

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 Shimbun* and the *Ishinomaki Shimbun*.¹ 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* (菊田医師事件), 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.² 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.³ Overseas newspapers, including the *New York Times*,⁴ 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.⁵ 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: 2-5402⁶

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 Shimbun*, 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."⁷ 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.⁸ Dr.

¹ Konaka Yōtarō, "Shin-kenri no tame no tōsō: Kikuta ishi jitsuko assen jiken, ketsuenshugi ni idomu," *Hōgaku Seminar Best Selection* no. 320 (vol. 25, no. 10) (October, 1981), 54.

² Specifically, Civil Code Art. 817, nos. 2, 3, 4, 5, 6, 7, 9, & 10. See Motoyama Atsushi, "'Oyako' wo produce," *Hōgaku Seminar Best Selection* no. 614 (Feb., 2006), 101, citing Uchida Takashi, *Minpō IV: Shinzoku, sōzoku* (revised and updated version) (Tokyo Daigaku Shuppankai, 2004), 277, and Ninomiya Shūhei, *Kazokuhō 2E* (Tokyo: Shinseisha, 2005), 211.

³ Dr. Kikuta testified before the Committee on Judicial Affairs (Hōmu Inkaï) on April 24, 1973. Konaka Yōtarō, "Shin-kenri no tame no tōsō," op. cit., 55.

⁴ "Japan Babies: Falsified Birth Papers Save the Unwanted," *New York Times*, Sep. 28, 1979, A28, cited in Yoshida Kashimi, "Kikuta ishi jiken to Yūsei hogohō kaisei mondai: 'umu jiyū' wo megutte," *Igaku Tetsugaku, Igaku Rinri* vol. 29 (2011), 53-62.

⁵ Prof. Chiba had produced a 1978 film on the Albanian nun called "Mother Teresa to sono sekai". Personal communication from Pastor Tsujioka Kenzō to author, May, 2016.

⁶ Konaka Yōtarō, "Shin-kenri no tame no tōsō," op. cit., 54.

⁷ Konaka Yōtarō, "Shin-kenri no tame no tōsō," op. cit., 54.

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.⁹ 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.¹⁰

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.¹¹ 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.¹²

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.¹³ Pastor Tsujioka had founded Chiisana Inochi wo Mamoru Kai (小さいのちを守る会) (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.¹⁴

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.¹⁵ 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

⁸ See, e.g., Lynn D. Wardle, “Crying Stones: a comparison of abortion in Japan and the United States,” *New York Law School Journal of International and Comparative Law*, vol. 14, nos. 2 & 3, 1993, 183-259. See also Akira Hayami, “Population Change,” in Marius B. Jansen and Gilbert Rozman, eds., *Japan in Transition: From Tokugawa to Meiji* (Princeton, NJ: Princeton University Press, 1986), cited in Wardle, “Crying Stones,” op. cit.

⁹ See Konaka Yōtarō, “Shin-kenri no tame no tōsō,” op. cit., 56. See also the novel, *Coin Locker Babies*, by Murakami Ryū (1980; English translation 1995), and Kikuta Noboru, “Kikuta ishi jiken to tokubetsu yōshi seido: ‘Minpō tō ichibu kaiseihō’ seiritsu ni atatte no oboegaki,” *Hōgaku Seminar Best Selection*, no. 395 (vol. 32, no. 11) (1987), 124.

¹⁰ This is not to say that there was no pro-life movement in Japan in the 1970s. See, for example, Tsuchiya Atsushi, “Nippon shakai ni okeru ‘taiji wo meguru seimeishugi’ no genryū,” *Sociologos* vol. 28 (2004), 96-114.

¹¹ Personal communication from Pastor Tsujioka Kenzō to the author, May, 2016.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Konaka Yōtarō, “Shin-kenri no tame no tōsō,” op. cit., 56. For racial element in adoption procedures, see Yoshida Etsuko, “Dairi shussan to onna no shiawase,” *Law Angle* 29, in *Hōgaku Seminar*, no. 560 (August, 2001), frontispiece.

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*.¹⁶ 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.¹⁷

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.¹⁸ 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*).¹⁹ 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*.²⁰ 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

¹⁶ Roger Goodman, “A child in time: changing adoption and fostering in Japan,” in Joy Hendry, *Interpreting Japanese Society: Anthropological Approaches*, 2E (London: Routledge, 1998), 151 ff.

¹⁷ See Konaka Yōtarō, “Shin-kenri no tame no tōsō,” op. cit., 57.

¹⁸ Kikuta Noboru, “Kikuta ishi jiken to tokubetsu yōshi seido: ‘Minpō tō ichibu kaiseihō’ seiritsu ni atatte no oboegaki,” *Hōgaku Seminar Best Selection*, no. 395 (vol. 32, no. 11) (1987), 123.

¹⁹ See, e.g., Koyanagi Koto, “Nippon josanshi,” in *Josanpu Zasshi* (vol. 1, no. 1) (1952), 23-25.

²⁰ See, e.g., Japanese Supreme Court record for July, 2005, revisiting a “straw adoption” case from 1943. Saihan, Hei 17-7-22 han, “Ta,” no. 1189, 173, cited in Motoyama Atsushi, “Oyako’ wo produce,” op. cit., 103. See also Ishikawa Toshio, “Kyōgi no chakushutsushi shussei todoke no kōryoku,” *Hōgaku Seminar Best Selection* no. 226 (1974), 105.

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 people 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

²¹ Ibid. See, e.g., Nakagawa Takao, "Yōshi hōsei no shintenkaï: 'Minpō no ichibu wo kaisei suru hōritsuan yōkōan' wo yomu," *Hōgaku Seminar Best Selection*, no. 389 (vol. 32, no. 5) (1987), 14-17.

²² See Law No. 156 of 1948, art. 14, reprinted in *Eugenic Protection Law in Japan*, ser. No. 68 (Ministry of Health and Welfare, Institute of Population Problems, Tokyo, Japan), March 1, 1969, cited in Wardle, "Crying Stones," op. cit., 195, fn. 65.

²³ Wardle, "Crying Stones," op. cit., 196, citing Takashi Wagatsuma, "Induced Abortion in Japan," in Minoru Muramatsu, ed., *Basic Readings on Population and Family Planning in Japan*, 3E (Tokyo: Japanese Organization for International Cooperation in Family Planning, 1985) and Samuel Coleman, *Family Planning in Japanese Society*, 19 (Princeton, NJ: Princeton University Press, 1983).

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

²⁵ See, e.g., Elof Axel Carlson, "The Hoosier Connection: Compulsory Sterilization as Moral Hygiene," in Paul A. Lombardo, ed., *A Century of Eugenics in America: From the Indiana Experiment to the Human Genome Era* (Bloomington: Indiana University Press, 2011), Stefan Kühl, *The Nazi Connection: Eugenics, American Racism, and German National Socialism* (Oxford: Oxford University Press, 1994), Harry H. Laughlin, *Eugenical Sterilization in the United States* (Chicago: Psychopathic Laboratory of the Municipal Court of Chicago, 1922), *Buck v. Bell* Documents, Paper 26, and Alexandra Minna Stern, *Eugenic Nation: Faults and Frontiers of Better Breeding in Modern America* (Berkeley: University of California Press, 2005), all cited in Toyoda Maho, "Amerika senryōka no Nippon ni okeru seishoku no kanri: Yūsei hogohō no funin shujutsu/danshu," *Amerikashi Kenkyū* (36) (2013), 79.

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 erbkranken 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 genetical-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 genetical-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 *oyatoi 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 (福沢諭吉) (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

²⁶ For a complication of the National Socialist connection, see Matsubara Yōko, "Kagakushi nyūmon: Yūsei hogohō no rekishizō no saikentō," *Kagakushi Kenkyū* (June, 2002), 104-106.

²⁷ Yamazaki Kiyoko, "The Birth of Genetics and Eugenics," in Karen J. Schaffner, ed., *Eugenics in Japan* (Fukuoka: Kyushu University Press, 2014), 16.

²⁸ Karen J. Schaffner, "Introduction," in Schaffner, ed., *Eugenics in Japan*, op. cit., 7.

²⁹ See, e.g., Takahashi, *Nihon jinshu kairyōron* (Jiji Shinpōsha, 1884).

³⁰ Schaffner, ed., *Eugenics in Japan*, op. cit., 8-9.

³¹ Sir Francis Galton (1822-1911) invented the term "eugenics". See *Inquiries into Human Faculty and Its Development* (London: MacMillan, 1883).

³² Schaffner, ed., *Eugenics in Japan*, op. cit., 10-11.

for preventing the proliferation of those of the “lesser races” whom Sanger characterized as “human weeds”.³³ 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.³⁴

Katō Shidzue (1897-2001), the “Margaret Sanger of Japan,” was instrumental in bringing Sanger and her ideas to Japan.³⁵ 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.”³⁶ 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.”³⁷ Christian socialist Abe Isoo (安部磯雄) (1865-1949), for his part, waffled but eventually came down in favor of birth control.³⁸

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.³⁹

There was also a racialist component to Japan’s expansion, echoing the eugenicist-expansionist biopolitics of the heyday of Euro-American neo-colonialism. In 1925, Japanese Protestant pastor and Japan Socialist Party co-founder Kagawa Toyohiko (賀川豊彦) (1888-1960) argued in favor of the forced sterilization, on eugenics grounds, of Japan’s poor, mentally disabled, alcoholics, and syphilis patients.⁴⁰ 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).⁴¹ Like Margaret Sanger, who founded Planned Parenthood in the United States, Nagai referred to undesirable racial specimens as “weeds”.⁴² Nagai’s influence was crucial to the 1943 adoption of a report by the

³³ Margaret Sanger, “High Lights in the History of Birth Control,” *The Thinker* (Oct., 1923), 59-61.

³⁴ Aiko Takeuchi-Demirci, *Contraceptive Diplomacy: Reproductive Politics and Imperial Ambitions in the United States and Japan* (Stanford: Stanford University Press, 2018), 25-26. See also Kolson Schlosser, “Malthus at mid-century: neo-Malthusianism as bio-political governance in the post-WWII United States,” *cultural geographies*, vol. 16 (2009), 465-484.

³⁵ See Ayako Kano, *Japanese Feminist Debates: A Century of Contention on Sex, Love, and Labor* (Honolulu: University of Hawaii Press, 2018), and Elise K. Tipton, “Ishimoto Shizue: The Margaret Sanger of Japan,” *Women’s History Review* vol. 6, no. 3 (1997).

³⁶ Takeuchi-Demirci, *Contraceptive Diplomacy*, op. cit., 25

³⁷ *Ibid.*

³⁸ See, e.g., Dag Stenvoll, “Contraception, Abortion, and State Socialism: Categories in Birth Control Discourses and Policies,” *Kansai University Review of Law and Politics* no. 28 (Mar., 2007), 33-49, but also Angus McLaren, “Sex and Socialism: The Opposition of the French Left to Birth Control in the Nineteenth Century,” *Journal of the History of Ideas* vol. 37, no. 3 (Sept., 1976), 475-92.

³⁹ See, e.g., “Family Planning,” in *Kodansha Encyclopedia of Japan* (1983), cited in Wardle, “Crying Stones,” op. cit., 188 and 194. See also Yoshida Toshihiro, *Hito wo ‘shigen’ to yonde ii no ka: ‘jinteki shigen’ no hassō no ayasusa* (Tokyo: Gendai Shokan, 2010), esp. Ch. 4, “Yūsei shisō to sabetu to ‘jinteki shigen’.”

⁴⁰ Kawashima Sachio, “Eugenic Thought of Abe Isoo, Social Reformer in Japan,” in Schaffner, ed., *Eugenics in Japan*, op. cit., 52.

⁴¹ Chūman Mitsuko, “Eugenics: Its Spread and Decline,” in Schaffner, ed., *Eugenics in Japan*, op. cit., 108.

⁴² Christopher W.A. Szpilman, “Fascist and Quasi-Fascist Ideas in Interwar Japan, 1918-1941,” in E. Bruce Reynolds, ed., *Japan in the Fascist Era* (New York: Palgrave Macmillan, 2004), 79-80

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.⁴³

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.⁴⁴ From the “gentlemen’s agreement” of 1907 and the 1924 exclusion act⁴⁵ to the post-Pearl Harbor roundup and incarceration of Japanese-Americans in concentration camps under President Franklin D. Roosevelt’s Executive Order 9066,⁴⁶ 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 authorities after war’s end. Indeed, it was partly in order to prevent miscegenation that Crawford Sams (1902-1994), the de facto surgeon general of Japan under Gen. Douglas MacArthur’s (1880-1964) occupation of the islands from 1945 to 1952, worked with the Japanese authorities to pass the 1948 Eugenics Protection Law. The Japanese side, for its part, wanted to prevent mixed-race children from being born in Japan (particularly to black fathers, a position with which the American Occupation authorities concurred).⁴⁷ The Americans were also anxious to hide the evidence of the mass rape of Japanese women by Soviet Red Army soldiers in the hopes of avoiding a direct confrontation with Stalin and triggering World War III.⁴⁸

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.⁴⁹

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

⁴³ See, e.g., Fujino Yutaka, *Nippon fascism to yūsei shisō* (Kamogawa Shuppan, 1998) and Matsubara Yōko, “Bunka kokka’ no yūseihō,” *Gendai Shisō* vol. 25, no. 4 (April, 1997), 8-21, both cited in Yamamoto Kiyoko, “Kindai Nippon ni okeru yūsei seisaku to kazoku seido ni kansuru rekishi shakaigakuteki kōsatsu,” *Sonoda Gakuen Joshi Daigaku Ronbunshū*, no. 37 (Dec., 2002), 99-110.

⁴⁴ John Dower, *War Without Mercy: Race and Power in the Pacific War* (New York: Pantheon, 1987) and Takashi Fujitani, *Race for Empire: Koreans as Japanese and Japanese as Americans during World War II* (Berkeley: University of California Press, 2011)

⁴⁵ The Immigration Act of 1924 (Johnson-Reed Act) (Pub.L. 68-139, 43 Stat. 153)

⁴⁶ February 19, 1942

⁴⁷ See, e.g., Yasuhiro Okada, “Race, Masculinity, and Military Occupation: African American Soldiers’ Encounters with the Japanese at Camp Gifu, 1947-1951,” *The Journal of African American History* vol. 96, no. 2 (Spring, 2011), 179-203.

⁴⁸ See, e.g., Shimokawa Masaharu, *Bōkyaku no Hikiageshi: Izumi Sei’ichi to Futsukaichi Hoyōsho* (Fukuoka: Genshobō, 2017), esp. 276 and 310-12. See also Sawada Kayo, “Beigun tōjika Okinawa no shusseiryoku tankan to seishoku no seijigaku: Yūsei hogohō no ‘haishi’ to josanpu no kōshō,” *Okinawa Kokusai Daigaku Shakai Bunka Kenkyū*, vol. 11, no. 1 (March, 2008), 1-22.

⁴⁹ Wardle, “Crying Stones,” op. cit., 223-24, citing Christopher Tietze, *Induced Abortion: A World Review* 5E (New York: Population Council, 1983), 61 citing J. Miyamoto, “Background Considerations on Induced Abortion,” *Journal of International Fertility*, 18 (1973), and Samuel Coleman, *Family Planning in Japanese Society* (Princeton, NJ: Princeton University Press, 1983).

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".⁵⁰ This biopolitical universalism was antithetical to the statist approach theretofore, and as such led to upheavals seemingly far out of proportion to two business card-sized advertisements in small-market newspapers.

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.⁵¹ 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 and abortion 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).⁵²

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].⁵³ 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?⁵⁴

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⁵⁰ Konaka Yōtarō, "Shin-kenri no tame no tōsō," op. cit., 57.

⁵¹ For an overview of the Kikuta cases, see, e.g., "Iwayuru akachan assen wo shita koto wo riyū ni Yūsei hogohō 14 jō 1 kō ni yoru shitei ishi no shitei wo tekka suru koto ga dekiru to saretai jirei," *Hanrei Times* no. 706 (October 25, 1989), 348-49. See also "67: Shikkō teishi mōshitae jiken," *Gyōsei jiken saiban reishū*, vol. 30, no. 7 (1979), 1246 (22) ff., "62: Igyō teishi shobun torikeshi tō seikyū jiken," *Gyōsei jiken saiban reishū*, vol. 34, no. 6 (1979), 1055 (53) ff., "30: Igyō teishi shobun torikeshi tō seikyū kōso jiken," *Gyōsei jiken saiban reishū*, vol. 37, no. 3 (1983), 546 (290) ff., "25: Yūsei hogohō shitei i no shitei torikeshi shobun torikeshi tō seikyū kōso jiken," *Gyōsei jiken saiban reishū*, vol. 36, no. 3 (1982), 457 (205) ff., and "40: Yūsei hogohō shitei i no shitei torikeshi shobun torikeshi tō seikyū jiken," *Gyōsei jiken saiban reishū*, vol. 33, no. 2 (1982), 692 (368), ff.

⁵² Motoyama Atsushi, "'Oyako' wo produce," op. cit., 103, fn. 14.

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