On the Japanese

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— A few comments from a point of legal view —

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Preface

The social, economic or political scandals almost every day recently have been reported in newspaper or television.

while I wish to take the view saying that the Japanese human nature is fundamentally good despite exceptions, I will write this essay as I please chiefly from a point of legal view.

I. Japanese general character

1. confidence

The Japanese generally place entire confidence in a trademan when they get articles. Old men and women are frequently tricked. The cases including criminal ones are so numerous that the book Kinya Kimoto and Keigo Sato, supervision, “Malignant Trade-Sufferer Examples and the Measures for Relief” and other many books are published. These are exceptions, but the cases show that the Japanese are easily cheated. The Japanese inborn nature is good.

2. Faith

The Japanese generally are too ready to believe in God or profess Bud-
dism. The Japanese are honest and sometimes the Japanese are said to be irreligious, but there are in Japan various religions, which have brought about many scandals.

Some malignant and religious associations got excessive money from the believers who walked by faith. “Tōitsu Kyōkai” and “Hō no Hana” are reported frequently in newspaper or television. The believers professed the doctrine and devoted a lot of money.

The religion which chiefly aims to get money, is malignant. Nevertheless if the believers profess, “the eye of faith may fancy even a sardine head to emanate divine light.”

In the Aum Shinrikyo Cases the founder of the newly risen religion, Asahara, whose real name is Chizuo Matsumoto, was deemed to be a head of criminal counts in connection with 17 cases including murder and attended murder under indictment. According to the indictment Asahara ordered the pupils including highly educated persons to kill the persons that have hampered the religion and to release sarin on a subway. Asahara and his pupils were subject to legal action. The matter is pending in court.

The case is rare and beyond conception in Japan’s religion.

Now many of the pupils who participated in such felon deed and have noticed Asahara to be a mere nobody, have been sorry for their cruel crimes and have apologized to the suffering families.

Are the Japanese a dupe? Why did the pupils such as doctors and other scientists act with Asahara in cruel crimes? I will examine this in future.

3. Courtesy

The Japanese generally are courteous and their words are scanty especially for a foreigner met for the first time.

The character of the nation is not bad. But the foreigners’ impressions for the Japanese vary with persons.
When Commodore Perry and his followers came and stayed in Japan, his followers talked “The Japanese are the most polite people on earth.”

But Perry was deeply frustrated by “what he considered to be their outright lies, evasions, and hypocrisy”. (Sheila K. Johnson, The Japanese Through American Eyes, 1988, p. 1)

I now suppose that frequently Perry met the politicians and his followers had friendly relations with the people. I can find in the politicians and the people the difference of the impressions between Perry and his followers.

Nathan Glazer quotes the following words of Ruth Benedict about the paradoxical nature of the Japanese: The Japanese are, to the highest degree, both aggressive and unaggressive, both militaristic and aesthetic, both insolent and polite, rigid and adaptable, submissive and resentful of being pushed around, loyal and treacherous, brave and timid, conservative and hospitable to new ways. (Nathan Glazer, “From Ruth Benedict to Herman Kahn: The Postwar Japanese Image in the American Mind”, Seila K. Johnson., The Japanese Through American Eyes p.2–3). In this case it is important for us to analyze the historical background of the paradoxical nature of the Japanese.

4. Submission

The Japanese are generally modest and submissive. This character makes a favorable impression on a person met for the first time.

The Japanese make obedience especially to his superior and to a man of political or administrative powers.

5. Submission to the Superior — Company Person

German labor law scholares explain that there is generally a subordinate relation (Abhängigkeit) between an employer and an employee.

An employee is not on equal standing with an employer (Wirtschaftliche
Abhängigkeit), and an employee sales and delivers not only labor power but also personality and heart to an employer (Persönliche Abhängigkeit)

Persönliche Abhängigkeit has been found in the relation between Japan's employee and employer. The Japanese employee has been called a company person.

The employers have created the Lifetime Employment System and the Seniority Rule.

The Employees have pledged loyalty to the employer. Therefore the employer trust to the employees with the performance of the task.

Toshihide Iguchi, a part-timer of Daiwa Bank's New York branch confessed the losses of $1.1 billion to the bank on July, 1995. Till then for eleven years the president and the other managers of the Bank in Tokyo had not known the fact.

Yasuo Hamanaka, the head of Sumitomo's nonferrous metals division, conducted unauthorized copper trading over a 10-year period that resuted in losses totaling $2.6 billion. Sumitomo fired Hamanaka on June, 1996

The persons concerned who acted against laws were arrested and the court would decide penalty in time.

It is worthy of note that the two firms' international credit is shaken.

In Japan the president or executive more or less has not demonstrated his leadership and responsibility because he has placed confidence in his followers and they have pledged loyalty to their employer.

But in the recession of Heisei the Lifetime Employment System and the Seniority Rule begin to collapse and the employee's love for company or the loyalty to company is perishing.

I will give full account of Japanese submission to the political powers later.
II. Peace-Loving People or Aggressive (Warlike) People?

1. Two Opinions and Method of Study

Further on the Japanese character, two opinions are divided. According to an opinion, the Japanese are the aggressive (warlike) people. A novelist, Kaga said once in a newspaper that in the militaristic war time the Japanese did not go to wars reluctantly but with great joy.

This description is right in a sense. The profession soldiers went to wars with delight. The Japanese were overjoyed when an army captured an enemy’s position.

But his speaking is limited to the Japan’s acts in the period between 1931 and 1945.

And he was a third year pupil of the Military Preparatory School at the end of the Second World War, though he is now an excellent novelist.

I can understand his speaking from his background.

I shall review the Japanese from a point of the long historical view.

2. The Age of Civil Wars

In the age of Civil Wars each lord had many warriors and engaged in battle with one another. The warriors pledged loyalty to their lords and fought bravely at the risk of their lives.

The lords took care of the families in compensation for the warriors.

The first lord who almost executed the national unity was Nobunaga Oda and Hideyoshi Toyotomi.

Hideyoshi had dispatched army to Chosen. But it is different from the aggression of the present age. Japan in those days was not absolutely united state. The dispatch was not all Japan’s act, but Hideyoshi’s single-handed
I think. Therefore after Hideyoshi’s death his warriors evacuated Chosen. Ieyasu Tokugawa did not succeed Hideyoshi’s Chosen dispatch.

In the Age of Cicil Wars the people were suffered from war damages between lords and waited for peace, I think.

3. The Tokugawa Period

Ieyasu Tokugawa succeeded Toyotomi. The Tokugawa’s political power continued for about three hundred years. The characteristic policy of Tokugawa power was a national isolation policy.

During the period the head of Tokugawa political power (Shōgun) ordered the local lords (Daimyō) to go up to Edo (Tokyo) for an alternate-year residence at their own great expense. Daimyō’s alternate-year residence was a token of loyalty to Syōgun.

The people were discriminated in social relations because of the classes of warriors, farmers, artisans and trademen. The lowest status was the humble people. The social classes were the means to rule the people.

Daimyō, warriors, farmers, trademen were submissive to Tokugawa fifteen Syōguns.

Tokugawa all fifteen Syōguns took a national isolation policy, and Japan did not make a war with foreign countries for Tokugawa three hundred years.

4. Meiji Constitution Age

After Tokugawa political power collapsed the Emperor succeeded for about ninety years till the end of the Second World War.

The new government under the Emperor lifted a flag “Wealth and Military Strength of the State”

It enacted the Great Imperial Constitution (Meiji Constitution) which stipulated the separation of the three powers of legislation, Administration and
Judicature.

But the Sovereign power resided in the Emperor (article I of Meiji Constitution). The people pledged loyalty to the Emperor and were compelled by law to do so.

The Emperor shall be sacred and inviolable (article 3 of Meiji Constitution). The Emperor was a living god until the end of the Second World War. He declared himself that he was not God, but a mere man. The present Constitution stipulates “The Emperor shall be the symbol of the State” (article I).

Japan made wars five times with foreign countries for about ninety years during Meiji Constitution period.

Japan made wars with China (1894) and Russia (1904), participated in the First World War (1915), made a raid upon the Republic of China - the Peoples Republic of China (1931) and made a fight with the Allied Powers including U.S. England and Russia et. cetera (1943)

Therefore Japan was regarded as a warlike country. But the wars were not conducted by the intention of people, but military authorities. According to Meiji constitution, Article 13 stipulates “Emperor declares war”. Military authorities made the best use of this stipulation.

The Second World War was forced by military authorities. I was called up to the cavalry regiment by a writ (akagami in Japanese)

Many young men were called away to the war and died in battle. The Japanese were obedient to military authorities and lost their lives

5. Present Constitution

After Japan surrendered at the Second World war, the Japanese were obedient to the occupation forces and no guerrilla during the occupation.

The Constitution of Japan(Prsent Constitution) was established in November 3, 1946. In the preamble of the Constitution "We, the Japanese people re-
solved that never again shall we be visited with the horrors of war through the action of government, do proclaim that sovereign power resides with the people”

Since then Japan has not made a war for fifty years till today. The Japanese are submissive to peace and further in future shall have positive love for peace. The neighboring countries will support the Japanese peace attitude.

III. Renunciation of War and the Japanese

1. The Constitution of Japan

The Constitution of Japan declares the renunciation of war. This is the pride of the Japanese, because we can not find this in the world.

Article 9 of the Constitution of Japan describes as following:

"Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized."

By the stipulation Japan pledged itself to the world that it should be born again as a peaceful and democratic nation.

But in this case the leading actor is not Japan but the Japanese people. Speaking the Preamble of the Constitution again, "We, the Japanese people desire peace for all time." "resolved that never again shall we be visited with the horrors of war through the action of government."
2. Japan-U.S. Security Treaty

The cold war grew in intensity and the Japan-U.S. Security Treaty was concluded in 1951. The Self-Defence Forces were born in 1954.

The treaty was revised in 1960. The security alliance was strengthened.

The Treaty and the Self-Defence Forces were criticized by many constitutionalists and other scholars. Some critics said that they were against the constitution.

Until SDP (Social Democratic Party) leader Tomiichi Murayama became Prime minister in June 1, 1994, the party for decades contended that the Self-Defence Forces were unconstitutional, and opposed the Japan-U.S. Security Treaty, but the party changed the usual policy though the party is still wary on policy issues that could lead to a possible military buildup or greater role for the SDF (Self-Defence Forces)

The summit between Prime Minister Ryutaro Hashimoto and U.S. President Bill Clinton agreed to expand military cooperation in the event of crisis in the Far East. Japan and the United States officially redefined their decades-old security alliance on Thursday, April 18, 1996.

LDP Secretary General Koichi Kato stressed that such actions would remain within the bounds of the Constitution. Prime minister Hashimoto’s opinion is the same.

I think that that problem should have been completely discussed in the diet and among the people before Prime minister’s decision

The article 9 of the Constitution has been menaced by "cold war," but it has been anyway maintained by the constant exertions of the Japanese people for fifty years after the end of the Second World War.
IV. Talking Together Before Decision

1. democracy–irresponsibility

Generally the Japanese character is rather weak. The Japanese are talking together in all.

It has been right for the politicians to refer all state affairs to public opinions in Japan, and also in many companies except small ones, the president does not express his own opinion and consults with his subordinates on everything.

It is democratic and worthy of praise. On the other hand it is difficult for an outsider to clarify where the responsibility lies.

In a government office or a company office an official document is sealed as a person in charge, a section chief, a director and an organization top. In this case an individually responsible person is not clear.

Especially it is quite rare for a government official to be held criminally responsible for negligence. The prosecutors arrested a former senior Health and Welfare Ministry official on suspicion of professional negligence resulting in the death from AIDS(Friday, October 4,1996)

In a company also no sense of self-responsibility is found. A president does not express his own opinion, but listen to his staffs’opinions and decides his policy.

Another president trust a reliable staff with the performance of the task.

A severe critic says that a huge company president in Japan is unexpectedly an easy going person and is able to live to a good old age.

But recently the presidents who have demonstrated their leadership have increased because there have been keen competitions among enterprises.
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2. Acting together

The Disregard for a red signal alone is dangerous but there is nothing to fear if he walks across together. It shows the Japanese collective feelings and they are found in the various connections of school friends, companies or political parties.

3. School Bullying

School bullying is the dirty deed including violence or extortion that can not be forgiven because bullied children committed suicide one after another. Home, school or society may be responsible for this, but on the other hand we should mind that bullying is committed in a group.

A foreigner says that Japan is an island country. The Japanese everybody has the same quality and the same feeling of value. This indication is right.

The Japanese society tradition placed top priority to collectivism. With the defeat of Japan in the Second World War the Constitution states "All of the people shall be respected as individuals"(article 13).

4. Factory and Shop bullying

In the recent recession a company takes up the jobs of the middle old workers and casts the burdens upon young men. Consequently they suffered a mental injury. Even a suicide came out(Tokyo Newspaper October 16,1996)

These shall be examined from a point of legal crime, unfair labor practices or abuse of right.

5. Prime Minister'visit Yasukuni Shrine and Asian countries

Yasukuni Shrine honors the nation’s war dead as well as war criminals. Some ministers to-gether in a group visit Yasukuni Shrine on the August 15 anniversary of the end of the Second World War every year.
Ryutaro Hashimoto was the first prime minister to visit Yasukuni Shrine since Prime Minister Nakosone in 1985. Hashimoto explained that the July, 1996 visit was made as a private citizen because his cousin had been killed in the Second World War.

Not only China but also South Korea and many other Asian neighbours expected Japan to reflect on its history as a war aggressor. They criticize that Japanese Prime minister visited Yasukuni Shrine because it seriously harmed the feelings of the people of every Asian Country.

Prime Minister Hashimoto has dropped his plan to visit Yasukuni Shrine again in October.

Prime Minister Hashimoto is the president of the Liberal Democratic Party, and the party unprecedentedly declared the official visiting by ministers to Yasukuni Shrine as campaign pledge ahead of the Oct. 20 House of Representatives general election.

China and South Korea have blasted the Liberal Democratic Party on Yasukuni Problems.

Yasukuni Shrine enshrines Japan's war dead including class A war criminals. Official visits in the past have brought international criticism.

Prime minister’s or ministers’ visit to Yasukuni Shrine is sensitive to the feelings of neighboring countries that suffered from Japan’s aggression in the past.

Therefore Hashimoto will not visit Yasukuni Shrine during his tenure of Prime Miniter.

V. The Japanese and Trade Union

1. Trade Union Law

After the end of the Second World War the trade union law was enacted on
December, 1945 and the Article 28 of the Constitution declared "The right of workers to organize and to bargain and act collectively is guaranteed" on November, 1946. The Trade Union Law was afterwards revised frequently.

The Constitution stipulates the right to organize and act collectively (article 28) in addition to the freedom of association and all other forms of expression (article 21). The Constitution is the foundation of the Trade Union Law.

The employer shall be disallowed to do the following unfair labor practices (1) to give discriminatory treatment to a worker by reason for his having performed proper act of a trade union (2) to refuse to bargain collectively without fair reasons (3) to control or interfere with the formation or management of a trade union by workers or to give financial support to it (article 7 of the Trade Union law, article 28 of the Constitution)

The relief organ is the Labor Relations Commission which shall be set up consisting of equal number of persons representing employers, workers and public interest. It is a democratic, professional and inexpensive organ. The Trade Union Law expects the Labor Relations Commission to settle the case speedy, though those who are not satisfied with the results of the commission can sue. The Labor Relations Commission has not discharged the ideal of the Trade Union Law until today, I am sorry.

2. Japan's Trade Union

Japan's trade unions had been for a long time suppressed by various restraining legislations before the end of the Second World War and the Association for Service to the State through Industry (Sangyo Hōkoku Kai) and its locals were established after disestablishing the trade unions by Japan's military government.

After the end of the Second World War Japan's trade unions were born. Japan's trade unions were unusually in the world established at every com-
pany and called “company union.” The Trade Union Law regarded company union as legal though it declared company dominated union as illegal (article 2, 7).

Immediately after the end of the Second World War Japan’s company unions fought hard against their companies with the measures of production management by workers as acts of dispute.

Almost all the measures were penalized by the criminal law as infringement of ownership by the supreme court (Yamada Kōgyosho Case, Showa 25, 11. 25 and the like)

Recently Japan’s company unions have been in cooperation with the companies. The federations thereof have repeated disunion and combination for fifty years. The biggest federation, Rengo is moderate and cooperative in comparison with Sohyo, the federation in the early period, while Zenroren, the next biggest federation is comparatively not in cooperation with the companies and government.

Rengo and Zenroren are eager for their political activity and may select the candidates of the Daiet members, local governors or local assemblymen suitable for Rengo or Zenroren and the affiliated company unions, because the Trade Union Law permits the trade union’s political movement (article 2), On the other hand the Constitution of Japan guarantees the Japanese the right to vote and the secrecy of ballot (article 15). The supreme court decided that the right to vote included the right to run as a candidate and these rights are originally the individual rights which are inviolable (Mitsui Bibai case, Showa 43. 12. 4 and the like). The trade union shall not force, but persuade the affiliated members to follow it out with regard to the election of public officials. Nowadays it has become important for the trade unions to watch politics and carry on every political action if necessary for raising the economic status of the workers.

Japan’s organized labor percentage is today low rate and about 23.2 pre-
cent of the total workers (The Labor Ministry Survey, December 26. 1996)

Japan's labor unions shall thereafter elevate the organized labor percentage by protecting the individual interests of the members though elevating the political status is very important.

VI. The Japanese and Lawsuit

1. Indistinct Answer

The Japanese do not say "Yes or No" clearly. When they refuse another's request they do not say "no" exactly at once, They murmur,"I-Ya" at themselves and their silence continues for a while. "I-Ya" in Japanese is used frequently when they are not able to speak out their intentions. Later they will write letters showing their intentions. A letter of refusal with reasons may give soft impression on another.

Why do the Japanese not say "No" clearly? I think because he takes care not only to hurt persons' feelings but also to maintain good human relations.

2. Few Lawsuits

Japan's civil Law regards principally oral contract with a few exceptions of donation, marriage (article 55. 742 of Civil Law) and collective agreement (article 14 of Trade Union Law)

But unless the contract is put in writing with the names affixed with seals by both of the parties concerned, troubles may occur. If one party who owes the other party 50,000 Yen, denies the obligation, the other party can sue the party for confirmation of the obligation and for repayment of 50,000 Yen

In this case an American usually sues. The United States of America are known by the name of lawsuit society. I am told that after the decision of
a court an American restores the normal human relation or friendship.

On the contrary a Japanese seldom sues because he supposes that a lawsuit not only makes the relation of the parties in the lawsuit worsen but also takes a long time and much money.

In the administrative litigation the people side is almost defeated.

The number of the lawyers and lawsuits in the United States of America are much more than in Japan. According to Micael K. Young ("Japan Stung". The new York Times Aug, 17, 1982), in Japan there is one lawyer per 10,000 citizens, but in U. S. one lawyer per 450 citizens and the number of lawsuits of only one state, California in 1981 is more than the total number in all Japan. Though the above mentioned are rather old statistics, the substantive facts have not been so much changed, I think.