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BURAKU MONDAI IN JAPAN:
HISTORICAL AND MODERN PERSPECTIVES AND
DIRECTIONS FOR THE FUTURE
FROM THE PERSPECTIVE OF AN AMERICAN RESEARCHER

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INTRODUCTION

In Japan, a Japanese minority group called “burakumin” continue to face discrimination in such areas as housing, employment, marriage and education. Although culturally, linguistically, ethnically and racially indistinguishable from other Japanese, burakumin fall victim to discrimination because of the outcast status of their predecessors, eta and hinin, in the status system and social order of Japan’s Tokugawa Era (1600–1868).¹ On August 28, 1871, the Council of State issued the following Emancipation Edict: “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).” Nevertheless, discrimination continued. The Emancipation Edict resulted in no more than the “enhanced legal status [of burakumin] at the cost of intensified social

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**This paper is the Executive Summary of a thesis presented in partial fulfillment of a Graduate Research Certificate in the Department of Literature at Osaka City University. Research was conducted under the advisorship of Tsukada Takashi at Osaka City University. Among those interviewed were Tomonaga Kenzo, Director of the Buraku Liberation Research Institute; Okuyama Mineo, Executive Director of the Institute of Buraku Problem; Kimura Eichi, Head of the Administrative Office of the Asaka Local of the Buraku Liberation League; Nabeshima Yoshiro and Noguchi Michihiko of Osaka City University’s Dowa Mondai Research Center; and Murakami Shojiki of Osaka University’s Graduate School of International and Public Policy Research Institute. Nakano Kotaro, professor of American History at Osaka City University helped to edit this articles. These individuals share no responsibility for any errors or omissions that may occur in this work, or in any of its shortcomings, and the opinions and conclusions expressed here are solely my own.

1 The word burakumin will be used in this paper to refer to two different but overlapping groups of individuals: those who have ancestors who were treated as outcasts in the Tokugawa period, and those who have come to be identified as having relationships with burakumin and thereby become objects of discrimination, based on factors other than kinship, such as place of residence and occupation. (Usually in this paper I will be referring to the latter group of people.)

discrimination and loss of economic privileges.”²

Examples of discrimination against burakumin in the Tokugawa Era are as follows:

Marriage. Marriage outside the [outcast] group was [at first simply not practiced] but later forbidden...

Housing. [Outcasts] were required to live in designated ghetto communities...

Social behavior. [Outcasts] could not interact freely with the commoners, and if they went to their homes for whatever reason, they were not allowed to go beyond the entrance hall...

Occupation. Not 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...³

The origin of discrimination against burakumin is one of the greatest topics of academic research in Japanese History, and one which scholars today engage in rigorously. However, the scope of this essay will not allow for a full exploration of the details of this history.⁴ Rather, this essay will focus on current problematic issues of buraku mondai and aim to present ideas for governmental measures to extinguish discrimination against burakumin from the perspective of an American researcher. Section I provides a summary explanation of the historical efforts of both the liberation movement and the Japanese government in combating discrimination against burakumin, the progress made so far, and the present state of the policies and policymaking regarding buraku mondai. Section II explores several current issues of buraku mondai. Finally, Section III contains policy recommendations which aim to eliminate discrimination against burakumin and improve the conditions of burakumin.

I. RECENT HISTORY

To provide a basis for understanding the arguments in Section II, I will first make clear the up-to-date achievements of the buraku liberation movement and government measures

2 Frank H. Upham, *Law and Social Change in Post-War Japan* (Cambridge, Massachusetts: Harvard University Press, 1987) 80. This declaration followed the collapse of the Tokugawa feudal regime (including 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. Ibid.

3 Ibid.

4 The history of buraku mondai and of burakumin, although it has evolved and progressed, has not yet been conclusively written. Earlier research tends to over-generalize about the origins of discrimination against the ancestors of burakumin, for example, as a situation arising from the religious classification of certain occupations as defiling, or in later research, as a phenomenon created by the state to control the masses. There appears to be no such single and simple explanation of the origins of burakumin and of discrimination against them, however. Recent research elucidates some of the details of the circumstances of Tokugawa Period outcasts, and reveals the diversity in both the outcast population and the ruling policies over time and in different areas of the country. In any case, none of the historical explanations of the status of outcast or how some of these and other people came to be burakumin justify the continuance of any aspect of that status in Japan today or in the future. Misinformation about, and misinformed prejudices against, burakumin still abound in modern day Japanese society, business, and politics.

to eliminate discrimination against burakumin and improve the condition of burakumin. I will also evaluate the limits of these achievements and summarize the current state of debate on appropriate governmental remedies to buraku mondai.

Early Buraku Liberation Movement and Government Measures

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 concerned mostly with buraku self-improvement, the *Suiheisha* "advocated humanistic principles that emphasized utmost respect for the dignity of human beings. The *Suiheisha* denounced all kinds of discrimination against burakumin, struggled for peace and against war and strove to improve burakumins' living standards."⁵ W.W. II arrested official efforts of the buraku liberation movement. However, in August of 1945, Japan surrendered to the Allies, in 1946 the Emperor and status system were abrogated and in 1947, the Post-War Constitution of Japan replaced the Constitution of the great Japanese Empire (*Dainihon Teihoku Kenpou*, 1881). Article 14, paragraph 1 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."⁶ The liberation movement reasserted itself, equipped with the principles of post-war democracy and human rights on its conscience.

In 1953, because of activities and pressure from individual burakumin and the buraku liberation movement, the national government began to give small subsidies to the local governments for improvement of buraku areas. In 1960, the *Douwa Taisaku Shingikai Secchi Hou* (Law to Establish a Deliberative Council for Buraku Assimilation)⁷ was legislated and in 1961, the government created the Deliberative Council for Buraku Assimilation (the "Council").⁸ 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. It defined buraku mondai as:

...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... is placed in

5 Tatsukuni Komori, "Discriminated-Against Buraku and Civil Rights Protection," *White Paper on Human Rights in Japan* (Osaka: Buraku Liberation Research Institute, 1984) 50.

6 Post-War Constitution of Japan (*Nihonkoku Kenpou*), 1947. Other Articles which oppose discrimination against burakumin include Article 11, 12, 13, 14, 17, 22, 25, 26, 27, 98. Ibid.

7 *Douwa Taisaku to Undou Dantai no Nagare* (Kyoto: Buraku Mondai Research Institute, 1997).

8 The Council was a government created body, but not one which was composed strictly of government officials; it was a fact-finding committee appointed by the Prime Minister and composed of bureaucrats, politicians, and experts from society, including some burakumin, whose purpose it was to study the buraku situation and recommend possible action. Frank K. Upham, 84.

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 ensured to all people as a principle of modern society, are not fully guaranteed in reality.⁹

The Report also evaluated as superficial and insufficient the prior attempts to extinguish discrimination against burakumin.¹⁰ In July of 1969, the national government implemented the *Douwa Taisaku Jigyou Tokubetsu Sochi Hou*, the Special Measures for Assimilation Projects Law. From that time until the present, laws similar to the Special Measures Law have provided funds for improvements of buraku areas, educational scholarships for burakumin and aid to small buraku businesses.¹¹

In the 1960s, the fabric of the liberation movement began to rip in two. This was spurred in part by the 1969 Special Measures law, which was one factor which led to the ultimate split of the buraku liberation movement into two organizations: the *Zenkoku Buraku Kaihou Undou Rengoukai* (All Japan Federation of Buraku Liberation), commonly abbreviated “Zenkairen” (1976) and the Buraku Liberation League, the “BLL.” The 1969 Special Measures law allowed for the first time the leftist segment of the liberation movement to work with the conservative Liberal Democratic Party (LDP) government to secure funds for buraku liberation. Prior to W.W. II, the Japanese Communist Party (JCP) supported efforts of the Suiheisha, but was more interested in its class struggle aspects than with its anti-discrimination and human rights aspects. Just after the report was issued, and much to the shock of the BLL elders, the JCP denounced the report as a ‘poisonous cake,’ or a watered-down government version of the original demands for liberation. Although the BLL was not entirely satisfied with the report, it supported the idea that the national government should increase funding of buraku improvement projects. 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.”¹²

9 1965 *Report of the Integration Measures Deliberation Council*, English translation, as cited in Karin Buhmann, *Civil and Political Rights in Japan* (Denmark: The Danish Center of Human Rights, 1989) 48.

10 Ibid, 84-6.

11 In the second national legislation, *Chiiki Kaizen Taisaku Tokubetsu Sochi Hou* (1982), *Douwa Taisaku to Undou Dantai no Nagare* (Kyoto: Buraku Mondai Research Institute, 1997), the government decided not to include an explicit reference to buraku mondai or buraku communities. It instead refers to area improvements in general, though in effect the beneficiaries remained those qualified residents living within the boundaries of government recognized buraku areas. Also under this law the government ceased recognizing buraku which had not yet been officially recognized, and thus no new communities were eligible to receive government improvement assistance. The third national law aimed at buraku liberation is the Law for Special Fiscal Measures for Area Improvement Projects (1987), which does not include a statement that its existence is based on the responsibility of the Japanese government to eliminate discrimination against burakumin; also it excludes areas which had been improved under the prior two laws. In the preceding two laws, secondary education grants were offered to burakumin students, but under this law, loans were extended in place of grants. Buhmann, 55.

12 Roger Yoshino and Sueo Murakoshi, 89–90.

Current Conditions and Government Policies

In buraku areas recognized by the government to receive funds from the special measures laws, large strides have been taken to achieve physical improvements of the living environment, and to improve primary and secondary education. Unfortunately, strides have been shorter in addressing employment and marriage discrimination, social prejudice, and nation-wide dowa education. For example, although many Japanese assert that buraku mondai is no longer a part of their everyday lives or thoughts, and so it is no longer a problem which requires attention, many people still conduct background investigations for hiring and marriage, and use the information gained in ways that operate to maintain the vestiges of buraku discrimination. Also, the buraku liberation movement itself has serious problems both within and without it, which hinders progress toward a more liberated society.

On May 17, 1996, the government issued its first official report since 1965 on the status of buraku mondai. The Consultative Council on Regional Improvement Measures, organized by the Management and Coordination Agency of the National Government, recognized that:

- (1) While the Buraku discrimination problem has been solved to a certain extent through the [special] measures [laws] for years, discrimination still clearly exists.
- (2) As a basic understanding,...
 ...considering the Dowa problem as one of the human rights problems, efforts should be exerted to solve problems related to human rights.
 ...the expiration of the current Law Regarding the Special Fiscal Measures of the Government for Regional Improvement Projects does not mean the abandonment of Dowa measures. The solution to Buraku discrimination should be actively sought, including a legislative measure...¹³

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.¹⁴ According to the policy entitled Future Measures Seeking an Early Solution to the Dowa Problem, improvement projects which were not finished by March of 1997 are to be provided funding for up to five more years, as are subsidies for school scholarships. Improvement projects which have not yet begun, and the maintenance of community centers and nurseries, will be transferred over to ordinary measures, though they will receive special subsidies. Finally, all other projects previously covered by the 1982 law will be

¹³ Buraku Liberation Research Institute, Kenzo Tomonaga, "Aiming at the Enactment of the Fundamental Law for Buraku Liberation at the Next Diet Session," *Buraku Liberation News*, No. 91, July 1996, 2-3.

¹⁴ Tomonaga Kenzo, Buraku Liberation Research Institute, *Buraku Liberation News*, "Let's Build a Universal Culture of Human Rights."

treated as ordinary projects with no special subsidies.¹⁵ The government also established in 1997 the Council for Promoting Human Rights Protection which will analyze buraku mondai and create policy recommendations for human rights education and enlightenment within two years, and recommendations for relief measures for the victims of human rights violations within five years.¹⁶

The BLL demands implementation of the *Buraku Kaihou Kihon Hou*, the Fundamental Law for Buraku Liberation. It contains four sections: Proclamation, Projects, Enlightenment and Regulations (including relief). Portions of the law have already been legislated to some extent, as described above. Under the Projects section, the government is obligated to continue in efforts to improve the living conditions, social welfare, public hygiene, agriculture, forestry, small and medium-sized enterprises, employment, school and social education in dowa areas. Under enlightenment, "the government must eliminate discriminatory consciousness and enhance ideas about human rights through systematic education and enlightenment." Under regulations, "the government must regulate vicious discriminatory behavior, such as family background investigations and discrimination in employment relations against Buraku people." Also, it must establish a committee for human rights which must in turn construct a relief system for victims of discrimination.¹⁷

While it is a fairly comprehensive draft bill, the Fundamental Law does not include any provisions for people living outside of dowa areas, nor does it cover discrimination against any other groups aside from burakumin.¹⁸ 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 which confronts discrimination against all burakumin, and other minorities and women as well. It is naive to think as the BLL does that "tackling the Buraku Problem will necessarily lead to the elimination of all forms of discrimination."¹⁹ The JCP and two-thirds of the Liberal Democratic Party (LDP) are opposed to the Fundamental Law. The reasons of the JCP are as follows:

- There is no more discrimination.
- If a law concerning buraku discrimination is passed, discrimination will always remain.

Objections by other groups include the following:

- This type of law which specially entitles burakumin to reap certain government benefits antagonizes the citizens in general.

15 Tomonaga Kenzo, Buraku Liberation Research Institute, "More Efforts toward the Enactment of the Fundamental Law by Taking Advantage of the Cabinet's Conclusion," *Buraku Liberation News*, No. 92, September 1996, 3.

16 Tomonaga Kenzo, Buraku Liberation Research Institute, *Buraku Liberation News*, "Let's Build a Universal Culture of Human Rights."

17 Buraku Liberation Research Institute, "Buraku Problem Q & A (11): The Fundamental Law for Buraku Liberation," *Buraku Liberation News*, No. 90, May 1996, 8.

18 *Fundamental Law for Buraku Liberation*, draft bill, May 24, 1985.

19 Buraku Liberation Research Institute, "Buraku Problem Q & A (11) : The Fundamental Law for Buraku Liberation," 7.

- At least a time limit on special works is necessary (and the Fundamental Law does not impose one).

II. CURRENT ISSUES

There are a number of aspects of buraku mondai and the efforts to eliminate discrimination against burakumin that warrant particular discussion.

Almost no one in Japan welcomes a conversation about buraku mondai. It is viewed as an embarrassing or offensive topic of discussion, particularly with foreigners. I have found that there are two factors that contribute greatly to the reluctance to discuss buraku mondai: (1) the philosophy of *neta ko wa sono mama*, or “don’t wake the sleeping baby,” which instructs people to refrain from discussing buraku mondai on the theory that, if the subject is ignored rather than emphasized, it will go away naturally over time, and (2) *kyudan*, or denunciation, a tactic employed by the Buraku Liberation League (BLL) in which individuals determined to be discriminators against burakumin are made to self-criticize their conduct publicly.

Neta ko wa sono mama (Neta ko o okosu na)

The phrase “don’t wake a sleeping baby” is used to convey the idea that to ignore and do nothing in regard to buraku mondai is the best way to assure its disappearance. This idea is premised on the belief that there is little remaining discrimination against burakumin, that burakumin are physically indistinguishable from the majority of Japanese citizens and that inferior conditions in buraku communities have already been rectified through government improvement programs. Thus, some believe, remaining prejudice against burakumin will disappear completely if people would only stop talking about it. Unfortunately, the premises upon which this idea is based are not accurate as discrimination still persists as do real inequalities in standards of living, education and employment of burakumin.

The philosophy of *neta ko wa sono mama* is mistaken for many reasons. First, notions concerning the identity and history of burakumin are common and are passed from one generation to the next. “If we leave ‘a sleepy baby’ as he/she is, prejudice and false understanding will be taught for generations and Buraku discrimination will be continuously reproduced.”²⁰ Buraku mondai is not a sleeping baby, and even if it were, babies never remain asleep. Buraku discrimination continues to exist and needs to be addressed openly if it is to be put to rest.

Second, a truly discrimination-free society in the fullest meaning will not be realized by the elimination of dialogue on buraku mondai or even by the successful concealment of

²⁰ Ibid.

buraku identities. An environment in which people are unable to announce *their* ancestry without concern for serious negative repercussions is not a discrimination-free society. The argument that buraku people should simply integrate with the majority Japanese population, and that they are capable of doing so, because physical differences do not distinguish them, presumes that it is appropriate to require burakumin to abandon their buraku identity. While this approach might arguably result in an integrated society, it certainly would not be a society free from discrimination because at the heart of this approach is the assumption that individuals with buraku ancestry will be regarded as inferior if the fact of that ancestry is known.

Kyudan or Denunciation

On the opposite side of the spectrum, denunciation aims, and sometimes succeeds, to serve necessary purposes: to address discriminatory actions and to bring about changes in discriminatory systems. However, there are two problems with it. First, the BLL makes unilateral determinations of whether a person is a discriminator and does not allow room for differences of opinion or challenges to its determinations. This tactic has had the effect of preventing open discussion on the issue of buraku mondai in Japan for fear that participants in such a discussion would be labeled discriminators.²¹

The BLL currently defines discrimination broadly as including utterings, writings and graffiti, not to mention refusals to hire or promote burakumin because of their buraku status, and refusals to marry burakumin because of their buraku status. Not only the BLL definition of buraku discrimination but also its method of denouncing acts it identifies as discriminatory is responsible for contributing to the closed nature of discussions on buraku mondai. It is important to arrive at a less tyrannical view of what constitutes buraku discrimination, especially in the legal sense, and in particular not to draw the line too close when the alleged act of discrimination is only the expression of opinions and views, as opposed to actions such as refusals to hire or promote employees. The right of free speech is critical to a democratic society, even when the views expressed are obnoxious.

For example, 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 Dowa 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

21 Interview with Nabeshima sensei, Osaka City University, Dowa Mondai Research Institute, April 4, 1997.

explain.²²

In response to this comment, the assistant professor was labeled a discriminator by the BLL and made to self-criticize. The BLL allowed no room for argument. Concerning this issue, on August 17 the Nara Prefectural Federation BLL received a postcard which it deemed "extremely discriminatory." It reads:

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 Dowa 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.²³

Instead of simply arriving at the conclusion that a person is a "discriminator" and then conducting a denunciation session, the BLL should at least investigate more carefully the basis of seemingly discriminatory statements and make more cautious decisions concerning what is an act of discrimination. The BLL should regard the allegedly discriminatory behavior not only as something which must be but also as an indicator of what needs to be improved in the BLL's own sphere of influence, as some of the discriminatory remarks are not directed at specific burakumin or even the population of burakumin, but are directly or indirectly targeted at the BLL.

Second, the government would be a more appropriate entity to carry out denunciation-type functions.²⁴ For example, Tomonaga Kenzo, Director of the Buraku Liberation Research Institute, 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 making errors. Although this is true, at least judges are appointed by elected officials and are (or at least are perceived to be) 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. Rather than the BLL, the government should take action against buraku discrimination, thereby bringing problems of buraku discrimination into an open and official arena.²⁵

22 Buraku Liberation Research Institute, "Discriminatory Remark was Made by an Assistant University Professor," *Buraku Liberation News*, No. 93, November 1996, 5.

23 Buraku Liberation Research Institute, "A discriminatory postcard was sent to the Nara Federation," *Buraku Liberation News*, No. 93, November 1996, 6.

24 Perhaps the BLL should be given consultative status to a government entity charged with combating discrimination against burakumin, such as in the case of the United Nations and IMADR. The BLL should not be granted, however, broad discretion over the administration of government projects and funds.

25 Another danger of the BLL's denunciations is that other non-BLL groups can 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. These bully groups are detrimental to the perceived legitimacy of the BLL, as well as to society. If only the government responded to acts of discrimination, the possibility of impostor penal groups would disappear.

One Window Policy

Madoguchi Ipponka, or “one window policy,” is a policy adopted by the Japanese government since the beginning of the implementation of the special measures programs, and has been responsible in a number of buraku districts for conferring on non-governmental buraku liberation organizations (in most cases, local branches of the BLL) the power to administer government-funded programs in that district. The argument in favor of this policy is that it allows the unencumbered administration of these government programs by a local organization of those individuals primarily intended to be benefited by the programs.²⁶ In many instances, however, what the one window policy means is that the BLL is delegated the authority to determine a person’s eligibility for the government subsidy or other assistance, and usually makes that eligibility dependent on their buraku status, their conformity to certain rules and their agreement to participate in “enlightenment” or other activities. “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 to the government bureau is considered complete.”²⁷ There have been countless reported instances of this system being abused 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,”²⁸ while in other cases, non-burakumin who pledge their allegiance to the BLL have been able to receive benefits.²⁹ In Asaka buraku in Osaka, for example, recipients of educational scholarships and their parents are required to attend two “liberation” meetings each year during the term of their scholarship, to learn about buraku liberation and related government policies. They must also sign their name to pledge of support for dowa programs, and also may be required to become dues-paying members of the BLL.

Inherent in the one-window policy is great potential for abuses of power, the most common of which is giving preference to BLL members over Zenkai-ten members. In fact, as the Zenkai-ten has successfully argued in court, the one window policy is in violation of Japanese law, namely, the Local Autonomy Act, because a local government is forbidden to delegate power to a private sector entity to make a public decision.³⁰ However, these cases only provided relief of specific complaints, and were not successful in eliminating the one window policy on a national (or even local) level. *Madoguchi ipponka*, at least as it has at

26 Interview with Kimura Eichi.

27 Upham, 113.

28 Ibid.

29 A further problem caused by the government’s delegation of administrative powers to an organ of the Buraku Liberation movement is that in areas where the movement was not so strong, or the BLL or Zenkai-ten did not have a branch office, improvements were slow in coming or never came.

30 One case in Osaka City, forty-four cases (which are all related) in Fukuoka City and one in Kitakyushu City opposed the one window policy. Interview with Professor Nabeshima, August 1, 1997.

times been implemented, is offensive if not unconstitutional as it denies people the right to freedom of speech and thought by enabling a private organization to distribute government benefits in a way that favors only those individuals who support that group and its doctrines, and thus can properly be viewed as indirect "state discrimination against certain political beliefs (JCP sympathizers) in the administration of affirmative action welfare benefits."³¹ In my view, the government, through its elected and appointed officials, should control its programs and should prescribe more complete and strict regulations regarding eligibility for government allotments, based on appropriate criteria designed to meet appropriate policy objectives.

Of course, in taking control over its own public benefit programs and developing the policies which those programs are intended to serve, the government must not exclude the voices and participation of burakumin and buraku liberation activists.

Liberation Movement

Both the BLL and the Zenkai ren seem genuinely committed to solving buraku mondai, while at the same time being highly critical of the works and tactics of one another. While the BLL and Zenkai ren do have fundamental differences in their conceptions of buraku mondai in their views about the progress made in the resolution of buraku problems, they tend to exaggerate their differences in their views and thereby make difficult and unlikely any hope of a cooperative initiative. For example, the assertion of BLL officials that the Zenkai ren believes that all of the problems and realities of discrimination of burakumin have been resolved, is heard frequently. However, this assertion is fallacious. The Zenkai ren believes that "discrimination against the Buraku is basically on the way out," not that it does not exist. Although this outlook of the Zenkai ren may be unrealistically optimistic, it does provide a sense of progress which may be beneficial to the momentum and optimism of the cause. As articulated by Okuyama, Executive Director of the Institute of Buraku Problem, the BLL and Zenkai ren simply focus on different realities within buraku mondai. While the Zenkai ren focuses on the improvements and progress that have been made, the BLL focuses on the remaining disparities and discrimination. The two groups seem to be looking at opposite sides of the same buraku mondai coin. Both sides are necessary to form a coin, and consideration of the views of both the BLL and the Zenkai ren are necessary to provide a complete picture of buraku mondai and to supply the insights that will lead to final solutions.³² Perhaps it is time for the groups within the Buraku Liberation movement to consider their differences more objectively; the result might well be that they would find that they have much more in common than they think and that by joining forces they could achieve more effective and lasting solutions to buraku mondai.

³¹ Upham, 117.

³² *What Is the Buraku Question-Past, Present Future-*, 4.

U. S. Affirmative Action

The United States of America's policy of affirmative action is often compared to the policies of the Japanese government toward buraku mondai.³³ In the U. S., affirmative action is "government-mandated preferential policies toward government-designated groups."³⁴

Almost twenty years later, however, affirmative action is beginning to be dismantled. For example, in 1995 the University of California (UC) Regents resolved to terminate the practice of racial and gender preferences in the admissions process of all of the nine UC schools. At the federal level, Senator Bob Dole, majority leader at that time, strongly but unsuccessfully urged the adoption of the Equal Opportunity Act of 1995, which would have terminated affirmative action in the areas of federal employment, contracting, and all federal programs.³⁵

Should Japan adopt a policy of affirmative action such as the one that has been implemented (but that has, with some, fallen into disfavor) in the U. S. ?³⁶ In general, the theoretical arguments (including those of a moral, legal, philosophical, political, social, and economic nature) seem to support affirmative action as an appropriate step which should be taken to remedy the effects of generations of discrimination. On the other hand, a results-oriented analysis may caution against affirmative action policies based on studies which show few positive results and several negative consequences of affirmative action. Certainly there are pluses and minuses to affirmative action programs and there is no clear-cut answer to their desirability in addressing the problems of racial discrimination in the United States.

All government programs benefit certain groups of people and not others (depending on the eligibility and other parameters of the programs). The basis on which the government differentiates between different groups of people, however, is a matter of controversy and

33 "In 1968, an executive order prohibited discrimination against minorities by holders of federal contracts. A follow-up policy stated that it was not sufficient to simply stop discrimination. It was a dictate to show affirmative or positive action by changing recruitment and employment patterns. Thus, businesses, industries, colleges and universities and any other organizations with federal contracts were required to attempt to have a proportionate representation of minorities among their employees. Affirmative action requires that a good faith effort be made to locate, recruit, hire and promote minorities. In addition, employers must prove that required job qualifications such as education, test scores and years of training are really essential to the job." Roger Yoshino and Sueo Murakoshi, *The Invisible Visible Minority* (Osaka: Buraku Kaiho Kenkyusho, 1977) 88-9. In the *Bakke* case of 1978, the Supreme Court upheld that minority status could be used in deciding on admission to universities, though poorly designed affirmative action programs based on quotas were not protected by law. In addition, in the 1980 *Fullilove* case, the U.S. Supreme Court "upheld the principle and spirit of voluntary affirmative action taken to move beyond passive non-discrimination to active recruitment and promotion of minorities in the basic institutions of society." Ibid, 90.

34 Thomas Sowell, *Preferential Policies: An International Perspective* (New York: William Morrow and Company, Inc., 1990), 13.

35 Nakahara Mika, "California Faces Time in Transition: To End Affirmative Action or Not: That is the Question," *Contact: to the fight against discrimination and racism*, International Movement Against All Forms of Discrimination and Racism, vol. 1, no. 4, Oct/Nov 1996, 1.

36 In a few words, the Zenkai ren opposes the policy of affirmative action; the BLL has supported it in its literal meaning, but not necessarily as it is administered in the U.S.

great concern. It may not be best for affirmative action to be implemented in Japan, at least not in the sense of making burakumin the sole beneficiaries of public benefit programs or giving burakumin special treatment in educational and employment opportunities. Integration and the elimination of prejudice are admirable and feasible goals which might only suffer at the hands of affirmative action. Programs not based on ancestry or caste but rather on economic status might be perceived to be a fairer approach to contribute to buraku liberation, and hence would be more acceptable and effective. Before affirmative action programs based on buraku status are considered, a law prohibiting discrimination would be a better first step taken to break down barriers to buraku equality and to end discrimination.

III. POLICY RECOMMENDATIONS

The Japanese government is required by constitutional and international law to guarantee all of its people equal protection under the law.³⁷ In the case of burakumin, the government has not been entirely successful, in discharging this obligation.³⁸

Concerning human rights, Article 14 of the Japanese Constitution guarantees that "there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin." Also, Article 98 (2) of the Japanese Constitution states that "treaties concluded by Japan and established laws of nations shall be faithfully observed."³⁹ Japan has ratified several international human rights documents, including the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights (CCPR)⁴⁰ which contain provisions which appear to require the Japanese government to eliminate discrimination against burakumin. To further democracy and human rights in Japan, the Japanese government should be a leading force by demonstrating its intolerance of discrimination against any minority in Japan.⁴¹

Buraku liberation could be defined as the condition in society in which negative distinctions between burakumin and non-burakumin are non-existent and acts of discrimination have ceased. Realizing that not all aims of buraku liberation can be legislated, the following goals of buraku liberation are deserved of policy address:

37 Interview with Murakami Shojiki, Osaka University, Graduate School of International Public Policy Research Institute, May 29, 1997.

38 The Emancipation Edict is comparable in content, nature, and real effects to the 1867 Emancipation Proclamation freeing black Americans in the United States. While it was a start in the process of liberation, it was only a start--high in theoretical and moral content but low in actual results. Later government actions aimed at liberating black Americans and burakumin, however, were different in the U.S. and Japan. In the U.S., it was the judicial branch which took the lead in combating discrimination in the 1950s when the legislative branch failed to act; only after this judicial lead did Congress pass a series of important anti-discrimination laws. In Japan, the policies which have truly affected change are the special measures laws, though they are more like status-based welfare policies than laws which restrict discrimination.

39 Japanese Constitution.

40 Both became effective in 1978. Karin Buhmann, *Civil and Political Rights in Japan* (Denmark: The Danish Center of Human Rights, 1989) 2, 10.

- first, to obtain the goals of equality in living environment, education, employment, marriage, and the like;
- second, to eliminate prejudice through human rights education including an accurate portrayal of the history and present situation of dowa mondai;
- third, to realize a society respectful of human rights in which buraku mondai can be discussed freely.

Toward the end of buraku liberation, two types of government policies would seem to be appropriate in Japan — human rights protection and assistance funding. My principle recommendations concerning what these policies should be are as follows.

Anti-Discrimination Law

- A law against discrimination is appropriate and a vital first step.

Laws cannot eliminate personal prejudices and probably should not be used to outlaw all forms of discrimination, but a law prohibiting discrimination based on such things as gender and family origin (buraku status) in governmental entitlements and in equal opportunities to obtain employment, own a home and have an education of high quality would seem to be appropriate. Laws guaranteeing equal treatment in these important areas, rather than laws granting special rights or privileges, would seem to be the most appropriate and acceptable way to address in Japan any continuing discrimination that exists against burakumin. In December 1996, the *Jinken Yougohou* (Human Rights Policy Promotion Act) was passed. It recognizes that the Constitution is not enough to protect victims of discrimination, and that instruments to aid victims of discrimination are needed. The Committee established under this law is directed to submit its recommendations to the government within five years. It should carefully consider adoption of a law against discrimination.

Making discrimination an illegal offense actionable in a court of law would increase the effectiveness of other programs such as federal educational loans to dowa residents, or, when this program is terminated, loans to financially needy individuals wherever they reside. Without equal job opportunities, burakumin are less likely to seek higher education (and thereby incur the related loans and loss of earnings during the educational years) because such an education would not enable them to achieve the higher paying jobs that

41 A brief history of U.S. executive branch initiatives are as follows. President Truman, at the urging of the NAACP, appointed a Civil Rights Committee, issued Executive Order 9980, prohibiting racial discrimination in the Federal Service, and established a Federal Fair Employment Board. Additionally, he issued Executive Order 9981, ending segregation in the U.S. Armed Services. Althea T.L. Simmons, "The Activities of N.A.A.C.P. Against Racial Discrimination in the United States," *The Road to a Discrimination-Free Future: The world struggle and the Buraku Liberation Movement* (Osaka: Buraku Kaihou Kenkyusho, 1982) 125. The Civil Rights Act was enacted in 1964 and provided legal redress to victims of discrimination based on race, sex, religion, and national origin, "including back pay when discrimination is proved." Ibid, 73. In 1965, the Voting Right Act was passed, after which the Fair Housing Act of 1968 was also passed. Finally, the Equal Employment Opportunity Act of 1972 was established "which broadened the coverage of the law passed in 1964 and gave the Equal Employment Opportunity Commission power to seek enforcement of its findings." Ibid, 131.

should be available to them in the absence of discrimination.

Fifteen percent of Japan's population is currently over sixty-five years of age, and it has been projected that, by the year 2050, this statistic will rise to thirty percent.⁴² It is thus in Japan's long-term economic interest, especially due to its aging population and shrinking work force, to tap into its entire supply of labor and to encourage each person to achieve his or her full potential, selecting the most well-qualified candidates for each job. In short, it is in Japan's best long-term economic interest to become more of an inclusive society which encourages the full participation of all of its citizens in all positive aspects of Japanese life.

Governmental Agency or Committee

- **The government should establish a governmental agency or committee to provide a non-judicial vehicle of redress for victims of prohibited discrimination.**

Under the Japanese Constitution, it would seem permissible to establish an administrative body with quasi-judicial powers to investigate and resolve allegations of discrimination.⁴³ Perhaps a body like the Equal Employment Opportunity Commission (EEOC) in the U. S. would be a valuable and appropriate entity to create to examine claims of prohibited discrimination.⁴⁴ Such a body would develop expertise in this area and would not be subject to the formal constraints (and related costs) associated with the court system.

Assistance Funds

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."⁴⁵ Thus, it would seem just for these areas to be improved to a level at least on par with other communities in Japan. However, enacting legislative measures that identify and fund improvement of only buraku areas is problematic in and of itself not only because it excludes other areas equally in the need of development and improvement, but also because the identification of buraku areas is difficult and may lead to further discrimination. Victims of past discrimination, especially institutionalized discrimination or discrimination by the government, surely deserve redress in some form. However, measures should be addressed to the needs of the poor and other disadvantaged individuals and to the improvement of areas that have deteriorated or are deficient in infrastructure, rather than be directed to burakumin as an identified group or to communities that are considered buraku areas, even though as a practical matter, burakumin and buraku areas will likely be highly benefited.

⁴² Yashiro, 10.

⁴³ Ibid.

⁴⁴ Interview with Nabeshima Yoshiro.

⁴⁵ Buraku Liberation Research Institute, "Buraku Problem Q & A (12): Discrimination or Jealousy?," *Buraku Liberation News*, No. 91, July 1996, 10.

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

In addition, there are still approximately a thousand buraku communities that have been denied official designation as dowa areas and which have thus been unable to receive benefits under the Area Improvement Measures adopted by the Japanese government in the past. This situation would seem to violate Article 14 of the Japanese Constitution as well as Article 26 of the ICCPR.⁴⁶ These communities will also benefit from a more general improvement law.

- **Administration of improvement and any other measures should be in the hands of the government.**

In distributing government entitlements and subsidies, the one-window policy method of allotting government resources through private groups such as the BLL and Zenkai- ren should not be used. The distribution of these benefits by objective government workers who have no agenda other than seeing that these benefits are given only to those intended to be benefited thereby (and to all who are entitled to benefit) is necessary to avoid the abuses that have arisen when private groups have used their power to distribute such benefits to achieve other ends.

- **The government should cease its financial support of the BLL and Zenkai- ren, and other dowa organizations.**

These organizations should finance themselves independently, though their respective research institutes should be able to properly apply for research grants.

Chimei Soka, or Buraku Lists

Since the existence of a buraku list was first disclosed in November 17, 1975, the government has only acted with limited effectiveness to prevent their use in furtherance of discrimination against burakumin.

- **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 ensuring that this law is enforced.**

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

⁴⁶ Takano Masumi, "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* (Osaka: Buraku Kaiho Kenkyusho, 1993) 2.

In Osaka Prefecture, a government ordinance prohibiting discriminatory background checks by detective agencies was enacted in 1985. Article 5 (1) of the Prefectural Ordinance to Regulate Personal Background Investigation Conductive to Buraku Discrimination states that "a detective agency shall not investigate and/or report whether any person or relatives of him/her lives or lived in a Buraku area."⁴⁷ This regulation, at least by its terms, is very strict, as it not only prohibits investigation into buraku identities by detectives for discriminatory purposes but for any purpose.⁴⁸

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 compensation for those who suffer by reason of its violation, such as by requiring the offender to make back payments to workers denied employment because their buraku status was disclosed through a violation of the Ordinance.

***Koseki*, or 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.⁴⁹ Unfortunately, the restrictions are not sufficient; acts of discrimination facilitated by access to the family register apparently abound.

- A commission should be formed for a short period of time and analyses conducted to determine the best way to eliminate discriminatory uses of family registers.

Education

Toward the end of a discrimination-free society, more education about buraku mondai is needed (as one aspect of national human rights education) to correct misperceptions which perpetuate prejudice and discrimination against burakumin.

47 Tomonaga Kenzo, Buraku Liberation Research Institute, *Buraku Liberation News*, "Let's Build a Universal Culture of Human Rights," May 1997.

48 Offenders are punished with sanctions on an ascending scale, 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); 3) Punishment of not more than three months in jail or a fine not exceeding one hundred thousand yen (less than \$1000 dollars) will be levied. Although enacted in 1985, this Ordinance was first employed by the Osaka Prefectural government in March of 1997. Tomonaga Kenzo, Buraku Liberation Research Institute, *Buraku Liberation News*, "Let's Build a Universal Culture of Human Rights," May 1997.

49 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 made clearly for an unjust purpose. Buhmann, 50.

V. CLOSING REMARKS

The final goal is not the elimination of burakumin's identity. The goal is a discrimination-free society in which those burakumin who wish to assert their identity can safely do so. Until the time comes when this goal is met, however, the government must ensure the right to privacy and non-discrimination of those burakumin who wish not to have their identity known.

The world will celebrate the 50th Anniversary of the Universal Declaration on Human Rights in 1998. Although no country has achieved a perfect record in observing human rights, it is my hope that Japan and its citizens will celebrate this international event by taking significant measures to eliminate the final vestiges of discrimination against burakumin thereby permitting burakumin to share fully in Japanese society.