discussion on guestworkers), pp.63-97, Tokyo: Kobundo

- HMSO(1991), *Aspects of Upper Secondary and Higher Education in Japan*
- Hobsbawm, E.(1992), *Nations and Nationalism since 1780: programme, myth, reality*, Cambridge, Cambridge University Press, 2nd ed.
- Hokama, H (1979), 'Hibakusha kenkotecho kofushinsei kyakka jiken jokokusin hanketsu' (the Supreme Court ruling on Son case), in *Juristo* no.693, *Showa 53 nendo juyo hanrei kaisetsu*, (Important cases in 1978), 10/July/1979, pp.29-31
- Homusho(1986), *Q&A atarashii kokuseki, koseki ho*, (New nationality and koseki Law), Tokyo: Nihon kajo shuppan
- Homusho(1992), 'Gaikokujin torokuho no kaisei' (Revision of Alien Registration Law) in *Kokusai Jinryu*, (International migration), July, pp.26-31
- Honda, T(1994), 'Shimon onatsu kyohi to sainyuikoku fukyoka' (Fingerprint rejection and re-entry rejection), *Juristo*, no.150, pp.30-1
- Horitsu jiho* (1985), 'Jinkenron ni okeru teijugaikokujin' (human rights and teijugaikokujin), discussion by Onuma, Y.; Imamura, T.; So. Y. et al., in *Horitsu jiho*, 57:5, pp.8-20.
- Hosokawa, K.(1990), 'Japanese nationality in international perspective' in Ko, S.ed. *Nationality and International Law in Asian Perspective*, Dordrecht, Boston, Martinus Nijhoff, pp.177-253
- Howarth, M.(1991), *Britain's Educational Reform*, London: Routledge
- Howell, D.(1994), 'Ainu Ethnicity and the Boundaries of the Early Modern Japanese State' in *Past and Present*, 142, Feb., pp.69-93
- Howell, D.(1996), 'Ethnicity and Culture in Contemporary History', in *Journal of Contemporary History*, 31,1, Jan., pp.171-190
- Hozumi Yatsuka(1891), 'Minpo idete Chuko horobu' (Civil Code appears and filial piety has gone) in Hozumi, S ed., *Hozumi Yatsuka Hakase Ronbunshuu*, (Collection of the works by Dr. Hozumi Yatsuka), Tokyo: Yuhikaku, pp.223-228
- Hucker, J.(1975), 'The House of Lords and the Race Relations Act', in 24 *International Comparative Legal Quarterly*, pp.284-304
- Hutchinson, J. and Smith, A.eds.(1994), *Nationalism*, Oxford, Oxford University Press
- Ijichi, N.(1994), *Zainichi Chosenjin no namae* (Koreans in Japan and their name), Tokyo: Akashi Shoten
- Ikegami, E.(1995), 'Citizenship and National Identity in Early Meiji Japan, 1868-89, A Comparative Assessment' in *International Review of Social History*, 40, s3, pp.185-221

Imai, H.(1982), 'Futatsu no kakumei' (The two revolutions), in Aoyama, I. and Imai, H. eds. *Gaisetsu igirisushi* (General British history), Tokyo: Yuhikaku, pp.97-117

Inoguchi, T.(1993), *Nihon-Keizaitaikoku no seiji unei* (Japan - the governing of Economic superpower), Tokyo: Tokyo Daigaku Shuppankai

Inoue, K. et al. eds.(1991), *Shosetsu Nihonshi*(Japanese History), rev.ed, Tokyo: Yamakawa shuppan

Inoue, K.(1990), *MacArthur's Japanese Constitution: a linguistic and cultural study of its making*, Chicago, University of Chicago Press: Chicago

Ishida, R.(1984), 'Igirisu ni okeru eirenpu iminseisaku no tenkai jou/ge' (The development of British immigration policy, part 1/2), *Rekishigaku kenkyu*, (Journal of History), vol.582, pp.1-12; vol.583, pp.19-31

Ishida, R.(1985), 'Igirisu no jinshu sabetsu heno chosen-1976 nen Jinshukankeihou to jihatsu soshiki no dentou' (An attempt to tackle racial discrimination in Britain - traditions of 1976 Race Relations Act and Voluntary organisations), in Isomura, E. ed. *Gendai sekai no sabetsu mondai*, (Contemporary discriminations in the world), Tokyo: Akashi shoten, pp.181-226

Ishiguro, K(1990), *Kokusai shihou sinpan* (Conflict of laws, new ed.), Tokyo: Yuhikaku

Ishiguro, K(1992), 'Uji no henkou' (Changing of surnames) in Yamada, R. and Hayada, Y. eds., *Enshu kokusai Shihou* (Practice conflict of laws), Tokyo: Yuhikaku, pp.78-82

Ito, M.(1963), 'Ho no shihai to nihonkoku kenpo' (The Rule of Law and the Japanese Constitution) in Kiyomiya, S. and Sato, K. eds. *Kenpo Koza I: soron, tenno, senso no hoki*, (Constitution 1: general, monarchy, renunciation of wars), Tokyo: Yuhikaku, pp.429-573

Iwasawa, Y.(1986), *Legal treatment of Koreans in Japan*, International Human Rights Group

Iyotani, T.(1992), 'Sakerarenai kadai, gaikokujin rodo sha' (Unavoidable task: guest workers) in Iyotani, T. and Kajita, T. eds. *Gaikokujin Rodosha ron*, (Discussion of guestworkers), Tokyo: Kobundo

Jacob, H. et al.(1996), *Courts, Law and Politics in Comparative Perspective*, New Haven: Yale University Press

Jones, C.(1985), *Patterns of Social policy, an introduction to comparative analysis*, London: Tavistock, '1 Argument'

- Jones, C.(1993), 'The Pacific Challenge' in Jones, C. ed., *New Perspectives on the Welfare State in Europe*, London: Routledge, pp.198-217
- Joppke, C.(1995), 'Review article- Citizenship and nationhood on France and Germany', *Archives Europeennes De Sociologie*:36, 1, Apr., pp.168-178
- Juss, S.(1988), 'Justice denied', *New Law Journal*, Jan/29, p67
- Juss, S.(1993), *Immigration, Nationality and Citizenship*, London: Mansell
- Kajita, T.(1994), *Gaikokujin Rodosha to Nihon shakai* (Foreign Workers and Japanese Society), Tokyo: NHK books
- Kajita, T.(1998), 'The challenge of incorporating foreigners in Japan: "ethnic Japanese" and "sociological Japanese"', in Weiner, M. and Hanami, T. eds. *Temporary Workers or Future Citizens?: Japanese and the United States Immigration Policies*, London: Macmillan, pp.120-147
- Kang, J. and Kim, D.(1994), *Zainichi kankoku/chosenjin - rekishi to tenbo* (South and North Koreans in Japan, history and prospect), Tokyo: Rodokeizaisha
- Kasama, C.(1988), 'Doshitsu no nakano Ishitsu genso' (Illusionary difference within homogeneity), in Miyajima, T. and Kajita, T. eds.(1988), *Gendai Yoroppa no chiiki to kokka*, (Contemporary Europe, its region and states), Tokyo: Yushindo Kobunsha, pp.142-167
- Kasama, C.(1992), 'Nationalisumu to Racisumu no kosaku' (Nationalism and racism), in Kajita, T.ed. *Kokusai shakaigaku* (International sociology), Nagoya: Nagoyadaigakushuppankai, pp.241-66
- Kavanagh, D.(1996), *British Politics: continuities and change*, 3rd ed., Oxford: Oxford University Press, chapter 2
- Kibata, Y.(1992), 'Eikoku to nihon no shokuminchi tochi' (The colonial policy of Britain and Japan), in *Shokuminchi teikoku nihon*, (Colonial empire -Japan), Iwanami koza 1, Tokyo: Iwanami shoten, pp.273-296
- Kidana, S.(1996), 'Kokuseki hou tikujou kaisetsu 1' (Interpretations of Nationality law 1), *Koseki jiho*(1996.4-), no.460, pp.3-15
- Kido, T.(1982), 'Chusei igirisu no tenkai' (The development of feudal England), in Aoyama, I. and Imai, H. eds. *Gaisetsu igirisushi*, (General British history), Tokyo: Yuhikaku, pp.45-78
- Kim, C.(1986), 'Zainichi chosenjin 'sanseiken' yokyu no kentou' (Reconsideration of the request of suffrage rights by Koreans in Japan), *Sekai*, (World), pp.262-268
- Kim, I.(1978), *Chosenjin ga naze Nihonmei wo tsukau noka* (Why Koreans in Japan use their Japanese-style name), Tokyo: San'ichi shobo

Kim, K.(1995), *Zainichi korean no aidentiti to hoteki chii* (Identity and legal status of Koreans in Japan), Tokyo: Akashi shoten

Kim, Y.(1990), *Zainichi chosenjin no kika* (Naturalisation and Koreans in Japan), Tokyo: Akashi shoten

Kobayakawa, K.(1940), *Meiji Hoseishi Ron, Koho no bu Jo* (The discussion on Meiji Legislation, public law part 1), Tokyo: Iwamatsu Shobo

Kobayashi, Y.(1996), *Goomanizumu sengen Yakugaieizu sosho* (Cartoon on medical AIDS case), Tokyo: Kodansha

Kohn, H.(1946), *The idea of Nationalism: a study in its origins and background*, New York: Macmillan

Komai, H.(1993), *Gaikokujin roudousha teiju heno michi* (Living together with foreign workers in Japan), Tokyo: Akashi shoten

Komai, H.(1994), 'Dankaiteki shiminken wo teishosuru' (Proposing a grade of citizenship), *Sekai*, (World) June, no.596, pp.122-33

Kondo, A.(1996a), *Gaikokujin sanseiken to kokuseki* (Aliens' suffrage and nationality), Tokyo: Akashi shoten

Kondo, A.(1996b), 'Kokuminshugi, minshushugi, juminshugi no trilemma' (The trilemma of nationalism, democracy, and residents autonomy) in Kyushu Sangyo Daigaku Shokeigakkai ed. *Kyushu Sangyo Daigaku Shokei Ronso*, (Journal of Kyushu Sangyo University, economics and management), vol.36, no.4, pp.177-210

Kotkin, J.(1992), *Tribes: how race, religion, and identity determine success in the new global economy*, New York: Random House

Kura, S.(1991), 'Latin America' in *Kokkyo wo koete*, Tsukuba Daigaku, pp.127-144

Kuramochi, T.(1995), 'Igirisu kenpo kenkyu no 50nen' (Works on British Constitution- 50 years), *Horitsu Jiho*, vol.67, vo.12, pp.10-13

Kuwata, S.(1961), 'Hanrei hihyou' (on 1961 case) *Minshoho zasshi*, 45:5:67

Kymlicka, W. and Norman, W.(1994), 'Return of Citizen:a survey of recent work on citizenship theory', *Ethics*, pp.352-381, Jan., vol.104

Lardy, H.(1997), 'Citizenship and the right to vote', *Oxford Journal of Legal Studies*, vol.17:no.1, pp.75-100

Layton-Henry, Z. ed.(1990), *The Political Rights of Migrant Workers in Western Europe*, London: Sage

- Layton-Henry, Z.(1999), 'Citizenship and Nationality in Britain' in Layton-Henry, Z. and Wilpert, C. *Challenging racism in Britain and Germany*, Macmillan (forthcoming)
- Lee, K.(1995), 'Denizen to kokumin kokka' (Denizen and Nation-state), in *Shiso*, (Thought) no.854, Aug., pp.45-62
- Legomsky, S.(1987), *Immigration and the Judiciary: law and politics in Britain and America*, Oxford: Clarendon
- Lehmann, J.(1982), *The Roots of Modern Japan*, London: Macmillan, chapter 6
- Lester, A. and Bindman, G.(1972), *Race and Law*, Harmondsworth: Penguin
- Lester, A.(1975), *Citizens without status*, London: Runnymede Trust
- Li, Y.(1993), *Zainichi Kankoku/Chosenjin to sanseiken* (Suffrage rights and South/North Koreans in Japan), Tokyo: Akashishoten
- Lijphart, A.(1971), 'Comparative Politics and Comparative Method', *American Political Science Review*, vol.65, pp.682-693
- Lipset, S.(1994), 'Binary comparisons: American exceptionalism-Japanese uniqueness', in Dogan, M., and Kazancigil, A. eds. *Comparing Nations: concepts, strategies, substance*, Oxford: Blackwell, pp.153-212
- Llobera, J.(1994), *The God of Modernity: the development of nationalism in western Europe*, Oxford, Berg
- Lustgarten, L.(1980), *Legal Control of Racial Discrimination*, London: Macmillan
- Macdonald, I. and Blake, N.(1995), *Immigration Law and Practice in the United Kingdom*, 4th ed., London: Butterworths
- Maher, J. and Kawanishi, Y.(1995), 'on Being there: Koreans' in Japan' *Journal of Multilingual and Multicultural Development*: 16: Nos.1, 2
- Mahler, G.(1995), *Comparative Politics: an institutional and cross-national approach*, London: Prentice-Hall, 2nd ed.
- Mann, M.(1987), 'Ruling Class Strategies and Citizenship', in Bulmer, M. and Rees, A. eds.(1996), *Citizenship Today: the contemporary relevance of T.H.Marshall*, London: UCL Press, pp.125-144
- Marsh, R.(1967), *Comparative Sociology: a codification of cross-social analysis*, New York: Hercourt Brace and World
- Marshall, T. and Bottomore, T.(1992), *Citizenship and Social Class*, London: Pluto Press

Marshall, T.H.(1950), *Citizenship and Social Class and other essays*, Cambridge: Cambridge University Press

Mason, M.(1986), 'Introduction: controversies and continuities in race and ethnic relations theory', in Rex, J. and Mason, D. eds., *Theories of Race and Ethnic Relations*, Cambridge: Cambridge University Press, pp.1-19

Matsumoto, K.(1988), 'Zainichi Chosenjin no Nihonkokuseki hakudatsu - Nihonseifu ni yoru heiwayoyaku taisakukenkkyu no kentou' (Deprivation of Japanese nationality from Koreans in Japan - regarding the policy of the Japanese government on the Peace Treaty), in *Tohokudaigaku Hogaku* (University of Tohoku) , vol.452

Matsuo, H.(1990), 'Jinken kara mita koseki (jou)' (Koseki from human rights aspect, part 1), in *Koseki*, vol.4., no.562, pp.1-37

Mayer, L, Burnett, J. and Ogden, S.(1993), *Comparative Politics: nations and theories in a changing world*, Englewood cliffs: Prentice-Hall

McInnes, P.(1996), 'Concept Citizenship' in *Politics Review* 5:3:Feb., pp.25-26

Meehan, E.(1993), *Citizenship and European Community*, London, Sage

Miles, R. and Phizaklea, A.(1984), *White Man's country: racism in British Politics*, London: Pluto

Miles, R.(1989), 'Nationality, Citizenship, and Migration to Britain, 1945-51', in *Journal of Law and Society*, 16:4, winter, pp.426-442

Miles, R.(1989), *Racism*, London: Routledge

Miles, R.(1993), *Racism after Race Relations*, London: Routledge

Minami, H. et al. eds.(1996), *Gyoseihou(2)* (Administrative Law 2) 3rd ed., Tokyo: Yuhikaku

Minzoku mei wo torimodosu kai(1990), *Minzokumei wo torimodoshita chosenkei nihonjin* (Korean-Japanese who restored their ethnic names), Tokyo: Akashi shoten

Miyajima, T. and Kajita, T. eds.(1996), *Gaikokujin roudousha kara shiminhe-chiiki shakai no sitenkara* (from guestworkers to citizens, perspectives from regional societies), Tokyo: Yuhikaku

Miyata, S., Kim, Y. and Yang, B.(1990), *Soushi Kaimei*, (Creation of surnames and alteration of given names), Tokyo: Akashi Shoten

Mizuno, N.(1996), 'Zai chosenjin/taiwanjin sanseiken 'teishi'joko no seiritsu' (The origin of 'suspension' of suffrage rights of Koreans and Taiwanese in Japan), *Kenkyu kiyo* (sekai jinken mondai kenkyu centre) vo.1, pp.43-65

Moore, B.(1966), *Social Origins of Dictatorship and Democracy: lord, peasant in the making of the modern world*, Boston: Beacon press

Moraes, C.(1993), 'Twenty-five years of the JCWI:an appraisal of the past and a perspective on the future', *Immigration and Nationality Law and Practice*:vol.7,2, pp59-64

Mori, H.(1996), *Immigration Policy and Foreign Workers in Japan*, Macmillan

Moriki, K.(1995), *Kokuseki no arika*(the proof of kokuseki), Tokyo: Akashi shoten

Morita, Y.(1996), *Suuji ga kataru kankoku/chosenjin no rekishi* (History of South/North Koreans in Japan by statistics), Tokyo: Akashi shoten

Nairn, T.(1977), *The Break-up of Britain*, London: NLB

Nairn, T.(1988), *The Enchanted Glass:Britain and its monarchy*, London: Radius

Nakagawa, A.(1994), 'Kokuseki toiu mondai'(kokuseki as problem), *Sekai* (World), June, no.596, pp.164-9

Nakahara, R.(1993), *Zainichi chosenjin koyo sabetsu to kokuseki joko* (Koreans in Japan , their employment discrimination and nationality clause), Tokyo: Akashi shoten

Nakai, K.(1989), *Teiju gaikokujin to komushuninken* (Settled Aliens and their right to hold public office), Tokyo: Takushoku shobo

Nakamura, M.(1989), *Shocho Tennosei heno michi* (The process toward symbolic tenno status), Tokyo: Iwanami shinsho

Nakane, C.(1967), *Tateshakai no Ningen kankei* (Japanese society), Tokyo: Kodansha

Neary, I.(1992), 'Ethnic Minorities', in Harrop ed.(1992), *Power and Policy in Liberal Democracies*, Cambridge: Cambridge University Press, pp.174-194

Neveu, C.(1989), *Ethnic Minorities, Citizenship and Nationality: A case study for a comparative approach between France and Britain*, CRER, Research Paper, University of Warwick

New College English-Japanese Dictionary(1994), Tokyo: Kenkyusha

Nicol, A.(1993), 'Nationality and Immigration' in Blackburn, R. ed., *Rights of Citizenship*, London: Mansell, pp.254-270

Ninomiya, M.(1983), *Kokuseki hou ni okeru danjo byodo* (Equality between sex in Japanese Nationality Law), Tokyo: Yuhikaku

Norton, P.(1976), 'Intra-party dissent in the House of Commons:a case study , the immigration rules 1972', *Parliamentary Affairs* vol.29, no.4, pp.404-20

Norton, P.(1994), *The British Polity*, New York: Longman, 3rd ed., chapter 1

Ogawa, M.(1978a), 'Shakaihosho ken sabetsu jiyu, saigono shoheki, kokuseki'(Social rights and its final excuse of discrimination-nationality), in *Shakai jigyo no shomondai (Nihon Shakaijigyo tankidaigaku Kiyo)*, no.24, pp.203-57

Ogawa, M.(1978b), 'Hibakusha kenko techo sosho hanketsu no igi'(on Son case), *Hogaku seminar*, July

Ogoshi, A.(1996), *Feminisumu Nyumon* (Introductory Feminism), Chikuma shobo

Oguma, E.(1995), *Tan'itsu minzoku shinwa no kigen* (The origin of the myth of homogeneous nation), Tokyo: Shinyosha

Oishi, S.(1977), *Edo Jidai* (Edo period), Tokyo: Chuko shinsho

Okazaki, K.(1978), 'Gaikokujin no hoteki chii ni tsuite no ichi kosatsu-kokkoritsu daigaku kyoin ninyo mondai ni sokushite' (An article on Aliens' legal status with regard to their appointments in public universities), *Hosei Ronso* (Nagoya daigaku), vol.75, pp.179-220

Okazaki, K.(1996), 'Gaikokujin no koumu shuninken' (Aliens and their rights to hold public offices), in *Gekkan jichiken*, June, pp.34-49

Oldfield, L.(1990), 'Citizenship:an unnatural practice?' in Turner, B. and Hamilton, P. eds.(1994) *Citizenship I*, London: Routledge, pp.188-198

Onuma, Y.(1979a), 'Shutsunyugoku kanrihousei no seiteikatei no.15'(the enforcement process of immigration control law), in *Horitsu Jiho*:51:7, pp.100-110

Onuma, Y.(1979b), 'Zainichi Chosenjin no hotekichii ni kansuru ichi kosatsu 1-5', (Articles on Koreans in Japan and their legal status), *Hogaku Kyokai Zasshi*, 96:3-97:3

Onuma, Y.(1983), ''Gaikokujin no jinken' ron saikosei no kokoromi' (An attempt to reconstruct 'alien's human rights'), in *Hokyo Hyakunen Ronshu*, vol.2

Onuma, Y.(1985), 'Kokuseki to sono Kinouteki Haaku' (Nationality and its functional understandings), *Hogaku Kyoshitsu* no.55, Apr., pp.132-137

Onuma, Y.(1986), *Tan'itsu minzoku kokka no shinwa wo koete* (Beyond the myth of homogeneous nation), Tokyo: Toshindo

Onuma, Y.(1993), *Sakhalin kimin* (Sakhalin displaced persons), Tokyo: Chuko Shinsho

- Ota, Y.(1994), 'The enterprise of Orientalism: comments on Jacalyn Hardee's enterprise of empire', in *Identities:Global studies- in culture and power*, 1-2, Nov., pp.275-277
- Owers, A.(1994), 'The Age of internal controls?' in Spencer, S ed. *Strangers and Citizens, a positive approach to migrants and refugees*, London, IPPR/River Oram, pp.264-281
- Park, K.(1986), *Zainichi Chosenjin no senkyoken mondai* (Suffrage issue of Koreans in Japan), *Doho to Shakai kagaku*(Fellow countrymen and social science), vol.1., pp.52-9 Prentice-Hall
- Prosser, T.(1983), *Test Cases for the Poor, Legal Techniques in the Politics of Social Welfare*, London: C.P.A.G.
- Pye, L. and Verba, S. eds.(1965), *Political Culture and Political Development*, Princeton: Princeton University Press
- Rich, P.(1986), *Race and Empire in British Politics*, Cambridge: Cambridge University Press
- Rikumoto, K.(1991), *Hoshakaigaku nyumon-tutorial 18 lectures* (Introductory sociology of law),Tokyo: Yuhikaku
- Rokkan, S and Urwin, D.(1982), 'Introduction: centres and peripheries in Western Europe', in Rokkan, S.ed., *The Politics of Territorial Identity:studies in European nationalism*, London: Sage, pp.1.-18
- Rose, E et al.(1969), *Colour and Citizenship*, London: Oxford University Press, Institute of Race Relations
- Rose, H.(1973a), 'The Politics of Immigration: after the 1971 Act', *Political Quarterly*, pp.183-96
- Rose, H.(1973b), 'Britain's Immigration Act of 1971: a study in British Politics', *Migration Today*, 72: no.16, pp.26-37
- Rose, R.(1971), *Governing Without Consensus: an Irish perspective*, London: Faber and Faber Limited
- Rose, R.(1991), 'Comparing Forms of Comparative Analysis', *Political Studies*, Vol.XXXIX, no.3, pp.446-62
- Roskin, M.(1995), *Countries and Concepts: an introduction to comparative politics*, New Jersey: Prentice-Hall
- Ryang, S.(1997), *North Koreans in Japan*, Connecticut: Westview Press

Samura, H.(1994), 'Hanrei shokai' (Chong Hyang-kyon case), *Minji Kenshu*, no.447, July, pp.36-45

Sapporogakuindaigaku America Kenkyukai(1989), 'Hokkaido to American Indian - introduction', in *Sapporogakuin daigaku jinbungakkai kiyo* (Sapporogakuin University humanities' journal): no.45, August, pp.1-4.

Sartori, G.(1994), 'Compare Why and How', in Dogan, M. and Kazancigil, A. eds., *Comparing Nations: concepts, strategies, substance*, Oxford: Blackwell, pp.14-34

Sato, B.(1991), *Koseki ga miharu kurashi* (Life controlled by koseki), Tokyo: Gendaishokan

Sato, B.(1997), 'Koseki ga tsukuru sabetsu' (discrimination created by koseki), in *Buraku kaiho* (Buraku liberation): 419, pp.20-29

Scheingold, S.(1974), *The Politics of Rights: lawyers, public policy and political change*, New Haven: Yale University Press,

Sekai (1994), 'Gaikokujin no sanseiken--zentei ha nanika'(Aliens' suffrage, what are the conditions), debate between Ebashi, T. and Bae, J., June/94, pp.143-152

Sellek, Y.(1996), 'The U-turn phenomenon among South American-Japanese Descendants: from Emigrants to Migrants', *Immigrants and Minorities*:15:3:Nov., pp.246-69

Seton-Watson, H.(1977), *Nations and States: an enquiry into the origins of nations and the politics of nationalism*, London, Methuen, chapter 4

Shah, R.(1994), 'Diminution of status', in *New Law Journal*, Jan. 14, pp.62-3

Shapiro, M.(1981), *Courts: A comparative and political analysis*, Chicago: University of Chicago Press

Shipman, M.(1971), *Education and Modernisation*, London: Faber and Faber

Shiso no kagaku(1995), 'Zainichi surukoto no siza' (The perspective of being a Korean in Japan), by discussion by Takeda, S., Kan, S., and Kato, N., *Shiso no Kagaku* (Thought and science): May:no.524, pp.54-78

Shutter, S.(1995), *Immigration and Nationality law handbook*, London: JCWI, 1995 ed.

Shutter, S.(1997), *Immigration and Nationality law handbook*, London: JCWI, 1997 ed.

Siddle, R.(1996), *Race, Resistance and the Ainu of Japan*, London: Routledge

- Simmonds, K.(1984), 'The British Nationality Act 1981 and the Definitions of the term 'national' for community purposes', *Common Law Market Review*: Oct: 21:no.4: pp.675-86
- Sivanandan, A.(1982), *A Different Hunger: writings on Black Resistance*, London: Pluto
- Smith, A.D.(1986), *The Ethnic Origins of Nations*, Oxford: Basil Blackwell
- Smith, A.D.(1991), *National Identity*, London: Penguin Books
- Smith, A.D.(1995), *Nations and Nationalism in Global Era*, Cambridge: Polity
- Smith, R.(1983), *Japanese society: tradition, self and the social order*, Cambridge (USA): Cambridge University Press
- So, Y. ed.(1992), *Teiju gaikokujin no chiho sanseiken* (Voting rights of teiju gaikokujin at local level), Tokyo: Nihonhyoronsha
- Soysal, Y.(1996), 'Introduction', in Cesarani, D. and Fullbrook, M. eds. *Citizenship, Nationality, and Migration in Europe*, London: Routledge
- Stevens, D.(1998), 'The Asylum and Immigration Act 1996: Erosion of the Right to seek Asylum', *Modern Law Review*, Mar., pp.207-222
- Stewart, A.(1995), 'Two conceptions of citizenship', *British Journal of Sociology*, 46:1, Mar., pp.63-78
- Stronach, B.(1995), *Beyond the Rising sun: nationalism in contemporary Japan*, Connecticut: Praeger Westport
- Sugihara, M.(1993), 'The right to use ethnic names in Japan', in *Journal of Inter-cultural Studies*, 14:2, pp.13-33
- Sugimoto, Y., and Mouer, R.(1995), *Nihonjin ron no Hoteishiki* (the equasion of nihonjin ron), Tokyo: Chikuma gakugei bunko
- Supperstone, M.(1994), *Immigration Law and Practice*, 3rd ed., London: Longman
- Takano, M.(1995), 'Gaikokujin no jinken hoshō' (Protection of aliens' human rights), in *Bessatsu Jurisuto*, Sept., no.130, pp.12-3
- Takasaki, S.(1995), Sengo Hoshō Mondai ni tsuite (On post-war compensation issue), Lecture, Nov./25, *kokusai rikaikoza koenroku*, Kodaira-city
- Takegawa, S.(1991), 'Shakaiseisaku ni okeru imin no atsukai--Igirusu no baai' (The treatment of Immigrants on social policy--the case of Britain), *Shakaihosho kenkyujo* ed., *Gaikokujin roudousha to shakaihosho*, (Guestworkers and social security), Tokyo: Tokyodaigaku shuppankai, pp187-215

- Tameike, Y.(1993), *Kokusai shiho kogi* (Lectures on conflict of laws), Tokyo: Yuhikaku
- Tameike, Y.(1995), 'Chosenjin otoko to konin sita moto naichijin onna no kokuseki' (1961 case), in *Bessatsu Juriusto* May no.133, pp.252-3
- Tamura, S.(1992), 'Naikoku shokuminchi to shite no Hokkaido' (Hokkaido as an 'internal colony'), in *Shokuminchi Teikoku Nihon* (Colonial empire Japan), Tokyo: Iwanami shoten, pp.87-99
- Tanaka, Haruo.(1996), 'Minzoku, kokka, kokumin-kokka' (Ethnic groups, states, nation-states, a survey article) *Shiso* (Thought):May,pp14-30
- Tanaka, Hideo.(1976), *The Japanese Legal System*, Tokyo: University of Tokyo Press
- Tanaka, Hiroshi.(1974), 'Nihon no shokuminchi ni okeru kokuseki kankei nokei-taiwan/chosen ni kansuru sanseiken to heiki gimu wo megutte' (Nationality relations and its circumstances of Japanese colonial policy-suffrage rights and conscription in Taiwan and Korea), *Aichi Kenritsu Daigaku Gaikokugo Gakubu Kiyo*(Journal of Aichi kenritsu University foreign studies), , no.9, pp.61-96
- Tanaka, Hiroshi.(1975), 'Nihon no Taiwan, chosen shihai to kokuseki mondai' (Japanese colonial administration of Taiwan and Korea and nationality issue), *Horitsu Jiho*, Apr., pp.85-97
- Tanaka, Hiroshi.(1980), 'Kokumintogo no miezaru souchi-koseki' (Hidden tool for national integration, koseki), in *Nihon no nakano Asia* (Asia in Japan), Tokyo: Yamato Shobo
- Tanaka, Hiroshi.(1991), *Zainichi gaikokujin* (Aliens in Japan), Tokyo: Iwanami shoten
- Tanaka, Hiroshi.(1994), *Zainichi gaikokujin* (Aliens in Japan), Tokyo: Iwanami shoten, new ed.
- Tanaka, Hiroshi.(1996), 'Why is Asia demanding post-war compensation now?' *Hitotsubashi Journal of Social Studies*, vol.28,no.1, pp.1-14
- Tashiro, A. and Kozuma, H.(1980), *Taikei koseki yogo jiten* (Dictionary of House registry related terms), Tokyo: Nihon kajo shuppan
- Tashiro, A.(1972), 'Kokusekihou (kokuseki touroku=koseki) no sinzokuhou, souzokuhou ni oyobosu eikyou ni suite' (The impact of nationality law 'kokuseki registration=koseki' on family and succession law) in Zenkoku rengo koseki jimu kyogikai ed. *Nihon koseki no tokushitsu* (Characteristics of Japanese koseki), Tokyo: Teikoku hanrei shuppansha, pp.429-573

- Tashiro, A.(1975), 'Oranda no kokuseki, sinzoku souzokuhou to mibun tourokuseido(13)' (Nationality in Holland, family and succession and status registration system,no.13), in *Koseki jiho*:7:no.355
- Tether, P.(1994), 'the Overseas Vote in British Politics 1982-92', in *Parliamentary Affairs*:47(1), Jan., pp.73-93
- Teune, H.(1990), 'Comparing countries: lessons learned', in Oyen, E.ed. *Comparative Methodology:theory and practice in international social research*, London: Sage, pp.38-62
- The Oxford English Dictionary, 1989, Oxford: Clarendon press
- Tilly, C.(1975), 'Reflections on the history of European State-making', in Tilly, C.ed. *The Formation of National states in Western Europe*, Princeton, Princeton University Press, pp.3-83
- Tokoi, S.(1981), 'Shutsu nyugoku kanrihoan no igi to kadai' (The significance and problem of the immigration control bill), *Horitsu Jiho* 53:7, pp.21-7
- Toshitani, N.(1987), 'Koseki no sisou' (The idea of *koseki*) in *Kazoku to kokka - kazoku wo ugokasu hou, seisaku, sisou*, Tokyo: Chikuma shobo, pp.139-59
- Toshitani, N.(1995), 'Koseki seido no yakuwari to mondaiten' (The function and problem of *koseki* system), *Juristo*, no.1059, Jan/15, pp.12-9
- Toshitani, N., Kamata, H. and Hiramatsu, H eds. (1996), *Koseki to mibuntoroku*, (*koseki* and status registration), Tokyo: Waseda daigaku shuppanbu
- Tsuboi, T.(1959), *Zainichi Chosenjin undo no gaikyou*, (Koreans in Japan and their activities), Homukenkyu hokokusho, Koanchosacho, No.46-3
- Turner, B. and Hamilton, P. eds.(1994), *Citizenship I,II*, London: Routledge
- Turner, B.(1986), *Citizenship and Capitalism: the debate over reformism*, London, Allen and Unwin
- Turner, B.(1992), 'Outline of a theory of Citizenship' in Mouffe C.ed. *Dimensions of Radical Democracy: pluralism, citizenship, community*, London: Verso, pp.33-62
- Turner, B.(1993) '1 Contemporary problems in the theory of citizenship', in Turner, B. ed., *Citizenship and Social Theory*, London: Sage, pp.1-17
- Ubukata, N.(1964), 'Chosen sanseiken no rekishiteki igi' (Historical implication of suffrage rights of Koreans), *Toyo Bunka*, (Oriental culture), June, pp.1-20
- Ubukata, N.(1979), 'Tan'itsu minzoku kokka no shisou to kinou' (the thoughts and functions of homogeneous nation-state), *Shiso*, (Thoughts), Feb., pp.23-37

- Uchida, Y.(1977), *Shakai Ninshiki no Ayumi* (The development of social consciousness), Tokyo: Iwanami Shinsho
- Uematsu, N.(1981), 'Chosenjin hibakusha to sono engo' (Korean A-bomb victims and their support), in Yoshioka, M.ed., *Zainichi chosenjin to Juminken undo*, Tokyo: Shakai Hyoronsha, pp.53-89
- Upham, F.(1987), *Law and Social Change in Post-war Japan*, Cambridge, Mass.: Harvard University Press
- Urwin, D.(1982), 'Territorial Structures and political development in the United Kingdom', in Rokkan, S.ed., *The Politics of Territorial Identity:studies in European nationalism*, London: Sage, pp.19-73
- van den Berghe, P.(1978), 'A socio-biological perspective' in Hutchinson, J. and Smith, A. eds., *Nationalism*, Oxford:Oxford University press pp.96-103
- Vedung, E.(1976), 'The Comparative Method and its Neighbours', in Barry,B ed. *Power and Political Theory:some European perspective*, London: John Wiley and Sons Ltd., pp.199-216
- Verba, S.(1967), 'Some Dilemmas in Comparative Research', in *World Politics*:20, pp.111-127
- Wagatsuma, S. ed.(1968), *Kyuu Horeishuu* (Abolished laws and ordinances), Tokyo: Yuhikaku
- Wagatsuma, S. et al. eds.(1956), *Sengo ni okeru minpo kaisei no keika* (The process of revising civil code just after the war), Tokyo: Nihon hyoronsha
- Wasby, S.(1970), *The Impact of the United States Supreme Court:Some Perspectives*, Homewood: Dorvy Press
- Weber, M.(1978), 'Sociology of Law' (Chapter 8), in Roth, G. and Wittich, C. eds. *Economy and Society*, vol.2, Berkeley: University of California Press
- Weiner, M.(1994), *Race and Migration in Imperial Japan*, London: Routledge
- Weiner, M.(1995), 'Out of the very stone: Korean Hibakusha' in *Immigrants and Minorities*, vol.14, no.1, Mar., pp.1-25
- Weiner, M.ed.(1997), *Japan's Minorities*, London: Routledge
- WING. (1985), *Worlds Apart:women, under immigration and nationality law*, London: Pluto
- World Politics* (1995), 'The Role of Theory in Comparative Politics-A Symposium', vol.48, no.1, pp.1-49, discussion by Kohli,A; Przeworski, A, et al.

Yabuki, H.(1990), 'Nation gainen no keisei to reikishiteki haikai' (the formation of a concept 'nation' and its historical background), in *Shiso* (Thought), Feb., pp.86-107

Yamamoto, F.(1985), 'Zainichi chosenshin no hoteikichii-genjo hen' (Legal status of Koreans in Japan - contemporary period) in Harada, N. and Kan, J. eds., *Koza Sabetsu to Minzoku*, no.4. minzoku, (Discrimination and ethnicity -ethnicity) Tokyo: Yuzankaku, pp.86-130

Yamamuro, S.(1990), 'Kokumin kokka nihon no hatsugen,nationality no kochiku wo megutte' (The emergence of Japan as a nation-state, on the construction of nationality), *Jinbun gakuho* LXVII, pp.83-106

Yamazaki, T.(1991), 'Kecchaku wo mita zainichi kankoku chosenshin hoteikichii mondai to gaikokujin toroku' (Issues of South/North Koreans in Japan, their legal status and alien registration finally settled), *Gaikokujin toroku* (Alien registration), 1991:6, pp.1-18

Yanaiharu, T.(1926), *Shokumin oyobi shokumin seisaku* (Colonization and Colonial Policy), 5th edn., Tokyo: Yuhikaku

Yoshino, K.(1992), *Cultural Nationalism in Contemporary Japan: a sociological enquiry*, London: Routledge

Yoshioka, M. and Yamamoto, F.(1986), *Zainichi gaikokujin to nihon kokusekiho* (Aliens in Japan and Japanese nationality law), Tokyo: Shakai hyoronsha

Young, I.(1989), 'Polity and Group Difference: a critique of the ideal of universal citizenship', in Turner, B. and Hamilton, P.(1994), *Citizenship*, vol II., London: Routledge, pp.386-408

Yuval-Davis, N.(1997), *Gender and Nation*, London: Sage

Zweigert, K. and Kotz, H.(1992), *An Introduction to Comparative Law*, Oxford: Oxford University Press, 2nd rev.ed.

Primary sources, Parliamentary debates

Parliamentary Debates, Commons(Hansard), vol.813, cols 42-178, 8/3/1971

Parliamentary Debates, Commons, Standing Committee B, Official Report, Session 1970-1, cols.81-384, 23/3/1971 to 22/4/1971

Parliamentary Debates, Commons(Hansard), vol.846, cols.1404-5, 22/11/1972

Parliamentary Debates, Commons(Hansard), vol.997, col 998, 28/1/1981

Parliamentary Debates, Commons(Hansard), vol.268, col 699, 11/12/1995

Parliamentary Debates, Lords(Hansard), vol.571, cols1785;1788, 2/5/1996
HC Official Report, SC A col.193, 19/11/1992

Shuugiin Shakai rodo iinkai kiroki(House of Representatives, social-labour
committee,8/8/1972

Public record office

'The Royal Family and the Colonies', 6/1948, 160802, in CO875/50/3

V.C.C Saunders to J.A.C.Robertson, 19/10/1946, in T215/709

Minute, T.Padmore, 9/10/1945, E.6869/8, in T215/709

Briefing note, Mrs. D.Williams, 7/1/1949, in T215/710

'Memorandum by the Civil Service Commissioners'', A.P.S., 25/10/1951, in
DO35/2593

Treasury Working Party, Draft report, 71794/110772, in CO886/82

Cases cited

(Note: Japanese cases are listed in the Japanese way-place, year and citation, but name
of person is also included when it was mentioned in chapters)

Judgement of the Supreme Court, 5/4/1961, *Saiko SaibanshoMinshu*:15:4:657,
(Recognition of Japanese Nationality case1)

Judgement of Yokohama District Court, 19/6/1974, *Hanji*:744:29, (Park Jong-sok
case)

Judgement of the Supreme Court, 30/3/1978, *Hanji*: 886:3, (Son Jin-du case; High
court Judgement on 17/7/1975, *Hanji*:789:11, District Court Judgement on 30/3/1974,
Hanji:736:29)

Judgement of the Supreme Court, 4/10/1978, *Hanji*:903:3, (Maclean case)

Judgement of Osaka Appellate Court 26/1/1981, *Hanji* 1010:139, (Son Tu-hoe case)

Judgement of Tokyo Appellate Court, 20/10/1983, *Hanji*:1092:31, (Aliens' national
pension scheme case)

Judgement of Tokyo District Court, 29/8/1984, *Hanji*:1125:97, (Han Jong-sok case)

Judgement of Osaka District Court, Nov./1989, *Igisujin no senkyo ken*, (Alien's
voting right), mentioned in 'Gaikokujin no senkyoken' *Bessatsu Jurisuto*, pp.8-9

Judgement of Hiroshima Appellate Court, 29/11/1990, *Hanta*:761:166, (Cho Kon-chi
case)

Judgement of Osaka Appellate Court, 25/2/1994, *Hanta*:875:246 (Kokuseki kakuninsosho 2); Judgement of Osaka District Court, 31/3/1993, *Hanta*:824:119; Judgement of Supreme Court, 12/3/1998, *Asahi Shinbun* 13/3/1998, *Koseki*:674:41

Judgement of Osaka Appellate Court, 28/10/1994, *Hanji*:1513, (Fingerprint rejection and state compensation)

Judgement of the Supreme Court, 27/1/1995, *Asahi shinbun*, 27/1/1995, (Andre case)

Judgement of the Supreme Court, 28/2/1995, *Hanji*:1523:51 (Alien's suffrage)

Judgement of Osaka District Court, 1/5/1995, *Hanta*:901:153, (Post-war compensation case)

Judgement of Tokyo District Court, 27/9/1995, *Hanta*:901:153, (Illegal migrant and the application of health insurance)

Judgement of Tokyo District Court, 16/5/1996, *Hanji*:1566:23 (Chong Hyang-kyon case); Judgement of Tokyo Appellate Court, 26/11/1997, *Asahi Shinbun*, 27/11/1997; *Hanta*:960:79)

'War Displaced women files for Citizenship', in *Japan Law Journal*(1994) vol.7:no.4, August pp. 5-6

'Court Dismisses War compensation Appeal', in *Japan Law Journal*(1995) vol.8:no.6 December, pp.7-8

(British)
The Times, 12/8/1967(Mauritian case)

ex p Zesko(1972) AC.342

Keshwani v SSHD(1975) Imm.A.R.38

C v ECO, HK(1976) Imm.A.R.165

ex p Phansopkar(1976) QB 606

ex p Bibi(1976) 1.W.L.R.879

ex p De Sousa(1977) Imm.A.R.6

ex p Ved, *The Times*, 14/5/1981

re H(1982) 3.All.ER.84

Marqueritte(1983) QB180

ex p Shah(1983) 2AC 309

Kawaja v SSHD (1983) 1.All.ER.765

ex p Orphanos(1985) AC 761

re Y(1985) 3.All.ER.33

re W(1985) 3.All.ER.449

R v SSHD, ex p Khan(1985) 1.All.ER.40

Christodoulider(1985) Imm.A.R.179

Abudalaziz, Cabales and Balkandali vs UK, 7EHRR471

ex p Ruhul(1987) 3.All.ER. 705

ex p Ullah(1988) 3.All.ER.1

Minta v SSHD(1992) Imm.A.R.380

Menon v ECO(1993) Imm.A.R.577

R v SSSS, ex p JCWI, 27/6/1996, *The Times*

pamphlets and others

Chong Hyang-kyon case, Junbishomen, Hanketsubun etc. Saiban shiryo (Chong Hyang-kyon case materials) photocopied

Granada Television, TV programme, 'World in Action', Gordon Burns interviewed Margaret Thatcher, 30/1/1978, transcript

Hondo, R.(1996), Written enquiry in December 1996

Kim Kyeong-Duk, Lecture at Hitotsubashi University, Japan, 1996, Oct.-Dec.

Minzoku sabetsu to tatakau renraku kyogikai(1995), Mintoren news

Mori, Y.(1996), Verbal communication, in Oct. and Dec.

Nihon Shakaito Ainuminzoku mondai tokubetsu iinkai(1989) *Ainu minzoku mondai kokkai shitsumonshuu* (Japan Socialist-Democratic party committee on Ainu groups, Questions at Diet), pamphlets

Park Sil, interviewed by a TV program, on 2/12/1996, 'NHK ETV Tokushuu'

Son Jin-du case, Junbishomen, Hanketsubun etc. Saiban shiryō (Son Jin-du case materials), photocopied

Sood, U. (1997), Verbal communication, in April 1997

Teijū gaikokujin no chiho sanseiken wo motomeru renraku kyōgikai(1995) symposium 5.17 (Organising committee for teijūgaikokujin's suffrage rights), Pamphlet

(Newspapers etc)

Asahi Shinbun

Mainichi Shinbun

Tōkyō Il Il Pao

Yomiuri Shinbun

JCWI Bulletin

Runnymede Trust Bulletin

The Guardian

The Times

Times Educational Supplement

Times Higher Educational Supplement

Official Publications etc.

Civil Service Commission, Annual Reports, 1983, 86

Cmnd 2739, Aug./1965, *Immigration from the Commonwealth*

Cmnd 6234, Sep./1975, *Racial Discrimination*

Cmnd.6795, Apr./1977 *British Nationality :Law-discussion of possible changes*

Cmnd 7987 July/1980 *British Nationality Law-outline of proposed legislation*

Gaimusho (1965), *Nihon ni okeru Ippan Gaikokujin no kokunaiho jo no chii*(Aliens in Japan and their legal status)

Homusho(1991), *Nihonkoku tonō heiwa jōyaku ni motozuki nihon no kokuseki wo ridatsusita monotōno nyūukoku kanri ni kansuru tokubetsuhō kankei shiryō* (The information on those who left Japanese Nationality on the grounds of the Peace Treaty, and their status on Special Immigration-Control Law related materials), photocopied

Homusho (1996a), 'Heisei 8nendo no homugyosei no ayumi' (Practice of administration), in *Hosojiho*:47:6:118

Homusho(1996b), *Heisei 8nendo ban Zairyu Gaijokujin Tokei* (Statistics of Aliens in Japan), Nyukan kyokai

Homusho(1996c), *Dai 35 Shutsunyugokukanri tokei nenpo Heisei 8nendoban* (Annual report of statistics on legal migrants)

Homusho (1997), 'Heisei 9nendo no homugyosei no ayumi' (Practice of administration), in *Hosojiho*:48:7:32

Koseisho(1995), *Jinko Dotai Tokei* (vital statistics of Japan)

OECD(1994), *SOPEMI, Trends in International Migration*

OECD(1997), *SOPEMI, Trends in International Migration*

Unpublished thesis

Abe, K. (1989), *Japanese Capitalism and the Korean minority in Japan: class, race and racism*, Ph.D. thesis, University of California, Los Angeles

Harajiri, H. (1993), *The force of Strangers: Construction and Deconstruction of Japanese Identity*, Ph.D thesis, University of Hawaii

Hayashida, C. T. (1976), *Identity, Race, and Blood Ideology of Japan*, Ph.D. thesis, University of Washington

Kim, T. (1996), *Sengo Zainichi chosenjin mondai no kigen - SCAP no tai zainichi chosenjin taisaku* (The Origins of the issues of Koreans in Japan-SCAP policy), Ph.D. thesis, Hitotsubashi University, Faculty of Law, July

Weiner, M. (1982), *The Origin and Early Development of the Korean Minority in Japan, 1910-25*, Ph.D. thesis, University of Sheffield

**THE BRITISH LIBRARY
BRITISH THESIS SERVICE**

COPYRIGHT

Reproduction of this thesis, other than as permitted under the United Kingdom Copyright Designs and Patents Act 1988, or under specific agreement with the copyright holder, is prohibited.

This copy has been supplied on the understanding that it is copyright material and that no quotation from the thesis may be published without proper acknowledgement.

REPRODUCTION QUALITY NOTICE

The quality of this reproduction is dependent upon the quality of the original thesis. Whilst every effort has been made to ensure the highest quality of reproduction, some pages which contain small or poor printing may not reproduce well.

Previously copyrighted material (journal articles, published texts etc.) is not reproduced.

THIS THESIS HAS BEEN REPRODUCED EXACTLY AS RECEIVED