
‘Embedded Racism’ in Japanese migration policies: Analyzing Japan’s ‘revolving door’ work visa regimes under Critical Race Theory

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Abstract: *Critical Race Theory (CRT), grounded in American legal theories of power and dominance, has been increasingly applied to other countries to analyze racialised power relationships between social groups. Applying CRT to Japanese society, where racism has been officially denied as a factor in the systematic differentiation of peoples into a dominant majority and disenfranchised minorities, nonetheless reveals embedded racialised paradigms behind visa regimes, i.e., allocating privilege to foreign workers by bloodline. This research focuses on Japan’s work visas, where biologically-based conceits have favored ‘Wajin’ (i.e., Japan’s dominant social group with ‘Japanese blood’) over ‘Non-Wajin’, even when the Wajin (as Nikkei Japanese diaspora) were not citizens – e.g., granting them longer-term visas, job mobility, labor-law rights, and even subsidized repatriation. This research demonstrates that the broader lessons of CRT and Whiteness Studies may be expanded and applied to a society without a white majority.*

Keywords: *Critical Race Theory; racism; Japan; work visa regimes; Wajin and Whiteness Studies.*

1. Introduction

Critical Race Theory (CRT) sees racism as a study of power relations within a society, particularly in terms of how people are rendered into hierarchical categories of power, social dominance, and wealth acquisition (cf. Delgado and Stefancic 2001; Crenshaw *et al.* 1995). Fundamental theories synthesizing economic and postcolonial arguments have a long history, going back to W.E.B. DuBois (1905, pp. 233-4), who linked the abolition of American slavery with the convergence of white economic and postcolonial interests (as opposed to the narrative of American society being convinced by ‘moral good’ and ‘just society’ arguments). CRT first

appeared in American academic legal studies in the 1970s, in response to perceived shortcomings within the American Civil Rights Movement, grounded in minority frustrations at being underrepresented within American public discourse and academia (Crenshaw *ibid.*, pp. xxii-xxvii). Incorporating various criticisms from Ethnic Studies, Women's Studies, Cultural Nationalism, Critical Legal Studies, Marxism and Neo-Marxism, and Internal Colonial models, CRT has expanded out of deconstructing legal and judicial processes and into other fields, including deconstructions of education, public discourse, gender, ethnicity, class and poverty, globalization, immigration and international labour migration, hate speech, the meritocracy, and identity politics (Solorzano and Yosso 2001). CRT has also been expanded beyond America's borders to examine postcolonialism and power structures in other societies, including Great Britain, Israel, and Europe (*cf.* Delgado and Stefancic 2012; Möschel 2011; Sakata 2012). This research will similarly expand CRT into Japan.

Although the Government of Japan (GOJ) officially denies the existence of racial discrimination (*jinshu sabetsu*) within its borders,¹ in terms of analyzing the racialised structural relationships of social power, CRT may be applied to any society. CRT starts from the fundamental standpoints (*cf.* Delgado and Stefancic 2001, 2012; Matsuda 1987) that, *inter alia*, 1) 'race' is purely a social construct without inherent physiological or biological meaning, so it is open to the same perceptual distortions and manipulations as any other social convention or ideology; 2) the prejudicial discourses about human categorization and treatment are so hegemonic that they become part of the 'normal' in society; that is to say, so embedded in the everyday workings of society that they give rise to discriminatory actions (both conscious and unconscious), resulting in discriminatory public policies and laws regardless of policymaker intentions; 3) such illusory perceptions of 'race' are in fact the central, endemic and permanent driving force behind organizing the scaffolding of human interaction, categorization, and regulation, both at the individual and more poignantly the legislative level; 4) 'race' thus fundamentally influences, even grounds, the formation, enforcement, and amendment process of a

society's laws; 5) those who best understand this dynamic and its effects are the people disadvantaged within the racialised structure of power and privilege, and thus are necessarily excluded from the discourse regarding the organization of society; and, consequently, 6) one must also recognize the power of minority narratives as a means to allow more minority voices and alternative insights into the discussion, to expose the realities present for the unprivileged and underprivileged.²

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

Although these analytical paradigms have been applied primarily to the American example, this research argues that similar dynamics can be seen in the Japanese example by substituting 'white' with 'Japanese' (Levin 2008). However, it is not an exact match: 'Japanese' as a term is confusing, as it can mean both 'a Japanese citizen' (a legal status which

can include people of different races and ethnic backgrounds), and 'a Japanese by blood' (a racialised paradigm that can include, as we shall see below, people who do not have Japanese citizenship, such as *Nikkei* imported workers from South America). The term also ignores the people who are 'Japanese' and have citizenship, not to mention acculturation and phenotype by which they can normally 'pass' as 'Japanese,' yet suffer from discrimination by descent and social origin (e.g., the *Burakumin* historical underclass, the indigenous peoples of Hokkaido and Okinawa, or Japanese children of international relationships (Arudou 2006)). So a new term is necessary, called 'Wajin' for the purposes of this research.

2. 'Wajin': The dominant majority group in Japan

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

This research will use the term *Wajin* for two reasons: 1) it is a legitimate, non-pejorative word in modern Japanese language long used to describe Japanese people, even before Japan as a nation-state (or proto-state) began colonizing others; 2) it enables the author to define its meaning under new and flexible paradigms. Just as the term 'white' can be made useful as both an indicator of social status and as a visual identifier/enforcer of those who have that social status (and allow for flexibility of 'shades of white' as people attempt to 'pass' as 'white' in order to gain power or privilege), *Wajin* will also underscore the performative aspect of racialized differentiation, a) allowing for visual differentiation between people who 'look Japanese' and 'do

not look Japanese'; and b) allowing for 'shades' as people 'pass' or 'don't pass' as 'Japanese', finding their status, privileges, and immunities affected when they are suddenly revealed as 'Non-Wajin'.

3. Visa regimes and the lack of constitutional rights for non-citizens in Japan

All sovereign nation-states distinguish between who is a 'member' of society (i.e., a citizen) and who is not (i.e., a foreigner), offering different rights and privileges (e.g., the right to work certain jobs, the right to vote, the right to own property) to each category as per nation-state policy (*cf.* Balibar and Wallerstein 1991; Miles 1993; Sharma 2006). In Japan's case, this is in the form of visas officially called 'Status of Residence' (*zairyū shikaku*), where the GOJ grants official permission to non-citizens to stay within their borders as guests or temporary/conditional residents.

However, Japan adds another layer of systematic disenfranchisement for non-citizens through its visa regimes. As law professor Colin P.A. Jones (2011) writes:

So what rights do foreign residents have under the Constitution? Well, according to the Supreme Court, they are entitled to all the same rights as Japanese people, except for those which by their nature are only to be enjoyed by Japanese people...

This Delphic guidance comes from a very important 1978 Supreme Court ruling in what is known as the McLean Case. Ronald McLean came to Japan as an English teacher in 1969 but quickly got involved in the local anti-Vietnam War protest movement. When he sought to renew his visa, the Ministry of Justice refused. He challenged the denial in court, asserting that he was being punished for engaging in lawful political activity, exercising his rights to free speech, assembly and so forth.

He lost (of course), and although the case is supposedly significant because in it the nation's highest court enunciates the general principle that foreigners enjoy some of the rights enumerated in the Constitution, it does so with a caveat: that even those rights are limited by the scope of the regime of immigration laws which allow them to enter, reside and work in Japan.

Rooted in principles of customary international law holding that countries are free to deny entry to nonnationals, this reasoning potentially renders all rights enjoyed by non-Japanese in Japan subject to legislative restraints imposed through their visa status (constitutional rights, of course, are supposed to trump legislation). Not only that, but since the immigration statute at issue in the McLean case granted broad leeway to the minister of justice in deciding whether to renew visas, whatever constitutional rights he did enjoy were limited by that administrative discretion, a discretion the court found not to have been abused.

In summary, therefore, the McLean case says that non-Japanese have constitutional rights that may be subject to both statutory limitations and administrative discretion. Or as some might be inclined to put it, they have constitutional rights that are not actually constitutional.

This excerpt illustrates the arbitrary degree of power that Japan's administrative branch has through its visa regimes to subordinate and deprive non-citizens of fundamental constitutional rights. However, Japan's visa regimes also have a racialised hierarchy within that subordinated status: selective advantages are given to people with 'Japanese ancestry' in the form of 'Japanese blood', i.e., the *Nikkei*. Let us consider the public-policy use of border control to favor Wajin blood ties (Immigration Bureau 2012):

4. Permanent Residency vs. 'Returnee' Permanent Residency

Similar to other countries' visa regimes (such as America's 'Green Card'), Japan's Permanent Residency (*ejūken*, hereinafter PR) grants recipients permission to stay in Japan indefinitely without restrictions on employment. PR is generally awarded (at the discretion of the Immigration Bureau (*nyūkoku kanrikyoku*) within three to five years of near-continuous residence if the applicant is married to a Japanese citizen, or after about ten years if the recipient is not married to a Japanese citizen (Higuchi and Arudou (2008: 20-33; 56-61). That said, anecdotal evidence (see Note 38 below) suggests there is a degree of latitude for arbitrary decision making, with no right of appeal or review if rejected.³Racialised conceits become visible when the PR is

compared to Japan's Long-Term Resident Visa regime (*teijū*, or 'Returnee Visa' in the vernacular). Offered to *Nikkei* 'returnees' (i.e., descendants of Wajin who emigrated from Japan a century ago) (cf. Linger 2001; Tsuda 2003) applying from countries such as Brazil or Peru, this special visa status enabled *Nikkei* to reside in Japan indefinitely (subject to renewal) with no job restrictions, five- to ten-years' wait, or marriage to a citizen. Thus this Returnee Visa is technically PR for quasi-Wajin 'returning to Japan'. After bringing in millions of *Nikkei* South Americans after 1990, the number of Brazilian workers in Japan peaked in 2007 at around 370,000 people, becoming Japan's third-largest foreign minority (Ministry of Justice 2011). The logic behind this preferential treatment, according to Inoue Hiroshi, one architect of this policy within the powerful Japan Business Federation (*Nippon Keidanren*), was overtly blood-based: the express assumption that 'foreigners' with Japanese blood would be more easily assimilated into Japanese society than other Non-Wajin (Koenig and Kremers 2008).

On the other hand, Non-Wajin faced significant hurdles to PR. Not only the abovementioned five- to ten-year investment of time, but also necessary is a track record of stable GOJ visas (under which recipients or their families may not be allowed to work, or may be required to work only within certain job sectors with lower incomes) (Higuchi and Arudou 2008: 20-33), a clean record vis-à-vis often arbitrary bureaucratic guidelines,⁴ and further intrusive inspections by the State (such as personal home visits by officials to gauge the stability of one's marriage or the state of one's household).⁵ *Nikkei* officially bypassed these requirements and thus have been given more stable, permanent lives and livelihoods in Japan by dint of blood.

5. Visa regimes and unstable employment: Japan's 'revolving door' work market

Japan's 'registered foreign population' (*gaikokujin tōrokusha*) is a complex collection of visa statuses whose history merits a brief recounting: First, Japan has 'generational foreigners'; that is to say, there are people born in Japan who are socially and linguistically indistinguishable

from the Wajin population, yet have remained for several generations as 'foreigners'. Called the *Zainichi* 'Special Permanent Residents' (*tokubetsu eijūsha*), they are descendants of citizens of empire (such as Korea, Taiwan, and China) working in Japan either by force or by choice. After Japan's loss in World War II, Japan forfeited its colonies, and stripped the *Zainichi* who elected to remain in Japan of Japanese citizenship (through the *jus sanguinis* requirement of the revised Nationality Law) (Myers and Peattie 1987; Iwasawa 1998; Ching 2001; Levin 2001; Ōguma 2002; Shin 2010). Except for those who underwent the difficult process of naturalisation (which many were loath to do due to identity-sacrifice issues; cf. Morris-Suzuki 2010), *Zainichi* still remain four generations later as 18.7 per cent of the registered 'foreign' population (Ministry of Justice 2011a). Thus nearly a fifth of Japan's 'foreigners' are Non-Wajin who have lived in Japan for generations with a special PR status, but cannot vote, contribute to political campaigns, hold administrative jobs in many branches of Japan's civil service, or run for public office.

Then there are the non-generational 'foreigners', who in recent decades have caused a sea change in the composition of the non-citizen population. After Japan opened its labor market from 1990 to foreign labor (see below), the registered non-citizen population has since doubled. These new residents have been nicknamed the 'Newcomers' (*nyūkamā*, as opposed to the *Zainichi* 'Oldcomers' (*orudokamā*)), and many have changed their status from short-term 'migrant' to long-term 'immigrant' with 'regular PR' status (*ippan eijūken*). In 2007, the number of Newcomer PRs surpassed the Oldcomer PRs, partially due to the influx of millions of Newcomers, partly due to a steady fall in Oldcomers (due to attrition by death, marriage to a Wajin legally rendering the next generation into Wajin, or naturalization and 'passing' as Wajin). However, from 2008, the total numbers of all registered non-citizens (of which Newcomers and Oldcomers comprise about half) peaked at a little over two million (less than two percent of Japan's population), and have been dropping every year.⁶

This research argues that the number of Newcomers has been held artificially low due to the GOJ's 'revolving door' visa regimes. In particular, Non-Wajin Newcomers face visas with significant barriers to staying in Japan permanently even with PR.⁷ Not only does the GOJ have an official policy against imports of 'unskilled labour' (*tanjun rōdō*), it also has no official policy for immigration (*imin seisaku*) to help people settle in Japan.⁸ Let us now consider how Japan's most popular migrant-labour visa regimes offer clear incentives for Non-Wajin migrants to 'go home' instead of making Japan their new home as immigrants.

6. Japan's 'Trainee' visa regimes

The policy justification for Japan's 'Trainee' visas has been covered in detail elsewhere (*cf.* Linger 2001; Roth 2002; Lesser 2003; Tsuda 2003); but a brief recap: During Japan's economic boom between 1986 and 1991 called the 'Bubble Era', there was a labour shortage in industry. Despite the official policy of not accepting unskilled labour, in 1989 according to the Ministry of Labour 46 per cent of all domestic manufacturers were 'labour deficient' (*rōdō fusoku* or *jinzai fusoku*); by 1990, this figure had risen to 56 per cent. The shortage was acute in the blue-collar '3K' industries (standing for *kitanai*, *kitsui*, and *kiken*, or 'dirty', 'difficult', and 'dangerous') – jobs many Wajin did not want to do. Moreover, due to rising wages coupled with the high yen (*endaka*), Japan's domestically-manufactured goods were being priced out of export markets. Japan's industry faced a major restructuring due to a phenomenon called 'hollowing out' (*kūdōka*), where they could a) go bankrupt, b) move production overseas for cheaper labour costs but a decreased tax base for the GOJ, or c) make labour costs cheaper domestically by importing cheaper foreign workers. *Keidanren* among others lobbied for imported workers (Koenig and Kremers 2008), and from 1990, a 'backdoor' labour market was created through new visa regimes to bring in unskilled and lesser-skilled foreign workers.

The 'Trainee' (*jisshūsei*) and the 'Researcher/Intern' (*kenshūsei*) visas were officially designed to provide an 'on the job training system' in Japanese technical skills,

technology, and knowledge to Non-Wajin (mostly Chinese). 'Trainees' were managed by the GOJ under the Japan International Training Cooperation Organization (JITCO) under two programs: the Industrial Training Program and the Technical Internship Program, collectively grouped together as 'Trainees' under an umbrella system (*kenshūginō jisshū seido*).⁹ Legally, however, *Jisshūsei* were in a weakened position where, as people being 'trained', they were under their visa status not legally defined as 'workers' (*rōdōsha*).¹⁰ They were thus the only laborers in Japan officially made exempt from labour-law protections governing, full- and part-time hours, social safety-net benefits (including health and unemployment insurance that employers were otherwise required to pay into the system (Higuchi and Arudou 2008: 72-7)), or the minimum wage (*saitei chingin* – which varies by prefecture and industry, but is around 630-770 yen per hour).¹¹

The potential for abuse of these 'quasi-workers' (such as perpetually hiring people as cheap 'Trainees') was apparent at the inception of these visa regimes, so originally the GOJ placed a one-year limitation on the *jisshūsei* status (i.e., after one year, veterans were to graduate up to *kenshūsei* status, thereby becoming classified and protected as 'workers'). However, in 1993, the GOJ removed this safety catch by creating a new visa status, the twice-renewable 'Practical Trainees' visa (*kenkyū jisshūsei*) – essentially extending the *jisshūsei* status for two more years. Thus, the GOJ fostered visa regimes that created an entire Non-Wajin temporary work force not protected by Japan's labour laws (e.g., *rōdō kijun hō*).¹²

Although both *Nikkei* 'Returnees' and Non-Wajin 'Trainees' were put into 3K work, the *Nikkei* with Wajin blood, with ersatz PR status, had no work restrictions, could change jobs, and had potential perpetual renewal. On the other hand, the Non-Wajin had a visa valid for one year at a time; 'Trainees' could graduate into the 'Researcher' category, but there was still a limit to the maximum number of renewals within this visa category. Further, the Non-Wajin 'Trainees' and 'Researchers' were tied to sponsorship by their employer, meaning if they were fired for whatever reason,

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they also lost their visa, and would to leave the country immediately (sometimes forcibly by the employer), instead of being able to contest any potential discriminatory or exploitative treatment.

Over the next two decades, 'Trainees' faced exploitative job conditions. According to media outlets, NGOs, advocacy groups, and labour unions, many Trainees got paid far less than minimum wage (figures of 300 yen per hour have been reported, but there have also been reports of unpaid servitude, due to unanticipated deductions by employers ostensibly for living expenses, room and board),¹³ working long hours (one newsmagazine reported 22-hour days),¹⁴ and suffering mental, physical, and sexual abuse.¹⁵ There have also been reports of excessive and uncompensated overtime, illegal activities such as confiscation of passports and prison-like conditions, and deaths due to overwork and other undetermined circumstances. There have been reported instances of child labour, uncompensated job injuries and health concerns, forced deportations by the employer, and murder. People who dropped out of these programs and returned home early faced debt collection and indentured servitude from local 'brokers' who had initially funded their costs to come to Japan. NGOs, labour unions, pundits and prominent politicians have severely criticised these visa regimes as a 'swindle' (*ikasama*), noting that the lack of official regulation and oversight has encouraged the systematic abuse.¹⁶ Court cases sponsored by domestic activist groups have resulted in rulings substantiating these claims and ordering worker compensation from the employers.

As Jorge Bustamante, UN Special Rapporteur on the Human Rights of Migrants, reported in March 2010:

The Industrial Trainees and Technical Interns program often fuels demand for exploitative cheap labour under conditions that constitute violations of the right to physical and mental health, physical integrity, freedom of expression and movement of foreign trainees and interns, and that in some cases may well amount to slavery. This program should be discontinued and

replaced by an employment program (United Nations 2010).

Meanwhile, Japan's backdoor 'unskilled job market' has become less attractive, as Japan's economy continues to stagnate, domestic wages drop while comparative wages within neighboring national economies grow; Japan's programs, peaking in 2007 at around 88,000 'Trainees' per year,¹⁷ plunged to around 40,000 by 2010 (with the 68,860 Chinese 'Trainees' dropping by nearly 60 per cent to 28,964) (Ministry of Justice 2011a).

In contrast, the *Nikkei Wajin* 'Returnees,' although their working conditions and wages were similarly not equal to those of Wajin (some working 10-15 hours a day, six days a week), managed to get jobs at Japan's blue-chip export factories making substantially more than the minimum wage (Higuchi and Tanno 2003: 36), many resided in Japan in the hundreds of thousands for nearly two decades. They were not similarly exposed to Japan's 'revolving door' labour market like other visa statuses until 2009 (see below).

7. The 'Student' and 'Entertainer' visa regimes:

Other GOJ visa regimes have followed this template, creating backdoor routes to import cheap foreign labour into other sectors of Japan's job markets. 'College Student' (*ryūgaku*) and 'Pre-College Student' (*shūgaku*) visas have brought in other Non-Wajin youth from countries such as China, Thailand, The Philippines, and Indonesia to 'study' in Japanese universities, technical colleges, and tertiary educational institutions (which are suffering from diminished student enrolments due to Japan's population decline, facing Ministry of Education subsidy cuts from insufficient student rosters).¹⁸ However, in many cases these 'students' became truants, working in places like restaurants and convenience stores in violation of their visa, leading to crackdowns on fake 'schools' laundering visa statuses for migrant labour (Herbert 1996: 107-16). Although the 'College Student' has increased significantly from 131,789 in 2006 to more than 201,511 in 2010 (due again to Japan's declining domestic student population and university demands for

students), the 'Pre-College Student' status was abolished in 2010 (Ministry of Justice 2011a).

However, a more officially-sanctioned underground labour market was found putting Non-Wajin to work in the 'water trades' (*mizu shōbai*) through the 'Entertainer' (*kōgyō*) visa regime.¹⁹ Although officially for actors, musical performers, thespians, or other show business people, this visa regime has brought in many women ostensibly to work as 'dancers' and 'entertainers' who then found themselves trapped working in Japan's sex trades connected to organised crime. Conditions have been reported as horrendous, including physical and sexual abuse, no freedom of movement, unpaid wages and debt bondage, little punishment of offenders, little protection of victims due to their status as visa overstayer (often because their passports had been confiscated by employers); victims reporting abuses to the police have resulted in arrests and deportations of the victims. In every year since 2004, Japan has been declared a 'Tier-Two Human Trafficker' by the US State Department; while the GOJ has officially reformed its laws on trafficking somewhat, abuses and problematic enforcement of the laws continue (United States Department of State 2011).²⁰ Meanwhile, recipients of the 'Entertainer' visa have dwindled from 21,062 in 2006 to 9,247 in 2010 (Ministry of Justice 2011a).

8. The bilateral health-care worker program and 'foreign nurses'

Japan's aging society has also increased the number of elderly needing health care, with the Health Ministry estimating that the majority of Japan's population (57 per cent) will by 2050 be *kōreisha*, or elderly people above the age of 65, i.e., beyond a prime working age.²¹ Coupled with a perpetual shortage of health care workers,²² Japan launched bilateral work programs (called the Japan-Philippines and Japan-Indonesia Economic Partnership Agreements)²³ from 1 July and 11 December 2008 respectively, bringing in nurses and caregivers from Indonesia and The Philippines. Although they had already received their nursing licenses abroad, these nurses were to be 'Trainees' for health care in Japan, meaning they also

were not legally protected as 'workers' in Japan, and received a 'training allowance' (*kenshū teate*) instead of a salary. Moreover, in order to keep their visa, recipients were required within three years to pass the same national nurse licensure examination (*kangōshi kokka shiken*)²⁴ as Japanese native speakers do, after only receiving six months of Japanese language instruction while working full-time in low-skilled hospital labour. Consequently, as of 2012, few nurses have managed to pass the exam, with most (including a handful who did pass) returning to their countries of origin after a few years.²⁵

Critics decried the program as having 'unfair hurdles' and lax oversight leading to workplace abuses.²⁶ However, as has been argued above and elsewhere,²⁷ the author believes this visa regime was part of a pattern: designed as a revolving-door program to discourage foreign nurses to stay in Japan permanently while exploiting them temporarily as young, cheap, eager workers. If applicants were already qualified overseas as nurses, and a *kanji* (Chinese-character) test was the main hurdle, why did the GOJ not invite nurses from *kanji*-literate countries, such as China, Taiwan, Macao, Hong Kong, or Singapore? Indicatively, when the number of applications dropped from Indonesia and The Philippines, the GOJ announced that it would invite nurses from Vietnam next – another non-*kanji* society. As of 2012, the nursing program looks like it may be discontinued entirely.²⁸

9. Japan's economic downturn of 2008 and the 'Nikkei Repatriation Project'²⁹

Another bellwether of Japan's 'revolving door' work market was also seen during the Asian economic crisis that started from 2007, but began to affect Japan's economy in 2008. As companies began to rationalise and cut labour costs, non-citizens, including the *Wajin*, were among the first to be downsized.³⁰ From April 1, 2009, the GOJ launched the 'Project to support repatriation [sic] of *Nikkeijin* with employment difficulties' [*author's translation*] (*nikkeijin nanshokusha ni taisuru kikoku shien jigyo*). Administered through the GOJ's unemployment office ('Hello Work'), the program offered 300,000 yen for *Nikkei* South American

beneficiaries and 200,000 yen for each dependent to purchase plane tickets 'back home' and forfeit their Long-Term Resident status and pension investments.³¹ Thousands of *Nikkei* took the stipend³² (sometimes under compulsion from authorities denying them welfare benefits),³³ and the Brazilian population dropped by a third, from 312,582 in 2008 to 210,032 in 2011 (GOJ 2012).

The significance of this project in relation to this research is that the GOJ stipend was only offered to Wajin non-citizens³⁴ – not to the other Non-Wajin foreigners (such as the Chinese 'Trainees' and 'Interns') who were also adversely affected by these economic circumstances.³⁵ Non-Wajin were left unassisted as Japan's revolving-door work regimes rotated them out of national unemployment statistics during times of economic stress.³⁶

10. Other visa regimes and miscellaneous hurdles encouraging 'revolving door' work

This research does not have the space here to discuss each of Japan's dozens of visa categories. Like all visa regimes allowing migrant work within the nation-state, permission is contingent upon public policy needs and political whim. However, with Ministry of Justice and media campaigns during the 2000s targeting 'bad foreigners' (*furyō gaikokujin*) and 'illegal overstayers' (*fuhō taizaisha*) (Arudou 2006: 206-7), enforcement of these regimes have been at times draconian and racialised. Non-citizens have seen their civil and political rights abrogated due both to legal fiat and administrative 'discretion.' Interviews with immigration specialists (e.g., Higuchi Akira) corroborate anecdotal evidence that even one-year visas for skilled labour, such as the 'Specialist in Humanities/ International Services' (*jinbun chishiki/kokusai gyōmu*) that is the mainstay of language teachers in Japan, is sometimes only granted for one year at a time (despite Japan's hitherto three-year maximum duration for long-term visas); there have been cases where longer-term residents have found their visa *reduced upon renewal* from three years to one year at whim (with no explanation or possibility of appeal).³⁷ Until 2012, there was neither a standardised 'points system' for objectively

granting visas to skilled international migrant labourers, nor a valid visa period longer than three years.³⁸ Moreover, strict punishments have been meted out for administrative infractions, such as overlooked visa expiries and expired Re-Entry Permits (*sainyūkoku kyoka*),³⁹ that have resulted in cases of automatic invalidation of all accrued time under the visa regime, or in cancelled visas with high fines, deportation, and expulsion from Japan for up to a decade.⁴⁰ Thus the often-unforgiving nature of Japan's Immigration Bureau and visa regimes make it clear to non-citizens that their status in Japanese society is tenuous, revocable even for minor administrative infractions, and applicable even to PR holders.

11. Summary and Conclusion

Japan's visa regimes for granting temporary permission to stay and work have shown not only large hurdles regarding visa longevity and job stability, but also have implemented racialised degrees of privilege. Wajin non-citizens (as *Nikkei*) have enjoyed the equivalence of permanent residency in terms of visa longevity and renewability, as well as flexibility to work within Japan. Non-Wajin non-citizens, on the other hand, have had to wait for up to a decade for the same conditions. Other Non-Wajin have been brought into Japan in various degrees of exploitable labour to the point where they, as 'Trainees,' were rendered exempt from labour protections as 'workers' under the Labour Standards Law. Non-citizens in general have endured visa regimes strict in standard and unforgiving in punishment for even minor bureaucratic infractions, contributing to what has amounted to Japan's 'revolving-door' labour market: Short-term young workers being imported as cheap temporary migrant labour and discouraged from making Japan 'home' as immigrants (as the recent peak, then decline, of the registered non-citizen labour force from 2008 demonstrates). Japan remains as of this writing a country without an official immigration policy, and based upon its express policy preferences appears to be disinclined to show significant flexibility towards new potential immigrants unless they are Wajin.

As this research argues, the reason for this disenfranchisement of non-citizens in Japan is the normalization of 'embedded racism' within Japanese society, beginning elementally with Japan's Nationality Law (which conflates citizenship with blood, and creates the Wajin/Non-Wajin structures for differentiated and racialised legal treatment). When viewed through a CRT lens, the power and privilege structures become clear. The GOJ's 'revolving-door' visa regimes are designed not only to keep non-citizens in Japan in a weakened, disenfranchised position, but also select for Wajin attributes by granting advantages to *Nikkei* while denying rights to Non-Wajin). However, when Japan's economy went sour in 2008, the quasi-Wajin found themselves treated like 'foreigners' and asked to leave, except that they received subsidized repatriation that other Non-Wajin did not.

CRT also informs this research to conclude that there will be no resolution to this situation. It is unclear when, or even if, an 'interest convergence' between Wajin and Non-Wajin⁴¹ will ever occur to compel Wajin to cede some degree of privilege, and to allow Non-Wajin to enjoy anything beyond perpetual 'outsider' status. This situation is probably not sustainable, due in part to demographics. Japan's aging society needs people regardless of phenotype to keep Japan's economy vital and solvent (Sakanaka 2007). Although CRT dictates that racism is 'the usual way society does business' and what makes a society 'work' (Delgado and Stefancic 2001, p. 7), in Japan's case, 'embedded racism' will be what makes Japanese society 'not work'. It is only a matter of time before the situation reaches a tipping point, as Japan's economy and population continues to shrink and age, and its Asian neighbors increasingly outcompete Japan in its traditional export markets. Still, it is unclear if 'interest convergence' will come in time to pull Japan up from an impending economic tailspin. In sum, Japan's 'blind spot' towards accepting 'outsiders' will mean that its perpetual policy failure in countermanding 'embedded racism', by not acknowledging and effecting long-overdue legal protections for Japan's non-citizens, will continue for the foreseeable future.

Notes

1. The GOJ has repeatedly claimed, when justifying the reason why Japan has no law against racial discrimination in its Civil or Criminal Code, that the UN Convention on Racial Discrimination essentially covers nobody in Japan (*cf.* Ministry of Foreign Affairs 1999, 2001, 2008).

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

3. Questions have been raised about how 'permanent' PR actually is if, for example, lapsed Re-Entry Permits (*sainyūkoku kyoka*) and home visits have resulted in immediate revocation of PR status or the applicant's 'visa clock' (i.e., the tabulation of one's continuous period of residency being counted towards PR) being reset to zero. See current official qualifications for PR at www.immi-moj.go.jp/english/tetuduki/kanri/shyorui/05.html.

4. See primary-source testimonials on how laws influencing Immigration decisions can be altered through new bureaucratic guidelines and arbitrary enforcement: 'How Japan's Immigration Bureau uses unlegislated bureaucratic guidelines to trump the letter of the law, in this case re obtaining Permanent Residency.' Debito.org, 18 December 2011, at www.debito.org/?p=9650; 'Arbitrary bureaucratic hurdles for registering international marriages in Tokyo Edogawa-ku Ward office.' Debito.org, 15 December 2011, at www.debito.org/?p=9731; *et al.*

5. See marriage screening procedures (down to what language the couple speaks together, how many people attended their wedding, and how many times the couple crossed the border both before and after marriage) using an official questionnaire (*shitsumonsho*) for Spouse Visas (*haigūsha biza*) at 'Immigration Bureau violates privacy of marriage, in questioning Japanese spouses for longer-term visas.' Debito.org, 11 January 2007, at www.debito.org/?p=158. Regarding house visits, see primary-source account at 'Gaijinwife blog on her house check - is having authorities visit Permanent Residency

applicant's home and thoroughly photograph its interior now SOP?' Debito.org, 21 December 2011, at www.debito.org/?p=9623.

6. *Ibid.*

7. See 'Japan's revolving-door immigration policy hard-wired to fail.' Japan Times, 6 March 2012.

8. See *inter alia* 'Competing foreign-worker plans face off.' Japan Times, June 7, 2007; 'Keidanren: Immigrant worker influx to halt labour shortage.' Japan Times, October 15, 2008, et al.

9. See www.jitco.or.jp/english/overview/index.html. Example of discussions about said system at MHLW website at www.mhlw.go.jp/houdou/2008/06/h0613-6.html.

10. See '*Ippō zenshin mo tarinu seifuron: Gaikokujin rōdōsha no taigū kaizen no yukue wa?* [GOJ arguments without a single step forward: What happened to the improved treatment of foreign workers?] Tokyo Shimbun, 3 December 2006, p. 24, section demanding the creation of an actual '*Rōdōsha Biza*' [worker visa] for the 'Trainees'.

11. Ministry of Health, Labour, and Welfare-sponsored minimum wage prefectural map at www.saiteichingin.com/linkMap.html. See also www.saiteichingin.com/about.html.

12. Given the economic incentives behind employing cheaper workers with no labour-law protections, one would assume far more workers have been hired as non-labourer Trainees than as labourer Researchers; official statistics, however, have been unclear and difficult to obtain. The Ministry of Justice Immigration Bureau reports that the *kenshūsei* Researchers in 1999 were 47,985 and the *ginōjisshūsei* Technical Trainees were 11,032. By 2006, they were 92,846 and 41,000 respectively. See '*kenshūsei oyobi ginō jisshūsei no nyūkoku/zairyū kanri ni kansuru shishin*' [Guiding principles regarding the administration of entry and residence of 'Researchers' and 'Technical Trainees'], page one, (www.moj.go.jp/PRESS/nyukan67-2.pdf). Managing agency JITCO says that the total number of 'Trainees' hired between 1992 and 2005 was 416,009 (www.jitco.or.jp/english/overview/statictics1.html).

However, the same site notes the number of Technical Internship Program (as in *ginōjisshūsei*) applicants (i.e. people not necessarily accepted into this status) have only been

210,863 between 1993 and 2005 (www.jitco.or.jp/english/overview/staticstics2.html). Since neither of these sources separate *jisshūsei* from *kenshūsei*, it is difficult to ascertain how many 'Trainees' graduate up into the workforce as labourers protected by law. Note that this is by design. See interview report with Keidanren's head policymaker (*nihon keidanren sangyōbu kihan gurūpu chō*) Inoue Hiroshi, 'No Border' Forum 2007, Hosei Daigaku, Tokyo, 18 November 2007, and interview with Inoue in Koenig and Kremers (2008).

13. See Tokyo Shimbun, 2 December 2006, *ibid*.

14. See Shūkan Diamondo magazine, 5 June 2004, cover.

15. See Tokyo Shimbun *ibid*, and more cases too numerous to include in their entirety here. Sample cases of abuse: 1) Chinese males and female assaulted, denied wages, and attempted forced repatriation; two different cases in 'Foreign trainees injured in row with dry-cleaning firm over measly pay.' Mainichi Shimbun, 27 August 2008; and 'Wage row erupts between strawberry farms, sacked Chinese apprentices.' Mainichi Shimbun, 29 January 2008. The latter resulted in a successful lawsuit for back pay; see 'Employees win suit against Tochigi farms for unpaid wages, unfair dismissals.' Mainichi Shimbun, 11 February 2008; 'Foreigners win ¥17 million for trainee abuses.' Japan Times, 30 January 2010. 2) Abuses inciting murder, 'Slain farm association official took fees from both Chinese trainees, farmers.' Asahi Shimbun, 28 May 2007. 3) Denial of basic rights, such as praying, religious fasting, cellphone use, writing letters, wiring money home, riding in a car, or staying out past 9PM, 'Factory denies Muslim basic human rights.' Yomiuri Shimbun, 5 December 2006. And 4) Child labour of boys and girls aged 13 to 15, 'Gifu firms warned on Brazilian child labour', Japan Times, 30 December 2006. 4) Overwork and deaths, see 'Dying to work: Japan Inc.'s foreign trainees.' Japan Times, 3 August 2010. 5) Insights into how widespread and systematic these practices are: 'Foreign trainees facing chronic abuses.' Kyodo News, 3 January 2007; 'Foreign trainee abuse found at 452 entities.' Yomiuri Shimbun, 11 April 2009, which writes, 'The Justice Ministry says it has found irregularities at a 452 companies and organizations that hosted foreign trainees last year... Officials of the ministry said it had confirmed that the

companies and organizations violated labour laws, such as by paying lower-than-minimum wages to foreign trainees. Of the total, 169 cases of entities making trainees work unpaid overtime were found and 155 cases concerned other labour law violations such as payment of illegally low wages; 'Foreign trainee program 'like human trafficking'.' Yomiuri Shimbun, 29 June 2011.

16. Interview, labour union leader Torii Ippei, in Koenig and Kremers (2008), who notes that places employing 'Trainees' without labour abuses are 'very rare' (*goku mare*). See also 'Immigrant workers in Japan caught in a real racket.' Japan Times, 1 July 2007.

17. The Mainichi reports higher figures: 'Japan received a total of 102,018 foreign trainees in 2007, according to the Immigration Bureau.' See '1,000 foreign trainees forced to return home as firms feel pinch.' Mainichi Shimbun, 7 April 2009.

18. See 'The scramble for foreign students.' Yomiuri Shimbun, 31 May 2008.

19. See 'Japan installs caution signal for sex traffic.' WomensENews.org, 18 July 2005; 'Law bends over backward to allow 'fuzoku'.' Japan Times, 27 May 2008, noting, 'There were approximately 1,200 soaplands in Japan and 17,500 sex-related businesses, including massage parlors and strip clubs, in 2006, according to statistics released by the NPA;' 'UN expert calls on Japan to boost action in combating human trafficking.' UN News, 17 July 2009. See also interview with Jake Adelstein, National Public Radio 'Fresh Air,' 19 November 2009; the Japan Network Against Trafficking in Persons: <http://jnatip.blogspot.com>; and Patricia Aliperti, 'Human Trafficking: Modern-day slavery for commercial sexual exploitation,' delivered at Peace as a Global Language Conference, 27 October 2007.

20. See also 'U.S. State Department blasts Japan in human trafficking report.' Asahi Shimbun, 30 June 2011, quoting the report saying Japan is a destination, source, and transit country for men, women, and children subjected to forced labour and sex trafficking. The text of the 2011 State Department report is available at www.state.gov/g/tip/rls/tiprpt/2011/164232.htm.

21. See *Ekonomisuto*, 15 January 2008, p. 16. The original policy trial balloon, as it appeared in the Western press, was

to robotise Japanese health care. See 'Japan's humanoid robots, better than people.' *The Economist*, 20 December 2005.

22. See *inter alia* '80 per cent of hospitals interested in employing foreign nurses.' *Yomiuri Shimbun*, 12 March 2008; 'Language sets high hurdle for caregiver candidates.' *Japan Times*, 11 May 2010; 'Strict immigration rules may threaten Japan's future.' *Washington Post*, 28 July 2010.

23. These agreements were accused of political subterfuge due to links with bilateral trade and investments. See 'JPEPA lowers labour standards for Pinoy nurses, caregivers.' *ABS-CBN News (Philippines)*, 11 October 2008, which reports: '[Dr. Gene Nisperos, vice chairperson of the Health Alliance for Democracy, or HEAD] said that under JPEPA, nurses' labour standards, job security, migrant and labour rights, benefits and wages, and other protection for Filipino nurses and caregivers will be compromised 'in exchange for so-called trade and investments.' Because of this, the HEAD is calling on all nurses, doctors, caregivers and health professionals to denounce all the 16 senators who voted in favor of what they described to be as 'onerous trade agreement.'... 'This is labour export policy at its worst. Senators are conniving with the Arroyo government in allowing the unbridled exploitation of Filipino health workers and professionals.' [HEAD Secretary General Dr. Geneve Rivera] said.'

24. More information on the nursing examination at the MHLW website:
www.mhlw.go.jp/kouseiroudoushou/shikaku_shiken/kango-shi/index.html.

25. See 'First foreign nurses pass national exam.' *Yomiuri Shimbun*, 27 March 2010; 'Strict immigration rules may threaten Japan's future.' *Washington Post*, 28 July 2010; 'High language barrier for nurses.' *Yomiuri Shimbun*, 13 April 2010; 'Nurse trainees leave Japan despite 1-year extension.' *Asahi Shimbun*, 15 June 2012.

26. See 'Foreign nursing trainees face unfair hurdles.' *Asahi Shimbun*, 13 May 2009; 'EPA foreign nurses and caregivers working in Japan urgently need help.' EPA nurse Emily Homma, Association of Foreign Wives in Japan and *Debito.org*, 31 January 2010, archived at www.debito.org/?p=6056; 'Editorial: Japan must be more

humble toward foreign care workers.’ *Mainichi Shimbun*, 30 March 2012; ‘Editorial: Ease up on the nursing exam.’ *Japan Times*, 5 April 2010. ‘Language hurdle trips up Indonesian nurses.’ *Yomiuri Shimbun*, 5 January 2012. An example of the language hurdle in the nurses’ exam cited in the media was the word *jokusō* 褥瘡 (bedsore), which the author looked up in the Yahoo Japan Japanese Dictionary. The word is so obscure that an English translation was not available. However, when calls for amendments to examinations for these ‘trainees’ came forth in the media, the official response was: ‘An official at the Ministry of Health, Labour and Welfare dismissed suggestions that special considerations be made for language barriers, saying that both Japan and Indonesia agreed that the trainees would ‘attain the required qualifications in line with Japanese law under the (economic partnership) agreement.’ ‘We have no intention of lowering the standards of the exams,’ the official said.’ See ‘Survey: 70 per cent want special exams for Indonesian trainees.’ *Asahi Shimbun*, 3 November 2009.

27. See ‘Japan’s revolving-door immigration policy hard-wired to fail.’ *Japan Times*, 6 March 2012. The official position of the Philippine Nurses Association, dated 10 September 2007, would concur with this assessment: ‘Unrealistic Demand for Filipinos to Speak Nihonggo, [sic] a suspicious agenda of cheap labour... The Filipino nurses politely decline the offer of Japan as it is currently embodied in the JPEPA. Nurses strongly feel that the bilateral agreement shortchanges the professional qualifications of Filipino nurses and exposes to potential abuse and discrimination those who may be unwittingly enticed to seek Japanese employment under its bilateral channel... Under the bilateral agreement, the odds are unfairly stacked against us. It could be said that with the JPEPA Japan slightly opened the gate to the yard, but double-bolted the door to the house. – Signed, Dr. Leah Primitiva G. Samaco-Paquiz, National President, PNA.’ Full text archived at www.debito.org/?p=1408#comment-139351.

28. See ‘Job offers for Indonesian nurses drop by 60 percent in Japan.’ *Antara News* (Indonesia), 18 February 2010; ‘Language hurdle trips up Indonesian nurses.’ *Yomiuri Shimbun*, 5 January 2012; ‘Foreign caregiver exits put program in doubt,’ and ‘Foreign caregiver program faces

tightening.' Kyodo News, 2 June and 4 August 2012, respectively.

29. See the MHLW's project outline at www.mhlw.go.jp/houdou/2009/03/dl/h0331-10a.pdf. The New York Times reports a broader goal of this Project – housecleaning: 'Japan has been keen to help foreign workers go home, thus easing pressure on domestic labour markets and getting thousands off unemployment rolls. 'Japan's economy has hit a rainstorm. There won't be good employment opportunities for a while, so that's why we're suggesting that the Nikkei Brazilians go home,' said Jiro Kawasaki, a former health minister and senior lawmaker of the ruling Liberal Democratic Party. 'Naturally, we don't want those same people back in Japan after a couple of months,' Mr. Kawasaki said, who led the ruling party task force that devised the repatriation plan, part of a wider emergency strategy to combat rising unemployment in Japan. 'Then Japanese taxpayers would ask, 'What kind of ridiculous policy is this?'... Mr. Kawasaki, the former health minister, said the economic slump was a good opportunity to overhaul Japan's immigration policy as a whole. 'We should stop letting unskilled labourers into Japan. We should make sure that even the three-K jobs are paid well, and that they are filled by Japanese,' he said. 'I do not think that Japan should ever become a multi-ethnic society' like the United States, which 'has been a failure on the immigration front,' Mr. Kawasaki added. That failure, he said, was demonstrated by extreme income inequalities between rich Americans and poor immigrants.' See 'Japan Pays Foreign Workers to Go Home.' New York Times, 22 April 2009.

30. See *inter alia* Terrie's Take No. 492, 2 November 2008.

31. From an accounting point of view, this up-front subsidy probably meant long-term savings, because leaving Japan would mean the *Nikkei* would forfeit their *nenkin* (pension), since Japan's *nenkin* system requires 25 years of minimum investment for any payout upon retirement (Higuchi and Arudou 2008: 280-9; there is no totalization agreement in place between Japan and Brazil or Peru so that employment on either side of the Pacific would count towards their pension). Thus the terms of the subsidy also meant *Nikkei* not collecting their paid-in unemployment benefit. In fact, the program offered financial incentives for those already

collecting unemployment benefit to leave Japan quickly, where those with more than 30 days left on their collection would receive a bonus of 100,000 yen, and with more than 60 days left would receive 200,000 yen.

32. The Health Ministry reported that it had received about 16,000 *Nikkei* applicants for the stipend between April and November 2009, while 40,000 to 50,000 were reported to have returned to South America at their own expense. See 'Number of immigrants applying for repatriation aid hit 16,000 by mid-November.' *Kyodo News*, 24 November 2009.

33. See 'Local government makes foreign welfare applicant sign up for cash to return to Brazil.' *Mainichi Shimbun*, 14 September 2009.

34. As the AP reports, *Wajin* blood conceits were fundamental to these visa regimes: 'In the early 1990s, Tokyo relaxed its relatively tight immigration laws to allow special entry permits for foreigners of Japanese ancestry in South America to make up for a labour shortage at this nation's then-booming factories. They took the so-called 'three-K' jobs [which] Japanese had previously shunned. Before their arrival, many such jobs had gone to Iranians and Chinese. But the government... was eager to find a labour pool it felt would more easily adapt to Japanese society, said [Nishiyama Iwao, of the Association of *Nikkei* and Japanese Abroad, a government-backed organization that connects people of Japanese ancestry]. So by virtue of their background, these foreigners of Japanese descent... were offered special visa status. 'They may speak some Japanese, and have a Japanese way of thinking,' Nishiyama said. 'They have Japanese blood, and they work hard.'" See 'Japan government gives cash for jobless foreigners of Japanese ancestry to go home.' *Associated Press*, 1 April 2009.

35. The GOJ offered a retraining program for 5000 *Nikkei* unemployed (see www.mhlw.go.jp/houdou/2009/03/dl/h0331-10a.pdf).

However, this amounted to only about one percent of all *Nikkei* workers. Also, the retraining program was only offered to *Nikkei*, meaning preference was again given to *Wajin*.

36. See 'Golden parachutes' mark failure of race-based policy.' *Japan Times*, 7 April 2009; 'Japan to Immigrants:

Thanks, but you can go home now.' TIME Magazine, 20 April 2009. Regarding the 'revolving door' labour market, TIME notes: 'And if Nikkei Brazilians, Peruvians and others who have lost their jobs go home, what will Japan do? Last week, Prime Minister Taro Aso unveiled a long-term growth strategy to create millions of jobs and add \$1.2 trillion to GDP by 2020. But the discussion of immigration reform is notoriously absent in Japan, and reaching a sensible policy for foreign workers has hardly got under way. Encouraging those foreigners who would actually like to stay in Japan to leave seems a funny place to start.'

37. Even the largest government employer of language teachers in Japan, the Japan Exchange and Teaching (JET) Programme, had until recently for almost all of its foreign employees only one-year contracts with the possibility of two extensions. This has since been extended to five years maximum, but almost no non-citizen JET can find a permanent career within the JET Programme. It is, by design, a temporary work program. See the official JET website at www.jetprogramme.org.

38. See Japan Times, 6 March 2012, *ibid*. As of 9 July 2012, the nominal maximum visa period is five years, although administrative 'discretion' does not necessarily guarantee that it will be awarded frequently. See Immigration Bureau (2012).

39. Re-Entry Permits (REPs) are a contentious issue in themselves, decried by activists as a 'gaijin tax' on resident non-citizens who wish to leave Japan for short periods. Costing 3000 yen for a single re-entry or 6000 yen for multiple re-entries for up to three years, REPs have also been criticised as another excuse for Immigration to void valid visas. As primary-source testimony (dated 31 May 2012): 'I had a permanent resident visa that took me 12 years to get. They took it away in 5 minutes... I got on the plane [back to Japan] and realised halfway there that my re-entry permit had expired 2 weeks prior... They pulled me out of line, took me to a windowless room, ...left me there. Then came back and handed me my passport. My permanent resident visa was stamped 'VOID'. They never even asked me any questions! I'd never even had a parking ticket in Japan, was a responsible college professor, etc... I was told that I could start over again with a spouse visa: 6

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months, 6 months, 6 months; 1 year, 1 year, 1 year; 3 years, 3 years, 3 years... and then try for the permanent resident visa again. But by that point I had lost any desire to live in Japan at all, much less permanently. So when I need to go to Japan for conferences or to visit in-laws, I have a tourist visa.'

Regarding the 'gaijin tax' criticism, the comparison to a tax on nationality is appropriate. When reforms to the Immigration law that were promulgated in 2009 revealed the abolition of the REPs, Eurobiz Magazine ('Your new alien registration card,' August 2010) reported, 'Without re-entry permit income, currently ¥6,000 for multiple re-entry, the changes are likely to lighten the government's coffers. "This is a huge reduction in our revenue," said [Matsuno Hiroaki, a deputy director at the Ministry of Justice]. "The Ministry of Finance is angry."'

40. See 'Japan gets tough on visa violators: One-day overstay can bring time in cell, 5-year banishment.' San Francisco Chronicle, 10 May 2004, which cited cases of people being strip-searched, incarcerated (at their own expense of around \$600 per day) as hardened criminals, and banned for five years for renewal oversights. From 27 May 2004, fines for visa expiries increased tenfold from 300,000 yen to 3 million, and maximum expulsion from Japan after deportation doubled from five to ten years. See also 'Visa villains: Immigration law overdoes enforcement, penalties,' and 'Visa crackdown: Don't get burned.' Japan Times, 29 June 2004, and 28 June 2005, respectively.

Further, procedurally, non-citizens are not issued verifiable evidence by Immigration when their visas are being processed (the Ministry of Transportation, in contrast issues temporary licenses during processing); so if an unlucky non-citizen gets racially profiled and stopped for an ID check on the street by police, then arrest and incarceration is likely for appearing to be an overstayer. Although people in Japan are routinely sent reminders of other important expiries (such as driver licenses), non-citizens are issued no reminders about something as essential to life in a foreign country as a valid visa. After decades of research in Japan (as well as anecdotal evidence and interviews from dozens of sources), the author concludes that there is a general attitude within

the Immigration Bureau to look procedurally for ways to 'trip foreigners up', as it were, and 'reset their visa clock.'

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

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