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A breakthrough for ethnic minority rights in Japan: Ana Bortz's courageous challenge

"Japan needs to establish a law against racial discrimination. Japanese people think that talking will eliminate discrimination. Wrong! Nothing comes without fighting. I hope that my lawsuit will help Japan make a step toward a better society, equal for everyone including foreigners." (Ana Bortz, Interview, November 1998)

1. Introduction

On June 16, 1998, Ana Bortz, a Brazilian journalist and legal resident of Hamamatsu City, entered a jewelry store while shopping for a necklace. The proprietor, Takahisa Suzuki, approached her to ask, "Where are you from?" When she answered, "I am from Brazil," he gestured her toward the door while pointing to a homemade poster in Japanese on the wall: "No foreigners allowed in this store." He then took from the wall a police department sign warning of frequent robberies in jewelry stores. Thrusting it before her, he demanded that she leave.

Bortz refused, protesting that exclusion of foreigners from the store is a violation of their basic human rights. In response, the proprietor summoned police who rushed to the store. In the presence of two policemen, Bortz repeated her argument, demanding removal of the poster and that a letter of apology be written.¹ The proprietor refused, whereupon the policemen declared that this was an issue beyond their jurisdiction and promptly departed. Bortz left too, but only after announcing that she would file a suit in court. Two months later she did so. In the brief she submitted to the court, Bortz argued that Japan's 1995 ratification of the International Convention on the Elimination of All Forms of Racial Discrimination (hereafter ICERD) mandated that its citizens are obliged to abide by its provisions. Fourteen months later, on October 12, 1999, a District

¹ According to Bortz's brief submitted to the court, Mr. Suzuki's mother, Hisako, who is co-owner of the store, posted the sign prohibiting foreigners from entering.

Court judge astounded the nation when he ruled that the plaintiff had suffered discrimination because of her race and nationality and ordered the defendants to pay her full compensation.

In a front-page article, the *New York Times* (French, 1999, p. A1) reported that, by taking her case to the courts, Ana Bortz set off "what may one day be looked back on as the Japanese equivalent of Rosa Parks's defiance of bus segregation in Montgomery, Alabama" – the 1955 incident which is widely regarded as having sparked the American Civil Rights Movement (Friese, 1990; Parks, 1992).

Foreigners in Japan routinely suffer many forms of discrimination at the hands of the Japanese bureaucracy, business establishments and citizenry. Two hundred thirty thousand Brazilian immigrant workers (most of them of Japanese ancestry) live in Japan together with their dependents as a result of legislation encouraging them to immigrate in order to fill jobs shunned by Japanese. They routinely encounter stereotyping as criminals in face-to-face interaction, in media and elsewhere. In response, some have begun to assert their rights as long-term legal residents and dutiful taxpayers in the country in which they have made their homes. The Ana Bortz lawsuit encapsulates this increasing demand by foreigners for rights equal to those of the host population on the basis of human rights guaranteed for all. It also demonstrates the deepening dilemma facing local citizens and the municipal administration in a typical Japanese industrial city where sudden and massive global migration since the late 1980s has resulted in its becoming unexpectedly multiethnic.

Here, I discuss implications of the Ana Bortz lawsuit in the context of this 'emerging' nationwide multiethnicism. I begin by discussing theories of multiethnicity and citizenship rights of ethnic minorities in the nation state. Next, I describe Japan's international migration history and the experience of 700,000 Koreans as non-citizen residents before, during, and after World War II. Then, I discuss the sudden influx of Japanese Brazilians as guest workers in the early 1990s, illuminating the processes by which the people of Japanese ancestry have been racialized to become 'foreigners' and criminals. This is followed by an account documenting the Ana Bortz anti-discrimination court case. Thereafter, I analyze local responses to Bortz's victory in court and subsequent debates on how to eliminate racial discrimination in Hamamatsu. The paper concludes with a discussion of multiethnicity and rights of non-citizens in a country which has clung tenaciously to an ideology of ethnic homogeneity despite its multiethnic history and the foreign labor force that its recent economic boom has attracted and upon which its industries have depended.

2. Immigration and multiethnicity in the nation state

By the 1990s, relationships between citizenship and immigration had become a central concern of nation-states in regions such as Europe and North America where massive numbers of immigrants and refugees had settled with their families. The concept of nation-states assumes a close link between the nation (based on common ethnicity) and the state (based on territory) (Brubaker, 1989, 1992; Castles, 1997, 1999; Jacobson, 1997; Piper, 1998). Among them there is characteristically a strong emphasis within the national boundary on shared origin, heritage and language in the population achieved through public education, popular media, a dominant religion, and long-standing traditions. Politically, each citizen is obliged to perform such civil duties as obedience to laws, payment of taxes and service in the military. In exchange, the individual is entitled to equality under law, political participation and social welfare benefits (Bader, 1997; Dunne & Bonazzi, 1995; Marshall, 1950; Marshall & Bottomore, 1992; Steenbergen, 1994). In theory, therefore, all members of the nation-state are equal as citizens regardless of the ethnic, religious, class, gender and regional differences that often divide them.

Recent global migration and resultant ethnic diversity have exacerbated the structural contradictions built into the definitions of the nation-state model (Brubaker, 1989, 1992; Castles, 1997; Piper, 1998). Upon arrival in the nation-state, immigrants and refugees are granted differential rights and privileges depending on their visa statuses as new entrants to the nation. Many of them settle down, earn wages, pay taxes, and raise their children, many of whom have been born in the nation-state (Castles, 1984). However, the dominant population tends to regard immigrants and their children as culturally 'irreducible others' who will never assimilate into its ways of life, language and traditions (Miles, 1993). New immigrants are also likely to be diverse in their countries of origin, demographic composition, class positions, languages, and religious affiliations. Consequently, the addition of massive numbers of immigrants widens the already large cultural and socioeconomic gap between majority and minority populations.² This makes it politically challenging for the government to define membership, entitlements and obligations of the immigrants and their children. It also makes it increasingly difficult for members of the state to identify themselves as

2 For example, Jews have lived in Western Europe for hundreds of years, while Native Americans and Australian Aborigines preceded European immigrants by thousands of years. Despite their long-standing residence in the land over which the state claims sovereignty, these 'outsiders' and 'internal others,' have been commonly excluded by law or by racism from full participation in public affairs, governmental politics and cultural events (Bader, 1997; Steenbergen, 1994). In socioeconomic realms, such minority populations have typically faced unequal treatment in education, employment, occupation, housing and welfare.

citizens of a unified country with shared national goals (Cesarani & Fulbrook, 1996; Miles & Thränhardt, 1995).

Historically, countries that host large numbers of immigrants can be seen to have adopted one of three theoretical multiethnic models for organizing ethnic diversity while protecting immigrants' rights (Castles, 1997, pp. 115-7). The first, 'differential exclusion,' is characterized as "a situation in which immigrants are incorporated into certain areas of society (above all the labour market) but denied access to others (such as welfare systems, citizenship and political participation)" (Castles, 1997, p. 115). This model has commonly been adopted by countries such as those in Central and Eastern Europe, most notably Germany, where formation of the nation-state came relatively late and posed significant obstacles to uniting the nation (Brubaker, 1992; Piper, 1998). A second model, 'cultural assimilation,' has become the central ideology and practice of countries such as England and France, where the presence of large numbers of colonial citizens, immigrants and refugees was met by their incorporation into the dominant cultures and values of the nation (Brubaker, 1992; Piper, 1998). The third and most recent model, 'ethnic pluralism,' has been the experience of the United States, Canada and Australia, whereby the prevalence of immigration as the source of the nation-state's population has given rise to a considerable degree of tolerance for ethnic diversity (Castles, 1997; Juteau, 1997).

In practice, despite the promise offered by each model, equal rights are seldom fully guaranteed for immigrants and ethnic minorities (Bader, 1997; Cesarani & Fulbrook, 1996; Dunne & Bonnazi, 1995; Piper, 1998; Steenbergen, 1994). In a country practicing differential exclusion, immigrants are often technically excluded from citizenship, as a result of which their children remain foreigners despite their cultural assimilation (Brubaker, 1992, p. 8). In a country practicing ethnic assimilation or cultural pluralism, immigrants and their families may be able to acquire citizenship through naturalization. But, because of institutionalized discrimination in the labor market and in social organization, formal citizenship rarely ensures equal access to rewarding opportunities (Miles, 1993; Small, 1994). Throughout Europe and the United States, deep-seated racism has cemented the image of strangers, especially male minority youth of color, as potential criminals (Essed, 1991). Moreover, achieving a comfortable material life may not satisfy immigrants in their cultural and spiritual lives if the host society denies them public expression of their religious values (Feldburn, 1999).

The persistence of racism, and the growing incongruity between the ideal and the practice of these multiethnic models of ethnicity and nationality in single, specific nation-state settings, have led scholars to seek new concepts that will apply transnationally. One such concept is 'citizenship' defined on the basis of shared territory, and therefore applicable to all citizens regardless of ethnicity. The concept of 'substantive citizenship,' as opposed to formal citizenship, has

emerged, referring to citizenship which is "concerned with the welfare of people as citizens, taking 'welfare' in a broad sense to include such things as work, education, health and quality of life" (Piper, 1998, p. 90, citing Roche, 1992, p. 3). In this definition, the 'people' include both citizens and permanently settled non-citizens. In the wake of a unified market and polity, this kind of global or transnational citizenship is gaining recognition in Europe in order to ensure equal treatment of all residents in local communities (Lister, 1997, pp. 55-63; Soysal, 1994). For decades, the United Nations and other supra-national organizations have promulgated human rights-related conventions, including one specifically on the rights of migrant workers and their families. These conventions are designed to define and protect as inalienable rights the rights of all human beings. They therefore address issues confronting all residents regardless of legal status, nationality or ethnicity (Sassen, 1996; Soysal, 1994). It should be noted, however, that the construction of civic-based EU citizenship has resulted in tightening of border control for residents of EU countries who are citizens of non-EU countries (Cesarani & Fulbrook, 1996).

3. Immigration and multiethnicity in Japan

Armstrong (1989, pp. 337-8) suggests that the ideology of ethnic homogeneity played a key role in the rise of Japanese nationalism throughout the periods of the founding of the modern nation-state and developing rapid industrialization (between 1880 and 1910). It gave rise to an 'imagined community,' such as one big family, or children of the Emperor, racialized on the basis of shared ancestry and culture (Anderson, 1983). The fact that Japan is a nation of islands, together with its two centuries of diplomatic isolation between 1633 and 1868, contributed to the persistence of that ideology (Yoshino, 1992). However, never in its history has Japan been ethnically homogeneous (Lie, 2001). In the seventh and eighth centuries, Chinese and Korean immigrant artisans frequently settled in Japan and became Japanese. Under rules of military regimes from the late twelfth to mid-nineteenth centuries, those who engaged in certain stigmatized occupations were collectively treated as a distinct 'untouchable,' even subhuman, population, which today comprises the two to three million Burakumin in Japan (De Vos & Wagatsuma, 1966; Lie, 2001, pp. 84-89). During the modern nation building of the nineteenth and twentieth centuries, territorial expansion incorporated two other ethnically distinct populations, numbering today 1.6 million Okinawans in Japan's far south, and 25,000 to 300,000 Ainus in its far north (Lie, 2001, p. 4).

Modern Japanese history is also replete with massive flows of international migration in both directions (Suzuki, 1992; Watanabe, 1994). Between 1885 and

1942, nearly 800,000 Japanese migrated to North and South America, Asia, the Pacific, and Russia in search of better economic opportunities (Watanabe, 1994). The first wave of immigrants to North America, mostly single males, toiled as underpaid laborers in plantations, fields, orchards, fisheries and construction sites. When the 1908 U.S.-Japan 'Gentlemen's Agreement' restricted entry, Japanese began to migrate to Brazil to work as farm hands in coffee plantations (Yamanaka, 1997, 2000a). Despite the immense difficulty of living under the harsh conditions of rural Brazil, by the 1930s Japanese immigrants had become independent farmers, first leasing, then purchasing, land in remote, undeveloped areas. By the early 1940s, 190,000 Japanese had emigrated to Brazil, increasing to 1.2 million in 1988 (São Paulo Jinbum Kagaku Kenkyujo, 1988).

In a reverse flow of migration between 1910 and 1945, successive waves of migrants arrived in Japan from its imperial colonies, mostly from Korea which had been annexed in 1910. As colonial subjects, all Koreans were granted Japanese nationality and were therefore able to move freely from Korea to Japan in search of jobs (Tanaka, 1984, p. 156). What began as a trickle of colonial workers grew to a large influx in the 1920s as the expanding Japanese economy demanded more inexpensive, unskilled labor (Weiner, 1994; Yamawaki, 2000). By 1925, 150,000 Korean immigrants worked in jobs shunned by Japanese in such labor intensive and dangerous industries as mining, construction and arms manufacturing. This number had risen dramatically to 800,000 by 1937, the year Japan initiated war with China. By this time Japan had instituted a policy of assimilating Koreans completely into Japanese culture, as a result of which Koreans were forced in 1938 to follow the Japanese school curriculum, and in 1940, to adopt Japanese names (Lie, 2001, p. 105). At the height of the Pacific War (1942-45), Korean men and women, as Japanese nationals, became an important source of conscripted, and later forced, labor working under extremely harsh conditions (Weiner, 1994; *Critical Asian Studies*, 2001). By the end of the war in 1945, the Korean population in Japan had grown to 2 million.

Japan's surrender in 1945 liberated its Korean colonial subjects, the majority of whom soon repatriated to their homeland. One fourth of them (600,000), however, chose to remain in Japan for political, economic and familial reasons. The looming threat of war in the Korean Peninsula further deterred their repatriation efforts (Lie, 2001, p. 197). For seven years, between 1945 and 1952, the state regarded its former Korean born nationals as foreigners, excluding them from political participation and requiring them to register as foreign residents. In 1951, Japan signed the San Francisco Peace Treaty with the United States with the result that the country was restored to full independence and reentered the international community. In April of the following year, when the Treaty took effect, the Ministry of Justice issued a communication by which the 600,000 Koreans were formally deprived of Japanese nationality (Tanaka, 1995). In 1950, when the Nationality Law was revised, Japan had retained the principle of *jus*

sanguinis (law of blood) in defining Japanese citizenship. As a result, descendants of non-Japanese nationals, including Koreans, are to this day defined by law as foreigners no matter how long or over how many generations they have lived in Japan (Miyajima, 1997, p. 126).

In 1965, the Japan-Korean Peace Treaty imposed South Korean nationality on most ethnic Koreans in Japan, but granted them permanent resident status in the country. Both the Japanese government and leading Korean organizations regarded Koreans in Japan as foreigners or sojourners despite the fact that their lives had already taken deep root in the country (Lie, 2001, p. 108). By 1990, the Korean population had increased to 700,000, constituting Japan's largest foreign population. Following the late 1940s, the loss of Japanese citizenship denied Koreans most of the benefits of public services to which Japanese citizens are entitled, including national health insurance and workers' pensions – this despite their obligation to pay taxes on their earnings (Miyajima, 1997, p. 127). This institutional discrimination was eliminated only in 1981 when Japan ratified the United Nations Convention and Protocol Relating to the Status of Refugees (hereafter the Refugee Convention), which required its signatories to grant equal treatment to foreign nationals in the areas of social services, social security and welfare (Takafuji, 1991; Tanaka, 1995, pp. 151-174).

Because of their definition as foreigners, and despite their permanent resident status, Koreans were subject to surveillance under the Alien Registration Law which, until 1992, required finger printing as well as an alien registration card (Lee & De Vos, 1981, pp. 141-2; Tanaka, 1995, pp. 77-100).³ Most private companies and public offices have continued to exclude Koreans on the basis of their nationality. As a result, they are heavily concentrated in self-employment as small business owners and family business workers (Tanaka, 1995, pp. 129-50). In the mid-1980s, for example, in Kanagawa Prefecture, more than 40 percent of Korean residents were self-employed, compared to 20 percent of Japanese residents (Miyajima, 1997, p. 133, citing Kimbara et. al., 1986). Today, most young Koreans have adopted Japanese language and education, thus identifying themselves as culturally Japanese (Fukushima, 1993; Harajiri, 1998; Kajita, 1998). Widespread discrimination and deep-seated prejudice cause the majority of them to also use Japanese names in order to remain invisible. As a result, many report experiencing serious internal conflict between their Korean ancestry and Japanese upbringing (Fukushima, 1993).

At the outset of Japan's post-war economic reconstruction, the 1952 denationalization of 600,000 Koreans had consolidated the postwar Japanese myth of ethnic homogeneity in the country of then 100 million (Oguma, 1995, 1998; Ohnuma, 1993). In the late 1950s, when Japan's post-war 'economic miracle' was to take off, the notion of 'one nation, one people,' served as a new national

3 In August 1999, the Revised Alien Registration law ended finger printing for all foreigners.

ideology to unite the nation and the labor force in pursuit of economic goals. The emphasis on social homogeneity was also closely linked to political objectives of the time, because construction of postwar democracy and the welfare state was based on the assertion that 'everyone is equal because everyone is Japanese.' In reality, such ideology had long been belied by the presence of diverse ethnic minority communities (notably Okinawans, Ainu, and Burakumin, in addition to Koreans), as well as by labor market exploitation of female and older workers, and by underdevelopment of peripheral regions. By the late 1960s when Japan was acclaimed the country with the highest rate of economic growth, Japanese nationality provided its citizens with a source of ethnic pride. As a result of the nation's post-war educational curriculum, postwar generations – comprising two thirds of its population – are today unaware of Japan's multiethnic history and its contemporary legacy. They have therefore accepted the idea of 'monoethnic Japan' uncritically. In their minds, Japanese nationality is synonymous with Japanese ethnicity (Lie, 2001).

The arrival of the age of global migration in the late 1980s opened a new chapter in Japan's recent history. Its growing labor needs increasingly challenged its tenacious efforts to maintain the myth of a monoethnic state and nation. As immigrant workers arrived not only from South, Southeast and East Asia but also from South America, the reality of a 'multiethnic Japan' could no longer be denied (Lie, 2001).

4. Japanese Brazilian immigrants in Hamamatsu

In June 1990, the Japanese government implemented its Revised Immigration Law, which retained the long standing principle of limiting foreign labor to skilled occupations (Cornelius, 1994; Weiner & Hanami, 1998; Yamanaka, 1993). The revision was a governmental response to rising numbers of illegal workers in the late 1980s, mostly from other Asian countries. It created a residence visa category unrestricted by occupation, exclusively for foreign descendants of Japanese emigrants (*Nikkeijin*) up to the third generation and their dependants. As a result, an influx of *Nikkeijin* immigrant workers arrived, most of whom originated from Brazil (and fewer from Peru), reaching more than 200,000 in the next five years.⁴ Underlying this sudden exodus of citizens of Japanese descent from Brazil to Japan were the serious economic and political crises that plagued Brazil throughout the 1980s, and at the same time Japan's un-

4 Peruvians comprise the other major South American immigrant population in Japan. In 1988, 864 Peruvian nationals were registered as long-term residents in Japan, increasing to 4,121 in 1990 when the Revised Immigration Law took effect. This grew to 40,394 in 1997 (Japan Immigration Association, 1998, p. 8).

precedented economic boom that required continuous supplies of unskilled labor (Tsuda, 1999; Yamanaka, 2000a).

Hamamatsu, with its population of 560,000, is one of many industrial cities that have received significant *Nikkeijin* immigrant populations since 1990. Together with its satellite cities, including Kosai and Iwata, it serves as headquarters for several major automobile and motorcycle companies, including Suzuki, Yamaha and Honda, as well as thousands of small- to large-scale subcontractors which supply the parts to be assembled into vehicles by these parent companies. Contiguous and to the west of these cities lie Toyohashi, a city of 350,000 and its neighbors, Toyokawa, Toyota and others, in the eastern part of adjacent Aichi Prefecture. They host another giant automaker, Toyota, with its thousands of subcontractors. Immigrant workers, both documented and undocumented, find this area attractive because of its chronic labor shortage among small-scale employers (e.g. Kuwahara, 2001; Yamanaka, 2000b).

Hamamatsu is also the site of Ana Bortz's anti-racial discrimination lawsuit brought in June 1998. To study local responses to her lawsuit and the court ruling in November 1999, I conducted interviews in January and February 2000 with 18 Japanese who were knowledgeable of foreign workers' issues in the city.⁵ About a year prior to this study (September to December 1998), I lived in Hamamatsu studying social interactions between local residents and immigrants. That research, together with earlier research among Japanese Brazilians in Hamamatsu and Brazil, provided useful background for the present study (Yamanaka, 1997, 2000a).

Until 1988 few Brazilians lived in Hamamatsu. Some 1,900 Korean permanent residents, descendants of pre-war colonial immigrants, had theretofore comprised the city's largest, but largely invisible, ethnic minority. The first wave of Brazilians, 815 in number, arrived in 1989 in response to Japan's booming economy. In 1990, with the implementation of the Revised Immigration Law, the Brazilian influx to the city grew suddenly to 3,500 (see Table p. 240). Hundreds and thousands followed each year for the next ten years. By late 1998, 10,000 Brazilian nationals and their families had registered as alien residents, accounting for two thirds of Hamamatsu's foreign population of 16,000, and comprising 3 percent of its total population.⁶

5 The 18 interviewees were: 3 university professors, 2 elected City Council members, 2 non-governmental organization workers, 2 newspaper reporters, 2 city international cultural exchange association workers, 2 citizen's group volunteers, 1 medical doctor, 1 Portuguese language newspaper editor, 1 city Human Rights Committee member, 1 city Chamber of the Commerce official, and 1 city merchant association member.

6 In November 1998, other major nationalities registered in Hamamatsu included: 1,695 Koreans, 973 Filipinos, 892 Chinese, 876 Peruvians, and 436 Vietnamese.

Brazilian Resident Population in Japan and Hamamatsu City, Shizuoka Prefecture, 1986-98

Year	JAPAN					HAMAMATSU CITY				
	Brazilian Population					Brazilian Population				
	N of Residents*	% Female	% Age < 14	N of Residents*	% Female	% Age < 14	N of Residents	N of Foreigners*	% Foreign Residents	% Brazil Foreigners
1986	2,135	57,0	11,7	12	66,7	-	532,092	2,539	0,5	0,5
1987	-	-	-	26	46,2	-	536,587	2,689	0,5	1,0
1988	4,159	45,9	6,8	91	24,2	-	540,710	2,960	0,5	3,1
1989	14,528	-	-	815	34,5	-	543,759	3,864	0,7	21,1
1990	56,429	37,5	4,8	3,448	41,2	-	547,875	7,022	1,3	49,1
1991	119,333	-	-	5,771	43,5	10,3	549,962	10,973	2,0	52,6
1992	147,803	40,7	8,3	6,313	42,2	11,9	557,881	11,415	2,0	55,3
1993	154,650	-	-	6,288	42,9	11,8	560,660	11,348	2,0	55,4
1994	159,619	42,3	9,0	6,166	44,1	12,1	562,156	11,312	2,0	54,5
1995	176,440	42,4	9,8	7,011	44,2	12,9	561,606	12,327	2,2	56,9
1996	201,795	43,0	11,0	7,714	47,9	14,7	564,422	13,197	2,3	58,5
1997	233,254	43,8	12,8	9,639	44,3	16,7	568,796	15,469	2,7	62,3
1998	222,217	55,3	14,4	9,795	43,8	18,0	565,129	16,079	2,8	60,9

Source: Japan Immigration Association (1987-99), Hamamatsu City Municipal Office (1987-99).

* N of registered foreign residents.

As these statistics suggest, by the late 1990s Hamamatsu was spearheading the unprecedented grassroots 'transnationalization' that is currently sweeping Japan in many non-metropolitan, industrial cities. That is, a form of social transformation is occurring, in which citizens and immigrants interact with one another in their daily lives at work and on the street, as a result of which each party is developing a new sense of collective identity and history.

From the beginning, the Brazilian immigrant population in Japan included a high proportion of females and of children under 14 years of age. In 1992, the proportions stood at 41 percent females and 8 percent children (see p. 240). By 1998, the proportion of females and children had increased to 55 and 14 percent, respectively. According to the *Nikkeijin* census of 1988 (São Paulo Jinbun Kagaku Kenkyujo, 1988, p. 104), interracial marriage between *Nikkeijin* and non-*Nikkeijin* accounted for 46 percent of all married couples in the *Nikkeijin* population.⁷ This relatively high rate of interracial marriage has resulted in a substantial number of non-*Nikkeijin* Brazilian women and men in the recent migration to Japan. Although no official records are available, my interviews and observations suggest that the *Nikkeijin* population in Hamamatsu includes significant numbers of such non-*Nikkeijin* spouses (of whom Ana Bortz is an example) and their *mestiços* children (Yamanaka, 1997). As these data demonstrate, the *Nikkeijin* population throughout Japan includes people of diverse ethnic origins, ages, generations, languages, classes, regions, and other demographic characteristics. The majority are second and third generation men and women of prime working age from southern Brazil, where Japanese Brazilians have been most concentrated. Prior to coming to Japan, more than half of them had completed their high school education or higher and were working as white collar or skilled workers (Yamanaka, 1997, 2000a).

Since the 1980s, feminist scholars have justifiably criticized the lack, or stereotypic nature, of academic attention paid to women and their roles in international migration and settlement processes at destination (e.g., Morokvasic, 1984). Most social science theories of civil society divide it into public and private domains, locating women and the family in the latter (Yuval-Davis, 1991, 1993). Theories of labor migration and immigration policies typically regard women as dependants of male immigrants, ignoring their economic and social roles entirely. By contrast, feminists point to the fact that significant numbers of women migrate on their own initiative, earning wages upon arrival for either their own or their household goals. They note that patriarchal gender ideologies lead employers to

⁷ Interracial marriage rates for people of Japanese ancestry in Brazil vary considerably by region, ranging from 69 percent in Central West, to 23 in South. This probably reflects differences in the size of the Japanese population by region which is, in turn, a result of differences in Japanese community settlement histories. South is the oldest and largest settlement region. Central West and North are more recent and therefore constitute smaller settlement regions (São Paulo Jinbun Kagaku Kenkyujo, 1988, p. 104-5).

regard female workers as secondary earners, thus justifying wages lower than those for their male counterparts (e.g., Yamanaka & McClelland, 1994).

A paradox of male-centered immigration policies is the fact that host governments often allow immigrants to reunite with the family but pay little attention to the resulting large influx of wives and children. As a result, the rapid formation of immigrant families and communities often escapes public attention and scrutiny. Once settled, as producers and reproducers, immigrant women play central roles in uniting families, developing social networks and interacting with host populations (Gabaccia, 1992; Kibria, 1993). But the state, markets and society regard immigrants as temporary workers, therefore defining their communities as short-term settlements of foreigners, and women as unimportant adjuncts. In countries such as Japan and Germany, where differential exclusion is practiced, the state denies immigrants citizenship rights despite their prolonged stays and growing needs. Thus, rigid nation-state ideology, together with prevailing male bias, contributes to increasing contradictions between official policy and unofficial consequences.

5. Japanese Brazilians as a new ethnic minority

5.1 Social marginalization

Prior to the recent influx of *Nikkeijin*, Japanese citizens of Hamamatsu rarely saw 'foreigners' with distinctive languages, behavior, and physical appearance. By the mid-1990s, *Nikkeijin* had become a conspicuous presence in many everyday settings, including supermarkets, shopping malls, public transportation, public housing developments, festival and entertainment sites, public parks, and schools. The sudden increase in 'foreigners' (*gaikokujin*), many with Japanese facial features but distinctly foreign dress, demeanor and language, has spawned confusion, fear and resentment among local citizens (Weisman, 1991). The Revised Immigration Law had been intended and expected to attract *Nikkeijin* as racially and culturally familiar substitutes for the shrinking Japanese workforce and for the 'alarming' influx of labor migrants from such countries as Bangladesh, Pakistan and the Philippines (Yamanaka, 1996). These intentions and expectations proved to be ill-fated.

Upon arrival, *Nikkeijin* found themselves to be regarded not as Japanese, but as cultural strangers (Yamanaka, 1996, 1997, 2000a). They were treated as lower class migrant workers from a backward country. Japanese found the *Nikkeijin* to be disturbingly foreign and unwilling to conform to Japanese customs. Their complaints centered mostly on such everyday behaviors as *Nikkeijin*'s irregular habits of garbage disposal, late night visitation with friends, and noisy

congregation in public places – all of which were in violation of informally established community rules (Ikegami, 1998). Although seemingly minor, such behaviors were sufficiently significant to, and resented by citizens that they came to comprise the basis for negative stereotypes of foreigners as uncivilized, undesirable and untrustworthy residents and customers.

5.2 Economic exploitation

Underlying the suspicion and antagonism between these two peoples of largely shared ancestry has been the contradictory ethnic and class criteria employed in seeking to attract inexpensive Brazilian labor to Japan (Yamanaka, 1996). By law, Japanese ancestry has privileged ethnic Brazilians by offering them long-term residence visas irrespective of occupation. The majority of them, however, work in factories, comprising a reservoir of temporary manual workers. According to Castles (1984, p. 12), the guest worker system embodies institutional discrimination designed to recruit and control temporary migrant workers. For local industries, the advantage of hiring migrant workers from the Third World rests on their vulnerability as a result of dire economic need, non-citizen status, linguistic handicaps, and unfamiliarity with local labor customs. Foreign workers provide a cheap alternative labor pool, which performs essential manual jobs shunned by local Japanese. In times of recession, they are the first to be laid off, while Japanese co-workers' jobs and wages remain secure. Their work requires physical strength and on-the-job experience but no complex technical or communication skills. It exposes them to danger and stress while providing no prospect of promotion and none of the fringe benefits their Japanese co-workers enjoy. Brazilian workers of Japanese ancestry are no exception to this kind of systematic discrimination.

The economic exploitation of Brazilian guest workers is most obvious and firmly established in the system by which job brokers hire them on short-term contracts and then send them to their actual workplaces in sub-contractors' factories. This dispatching service saves factory owners the large expenses associated with hiring and firing, labor management, fringe benefits, social security, bonuses, etc. Hiring foreigners via brokers also helps Japanese manufacturers in their public relations. Sensitive to their product images and company reputations, manufacturers are able to avoid the social stigma of exploiting foreign workers for cheap labor; 'only brokers do that.'

Exploitation of foreign workers also excludes foreigners from the housing market. Japanese landlords customarily require one-month's rent in advance, a rarely returned damage deposit and a non-returnable deposit. In addition they require the signature of a guarantor – either employer or relative – to secure regular payment of rent. Most landlords are also unwilling to lease apartments to

foreigners. As a result, foreigners face serious difficulty in obtaining housing on their own. Frequently, job brokers sub-let apartments or houses to their foreign employees during the period of their employment contracts. This sublease system severely restricts foreigners' choice of residence and limits their occupational mobility. At the same time, it constrains their private lives, particularly their children's schooling, by the frequent and unpredictable change of jobs and residential locations.

5.3 Political exclusion

Since the early 1990s, the sudden and growing influx of Brazilians into Hamamatsu has put the local administration under tremendous pressure to accommodate the diverse needs of immigrants and their children in the area of social services. In the first few years, the city had welcomed Brazilian immigrants as new workers and residents by implementing various programs to assist them in adjusting culturally and socially (Tegtmeier Pak, 2000). When, after 1992, the city's economy suffered a serious recession, its government grew increasingly anxious about the continuing flow of immigrants into the city.

A turning point was reached in 1993 when, following central government guidance, Hamamatsu City adopted a policy whereby newcomers of foreign origin were no longer entitled to membership in the National Health Plan. Instead, the city instructed foreign workers to participate in the National Social Security Plan, which combined health insurance with an expensive old age pension plan. Because most immigrants did not intend to stay in Japan longer than a few years, they did not want to pay for the pension plan even though this meant they would have to forego health insurance. Furthermore, employers and workers were to finance this National Social Security Plan jointly and equally. Since most employers of foreign workers were small-scale labor brokers, they were financially motivated to ignore such an expensive program. As a result, among foreign residents of the city (of whom Brazilians comprised the majority), the proportion of those covered by the National Health Plan plummeted. According to a report by a volunteer group, in 1998 only 13 percent of the foreign population in Hamamatsu was enrolled in the National Health Plan (*Grupo Justiça e Paz*, 1999).⁸

Children's education was another critical aspect of immigrants' life that required urgent attention by the local government. In 1996, 372 of the 1,134 Brazilian children under 14 years of age in the city were enrolled in its public primary and junior high schools (Ikegami & Kinpara, 1997, p. 17). The sudden and

8 Some immigrants are enrolled in commercial health insurance plans for travelers. The extent to which these meet the health and medical needs of immigrants and their families remains unclear.

rapid increase in Portuguese speaking pupils left Japanese teachers and the city's Board of Education ill-prepared, causing great difficulty in meeting their educational needs. In response, the city administration and its affiliated organizations hired bilingual Brazilians and Japanese as advisers, coordinators and teachers to assist Brazilian children studying in Japanese classrooms. Such efforts by the city notwithstanding, the task of meeting educational needs of immigrant children remains overwhelming.

In the national education system of Brazil, instruction in Japanese is virtually unobtainable for Japanese Brazilians. In Japan, schooling in Portuguese is difficult for them to access.⁹ As a result, most Japanese Brazilian children are linguistically and culturally unprepared to benefit from Japanese schooling. Moreover, as non-citizens, they are not required to attend schools. Therefore, many Brazilian children remain unschooled, or soon drop out. Many teenagers instead work in factories to make money. Others kill time roaming the streets in groups, which gives local citizens the impression that Brazilian teenagers are truants and delinquents.

5.4 Foreigners as criminals

Systematic exclusion of Brazilian workers and their children by the local administration and industries have reinforced the cold reception they receive from Hamamatsu citizens. Prejudice and discrimination are common in stores and restaurants which serve immigrant customers (Essed, 1991). Having experienced difficulty in communicating with foreign customers, some merchants become reluctant to serve them. Foreigners often bring with them unfamiliar customs and behavior such as removing merchandise from its packaging and eating food before paying, congregating, loitering and speaking loudly in stores and restaurants, etc. These violations of Japanese customs aggravate the merchants' negative perceptions of foreigners. Such cultural conflicts have rapidly led to rumors and widespread suspicion among Hamamatsu merchants that foreign customers are troublemakers, even criminals. A news item in the New York Times (Weisman, 1991) included a report by Brazilians that when they entered a department store in Hamamatsu a loud speaker warning was broadcast that a group of foreigners had come in and clerks should be on guard.

9 Brazilian schooling is not entirely unavailable in Japan. In the absence of Brazilian governmental assistance, Brazilian families and communities commonly resort to home schooling or correspondence courses. Occasionally, they establish small-scale Brazilian schools. However, these efforts neither meet educational needs of immigrant children, nor do they provide the quality of education required by the Brazilian government ("Kanmin Kyoryoku," 2000).

The mass media have paid a great deal of attention to police reports of increasing violence and crimes committed by foreigners at both national and local levels. According to the annual reports by Police Headquarters (1995, 1996), in Hamamatsu in 1994, 88 foreigners were apprehended as suspects in 120 criminal cases. In the following year, the figure rose to 94 foreigners apprehended in 505 cases.¹⁰ Most of these cases were for minor offenses such as petty theft or shoplifting. According to Herbert (1992), Japanese police reports on the crime rate among foreign workers are inflated because of bias against them and serious flaws in data collection methods. For example, the reported 'crimes' included those which could only be committed by foreigners, such as visa-overstay and illegal employment, and which in any case are victimless crimes. In Hamamatsu, such crimes accounted for 44 percent of all crimes in 1994. These contributed to the reported increase in crime rates by foreigners and, as a result, to the growing image of them as dangerous criminals who threaten the safety of Japanese citizens.

In 1996, as crimes by foreigners were again reported to have increased, Hamamatsu Police began reporting the nationalities of criminals. According to 1996 records, 90 foreign criminals were responsible for 281 cases. Twenty-four of the perpetrators were Brazilians (27 percent), 10 Filipinos (11 percent), 5 Chinese (6 percent), 5 Vietnamese (6 percent) and 46 undesignated nationalities (50 percent). The relatively high proportion of Brazilians reported in the crime rate must be understood in the context of the fact that they accounted for 60 percent of the city's foreign population at that time (see Table, p. 240).

6. Human rights vs. business rights

6.1 Human rights

The attempt by the Suzukis to expel Ana Bortz from their store is hardly surprising in view of this rampant public and official criminalization of foreigners, particularly Brazilians, 'supported' by the manner in which police collect and report criminal statistics.

The contentions of plaintiff and defendant in the lawsuit which followed centered on contrasting views of the rights of customers and storeowners. This

10 Clearly these figures do not indicate that many more were apprehended in 1996 than had been the previous year, but rather that those apprehended were reported to have been responsible for an average of four criminal cases each. According to an officer in Hamamatsu Police Headquarters, during their investigations police frequently find that suspects who had been held responsible for one crime often proved to be responsible for other crimes as well (Hamamatsu Police Headquarter, Interview, December 1998).

was encapsulated in the headline of an article which appeared on December 4, 1998 in the local section of Asahi Shimbun, one of Japan's most respected newspapers: " 'Racial Discrimination' or 'Freedom of Business'? " with sub-headlines announcing the positions of plaintiff (Bortz) and defendant (the Suzukis) on excluding a foreigner from the store: respectively, "It Violates Public Order," and "It Is Socially Permitted" ("Racial Discrimination," 1998, p. 35).

Plaintiff Bortz held that it was her basic human right to enter the store freely to shop regardless of her nationality. In her view, the proprietors' actions not only violated her rights but also insulted her as an individual. She pointed out that the International Convention on Eliminating All Forms of Racial Discrimination (ICERD), ratified by Japan in 1995, requires its signatory governments to legislate laws prohibiting racial discrimination. The Japanese government is yet to enact such a law. ICERD's Article 2(d) prohibits racial discrimination against individuals, groups or institutions. Article 6 guarantees victims of discrimination the right to seek reparation for damages.

In the absence of an anti-discrimination law in the country, Bortz argued, the ICERD takes effect as domestic law. It therefore prohibits Japanese citizens from engaging in such discriminatory acts. Her demands as plaintiff included: (1) that ICERD Article 2 (d) be applied directly to her case to determine as illegal the defendant's acts against her; and (2) that her suffering as a result of the illegal activities be compensated under ICERD Article 6, and also under Japanese Civil Law Articles 90, 709 and 719 which, without reference to specific violations, rule on maintenance of public order and compensation for damages incurred (Shizuoka District Court, 1999).

6.2 Business rights

The Suzukis, as defendants, countered that increasing crimes by foreigners justified their attempted expulsion of Bortz on the basis of her nationality, especially in view of the fact that the store carries expensive jewelry. Citing the Japanese Constitution Article 22 that guarantees freedom of choice of occupation, the defendants argued that (1) freedom of occupation includes autonomy of a business owner as long as his act does not interfere with public order; (2) the autonomy of business guarantees the storeowner the right to select his customers in order to protect his business; (3) therefore, expelling a foreigner from the store at a time when crimes by foreigners were increasing did not constitute interference with the public order (Shizuoka District Court, 1999). In the defendants' view, foreigners are unpredictable in behavior and known to be prone to criminal acts, thus leaving storeowners vulnerable to their criminal acts. In the official reply to the plaintiff's argument, the defendants' attorney, Shigeharu Suzuki (no relation), wrote on cultural and behavioral differences between Japanese and foreigners:

It may happen that the storeowner excludes foreigners from his clientele. Even if this happens, it may not constitute an act of discrimination which interferes with the public order. This is because, generally speaking, foreigners are different from Japanese in life styles, behavioral patterns, customs, habits, ways of thinking, and mental and emotional activities. Especially due to linguistic barriers, it is difficult for foreigners to communicate with the Japanese. Therefore, it is often difficult for the two parties to establish trust between them. (Shizuoka District Court, 1999)

6.3 International convention as the standard

The view of the defendants received little support from Judge Tetsuro Soh of Shizuoka District Court (Hamamatsu Branch) when, on October 12, 2001, he delivered his ruling. While disagreeing with Bortz on the direct applicability of ICERD to the case, he adopted the view, unprecedented in Japan, that: (1) ICERD provisions provide standards by which the court can determine discriminatory acts and assure the victim reparation for his/her suffering. Based on its Article 2 (d), the Judge also ruled that: (2) discrimination is prohibited at the individual level, and that: (3) expelling a customer from the store on the basis of nationality constituted an act of racial discrimination which in itself interfered with the public order (Shizuoka District Court, 1999). In conclusion, the Judge ordered the defendant to pay 1,500,000 yen (\$12,500) to the plaintiff as compensation for her suffering under the ICERD Article and Japanese Civil Law provisions cited by the plaintiff.

The defendants did not appeal to a higher court, thus accepting the District Court's ruling and ending the lawsuit. Consequently, Ana Bortz's anti-racial discrimination case constituted a landmark victory, unique in Japan's judicial history, for a victim of discrimination by another individual on the basis of nationality or race (French, 1999). Prior to this case, Japanese courts had ruled only on cases of governmental discrimination against groups or categories of people on the basis of sex, race, nationality, religion, etc. It also established a precedent in that the court's decision defining acts of racial discrimination and their consequences was based on Japan's having ratified an international treaty, the ICERD.

7. Local responses to the court ruling

On the evening of the day the court ruling was announced, local and national media focused great attention on the unprecedented ruling. The victory for Ana Bortz drew headlines in national newspapers, TV networks and magazines, while local media covered the case extensively for several days after the ruling.

Included were interviews with local citizens from many walks of life, ranging from legal scholars and city officials to ordinary citizens and Brazilian immigrants ("Burajirujin Josei Shoso," 1999; "Sabetsu Teppai," 1999). Many expressed surprise at, and approval of, Bortz's victory. Some were excited and encouraged by the strong human rights stance by the court and the prospects for improvement in racial relations between citizens and foreigners in the city.

The day following the court ruling, one local newspaper carried interviews which revealed the profound dilemmas that the Bortz victory brought to the local community. Under the headline, "When Will Misunderstanding and Prejudice Be Solved?" the article reported contrasting responses from merchants and housewives, on the one hand, and Brazilian workers and their families, on the other ("When Will Misunderstanding," 1999). Unconvinced by the defeat of their fellow merchant in the lawsuit, three storeowners interviewed did not hide their confusion and disagreement, expressing sympathy for the defendants who, in their opinions, did the right thing in order to protect their store from the foreigner, a potential criminal. Two housewives spoke of their fear that the ruling would encourage criminal behavior among foreigners. By contrast, five Brazilian interviewees discussed pervasive racism experienced in their daily lives, together with institutional discrimination built into the bureaucracy. All of the Brazilians interviewed hoped that the Bortz victory would lead Japanese citizens to become tolerant of cultural differences and aware of the human rights of foreigners.

7.1 Anti-racial discrimination ordinance

For Bortz, her victory in court was not an end in itself, but a means to set a precedent by which unchecked discrimination against foreigners in Japan could be eliminated. In a press conference following the court ruling, she proposed that the Hamamatsu City Council enact a city ordinance to officially prohibit racial discrimination ("Hamamatsushi," 1999). Bortz stressed that in the absence of a national anti-racial discrimination law, such an ordinance was essential in a city with such a high concentration of foreigners as Hamamatsu. The law, she argued, must define racial discrimination as a punishable criminal offense. Citing instances of widespread discrimination in Japan, including those against women, ethnic minorities, foreigners, homosexuals, and other social groups, Bortz emphasized the serious lack of awareness of human rights issues among Japanese citizens.

My aim in the lawsuit was to promote discussion of racial discrimination in Japanese society, a subject heretofore regarded as taboo. Japan has the second largest economy in the world and seeks a chair in the United Nations Security Council, but most of its people are unable to recognize discrimination. The government has little interest in anti-dis-

crimination legislation. Does this mean that Japan tolerates discrimination? . . . Although a law alone cannot change people, it can provide a reference point by which they can evaluate their attitudes and behavior. (Bortz, 2001)

7.2 Communication and understanding

Hamamatsu Mayor Yasuyuki Kitawaki expressed very little interest in Bortz's suggestion for the enactment of an anti-discrimination ordinance. Instead, he stressed the importance of communication between Japanese and foreigners. On October 4 and 8, 1999, the Mayor met with a select group of foreign residents where he discussed his view on the anti-racial discrimination ordinance:

I do not intend to legislate such an ordinance, but I do agree that racial discrimination should not be tolerated. I will make every effort to eliminate it short of legal enforcement. As for causes of racial discrimination, I think that Japanese people may not be used to interacting with foreigners because they have long lived in an island country. Therefore, I believe that, if the Japanese come to know well about foreign residents in Hamamatsu, their ideas and their activities, this will eventually lead to better understanding of them among Japanese. (Hamamatsu Foundation for International Communications and Exchanges, 1999)

Three months later (January 2000), I interviewed Hamamatsu citizens knowledgeable about foreign worker issues, in order to assess the long-term impact of the court ruling on their understanding of rights of foreigners. A majority of my informants, like the Mayor, discussed communication as the best method of ending discrimination. They frequently suggested that to achieve this goal the city's cultural exchange organizations, merchants' associations and grassroots groups should make more efforts than before to provide a variety of cultural events, ethnic festivals and language classes through which Japanese and foreigners would meet and communicate naturally with one another.¹¹ In their views, strained relationships between Japanese and Brazilians could be normalized only if both parties were to try hard to understand cultural differences and to establish common rules for dealing with them. In contrast, they said, the use of law to enforce racial harmony would result in the mere appearance of harmony, and would therefore be counterproductive.

11 By the mid-1990s, there had already been many cultural and social events organized by Japanese and Brazilian grassroots groups in which both populations met and interacted with one another. Some of these were co-sponsored by the Hamamatsu Foundation for International Communications and Exchanges (HICE) or commercial associations. Japanese and Portuguese language classes were also made available by HICE, as well as by private language schools and grassroots organizations.

7.3 Little social impact

A test of this cultural solution arose soon thereafter in an interview with a merchant active in the Hamamatsu Storeowners' League. Asked about the impact of the Ana Bortz victory on storeowners' attitudes toward foreign customers, he immediately remarked upon the personality of defendant Takahisa Suzuki. According to him, Suzuki had experienced trouble with his customers even before the Bortz case took place. He suggested that the Bortz case was a result of Suzuki's problematic personality and behavior. To his knowledge, he said, most storeowners had been well aware of the immorality of discrimination, exercising restraint and avoiding overt discrimination in their relations with foreign customers. It was his observation, therefore, that the court ruling on racial discrimination had very little impact on himself and his fellow merchants, although it did signal a warning to them by drawing a clear line between legal and illegal acts in dealing with foreign customers. Asked about his own policy on foreigners, the merchant responded with the following revealing statement:

Crimes by foreigners are real and pose a threat to us in our businesses. It is my responsibility as a business owner to prevent crime damage before it occurs. In the past I have said to my employees in the morning meeting that they must be careful if a group of foreigners gather around the cash register asking for change. I referred to physical characteristics of dangerous foreigners, such as their height or hair color, as reported in newspaper articles about crimes. This is not racial discrimination but a method to prevent crime in advance. (Store Owner, Interview, January 2000)

Interviews with selected Hamamatsu citizens largely confirmed this merchant's view that the court ruling had little impact on attitudes toward foreigners. Many informants told me that by January 1999, the public's excitement about the court ruling had dissipated, arousing very little public discussion or private conversation on the topic. They also pointed to the facts that, following the court decision, signs reading, "No Foreigners Allowed," disappeared from the city's stores and bars, and in December 1999 the lawyers' association held a public forum to emphasize the importance of human rights for foreigners. Nonetheless, the media attention and intellectuals' debates led to little, if any, increase in public discourse concerning causes of racial discrimination and the meaning of human rights for all, including foreigners. According to my informants, most citizens had never been engaged, or even interested, in the lawsuit from its beginning to the end. Publicity about the court ruling therefore made these citizens aware for the first time of racial discrimination and its social repercussion. Most informants reported their impression that the general public remained untouched in their understanding of why and how racial discrimination occurs, how it can be eliminated, and how to protect foreigners' human rights.

7.4 Changes and progress

The same informants, however, emphasized recent improvements in social services for foreign residents, including health, housing and children's schooling. Among frequently cited examples of such improvements were these:

In December 1999, the Hamamatsu City Council unanimously adopted a statement of opinion, demanding that the national government review the public health insurance system for foreign residents. This was prompted by Council members' realization that the low rate of public health insurance among the city's foreign residents could not improve without policy change at the national level.¹²

Equal treatment of foreigners in the area of public housing, as well as social services, social security and welfare, had been guaranteed by Japan's 1981 ratification of the Refugee Convention, but practice in public housing had varied widely depending upon local administrations. In 1992, the Ministry of Construction issued a notification, reminding all municipal administrations that permanent residents and registered aliens were to be admitted to public housing under conditions equal to those for Japanese. The Ministry's notification was an attempt to level existing local inequalities in administration of housing. As a result, the number of foreigners living in public housing increased throughout Japan, including Hamamatsu.¹³

In February 1999, Hamamatsu citizens witnessed the inauguration of a Brazilian school, *Colégio Pythagoras*, organized according to the Brazilian national educational system, with instruction in Portuguese. This was a major achievement as the Brazilian Principal and his colleagues had met strong opposition from Japanese neighbors in each of five locations originally proposed for the school ("Gaikokujinn Shiminn Kaigi," 2000).¹⁴ Despite its rocky beginnings and an enrollment of only seventy pupils in the first year, the inauguration of the school was celebrated by the media as well as my informants as a major step toward increasing educational opportunities for the city's Brazilian children.

12 Kyoko Yotsuya, a leading volunteer of *Grupo Justiça e Paz*, a group dedicated to foreigners' access to health insurance, observed that even after the City Council's statement of opinion had been adopted, the city bureaucracy remained untouched, leaving many institutional barriers intact (Yotsuya, Interview, February 2000).

13 Foreign occupants of the city's public housing grew from 4 percent (159 households) of total occupancy in March 1997, to 7 percent (225 households) in November 1998 (Ikegami, 1998). This increase was largely accounted for by Brazilian households, whose numbers doubled in that year from 69 to 115.

14 The neighbors had feared delinquency, crimes and other social problems thought to be associated with the Brazilian population (Hamamatsu Chamber of the Commerce, Interview, January 1999).

7.5 The court decision and new awareness

Informants stressed that such visible progress had been a result of incremental progress through years of disputes and challenges by dedicated advocates, Japanese as well as non-Japanese. Some informants mentioned Ana Bortz's victory in her lawsuit as having contributed significantly to this process. According to anthropologist Shigehiro Ikegami, Bortz's case made the city government vividly aware that the problems faced by the city's large foreign populations could draw embarrassing nationwide attention to the city and its public policies (Ikegami, Interview, February 2000). Dr. Takaji Yamaguchi, a prominent surgeon and leader of a citizen's group, Medical Aid for Foreigners in Hamamatsu (MAF), which since 1996 has provided uninsured foreigners with free annual checkups, also remarked on the positive impact of the court decision on MAF's activities. Each year, he said, not only have more foreigners applied for free checkups, but also more medical professionals and other local citizens have offered their services as volunteers. Dr. Yamaguchi attributed the growing number of applications and volunteers to the Bortz court case having attracted widespread attention to foreigners' fundamental rights, including access to inexpensive health care (Yamaguchi, Interview, January 2000).

Another informant, Shuichi Uchiyama, Japanese editor of *Nova Visão*, a weekly Portuguese newspaper published in Hamamatsu, was affected by the Ana Bortz case at a deeply personal level. He reported that the lawsuit and the court decision led him to reexamine his views on racial discrimination and to consider methods for its elimination. Through his daily interactions with Brazilians, Uchiyama had become acutely aware of the newly multi-ethnic, multi-cultural society that Hamamatsu and Japan had become since the late 1980s. Having grown up in the post-war period during which ethnic homogeneity was emphasized, he recognized the deep-seated prejudice and discrimination against ethnic minorities in Japanese society which the Bortz case revealed. Uchiyama's narrative demonstrates the growth of his awareness of a major social transformation that lies ahead for Japan and its people: the promotion of ethnic minority rights:

When the lawsuit began, I thought it would reverse the recent progress we had achieved so far. "Why such a fuss over a jewelry retailer?" I wondered. I was at the time sympathetic to the storeowner. I thought that his act of treating a foreigner differently from a Japanese did not constitute an act of discrimination. But the court ruling has changed me significantly. I have come to realize that a new kind of discrimination is emerging. Even today, for example, Koreans change their names into Japanese to remain invisible. Until this court decision, I had thought that discrimination would disappear in the near future as time passes and generations change. But look, now we have Brazilians, like Ana Bortz. They cannot change their faces into Japanese ones! They cannot escape discrimination in the way Koreans can. Coming from a multiethnic society, Ana must have known that discrimination would not end without fighting it openly. She did not compromise in her la-

wsuit. I was very impressed. I then realized that Japan is also becoming a multiethnic society. This means that we cannot wait for discrimination to disappear naturally through conversation and understanding. Instead, we must face discrimination openly and do something about it. (Uchiyama, Interview, February 2000)

7.6 Multiethnic Hamamatsu

At the end of the 1990s, nearly ten years after the Japanese Brazilian influx, a majority of the Japanese Brazilians in Hamamatsu still express their intention to return to Brazil. Realistically, however, it is clear that as they prolong their stay the possibility that they will do so diminishes. The expansion of Brazilian business, cultural and social activities is a significant indicator of a growing interest among Brazilian immigrants in long-term settlement (Yamanaka, 2002). By 1998, with the arrival of more than 10,000 Brazilians, this city of 560,000 witnessed the rapid growth of small Brazilian businesses attending to the diverse interests and needs of the immigrants and their families. In addition, increasing contradictions between the city's public policy and the needs of immigrant communities has already spawned lively civil activism among the small but committed numbers of Japanese volunteers, as described above. Similarly, small numbers of Brazilian women, as well as their menfolk, cooperate with Japanese and other nationals to promote their rights. Hamamatsu has become multiethnic.

8. Conclusion

This analysis of an anti-racial discrimination case in Hamamatsu and its implications, has illuminated problems embedded in Japan's rigid nation-state ideology and practice in the context of rapidly progressing transnationalization at the grassroots. Drawing upon two immigrant populations in different historical periods, the analysis reveals the mechanisms by which differential exclusion of non-citizens as cultural others and temporary residents with few rights is reproduced. It also demonstrates that Japanese nationalism is closely associated with definitions of who belongs to the nation and territory and who does not. These definitions are alterable, however, as national goals and boundaries shift with the rapid changes in international politics and economy. The 'imperial' Japanese state defined Koreans as colonial subjects and citizens, to be mobilized into the labor force and the military. In times of peace and prosperity, the 'democratic' state defined former colonial citizens as foreigners, excluding them from social and political participation. In the age of global migration, the 'capitalistic' state has redefined foreigners of Japanese ancestry as a source of temporary foreign labor, while excluding them from becoming members of the ethnic and national community.

In Hamamatsu immigrant families and households, most of whom are of Japanese ancestry, continue to face many kinds of social, economic and political exclusions based on nationality, ethnicity and class. This research demonstrates that despite such structural barriers, many citizens in Hamamatsu, from the mayor to people on the street, wish to normalize strained relationships between Japanese and Brazilians through understanding and communication. But, as experiences of Koreans and Brazilians there suggest, discrimination is unlikely to end unless institutional barriers to rights of non-citizens are eliminated and equal rights guaranteed. Such structural shift requires an ideological shift from 'ethnic' to 'civic' definitions of citizenship.

Some of the international conventions ratified by Japan have proven to be vital in protecting rights of immigrants and ethnic minorities. For example, in 1981 the state eliminated differential treatment of non-citizens in their access to social welfare services, a requirement of the Refugee Convention to which Japan is a signatory. Two decades later Ana Bortz's lawsuit invoked ICERD provisions to challenge the racism widespread among Japanese citizens. Clearly, these conventions' universalistic standards and their adherence to the principle of inalienable rights for individuals, have helped and encouraged the state and society to take steps toward the elimination of institutional, structural inequality and daily racism. One lawsuit alone cannot catalyze widespread institutional and behavioral transformation, but Bortz's challenge to legal precedent and social taboo has resulted in a landmark breakthrough in the law, and perhaps in the practice and enforcement of ethnic minority rights in Japan.

The characterization of Ana Bortz as the Japanese equivalent of [America's] Rosa Parks therefore comprises a vivid and useful analogy. Both defied conventional racism in a manner that turned public attention to the issue. Rosa Parks' refusal to move to the back of a public bus because of her race broke social and legal conventions, which relegated Blacks to inferior status on the basis of race in Alabama and throughout the American South. This led to a dramatic social revolution in America, the Civil Rights Movement. Ana Bortz's refusal to be excluded from a Hamamatsu jewelry store because of her nationality broke similar social conventions and practices in Japan which relegated foreigners to inferior status. Her action has heightened awareness and increased activism for social justice in Japan. However, because of profound differences in social, cultural and historical context, the analogy between the actions of these two courageous women has only limited relevance to an understanding of the contrasting reactions they have evoked. Japanese responses to Bortz's action and the court ruling have been slow and reluctant; American responses to Parks' action were rapid, decisive and explosive. Only time will tell whether or to what extent a significant social movement will follow in Japan.

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