

Convergence in Foreigners' Rights and Citizenship Policies? A Look at Japan

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Citizenship laws and immigrant rights in rich, democratic countries are widely understood to be converging. Since most accounts of convergence are based on Western examples, Japan is an important test case. I distinguish three theoretical accounts of convergence: global-institutionalist, liberal-democratic, and problem-solving perspectives. I then examine trends in foreigners' rights in Japan since World War II in three domains: entrance, rights of residents, and citizenship. I find that convergence is occurring in the expansion of rights, partially in access to the territory, but not in formal citizenship. While the liberal-democratic perspective fails to account for trends, a combination of global-institutionalist and problem-solving accounts provides the most powerful analytic insight into convergence processes.

A broad consensus has emerged in recent years that citizenship laws and migrant rights in rich liberal democracies are converging (Cornelius, Martin, and Hollifield, 1994; Freeman, 1995; Ongley and Pearson, 1995; Mahnig and Wimmer, 2000; Hansen and Weil, 2001; Joppke, 2001; Weil, 2001; Cornelius and Tsuda, 2004).¹ While a wide range of scholars agree descriptively, they offer contrasting explanatory accounts of the phenomenon. In most cases, supporting evidence is drawn primarily from Western liberal democracies, although claims regarding convergence are formulated in sweeping terms. To assess the utility and limits of convergence accounts, I identify three theoretical arguments about the dynamics of convergence and apply them to the understudied Japanese case.

Most accounts define convergence in one of two ways. Convergence can occur as a meeting of opposites, as when policy makers in countries in which *jus sanguinis* principles predominate strengthen the use of *jus soli* principles by readily extending citizenship to newcomers, and vice versa (*see* Feldblum, 1998; Weil, 2001). Alternatively, convergence can be registered as increasing similarity in a field of difference. Examples include cases when the diversity

¹Meyers (2002) also makes the case that an academic consensus on convergence has emerged, while arguing that such similarities have a much longer history. For other contrasting views *see* Brubaker (1992) and Kastoryano (2002) for analyses of how relatively similar states can exhibit divergent citizenship policies.

of foreigners' rights and citizenship laws decreases as comparable policies are adopted (*see* Soysal, 1994; Joppke, 1999; Guiraudon, 2000).

Convergence has been identified at three interrelated political "gates" (Hammar, 1990) that stand between nonmembers and full state membership: (1) admission to the territory (Joppke, 2003; Joppke 2005b); (2) legal claims to social, political, and economic rights granted to residents of a nation-state regardless of citizenship status (Soysal, 1994; Feldblum, 1998; Mahnig and Wimmer, 2000; Joppke, 2001); and (3) formal citizenship acquisition (Hansen and Weil, 2001; Weil, 2001; Joppke, 2003; Joppke and Morawska, 2003). Yet, scholars who assume *that* convergence is occurring have different explanations for *why* it is occurring. Three main accounts can be distinguished: global-institutionalist, liberal-democratic, and problem-solving. Global-institutionalists find the source of convergence in global human rights norms; liberal-democratic accounts emphasize the effects of liberal principles embedded in state constitutions; and problem-solving approaches highlight the critical role of policy-formation processes.

All accounts apply their claims to a broad range of cases, from liberal democracies (Freeman, 1995; Joppke and Morawska, 2003) and countries of immigration (Weil, 2001), to labor-importing countries (Cornelius and Tsuda, 2004). Yet empirical evidence is drawn overwhelmingly from the West, frequently from Germany, France, Great Britain, the Netherlands, Sweden, Italy, and the US (*see* Cornelius, Martin, and Hollifield, 1994; Soysal, 1994; Guiraudon, 1998; Joppke, 1999, 2007; Mahnig and Wimmer, 2000; Hansen and Weil, 2001). However, the examination of non-Western cases is essential to assess the robustness of broadly formulated theories. Even for more modest explanations that restrict conclusions to only the West, non-Western cases are still critical for determining whether the proposed theoretical limits of their claims are the actual empirical limits.

Although a prosperous, democratic, capitalist country, Japan is an often ignored, yet critical test case for assessing accounts of convergence. From the ruins of World War II, it has developed into one of the world's leading capitalist economies. The government has been democratically elected for half a century under a liberal-democratic constitution. And the number of registered foreigners, although small, has more than doubled over the past two decades, from 851,000 in 1985 to 2,012,000 in 2005 (Ministry of Justice, 2006).²

²Approximately 3.4 percent of the registered foreigners possess a "temporary visitor" visa. The government considers the remaining 1,943,000 to be residing in Japan for an extended period (Ministry of Justice, 2006).

Given these structural similarities, are Japan's policies converging with those of other advanced countries? And, if so, what are the mechanisms? After discussing the main theoretical arguments concerning immigration policy convergence, I investigate Japanese trends over the past half century in order to ascertain whether Japan's policies on admission, foreigners' rights, and citizenship are becoming more like those of other advanced countries. To the extent that they are converging, I examine the mechanisms through which convergence has occurred. I conclude by assessing the degree to which the three main explanations of convergence account for the Japanese case, and I suggest a combination of approaches to explain convergence trends.³

THREE ACCOUNTS OF CONVERGENCE

The Global-Institutionalist Perspective

A number of prominent migrant-receiving countries have greatly expanded the rights of foreign residents over the past few decades (Hammar, 1990; Soysal, 1994; Guiraudon, 1998) – a seemingly counterintuitive trend given their restrictionist admission policies, the electoral success of xenophobic parties, the prevalence of anti-immigrant attitudes, the use of temporary foreign workers, and the intrinsically exclusionary logic of welfare states (Sassen, 1996; Guiraudon, 1998). Global-institutionalists account for this paradoxical expansion by locating the source of change outside the nation-state in the spread of a global human rights regime (Soysal, 1994; Jacobson, 1996; Sassen, 1996). Since the end of World War II, an international discourse on human rights – embodied in charters, treaties, and transnational organizations as well as in proliferating governmental and nongovernmental “rights talk” – has extended to all people rights previously limited to citizens. These “postnational” rights, based on universal personhood, are seen as reducing the importance of national-level citizenship frameworks (Soysal, 1994). Global-institutionalists argue that although such rights are effectively realized only within the nation-state, their justification lies in external sources, namely, in the cultural codes constitutive of what Meyer and colleagues (Meyer *et al.*,

³The Western literature often employs the term “immigrant” to refer to people who enter a country where they do not have citizenship and stay for an extended period of time. The Japanese literature generally uses the term “foreigner” in these instances, and reserves the use of “immigrant” to cases when people enter a country and intend to naturalize. Thus, Japan is often said to not have an “immigration” but a “foreigner” policy. For the sake of clarity, I will employ the term “immigrant” as it is generally used in the Western literature.

1997) have called the “world society,” and, more proximately, in a variety of international legal codes and conventions. As a consequence, benefits and privileges of membership in a national polity are based on global norms of personhood rather than particular conceptions of nationhood (Soysal, 1994; Jacobson, 1998). This shift has also opened the doors to new categories of migrants. The proliferation of international covenants and treaties guaranteeing the human rights of refugees has facilitated entrance to those fleeing political persecution. For ardent global-institutionalists, it matters little whether citizenship policies are converging, since the rights of denizens closely approximate those of full citizens. Formal citizenship is one area where the state may still exert exclusive sovereignty. Consequentially, work in this vein generally addresses the policy domains of entrance and foreigners' rights, neglecting naturalization policies.

The Liberal-Democratic Perspective

In contrast to the international focus of the global-institutionalists, the liberal-democratic perspective maintains that the source of change resides within nation-states, in the liberal-democratic principles embedded in constitutions (Cornelius, Martin, and Hollifield, 1994; Freeman, 1995; Joppke, 1998). The proposition that global human rights norms are *replacing* national rights is faulty, it is argued, because human rights gain whatever force they have only by being anchored in liberal-democratic constitutions (Joppke, 1998). Because liberal states grant many rights to *persons* rather than *citizens*, migrants immediately acquire a bundle of rights upon entry, which can expand over time as ties between migrants and the receiving society increase (Joppke, 2001). This trend has flourished in the West since the Cold War as posturing against a perceived communist threat and a shift from a “Hobbsian zone of war to a Lockean zone of trade” led to the unfolding of a liberal-democratic logic (Joppke and Morawska, 2003:19).

Drawing on liberal-democratic values encoded in constitutions, the judicial system makes key contributions to the accumulation of rights. Since World War II, courts have taken an increasingly activist stance in interpreting constitutional commitments to extend the rights of foreigners (Joppke, 2001). In addition, the liberal democratic political system can foster expansionist policies, since well-organized interest groups are able to successfully lobby for liberalizing reforms when policy making is kept behind closed doors (Freeman, 1995).

Liberal democracy has also affected the politics of citizenship by increasingly separating demands for cultural assimilation from citizenship

(Joppke, 2003, 2005b). Citizenship has become “de-ethnicized” (Joppke, 2003; Joppke and Morawska, 2003), as indicated by the increasing use of *jus soli* principles for citizenship attribution, the tolerance of dual citizenship, and a more relaxed stance toward multiculturalism. Requirements for cultural assimilation are replaced by expectations that new members simply adhere to broadly defined liberal-democratic values (Joppke and Morawska, 2003; Joppke, 2005a). However, change occurs within limits. Although immigration propels de-ethnicization, emigration brings a countervailing trend toward re-ethnicization as even liberal states attempt to keep track of members who leave the country’s borders (Joppke, 2005b).

Finally, entrance policies are converging as countries increasingly use achieved rather than ascribed characteristics in regulating admission (Joppke, 2005b). Ascribed characteristics are seen as legitimate grounds for filtering only when used as a basis to include rather than exclude, and when no ethnically identifiable losers are produced. Immigration serves as the motor behind these changes, but only under particular circumstances, namely, when liberal-democratic imperatives to integrate foreigners predominate under the acceptance of global human rights, the decoupling of nation- and state-building, and the presence of a political force calling for reform (Joppke, 2003).

The Problem-Solving Perspective

The problem-solving perspective holds that countries in similar positions, dealing with similar problems, but with limited options, converge toward similar solutions (Hammar, 1985; Mahnig and Wimmer, 2000; Hansen and Weil, 2001; Weil, 2001; *see also* Sassen, 2000; Feldblum, 2000; Guiraudon, 1998). While directing attention to domestic causes, this position focuses not on liberal-democratic constitutional commitments but on the dynamics of policy-making. Within such contexts, convergence in citizenship policies stems from the parallel actions of domestic policy makers dealing with kindred immigration-related problems, who learn from past experiences and arrive at similar responses (Hansen and Weil, 2001).

Research investigating parallel responses to similar problems has found that citizenship policies are converging around an international mean. Countries using *jus soli* principles to determine access to citizenship have been moving toward more restrictive measures, while those employing *jus sanguinis* have expanded access for those who do not acquire citizenship by descent. This shift occurs when democratic countries see themselves as immigration countries and face similar integration issues in the context of stabilized borders (Weil, 2001).

Work examining pragmatic policy-making shows while convergence in some policy domains is evident, it does not seem to be occurring across the board. Policies establishing equality under the law by guaranteeing civil and social rights as well as those remedying social disadvantage are becoming more similar and broadly inclusive. However, domains concerning a country's particular historically defined relationship between state and society, for example, protection against racism and guaranteed access to public institutions, still evince a great deal of cross-country variation (Mahnig and Wimmer, 2000).

THE JAPANESE CASE

To what extent are the accounts of convergence sketched above helpful in understanding the Japanese case? Assessing the global-institutionalist argument requires evidence that global human rights norms were critical for policy changes, which can be derived by examining the influence of international treaty ratification. Evaluating the liberal-democratic account suggests examining judicial rulings to test whether policy changes are the result of liberal constitutional commitments. The specific argument about the de-ethnicization of citizenship and admission can be assessed by considering requirements for nationalization and policies for entry. Assessing the problem-solving accounts calls for examining policy-making processes.

To anticipate the conclusion, Japanese policies regarding the rights of long-term resident foreigners are converging with those of Western countries. However, policies governing entrance into the territory are converging only partially. Japan remains different in the area of citizenship policy. The Japanese experience provides qualified support for the global-institutionalist and problem-solving perspectives, but it is inconsistent with liberal-democratic accounts. Table 1 summarizes the three perspectives' accounts of convergence, as well as the basic characteristics of the Japanese case.

The Foreign Population in Contemporary Japan

There are currently about two million registered foreigners in Japan, the bulk of whom are Koreans (600,000), followed by Chinese (520,000), and Brazilians (300,000) (Ministry of Justice, 2006). Foreigners are sorted into over two dozen visa categories. Work activities and length of residence are restricted for most categories, including skilled laborers, students, trainees, entertainers, etc. Activities are unrestricted for four categories. Of these "special permanent resident" is the largest, and its 452,000 members are mostly Korean

TABLE 1
THREE ACCOUNTS OF CONVERGENCE AND THE JAPANESE CASE

	Global-Institutionalist	Liberal-Democratic	Problem-Solving	The Japanese Case
Gate 1 (Access to Territory)	Proliferation of international norms guaranteeing human rights of refugees opens doors to those fleeing political persecution.	Shift from ascribed to achieved characteristics in admissions policy.	Suggests the importance of looking at policy formation processes.	Front doors opened to skilled migration, side doors opened to unskilled migration. <i>Nikkeijin</i> admitted for ostensibly cultural reasons in fact serve as workers. Very closed refugee policy developed.
Gate 2 (Foreigners' Rights)	Global institutionalization of human rights norms leads to an extension of rights to noncitizens.	Post World War II flourishing of liberal democratic values. Activist courts or client politics expand rights.	Pragmatic policy makers concerned with maintaining social harmony extend rights to long-term foreign residents in particular domains.	Ratification of international treaties led to revision of national laws and expansion of rights. Local governments with large foreign populations extending rights. Denizens' rights now generally equivalent to those of citizens.
Gate 3 (Formal Citizenship Acquisition)	Moot	De-ethnicization of citizenship, including an expansion of <i>jus soli</i> , dual citizenship, and relaxed cultural assimilation requirements. Re-ethnicization of citizenship for coethnics leaving the territory.	Policies in immigration countries with stable borders and similar integration problems regress toward an international mean as restrictionist policies become more expansive and vice versa.	No major changes. Strong <i>jus sanguinis</i> elements, but not expansively applied to descendants of emigrants. Permanent resident status extended to former colonials and their descendants.

former colonial subjects or their descendants. In addition, activities are unrestricted for “permanent residents” (350,000), of which Chinese are the largest group at 106,000, as well as “spouses or children of Japanese nationals” (260,000), and “long-term residents” (266,000), largely the descendants of Japanese emigrants to Latin America (Ministry of Justice, 2006). Although Japan remains relatively homogeneous with a population over 98 percent Japanese, the array of non-Japanese has changed dramatically since 1945, as discussed below.

Empire Collapse

Most theories of citizenship and foreigners' rights policy convergence begin with the end of World War II.⁴ In Japan, during this time, ethnic unmixing occurred swiftly. In 1944 there were approximately 2 million Koreans in the Japanese archipelago, but the numbers dropped to around 530,000 by 1947 (Morita, 1996), when they comprised over 90 percent of the foreign population (Lee, 1981b).⁵ While Koreans and Taiwanese were Japanese nationals (although not full and equal citizens) under the Japanese Empire, they were redefined as foreigners after the war. With the 1947 Alien Registration Law, Korean and Chinese residents were labeled “aliens” and required to carry identification cards and register with the government.⁶

In 1951 the American occupation authorities ordered the development of a comprehensive immigration control policy modeled on the US system and characterized by strict border control, resulting in the 1952 Immigration Control Law. In 1952, during the last days of the American occupation, the Ministry of Justice restricted Japanese nationality to “Japanese proper.” This shift not only rescinded the Japanese nationality of residents of Korea and Taiwan, but also de-nationalized Koreans and Taiwanese living in Japan, resolving the contradictory position of these alien citizens through complete

⁴See Oguma (1995) for the pre-1945 Japanese imperial situation and Kashiwazaki (1998) for a description of the formation of the first citizenship law in 1899.

⁵See Lee (1981b) and Morris-Suzuki (2006) on repatriation and why some did not return to Korea.

⁶Although throughout this piece I treat “Koreans” together, it is important to note that they do not form a monolithic group. Their circumstances of migration, political and cultural orientation to Japan and the Koreas, and legal statuses have varied greatly. See, in particular Lee (1981a) and Iwasawa (1986) for a discussion of the different legal categories used over time.

membership loss (Iwasawa, 1986; Kashiwazaki, 2000a). At the time, this decision was uncontroversial and unquestioned by the Japanese courts as well as the American and Korean governments. During the following two decades, citizenship loss was almost entirely unchallenged by the Koreans affected (Iwasawa, 1986: note 66).

Constitutional Rights

For the 530,000 Koreans and 30,000 Taiwanese who remained in Japan after the war, the loss of Japanese nationality stripped them of particular membership benefits, including easy entry and exit, access to certain public-sector jobs, and eligibility for reparations for war losses.⁷ The Japanese Constitution guarantees certain rights for nationals only. In particular, Article 14 guarantees that “all *nationals* [my italics] are equal under the law, and there shall be no discrimination in political, economic, or social relations because of race, creed, sex, social status, or family origin.” However, the Japanese Supreme Court revised the official stance on this key Article in 1964 when it concluded that the provision applied to aliens as well (Iwasawa, 1998:85). This so-called nature doctrine reading of the Constitution has since become standard (Kondo, 2001).

Nevertheless, aliens' rights were slow to develop. Widespread anti-Korean discrimination in Japanese society limited the broader appeal of resident alien causes. In addition, the affiliation of Sōren, one of the two main Korean activist groups, with North Korea raised concerns about communist subversion. By the mid-70s, Korean rights groups came together with human rights organizations, securing greater visibility and legitimacy, but without making dramatic gains at the national level, as the national government generally ignored these groups in making policy decisions (Gurowitz, 1999). In general, Korean rights' groups saw more success at the local level, where significant gains in health care and job access were made (Kashiwazaki, 2003). Local level governments trying to solve community problems have been often far more proactive than the national government in extending health insurance and other social benefits as well as local franchise rights and job access (Takao, 2003).

⁷See Morris-Suzuki (2006) for the impact on the migrants moving illegally between Korea and Japan during the postwar years, who are often missed in official counts.

International Treaties and Rights

Spurred by rapid economic growth in the 1960s, Japan began to take a more prominent role among global leaders by the end of the 1970s. The rise in status produced, within the government, a heightened concern with its international image and, outside the government, increased criticism from domestic and international groups for failure to conform to human rights expectations (Iwasawa, 1998; Gurowitz, 1999; Kashiwazaki, 2000a; Kajita, Tanno, and Higuchi, 2005). During the debates, the Minister of Foreign Affairs maintained that ratifying these treaties was essential for Japan to maintain diplomatic relations with other countries on an equal basis. From the mid-1970s, organizations such as the Japanese Civil Liberties Union, the National Women's Committee of the United Nations, Amnesty International, the Tokyo Bar Association, and the Asian Human Rights Center pressed the Japanese government to sign on to standard international human rights agreements (Gurowitz, 1999).

After becoming a G7 member in 1975 and subsequently facing international pressure, Japan in 1978 took in its first refugees, 500 Indochinese. However, the number of refugees admitted since has remained strikingly low. Between 1982 and 2004, less than 10 percent of requests for refugee status were granted, and Japan ranks last among the top 30 industrialized countries on refugee acceptance (Iwasaki, 2006). The low acceptance rates continue to invoke international criticism. While Japan formally constructed a refugee policy, it was framed within the immigration law, thus linking refugees with immigration control issues (Dean and Nagashima, 2007).

As Japan emerged into the international limelight and began to receive limited refugees, it joined several international conventions, including the International Covenant on Civil and Political Rights (1979), the International Covenant on Economic, Social, and Cultural Rights (1979), and the Convention on the Status of Refugees (1981). By signing onto these conventions, Japan agreed to treat resident aliens equally with citizens on issues of social security and welfare, and the government took measures to bring Japanese law into conformity with these conventions. These changes significantly expanded the rights of resident foreigners – mainly Koreans, who gained guaranteed access to a range of social welfare services, including pensions, public housing, public financing, and childrearing allowances (Iwasawa, 1986; Gurowitz, 1999; Kondo, 2001). In addition, before ratifying the Convention on the Elimination of All Forms of Discrimination against Women in 1985, the government made the first major change to its citizenship law in the postwar era by shifting from

patrilineal *jus sanguinis* to bilinear *jus sanguinis*. Overall, governmental reform, in response to international measures and pressures, has been much quicker and more productive than long-term court campaigns (Iwasawa, 1998).⁸

The 1990 Immigration Control and Refugee Recognition Act

While the series of international human rights covenant ratifications led to a significant expansion in foreigners' rights, the most important reform in postwar Japan was the 1990 Immigration Control and Refugee Recognition Act. The complexities and contradictions of this revision to the 1952 Immigration Control Law provide a window into the politics of immigration policy formation.

As treaty renegotiations between Japan and South Korea scheduled to occur by 1990 approached, the Japanese Ministry of Justice began to deal with the unresolved status of Korean residents, particularly those in the growing third generation.⁹ In 1987, a team to reconsider foreigner laws was created within the Immigration Bureau, and the government quickly determined to give the third generation (extended also to the first and second generation) the status "special permanent resident" (*tokubetsu eijūsha*) to all Koreans and their descendants living in Japan as a result of colonization (Kajita, 1999; Kajita, Tanno, and Higuchi, 2005).

Negotiations over the status of resident Koreans coincided with and subsequently became embroiled in debates concerning several separate issues. First, during the 1980s, a small but increasing number of Japanese who had remained in China after the war, as well as their spouses and descendants, were returning to Japan. Family and economic motivations loomed large in the decisions of many. Although they possessed Chinese citizenship, these people were generally represented by officials and the media in Japan as fellow

⁸This is not to say that the courts have been entirely inconsequential. In 2002, courts for the first time ruled against the government in an Afghani deportation case, and again in 2003 in an Iranian deportation case.

⁹In the 1980s, around 80 percent of Korean residents were second- or third-generation (Komai 1995). The status of resident Koreans was not completely resolved during the 1965 treaty negotiations. While the South Korean government insisted that Japan grant permanent residence to all future generations of Korean residents in Japan, the Japanese government balked (Gurowitz, 1999). The 1965 ROK-Japan treaty gave people choosing to claim South Korean nationality the status "permanent resident by treaty," which provided some legal protection against deportation as well as access to national health care. By 1974, 342,000 Koreans held this status while 270,000 did not.

Japanese, and legal means had to be developed to facilitate their return (Kajita, 1999).

Second, the number of foreign workers was increasing. Labor migration to Japan grew in the 1980s as it became more difficult to find nationals willing to take dirty, dangerous, and difficult jobs. Although the high-growth economy of the 1960s and 1970s had been sustained without foreign worker programs by utilizing women, elderly, and seasonal workers as well as by automating or outsourcing production, these means were outstripped by the bubble economy of the 1980s, which led to the admission of a small group of foreign unskilled laborers (Kajita, 1994; Kajita, 2002). In 1988, the Ministry of Labor (since 2001, the Ministry of Health, Labor, and Welfare) proposed developing a system to accept some skilled foreign workers, and the government decided to expand the number of specialists permitted to work in Japan (Kajita, 1999).

Third, members of other categories of foreigners, such as Indochinese refugees, were increasingly living for an extended period in Japan, and their status needed to be settled. To deal with these disparate issues at once, the bucket category *teijūsha*, or “long-term resident,”¹⁰ was established (Kajita, Tanno, and Higuchi, 2005). This motley category includes several diverse groups, namely, Indochinese refugees, families of settlers and long-term residents, and descendants of Japanese abroad through the third generation.

Interest differences and competition among ministries helps explain the establishment of this heterogeneous category. The Ministries of Justice and Labor generally prefer to keep immigration policy debates behind closed doors, while the Ministry of Foreign Affairs favors making them public (Komai, 1995). Furthermore, the Ministry of Labor has on occasion proposed opening doors to skilled foreign workers, while the Ministry of Justice generally maintains a more conservative entry policy (Kajita, 1999). The Ministry of International Trade and Industry (since 2001, the Ministry of Economy, Trade, and Industry) generally represents business demands for ways to deal with labor shortages (Hachiya, 1992). The ministries' conflicting positions over the growing number of illegal workers came to a head in 1988 when the Ministry of Labor discussed establishing a work permit program, while the Ministry of Justice preferred to deal with the issue through employer sanctions (Hachiya, 1992). Taking Germany as a negative model, Ministry of Justice bureaucrats did not want to

¹⁰Note “long-term resident” is distinct from “special permanent resident,” the status created for former colonial subjects and their descendants.

produce a guestworker program in which participants never returned home (General Affairs Division, 2005). In the end, the Ministry of Justice's employer sanctions law was passed with an implicit agreement with the Ministry of Labor that enforcement would not be strict (Tsuda and Cornelius, 2004). The "long-term resident" category was developed in part as a compromise to meet the call by economic interests for a foreign-worker program (Kajita, Tanno, and Higuchi, 2005; *see also* Hachiya, 1992).

Perhaps the most visible outcome (though not explicit goal) of the 1990 reform was the great expansion of numbers of *Nikkeijin*, or people of Japanese ancestry, generally from Latin America. Although, officially, entry is facilitated to permit people of Japanese descent to learn about their cultural heritage and visit their ancestors' graves, *Nikkeijin* are in fact granted three-year, unlimitedly renewable visas with no work restrictions. Employers were quick to see *Nikkeijin* as "foreign workers," who are easy to hire given the absence of visa restrictions on employment (Kajita, 1999:147).¹¹

This camouflaged worker program for coethnics was carried out in conjunction with restrictions on the entry of other foreign workers. The government suspended mutual visa exemption agreements with Bangladesh and Pakistan in 1989, leading to a reduction of Bangladeshis from 14,000 in 1988 to 2,700 in 1989 and Pakistanis from 19,000 in 1988 to 5,900 in 1989. The mutual visa exemption agreement with Iran was suspended in 1992, leading to a drop of Iranians from 48,000 in 1991 to 14,300 in 1992 (Hatsuse, 2005). With the increase of Japanese descendants coming to "visit ancestors' graves," the government was able, in effect, to successfully substitute *Nikkeijin* for many Pakistani, Bangladeshi, and Iranian workers.

Yet, the government does not officially recognize *Nikkeijin* as "foreign workers." Because *not* allowing Bangladeshi, Pakistani, and Iranian workers to enter may be interpreted as a form of racial discrimination, bureaucrats have repeatedly emphasized that *Nikkeijin* have been admitted for family reasons (Kajita, 1999:146). The non-economic category "long-term resident" enabled the government to meet economic needs without risking accusations of discrimination.

¹¹However, it is important not to apply this label so quickly that the role of unintended consequences is lost. Among the wide range of issues that arose in forming the 1990 law, Brazilian *Nikkeijin* (who, with about 1.5 million members, made up the bulk of Japanese descendants outside the nation-state) did not emerge as a topic within government debates, nor were they taken up by the newspapers (Kajita, 1999). Government officials in interviews maintain that the large influx of this group was unexpected.

In addition to this back door for coethnics, the 1990 Immigration Control Act opened front doors for skilled laborers and side doors for unskilled labor. To meet demands for managerial and technical expertise, the visa categories for professional workers were expanded and immigration procedures simplified (Mori, 1997). Furthermore, clauses were inserted to encourage foreign "pre-college" students to study in Japan, allowing them to work up to 20 hours per week (now 28 hours) during the school year and 40 hours during the holidays. In 2005 there were 18,000 such *shūgakusei* (Ministry of Justice, 2006), most illegally working longer hours. Moreover, in 1993, the trainee program that had been in place was modified to benefit small- and medium-sized businesses, creating, in effect, a short-term worker program under which "trainees" from developing countries work for up to three years for only "trainee" wages (Hachiya, 1992; Komai, 1995; Oishi, 1995). By 2005, there were 83,000 trainees (Ministry of Justice, 2006). Thus, Japan has developed a *de facto* rather than *de jure* foreign labor recruitment policy, sustained by coethnics, as well as by students and trainees entering through side doors (Kajita, 2002; Kanbayashi, 2002).

Finally, the 1990 law eliminated the nominal link between permanent residency and citizenship. The American model of transition from admission to permanent residence to citizenship had been inscribed in the law forty years earlier, but never implemented. Now it was formally abandoned, with the justification that Japan is not an immigrant-accepting country, and that newcomers should not be admitted on the assumption that they would eventually become citizens (Hirowatari, 1992; General Affairs Division, 2005).

Stability of Citizenship Laws

Citizenship laws in Japan have remained largely unchanged since the end of World War II. The main adjustment was the above-mentioned 1985 recognition of matrilineal descent in attributing citizenship. Not only have citizenship laws remained remarkably stable, they have for the most part not even been questioned. European and North American cases show that the development of the second and third generation of foreign residents often leads to a more open citizenship policy (Hansen and Weil, 2001). However, this does not seem to hold for Japan, although now the great majority of Korean residents were born and raised on the archipelago. Permanent residency status has been extended to former Korean colonials and their descendants. Following a Japanese government naturalization promotion program, naturalization rates doubled for Koreans, from 5,000 to 10,000 per year from

the 80s to the 90s (Ryang, 2000). This trend has held steady in recent years (http://www.moj.go.jp/TOUKEI/t_minj03.html), yet only about one percent of Koreans naturalize every year.

One key factor underpinning the untouchability (and undesirability) of citizenship is the centrality of cultural assimilation to naturalization.¹² Although Japanese nationality law does not explicitly specify that assimilation is necessary for citizenship, the Ministry of Justice, in practice, requires applicants for Japanese nationality to live Japanese lifestyles (Kim, 1990; Iwasawa, 1998; Kashiwazaki, 2000a; Kondo, 2001), a practice firmly ensconced since the 1950s (Kashiwazaki, 2000b). One reason that citizenship has not been extended to *Nikkeijin*, despite governmental worries about population decline, may be that Japanese behavior – even more than Japanese blood – is crucial for full state membership through naturalization. To qualify for citizenship, one must be at least 20, have lived in Japan for at least five years, be able to support one's family, respect the Japanese Constitution, and have "upright conduct." This final prerequisite is interpreted in practice as meaning cultural assimilation (Kondo, 2001). Generally, applicants need to submit documentation about work history, family, past residences, and also photos of their home, workplace, and family (<http://www.debito.org/naturalization.html>; see also Kashiwazaki, 2000a). Government officials may also interview neighbors and co-workers to assess whether or not an applicant possesses a high moral character. This process is, unsurprisingly, quite rigorous and arbitrary – a few too many traffic violations can mean disqualification (Kashiwazaki, 2000a). The prominent place of cultural assimilation in naturalization procedures has been influential in keeping citizenship off the table in foreigners' rights debates (Hirowatari, 1992; Kashiwazaki, 2000b). In fact, permanent residency is more desirable, although the length of residence required is longer than for citizenship (ten years versus five years). Between 2000 and 2005, an average 44,000 people applied for permanent residency every year, as compared to an average 15,000 for citizenship (Ministry of Justice, 2006; http://www.moj.go.jp/TOUKEI/t_minj03.html).

¹²When the institution of citizenship was established in Japan at the close of the nineteenth century, even the most conservative ideologues did not see the naturalization of foreigners as problematic or a threat to the state – as long as they assimilated into Japanese culture (Kashiwazaki, 1998). During the colonial period, the Japanese government actively and destructively promoted cultural assimilation of Korean and Taiwanese nationals as they became imperial subjects (Oguma, 1995).

ASSESSMENT OF CONVERGENCE ACCOUNTS

Gate 1: Entrance to the Territory

The global-institutionalist perspective holds that the postwar spread of a human rights discourse enshrined in international covenants and treaties has opened doors to refugees. Japan developed a formal refugee policy as a result of heightened internal and international pressure placed to assume the proper form accorded to the role when becoming a G7 member. However, these changes have been largely formal in the absence of pressure to substantively comply. The refugee policy is formulated under the auspices of the immigration law, over which the Ministry of Justice, concerned fundamentally with maintaining restrictive control, has the main stake and final say. As this perspective recognizes, although international norms are implemented primarily at the national level, states may still exert exclusionary sovereignty in particular domains.

While refugees are told to go elsewhere, Japan has begun to welcome other categories of migrants. In line with global-institutionalist accounts, these policies, even when exclusionary, are formulated within internationally acceptable idioms. The problem-solving perspective adds specificity, accounting for the dynamics of resolving who gets in and how. In the Japanese system, immigration policy is produced mainly by unelected bureaucrats and involves several ministries. The interplay between the Ministry of International Trade and Industry and business demands for additional workers, the Ministry of Labor's calls for a work-permit program, and the Ministry of Justice's interest in minimizing and controlling immigration eventuated in a policy of easing entry and work limitations for people of Japanese descent and encouraging others from East and South East Asia to work temporarily as trainees and students, while temporarily restricting visa procedures for people from Pakistan, Iran, and Bangladesh.

The particulars this compromise took might seem to be captured by the liberal-democratic model, which finds convergence in the use of achieved rather than ascribed characteristics for regulating entry. If ethnicity is used as a principle of selection, only positive discrimination in a limited sense (*e.g.*, producing no obvious and ethnically identifiable losers) is potentially legitimate. Japan seems to fall in line given the actions taken to formally welcome *Nikkeijin* for heritage and family reasons while informally welcoming them as low-skilled workers. Measures were taken to ensure that explicit labor policies were *formally* based on achievement rather than ascription. However, the reasons behind these changes do not follow liberal-democratic predictions. They were

not driven by political groups calling for reform in a context dominated by liberal-democratic imperatives to integrate foreigners. Rather, policy needed to be crafted in an internationally acceptable mode that avoided claims of racism in labor-migration policies. The global-institutionalist account best explains the imperative behind the style in which the side door was opened to *Nikkeijin* workers.¹³

Gate 2: Rights of Resident Foreigners

Trends in foreign residents' rights have received the bulk of attention in the literature on convergence, and in this domain the Japanese case lends qualified support to the global-institutionalist and problem-solving perspectives. In fact, the Japanese case more powerfully supports global-institutionalist arguments than the Euroamerican cases on which the literature has focused. To some degree, this is an issue of research design. To show that human rights norms of external origin are what count, one has to demonstrate change by drawing on evidence from two points in time: pre- and post-international covenant implementation. Yet in the European cases Soysal (1994) analyzes, covenant ratification occurs at the beginning of the postwar period, making isolation of its effect on subsequent policy-making difficult. In contrast, Japan was not a signatory to many key international human rights agreements for the first three postwar decades, making it easier to isolate the effects of ratification at the turn of the 1980s. Drawing on the benefits of a before-and-after contrast, scholars agree that international human rights conventions have been crucial in expanding denizenship rights in Japan, as the national government adjusted its laws to meet international standards (Komai, 1995; Iwasawa, 1998; Kajita, Tanno, and Higuchi, 2005). Conforming to human rights expectations was relatively unimportant until Japan entered the coterie of global leaders and came under internal and international pressure to fit the image projected by the role. Only at this point did international norms become effective, and accordingly, the national government (not the courts) brought national laws into alignment with international agreements.

¹³While Japanese officials and employers preferred *Nikkeijin* workers to others due to an assumed cultural similarity, encoding this ethnocultural preference in the law would have been seen as illegitimate. However, for policies promoting heritage recovery, ascribed terms are more readily justifiable, and employers happily accept the new sources of labor such policies bring.

The Japanese case fits poorly with the liberal-democratic argument that the source of the expansion of foreigners' rights is internal to the state. In 1964, the Constitution was interpreted as guaranteeing rights for all people, whether nationals or aliens (Iwasawa, 1998); but this formal change in constitutional jurisprudence did not lead to an expansion of long-term residents' rights during the late 1960s and 1970s. Although an interpretation of the Constitution in terms of liberal-democratic principles is standard, courts have, in most cases, refrained from actively extending foreigners' rights on this basis, independent of government policy. Furthermore, although policy-making generally occurs behind closed doors, interest groups have been largely unsuccessful in directly lobbying policy makers (General Affairs Division, 2005). Rather than the client politics or activist courts liberal-democratic perspectives generally cited as the mechanisms for expansive change, national-level bureaucrats revising policies to fit with international standards and local-level governments trying to ensure social harmony have been crucial, as the problem-solving perspective predicts.

The liberal-democratic perspective maintains that the Cold War context, which facilitated regional trade and civil rights demands, provided a supportive environment for liberal-democratic rights expansion (Cornelius, Martin, and Hollifield, 1994; Joppke, 2003; Joppke and Morawska, 2003). Yet Japan sits uneasily within liberal-democratic accounts of the timing. The Cold War competition between the "forces of freedom" and the communist enemy did not facilitate the expansion of alien rights. Rather, it served as a pretext for *limiting* rights. Under the Alien Registration Law, permanent resident foreigners, but not citizens, were (and still are) required to carry identification papers on them at all times, and this law has been used in the past to harass Koreans associated with communist activities (Lee, 1981a; *see also* Kashiwazaki, 2000b).¹⁴

Problem-solving accounts of convergence examine policy formation processes – the broader context in which policy formation occurs, where and how it occurs within a government, and what types of policies are produced. Policy makers concerned with maintaining the social fabric while minimizing financial burdens on the state extend the rights of foreigners in specific policy

¹⁴A counterargument might claim that these results are due to the absence of a liberal-democratic heritage in Japan. However, the constitution is founded on universal human rights and is understood as liberal-democratic in principle. According to the letter of the law, the state aims to protect people without regards to gender, race, class, religion, and so forth. Arguments that Japan is not liberal-democratic based on its restrictive policies risk circularity. Although Japan should indeed be considered a liberal democracy, the empirical evidence nevertheless fits poorly with the liberal-democratic perspective's expectations regarding convergence in foreigners' rights.

areas (Mahnig and Wimmer, 2000). Japan fits the claim that convergence is occurring toward expansive social and civil rights policies as well as policies that address social disadvantage. As in Europe, exceptions to convergence in Japan fall largely within the domain of state-society relations. For example, national franchise proposals have been tabled, there are no laws on racial discrimination, and access to certain public institutions and bureaucratic positions is still widely debated. Unlike the largely formal refugee policy, enforcement of rights has been more swiftly implemented. A large number of ministries have a stake in foreigners' welfare, making it more difficult to become monopolized by the strict logic of control that dominates in the Ministry of Justice. Furthermore, foreigners in Japan are geographically concentrated. Pragmatic local bureaucrats ensuring the well-being of a community with foreign populations have frequently been on the cutting edge of rights developments, often predating national initiatives on extending pension access, health insurance access, and employment opportunities by several years. These local-level gains provide difficult-to-ignore exemplars to national-level bureaucrats dealing with foreigner issues (Takao, 2003).

Gate 3: Citizenship

In contrast to many of the Western cases highlighted in the literature, citizenship in Japan has changed relatively little. For global-institutionalists, citizenship is moot since denizens gain rights largely equivalent to those of full members, creating a "postnational" formation, in which the boundaries between citizens and noncitizens blur. In Japan, permanent resident status is in greater demand than formal citizenship. Furthermore, its embrace has been extended in a blanket fashion to former colonials and their descendants living in Japan. Membership as permanent residents rather than citizens is expanding.

Problem-solving arguments find that convergence results from policy makers addressing similar problems under similar conditions given limited options. Focusing on conditions, Weil (2001) argues that if a democratic country has stable borders and a self-perception as a country of immigration rather than a country of emigrants or emigration, its citizenship policy will regress toward the international mean over time. Contemporary Japan is an exemplary case of what happens when only the first two of the three conditions are met. While Japan has been a democracy with stable borders for more than half a century, foreigners are not considered future citizens (General Affairs Division, 2005). The possibility of self-identifying as an immigrant-receiving country is consistently rejected by government officials (Suzuki, 2005). Thus, according

to this account, it should not be surprising that the citizenship policy is not changing.

The Japanese case fits uneasily with the liberal-democratic perspective's emphasis on the de-ethnicization of citizenship. In Japan, naturalization does not formally necessitate cultural assimilation, and its requirements, on paper, are not demanding. Nevertheless, as noted above, cultural assimilation is still required in practice. Furthermore, no elements of *jus soli* – not even when two generations have been born in Japan – have been introduced to temper *jus sanguinis*. While Joppke (2003) notes that re-ethnicization often occurs when the state attempts to maintain a grasp on nationals who have left its territory, there is no evidence of re-ethnicization regarding citizenship proper for Japanese coethnics and their descendants abroad. According to the letter of the law, Japanese citizenship is automatically lost when another is gained, and thus many Japanese in China, Brazil, and Peru and most of their descendants are not Japanese citizens. Although the 1990 Immigration Control and Refugee Recognition Act eased the way for *Nikkeijin* to enter and work in Japan, it did not alter citizenship policy, leaving coethnics to face many of the same hurdles as other foreigners once inside. A highly exclusive formulation of citizenship under which even ethnic Japanese returnees are not guaranteed easy access to full membership remains firmly in place.

CONCLUSION

Japan continues to hold on to relatively restrictive immigration policies and exclusivist citizenship policies, while granting rights to foreign residents. The evidence lends qualified support to the global-institutionalist and problem-solving accounts of convergence, but does not substantiate the liberal-democratic perspective. Major changes in rights and minor changes in citizenship policies are closely connected to international human rights treaty ratification, as global-institutionalists would predict, and the dynamics of these changes fit well with the problem-solving perspective. However, constitutionally enshrined liberal commitments do not explain Japanese foreigner policy developments. The liberal-democratic perspective holds less explanatory power than the other accounts due to shortcomings in the analysis of the impact of changes originating within and beyond the state. The proximate sources of convergence theorized – activist courts and client politics – are not necessarily intrinsic to liberal democracy. In the Japanese case, they have been largely irrelevant to the increasing similarity rights' policies hold with the West. This explanatory weakness is due to a misplaced focus on the limits of sovereignty. Constraints

on governments' strictly enforcing immigration control are less features of liberal democracy per se, and more a result of particular historical contexts or conjunctions. (Brubaker, 1995).

A combination of the global-institutionalist and problem-solving approaches provides the most powerful analytic insight into the contexts and conjunctions central in convergence processes. When countries enter into the world polity, they adopt the accoutrements expected of the role (Meyer *et al.*, 1997), which, in the postwar era, includes ratifying a range of international human rights-related treaties. However, in the absence of politically empowered vested interests working for reform, policy changes may remain cosmetic. This is more likely in the case of refugee admittance policies, where it may be more difficult to find vested interests within the polity willing to wage substantive reform. Foreigner rights' policies may be better positioned to find advocates promoting substantial change. If there is an established foreign community, foreigners' groups may bring problems to light. But, more importantly, local governments and divisions of the national government dealing pragmatically with the problems that arise when foreign populations become significant may seek ways to maintain effective governance that includes extending certain rights to foreigners. In addition, when divisions of the national government call for foreign laborers to meet production needs, doors for selected workers may be opened as well. In this case, pragmatic policy makers representing the interests of their offices may successfully negotiate for more expansive policies despite a generally restrictive immigration regime. The framing of the final policy product will conform to international norms.

Citizenship policies may change, but they become more expansive only when pragmatic policy makers in self-defined immigration countries attempt to incorporate the second-generation consequences of large-scale influxes (Weil, 2001). However, as the rights of resident foreigners come to approximate those of citizens, formal citizenship status declines in importance. Permanent residency then becomes the key stake, and its numbers may expand to incorporate those within the political jurisdiction.

The Japanese case productively highlights both the utility and limits of accounts of convergence in immigration and citizenship policies. Unfortunately, comparative work focusing on citizenship and membership rights outside the commonly investigated Euroamerican cases is still rare in international migration studies. Broadening the scope of research on receiving countries to include other non-Western states with growing economies and a growing reliance on foreign workers is necessary to examine whether theories derived from Western case analyses have wider empirical applicability. This holds both for analyses

that claim to account for only Western cases but may apply more generally, and for analyses making blanket claims, that in actuality hold only for the West. Another potentially revealing, yet understudied, case is Korea, which has modeled many Japanese foreign policies (Seol and Skrentny, 2004), but recently has been more proactive than Japan in establishing front-door channels for foreign workers. To thoroughly assess the theoretical and empirical limits of current migration theories, greater attention should be directed toward countries outside the West.

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