Kikuta Noboru and Adoption Law in Japan

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On April 17 and 18, 1973, obstetrician and gynecologist Dr. Kikuta Noboru (菊田昇) (1926-1991) placed a small advertisement in two local Japanese newspapers: the Ishinomaki Nichinichi Shim bun and the Ishinomaki Shim bun. Ishinomaki is a small city in the northern prefecture of Miyagi, and it is not often that events there make the national news in Japan. Nevertheless, Dr. Kikuta’s advertisement led to a nationwide uproar. The Kikuta Ishi Jiken (菊田医师事件), as the incident came to be called, provoked an intense national debate that lasted for over fourteen years and led to a very rare change in the Civil Code, the basic laws that govern Japan. So great was the commotion that Dr. Kikuta was called to testify before the Diet, Japan’s deliberative assembly, shortly after he placed his advertisements. Overseas newspapers, including the New York Times, picked up Dr. Kikuta’s story, and Japanese newspapers and weekly newsmagazines covered the unfolding incident heavily: Dr. Kikuta was featured in the Shūkan Bunshun, Asahi Journal, Sunday Mainichi, Shūkan Gendai, and many other publications.

Dr. Kikuta became so renowned that in April of 1981 he was invited by Prof. Chiba Shigeki (千葉茂樹) (1933- ) to meet Mother Teresa (1910-1997) when she visited Japan to attend an international conference on the sanctity of life. In 1990, Mother Teresa won the first annual World Prize for Life from the International Right to Life Organization in Geneva, Switzerland, and Dr. Kikuta was the awardee just one year later, shortly before he passed away.

What had this unassuming country physician done to cause such a reaction? At first glance, the advertisement he placed in the Ishinomaki papers seems routine enough.

Urgent Announcement! Seeking someone to raise a newborn baby boy as their own child. Kikuta, Gynecologist. Tel: Clinic: 2-5401, Home: 2-5402

As an ob-gyn, it would seem to be well within the purview of his professional capacity for Dr. Kikuta to help arrange adoptions for unwanted children. And yet, Dr. Kikuta’s tiny advertisements in two obscure newspapers were nothing less than a shot across the bow of existing adoption protocols in Japan. Intrigued by this act of defiance, a reporter from the Mainichi Shim bun, a national daily newspaper, came to Dr. Kikuta’s office the next day for an interview. The Mainichi editors in Tokyo decided to run the story on the front page of the paper, and by April 21 Dr. Kikuta’s phone was “ringing off the hook.” But why? What was all the fuss about?

Mothers having babies whom they can’t, or don’t want to, raise is hardly a new problem in Japan. Dr.
Kikuta's ads were met with a furor because, in publicly announcing that he was circumventing the authorities in trying to place a child up for adoption directly, he had dared to carry out openly what had long been a private, off-the-books process handled discretely in local communities. However, as economic and social disjuncture wracked Japan—producing, for example, the national scandal of "coin locker babies" abandoned and left in pay lockers in train stations and other public places—Dr. Kikuta's actions hit a nerve. Motivated by strongly-held pro-life beliefs, Dr. Kikuta was insisting on viewing the law and babies in a new way, not as subordinate to state law but as transcending it.

Because of his crusade to change Japan's adoption laws (and also his related refusal to perform abortions), Dr. Kikuta Noboru is remembered mainly for his staunchly pro-life views. But he had not always been pro-life. As a young physician, Dr. Kikuta had in fact been a prolific abortionist. In medical school, Dr. Kikuta had been interested in the Bible, but a bad experience with a pastor turned him against Christianity. He eventually married Suzuki Shizue, a Christian woman, but he was hostile to her beliefs and to religion in general, even going so far as to forbid his wife to read the Bible or attend church services. Once he started performing abortions as a medical doctor, Kikuta forced himself to ignore his conscience in favor of the lucrative business of terminating pregnancies.

However, his conscience still troubled him. As part of a long reconversion process, Dr. Kikuta stopped performing abortions and began placing unwanted children in adoptive families. In 1985 or 86, Tsujioka Kenzō, a Christian pastor whose ministry involved helping unwed mothers, visited Dr. Kikuta to sound him out about his pro-life ideas. Pastor Tsujioka had founded Chisana Inochi wo Mamoru Kai (小さなのちを守る会) (Pro-Life Japan) in 1984, and was eager to help Dr. Kikuta in his fight to change the law and help more at-risk women and children. Under the guidance of Pastor Tsujioka, Dr. Kikuta decided to convert to Christianity in March of 1987. On April 19 of that year, Dr. Kikuta was baptized by Saeki Akira, a Protestant pastor in Miyagi and a professor at Miyagi Gakuin Joshi Daigaku (Miyagi Gakuin Women's University) in Sendai.

Christians constitute a tiny minority of the Japanese population: approximately one percent. Dr. Kikuta's conversion made him a distinct outlier, and his pro-life views compounded his alienation from his peers. Unfortunately, the need for pro-life doctors was acute. After opening his own clinic in 1958, Dr. Kikuta encountered "on a daily basis" pregnant women who did not want to keep their children. There were also many women who had been raped, women who had been emotionally abandoned by their husbands, and unwed mothers who despaired of keeping their child. There was no shortage of children to be adopted, but there remained a big obstacle to doing so, an obstacle unique to Japan: the koseki system.

Every Japanese citizen is listed on a household registry, or koseki (戸籍). The koseki, which has been in its current form since 1872, records the date and circumstances of major life events: birth and death, marriage and divorce, change of domicile, and adoption. Before the relevant sections of the Civil Code were revised in 1987, if adoptive parents wanted...
to bring a child into their home who had been born into another family, then the couple had to register the adoption on their koseki. Infants and very young children who are adopted are very often not told later on about this fact, for obvious reasons. However, because koseki records are permanent, an adopted child is sure to learn someday that the people who raised him or her are not blood relatives. This eternal bureaucratic memory and the complications it caused greatly hampered adoption in Japan, leaving pregnant women with many fewer potentially adoptive families than would otherwise have been available and thereby contributing to the rate of abortion.

The koseki system is part-and-parcel of the ie seido ideology. In Japan during Dr. Kikuta’s time and earlier the currently-living members of a household were understood to be custodians of the diachronic ie, or transgenerational family. If an unmarried or widowed woman gave birth, then the circumstances would be apparent to everyone for all generations to come—a “smirch on the koseki,” as the phrasing often went. If a woman without a husband (or who was not in a position immediately to marry) was found to be with child, then the common practice was to send her away from her home village for her confinement and delivery, after which she would be expected to return home alone.

One of the saving graces for women pregnant out of wedlock was the midwife (助産婦 josanpu). Because of the nature of their work, midwives are often privy to intimate details about many people in a community. For a young pregnant woman from out of town, a midwife could help not only with the birth of the child, but also with placing the child with adoptive parents. This kind of adoption, called a wara no ue kara no yōshi (藁の上からの養子 lit., “adopting a child off the straw”), was not registered on the koseki. The midwife helped an at-risk woman deliver her baby, and then, if all went well, the woman would return to her hometown and her baby would be raised by another family who had registered the adopted child as their own. In the eyes of the law, it was as though the unplanned, out-of-wedlock pregnancy had never happened.

As Japan’s agricultural, sedentary economy gave way to a new arrangement of urban dislocation and industrial and post-industrial single-family-households, women began having children at hospitals or in clinics rather than at home under the care of a midwife. Unlike midwives, doctors are required to fill in birth certificates upon the delivery of a child. If an adoptive family wanted to keep the fact of the adoption off the koseki, then a doctor had to forge a birth certificate, in effect testifying fraudulently that a child who had been born to another woman was in fact the child of a completely different set of parents. Dr. Kikuta wanted to connect at-risk mothers with adoptive families, but in order to complete the transaction he was forced to utter a false document, a crime even if done with the best of intentions.

Dr. Kikuta wanted to do his pro-life work openly and without the taint of criminal activity. To that end, he proposed concrete changes to Japan’s adoption laws:

1/ Because the true nature of infanticide today is that it is caused by birth parents desiring to be separated from their children, in order to save the lives of many children, the koseki laws and the adoption laws must be revised so that parents may separate themselves from their children without killing them.

2/ If this occurs, then children separated [from their birth parents] will have no birth parents listed for them on any koseki, leaving a public record of their being abandoned children. For the

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sake of children’s happiness, it is preferable that foster parents be listed as birth parents on the koseki.

3/ A public agency, such as a family court, is needed to be involved in the selection of foster parents, the placement of children, and follow-up care after the adoption has been effected.21

In 1987, the gist of these proposals was included in the Civil Code. But even after this legislative victory was accomplished, an even bigger problem remained: Japan’s permissive abortion regime. Dr. Kikuta had won the procedural battle but still faced a much harder uphill fight against a culture of abortion, much of which had been imported from abroad.

Although Japan is now known for its perennial low birthrate and the puzzling aversion of its young to sexual intercourse, in the 1950s Japan had been the abortion capital of the world. The 1948 law that opened the floodgates to abortion in Japan, the Eugenics Protection Law (優生保護法 Yūsei hogohō), initially contained meaningful restrictions on abortion, but was soon reworded to be more permissive.22 Thereafter, abortion became steadily easier and more common. As Lynn D. Wardle writes:

In [...] 1949, several amendments were made to the EPL [Eugenics Protection Law]. The most profound change was that the health exception was enlarged: abortion would be permitted for “a mother whose health may be seriously affected by the continuation of the pregnancy or subsequent delivery because of physical or economic reasons.” The adoption of a broad economic justification for abortion changed Japanese substantive abortion law from restrictive to permissive. Thus, June 24, 1949 [i.e., when the updated EPL was passed], marks the point of adoption of liberal “grounds” for abortion in Japan. It is said that the reason for this “economic clause” was that black market abortions continued to flourish after the original EPL was enacted, most of which were motivated by economic reasons. [...] Since 1952, abortion has been available in Japan on the very liberal ground of “economic hardship,” upon the determination of a single physician that the abortion is appropriate under law.23

That the title of Japan’s abortion legislation contained the word “eugenics” is probably jarring to most readers today, because the term is tarred by its association with the murderous “final solution” attempted by the National Socialist regime in Germany. It may also seem incongruous that Japan passed such a law under American occupation. After all, the U.S. had led the Allies in defeating Hitler’s Germany in May of 1945, just three years before the U.S. helped Japan pass a revised eugenics program of its own. However, the identification of eugenics with Nazism conceals eugenics’ much earlier and broader reach. In fact, eugenics as a “science” got its start, not in Germany, but in the United States.24

Although often overlooked today, the United States was the world leader in eugenics studies during the prewar period. American Charles Davenport (1866-1944), for example, founded the Eugenics Record Office in 1910, and appointed Indiana schoolteacher and sociologist Harry Hamilton Laughlin (1880-1943) as director.25 Laughlin was idolized in Nazi Germany—the University of

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24 The ideological roots of eugenics go further back, though. A very useful timeline of eugenicist thought is in Shinagawa Shintarō, “Yūsei hogohō ni tsuite kaiko suru,” Igaku to Shakai, no. 26 (Dec., 2004), 12-23.

Heidelberg awarded him an honorary Doctorate in Medicine in 1936—for his research on breeding a superior white race. Japan's 1948 law mirrors much of the 1933 Law for the Prevention of Hereditarily Diseased Offspring (Gesetz zur Verhütung erkranken Nachwuchses), an early Nazi law that began the implementation of the National Socialists’ program for the purification of the German Aryan racial stock through abortion and forced sterilization. This German law was modeled on the writings of Harry Laughlin, thus making the United States doubly influential in bringing about Japan’s own modern eugenics program.26

While eugenics as an academic discipline is largely an American invention, it should be noted that eugenics did not spring fully formed from American soil. In many ways, eugenics was an outgrowth of Darwinism, and in particular the key Darwinian idea of natural selection as the means by which evolution advances and generates species. This Darwinist biological theory in turn is a rehashing of the Hegelian dialectic, which was an attempt by G.W.F. Hegel (1770-1831) to break the epistemological impasse occasioned by Immanuel Kant’s (1724-1804) distinction between the noumenon and the phenomenon. The Hegelianism that followed took on two distinct aspects: Geist Hegelianism, or Hegelianism proper (that is, the Hegelianism expounded by Hegel himself), and the materialist Hegelianism of Charles Darwin (1809-1882) and Karl Marx (1818-1883). In this sense, eugenics is little more than a Marxism of the body, an attempt to ground the human person in the flesh and blood through notions of “race”. As in neo-Darwinian social theory, this genetico-Marxism sees human beings as forming groups pitted against one another along ethnic lines.

It was under the guise of social and biological Darwinism that eugenicist genetico-Marxism first came to Japan. The pioneer of eugenicist thought in Japan seems to have been German Franz Martin Hilgendorf (1839-1904), who introduced evolutionary theory to Tokyo Medical School in 1873.27 German physician Erwin von Bälz (1849-1913), an ayatoi gaikokujin (御雇外国人 ‘foreign advisor’) teaching at the Medical Academy of Tokyo from 1876, helped promote the idea of a Yamato race, while American zoologist Edward S. Morse (1838-1925), who taught at Tokyo Imperial University from 1877, “was among the first to introduce biological evolution to Japan”.28

One year before Bälz’s arrival in Tokyo, Japanese intellectual Fukuzawa Yukichi (福澤諭吉) (1835-1901) published An Outline of a Theory of Civilization (文明論之概略 Bunmeiron no gairyaku), in which he followed a typical neo-Hegelian pattern of dividing the world into civilization types and then ranking them from least to most advanced. Fukuzawa’s ideas set off a long debate over race in Japan, with some, such as Fukuzawa’s mentee Takahashi Yoshio (高橋義雄) (1863-1937), agreeing with Fukuzawa that the “yellow” race was inferior and that intermarriage with “whites” would improve it.29 Others, such as politician Katō Hiroyuki (加藤弘之) (1836-1916), argued that Japanese were not inferior racially or otherwise, and that intermarriage would alter the Japanese race beyond recognition.30 Eventually, social Darwinist Herbert Spencer (1820-1903), responding to a request by Count Kaneko Kentarō (金子堅太郎) (1853-1942), settled the question in an 1892 letter in which he came down on the side of Katō Hiroyuki in the latter’s adoption of Galtonian ideas of heredity,31 and of racial integrity more generally, in recommending against “miscegenation” with other races.32

The debate over eugenics in Japan continued to be fraught with racial overtones when American birth control advocates began arriving in the islands. Most notorious was American Margaret Sanger (1879-1966), who saw eugenicist birth control as a method

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26 For a complication of the National Socialist connection, see Matsubara Yōko, “Kagakushi nyūmon: Yūsei hogobō no rekishihō saikentō,” Kagakushi Kenkyū (June, 2002), 104-106.
29 See, e.g., Takahashi, Nihon jinshu kairyōron (Jiiji Shinpōsha, 1884).
for preventing the proliferation of those of the “lesser races” whom Sanger characterized as “human weeds.” This Sangerian strain of eugenics was situated within the larger trend toward neo-Malthusianism at the turn of the twentieth century, as population control theorists, largely influenced by urban overcrowding and its association with poverty and disease, began to advance a biopolitics of austerity (for the “inferior races”) as a way to solve the demographic dilemmas of the emerging nation-states.

Katō Shidzue (1897-2001), the “Margaret Sanger of Japan,” was instrumental in bringing Sanger and her ideas to Japan. Sangerian birth control politics were particularly well received among feminists such as Yosano Akiko (与謝野晶子) (1878-1942), who “lamented that the ryosai-kenbo [(良妻賢母) “good wife, wise mother”] ideology had driven Japanese women to bear too many children at the expense of their own health, personal lives, and the well-being of their children.” Other feminists, however, took aim directly at capitalism. Socialist Yamakawa Kikue, for example, opined that birth control would “[liberate] working women suffering from the double oppression of patriarchy and capitalism.”

Christian socialist Abe Isoo (安部磯雄) (1865-1949), for his part, waffled but eventually came down in favor of birth control.

However, these neo-Malthusian and socialist ideals became less tenable as Japan moved out to confront a steadily worsening geopolitical situation. After its successful intervention in regional disturbances in the First Sino-Japanese War (1894-95) and Russo-Japanese War (1904-05) and the concomitant annexation of the Korean peninsula and Taiwan, Japan was a full-fledged expansionist power, eventually participating in World War I and the Siberian Intervention on the side of the colonialist Allies. The mid-WWI explosion of Bolshevism greatly alarmed many in the Japanese government and military, and Japan began encroaching deeper into Manchuria to form a buffer zone between Japan and the Soviet Union, and also a way to increase agricultural productivity for future wars while shoring up its program of economic autarky. All of this required manpower, and the Japanese government actively encouraged married couples to have as many children as possible.

There was also a racialist component to Japan’s expansion, echoing the eugenicist-expansionist biopolitics of the heyday of Euro-American neocolonialism. In 1925, Japanese Protestant pastor and Japan Socialist Party co-founder Kagawa Toyohiko (贺川豊彦) (1888-1960) argued in favor of the forced sterilization, on eugenics grounds, of Japan’s poor, mentally disabled, alcoholics, and syphilis patients. Other prominent eugenicists, often in the name of overcoming Caucasian influence in Asia, advocated systematic discrimination against the hisabetsu burakumin and the Ainu and the strengthening of the pure Japanese race. For example, Nagai Hisomu (永井潜) (1876-1957), a Tokyo University medical doctor, was the inaugural chairman of the Nippon Minzoku Eisei Gakkai (Japan Society of Race Hygiene). Like Margaret Sanger, who founded Planned Parenthood in the United States, Nagai referred to undesirable racial specimens as “weeds.” Nagai’s influence was crucial to the 1943 adoption of a report by the

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34 Takeuchi-Demirci, Contraceptive Diplomacy, op. cit., 25.
35 Ibid.
Ministry of Health and Welfare, *An Investigation of Global Policy with the Yamato Race as Nucleus*, which called for racial purity for the Japanese as empire extended into China and beyond.\(^*\)

Race was also a key factor in the American run-up to the Pacific War. As John Dower lays out in *War Without Mercy*, and as Takashi Fujitani elaborates in *Race for Empire*, the Pacific War was largely a vicious race war, with the Anglo-Saxon Americans spewing far more racial venom than their Japanese counterparts.\(^*\) From the “gentlemen’s agreement” of 1907 and the 1924 exclusion act\(^*\) to the post-Pearl Harbor roundup and incarceration of Japanese-Americans in concentration camps under President Franklin D. Roosevelt’s Executive Order 9066,\(^*\) the war against the sole non-white colonial power was the product of a long and unwavering trajectory of racial animosity towards Japan.

This view of the Japanese as racially inferior was, if anything, ratcheted up by the Occupation position with which the American Occupation authorities after war hopes of avoid animosity towards Japan.

Whatever the reasons may have been, the Eugenics Protection Law, far from protecting anyone, led to a massive loss of unborn lives in Japan:

Christopher Tietze, a statistics expert with many years of experience in the pro-abortion movement, reported in 1983 that a small study in Tokyo revealed that 61% of abortions were “repeat abortions” during the period from 1967 to 1972. Furthermore, Tietze wrote that “adjustment to the age distribution of all abortions in Tokyo (in 1970) raises the proportion of repeaters to sixty-eight percent...” Four years earlier, Tietze reported that a 1971 study in Japan revealed that 45% of all Japanese women ages twenty to forty-nine and 50% of all Japanese women ages thirty-five to forty-nine had at least two abortions, and 32% and 34%, respectively, had at least three abortions. Samuel Coleman cites estimates that the average Japanese woman experiences two abortions during her married life.\(^*\)

It was with this convoluted legacy of racism, neo-Darwinism, colonialism, imperialism, and sexual violence that Dr. Kikuta was contending when he placed his advertisements in the Ishinomaki newspapers in the spring of 1973. Revising the koseki law meant revisiting the Japanese eugenics laws, and this, in turn, meant reliving the biopolitical revolution that had accompanied Japan’s turbulent century since Fukuzawa Yukichi’s 1875 treatise on the survival of the civilizational fittest. For the next hundred years, Japan’s population was subordinated to statism, whether it was the Japanese drive to expand territory prior to 1945 or grow the domestic economy thereafter, or the American need to control Japan during the Cold War. Dr. Kikuta was trying to flip

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\(^{15}\) The Immigration Act of 1924 (Johnson-Reed Act) (Pub.L. 68-139, 43 Stat. 153)

\(^{16}\) February 19, 1942


this paradigm and put the population above the state.

Dr. Kikuta's proposal to change the adoption laws thus constituted an explicit and radical rejection of the policies of the past. His proposed solution was at least equally radical: he advocated moving from a "centripetal" (kyūshinteki na) love, such as found in a preference for consanguinity (ketsuenshugi)—a phenomenon Dr. Kikuta saw manifested in the internecine Genpei War (1180-1185) as well as in the emperor system overall, and also in the plight of the hisabetsu burakumin—toward a "centrifugal" (enshinteki na) love in which "all human beings are brothers, and any parent can raise any child." This biopolitical universalism was antithetical to the statist preference for consanguinity (brothers, and any parent can raise any child). Thus constituted an explicit and radical rejection of the policies of the past. His proposed solution was at least equally radical: he advocated moving from a "centripetal" (kyūshinteki na) love, such as found in a preference for consanguinity (ketsuenshugi)—a phenomenon Dr. Kikuta saw manifested in the internecine Genpei War (1180-1185) as well as in the emperor system overall, and also in the plight of the hisabetsu burakumin—toward a "centrifugal" (enshinteki na) love in which "all human beings are brothers, and any parent can raise any child." This biopolitical universalism was antithetical to the statist preference for consanguinity (brothers, and any parent can raise any child).

Dr. Kikuta was censured for his activism and his license to practice medicine was revoked. He sued to have these measures overturned and was eventually reinstated. But there is an irony in this, because while Dr. Kikuta fought vigorously in the courts, he viewed his own actions as going far beyond the positive law. He was not trying to disentangle adoption laws and policies from the nettlesome past but, rather, to transcend state prerogatives entirely whenever it came to protecting children. For Dr. Kikuta, it was ultimately a question of equity, whether adherence to the law at the expense of human life is more just than protecting human life in violation, even defiance, of the law. As Motoyama Atsushi writes:

[Dr. Kikuta’s] case threw a weighty proposition at us: whether illegal actions (falsifying a certificate and submitting a false certificate) were permissible if they were done for the sake of justice (protecting the life of a child).

Or, as Dr. Kikuta explained:

Children are killed because there is no system for taking them in. At the same time, there are three million husband-and-wife households who want [to adopt] children. Having these people raise children as their own is particularly effective medicine against infanticide. That’s why I intervened [and forged birth certificates] for 100 children [saying that they were the blood children of their adoptive parents]. I wrote out forged birth certificates, which means that I broke the law. But if you put the law and human life in the balance scales, which one is heavier?

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