

Buraku Mondai in Japan: Historical and Modern Perspectives and Directions for the Future*

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INTRODUCTION

Arguments: An Overview

The current state of legal, political, and sociological affairs in Japan constitutes an unfit stage for the eradication of discrimination against *burakumin* and the improvement of socioeconomic conditions among *burakumin*. First, federal law affords no protection to victims of discrimination¹: no anti-discrimination law exists, and access to certain government documents that can alert prospective employers and marriage partners to one's family lineage is not adequately restricted.² Second, the limited nature of debate on *buraku mondai* constrains the possibility of a democratic and resourceful solution to the problem. Two opposing political organizations dominate the discourse regarding *buraku mondai*. Moreover, many people in Japan believe the best remedy for prejudice and discrimination is to ignore these problems. Third, the form of political redress regarding *buraku mondai* ironically propogates, while in other ways counters, discrimination against *burakumin*. Single *buraku* organizations, varying by community, but most often the *Buraku Kaibō Dōmei*, or Buraku Liberation League (BLL), have been delegated almost full control over the administration of government-sponsored programs for *burakumin*. The BLL (nearly exclusively) offers the available relief to victims of

* Portions of this Note have appeared in the March 1998 issue of the JOURNAL OF DOWA-MONDAI [20 DŌWA-MONDAI KENKYŪ (JOURNAL OF DOWA-MONDAI) 45 (1998)]. The editors would like to thank Professor Yoshiro Nabeshima of the Dowa Mondai Research Institute at Osaka City University for his permission to reproduce these portions.

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1. See Kenzo Tomonaga, *A Critique Based on the Present State of Discrimination Against Buraku People* (2), BURAKU LIBERATION NEWS, Sept. 1998, at 4. Although there exist Civil Liberties Commissioners and District Legal Affairs Bureaus, these institutions lack expertise, are rarely approached with complaints and have no greater power than to urge human rights violators to mend their ways in the future. Of the many instances of discrimination, only 0.6% were reported to a Commissioner or Bureau. See *id.*

2. See Sections on "Koseki (Family Register)" and "Temple Registers" *infra*.

discrimination in the form of "denunciation."³ Government programs addressing *buraku mondai* target *burakumin* specifically, thereby eliciting contempt by non-*burakumin*, and are limited in scope. Historically, most programs have provided funding for the improvement of physical conditions of *buraku* districts and have neglected to provide other necessary programs.⁴ Discourse and political reform should be expanded to reach a broader cross-section of the government and population, for the ease and benefit of both the political actors-reformists and the targeted population.

This Article presents further ideas to determine which actions of the government and liberation movement might best facilitate the realization of *buraku* liberation and the elimination of discrimination. Part I provides an introduction to the origins of discrimination against *burakumin*, an explanation of the historical efforts of both the liberation movement and the Japanese government in combating discrimination against *burakumin*, the present conditions of *burakumin*, and the policies and policymaking regarding *buraku mondai*. Part II makes concrete the facts and points stated in Part I through a presentation of the history and current issues of one particular *buraku* district—Asaka *buraku*. Part III explores several current issues surrounding *buraku mondai* by weighing opposing opinions of the liberation movement's two most vocal organizations. Part IV is a summary of analytical findings. Part V offers policy recommendations to eliminate discrimination against, and improve the conditions of, *burakumin*.

Definitions

Buraku Mondai

As defined in the 1965 Report of the Integration Measures Deliberation Council, a consultative body of the Prime Minister's Office, *buraku mondai* is:

a most serious and important social problem deriving from the fact that a segment of the Japanese people, owing to discrimination based on a class system formed in the process of the historical development of the Japanese society, is placed in such an inferior position economically, socially and culturally that their fundamental human rights are grossly violated even in present-day society and that, in particular, their civil rights and liberties, which are en-

3. Denunciation, or *kyūdan*, is a BLL program of discussion designed to achieve "self criticism," an understanding on the part of the discriminator of the discriminatory nature of his or her actions or remarks and an apology. See KARIN BUHMANN, CIVIL AND POLITICAL RIGHTS IN JAPAN 59 (1989). See, e.g., *An employee of a construction firm inquired about the location of Buraku areas*, BURAKU LIBERATION NEWS, May 1997, at 4. "Denunciation, or *kyūdan*, is a practice invented by the Suiheisha after WWI to respond to acts of discrimination by soliciting from the discriminator (or alleged offender) apologies, self-criticism, promises to participate in enlightenment education and institutional reform." YASUMASA HIRASAWA, A POLICY STUDY OF THE EVOLUTION OF THE DŌWA EDUCATION IN JAPAN 37–38 (1989).

4. One example of a neglected program is human rights education for the entire population.

sured to all people as a principle of modern society, are not fully guaranteed in reality.⁵

Buraku mondai is a multi-faceted term that includes (1) issues of prejudice and discrimination in such areas as employment and marriage, based on *buraku* status, (2) inferior socioeconomic conditions of *burakumin*, and (3) the liberation movement's efforts and government measures aimed at rectifying these problems.

Buraku

There are thousands of *buraku* communities in Japan with a total of a few million residents.⁶ In general, *buraku* are concentrated along western Japan, although the only prefectures that historically have had no *buraku* are Hokkaido and Okinawa, the northernmost and southernmost prefectures. *Buraku* are generally located in areas ill-suited for human habitation, "such as ill-drained low damp ground, junction of two rivers . . . slopes in valleys."⁷ Knowledge about *buraku mondai* within Japan, therefore, is correspondingly inconsistent.

Burakumin

Although a neat and simple definition of *burakumin* would be ideal, the only consistent identifying feature of *burakumin* is that they are discriminated against. Defining *burakumin* today is a political task, not an everyday academic undertaking. *Buraku* means literally "hamlet" or "community," and the suffix *min* means "people."⁸ To define *burakumin*, however, is an imperfect science. By historical definition, *burakumin* are descendants of outcasts from the Tokugawa Period⁹ (mainly *eta* and *binin*,¹⁰ as those terms were developed prior to, but employed mostly during, the Tokugawa Period, 1600–1867¹¹). Although ethnically,¹² linguistically, and racially indistin-

5. Report of the Integration Measures Deliberation Council (1965), English translation, in BUHMANN, *supra* note 3, at 47–48.

6. Originally, the term *buraku* referred to all communities in Japan. Later, to distinguish outcast communities from the rest, the term *tokubetsu buraku*, or special hamlet, came to be used. Finally, as Japan modernized and there evolved yet different types of communities (cities and villages), only outcast communities were referred to as *buraku*.

7. J. SUGINOHARA, THE STATUS DISCRIMINATION IN JAPAN: INTRODUCTION TO BURAKU PROBLEM 34–35, 37–39 (The Hyogo Institute of Buraku Problem, 1982). See also BURAKU MONDAI HANDBOKKU 120–23 (Osaka Shiritsu Daigaku Dowa Mondai Kenkyūshitsu [Osaka City University Dōwa Mondai Institute] ed., 1997); GEORGE DE VOS & HIROSHI WAGATSUMA, JAPAN'S INVISIBLE RACE: CASTE IN CULTURE AND PERSONALITY 116 (1966).

8. MIKISO HANE, PEASANTS, REBELS, AND OUTCASTS: THE UNDERSIDE OF MODERN JAPAN 139 (1982).

9. Also known as the Edo Period.

10. *Eta* and *binin* were outcasts in the Tokugawa Period who performed various jobs, many of that were thought to be defiling. They are described further below.

11. SUGINOHARA, *supra* note 7, at 13, 131–32.

12. See ROGER YOSHINO & SUEO MURAKOSHI, THE INVISIBLE VISIBLE MINORITY 63 (1977).

guishable from other Japanese,¹³ *burakumin* did and still do fall victim to discrimination in varying degrees because of their status in the Tokugawa Period. The origin of this discrimination has been traced to a combination of: (1) government efforts to control the masses (divide-and-rule theory)¹⁴; (2) the demand for a constant supply of certain types of occupational labor; and (3) Shinto and Buddhist concepts of filth and the killing of animals that placed a stigma on many occupations previously or subsequently performed by the *buraku* people.

According to Takashi Tsukada, a leading historian of Tokugawa Period Japan, during the early Tokugawa period, *eta* held monopolies in their traditional occupations in leather processing and disposing of cows and horses; other traditional outcast jobs included those in the leather, meat, shoe, and bamboo goods industries. Predecessors of *burakumin* also did the same jobs as some non-*burakumin*, namely agricultural production, and daily labor. Individuals in other occupations such as cloth-dyeing also frequently faced discrimination, even though they were not outcasts. *Burakumin* were subject to various discriminatory regulations, usually only by local decree, and never by national laws, including those that restricted their freedom of residence. Thus, communities of these outcasts were formed, many of which are perpetuated as *buraku* to this day.¹⁵

Today, the definition of *burakumin* is much less fixed. The word *burakumin* will be used in this Article to refer to two different but overlapping groups of people: those who have ancestors who were treated as outcasts in the Tokugawa Period, and the broader group of people who have come to be identified as having relationships with *burakumin* and thereby have become objects of discrimination, based on factors including but not limited to kinship, place of residence and occupation. In general, I refer to the latter group of people in this Article. This most inclusive definition of *burakumin* is as follows:

those people who were born, brought up and living in {*b*}*uraku*, those who were not from {*b*}*urakumin* family but came to live in {*b*}*uraku* in the recent past and those who are living outside the {*b*}*uraku* but have blood relationship with {*b*}*urakumin*—all these are considered the {*b*}*urakumin* minority by the majority Japanese.¹⁶

13. See FRANK H. UPHAM, *LAW AND SOCIAL CHANGE IN POST-WAR JAPAN* 81 (1987).

14. SUGINOHARA, *supra* note 7, at 8.

15. See Interviews with Takashi Tsukada, Osaka City University Professor, in Osaka, Japan (October 1996–May 1997) (on file with author); see also Teraki Nobuki, *The Buraku Question*, BURAKU LIBERATION NEWS, Sept. 1998, at 2.

16. Tomohiko Harada, *Discrimination Against Buraku—Present conditions and problems to be solved*, in LONG-SUFFERING BROTHERS AND SISTERS, UNITE! (Buraku Liberation Research Institute ed., 1981), at 3.

This definition embraces those other than descendants of Tokugawa Period outcasts who, as a matter of convenience or by societal ignorance or negligence, have come to be labeled, or are at risk of being labeled, as *burakumin*.

A host of other terms are used by different circles of Japanese society to refer specifically to defined groups of *burakumin*. For example, the BLL defines *burakumin* as those people living within *buraku* communities, and terms them *hisabetsu burakumin*, or discriminated-against hamlet people.¹⁷ Another liberation group called the *Zenkoku Buraku Kaihō Undō Rengōkai* (All Japan Federation of Buraku Liberation), commonly abbreviated *Zenkaien*, terms them *mikaibō burakumin*, which means unliberated hamlet people.¹⁸ The government, on the other hand, since 1985 has called *buraku* districts *dōwa chiku*,¹⁹ referring to government recognized *buraku* areas. The differences in terminology as utilized by different groups stem from differences in ideology and reflect the aims and considerations of the different players involved in *buraku mondai*.²⁰

Population Statistics

The largest number of *buraku* was recorded in 1935 by government survey at 5371 areas, while the smallest number, 3570, was recorded in 1967. A 1993 survey recognized 4442 areas. These numbers are imperfect, however, in part because these areas have been inconsistently defined. At times only areas receiving government improvement assistance at the time were counted; at other times, areas already "improved" at the time of the survey were not included.²¹ In addition, those *burakumin* living outside of *dōwa* areas (government recognized *buraku*²²) were also not covered. According to the same survey, the 1993 population of residents in the 4442 *dōwa* areas was 892,751. However, the BLL has estimated that there are up to 6000 *buraku* and over 3 million *burakumin*.²³ All of these figures, however, include many

17. See, e.g., Teraki Nobuki, *supra* note 15, at 2.

18. See Interview with Yoshiro Nabeshima, Dowa Mondai Kenkyūshitsu [Dowa Mondai Research Institute of Osaka City University], in Osaka, Japan (Apr. 4, 1997) (on file with author).

19. See Teraki Nobuki, *supra* note 15, at 2. *Dōwa* is translated literally as "same peace" or harmony, a meaning that refers to assimilation. It took on its current day significance starting when it was employed by the government in 1941 with the aim to mobilize *burakumin* and non-*burakumin* together for the war. Before *dōwa* there was *yūwa* (assimilation or reconciliation) policy from the 1920s. "*Dofuwa* was . . . a strongly political slogan exploited by military leaders to mobilize people for the war." *Dōwa chiku* were *buraku* recognized by the government to receive benefits from the Area Improvement Measures. *Jūmin* means resident. Other terms formerly employed by the government are *taishō chiku* and *taishō chiku jūmin* (*taishō chiku* means directed-at areas) and *sokushu buraku* and *sokushu burakumin* (meaning special hamlets, used after 1969). See YASUMASA HIRASAWA, *supra* note 3, at 52–53 (1989).

20. See Interview with Yoshiro Nabeshima, *supra* note 18.

21. See Kenzo Tomonaga, *Buraku Problem Q & A: How Many Discriminated-Against Buraku Areas?*, BURAKU LIBERATION NEWS, May 1997, at 7.

22. *Dōwa* is a term used by the government to indicate *buraku* communities that are government-recognized and entitled to the benefits of national special measures laws to help rectify past and continuing discrimination against *burakumin*.

23. See Tomonaga, *supra* note 21, at 7–8.

residents of *buraku* who are not of *buraku* ancestry, and also the areas included in *buraku* are often larger than the historical boundaries of the *buraku*, and thus the number of residents counted is also much greater.

It seems that the BLL's figures more closely approximate the actual number of *buraku* areas, since government statistics include only those areas officially recognized.²⁴ Population statistics, on the other hand, are more elusive. If one were to include only those people who are of *buraku* ancestry, the numbers would be lower than those recorded either by the government or liberation organizations because of the increasingly inclusive definition of *burakumin*.

I. HISTORICAL BACKGROUND

A. Origins of Discrimination

Japan's Tokugawa Period status system, in which the position of the outcast was fixed, was based on the prior medieval status system of Japan. Under the supremacy of the shogunate and the shogunate's family were essentially five classes: the *samurai* (warriors), farmers, artisan-craftsmen, merchants and the outcasts—variously known as *eta* and *hinin*, now called *burakumin*. "It was during the Tokugawa feudal regime, beginning in the 17th century, when warrior-administrators came into power, that the [predecessors of] *burakumin* were legally stigmatized as outcasts."²⁵ Although people could be relegated to the status of outcast by committing a crime or violating society's regulations, the reverse became impossible. Even descendants of

24. There are still approximately one thousand *buraku* communities that have been denied official designation as *buraku* or *dōwa chiku* and thus have been unable to receive benefits under the Area Improvement Measures. See Masumi Takano, *Does the Third Periodic Report Accurately Reflect the Human Rights Condition in Japan?*, in HUMAN RIGHTS IN JAPAN FROM THE PERSPECTIVE OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: COUNTER-REPORT TO THE THIRD JAPANESE GOVERNMENT REPORT 2 (1993). In other cases, "some {b}uraku communities have resisted official designation as {d}ōwa districts under the leadership of conservative, and often wealthy, 'bosses' of the community who wish to have things kept 'quiet.' In others the political clout of {b}urakumin was not so strong as to make local governments recognize the plight of {b}uraku and execute {d}ōwa measures." HIRASAWA, *supra* note 3, at 8. It has also been alleged that the national government has chosen to limit the number of *buraku* it recognizes because of budget constraints. For whatever reason, in many instances government officials have taken the lead in publicly denying the existence of *buraku* in their prefectures. Around 1970, "the then Tokyo governor [falsely] declared that there were no {b}uraku ghettos in the metropolitan area, and [as of 1997] the majority of the city's residents are of the same opinion." YOSHINO & MURAKOSHI, *supra* note 12, at 135. Finally, there are large discrepancies in the conditions of people's social and economic standing within *buraku*, though the benefits that have been extended through the special measures laws have generally incurred to be beneficial of all in the *buraku* boundaries. This concurrent under-inclusiveness (because of the denial of the existence of *buraku* in many areas where they do exist) and over-inclusiveness (because programs have generally benefited areas and not specific people or groups) of government policies would seem to be an area that deserves further thought when contemplating future policies to address *buraku mondai*.

25. YOSHINO & MURAKOSHI, *supra* note 12, at 130. "Segregation of and discrimination against the *eta* and *hinin* had been institutionalized by a number of feudal lords, or *daimyō*, on their own initiative before the Tokugawa rulers froze the social order, but the latter made the *eta* and *hinin* a nationwide institution. For the first time their status was fixed." See HANE, *supra* note 8, at 141.

outcasts who came to work in traditionally non-outcast occupations, such as farming and fishing, could not escape the status prescribed by heredity.²⁶

"During the Tokugawa feudal era, both the central and district governments had numerous regulations that rigidly regulated the lives of the [*eta*, *binin*, and other classes]." ²⁷ The regulations were neither uniform in word nor in enforcement, since they often originated in social custom and were subsequently transformed into laws in some areas, many times when individual outcasts began to challenge the discriminatory traditions. A few of the most significant restrictions were the forbiddance of inter-marriage, designation of places to live (in ghetto communities), dictation of clothing style and color, and extreme limitations on interactions with commoners.²⁸ In addition, "[n]ot only were the kinds of occupations which the [outcasts] could pursue limited, but in some districts they could not own land or engage in farming[, nor] . . . engage in commercial fishing."²⁹

A number of theories have been advanced to explain the origins of the outcast status in Tokugawa Japan. Most are flawed in some way. In abbreviated form, they are as follows:

- Religious notions of filth

Beginning in the early Heian Period (794–1185), the coexistence of Shinto and Buddhism caused their teachings to mix.³⁰ Buddhist teachings of compassion for all living things led to the government decree prohibiting the slaughtering of animals.³¹ Shintoism placed emphasis on purity and cleanliness, or conversely, "pollution and avoidance of defilement (which was associated with death)."³² Together, these teachings gave religious impetus and justification for discrimination against outcasts. "Those who were engaged in the unpleasant but essential tasks of handling the deceased and disposing of dead animals from the temple grounds [and those who worked in such occupations as butchering and processing raw skins] were considered polluted and they were prohibited from participating in religious rites."³³

- Occupation

Another historical explanation attributes the status of outcast to participation in one of several distinct occupations. This explanation fails to account, however, for the numerous people discriminated against as *eta* and *binin* who did not work in one of these typically outcast occupations. Nor does this rationalization explain the inconsistency between different locales of the association of occupation and discrimination.

26. See HANE, *supra* note 8, at 141.

27. YOSHINO & MURAKOSHI, *supra* note 12, at 39.

28. See *id.* at 39–40.

29. *Id.* at 40.

30. See *id.* at 26.

31. See *id.*

32. *Id.*

33. *Id.*

- Divide-and-rule theory

Yasumasa Hirasawa asserts that the origins of discrimination against *burakumin* were the product of a feudal strategy of divide-and-rule, implemented in the following order: feudal lords, at the top of the hierarchy, appeased peasants and farmers, whom they exploited for their agricultural production capabilities, and the bottom, outcasts, designated to perform the leftover "less-favored but socially indispensable labor functions" and to bear the brunt of misguided peasant and farmer hostility. "Thus the divide-and-rule policy was effectively executed through psychological manipulation."³⁴

There appears to be no simple explanation of the origins of *burakumin* and of discrimination against them. The truth of the origins of *buraku* discrimination lies probably in a combination of some of the many explanations offered. The key points are that: (1) the status of outcast existed over the course of several centuries in Japan, (2) the vestiges of discrimination against these outcasts remain, and (3) none of the historical explanations of why the status of outcast existed in the past justify the continuance of this status in Japan today.

B. Results and Limitations: Pre-WWII Buraku Liberation (1871–1945)

1. Meiji Revolution and the Emancipation Edict

On August 28, 1871, the collapse of the Tokugawa feudal regime, the erosion of the shogunate and status system and the establishment of the Meiji government in the Meiji Revolution (*Meiji Ishin*), which brought about dramatic social change in Japan, led the Council of State to issue the Emancipation Edict. It stated: "The titles of [*eta*] and [*hinin*] shall be abolished; and henceforth the people belonging to these classes shall be treated in the same manner both in occupation and social standing as the common people (*heimin*)."³⁵ It required equivalent types of occupations and social standing for the *eta* and *heimin*.³⁶

The Emancipation Edict resulted in "enhanced legal status [of *burakumin*] at the cost of intensified social discrimination and loss of economic privileges."³⁷ The government did not provide *burakumin* with any type of assistance, financial or otherwise, while *samurai* (warriors) relieved of their status under a separate edict were provided loans by the Meiji Government to aid them in beginning new lives in agriculture and other endeavors.³⁸ No other measures were taken to ensure the true liberation of the former outcast population until two years short of a century later.³⁹

34. HIRASAWA, *supra* note 3, at 33.

35. Cabinet Ordinance No. 61, translated in YOSHINO & MURAKOSHI, *supra* note 12, at 46.

36. See SUGINOHARA, *supra* note 7, at 18.

37. UPHAM, *supra* note 13, at 81.

38. See GEORGE DE VOS & HIROSHI WAGATSUMA, JAPAN'S INVISIBLE RACE: CASTE IN CULTURE AND PERSONALITY 83 (1966).

39. See YOSHINO & MURAKOSHI, *supra* note 12, at 46.

2. Continued Practices of Discrimination

In the absence of positive government action, private and government practices discriminating against *burakumin* perpetuated the outcast status.⁴⁰ For example, in efforts to repress about ten *eta* and *hinin* families and confine them to their pre-Emancipation Edict ways, members of a village in Gifu prefecture formed a discriminatory compact promising discrimination against *burakumin* in areas of property rights, social interactions, financial resources and employment.⁴¹

Discriminatory actions also continued at the governmental level:

- In 1880 (less than ten years after the Emancipation Edict was disseminated), the Ministry of Justice referred to *burakumin* as “the lowliest of people, resembling animals” in its “A Handbook of Japanese Customs and Folkways.”⁴²

- In 1922, Ōita prefecture authorities effected the burning down of a *buraku* when an imperial family member was expected to pass on a nearby railroad; the public explanation was that it contained “criminals and drifters” and was also “a health hazard.”⁴³

- In a notorious case of May 1933, the District Court of Takematsu ruled: “*Burakumin* committed a crime by getting married without disclosing his origin to the partner of marriage.”⁴⁴ It should be no surprise that institutionalized discrimination continued long after the Emancipation Edict to preserve a de facto caste system from which it was extremely difficult, if not impossible, to emerge. Government officials were equally subject to discriminatory social pressures.

3. Birth of the *Buraku* Liberation Movement and Government Assistance

On March 3, 1922, the *buraku* liberation movement began officially with the formation of the Suiheisha (National Leveler’s Association) in Kyoto. Unlike prior efforts of activists who were most concerned with *buraku* self-improvement, the Suiheisha “advocated humanistic principles that emphasized utmost respect for the dignity of human beings.” The Suiheisha fought for improved living conditions of *burakumin*, and to eliminate discrimination against *burakumin*.⁴⁵

The 1920s and 1930s saw improvements in the circumstances of *burakumin*, partly afforded by subsidies from local and national governments. Matsumoto Jūichirō, chairman of the Suiheisha, was elected to the Imperial Diet

40. See HANE, *supra* note 8, at 247–48.

41. See *id.*

42. YOSHINO & MURAKOSHI, *supra* note 12, at 47.

43. HANE, *supra* note 8, at 146.

44. SUGINOHARA, *supra* note 7, at 66.

45. See Tatsukuni Komori, *Discriminated-Against Buraku and Civil Rights Protection*, WHITE PAPER ON HUMAN RIGHTS IN JAPAN 50 (1984).

in 1936.⁴⁶ Other *burakumin* tried to assert their identity as *burakumin* and equal to others. During World War II, however, the war effort dominated all other concerns. In 1942, the Japanese government passed anti-movement legislation during a period of growing fascist rule. All efforts were subordinated to helping Japan win the war, and the Suiheisha was dissolved. All improvement projects for *burakumin* begun before WWII were put on hold during WWII.

C. *Revival of the Buraku Liberation Movement: Enforcement of the Post-War Constitution of Japan* ("Nihonkoku Kenpō," 1946)

In August of 1945, Japan surrendered to the Allies. In 1946, a new Constitution, the *Nihonkoku Kenpō* [hereinafter *Kenpō*] took over the political-legal landscape, replacing the Constitution of the great Japanese Empire (*Dai Nihon Teikoku Kenpō* [hereinafter *Meiji Kenpō*], 1889).⁴⁷ A notion of the people's sovereignty overtook the old-fashioned absolutism of the eradicated Emperor system. The liberation movement was born anew with the principles of post-war democracy and human rights on its conscience. Article 14, paragraph 1 of the *Kenpō* states: "All people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin."⁴⁸ Further, Article 98 declares the supremacy of the *Kenpō* over all domestic laws, regulations, and the like, and also that "[t]he treaties concluded by Japan and established laws of nations shall be faithfully observed."⁴⁹

In February of 1946, leaders of the pre-war Suiheisha reassembled in Kyoto and established the *Buraku Kaibō Zenkoku Inkaei* (National Committee for Buraku Liberation) electing Matsumoto Jiichirō, father of *buraku* liberation, as chairman. In 1947, Matsumoto was elected to be Vice President of the House of Councilors (upper house of Diet).⁵⁰ The National Committee for Buraku Liberation was renamed the *Buraku Kaibō Dōmei*, or Buraku Liberation League (BLL) in August of 1955,⁵¹ after which membership skyrocketed, and massive efforts began to induce the government to improve the conditions of *buraku*.⁵²

46. See UPHAM, *supra* note 13, at 83.

47. See KYOTO INOUE, MACARTHUR'S JAPANESE CONSTITUTION 69 (1991).

48. *Nihonkoku Kenpō* [hereinafter *Kenpō*] (1946). Other Articles that arguably oppose discrimination against *burakumin* include those guaranteeing eternally inviolate fundamental human rights (Article 11), respect for people as individuals and their right to life, liberty, and the pursuit of happiness (Article 13), the right to be free from discrimination based on race, creed, sex, or social status (Article 14, paragraph 1), the right to sue the state for damage suffered through illegal actions of a public official (Article 17), freedom to choose one's occupation and change or choose one's residence (Article 22, paragraph 1), the right to minimum living standards (Article 25), the right to equal education (Article 26), and "the right and the obligation to work" (Article 27). *Id.*

49. *Id.*, art. 98.

50. See YOSHINO & MURAKOSHI, *supra* note 12, at 56–57.

51. See *id.* at 58.

52. See, e.g., *id.* at 87–88.

In 1951, local governments started to implement improvement policies, spurred in part by the "All Romance Incident" in which a local government official wrote a derogatory and fantastic novel about life in a *buraku*. The national government began to give small subsidies to the local governments for improvement of *buraku* areas in 1953.⁵³ In 1960, the Law to Establish a Deliberative Council for Buraku Assimilation was legislated and the Deliberative Council for Buraku Assimilation (Council) was established in 1961. The Council was a government fact-finding committee appointed by the Prime Minister and composed of bureaucrats, politicians, and experts from society, including some *burakumin*, whose purpose was to study the *buraku* situation and recommend possible action.⁵⁴

1. Government Report of 1965

In August of 1965, the Council issued a report entitled "Fundamental Measures for the Solution of Social and Economic Problems of Buraku Areas" with the authorization of the Prime Minister. For the first time ever, the government publicly admitted that *buraku* discrimination existed. This report is still highly regarded as a landmark document in the history of positive government involvement in *buraku mondai*. Its content closely resembles the thinking of the BLL.

In the report, the Council emphatically denied the scientifically unsupported but widely held belief that *{b}urakumin* are racially or ethnically different from other Japanese and that their situation is related to, if not justified by, their origins . . . [It also] rejected the common idea that the best solution would be to ignore the problem on the assumption that calling attention to it would merely perpetuate it and delay its inevitable dissolution by economic and social changes.⁵⁵

The causes of the condition of *burakumin* were attributed to "social and economic discrimination denying *{b}urakumin* freedom of occupational choice, equal educational opportunities, freedom of movement, and freedom of marriage and social intercourse" rather than intrinsic inferiority.⁵⁶ It also described the Emancipation Edict as "purely formalistic" and ineffective, and expressed disapproval of the government's efforts toward remedying the effects of *buraku* discrimination as "incomplete, paternalistic, and limited to improvements in the physical environment."⁵⁷

53. See Sueo Murakoshi, *A Note on the Law on Special Measures for Dowry Projects*, in LONG-SUFFERING BROTHERS AND SISTERS, UNITE!, at 31.

54. See UPHAM, *supra* note 13, at 84.

55. *Id.* at 84-85.

56. *Id.* at 85.

57. *Id.* Furthermore, "a more serious problem is the existence of 1,000 *{b}uraku* communities where improvement projects have not been carried out at all because those areas were not designated as *Dōwa*

The Report cited discrimination as responsible for the horrific living conditions, inferior education, and stilted to non-existent interactions with the majority of the *burakumin*, and declared it the "state's duty to resolve the problem fundamentally and promptly, based on a correct understanding of its causes and structures."⁵⁸

Broad policy recommendations were extended, the first of which was the need for special legislation. No laws existed at that time for the sole benefit of *burakumin*, although *burakumin* did receive aid under general welfare programs. The report concluded that an enabling statute was needed to allow the government to legislate special measures for the *buraku* problem.⁵⁹

2. Special Measures Laws

Out of the Deliberative Council's Report were born the first national fruits of *buraku* legislation. In July of 1969, the national government implemented the *Dōwa Taisaku Jigyō Tokubetsu Sochi Hō*, the Law on Special Measures for Dōwa [Assimilation] Projects.⁶⁰ From that time until the present, laws similar to the Special Measures Law have provided funds for improvements of *buraku* areas, educational scholarships and aid to small *buraku* businesses. Unfortunately, the Special Measures Law "[gave] broad authority for governmental action while mandating virtually nothing. [It created] no legal duties on the part of government agencies and no new legal rights for individuals, either in the form of private causes of action against other individuals or administrative causes of action against public entities."⁶¹

This 1969 law allows autonomous local bodies (most often local branches of the BLL) to improve houses and roads, give scholarships, reduce taxes for small to medium *buraku* businesses, offer loans at low interest rates, and establish enlightenment programs such as publications for the parent-teacher

areas by the government." Kenzo Tomonaga, *A Critique Based on the Present State of Discrimination Against Buraku People* (2), BURAKU LIBERATION NEWS, *supra* note 1, at 20.

58. UPHAM, *supra* note 13, at 85-86.

59. *See id.* at 86.

60. *See* Shigeyuki Kumisaka, *The Current Condition of Minorities in Japan and Challenges—the Buraku Issue*, BURAKU LIBERATION NEWS, March 1998, at 3.

61. UPHAM, *supra* note 13, at 86. Article 5 of the Law reads:

The objectives of the *Dōwa* projects shall be directed at eliminating various factors that unlawfully hinder the improvement of the social and economic standing of the residents of the objective areas by taking such measures in those areas as improving the living environment, enhancing social welfare, promoting industries, stabilizing the employment situation, improving education, strengthening activities for defending human rights, etc.

The Law on Special Measures for Dōwa Projects (Law No. 60, July 10, 1969). Article 6 stipulates eight projects to be carried out by the Central Government to meet the aims set forth in Article 5. Article 7, titled "Special Subsidies," directs the central government to bear two-thirds of the financial burden for *dōwa* project subsidies. *See id.* In Japan, local tax revenues are from resident and real estate taxes; national tax revenue is from income and business taxes (business comprises the most amount by far)—70% collected by national government, that only spends 30%; the rest is redistributed in the forms of grants and transfers; municipal governments collect 30% and spend 70% of all taxes. Municipal governments love these projects since they can get money from the national government for projects they would not have been able to finance independently.

association.⁶² In the sixteen years before this first national legislation (from 1953 to 1968), the national government spent a total of 17.8 billion yen on improvements.⁶³ In the thirteen-year period after the Law on Special Measures was passed, 1969 to 1982, the government appropriated over one hundred times more funds (approximately 2 trillion yen) for projects.⁶⁴

The first succeeding legislation on *dōwa* projects was named *Chiiki Kaizen Taisaku Tokubetsu Sochi Hō* (Law on Special Fiscal Measures for Regional Improvement). It was enacted in 1982 and remained in effect for five years until March 31, 1987. In contrast to the 1969 law, its title does not include an explicit reference to *buraku mondai* or *buraku* communities. It refers to area improvements in general, although, in effect, the beneficiaries remained those qualified residents living within the boundaries of government recognized *dōwa* areas. Under this law the government ceased recognizing *buraku* that had not yet been recognized as *dōwa chiku*, and thus no new communities were eligible to receive government improvement assistance.⁶⁵

The third law aimed at *buraku* liberation is the Law for Special Fiscal Measures for Area Improvement Projects. It was enacted in 1987 for a five-year period ending on March 31, 1992, but was subsequently extended for five more years until March 31, 1997, and then amended and extended in part for up to another five years. Unlike the first two laws, it does not state that its existence is based on the responsibility of the Japanese government to eliminate discrimination against *burakumin*, and it excludes areas that were improved under the previous two laws. Prior to this law, secondary education grants were offered to *burakumin* students, but under this law, loans were extended in place of grants.⁶⁶

D. Current Achievements and Remaining Problems

1. Split in the BLL and the Formation of the Zenkai ren

A breakdown in the alliance between the BLL and Japanese Communist Party (JCP) began in the 1960s, following the death of Matsumoto Jiichirō, in 1960, who was a JCP member and an influential *Suiheisha* and BLL leader for decades. At the time of the rice riots in 1918, Marxist and other revolutionary ideas were spreading among the working class, causing the

62. During the fiscal years from 1969 to 1977, approximately 500 billion yen was appropriated for *dōwa* projects. Eighty percent of this total budget went toward "improvement of sewage, construction of public housing, improvement of roads, supply of fire cisterns, construction of day nurseries and health guidance by traveling personnel." Three percent of the total (17 billion yen) was spent by the Ministry of Education for grants to *dōwa* schools, construction of meetings halls in *buraku*, and scholarships for *buraku* high school and college students. HIRASAWA, *supra* note 3, at 138–39.

63. See SUGINOHARA, *supra* note 7, at 84.

64. See Saichiro Uesugi, *The World Anti-Discrimination Movement and Solidarity with the Buraku Liberation Movement*, THE ROAD TO A DISCRIMINATION-FREE FUTURE: THE WORLD STRUGGLE AND THE BURAKU LIBERATION MOVEMENT 16 (1983).

65. See BUHMANN, *supra* note 5, at 55.

66. See *id.*

government great concern. Although, prior to World War I, the JCP supported efforts of the Suiheisha, it was more interested in the class struggle implications rather than the anti-discrimination and human rights aspects.⁶⁷ "The JCP members argued that the basis of discrimination was the capitalists' oppression of the working class . . . They felt that the Levelers should dissolve their association in the interest of working toward a proletariat revolution."⁶⁸

The breakdown in the relationship between the JCP and the BLL was spurred by the adoption of the 1969 Special Measures Law, which, for the first time allowed, the leftist BLL to work with the conservative Liberal Democratic Party (LDP) government to secure funds for *buraku* liberation. Also, according to Okuyama, executive director of the Institute of Buraku Problem, the split was accelerated when president of the BLL Matsumoto Jūichirō ran for Congress in the national precinct and won a place in the Senate. The BLL expected its members to vote for him, a Socialist party member. When Communist party members of the BLL would not vote for a Socialist, they were excluded from the BLL.⁶⁹

The Report of August 1965 caused another conflict between the supporters of Communist and Socialist parties, due to philosophical differences concerning their views on how to attain *buraku* liberation.⁷⁰ Just after the report was issued, and "much to the shock of the Liberation League elders, the JCP denounced the report as a 'poisonous cake' (*doku manjū*), or a watered-down government version of the original demands for liberation."⁷¹ Conversely, the BLL reacted supportively to the government's increased funding of *buraku* improvement projects.⁷² Later, in 1965, at the 20th Annual National Buraku Liberation League Convention, the BLL officially accepted the Deliberative Council's Integration Policy Report, which was considered "a victory in the continuing process toward complete liberation."⁷³ An irreconcilable difference developed in concepts between those who perceived of *buraku mondai* as a phenomenon "deeply embedded in prejudice and discrimination," and others who supported the JCP opinion that "capital oppression was the basic source of the depressed status of all proletariats."⁷⁴

In March of 1976, the *Zenkoku Buraku Kaibō Undō Rengōkai* (All Japan Federation of Buraku Liberation), commonly abbreviated Zenkai, was formed by members of the *Buraku Kaibō Dōmei Seijōka Zenkoku Renraku Kai*

67. See YOSHINO & MURAKOSHI, *supra* note 12, at 89.

68. *Id.*

69. See Interview with Mineo Okuyama, Executive Director, Institute of Buraku Problem, in Kyoto, Japan (May 1997) (on file with author).

70. *See id.*

71. YOSHINO & MURAKOSHI, *supra* note 12, at 90.

72. *See id.*

73. *Id.*

74. *Id.*

(Buraku Liberation League National Normalizing Liaison Association), which included members excluded from the BLL.

The Zenkai ren, which rejected the reconciliation (*yūwa*) position and opposed the militant (*bōryoku*) practice, resolved to sacrifice a fight for as many benefits as possible under the Special Measures Law in favor of full integration with the majority population and harmony within and without the *buraku*.⁷⁵ For this purpose it sought to organize the poor in and out of *buraku* to fight against government oppression. In 1975, the Communist party officially adopted the National Integration Policy in its annual platform, and thereby ensured strong ties with the Zenkai ren.⁷⁶ The philosophies and actions of the Zenkai ren contrasted sharply with those of the BLL, as they do today.

2. Background Investigations

Numerous remaining hardships face *burakumin* today.⁷⁷ *Burakumin* confront discrimination in employment and marriage.⁷⁸ Even if they do not identify themselves as *burakumin*, parents and businesses often conduct background investigations into the origins of potential marriage partners and job candidates to discover whether people are of *buraku*,⁷⁹ Korean, or other discriminated-against descent. Some of the tools used for conducting a personal background investigation are described below.

a. *Chimei Sōkan* ("Buraku Lists")

The existence of *buraku* lists was first discovered in November 1975, and since that time at least nine others have been found.⁸⁰ Although format and content vary, in general the following holds true:

A {*buraku*} list (*Chimei Sōkan*) is a book-length compilation of name, location, number of households and main occupations of the

75. See *id.* at 91

76. See interview with Mineo Okuyama, *supra* note 69.

77. See generally *Incidents Related to Buraku Discrimination Occur in Various Sectors of Society*, BURAKU LIBERATION NEWS, November 1997, at 2.

78. See, e.g., *A Large Number of Discriminatory Inquiries were Disclosed. The BLL Osaka Organized the Task Force to Find All the Facts*, BURAKU LIBERATION NEWS, Sept. 1998, at 1. Regarding marriage discrimination, "a 1994 survey of attitudes carried out in Sakai City in Osaka revealed that 29.1 per cent of respondents opposed the idea of their own child marrying someone from a *buraku*." Teraki Nobuki, *supra* note 15, at 2.

79. See, e.g., *The Osaka Federation Held a Denunciation Session for a Detective Agency that Reported about a Buraku Area*, BURAKU LIBERATION NEWS, September 1997, at 4.

80. See *Buraku Lists*, in HARADA, *supra* note 16, at 49–50. The Human Rights Protection Bureau of the Japanese Government's Ministry of Justice issued a report in March of 1980, disclosed by the Justice Ministry on November 13, 1980, concerning the nine lists first discovered. According to this report, titles of the lists include "Secret Personnel Data," "General List of Buraku Districts," "Present Situation of Dowa Districts in Japan," and "Report of Special Investigation." Publishing companies' names include "Research of Talented Men for Companies, Defense of Companies," and "Research Institute of Labor and Political Problems."

occupants, of some 5,300 {b}uraku throughout Japan, grouped according to prefecture. The format is that of a weekly magazine (18 X 25 cm) and usually comprises more than 200 pages.⁸¹

Most of these lists were compiled between 1970 and 1975,⁸² just after the Special Measures Law was passed and restrictions concerning access to personal information were first implemented: public access to individual people's census registers had been limited, and the Ministry of Labor's high school application forms had been revised to exclude prior questions regarding family finances, occupations, and religion.⁸³

Purchasers of the lists were mostly Japan's largest companies, including Toyota, Nissan, Kubota and Yasuda Trust Bank.⁸⁴ Some of the stated reasons for purchasing these lists to avoid hiring *burakumin* seem to be the following: (1) *burakumin* are looked down upon and thus would be detrimental to company images and customer relations; (2) excluding *burakumin* from employment is necessary to maintain social harmony among employees who might harbor prejudice against *burakumin* themselves; and (3) not having *burakumin* would avoid potential problems with the BLL if a *burakumin* were to be upset by being fired or by a discriminatory occurrence in everyday operations.

b. *Koseki* ("Family Register")

In 1872, at the start of the Meiji Era, the *koseki* (family register) system was established. The purported government purpose was to maintain records of population and to create a database for conscription.⁸⁵ Addresses, births and deaths in the family, and social status (in the old *koseki*) of all heads of family were recorded and held open as public record. The Meiji Restoration brought about changes in the *koseki*, such as the nuclear family being registered without reference to extended family or ancestors; however, the old

81. *Id.* at 50.

82. The *Buraku Daihyō* or General List of Buraku Districts, compiled by the government in 1935, has been said to have provided the basis for the discriminatory *buraku* lists. See Kenzo Tomonaga, *From Partial Solution to Radical Solution of the Buraku Issue: A Critique Based on the Reality of Discrimination Against Buraku People*, in HUMAN RIGHTS IN JAPAN FROM THE PERSPECTIVE OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: COUNTER-REPORT TO THE THIRD JAPANESE GOVERNMENT REPORT 9 (1993).

83. See *Buraku Lists*, in HARADA, *supra* note 16, at 53.

84. See *id.* at 52.

85.

Additions took place not only with new births, but when there was an adoption or when a bride came to live with the groom's parents. When a daughter married, or a son established a branch family (*bunke*) by leaving the main *ie* (*bonke*) or when there was an adoption out of the household, that person's name was generally deleted from the family register. Young adults who had not yet married but were working and living elsewhere remained in the *koseki* of their parents.

YOSHINO & MURAKOSHI, *supra* note 12, at 108.

koseki was not destroyed and certain people, such as investigators and lawyers, could still access the old records.⁸⁶

In 1968, after protests by the BLL to the Justice Ministry, the *koseki* ceased to be an item freely available for public perusal. Permission of the family whose vital statistics were involved became requisite, except that in infrequent cases, the permission of the Minister of Justice was sufficient.⁸⁷ Unfortunately, refusing to grant permission to view one's family's records sets off an alarm, "suspicion is aroused," and usually a private detective is able to do other investigations, perhaps in the subject's hometown, to make a decision on his or her family background.⁸⁸ "[I]n June 1976, the law was changed so that anyone who wanted access to the family registers must first stipulate the purpose for which he wanted to use the *koseki*."⁸⁹

Some critics of the *koseki* do not think that the *koseki* needs to be preserved; others argue not for its demolition but a simplification and generalization of its contents, perhaps requiring only the town or city of one's birth instead of one's exact address and precinct.

c. Temple Registers

In the past, temple registers were also utilized to determine the social status of individuals. When the first modern census was taken in Japan a little over a hundred years ago, the name of the Buddhist temple with which the family had its affiliation was recorded. *Burakumin* were compelled to go to segregated temples; thus a family's temple membership is a source of information as well as past in-group associations.⁹⁰

Temple registers exist as documentation for historical purposes, not for the purpose of discrimination. Unfortunately, there is potential for them to be abused for discriminatory purposes. Accordingly, whereas temples formerly produced their registers upon request, the main branch is now under informal obligation to the BLL not to show these registers to the general public. If the temple leaders keep their promise, the destruction of temple registers is neither requisite nor beneficial, because they are records of important historical and personal data such as the days of people's deaths, which dictate the days and years in which memorial services should be held. Furthermore, it is commonly held that priests receive most of their income from just these types of ceremonies, so they do not wish to have these records abolished.⁹¹

86. See *id.* at 108–09.

87. See *id.* at 111.

88. *Id.*

89. *Id.* at 112.

90. *Id.* at 111.

91. See Interview with Kenzo Tomonaga, Director, *Buraku Kaibō Kenkyūjō* [Buraku Liberation Research Institute], in Osaka, Japan (April 1997) (on file with author).

In addition to temple registers, the Buddhist practice of giving posthumous names to temple members allowed for post-mortem discrimination against *burakumin*. In some cases, deceased *burakumin* were given derogatory posthumous names, inscribed on the backside of their tombstones. In various instances, these posthumous names have been consulted to identify the status of potential spouses and employees.⁹²

3. Government Report of 1996 and Extension of the Law

On May 17, 1996 the Consultative Council on Regional Improvement Measures, organized by the Management and Coordination Agency of the National Government, submitted its opinion on *buraku mondai*, the first report of its kind since the 1965 Report. Among the findings in this report are the following: discrimination remains despite some headway made by the special measure laws; the 1965 Report should continue to elicit respect as *buraku* discrimination has not fallen from the list of important topics in Japanese society; approaching the twenty-first century of human rights and consistent with Japan's adoption of international human rights laws such as the International Convention on the Elimination of All Forms of Racial Discrimination,⁹³ Japan is obliged to work toward the abolition of discrimination against *burakumin* as a human rights violation; and "the expiration of the current Law Regarding the Special Fiscal Measures of the Government for Regional Improvement Projects does not mean the abandonment of *dōwa* measures. The solution to {b}uraku discrimination should be actively sought, including a legislative measure."⁹⁴ Human rights education and enlightenment must be undertaken, "where *dōwa* education will be placed as an important pillar." A system of redress for those whose human rights have been violated and studies to inform future projects was also considered requisite.⁹⁵

In March of 1997 the Diet approved with partial revision a five-year extension of the Law Regarding the Special Fiscal Measures of the Government for Regional Improvement Projects.⁹⁶ In addition to improvement measures laws, the Diet enacted in December 1996 the *Jinken Yōgō Seisaku Sokushin Hō*, the Law for the Promotion for Measures of Human Rights Protection, which became effective in January of 1997. This law directs government to establish the Council for Promoting Human Rights Protection, which will analyze *buraku mondai* and create policy recommendations for human rights

92. See Tatsukuni, *supra* note 45, at 55; Komori, *Discriminated-Against Buraku and Civil Rights Protection*, in WHITE PAPER ON HUMAN RIGHTS IN JAPAN 55 (1984).

93. International Convention on the Elimination of All Forms of Racial Discrimination, Jan. 4, 1969, 660 U.N.T.S. 195.

94. Kenzo Tomonaga, *Aiming at the Enactment of the Fundamental Law for Buraku Liberation at the Next Diet Session*, BURAKU LIBERATION NEWS, July 1996, at 2-3.

95. *Id.*

96. See Kenzo Tomonaga, *Let's Build a Universal Culture of Human Rights*, BURAKU LIBERATION NEWS, May 1997, at 1.

education and enlightenment and recommendations for relief measures for the victims of human rights violations all within a five-year framework.⁹⁷ These laws are in line with the trend that began with the changes in the Area Improvements Law of 1982, which draws attention to the more general problem of human rights and away from *buraku mondai*.⁹⁸ Supporters of these laws applaud them for their objective of examining the problem of discrimination on an all-inclusive basis, of which *buraku mondai* is but one part. The BLL supports the creation of the 1996 Law for the Promotion of Measures of Human Rights Protection, while the Zenkai ren is opposed. A more elaborate discussion of this split appears in Part III.

II. EVALUATION OF THE CURRENT SITUATION OF BURAKU MONDAI—ASAKA BURAKU

The difficulty of undoing centuries of social, political, and economic discrimination cannot be understated, but substantial progress is possible if there is the will to achieve justice and an effort to undo historical misconceptions.⁹⁹ In *dōwa* areas recognized by the government to receive funds from the special measures laws, large strides have been made in achieving physical improvements of the living environment, and to improve primary and secondary education. Unfortunately, there has been less progress in *buraku* not recognized by the government, and in addressing employment and marriage discrimination, social prejudice, and nationwide *dōwa* education. In addition, *buraku mondai* has evolved to include new problems.

To understand and evaluate the implementation and effects of improvement measures over the past several decades, a concrete look at the history and real conditions of Asaka *buraku* is useful as a case study to discuss what has occurred in most *dōwa* communities.

97. *See id.*

98. According to the policy effective July 26, 1997 entitled Future Measures Seeking an Early Solution to the *Dōwa* Problem:

[Forty-five] projects [that were] currently covered by the Law Regarding the Special Fiscal Measures of the Government for Regional Improvement Projects will be handled in three ways. While 15 projects will remain covered by a special but new law, 22 projects will be implemented as ordinary projects with certain financial subsidies. The rest will be shifted to ordinary projects.

Kenzo Tomonaga, More Efforts toward the Enactment of the Fundamental Law by Taking Advantage of the Cabinet's Conclusion, BURAKU LIBERATION NEWS, Sept. 1996, at 3.

99. The degree of this difficulty has some parallel with the United States' experience with slavery, historically its greatest embarrassment. It took a bloody Civil War to abolish slavery in the United States and it was not until nearly a hundred years later that U.S. courts, followed by the U.S. Congress, led the efforts to eliminate the vestiges of slavery, some of which have persisted to this day. Viewed relatively, the Japanese government has moved within a similar time frame, since the Emancipation Edict to eliminate official policies of discrimination and to adopt measures mostly for physical improvements of *dōwa* areas. Its relative inaction with regard to human rights legislation, however, has diminished the progress that otherwise would have been made.

A. History of Asaka Buraku

There is no "typical" *buraku*—not in terms of population, socioeconomic conditions, geography, intra-*buraku* politics, time frames, or any other measure. Accordingly, some efforts will be made in this Section to supplement information about Asaka *buraku* and its population with comparative facts from other *buraku* communities. The primary emphasis will remain on Asaka *buraku*.

In 1721 the area of the Asaka *buraku* was redeveloped for housing after which *kawata*, or hide tanners, came from Settsu, Kawachi and Izumi provinces, which were all within the boundaries of current day Osaka, to work and live together. This was the birth of Asaka *buraku*, though it was called Sugimoto Shinden ("newly explored paddies in Sugimoto Village")¹⁰⁰ until 1925. Sugimoto Shinden had separated from Sugimoto Village in 1883 and Asaka and Yosami Village merged into Osaka City, leaving Asaka-cho to exist alone.

While records are scarce, the following is known about the history of living conditions in Asaka. Throughout the Shogunate Rule (1603–1867), Asaka *buraku* residents subsisted by doing jobs such as transporting water from the Yamato River for agricultural use in times of poor irrigation, treating dead cattle and horses, and subcontracting from sharecroppers. Systematic status discrimination precluded them from engaging in other jobs with higher remuneration.¹⁰¹

According to a survey of 1898, *burakumin* in the Meiji Era (1868–1912), possibly including Asaka residents as well, "engaged in used material collecting, manual labor, agricultural labor or miscellaneous jobs," and barely made ends meet.¹⁰² In the Taishō Era (1912–1925), Asaka consisted of approximately 200 families of 1000 residents. Used material collectors were the majority, though petty farmers and day laborers were also plentiful.¹⁰³

In August of 1918, the nationwide rice riots began in Japan. After World War I, the economy of Japan had improved, but prices had also risen.¹⁰⁴ [[Poor people suffered the most from the price hikes due to their small budgets. There are said to have been about 500 disturbances in places within Osaka prefecture, involving clashes between citizens and the police and armies, resulting in injuries and deaths.¹⁰⁵ This was the first time Asaka resi-

100. A GUIDE FOR ASAKA BURAKU 14 (Executive Committee for Comprehensive Planning of Buraku Liberation in the Asaka Area ed., 1995).

101. *See id.*

102. *Id.*

103. *See ASAKA NO REKISHI TO SEIKATSU* II 9 (Group to Form the History of Asaka Buraku ed. 1977). This information was recorded by the Osaka government in 1918 in its survey on *buraku* entitled "Buraku Register," *supra* note 44, at 34.

104. *See id.* at 34. In July of 1918, the cost of one *shou* (0.477 U.S. gallons) of rice had risen drastically to 55 *sen* (100 *sen* is 1 yen), from 12 *sen* before the war. *Id.*

105. *See id.* at 36.

dents were a part of a national struggle. It provided them with a taste of possibilities to come.

During the early Shōwa Era (1925–1945), farming and waste collecting were the most common jobs for *burakumin*, and the beginnings of what would become branches of the Sumiyoshi Agriculture Cooperative were formed. Concerning geography, “the actual space of Asaka was reduced and access restricted by various projects around the town.” To the west was Osaka College of Commerce, later Osaka City University; to the north a new subway yard was built; to the south was a Tennoji-Abiko road extension; and to the east, the Yamata River ran.¹⁰⁶ It is unlikely that a non-*buraku* community would have undergone developments that operated to isolate and separate it.

Prior to government improvements, Asaka *buraku* existed above and on both slopes of the west bank of the Yamato River. “Over 200 households lived on the riverbed, on the inner side of the bank, where it is in fact a part of reserve river flow,” making them vulnerable to storms and floods. Many families did not have the benefit of tap water supply, central sewage disposal, or private lavatories. Tin house roofs were common. Insects infested the housing due to the high humidity near the river. And the narrow width of roads did not allow motor vehicles, including fire engines, to pass.¹⁰⁷

In 1974, there were 3,000 residents of Asaka and its population density soared at 1.6 times the city average. There was no dry goods or grocery store in town, and schools, both primary and junior high schools were much farther than the city standard walking distance. There was not one doctor in the town.¹⁰⁸

In addition, poverty was rampant. Few families received government relief, however, due to a combination of distrust among *burakumin* of government assistance, discrimination excluding *burakumin* from obtaining government services, and a lack of knowledge among *burakumin* regarding their rights to, and the availability of, relief. “The consequence was a vicious circle of dire poverty leading to illness or disability and an early death.”¹⁰⁹

To combat these and other problems, residents of Asaka rallied together to fight for benefits from the government and equality within society. Early struggles in Asaka, however, were not entirely successful.¹¹⁰ In July of 1965,

106. A GUIDE FOR ASAKA BURAKU, *supra* note 100, at 3.

107. *Id.*

108. *Id.* at 6.

109. *Id.* at 11. Although conditions between *buraku* were different, they were all lacking in basic infrastructure, and suffering from inferior education and job opportunities. They all existed at sub-standard levels, though the specific make-up of each's problems varied depending on location, traditional occupations, relationships with surrounding communities and relationships with municipal governments. See Interview with Eichi Kimura, Head of the Administrative Office of the Asaka Local of the Buraku Liberation League, in Osaka, Japan (March 1997) (on file with author).

110. See, e.g., A GUIDE FOR ASAKA BURAKU, *supra* note 100, at 15 (In September of 1957, residents

Asaka residents formed the Asaka Area Housing Improvement Union¹¹¹ and began to demand improvements from the government's Yamato River Construction Work Office and the Kinki Regional Construction Bureau of the Construction Ministry,¹¹² using the previous successes of Yata and Sumiyoshi *buraku* liberation movements as models. In 1965, the Asaka Local of the BLL was founded, despite the prevalence of the "don't wake a sleeping child" (see "Society" in Part IV) rhetoric.¹¹³ When government improvement projects were begun, this organization was called upon to be the administrator of these projects, under the government policy of *madoguchi ippō* (one window), to be discussed in Part III.

The history of the liberation movement in Asaka is consistent with the BLL's history of administrative struggle. The beginning phases of development, from 1965 to 1970, consisted of efforts to improve housing and infrastructure. In 1968, Asaka *buraku* won its first housing complex in the north-western part of the inner town under general government measures. This was the beginning of government housing construction in Asaka, which lasted almost two decades: the eastern half of the town received 138 apartments; in 1986, twenty-seven apartments were planned to be built in the western part of the inner village.¹¹⁴ Community roads were constructed and a road for emergency vehicle traffic was built along the river, next to 800 meters of newly planted cherry trees.¹¹⁵ Today, 70% of Asaka residents now reside in public housing. "Nevertheless, the average space for housing is about forty square yards, eight square yards less and twenty square yards less than the prefecture and national housing average[s, respectively]."¹¹⁶

The second stage of empowerment, from 1971 to 1975, involved the strengthening of the BLL's youth and women groups, by joining the national BLL struggle in the realms of denunciation and the Sayama Mistrial Struggle, which aimed to free Mr. Kazuo Ishikawa from jail after (the BLL and some others allege) he was falsely charged and imprisoned based on his

protested against the construction of a city subway yard, but this opposition lacked a unified voice, and the strength of their cries was dispersed in its scattered organization. In the end, the government was successful in appeasing the residents of Asaka with monetary compensation, exchanges of land, and the construction of a community center and new roads in exchange for allowing the subway yard to be built).

111. *See id.* at 16.

112. *See id.* at 3.

113. *See id.* at 16.

114. *See id.* at 4. By 1983, all of the dilapidated housing located along the Yamato riverbed was removed and the banks were improved. By 1989, government excavation and embankment projects were completed, turning the banks into the kilometer-long Yamato Riverbed Park with "tennis courts, an athletic ground, a Four Season's Plaza, a children's play corner and a trimmers' corner." *Id.* at 3. Seventy percent of the total housing in Asaka is government-built and subsidized. *See id.* at 12.

115. *Id.* at 3. Ironically, many residents did not support efforts by the BLL to improve housing conditions in Asaka because they did not want their community to be recognized as a *buraku* area and they were believers in the "don't wake the sleeping baby" philosophy, thinking that if *buraku mondai* were not discussed, it would be forgotten and the problems associated with it, including discrimination, would thus disappear. Yet predictably, once the houses were removed and built in a new location, these same people moved in readily. *See* Interview with Eichi Kimura, *supra* note 109.

116. A GUIDE FOR ASAKA BURAKU, *supra* note 100, at 13.

burakumin identity.¹¹⁷ A community after-school classroom building was built in 1974 and programs such as the Children Association (in which children join together for activities), Extra School Study Programs, and High School Subjects Study Programs, were initiated.¹¹⁸

From 1975 to 1980, residents of Asaka came together to create a vision, and to work on a plan for the future of their town. They formed the Executive Committee for Comprehensive Planning on March 14, 1976 with the aim of "building Asaka anew into a town of liberation, education and people's autonomy in every [aspect] of the environment, education, employment, daily life and culture."¹¹⁹ Also, the BLL conducted negotiations with the Osaka City Authorities, which resulted in the promise by local authorities "for the total removal of the subway yard, the reconstruction of the river bank and the riverbed of the Yamato River and the total renovation of all poor housing in the town center."¹²⁰ In October of 1989, just before the total removal of the City Subway Yard, the Council for the Promotion of Town Renovation Utilizing the Former Yard Site was organized. Many organizations joined the Council to discuss renovation plans for the yard site, and in April of 1988, the Council negotiated with the city and in August of the same year, "the vacant land of the former yard site was made a temporary athletic ground for citizens' use."¹²¹ Also with government support and funding, a multitude of community facilities have been built and administered in Asaka, for example the Asaka Buraku Liberation Center¹²² and the Asaka Community Dispensary.¹²³

In the late 1980s, Asaka *buraku* leadership changed its demands on government, focusing on (1) education, (2) nursery schools, and (3) rent supplements. These demands were heard and met. The government programs of awarding high school and college scholarships to *dōwa* residents and rent supplements were extended five and seven years, respectively. Now, almost all children attend a public nursery school. In general, Asaka Local of the BLL learned that what it does not demand from the government it will never get, but, if it is reasonable and makes strong claims, it can eventually receive what it demands.¹²⁴

117. See generally Kumisaka, *supra* note 60, at 3. In short, the Sayama case involved a *burakumin*, Ishikawa, who was accused of the kidnapping and murder of a non-*buraku* girl, made to confess, then sentenced to life in prison. He was finally released decades later. This case marked the focal point of the BLL's efforts in much of the 1960s and 1970s.

118. See *id.* at 9.

119. A GUIDE FOR ASAKA BURAKU, *supra* note 100, at 16-17.

120. *Id.* at 17. City removal of the subway yard was completed in 1988, clearing almost 28 acres of flat land. *Id.* at 5.

121. *Id.* at 17.

122. "To promote independence and awareness among Asaka residents, the Center provides welfare and employment counseling, various lessons, lectures and literacy classes. Also, many cultural activities such as human rights lectures and newsletter publications are conducted here." *Id.* at ii.

123. "Internal medicine and pediatrics specialists are available to preserve the health and hygiene of the community." *Id.* at iii.

124. See Interview with Eichi Kimura, *supra* note 109.

The most pressing problems, in the view of Asaka leaders today, are the dilapidated conditions of government housing and the growing inability of Asaka residents to pay their rent as it rises from about 10,000 yen (under \$100) per month to market levels when government subsidies are ended. In addition, prejudice against *burakumin* remains in people's hearts, minds and deeds. Asaka leaders support the enactment of a law prohibiting discrimination against *burakumin*. Also, the Asaka branch of the BLL is working to ensure the continuation, in some form, of improvements and assistance from the government.¹²⁵

B. Indirect Discrimination: Disparate Socioeconomic Conditions

Despite the many government funded improvements over the years, the results of past and present discrimination are still visible in all aspects of Asaka residents' lives. More than solely a problem of direct discrimination, *buraku mondai* today entails several less visible problems that are reflected in data on the socioeconomic and other conditions of *burakumin*.

1. Population Statistics

In 1990, Asaka was home to 1619 individuals in 634 households. Today, over half of the households include a native Asaka family member; most of the remaining families relocated to Asaka in the 1960s. Seventeen percent of households are composed of a single elderly person, "which is over five times higher than the average for [the] entire Osaka Prefecture population."¹²⁶ The small quarters of government housing may be pointed to as the cause of this circumstance, since a large percentage of elderly in Japan live with one of their children's families. "Single parent families comprise 11%, which is 1.6 times higher than the Osaka average."¹²⁷

2. Health

Over 30% of Asaka residents are either "under treatment or are hospitalized."¹²⁸ To make matters worse, almost 16% of Asaka residents are without any health or medical insurance, whereas virtually all majority Japanese have such coverage.¹²⁹ "Although the biggest reason given for no insurance is that many are on the medical relief roll, a significant number among the no-insurance group was unable to take advantage of medical service in the time

125. *See id.*

126. A GUIDE FOR ASAKA BURAKU, *supra* note 100, at 7. This is a decrease of approximately 300 households since 1970 due to many people moving out of Asaka after land purchases for improvement projects. *Id.*

127. *Id.*

128. *Id.* at 11. Problems of the circulatory system, digestive system and musculoskeletal system (hypertension sufferers are largest in number) abound. "This shows the consequence of hard labor and an improper nutrition over a long period." *Id.* Sickness accounts for 32.1% of unemployment. *See id.* at 10.

129. *See id.* at 11.

of need.”¹³⁰ In addition, 8.4% of Asaka residents (triple the prefectural average) are recognized by the government as having disabilities related to vision, hearing, balance, “lower extremity impediments, [and] . . . internal disabilities.”¹³¹ Although a great number of these disabled person households have moved into, rather than were born in, Asaka *buraku* because of its unusual amount of government supported programs and facilities for the handicapped available there, it seems that there must have been a strong need for these programs and facilities before these new residents moved in, or they would never have been established or built.¹³²

3. Income

The average income of *dōwa* residents is 70% of the national average. This is due to varying combinations of inferior jobs consistent with lower qualifications of many *burakumin*, an apparent lack of ambition to enter higher-paying, larger company positions, and direct discrimination against them.¹³³ Compared with the 1988 prefecture average, Asaka families are on average receiving approximately 80% of income of the average family¹³⁴ and disproportionately lack the benefits afforded by larger employers.

Approximately 25% of Asaka residents are on the government relief roll, a ratio eight times higher than that of Osaka city. “The head of the family’s illness is the biggest cause of people being on relief, followed by old age, disabilities and single-parent famil[ies].”¹³⁵

4. Education

According to a survey conducted in 1990 of Asaka *buraku*, “nearly one tenth of people over 15 years of age quit school before they finished the 6th grade.” This is an alarming twenty-seven times higher than the city average.¹³⁶ Although conditions are still inferior, this drop-out rate is lower than in the past, due to government projects for education in the 1960s and an emphasis on “problems of juvenile delinquency and inadequate academic performance of Asaka students in the 1970s.”¹³⁷ As of 1993 in Asaka, “the high school advancement ratio in the past five years went as high as 92.4%,”

130. *Id.*

131. *Id.*

132. It may be that the local branch of the BLL was simply able to muster more political strength than individual disabled people in other communities, in order to get special facilities, and thus *dōwa* areas have become attractive neighborhoods for the disabled.

133. See Tomonaga, *supra* note 82, at 12. Households in 1990 averaged a yearly income of 3,430,000 yen (approximately US\$34,300), an increase of 420,000 yen (equivalent to about US\$4,200) since the survey of 1983. The inflation adjusted increase would be calculated to about 120,000 (US\$1,200), and when the tax increase in the same period is considered, the real income stays about the same. A GUIDE FOR ASAKA BURAKU, *supra* note 100, at 13.

134. *See id.*

135. A GUIDE FOR ASAKA BURAKU, *supra* note 100, at 12.

136. *Id.* at 8.

137. *Id.*

almost equal to the average ratio of the Abiko Junior High, where Asaka children and non-*burakumin* kids study together.”¹³⁸ Opportunities for employment from high school are expanding with the help of public employment agencies and school guidance.¹³⁹

Buraku students have not advanced as far in higher education. The national entrance rate into universities has dropped to about 30%. Asaka *buraku*'s rate of entrance into higher education, including junior college, is less than 70% of the city average,¹⁴⁰ which is only around 60% of the all-inclusive national average.¹⁴¹

The education situation of [the] people of Asaka is almost 20 years behind the national average. As a result of such poor education, 16.1% of people in Asaka face inconvenience in reading, 23.5% say they have the same problem in writing. This works to their disadvantage not only in job situations but in almost all stages of their social life; a vicious circle continuing [from] one generation to the next.¹⁴²

Many *buraku* students do not enter higher education because they feel a sense of fatalism that even if they work hard and succeed academically, the existence of employment and workplace discrimination will never allow them the opportunity to succeed in the majority population. Other factors include the high cost of college and inadequate qualifications.

Scholarships available to Asaka residents are of two types: (1) *dōwa* school scholarships and (2) *ikueikai* scholarships. Requirements for the former are residence in the *dōwa* area, approval of *dōwa* measures in general, and participation of the children and parents in three meetings per year to learn about *dōwa* measures. The latter is based on merit and economic need, in the form of a loan that can be forgiven if all requirements are met.¹⁴³

5. Employment

Burakumin still face outright discrimination in education, in employment, and in marriage. According to a survey of residents in Asaka *buraku*, thirty percent of *burakumin* have experienced discrimination, mostly verbally but thirty percent demonstrated through “attitudes, actions or gestures.” Some were investigated by detective agencies for matters related to employment or marriage, or their homes marked by discriminatory graffiti.¹⁴⁴

138. *Id.* at 9.

139. *Id.*

140. *See id.* at 8.

141. *See* Tomonaga, *supra* note 82, at 11–12.

142. A GUIDE FOR ASAKA BURAKU, *supra* note 100, at 8.

143. *See* Interview with Eichi Kimura, *supra* note 109.

144. *See* A GUIDE FOR ASAKA BURAKU, *supra* note 100, at 13.

Although general rates of employment in Asaka are not grossly disproportionate to Osaka's averages, the type of work differs tremendously.¹⁴⁵ Approximately one-third of employed Asaka residents work as government employees, in the capacities of school janitor, cafeteria staff, water supply worker and railroad hand.¹⁴⁶ "Another third work in smaller companies with less than thirty workers, where the employment situation is unstable."¹⁴⁷ There are also those who are self-employed, engaged mostly in the business of buying used material for re-cycling or in small-scale construction businesses, followed by the dining, retail and service industries.¹⁴⁸ According to Kimura Eichi, Head of the Administrative Office of the Asaka Local of the BLL, although discrimination used to be the most influential barrier keeping Asaka residents from better jobs, today the barrier is a combination of poor educational achievement and a lack of motivation partly caused by such factors as observed past discrimination in employment.¹⁴⁹

Viewed on the national level, "in the field of jobs, the characteristics of *(b)uraku* workers can be described as follows: (1) the percentage of full-time employment is low; (2) most are employed by small- and medium-size companies; (3) few are in management; most are 'blue collar' workers."¹⁵⁰

Under Japan's dual economic structure it is difficult for the *burakumin*, who are employed primarily by small enterprises, to improve their economic circumstances. Large-scale corporations pay higher wages, have good working conditions, give higher semi-annual bonuses and better retirement pensions . . . *burakumin* are not employed by large corporations that provide life-time employment but are hired as temporary or contract workers and have no job security . . . Many are working as day-laborers, peddlers, street-cleaners and junkmen.¹⁵¹

Outright discrimination accounts for the scarcity of *burakumin* hired by large corporations in some cases, but inferior qualifications and the unwillingness of many *burakumin* to enter the harsh world of discrimination also plays a role.

Some progress has been made in eliminating discrimination from employment in Japan. By a regulation governing employment searches conducted through high schools, it is unacceptable for an employer to inquire

145. *See id.*

145. "The [total] ratio of people employed in Asaka is 46.1%, that is 1.7% lower than the Osaka Prefecture average. 37.3% are permanently employed, 2% lower than the prefecture average." (Osaka Prefecture statistics used for this comparison are four years older than Asaka statistics.) Also, 8.4% are temporar[il]ly employed or day laborers, one and a half times the prefecture average. *See id.* at 10.

146. Interview with Eichi Kimura, *supra* note 109.

147. A GUIDE FOR ASAKA BURAKU, *supra* note 100, at 10.

148. *See id.*

149. *See* Interview with Eichi Kimura, *supra* note 109.

150. Tomonaga, *supra* note 82, at 12.

151. *Id.*

about such things as an applicant's family and specific place of residence. A standard form issued by the Ministry of Labor is supposed to be used when employers are taking applications through high schools. "Students who will graduate from high school in 1997 are to use a uniform application form for employment" that will not require them to state their permanent domicile, family origin, or personal data about their family members.¹⁵² Nevertheless, optional questions inquiring about these "taboo" topics on job application forms are often added by employers to application forms, and, if schools complain, in many cases the employers do not return to the school the next year to interview job applicants.¹⁵³ In addition, students applying for jobs from college or other schools, or who seek jobs independently, have no formal protections against discrimination available to them. Nonetheless, there have been ways in which the Department of Labor has tried to abolish discrimination in employment. Actions have included "providing enlightenment" to employers, sending administrative directives to companies to establish a position for *buraku mondai* consultant, and job training.¹⁵⁴ No penal regulations prohibiting discrimination in employment exist.¹⁵⁵

6. Marriage

Discrimination in marriage persists against *burakumin*, but it also does against other minorities and poor people who wish to marry a person of higher social or economic status. Many Japanese believe they are not prejudiced against *burakumin*, yet they are still not comfortable with the idea of either themselves or their children marrying a *burakumin*. Some mainstream Japanese young adults respond by arguing that *burakumin* are too involved in their own struggle and would not be a good partner, and that such an association brings shame to the family and a lowering of one's position in society.¹⁵⁶ Personal prejudice against *burakumin* per se is hardly ever offered as a reason for the practice of discrimination, although such prejudice often seems to underlie the transparent rationales that are expressed.

Although statistics regarding marriage discrimination exist, they can be interpreted in various ways; also, the method of collection and the form of display can alter their appearance. For example, the BLL often views cumulative statistics of *buraku* marriages and emphasizes the low percentage of mixed marriages. The Zenkai ren, on the other hand, considers the change in statistics among surrounding generations to show the increase in mixed

152. Kenzo Tomonaga, *Toward The 50th Anniversary Of The Universal Declaration For Human Rights And The 30th Anniversary of The BLRI*, BURAKU LIBERATION NEWS, Jan. 1997, at 4.

153. See Interview with Kenzo Tomonaga, *supra* note 91.

154. See *id.*

155. See *id.*

156. Discussions with various mainstream Japanese young adults in western and eastern Japan, 1996-1997.

marriages.¹⁵⁷ Among the sea of statistics supporting the Zenkai-iren's contention are:

- 1) Sixty-five percent of Asaka couples stated that at least one of them is non-*burakumin*, as opposed to decades ago when *burakumin* simply did not marry outside of their class. ("Thirty percent of these couples, however, experienced opposition to their marriage by their close relatives, and 10% of them have at least one of their relatives rejecting any contact with them just because he or she married a *burakumin* or because they live in [a] *buraku*."¹⁵⁸)
- 2) Eighty to ninety percent of parents say they either did not care if their child married a *burakumin*, or they did care but could do nothing about it; only ten percent were found to actually oppose this idea.¹⁵⁹

At least one Japanese court has been sympathetic to claims of marriage discrimination against *burakumin*. In May of 1996, the Osaka district court awarded a *buraku* woman 4.1 million yen (under \$40,000) on her 26 million yen claim for compensation for her and her child from a man who allegedly "canceled their common-law relation under the influence of his mother who had prejudice toward (b)*buraku* people, in spite of the fact that a child was born to them."¹⁶⁰

III. THE BURAKU LIBERATION MOVEMENT'S INTERNAL DEBATE

So far we have examined the origins and history of *buraku mondai*, the liberation movement and government policies, the methods of perpetuating discrimination through background investigations, and the successes and failures of government legislation. The remaining Sections will address which actions of the government and liberation movement would best facilitate the full realization of *buraku* liberation and the elimination of discrimination. This will be accomplished by weighing the manifold opinions of the liberation movement's two most vocal organizations in Part III, while commenting on current critical issues of *buraku mondai* in Part IV. Finally in Part V, some ideas about Japan's responsibility to seek solutions to *buraku mondai*, along with policies that might be pursued to achieve this goal are presented.

Until 1975, there was almost no mention of *buraku mondai* or *burakumin* in mass communications media, including during the centennial of the Meiji Emancipation Edict in 1971. Early in 1975, one of Japan's leading national newspapers, the *Asahi Shinbun*, ran thirty-four articles about *buraku mondai*. The articles were concerned with the debate between the BLL and

157. See Interview with Okuyama Mineo, *supra* note 69.

158. A GUIDE FOR ASAKA BURAKU, *supra* note 100, at 13.

159. See Interview with Okuyama Mineo, *supra* note 69.

160. *Court Orders Compensation for Cancellation of Marriage by Reason of Buraku Discrimination*, BURAKU LIBERATION NEWS, July 1996, at 7.

the JCP on the integration policy of the government at that time. The Tokyo metropolitan governor's election was around the corner, and this topic was brought to the forefront.¹⁶¹ Since 1975, public debate over *buraku mondai* has continued, though it is still far from open, widespread, or abundant. Below is an analysis of the major points of contention in the *buraku mondai* debate as argued by two key players.

A. Sketch of Organizations

There are currently two political organizations that engage in an ongoing debate about *buraku mondai* in Japan: the *Buraku Kaihō Dōmei*, or Buraku Liberation League (BLL), and the *Zenkoku Buraku Kaihō Undō Renai Kai*, or All Japan Federation of Buraku Liberation (Zenkairen).¹⁶² They share a common ancestor, the Suiheisha, but in the 1970s became two separate entities. The BLL continued as the direct descendant of the Suiheisha, while the Zenkairen was formed by dissatisfied and excluded members.

It must be stated that even within *buraku* liberation organizations, there is much diversity in thought and practice between leaders, offices and individuals. Therefore, concentration will be placed on the central leanings of these two organizations themselves, but with the caveat that this focus oversimplifies a wider range of views, not only within the organizations, but also as between them and other organizations. Nonetheless, this method is well suited to expose key contentions.

1. *Buraku Kaihō Dōmei* [Buraku Liberation League (BLL)]

The Buraku Liberation League (BLL) is a non-profit organization composed of approximately 190,000 dues-paying members. According to the BLL, the number of supporters is four times this number, because usually only the head of each family pays dues.¹⁶³ According to the BLL, its mem-

161. See YOSHINO & MURAKOSHI, *supra* note 12, at 133.

162. There are several other organizations such as the *Zenkoku Jiyū Dōwa Kai* (All Japan Freedom Integration Committee), abbreviated Zenjidō, and the *Kokumin Yūgō Kaigi* (National Conference on the Buraku Question for National Reconciliation). The Zenjidō is especially strong in Shizuoka with a 4:1 ratio over the BLL. Members are thought to be wealthy *burakumin* (constructors, in order to get public funds, and other influential people in the *buraku* communities). While the Zenjidō is usually an avid supporter of the LDP, in the last election, some prefectural offices of the BLL also supported some LDP candidates, and since the LDP would rather have the BLL's support, because of its membership enrollment, the Zenjidō is losing its clout with the LDP. The latter holds opinions roughly in agreement with the Zenkairen and its affiliated Institute. In addition, a multitude of small groups or individuals claiming to be working for *buraku* liberation exist, some respectable but many that are simply in business to devise ways to extract money from the government from funds allocated for *dōwa* measures (or companies or individuals by using various types of implicit or explicit threats). See Interview with Okuyama Mineo, *supra* note 69, and talks with various majority, non-activist Japanese in western Japan.

163. See Interview with Kenzo Tomonaga, *supra* note 91. Of course, it does not necessarily follow that if one member of a household is a dues-paying member of the BLL, all members of that family are also supporters. In addition, some members of the BLL had to pledge their allegiance to the BLL in order to receive benefits under the Special Measures Laws. See Interview with Mineo Okuyama, *supra* note 69. On the other hand, there are those who support the BLL but are not dues-paying members.

bers are from every socioeconomic class and have varying political allegiances. It is commonly recognized, however, that the percentage of *burakumin* in the BLL is high, and JCP supporters are almost non-existent.¹⁶⁴

The BLL has over 2000 branches in local *buraku* as well as national and prefectural offices. In Osaka, there are forty-eight *dōwa* areas and forty-seven local branches of the BLL, ten branches of the Zenkai ren, and about six Zenjidō branches. The Buraku Liberation Research Institute, the BLL's affiliated research entity, became the Buraku Liberation and Human Rights Research Institute on July 1, 1998.¹⁶⁵ Unlike the Institute of Buraku Problem (affiliated with the Zenkai ren), however, it is not independent but an organ of the BLL.

The central body of the BLL and its branches exist on income from membership fees, publications and sales of books, and revenue from meetings. Also, local BLL branches receive government assistance funds, in the form of municipality subsidies and conduct private sector fundraising. In many instances, government subsidies are given directly to the BLL and used for (1) BLL cooperation to implement improvement works, and (2) BLL funds for travel, tutorial materials, and other incidental costs.¹⁶⁶ The BLL, at least at the local level, seems to function as a quasi-governmental body, implementing and administering government projects and funds.

2. Zenkoku Buraku Kaihō Undō Renai Kai [All Japan Buraku Liberation Movement Federation (Zenkai ren)].

The Zenkai ren (previously the *Buraku Kaihō Dōmei Seijōka Zenkoku Renkaku Kaigi*) was organized by the Communist Party after the passing of the Special Measures Law in 1969, as a rival organization to the BLL. Membership was composed of prior BLL supporters who had been purged or had withdrawn from the BLL mainly in 1969. It has friendship ties to the Japanese Communist Party (JCP)¹⁶⁷ and the Institute of Buraku Problem.¹⁶⁸

The Zenkai ren has two main offices, in Tokyo and Osaka, as well as prefectural and local branches. There are approximately 80,000 members of the Zenkai ren, enrolled individually, and most of whom are not living within a *buraku*. The membership is largely composed of intelligentsia, JCP members, and others who, for the most part, are not *burakumin*. There are teachers of all levels, and high school teachers with *buraku* backgrounds are common leaders of local Zenkai ren offices.¹⁶⁹ The Zenkai ren is the strongest in

164. See Interview with Kenzo Tomonaga, *supra* note 91.

165. See *id.*

166. See *id.*

167. See GEORGE DE VOS & HIROSHI WAGATSUMA, JAPAN'S INVISIBLE RACE: CASTE IN CULTURE AND PERSONALITY 68 (1966).

168. See Interview with Mineo Okuyama, *supra* note 69.

169. See Interview with Kenzo Tomonaga, *supra* note 91.

Okayama and Wakayama, with fifty percent support from residents of government recognized *buraku*; the BLL makes up the other fifty percent.

Sources of funding for the Zenkai are similar to those for the BLL, including the following: (1) *hojōkin* (government assistance funds), although this is not allocated based on a national policy and thus the amount received differs according to prefecture, method of request and other considerations, (2) income derived from guidance of small *buraku* companies with regard to accounting and other services, and (3) in Osaka, the prefectural *dōwa* policy council gives *sokushin*, or promotion money, for construction and also the running of meetings, production of educational materials for public use and similar activities.¹⁷⁰

Articles 19 and 21 of the *Kenpō* guarantee individual freedom of thought and assembly, respectively, so mass movements cannot force their members to support one particular political party. The Zenkai, however, supports the JCP, and holds meetings in which it asks members to indicate their intended vote. The Zenkai also has some conservative members, although it is a more homogeneous group than the BLL. The members of the Zenkai are historically those who were excluded from the BLL exactly because of their Communist leanings and support.¹⁷¹ In discussing the relationship between the JCP and the Institute of Buraku Problem, Okuyama,¹⁷² the latter's Executive Director, stresses that the JCP is a political party, with many concerns and an aim to achieve political power, while the Institute is an independent research group concentrating solely on *buraku mondai*.¹⁷³

B. Significant Conflicting Views

The Zenkai has much to say about the BLL, and has been called the BLL's opposition group. It is critical of the "excessive (*h*)*uraku* orientation" of the BLL, while the BLL responds that "the initiative and critical perspective of the discriminated-against peoples play vital roles in democratizing

170. See Interview with Mineo Okuyama, *supra* note 69. According to the latest figures, in Kyoto city, the government gave 40,000,000 yen (less than \$400,000) to the BLL, and half of that to the Zenkai. See *id.*

171. See *id.*

172. Okuyama, as Executive Director of the Institute of Buraku Problem, holds opinions that generally concur with those of the Zenkai.

173. See Interview with Mineo Okuyama, *supra* note 69. The Institute is a private, non-profit organization established in 1948 when the Department of Education recognized it as a legal juridical entity and is independent from the Zenkai and JCP. It is funded by a combination of: (1) membership fees (9000 yen/year for individuals, 100,000 yen/year for organizations), (2) publications and (3) grants from the government (for individual researchers or teams of researchers, not for the entire organization) for that applications must be sent to the Department of Education. The Institute of Buraku Problem shares opinions in common with the Zenkai, the most significant ones being (1) the perception that *buraku mondai* is moving toward extinction, and (2) national integration of *burakumin* with the belief that the rest of Japanese society over time is an appropriate solution to *buraku mondai*. However, the Institute differs from the Zenkai in that it is composed of individual researchers who are free to conduct their research and assert their own ideas and opinions. Therefore, there is greater diversity of opinion within the Institute. See *id.*

the society."¹⁷⁴ The Zenkai ren and government call for attitudinal changes on the part of *burakumin*, in other words, less dependency on government and a conquering of their "backwardness";¹⁷⁵ the BLL criticizes the government and Zenkai ren for their assimilationist tones.

Each in its own way, both the BLL and Zenkai ren are extraordinarily convincing in their presentations of the origins, problems and current realities of *buraku mondai*, and their corresponding ideas concerning appropriate policies. When viewed in the context of the views of the majority population, mass media and especially in relation to one another, however, a helpful perspective can be gained of their points of agreement and disagreement and the strengths and weaknesses of their actions and visions for the future.¹⁷⁶ In any case, there are fundamental differences between the BLL and Zenkai ren's ideologies. To understand these distinctions, it is helpful to analyze the main points of contention.

1. On the Origins of Discrimination

Is *buraku* discrimination a caste or class-based problem?¹⁷⁷ The Zenkai ren considers *buraku* discrimination to be class discrimination, and espouses opinions consistent with this theory. Yet, when one of two equally qualified applicants for a job loses out on grounds of his or her *buraku* identity, this presents a problem of caste versus class discrimination. Therefore, *buraku mondai* cannot be analyzed simply in terms of the Marxist theory of economic determination, that is, of a class struggle between the capitalist and the workers. "Even though by any objective measure of social stratification a *burakumin* may be in the upper middle class, the majority group members emotionally retain a social distance."¹⁷⁸

On the other hand, the BLL's categorization of *buraku* discrimination as a type of caste discrimination is also simplistic. While this might have been the case in the Tokugawa Era, today people not of Tokugawa outcast ancestry are also discriminated against as *burakumin*, based on their place of residence or occupation. Beyond the fallacies indicated above, there are practical inadequacies to classifying *buraku* discrimination simply as either a form of class or caste discrimination.

174. HIRASAWA, *supra* note 3, at 143–44.

175. *See id.*

176. There are reasons why each organization seems to present a very lucid and realistic argument about *buraku mondai*, even though the arguments between the organizations are contradictory. One factor is that analyses of, or emphasis on, different issues lead to different opinions and strategies to deal with them. And oftentimes, certain facts or issues are chosen deliberately in order to come up with certain desired answers.

177. Caste discrimination refers to discrimination based on *buraku* identity. Class discrimination is based on socioeconomic status—for example, membership in a proletariat.

178. YOSHINO & MURAKOSHI, *supra* note 12, at 104.

Class reductionism prevents non-*(b)uraku* poor from perceiving correctly the pain and suffering of the discriminated-against. *Burakumin*'s unique aspirations and demands are lost from their sight. Caste reductionism may unnecessarily generate feelings of antagonism between *(b)urakumin* and non-*(b)urakumin* thereby curtailing the possibility of their joint engagement for liberation.¹⁷⁹

As explained in the Introduction, the origins of *buraku* discrimination are neither clear-cut nor uniform. Nor are the justifications or explanations for discrimination against *burakumin* today consistent with the justifications for it in years past. Indeed, the base definitions of *burakumin* and *buraku* discrimination are controversial.

2. Evaluation of Progress

Both the BLL and Zenkai-ken agree that progress has been made in the lives of *burakumin*. They also agree, on the other hand, that discrimination still exists. The difference is simply that they focus on opposite ends of the reality spectrum, the Zenkai-ken on the improvements and the BLL on the remaining discrimination. Okuyama estimates that about four-fifths of *buraku mondai* has been resolved. The BLL would estimate a much lower ratio. Possibly one of the factors accounting for the discrepancy in perspectives is the different definition of discrimination recognized by the BLL and Zenkai-ken. Other reasons are most likely directly related to differing ideological and political aims of the BLL and Zenkai-ken.¹⁸⁰

3. On the Definition of Discrimination

One reason for the contrary evaluations of the progress of *buraku mondai* by the BLL and Zenkai-ken is their conflicting definitions of discrimination. The BLL defines discrimination quite broadly, while the Zenkai-ken defines it narrowly. The items included in the BLL's list are employment and marriage discrimination, discriminatory remarks or actions, and discriminatory graffiti. The Zenkai-ken argues, however, that marriage is supposed to be agreeable to both parties, and thus any reason for deciding not to marry is definitionally legitimate. The Zenkai-ken thus believes that refusals to marry based on one of the couple's *buraku* identity should not be punishable by an anti-discrimination law. This argument is based on Article 24 of the *Kenpō*, which reads: "marriage shall be based only on the mutual consent of both sexes . . ." Yet, it continues: "With regard to . . . matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes."¹⁸¹ Perhaps this lan-

179. HIRASAWA, *supra* note 3, at 43.

180. See Interview with Mineo Okuyama, *supra* note 69.

181. *Kenpō*, *supra* note 48.

guage provides some support for the BLL position. The Zenkai ren also asserts that discrimination in employment hiring should not be prohibited because of people's right to do business. The BLL strongly disagrees.

The Zenkai ren does not include discriminatory graffiti or remarks as acts of discrimination that should be legally punished but rather as expressions of prejudice that are unfortunate, but within an individual's personal prerogative. Okuyama asserts that there are legal means already in place to deal with extreme cases, which are not only sufficient but more appropriate than a general law against discrimination. For example, if discriminatory graffiti or remarks are targeted at an individual, they could be infringing on that person's right to privacy, or be prosecuted as slander.¹⁸² In most cases though, the Zenkai ren believes that when discriminatory graffiti is found, it should simply be erased without further commotion. The BLL, by contrast, would insist that discriminatory graffiti must be reported, investigated and then revealed openly as an opportunity to help teach about *buraku mondai*.¹⁸³

While the acts listed by the BLL as discriminatory may be so in nature, to prohibit all acts exhibiting prejudice would go too far, infringing on people's constitutional rights such as privacy and free speech. Suggestions to alleviate discrimination without infringing on constitutional rights are offered in later Sections.

4. *Kyūdan* ("Denunciation Tactics")

The Joint Committee for International Problems, composed of three organizations including the Zenkai ren and the Institute of Buraku Problem, issued a Statement for Publication in August of 1990 that included the following accusation that the BLL "seriously violates human rights."¹⁸⁴ These allegations, in large part, refer to the use of *kyūdan*, or denunciation tactics, by the BLL.

Denunciation, or *kyūdan*, is a practice invented by the Suiheisha after World War I to respond to acts of discrimination by soliciting from the discriminator (or alleged offender) apologies, self-criticism, promises to participate in enlightenment education and institutional reform. In the early years of the Suiheisha, spontaneity and anger were chief features of denunciations.

182. See, e.g., *A Man Who Made Discriminatory Scribbles was Found Guilty*, BURAKU LIBERATION NEWS, Nov. 1997, at 3 (a man who wrote discriminatory graffiti was given a one year prison sentence and a three-year stay, that is a very heavy sentence for graffiti, in the Tsu District Court's Yokkaichi Branch because, according to the judge, "his criminal liability is serious because the graffiti expressing (b)uraku discrimination was antisocial enough to have a serious impact on society. The graffiti was malicious because it was not easy to erase them").

183. See Interview with Mineo Okuyama, *supra* note 69.

184. "The Buraku Liberation League violates 'freedom of living, physical security', 'freedom of thought and conscience', 'freedom of opinion and expression', 'freedom of peaceful assembly'. It engages in 'brutal, inhuman and humiliating treatment', 'intervenes in personal affairs' against people who refuse to follow its opinions or approve its actions, and tramples on civil rights, that everyone should naturally be able to enjoy." JOINT COMMITTEE FOR INTERNATIONAL PROBLEMS, WHAT IS THE BURAKU QUESTION—PAST, PRESENT, FUTURE 1 (1990) [hereinafter WHAT IS THE BURAKU QUESTION].

Individuals labeled by the Suiheisha as discriminators were targeted “with the goal of obtaining a public apology and a promise not to use discriminatory language in the future.” To this limited extent denunciations were successful, although the costs were high. There was not a lot of preparation involved in these early *kyūdan* and they often led to violent clashes between *burakumin* and majority members of Japanese society. “The end result was often the suppression of overt discrimination, especially the use of derogatory language, but also increased hostility toward *burakumin* among the majority population and a view of the Suiheisha as violent and frightening.” It must be remembered, however, that “the change of a stereotype from ‘docile’ and ‘obedient’ to ‘fierce’ is observed for other minority groups, too, as they become active politically.” The BLL says:

In other words, this change is triggered by the prejudice in the mind of discriminators who label unfairly the activism of the minority group as “fierce.” Therefore, it was “activism” rather than a specific tactic like “*kyūdan*” that generated the fear.¹⁸⁵

On the other hand, perhaps some people do have specific objections to *kyūdan* and not activism generally.

Recognizing the shortcomings of this tactic, a barrier to joining forces with other elements of Japanese society, in the late 1920s the Suiheisha reinvented its own practice of denunciation. It created a special category for discriminators of working or lower classes, whom the Suiheisha viewed as fellow victims of oppression. These discriminators were educated rather than intimidated. On the other hand, those with positions of power in institutions were subject to carefully planned non-violent denunciation sessions.¹⁸⁶ “The goal was to link the elimination of discrimination to the general class-based complaints of labor and tenant farmers.”¹⁸⁷

This refinement in tactics met with great success with respect to BLL objectives: “individuals who practiced discrimination were often transferred and institutional policy frequently changed.”¹⁸⁸ For example, there was integration of formerly segregated classrooms and firing of discriminatory judges.¹⁸⁹ Such successes demonstrated that denunciations could be effective vehicles for swift reform of discriminatory practices and institutions.

The purposes of denunciation as recited by Tomonaga are the following:

185. HIRASAWA, *supra* note 3, at 37–38.

186. See UPHAM, *supra* note 13, at 82.

187. *Id.* This connecting of discrimination to class-based problems seems to demonstrate in part the current thinking of the Communist party and the Zenkai ren (though they do not approve of denunciation). *See id.*

188. *Id.* at 82–83.

189. *Id.* at 83.

- *jichi kyōiku*, or on the spot education of especially young *burakumin* to awaken their *buraku* identity;
- to make discriminators conscious of the invalidity of their discrimination;
- to combat the indirect influence of prejudicial surroundings and people as a form of education about *buraku mondai*;
- to show the discriminator the actual conditions of *buraku*, and “to make clear the substantial conditions of discrimination.”¹⁹⁰

The BLL justifies the use of denunciation as a mechanism of last resort to publicly expose acts of discrimination, seek deliberation on the part of the discriminators, and look to secure the eradication of institutional support and encouragement of discrimination. The Japanese government fails to take action and no law prohibiting discrimination against *burakumin* exists. The BLL asserts that denunciation properly responds to discrimination within the legal limits of the Japanese Constitution and international covenants.¹⁹¹ The reality of continued discrimination and lack of governmental response, however, does not necessitate denunciation by the BLL as the exclusive option. Further, a court case, described below, explains that legal limits apply to denunciations.

The Civil Liberties Bureau of the Ministry of Justice has, since 1986, not only publicly criticized denunciations conducted by the civil groups such as the BLL, but also has taken obstructive actions against them. The Bureau bases its claims on the opinion of the Council on the Area Improvement Measures issued in December 1987 that targets of discrimination are not required to consent to attending denunciations. In an August 1985 report of a subcommittee of the Area Improvement Council “whose object was to formulate a policy framework for further Government measures to deal with *buraku* discrimination problems about *kyūdan*” it is written that:

because *kyūdan* is a kind of self-rescuing act and private trial engaged in by the discriminated-against, those who are exposed to *kyūdan* may not be really obliged to face *kyūdan* . . . [F]or a right to be established as legal right demanding certain obligations on others, it has to be founded in legal provisions or court rulings. There is no such court law or previous court ruling.¹⁹²

The BLL argues that this opinion cannot be considered legitimate as the Council excluded the representatives of the *buraku* communities from its membership. Although this may be true depending on the method of selecting Council members, the conclusion of the Council seems to be in ac-

190. See Interview with Kenzo Tomonaga, *supra* note 91; UPHAM, *supra* note 13, at 82.

191. See Interview with Kenzo Tomonaga, *supra* note 91.

192. BUHMANN, *supra* note 5, at 62–63.

cordance with the Constitution and laws of Japan. The BLL goes further and alleges that the interference by the Civil Liberties Bureau of the Ministry of Justice in denunciation is clearly an abuse of state power that must be stopped immediately. The governmental authorities must not obstruct denunciation but enact laws aiming to eliminate discrimination and to create an effective remedial mechanism. The BLL insists that if positive steps are taken towards these goals and prove successful, then denunciation policy will naturally change.¹⁹³ One can infer from this statement that the BLL envisions its role as combating discriminators as eternal, and not the only alternative to future government solutions.

On the other hand, the legitimacy of denunciation in the abstract, and to a limited extent, is supported by the Osaka High Court in relation to the infamous Yoka High School Discrimination Case. On March 29, 1988 it decided: "*Kyūdan* is not a right that is recognized in the substantial law, but may be accepted as a self-rescuing act by [asserting] the principle in article 14 of the Japanese Constitution."¹⁹⁴

Legal remedies against discrimination are definitely limited. Their scope is narrow and frequently there is nothing that can be done. In light of these circumstances, it's justifiable for society to accept the process called denunciation against discrimination as long as the methods and tactics don't exceed reasonable limits.¹⁹⁵

Furthermore, the question whether reasonable bounds were exceeded cannot be determined uniformly or abstractly. It should be determined by reference to all the circumstances, the content and degree of the discrimination targeted by the denunciation in question, the events leading up to the discrimination, the process of negotiations between the discriminator and the denouncers, the attitude of the discriminators, and the like.¹⁹⁶

It seems as if the court is treating denunciation in a manner similar to an act of self-defense, the legitimacy of which can only be determined by the degree of threat, versus a simple case decided by a fixed set of rules. Thus, courts may uphold the legitimacy and rightfulness of denunciations in some cases, but not in all. The outcome should be dependent on the severity of the denunciation versus the offensiveness of the discrimination. The court in 1988 thus failed to provide much guidance concerning the "permissible purposes [or actual bounds] of denunciation."¹⁹⁷

These two opinions, by the Civil Liberties Bureau of the Ministry of Justice since 1986 and the Osaka High Court in 1988, while seemingly disparate, are not necessarily inconsistent. Taking both opinions into account, it

193. See Tomonaga, *supra* note 82, at 18-19.

194. Yoko High School Case (Osaka High Court, Mar. 29, 1988), in BUHMANN, *supra* note 5, at 63.

195. UPHAM, *supra* note 13, at 98.

196. See *id.*

197. *Id.*

seems that the Japanese judicial branch assesses denunciations to be legal in cases where the severity of the denunciation matches the severity of the alleged crime, if the alleged discriminator freely and willingly chooses to participate in the denunciation.

a. Problem I: Definition of *Kyūdan* by the BLL

In March of 1996 the BLL launched a denunciation against an assistant professor of Kinki University, a private university in Osaka Prefecture, because of a remark he made in an August 1995 lecture to local government employees of Nara Prefecture during their training session. He said:

One of my students who is working for a local government office in charge of public works told me about the difficulty of his duties. According to him, there are three kinds of masters who bring trouble to the office: politicians, Yakuza (gangsters) and people from *dōwa* areas. He laments that he is no longer able to have a conversation with these visitors when shouted at by them without being given a chance to explain.¹⁹⁸

In response to this comment, the assistant professor was labeled a discriminator by the BLL and made to self-criticize.

The assistant professor was also criticized in a denunciation session for explaining that he “simply associated {b}uraku people with members of fake organizations on the *dōwa* only hunting for concessions on *dōwa* projects.”¹⁹⁹ Okuyama of the Institute of Buraku Problem and others have mentioned the problem of “fake” *dōwa* organizations causing a great deal of trouble in society and to the liberation movement. Thus, the existence of non-*buraku* (or at least non-BLL organizations pretending to be *buraku* or BLL organizations) seems to be a reality. Surely Okuyama is not a “discriminator,” being executive director of the Institute of Buraku Problem and from a *buraku* district. If the statement were false, perhaps it could be called discriminatory, and some sort of educational action taken. Even in that case, to put the action on a level with acts of discrimination that might be punishable by law, if there were laws against discrimination, would be to go too far. The BLL needs to weigh the truth of seemingly discriminatory statements to deduce their real nature, and possibly even take what is said as an indicator of what needs to be improved in their own sphere of influence, instead of focusing solely on what ideas the alleged discriminator must eliminate or change.

In a related incident, on August 17 the Nara Prefectural Federation BLL received a postcard that it deemed “extremely discriminatory.” It reads, in part:

198. *Discriminatory Remark was Made by an Assistant University Professor*, BURAKU LIBERATION NEWS, Nov. 1996, at 5.

199. *Id.*

I heard that you, the BLL, denounced an assistant professor of Kinki University It is true that there are three kinds of terrible masters: politicians, the Yakuza, and people from {d}ōwa areas. Although a right to denounce other people is not authorized, you unilaterally denounce others with self-righteous justice as if holding a kangaroo court. All of us are afraid of you.²⁰⁰

Certainly this postcard can be termed critical and derogatory, and it is indicative of the intense ill feelings held by the writer toward the BLL's denunciation tactics. It should not, however, be legally actionable, nor must it necessarily be labeled as "discriminatory" and attacked as such. The letter articulates sentiments that are in fact not uncommon among those familiar with the BLL and its denunciations, not because of prejudice against *burakumin* necessarily, but because of serious philosophical and legal objections to the BLL practice of denunciation. The writer of the postcard goes on to say that the BLL operates only for material gain and "will not only destroy democracy in Japan but also hopeful prospects for the future." Simply labeling this postcard as discriminatory without responding seriously to the contents of the letter cuts off debate and understanding.

One improper effect of denunciation, either intended or unintended, is to prevent open discussion on the issue of *buraku mondai* in Japan. The BLL defines discrimination very broadly and does not leave room for discussion.²⁰¹ It is not beneficial to *buraku* liberation to be so quick to label people as discriminators. A vital step in the extinguishing of *buraku* discrimination is for people to learn about *buraku mondai* and to be given the freedom to explore their own feelings and thoughts, even if this must be done through a series of trial-and-error steps.

Although some reporters, researchers and television programs cover issues relating to *buraku mondai*, in general even the media and scholars seems somewhat wary of becoming a target of BLL denunciation. In the media, only the JCP publicly challenges the BLL. Academics, ranging from Japanese legal scholars to sociologists (except those associated with the BLL or the JCP), also steer clear of analyzing or critiquing matters under this topic. Foreign authors find the portions of their translated works regarding *burakumin* deleted by even the most well respected academic publishers in Japan.²⁰²

Although it is never discussed openly, one factor contributing to the taboo is simple: the BLL monitors the Japanese press closely for discriminatory references to {b}urakumin and immediately initiates denunciation campaigns against perceived discriminators, their in-

200. A discriminatory postcard was sent to the Nara Federation, BURAKU LIBERATION NEWS, Nov. 1996, at 6.

201. See Interview with Yoshiro Nabeshima, *supra* note 18.

202. See UPHAM, *supra* note 13, at 114.

stitutions, and their publishers. Rather than taking the chance that something they publish may be considered discriminatory, the publishers prefer to avoid the entire issue [The result] has been . . . allowing the BLL to dominate the rhetoric of the {b}uraku question²⁰³

Denunciation should not limit the exercise of important freedoms of speech and press.

b. Problem II: Denunciations by a Nongovernmental Organization

The BLL's main argument, emanating from the Suiheisha, for assuming its role as organizer of denunciations is that although *buraku* discrimination is contrary to the *Kenpō*, no adequate means of redress exist in the legal system to respond to or punish acts of discrimination against *burakumin*. Even if these means were to exist, legal agents are themselves prejudiced and will continue to engage in discriminatory practices,²⁰⁴ and if a discrimination-free legal means for redress or relief did exist, it would be unreasonably time consuming to adjudicate all of these cases. Thus, denunciation would remain necessary at least as a first step in all cases of addressing discrimination.²⁰⁵

Even if cases could be brought against discriminators by the victims of discrimination, the BLL argues that denunciation should always be a first line of defense, especially because the cost and time associated with using the court system makes it impossible to try all cases of discrimination this way. The BLL is in favor of a government created and administered regulation and relief system for *buraku* discrimination, but asserts that these would need to be supervised by the BLL, or they would not function effectively.²⁰⁶ One reason for this is that BLL eschews litigation on the grounds that "it foster[s] dependence on the state and its judiciary, both of which are believed to be infected with anti-{b}uraku prejudice."²⁰⁷ On the contrary:

Although it may well be that Japanese judges are "prejudiced" in the sense of not fully agreeing with BLL interpretations of the necessity and nature of denunciation and therefore convicting BLL participants, there is no reason to assume they would be unsympathetic to civil litigation initiated by the BLL. Nor . . . does it appear that there are insurmountable doctrinal obstacles to the effective use of litigation against discrimination.²⁰⁸

203. *Id.*

204. *See id.* at 111.

205. *See* Interview with Kenzo Tomonaga, *supra* note 91.

206. *See id.*

207. UPHAM, *supra* note 13, at 23.

208. *Id.* at 111.

In fact, *burakumin* have won civil suits for marriage and employment discrimination.²⁰⁹ Although informal methods of resolving disputes are not only sufficient but less resource-consuming, and often end in more amicable solutions, this process should occur on the basis of the voluntary consent of both parties involved, not on the basis of judgments made by a private organization with predetermined views. The actions of the Civil Liberties Bureau in clamping down on denunciation sessions and supporting the right of alleged discriminators to refuse to participate in denunciation seem justified. Unfortunately, the BLL does not recognize all of the problems, or at least the magnitude of the problems, associated with unilaterally taking these matters into its own hands. Other reasons why the BLL is not an appropriate vehicle for addressing discrimination with *kyūdan* are as follows.

First, Tomonaga admits that the BLL always runs the risk of making false accusations, but he offers the rationalization that police, judges, and other governmental officials are also vulnerable to the same sort of folly.²¹⁰ Although this is true, it is also true that, unlike in court, in the case of denunciation the alleged discriminator has no avenue within the system to appeal his case; the judge and the prosecutor are one in the same, and defense counsel has no role. Furthermore, judges are appointed by politicians and are (at least theoretically) impartial so that their judgments are more likely to be "just." BLL leaders are not appointed or elected and have preexisting views that may suit them to be prosecutors, but not judges. Undoubtedly it is good that, in order to lessen the possibility of erring in denunciations, the BLL states that it always (1) confirms the facts, (2) follows established guidelines in conducting denunciations, and (3) solicits the presence of third parties to serve as witnesses and outside checks on the process. Unfortunately, these precautions have not prevented denunciations that seem out of proportion to the alleged act of discrimination and hence seem insufficient in making denunciation an acceptable means of combating discrimination in society by a nongovernmental organization.

Second, denunciation "differs from mere persuasion or the exercise of the freedom of expression in that implicit in all denunciation is the actual or threatened use of limited physical force by large groups of *{b}urakumin*,"²¹¹ or nowadays the destruction of one's reputation and career. Tomonaga says that BLL denunciations are controlled as much as possible, but that the BLL cannot stop the actions of some of its younger members. Under Article 38 of the *Kenpō*, "no person shall be compelled to testify against himself. Confession made under compulsion, torture or threat shall not be admitted in evidence and, where the only proof against an accused is his own confession, he shall not be convicted or punished."²¹² Although this provision does not

209. *Id.* at 111.

210. See Interview with Kenzo Tomonaga, *supra* note 91.

211. UPHAM, *supra* note 13, at 78.

212. *Nihonkoku Kenpō* (1946), *supra* note 48.

have any direct legal bearing on denunciation, the principle underlying it would seem equally applicable to condemn these aspects of denunciation that relate to requiring the alleged discriminator to admit his "wrongful" act and apologize.

A third danger of allowing denunciations to persist is that other non-BLL groups might emulate the BLL for their own selfish purposes, using their own definitions of discrimination, and dispensing their own brands of justice. In fact, incidences such as this do occur, and the BLL has confronted these "impostors" on more than one occasion.²¹³ These bully groups are detrimental to the perceived legitimacy of the BLL, as well as to society.

Nevertheless, the BLL intends to continue denunciations contingent on the following three variables:

- (1) when the BLL can confirm the specific facts of discrimination;
- (2) when the status of the alleged discriminator and extent of his discrimination or prejudicial remarks have significant social implications;
- (3) so long as the reality of *buraku* liberation has not yet been fully realized.

Tomonaga believes that by carrying out denunciation, a concrete vision of developing *buraku* emancipation can be formed by viewing the current reality and intricacies of remaining prejudice and discrimination for the purpose of devising counter-active actions.²¹⁴

C. Ideas for Policy Solutions

1. Zenkairen

The Zenkairen admits that there is remaining discrimination, but proposes legislative inaction with regard to it. The Zenkairen relies heavily on the theory that *buraku* discrimination is "a remnant of feudalism currently exploited by monopoly capitalists which will eventually be destroyed by the further development of Japanese capitalism." Thus, the Zenkairen admits that "*buraku* liberation can only be completely achieved through a transformation of Japanese society that will liberate all oppressed Japanese."²¹⁵ Accordingly, government policies that solely benefit *burakumin*, rather than all of Japan's poor, are thought to be detrimental in that they create division in the ranks of the common people. Fundamentally speaking, the JCP believes that:

affirmative action [(embodied by the Special Measures laws)] is intended by the conservatives to . . . split the left and thereby preserve the status quo in Japan while simultaneously transforming

213. See Interview with Kenzo Tomonaga, *supra* note 91.

214. See *id.*

215. UPHAM, *supra* note 13, at 91–92.

the *{b}urakumin*, once reliable participants in leftist causes, into indolent dependents of the government.²¹⁶

Okuyama asserts that a law against discrimination should not be established in Japan for three reasons. First, he believes that it would be too difficult not only to write but also (due to fact-finding problems) to prosecute a case under it. Second, there already exist laws that can be used to address problems of *buraku* discrimination, such as those against libel and discriminatory treatment in the workplace. In addition, individual actions may also apparently be brought to enforce constitutional provisions, such as Articles 13, 25, 26, and 27 of the *Kenpō*.²¹⁷ Third, the only necessary steps to ensure the achievement of *buraku* liberation are the raising of human rights consciousness in Japan, and continued physical environment improvements using general measures.²¹⁸ The Zenkai ren believes that "viewing the essence [of] the *{b}uraku* question, we see that only the guarantee of human rights as Japanese people is necessary for the *{b}uraku* people."²¹⁹

2. BLL

The BLL's understanding of *buraku mondai* and its consequent policy stances are fundamentally and completely different from that of the Zenkai ren's. The BLL believes that

a proper understanding of *{b}uraku* discrimination requires a more sophisticated analysis than mechanical Marxism. [Leaders] argue that discrimination is pervasive in Japanese society and present among members of the working class and the Communist Party itself The structure of the contemporary labor market that segregates the *{b}urakumin* into a distinct group supplying marginal, unskilled, low-wage labor is dependent on pervasive discrimination, and since that structure benefits working-class Japanese as well as those of other classes, all are guilty of discrimination.²²⁰

216. *Id.*

217. The text of these articles states:

Article 13: All of the people shall be respected as individuals. Their right to life liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

Article 25: All people shall have the right to maintain the minimum standards of wholesome and cultured living.

Article 26: All people shall have the right to receive an equal education correspondent to their ability, provided by law. All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free.

Article 27: All people shall have the right and the obligation to work.

Kenpō, *supra* note 48.

218. See Interview with Mineo Okuyama, *supra* note 69.

219. WHAT IS THE BURAKU QUESTION, *supra* note 184, at 3.

220. UPHAM, *supra* note 13, at 91-92.

The stigma attached to the identity of *burakumin* and not other poor Japanese cannot be explained by class consciousness. Thus, the BLL can rationally support affirmative action programs and also espouse their limitation to *burakumin*.²²¹

In response to the current situation of *buraku mondai*, the BLL demands implementation of the *Buraku Kaibō Kibon Hō*, the Fundamental Law for Buraku Liberation. The BLL regards the Fundamental Law as a necessary piece of machinery in the grand design of *buraku* liberation—the legal part of the solution.

The bill has two objectives: to solve *buraku mondai* quickly and fundamentally, and to create a discrimination-free society. These goals are to be attained by continued government improvement of the living conditions, social welfare, public hygiene, agriculture, forestry, small and medium-sized enterprises, employment, schools, and social education in *dōwa* areas. Also, “the government must eliminate discriminatory consciousness and enhance ideas about human rights through systematic education and enlightenment.” Further, it must “regulate vicious discriminatory behavior, such as family background investigations and discrimination in employment relations against *(b)uraku* people.”²²²

The Fundamental Law draft also directs the government to research and review the actual conditions of *buraku* areas every five years and furthermore, to establish a Buraku Liberation Deliberation Council composed of experts on *buraku* discrimination to submit recommendations for policy solutions of *buraku mondai*. It is also instructed to submit a report to the Diet annually describing measures taken to date and measures planned for the future.²²³ Portions of the fundamental law have already been legislated to some extent. For example, the Council for Human Rights Protection was formed in May 1997 and meets monthly.²²⁴ To date, there are over 1000 resolutions by municipalities that support the spirit of the Fundamental Law in some way.²²⁵

The JCP and two-thirds of the Liberal Democratic Party (LDP) are opposed to the Fundamental Law. They reason that discrimination has essentially disappeared and that law concerning *buraku* discrimination will only serve to perpetuate discrimination. The JCP recommends general rather than *buraku*-specific measures to extinguish any last remnants of *buraku mondai*. LDP objections are more practical: this type of law antagonizes the citizens in general, and a time limit on special works is necessary.²²⁶

221. See *id.*

222. *Buraku Problem Q & A (11): The Fundamental Law of Buraku Liberation*, BURAKU LIBERATION NEWS, May 1996, at 8.

223. *Buraku Problem Q & A (11): The Fundamental Law for Buraku Liberation*, *supra* note 222, at 8.

224. Kenzo Tomonaga, *A Critique Based on the Present State of Discrimination Against Buraku People (2)*, BURAKU LIBERATION NEWS, *supra* note 1, at 3.

225. Interview with Kenzo Tomonaga, *supra* note 91.

226. Tomonaga responds that although the Fundamental Law has no expiration date, laws derived from it do and will. In addition, the Fundamental Law provides for investigations of the realities of *buraku* discrimination every five years. Results will be published and laws ended as deemed appropriate.

The law does not include any provisions for people living outside of *dōwa* areas, nor does it cover discrimination against any groups beside *burakumin*.²²⁷ If the aspirations of the Proclamation's second objective—to create a discrimination-free society—are to be met, a more general law must be passed that confronts discrimination against *burakumin* and other minorities and women as well. It is naive to think, as the BLL does, that “tackling the {b}uraku [p]roblem will necessarily lead to the elimination of all forms of discrimination.”²²⁸ The BLL should know this as it places true understanding of the origins of *buraku mondai* at the heart of eliminating discrimination against *burakumin*. Likewise, accurate understandings of the various groups of minorities and the specific injustices perpetrated against them are essential to the elimination of discrimination against them, and to the building of a discrimination-free society.

IV. GENERAL REFLECTIONS

A. Buraku

The very notion of *buraku* should be recognized as outdated. It now serves to perpetuate discrimination not only against people with *burakumin* ancestry but also those now labeled as *burakumin* because of their residence in areas traditionally populated by *burakumin*. The government should find ways for *buraku* areas to be further integrated with surrounding areas, to break down the barrier between *uchi* (inside) and *soto* (outside). Currently, in *buraku* areas, about one-half of the residents are not of *burakumin* descent, but rather are newcomers to the districts. These include people who want to join in the movement, or who unknowingly moved into a *buraku* area, and those who are handicapped and find *dōwa* districts more accommodating to their needs. *Dōwa* districts generally have higher ratios of teachers to students, extra money for special facilities, extra classes and similar advantages. Discrimination against *burakumin* still remains. It is time for the focus to shift from government recognized *buraku* areas to specific individuals and needy communities generally.

Some in Japan talk about a “segregated *buraku*,” referring to the notion that *buraku* are often closed communities that keep themselves separate from, and are kept separate from, non-*buraku* communities.²²⁹ Tomonaga

Nevertheless, anxiety about special measures for *burakumin* continuing forever is real. Perhaps more direction in the Fundamental Law concerning the conditions that would make it no longer necessary would help to sway some LDP politicians in favor of its passing.

227. See FUNDAMENTAL LAW FOR BURAKU LIBERATION, Draft bill, May 24, 1985.

228. *Buraku Problem Q & A (11): The Fundamental Law for Buraku Liberation*, *supra* note 222, at 7.

229. The direct and indirect efforts over the years of majority Japanese to segregate *burakumin* have been reinforced in many instances by self-segregation. Many parents do not want their children to enter the outside world for fear that they will have to face the harsh realities of discrimination. Other parents have not achieved a high level of education nor ventured outside of their community for employment or to meet other needs, so they do not expect or demand this behavior from their children. These attitudes make it additionally difficult to break down historical patterns of segregation.

argues that it is impossible to do away with *buraku*, since eliminating communities and erasing ancestry are impossible if not unworthy tasks, but that discrimination should and must be eliminated while *buraku* remain and identities are left in the open.²³⁰ This concept of segregation without discrimination, however, may not be feasible. For example, the National Association of American Colored People (NAACP) in the United States has long recognized that segregation and discrimination are inextricably intertwined twin evils—when one remains, so will the other.²³¹ The boundaries of *buraku* may be erased by improving the quality of the structures and facilities within these areas, encouraging the movement of majority Japanese into these areas so that they over time lose their identity as *buraku*, and eliminating discrimination and prejudice so that residents of *buraku* will be able to comfortably move elsewhere.

A solution that aims to reduce emphasis on the exact locations and existence of *buraku* seems to be requisite to extinguishing discrimination against *burakumin*. It is important to focus on *buraku mondai* as individuals and their individual circumstances, rather than as *buraku* communities and residents of *buraku* communities. For example, in areas where *dōwa* measures have been carried out, and especially where the resident population is less than half *burakumin*, the government and liberation organizations should shift the focus from improving *buraku* communities to eliminating discrimination against *burakumin* as individuals. The poor condition of *buraku* communities should be addressed as an issue of poverty, not *buraku* discrimination.

B. Liberation Movement

Both the BLL and the Zenkai ren seem genuinely committed to solving *buraku mondai*, while at the same time they are highly critical of each other. Ironically, these two groups have a lot more in common than they wish to admit. Although enjoying a nice day of *banami* (cherry blossom viewing) together may be far-fetched, it would seem time for the groups within the *buraku* liberation movement to flesh-out their respective differences and arguments and understand the true origins and rationales behind the other's actions and positions.

The BLL and Zenkai ren do have fundamental differences in their conceptions of *buraku mondai*, its present state and possible solution, but they tend to overstate the other's assertions, thereby forfeiting any hope of a cooperative initiative or success. One could say that the two groups fight like brothers, which might not be so off-the-mark considering their common origins in the movement of the Suiheisha.

230. Interview with Kenzo Tomonaga, *supra* note 91.

231. See National Association for the Advancement of Colored People, *What you should know about the NAACP* (visited Nov. 30, 1998) <<http://www.naacp.org/about/factsheet.html>>. See also Interview with Kenzo Tomonaga, *supra* note 91.

For example, the assertion of BLL officials that the Zenkaijin believes that all of the problems and realities of discrimination of *burakumin* have been resolved, is heard frequently. In fact, this was given twice as a reason for why the BLL and Zenkaijin have no common grounds on which to even begin a discussion or argument.²³² This assertion, however, is fallacious. The Zenkaijin simply believes that “discrimination against the *(b)uraku* is basically on the way out.”²³³ Although this outlook of the Zenkaijin may be unrealistically optimistic, it does provide a sense of progress that can be beneficial to the momentum and optimism of the cause. As articulated by Okuyama, Executive Director of the Institute of Buraku Problem, a friendship organization of the Zenkaijin, the BLL and Zenkaijin simply focus on different realities within *buraku mondai*. While the Zenkaijin focuses on the improvements and progress, the BLL focuses on the remaining disparities and discrimination. The two groups seem to be looking at opposite sides of the same coin. Consideration of the views of both the BLL and the Zenkaijin is necessary to provide a complete picture of *buraku mondai* and to supply the insights that will lead to final solutions.

C. *Kyūdan* (“Denunciation”)

As stated in the preceding Section, *kyūdan*, or denunciation, is a tactic employed by the BLL by which people determined to be discriminators by the BLL are made to publicly self-criticize. There are two problems with *kyūdan*. First, the BLL determines the definition of discrimination and does not allow room for argument or difference of opinion. Its definition of discrimination is overly restricting, infringing on people’s freedom of speech and relegating discussion of *buraku mondai* to a dark, deep corner. By another definition, “simply stated, denunciation is the attempt by a group of BLL members to convince one or more majority Japanese to adopt the BLL interpretation of a particular event, language, or policy that the BLL considers discriminatory.”²³⁴ The second criticism of *kyūdan* is that the BLL, a citizen group, is not the proper organization to judge acts of discrimination and carry out solutions to, or punishments for, them.

The BLL does not seem to comprehend fully the damage it causes by its continued use of denunciation sessions. Even if the legal and ethical grounds for denunciation are sound, the failure to consider the full repercussions of this practice is a mistake. The results and benefits of denunciation must be weighed carefully to determine whether benefits outweigh the detriments and the outcomes breed more problems than solutions. In the absence of government action against discrimination, the practice of denunciation may be appropriate particularly if the acts of discrimination are egregious, such

232. See, e.g., *id.*

233. WHAT IS THE BURAKU QUESTION, *supra* note 184, at 4.

234. UPHAM, *supra* note 13, at 78.

as might be the case if the act was the announced refusal by the president of a large company to employ *burakumin*. Nonetheless, as a tactical matter, in such situations more effort should be placed on requiring the government to address such actions and to assure the reception of counter-discrimination measures by the general public as controlled, official, and therefore just. Courts could also be used. Government responsibility in this area would establish and ensure legitimacy, control, and consistency in taking actions against those who discriminate, and would also bring problems of *buraku* discrimination into the open and into the official arena. If anything, the BLL might have a consultative status, such as in the case of the United Nations and IMADR, not a position akin to that in local communities where the BLL has broad discretion over the administration of government projects and funds.

It is also important to arrive at a less rigid view of what constitutes *buraku* discrimination. In particular, one can not draw the line too close when the only alleged act of discrimination is the expression of opinions and views, as opposed to actions such as refusals to hire or promote employees. The right of free speech and press is too precious to be compromised, even when the views expressed are obnoxious or unpopular.

D. Madoguchi Ippō ("One Window Policy")

Madoguchi Ippō (One Window) is a policy adopted by the government since the beginning of the implementation of the special measures programs. This policy has been responsible in a number of *dōwa* districts for conferring on non-governmental *buraku* liberation organizations, in most cases, local branches of the BLL, administrative powers over government funding and programs in that district. The argument in favor of this policy is that it allows the unencumbered and thus efficient administration of government programs by a consensual, cooperative, and competent body.²³⁵ In many instances of the one window policy, the BLL has the authority to determine a person's eligibility for a government subsidy or other assistance, usually dependent on her *buraku* status, conformity to certain rules, agreement to participate in enlightenment or other activities, or consent to BLL-created provisions. The government usually chooses the BLL over other organizations because the BLL has had greater numbers of supporters than its rival groups and has pressured government officials, sometimes in all night negotiating sessions at city halls with unsuspecting politicians, to meet its demands. It must be noted, however, that the one window policy is not operative in every government recognized *dōwa* area.

"The result [of the one window policy has been] that the BLL becomes the only channel for benefits; without BLL certification of status, no application

235. See Interview with Eichi Kimura, *supra* note 109.

to the government bureau is considered complete."²³⁶ There have been countless instances of this system being used by the local BLL branches to reward their sympathizers and punish their opponents.

As a result, non-BLL (*burakumin*) are regularly denied benefits, and at least passive support of BLL policies and activities is necessary not only to receive financial benefits such as scholarships, but also to enter newly built public housing.²³⁷

In other cases, non-*burakumin* who pledge their allegiance to the BLL have been able to receive benefits, whereas disadvantaged *burakumin* who do not support the BLL do not.

In Asaka *buraku*, for example, recipients of educational scholarships and their parents are required to attend two liberation meetings each year of their scholarships, to learn about *buraku* liberation and supporting government policies. They must sign their names to a document pledging their support for *dōwa* programs, and in some areas must also become dues-paying members of the BLL. This type of system breeds great potential for abuses of power, for example, giving preference to BLL members over Zenkai members by simply providing benefits to those who support the BLL, rather than those who most need and should be entitled to these benefits.

In conclusion, the government should have taken more control over their programs on the local level, and should have prescribed more complete and stricter regulations regarding the proper administration of government allotments, based on clear objectives. In fact, the one window policy seems unconstitutional. It denies people the right to free speech, and is an example of "state discrimination against certain political beliefs (JCP sympathizers) in the administration of affirmative action welfare benefits."²³⁸ In the 1960s and 1970s, over sixty cases concerning the one window policy were brought to court by the Zenkai members for violations of the Local Autonomy Act, which forbids a local government from delegating power to a private sector entity to make a public decision. All of these cases were decided in favor of the Zenkai members,²³⁹ although relief was provided for specific complaints only, and they were not successful in eliminating the one window policy altogether.

A further problem caused by the government's decision to delegate administrative powers to an organ of the *buraku* liberation movement is that in areas where the movement was not strong, or the BLL or Zenkai members did not have a branch office, improvements were slow or were not received at all. If the people did not ask for benefits (loudly), they did not usually receive them. The Japanese government must take control of its own policies, and

236. UPHAM, *supra* note 13, at 113.

237. *Id.*

238. *Id.* at 117.

239. See Interview with Mineo Okuyama, *supra* note 69.

act swiftly and responsibly to become an instrument of positive change in *buraku mondai*. In doing this, however, it must enlist and not exclude the voices and participation of *buraku* people or *buraku* liberation activists.

E. Society

Almost no one in Japan likes to discuss the issue of *buraku mondai*. It is a topic that people are either weary to discuss or find offensive or otherwise inappropriate. It is not unusual for foreign researchers of *buraku mondai* to be urged, directly or indirectly, to pursue other studies. It seems that most people, especially those of the older generation, offer more inaccurate than accurate information about *buraku mondai*. Almost as a way of casting off the seriousness of *buraku mondai* and distancing themselves, many of the majority Japanese insist that they have never come into contact with a *burakumin*. One explanation of this might be a lack of education about *buraku mondai*, or rather, a reliance on outdated information. Another may be the belief in the philosophy articulated as "*Neta ko wa sono mama,*" which means "Don't wake a sleeping baby."

"Don't wake a sleeping baby" is often heard in discussions concerning how to deal with *buraku mondai*. This phrase captures the belief that discrimination against *burakumin* is no longer an everyday affair, and that, so long as younger or uninformed people in society do not know about *buraku mondai*, they will not discuss it or discriminate against *burakumin*. This philosophy is based on the false premise that *buraku mondai* has become almost extinct, and that most of the inequalities suffered by *burakumin* have already been rectified. Thus, some believe, any remaining prejudice against *burakumin* will disappear completely if people would just stop talking about it. This hypothesis, applied to discrimination against African-Americans, was also widely circulated in the United States not many decades ago, mostly by middle-aged and elderly people. Unfortunately, discrimination does still persist as do real inequalities in standards of living, education and employment. "If you say that just by keeping quiet, discrimination will go away, you are just [saying] be patient with discrimination."²⁴⁰ In addition, false ideas about the identity and history of *burakumin* circulate widely and are passed down through the generations, perhaps through just one sentence, one expression, one prejudicial or discriminatory word or action that is directed at or observed by a youngster.

Many Japanese believe that *buraku mondai* is no longer a part of their everyday lives or thoughts, and so it is no longer a problem that requires attention. Unfortunately, many people still conduct formal background investigations for hiring and marriage. Even if *buraku mondai* enters into the lives of majority Japanese once on one of these occasions (usually as an act of dis-

240. *Buraku Problem Q & A (14): Don't-wake-up-a-sleeping-baby*, BURAKU LIBERATION NEWS, Nov. 1996, at 10.

crimination perpetrated by them), it creates a reality of discrimination that affects the victims on an ongoing basis. "If we leave 'a sleepy baby' as he/she is, prejudice and false understanding will be taught for generations and {b}uraku discrimination will be continuously reproduced."²⁴¹ *Buraku mondai* is not a sleeping baby. It is awake and needs to be addressed if it is to be resolved.

V. POLICY RECOMMENDATIONS

The Emancipation Edict was only a start in the process of liberation—high in theoretical and moral content but low in actual results. The policies that have truly affected change are the special measures laws, though they are more like status-based welfare policies than laws that restrict discrimination. The three laws of 1969, 1982, and 1987 have helped to improve the physical living environment and facilities in a large percentage of *buraku* districts, and to a limited extent have helped to support students and small businesses in *buraku*. Japan's ratification of several international human rights documents and creation of a committee to research and recommend policies concerning human rights in Japan, are also significant steps in the march toward liberation.

Unfortunately, historical problems of discrimination cannot be solved overnight, nor even within a few decades. Remnants of prejudice and discrimination will last for years. There is much the Japanese government can and is obliged to do by constitutional and international law to guide this process. To further democracy and human rights in Japan, the Japanese government should act by example to demonstrate its intolerance of discrimination against all minorities in Japan.

A. Goals

In order to build a road, the starting point, destination, and terrain need to be mapped. While the starting point (current circumstances of *buraku mondai*) was mentioned in the preceding paragraph, and the terrain (controversial issues of *buraku mondai*) was explored in previous Parts, it is necessary to have in mind the final destination—the goals of the struggle for *buraku* liberation. Simply stated, what is *buraku* liberation and what will it look like when it is achieved? After this is made clear, the road, or at least a gravel path heading in the right direction, can be constructed.

Buraku liberation could be defined as the condition in society in which negative distinctions between *burakumin* and non-*burakumin* are not drawn and acts of discrimination have ceased. According to the BLL, *buraku* liberation will be realized when each of the following points is recognized:

241. *Id.*

- Real conditions of discrimination disappear, including inferior physical environment, educational and employment abilities;
- “Mental discrimination” vanishes, referring to marriage and employment;
- Human rights and democracy become realities in society;
- An actual situation is realized in which even if *buraku* remain, and truth about a *burakumin*’s identity is known, no one will discriminate.²⁴²

According to the Zenkai-ten, the *Kokumin Yūgō Kaigi* (National Conference on the Buraku Question for National Reconciliation), and the *Buraku Mondai Kenkyūjo* (Research Institute of Buraku Problems), settlement of the *buraku* question means “to be rid of the barrier between the {*b*}*uraku* and outside of the {*b*}*uraku* (reconciliation between the people) . . .” and includes that:

- 1) Differences in the living environment, employment, education and other matters between the {*b*}*uraku* and neighbors are corrected;
- 2) A condition is created in society in which unscientific knowledge of the {*b*}*uraku* question and prejudiced remarks are not accepted;
- 3) In the course of struggling against discrimination of the {*b*}*uraku*, the historical backwardness in the {*b*}*uraku* people’s living and habits is overcome;
- 4) In society, free social communication is developed and reconciliation with solidarity is [too].²⁴³

The BLL’s opinion seems to emphasize non-discrimination whereas the Zenkai-ten’s does not mention non-discrimination but instead refers to differences being corrected, focusing on integration and open discussion and education. According to the Zenkai-ten:

the Buraku Liberation League misunderstands the essence of the {*b*}*uraku* question, separates the {*b*}*uraku* people from the general public, and makes it difficult to remove the barrier resulting from the social system of feudal society. This prevents the {*b*}*uraku* question from being solved.²⁴⁴

Interestingly, the opinions of the BLL and the Zenkai-ten as to when *buraku* liberation would have occurred on their face appear to be not all that different. The Zenkai-ten speaks about the “historical backwardness” of the *burakumin*, while the BLL does not, and the Zenkai-ten places more emphasis on

242. Interview with Kenzo Tomonaga, *supra* note 91.

243. WHAT IS THE BURAKU QUESTION, *supra* note 184, at 4.

244. *Id.*

the self-improvement of *burakumin*, as did the first founders of the liberation movement in the early twentieth century. But, from a larger perspective, these differences do not seem profound.

Realizing that not all aims of *buraku* liberation can be legislated, the following goals of *buraku* liberation should be addressed:

- first, obtain the goals of equality in living environment, and equal opportunity in education, employment, marriage, and similar areas;
- second, eliminate prejudice through human rights education including an accurate portrayal of the history and present situation of *dōwa mondai*;
- third, achieve a society respectful of human rights in which *buraku mondai* can be discussed freely.

B. Legal Obligations of the Japanese Government

Although customary biases have sustained discrimination against *burakumin*, the laws and government policies of Japan have contributed, and still contribute, to its endurance.²⁴⁵ The rights to equal protection under the law and the right to freedom from discrimination have not been protected by the Japanese government.²⁴⁶

1. Japan's Constitution

The *Kenpō* was proclaimed on November 3, 1946, implemented on May 3, 1947, and has not been amended yet.²⁴⁷ Technically, it was an amendment to replace Japan's first 1889 *Meiji Kenpō*, and focuses on "three basic principles: guarantee of human rights, popular sovereignty, and the renunciation of war."²⁴⁸ Article 14 of the *Kenpō* guarantees that "there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin."²⁴⁹

2. International Law

Article 98(2) of the *Kenpō* states that "treaties concluded by Japan and established laws of nations shall be faithfully observed."²⁵⁰ Japan joined the United Nations in 1956.²⁵¹ The United Nations Charter, which is classified as a treaty, became operative on October 24, 1945 and refers to the protection of human rights in articles 1, 13, 55 and 56.²⁵² The wording of one of

245. See BUHMANN, *supra* note 5, at 46.

246. See Interview with Shojiki Murakami, Professor, Osaka University Graduate School of International and Public Policy Research Institute, in Osaka, Japan (May 29, 1997) (on file with author).

247. See BUHMANN, *supra* note 5, at 20.

248. *Id.*

249. *Kenpō*, *supra* note 48, art. 14.

250. *Id.* art. 98.

251. See BUHMANN, *supra* note 1, at 10.

252. See *id.* at 5; U.N. CHARTER, arts. 55, 56.

the purposes of Article 55, however, according to Article 56, is "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."²⁵³ The terms "social status" or "birth" or "family origin" are not included.²⁵⁴

Two treaties signed and ratified by Japan oblige the government to eliminate discrimination against *burakumin*. While declarations are only pledges of ethical and political conviction, covenants are legally binding, though enforcement mechanisms are close to non-existent.²⁵⁵ Relevant to *buraku mondai*, the International Covenant on Economic, Social and Cultural Rights (ICESCR) involves positive rights, e.g., the right to claim, and negative rights, e.g., the right to non-interference by the State), are treated in the International Covenant on Civil and Political Rights (ICCPR). Both entered into force in 1978 and cover the issue of *buraku* discrimination.²⁵⁶ Further, Article 6 of the International Convention on Human Rights "requires states to assure effective protection and remedies, including adequate reparation for damages suffered as a result of discrimination. Constitutional guarantees are insufficient if they are not backed up with means by which ordinary people can secure their rights."²⁵⁷ Ratifying the convention means the ratifying body must actively fight against discrimination, in part by pursuing policies to that effect, and report bi-annually on their policy progress.²⁵⁸

Pertinent declarations prohibit discrimination against *burakumin* but do not have the force of law. The International Declaration to Eliminate All Forms of Racism and Discrimination recently adopted by Japan prohibits discrimination based on birth, and thus, contrary to current Japanese government assertions, does concern *buraku mondai*.²⁵⁹ Article 4 requires parties to "undertake to adopt positive measures designed to eradicate all incitement to or acts of racial discrimination."²⁶⁰ To fulfill this requires domestic legislation, but the Japanese government is concerned that any regulations to this end might contradict the constitutional freedom of speech provision. In addition to prohibiting racial discrimination by public authorities and institutions, the Declaration covers private actions as well.²⁶¹ The Universal Declaration of Human Rights, adopted on December 10, 1948, spells out numerous economic, social, cultural, civil and political rights.

253. BUHMANN, *supra* note 5, at 5.

254. See U.N. CHARTER, *supra* note 252.

255. See Interview with Shojiki Murakami, *supra* note 246.

256. See BUHMANN, *supra* note 5, at 2, 10.

257. Michael Banton, *The Implications for Japan of Ratification of the UN Racial Convention*, in HUMAN RIGHTS OF MINORITIES IN ASIA-PACIFIC 97 (Buraku Kaihou Kenkyuusho ed., 1990).

258. See *id.* Their reports are sent to a committee of 18 experts whom they themselves elect, but who serve in their personal capacity. The Committee on the Elimination of Racial Discrimination (CERD) considers the reports. In turn, it reports annually to the U.N. General Assembly. It may make suggestions and general recommendations based upon its examination of the information received from the States Parties. *Id.*

259. See Interview with Shojiki Murakami, *supra* note 246.

260. BUHMANN, *supra* note 5, at 58.

261. See *id.*

There are also a number of international conventions and declarations that have similar directions that the government of Japan is under a moral and ethical (if not legal) obligation to follow. Japan is party to several international agreements concerned with human rights, including the International Convention on the Elimination of all Forms of Racial Discrimination,²⁶² the International Covenant on Civil and Political Rights,²⁶³ the International Covenant on Economic, Social and Cultural Rights,²⁶⁴ the Convention Relating to the Status of Refugees,²⁶⁵ the Convention on the Elimination of All Forms of Discrimination against Women,²⁶⁶ the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,²⁶⁷ and the International Convention on the Rights of the Child.²⁶⁸

C. Policy Approach

Toward the ends laid out in the first part of this Section, two types of government policies are appropriate: assistance funds and human rights protection.²⁶⁹

The *{b}uraku* problem is not such a situation where a particular minority group would like to preserve its own language or culture. On the contrary, it would seem that the minority group in question would like to be fully integrated with the majority group and

262. International Convention on the Elimination of All Forms of Racial Discrimination, *entered into force* Jan. 4, 1969, 660 U.N.T.S. 195.

263. International Covenant on Civil and Political Rights, *entered into force*, Mar. 23, 1976, 999 U.N.T.S. 171 (signed by Japan May 30, 1977, ratified June 21, 1978, and effective in Japan September 21, 1978). See BUHMANN, *supra* note 5, at 10.

264. International Covenant on Economic, Social and Cultural Rights, *entered into force*, Jan. 3, 1976, 993 U.N.T.S. 3. Japan signed and ratified this treaty together with the International Covenant on Civil and Political Rights, *supra* note 263. See BUHMANN, *supra* note 5, at 10.

265. Convention Relating to the Status of Refugees, *opened for signature* July 28, 1951, 189 U.N.T.S. 150 (*acceded to by Japan* October 3, 1981). See BUHMANN, *supra* note 5, at 11.

266. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 34 U.N. GAOR, Supp. No. 46, at 193, G.A. Res. 34/180, U.N. Doc. A/34/36 (1980), reprinted in 19 I.L.M. 33 (1980) (signed by Japan July 17, 1980, ratified June 26, 1985). See BUHMANN, *supra* note 5, at 11.

267. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Dec. 2, 1949, 96 U.N.T.S. 271 (*acceded to by Japan* May 1, 1958). See BUHMANN, *supra* note 5, at 11.

268. Convention on the Rights of the Child, Nov. 20, 1989, 44 U.N. GAOR, Supp. No. 49, at 165, G.A. Res. 44/25, U.N. Doc. A/44/736 (1989), reprinted in 28 I.L.M. 1448 (1989). See Interview with Shojiki Murakami, *supra* note 246. See also BUHMANN, *supra* note 5, at 11.

269. It has also been suggested that *burakumin* have an inferiority complex that hinders their integration and acceptance success in the majority world, or that *burakumin* have a sense of fatalism that prevents them from rising out of their status. However, this explanation ignores the continuing effects of past discrimination, as well as those of persistent ongoing discrimination. It would not seem appropriate to excuse continuing prejudice and acts of discrimination on the fatalism of the victims of discrimination to overcome such acts. Nevertheless, some scholars believe that *buraku* communities must first be built up along with the confidence of *burakumin*, so that they will be well-prepared to face the outside world with confidence. Others believe that the outside world must be made "safe" for *burakumin* to enter. A combination of both approaches is likely to be the most effective.

to avoid or erase all artificial distinctions which might set them apart from the rest of the population.²⁷⁰

As long as it is not used as a tactic to brush the remainder of *buraku mondai* under the rug, both assistance funds and human rights protection laws should be aimed at bettering the conditions and opportunities of *burakumin*. They should also be implemented in general terms, as they will be just as effective this way, and, at the same time, will not invite protests that *burakumin* are receiving special treatment unrelated to their economic, educational or social conditions. Such an approach should promote harmony instead of division within Japanese society and a respect for the human rights of all rather than a distaste for special treatment.

D. Policies

1. Anti-Discrimination

Karin Buhmann, of the Danish Center of Human Rights, identifies three major conditions that make it difficult to realize human rights in Japan. The first condition relates to the unique set of cultural values that tend not to promote a consciousness of human rights:

Values and ideals in present day Japan are still influenced by those prevalent in Tokugawa Japan (1615–1867) . . . [which] centered around neo-Confucian virtues . . . [which placed emphasis] on fulfillment of duties according to one's place in the status hierarchy, rather than on recognition of the rights of the individual person.²⁷¹

Second, harmony and consensus are ideals in social interactions, and often this leads to a culture of "groupism," which builds consensus within a group but often leads to heightened tensions between different groups. Third, democracy and human rights were imposed on Japan though it had "no tradition of literary, philosophical or legal reflection on the rights of the individual, at least not in the above western sense, let alone a general notion of human rights."²⁷² Although these three conditions are changing, they do indeed stall the process of true democratization and achievement of human rights in Japan.²⁷³

Discrimination can be defined as "a form of social interaction that keeps certain groups, organizations and communities from enjoying the rights and

270. Jose D. Ingles, *An Outsider's View of the Buraku Problem, in THE ROAD TO A DISCRIMINATION-FREE FUTURE: THE WORLD STRUGGLE AND THE BURAKU LIBERATION MOVEMENT* 94 (1983).

271. BUHMANN, *supra* note 5, at 13–14.

272. *Id.*

273. See HIRASAWA, *supra* note 3, at 143–44.

privileges granted equally to all.”²⁷⁴ Or, “put plainly, discrimination places a person in a social situation where he or she is systematically disadvantaged for reasons for which he or she is not responsible.”²⁷⁵ To protect its citizens from *buraku* discrimination, the Japanese government must implement a law against discrimination and perhaps establish a government body to address violations.

2. Law

A law against discrimination is a vital first step.

Laws cannot and should not be used to eliminate all forms of discrimination, but a law against discrimination based on *buraku* status in governmental entitlements and in equal opportunities to obtain employment, own a home, and have an education of high quality, for example, would be appropriate. The committee established under the *Jinken Yōgō* (Human Rights Policy Promotion Act), which recognized that the *Kenpō* is not enough to protect victims of discrimination, should research all of the possibilities for constructing a law against discrimination and then recommend the best option to the government for adoption and implementation.

One point to consider in constructing a law against discrimination is that if discrimination is made a civil instead of a criminal offense, a lower standard of proof will be required; also private enforcement will be undertaken if attorney’s fees are awarded to successful plaintiffs. Beyond deterring acts of discrimination, making discrimination a civil offense would most likely result in settlements out-of-court, which would be more suitable to Japan’s judicial system and culture and also would thus not increase the burden on the courts.²⁷⁶ Because of the sliding-scale nature of the definition of *burakumin*, discrimination in this context should be defined as discrimination against someone who the discriminator believes to be a *burakumin*, because of this belief, and regardless of whether or not the person is actually a *burakumin* by ancestry.²⁷⁷

Due to Japan’s aging population and thus shrinking work force, it is in Japan’s economic interest to tap into its entire long-term supply of labor, indiscriminately selecting the most well-qualified candidates for each job.²⁷⁸

274. Jonathan H. Turner, *Sociology: Studying the Human System*, in HIRASAWA, *supra* note 3, at 4–5.

275. *Id.*

276. See Tomonaga, *supra* note 82, at 17.

277. The lack of an absolute definition creates many uncertainties and discrepancies when dealing with population statistics, evaluations of educational and career achievement, and the like. These investigations are also hampered by instances in that the boundaries of *buraku* are drawn too widely, to include areas with many non-*buraku* households. One reason for this inaccuracy is that the more area and people are included within a *dōwa* district, the more funds and authority the municipal government can receive to distribute for individual use or use for public works. Even those who fit a definition of *burakumin* are sometimes successful in concealing their identity and “passing” as a majority member of society. There are also those who are of *buraku* ancestry but do not know this fact themselves. These people are sometimes shocked to learn of their heritage by a detective hired by a potential employer or parents-in-law.

278. Fifteen percent of Japan’s population is currently over 65 years of age, and it has been projected

In the short run, this could lead temporarily to feelings of dissatisfaction or discontent among those non-minority workers who themselves harbor feelings of prejudice and might be struggling with their own pride to work alongside minority workers or reduced patronage by prejudiced customers or clients. Yet, with proper education and, especially in the case of *burakumin* whose identities are often neither definite nor visible, the economic pay-offs in the long-term will be well worth these possible short-term drawbacks in select situations.²⁷⁹ In general, it is in Japan's best interest to become a more inclusive society that encourages citizen and non-citizen participation in all positive aspects of life. A law against discrimination is a vital step in this direction.

3. Governmental Agency or Committee

The government should establish a governmental agency or committee, or redesign an existing one, to provide a non-judicial vehicle of meaningful redress for victims of prohibited discrimination, not only buraku discrimination, while being sensitive to individual privacy and other rights.

Under the *Kenpō*, there are no other courts, aside from those that fall under the jurisdiction of the judicial branch, that can allocate punishments. For example, a military tribunal in Japan would be unconstitutional. The *Kenpō* would allow for, however, the establishment of another organizational body of a judicial nature, to investigate and suggest solutions to complaints of discrimination.²⁸⁰ Perhaps a body like the Equal Employment Opportunity Commission (EEOC) in the United States would be a valuable and appropriate entity to examine views of discrimination in the first instance.²⁸¹ On the other hand, perhaps relief from a court of law would be more satisfactory, especially if a federal anti-discrimination law were passed. Existing government quasi-judicial entities have performed inadequately so far.

4. Assistance Funds

It is true that in the past, "*buraku* areas have been neglected by the administration as a result of a centuries-old discrimination, without proper infrastructure projects, including housing."²⁸² Thus, it is only just for these areas to be improved to a level at least on par with other communities in Japan. Yet, creating measures that identify and fund improvement of *buraku* areas exclusively is problematic in and of itself not only because it would

that by the year 2050, this statistic will rise to 33%. Japan Information Network, *Japan Faces a Silver Society* (visited Jan. 27, 1999) <http://www.jin-japan.org/insight/html/in_perspective/population/today.html#p-01>.

279. See Interview with Shojiki Murakami, *supra* note 246.

280. *Id.*

281. See Interview with Yoshiro Nabeshima, *supra* note 18.

282. *Buraku Problem Q & A (12): Discrimination or Jealousy?*, BURAKU LIBERATION NEWS, July 1996, at 10.

neglect other areas equally in need of development and improvement, but also because identification of *buraku* areas is difficult, biased, and may lead to further discrimination. In addition, the majority population has witnessed the "reduction of [government] workers and [of wages], the change of the free scholarship system into student loans, [and] the free school textbooks of compulsory education into purchased items, also the change of free medical treatment for the elderly into a payment system."²⁸³ Although victims of past discrimination, especially institutionalized discrimination or discrimination by the government, surely deserve redress in some form, money spent for *dōwa* measures does have the opportunity cost of not being available for other uses.

Since *dōwa* area improvements are the same whether provided for by special or general measures, to avoid negative externalities, perhaps it would be wiser for future government measures to target dilapidated, unsafe areas in general. Measures could respond to the needs of the poor and other disadvantaged individuals, by addressing their problems without restricting benefits to a certain group of these people based on ethnic, gender, or other non-economic-based groupings.

Unimproved buraku should be addressed under general welfare measures, along with other deserving communities.

There are still approximately a thousand *buraku* communities that have been denied official designation as *dōwa* areas and are unable to receive benefits under the Area Improvement Measures. This situation seems to violate the Japanese Constitution, for example, Article 25 guaranteeing "minimum standards of a wholesome and cultured living."²⁸⁴ Accordingly, the government should implement physical environment improvement measures with respect to those communities that have not yet been guaranteed the standard minimum living conditions of Japanese communities.

- Administration of improvement and any other measures should be put in the hands of the government, not in a non-governmental political or other organization.

In distributing more subsidies, the one window policy method of allotting government resources through private groups such as the BLL and Zenkai ren should be abandoned, for reasons stated earlier.

5. *Chimei Sōkan* ("Buraku Lists")

After the existence of a *buraku* list was first disclosed on November 17, 1975 by an anonymous letter, the government acted, but with limited effectiveness. On December 8, 1975, it sent requests to associations such as the

283. Saichiro Uesugi, *The World Anti-Discrimination Movement and Solidarity with the Buraku Liberation Movement*, in *THE ROAD TO A DISCRIMINATION-FREE FUTURE: THE WORLD STRUGGLE AND THE BURAKU LIBERATION MOVEMENT* 17-18 (1983).

284. BUHMANN, *supra* note 5, at 53.

Federation of Economic Organizations to "prove equal opportunities to *(b)jurakumin* and protect the human rights of everyone." It also provided governors of each prefecture and several mayors and educators with information regarding discrimination.²⁸⁵ On December 18, 1975, the Diet "reported that of 1000 advertising pamphlets that were distributed, 500 in eastern Japan and 300 in western Japan had been seized by the government."²⁸⁶ Although the government confiscated 400 books of *buraku* lists, it expressed its worry that others might still be in the making. Nevertheless, the Minister of Justice recommended that charge should not be brought, "but rather [that] the violator should be admonished and encouraged to respect human rights."²⁸⁷ Regarding the establishment of a law against discrimination, the Head of the Prime Minister's office expressed his concern for the possible conflict a law against discrimination might have with "freedom to do business."²⁸⁸

A law should be created to outlaw the use of buraku lists for discriminatory purposes; further, a government body should be assigned the role of overseeing businesses and other organizations that are susceptible to using these lists for damaging purposes.

Outlawing the possession of these lists under all circumstances and for all purposes is neither necessary nor beneficial, since such lists may be useful for historical, governmental, or academic purposes. Nevertheless, a law prohibiting background investigations concerning a person's *buraku* status for discriminatory purposes should be enacted and the use of these lists should be closely regulated.

In Osaka Prefecture, a government ordinance directed against discriminatory background checks by detective agencies was enacted in 1985. The Prefectural Ordinance to Regulate Personal Background Investigation Conducive to Buraku Discrimination, under Article 5(1) states that "a detective agency shall not investigate and/or report whether any person or relatives of him/her lives or lived in a *(b)juraku* area."²⁸⁹ This regulation not only prohibits investigation into *buraku* identities for discriminatory purposes but for any purpose. Offenders are addressed in the following ordered manner, the extent to which is dependent on whether or not they halt their discriminatory practices and comply with the Ordinance:

- 1) The governor of Osaka Prefecture is authorized to give administrative guidance to the agency.
- 2) The governor is authorized to order the agency to suspend its operation for not exceeding one month (Article 9).

285. YOSHINO & MURAKOSHI, *supra* note 12, at 99.

286. *Id.*

287. *Id.*

288. *Id.*

289. Tomonaga, *Let's Build a Universal Culture of Human Rights*, *supra* note 96, at 1.

- 3) Punishment of not more than three months in jail or a fine not exceeding one hundred thousand *yen* (less than \$1000) will be levied.²⁹⁰

Although enacted in 1985, this Ordinance was first employed by the Osaka Prefectural government in March of 1997.

The Osaka prefectural Ordinance targeting discriminatory background checks could be a model for a national law. Article 6 of the draft bill of the Fundamental Law for Buraku Liberation states: "the central government must take necessary legal measures such as regulating family background investigations conducive to *buraku* discrimination." The content of the law must be strengthened, however, so that it truly is (1) a deterrent against discrimination, and (2) a proper tool to punish offenders so that they and others will be deterred from committing this offense. Also included in the law might be a measure to provide back pay to workers denied employment because their *buraku* status was disclosed through a violation of this Ordinance.

6. *Koseki* ("Family Register")

The Family Registration Law governs all aspects surrounding the existence of the *koseki*, or family register. In 1976 it was amended to restrict access to the family register for the first time since its creation. Article 10, paragraph 1 and 2 currently allows "any person . . . to request delivery of a copy or abstract from a family register . . . by explaining the reason [for the request]." Article 10, paragraph 3 permits the mayor in charge of managing the family register to refuse a request if it is clearly made for an unjust purpose.²⁹¹ Unfortunately, these restrictions are not sufficient; acts of discrimination facilitated by access to the family register abound.

A stricter law, with punitive measures, prohibiting use of the koseki for discriminatory purposes is necessary.

CONCLUSION

Over a century has passed since the Emancipation Edict purported to eliminate the inferior status of the ancestors of *burakumin*. Much as has been the lot of blacks in the United States, who were declared free by the Emancipation Proclamation nearly 135 years ago, the vestiges of the *buraku* status have lingered to present day.

Targeted measures by the Japanese national and a few local governments, prodded by determined efforts by members and organizations fighting for *buraku* liberation, have improved the physical surroundings, educational and employment opportunities, and health of some *burakumin*, but not all. These

290. *See id.*

291. BUHMANN, *supra* note 5, at 50.

efforts have drawn attention to the need for improved conditions for *burakumin*, but at the same time have caused resentment toward *burakumin* by those who feel that the policies are unfairly and discriminately preferential—much like the backlash against affirmative action in the United States.

Meanwhile, no branch of government has moved to afford legal redress to those *burakumin* who are the victims of public or private discrimination, or to make it impossible to determine the ancestry of *burakumin* through government records. The BLL has taken up this task primarily through its denunciation tactics, but has lacked the emblem of legitimacy and strength of national influence more easily assignable to a national government.

Achieving a discrimination-free society, in which those *burakumin* who wish to assert their identity can do so without negative consequence, requires a safety net of laws that function to deter acts of discrimination, to punish those acts of discrimination that are committed, and to establish a normative standard of non-discrimination and respect for human rights to which the society can cohere. Equally importantly, until the goal of non-discrimination, or at least governmentally untolerated discrimination, is met, the government should act to ensure the right to privacy and non-discrimination for those *burakumin* who wish not to endure the experience and consequences of invidious discrimination.

