

THE EMERGENCE OF ANTI-HATE SPEECH ACTIVISM IN JAPAN: THE RELEVANCE OF CRITICAL RACE THEORY'S SOCIOLOGICAL IMPLICATIONS

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ABSTRACT

As concern over hate speech grows into a global issue (Haraszti 2012), a recurring question confronting every democratic society is how it should restrict a discriminatory speech without infringing upon the universally accepted principle of free speech. Japan's recent experience in coping with growing hate speech presents a valuable case study. The country had staunchly protected the free speech principle enshrined in the post-World War II constitution and consistently been disinclined to pass any law that regulated hate speech. This, however, has changed dramatically in the last few years. The incidence of hate speech targeting ethnic Koreans exploded around 2012, which in turn set in motion a tidal wave of vibrant anti-racism movements. This article examines the relevance of sociological implications of critical race theory, a legal movement that has featured prominently in the anti-racist practice in the United States, in understanding the recent emergence of anti-hate speech activism in Japan.¹

KEYWORDS

Hate speech; critical race theory; social constructionism, interest convergence, Japan.

ABSTRAK

Tatkala keprihatinan akan ujaran kebencian menjadi masalah global (Haraszti 2012), pertanyaan yang mengusik setiap masyarakat demokratis adalah bagaimana ia harus membatasi ujaran kebencian tanpa melanggar asas kebebasan berpendapat. Pengalaman Jepang menghadapi ujaran kebencian yang merajalela menjadi studi kasus yang berharga. Negara itu secara gigih mempertahankan asas kebebasan berpendapat yang telah dicanangkan dalam konstitusi dan menolak membuat undang-undang yang mengatur ujaran kebencian. Namun, keadaan telah berubah drastis dalam beberapa tahun terakhir ini. Insiden ujaran kebencian yang menyasar warga etnik Korea meledak di sekitar tahun 2012 dan kejadian itu mengundang gelombang besar gerakan antirasisme yang penuh semangat. Artikel ini mengkaji relevansi implikasi sosiologis teori ras kritis, sebuah gerakan ilmu hukum yang mewarnai antirasisme di Amerika Serikat,

¹ Shiohara (2013; 2017) notes that academic discussion of hate speech in Japan has focused primarily on the issue of a hate speech regulation from a legal perspective.

dalam memahami kebangkitan aktivisme antiujaran kebencian di Jepang. Kajian ini juga memberikan gambaran sosiologis mengenai munculnya ujaran kebencian anti-Korea di Jepang, sebuah topik yang selama ini didominasi oleh argumen-argumen hukum tentang masalah konstitusionalitas pembatasan ujaran kebencian.

KATA KUNCI

Ujaran kebencian; teori ras kritis; konstruksionisme sosial, konvergensi kepentingan, Jepang.

1. INTRODUCTION²

As Maussen and Grillo (2014, 175) point out that finding ways of addressing the problem of hate speech while maintaining free speech is “one of the major challenges facing democratic societies.” Countries have coped with spiteful speeches with varying courses of action, including 1) the “minimalist” approach of the United States, which prioritizes the freedom of speech over every form of speech restriction including the hate speech regulation, and 2) the ‘regulationist’ stance exemplified by the European Union, which warrants a certain level of regulation of hate speech on the grounds that the latter will inevitably lead to the dismantling of democracy, pluralism, and diversity (Haraszi 2012; Maussen and Grillo 2014).

Ethnically discriminatory hate speech aimed at resident Koreans has existed in Japan for some time, but its incidence skyrocketed around 2012 amid the country’s deteriorating relationship with South Korea (Duetsche Well 2013; Sato 2013). Inflammatory demonstrations by anti-Korean activist groups have risen sharply since then, many of which involved racial invectives against ethnic minorities.

At the height of this rising racism, a new counter-protest movement was born, whose main activity involved tracking down xenophobic rallies and staging opposing demonstrations characterized by equally incendiary language. The movement’s provocative methods raised a few eyebrows, but its straightforward messages were instrumental in raising public consciousness regarding the presence of noxious discriminatory speech in Japan.

Furthermore, as reported by the Japan Times (2016), “In [August] 2014, the UN Committee on the Elimination of Racial Discrimination urged the Japanese government to regulate hate speech by law,” which led to the ascendancy of anti-hate speech activism in Japan, the most significant outcome of which was the passage of the very first hate speech elimination law by the Diet in May 2016.

The following sections present a detailed account of these processes and examine the sociological implications of critical race theory in understanding them. This study employs library research methods in collecting the relevant data concerning the outbreak of anti-Korean hate speech 2012-2015, the emergence of anti-racism movements, hate speech elimination legislation and its effects, as well as the theoretical perspectives for analyzing them, from both English and Japanese sources.

2. Definitions of Hate Speech

The term “hate speech” as we know it today has undergone a long process of refinement. Cortese (2006, 3) points out that before the 1980s, “hate” merely referred to “any intense dislike or hostility whatever its object

² The draft version of this article (Alam 2016), with entirely different theoretical discussion, was presented at the International Symposium “Half a Century of Japanese Studies in Indonesia: Reflecting the Past, Envisioning the Future,” organized by the Indonesian Association for Japanese Studies (ASJI), 27-28 October 2016, and published in Indonesian as Alam (2017).

... Hate, in this generic sense, could be directed at virtually anything—a person, a group, an idea, some other abstraction, or an inanimate object.” However, after the mid-1980s, “hate” began to be utilized “in a much more restricted sense to characterize an individual’s negative belief and especially about the members of some other category of people based on their ethnicity, race, gender, sexual orientation, religion, or physical or mental disability.” As a result, “this more limited use overlaps with prejudice, bigotry, racism, misogyny, homophobia, ageism, bias, and xenophobia (Ibid.)”

Today, one of the widely used definitions of spiteful speech is offered by the Committee of Ministers – Council of Europe (1997), which in its 1997 recommendation formulates the concept from a primarily racial, ethnic, national perspective as follows:

The term “hate speech” shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.

More recently, Maussen and Grillo (2014, 175) suggest that while “[i]n legal practice, a precise definition of ‘hate speech’ may be preferable . . . in other contexts more inclusive notions can be used.” They submit that in a social and political analysis the term “hate speech” should include “a wide range of forms of expression (oral or written) which may include pictorial and other kinds of representation, including symbols and signs, for example the ‘Heil Hitler!’ salute, or dress codes that express political sympathies (Ibid.)”.

Maussen and Grillo (Ibid.) further identify “three essential features of hate speech.” First, “it is directed against a specified or easily identifiable individual or, more usually, group of individuals based on aspects of their (core, non-voluntary) identity.” Second, “it stigmatizes the target group by implicitly or explicitly ascribing qualities widely regarded as highly undesirable.” Third, “because of its negative qualities, the target group is viewed as an unwelcome presence and a legitimate object of hostility.” The core, non-voluntary identity mentioned in this inclusive definition, clearly refers to such deeply personal attributes as race, ethnicity, nationality and religion as well as gender, age, disability, sexual orientation etc. For the purpose of this study, the inclusive definition of hate speech is used throughout this article.

3. CRITICAL RACE THEORY: BASIC TENETS

One of the theoretical perspectives that sanction hate speech regulation is critical race theory. The early pioneer of the theory, Mari Matsuda (Matsuda et al. 1993, 18), wrote that its origin can be traced back to the late 1970s, when “[t]he civil rights movement of the 1960 had stalled, and many of its gains were being rolled back ... [i]ndividual law teachers and students committed to racial justice began to meet, to talk, to write and to engage in political action in an effort to confront and oppose dominant societal and institutional forces that maintained the structures of racism while professing the goal of dismantling racial discrimination.” While critical race theory is largely referred to as a “movement” that engages “in studying and transforming the relationship among race, racism, and power (Delgado and Stefancic 2017, 3),” it does offer a number of theoretical perspectives for socio-political analysis of hate speech.

Among scores of its basic tenets (Ibid., 8–11)—ordinariness of racism, differential racialization, intersectionality, and antiessentialism, to name a few—the most relevant ones to this study are social constructionism and interest convergence. Social constructionism implies that racial, ethnic, gender, sexual, and other forms of discrimination are not solely occasioned by personal prejudice and decision making, but

rather informed by larger, systemic, structural, and cultural forces operating on psychological and communal levels of individual lives (Ibid.).

Interest convergence, a notion that the majority “will support minority rights only when it is also in their interest (Oremus 2012),” was proposed by Derrick Bell, one of the legal scholars who propounded the term “critical race theory” in the 1970s. As pointed out by Oremus (2012), Bell (1980) presents an audacious hypothesis in his historical article that “the US Supreme Court’s landmark 1954 school-desegregation decision, *Brown v. Board of Education*... [was] a part of a Cold War effort to improve America’s standing among Third World countries.” He theorizes that “world and domestic considerations—not moral qualms over blacks’ plight—precipitated the path-breaking decision (Delgado and Stefancic 2017, 22).” This bold hypothesis was later proved to be largely correct by Dudziak (2000), who demonstrated in her archival study that the US Justice Department did “intervene on the side of the NAACP³... responding to a flood of secret cables and memos outlining the United States’ interest in improving its image in the eyes of the Third World” (Ibid., 23–24).

Armed with these concepts, critical race theory today is concerned not only with racial discrimination but also with other forms of prejudice and discrimination, such as ageism, homophobia, sexism, and xenophobia. Critical race theory thinkers refer to this as “intersectionality,” a notion that the core attributes of an individual such as “race, sex, class, national origin, and sexual orientation... can be separate disadvantaging factors” (Delgado and Stefancic 2017, 58–59).

Delgado and Stefancic (Ibid., 20–24) further posit that the proponents of critical race theory consist of two camps, which respectively offer different practical implications, namely the “idealists” and the “realists.” The idealists hold that “racism and discrimination are matters of thinking, mental categorization, attitude, and discourse... [h]ence the effective methods to counter them are changing the system of images, words, attitudes, unconscious feelings, scripts and social teachings” that convey intolerance and prejudice (Ibid., 20–21). On the other hand, the realists believe that “racism is much more than a collection of unfavorable impressions of members of other groups (Ibid., 21),” but it has a lot to do with power and economic interests. They argue that racial hierarchies determine who gets tangible benefits and are deeply rooted in economic structure; hence, racism can only be abated by changing the racially informed class hierarchy. Anti-hate speech activism examined in this article is in alignment with the idealist strand of the critical race theory.

4. RECENT OUTBREAK OF HATE SPEECH IN JAPAN

Incidences of hate speech in Japan targeting resident Koreans exploded around 2012 amid Japan’s deteriorating relationship with South Korea, sparked off among others by the Korean president’s sojourn on the Liancourt Rocks,⁴ a collection of small islands in the Sea of Japan that has been a source of territorial disputes between the two nations (Deutsche Well 2013; Sato 2013).

In addition to international problems, the visit led to increased racist demonstrations in Japan. A report commissioned by the Ministry of Justice (the Center for Human Rights Education and Training 2016) suggests that from April 2012 to September 2015 the demonstrations involving hate speech occurred 1,152 times, an annual average of 329 for the period, or nearly once a day.

3 NAACP (the National Association for the Advancement of the Colored People) is a civil rights organization in the United States, founded in 1909. In *Brown v. Board of Education*, NAACP’s team of attorneys represented the plaintiff.

4 The Liancourt Rocks are known as Dokdo in Korean, and Takeshima in Japanese (<https://www.bbc.com/news/world-asia-19207086>).

A report prepared by the Korean Residents Union in Japan (2014) describes the sudden rise of anti-Korean discriminations as follows.

After the visit of President Lee Myung-bak to Dokdo (Takeshima) in August 2012, anti-Korean demonstrations intensified, and hate speech demonstrations with highly incendiary ethnically-discriminatory language began to occur frequently in areas with large concentrations of Korean residents, such as Shin-Okubo in Tokyo and Tsuruhashi in Osaka.

At the same time, the boom in the Korean influence on pop culture was attacked, and the contentious issues surrounding comfort women, territorial disputes, and history education were used to further exacerbate ethnically discriminatory language and behavior against 'anti-Japanese' Koreans. This was especially the case with the flagrantly hate-filled injunction, 'Kill them!' directed at Koreans, being heard more frequently.

Their hate rallies, in which they use megaphones in busy shopping districts to spew their anger, wave the Rising Sun ensign flag that conjures up images of pre-WWII Japanese militarism, and stir up hatred, threaten the lifestyles and safety of Korean residents in Japan, and have a particularly bad effect on children. This is a worsening social problem in Japan. There have even been voices within the Japanese Diet raising concern for this intensifying discrimination and calling for legal restrictions, but in reality, this situation continues to remain unaddressed.

5. RACIST DEMONSTRATIONS AND ANTI-HATE SPEECH ACTIVISM

5.1 Anti-Korean Group: Zaitokukai

Anti-Korean demonstrations in 2012–15 were mainly spearheaded by fringe right-wing groups that have been around in Japan for some time. Their agenda typically consists of the common staple of ultra-nationalist discourse such as the advocacy of national interests and dignity, onslaught on communists and leftists, strong condemnation of Russia, China, North and South Korea as well as, occasionally, the US. However, one group stood out among them as it exclusively targets long-term Korean residents of Japan, generally referred to as *Zainichi* (or Zainichi Koreans in English),⁵ and alleges the latter of taking advantage of Japan's welfare and tax system on account of the special permanent residence status granted to them. The group, known as Zaitokukai (an abbreviation of "Zainichi Tokken o Yurusanai Shimin no Kai," 在日特権を許さない市民の会, "the Association of Citizens against the Special Privileges of Zainichi"), was founded in 2007 with the express purpose of abolishing the so-called Special Act on Immigration Control which grants ethnic Koreans in Japan special permanent resident status that has hardly ever been conferred on other foreign individuals (Penney 2012; Shibuichi 2015; Yasuda 2015).

While officially claiming that its ultimate goal is simply to repeal an unfair legislation, in reality the group has primarily focused on organizing aggressive, and oftentimes violent, xenophobic rallies fraught with hate speech and racist slurs primarily targeting Zainichi Koreans.

According to the Asia-Pacific Human Rights Information Center (2013), "Zaitokukai has been holding its anti-Korean marches in 'Shin-Okubo Koreatown' since 2012," and the group's protest started in August 2012 "with about five hundred members marching through the streets of the neighborhood, displaying the... militaristic... 'kyokujitsuki' (rising-sun flag), and chant[ing] such slogans as '*Kankokujin wa kaere*' (South Koreans go home) and '*Chōsenjin wa dete yuke!*' (Koreans get out)."

⁵ Zainichi literally means "Japan resident," short for Zainichi Chōsenjin (Japan's resident Koreans).

5.2 Anti-Korean Incidents

5.2.1 Attacks on Kyoto Korean Primary School

Shortly before the hate-speech outbreak of 2012–15, in December 2009, Zaitokukai members stormed the Kyoto Chōsen Dai-ichi Primary School, a school operated by a pro-North Korean organization (Chongryon). Tokunaga (2011) recounts that in this incident the demonstrators shouted flagrantly hate-filled injunction through loud speakers during the school hours. They accused the school of illegally occupying a nearby public park. The students were terrified and many of them started crying openly, fearing for their lives. The Asia-Pacific Human Rights Information Center (2013) points out that “[m]embers of the police, who were present at that time, simply observed the incident and did not do anything,” and “[t]he school filed a criminal complaint against Zaitokukai on 21 December 2009.”

According to the Asia-Pacific Human Rights Information Center (2013), a few weeks after the incident, “Zaitokukai organized another hate speech demonstration against the school and the resident Koreans using loudspeakers on the street in front of the school... ignor[ing] a court order to stop the acts of assault and defamation... Four members of Zaitokukai who played the main role in organizing these actions were arrested and prosecuted in August 2010. The court convicted the four members on 21 April 2011 for forcible obstruction of business, destruction of property and defamation of the school. The court decision, however, did not consider the racist ideas and motivations or hate speech against a specific group of people” as the Hate Speech Elimination Act had not come into force yet.

The Center (Ibid.) further notes that “[t]he school filed a damage suit against Zaitokukai on 28 June 2010 demanding compensation for the damage suffered and still being suffered. On 7 October 2013, the Kyoto District Court banned the Zaitokukai from ‘demonstrating near a pro- Pyongyang elementary school[.]’... ruling that the group’s words blared through sound trucks were ‘extremely insulting and discriminatory.’” Additionally, “[t]he court also ordered Zaitokukai to pay about ‘12.26 million yen (\$126,400)’ in damages,” and “clearly stated in its judgment that Zaitokukai’s activities constituted a violation of the International Convention on the Elimination of All Forms of Racial Discrimination that Japan has been ratified.”

While the incident had taken place before the hate-speech outbreak of 2012–15, it was quite impactful as pointed out by legal scholar Hatano (2019, 233) that “[t]he Kyoto Korean School cases and their progeny, intertwined with the social movement against hate speech and racism, are said to help the development of ... anti-hate speech policies and legislation.”

5.2.2 Anti-Korean Death-Threats by an Underage Girl

On February 24, 2012, an anti-Korean rally was organized in Osaka by a number of right wing groups including Zaitokukai, and a fourteen-year old Japanese girl gave a harrowing speech expressing her hatred of Koreans (Hatano 2019, Kendall 2013, Penney 2013). Kendall (2013) notes that “[a]mid cheers of support from members of her own group, the girl goes on to state her desire to kill the ‘piece of crap’ Koreans living in the area, threatening a repeat of the Nanking Massacre in response to the Koreans’ ‘arrogance.’”

The video, which was uploaded on YouTube, clearly shows that “the young speaker repeatedly warns Koreans to return to their own country before the anger of the Japanese becomes so great that they are killed (Ibid.)” The footage, which also reveals that “the girl’s cries of ‘go home’ and ‘this is not your country’ are met with cheers from men and women off-camera (Ibid),” went viral on the Internet and “widely reported in South Korea and China” (McCurry 2013).

5.3 Counter Racist Action Collective (CRAC)

Amid a growing trend of anti-Korean demonstrations by right-wing organizations, a new kind of counter-racist activism was born. The embryo of the movement came into existence after the great earthquake of 2011, when a number of social activists who were protesting against a variety of political issues such as nuclear power plants and constitutional amendment began organizing counter-demonstrations.⁶ In September 2013 the Counter Racist Action Collective (CRAC), or in Japanese *Tai-Reishisuto Kōdō Shūdan* (対レイシスト行動集団) was formed. According to its website, CRAC provides “a platform for those who are going to carry out various anti-racism action such as street protest, speech, photograph, art, music, petitions, lobbying, events, workshop and so on” (CRAC 2019). Resolving to oppose discrimination on all levels, the group is often at odds with the police and the government. Maher (2015) explains, “[CRAC] members are frequently arrested by the police during demonstrations, despite operating under a total non-violence policy. When they are not being detained by the authorities, they are subject to government-approved house searches in order to ascertain their motives and movements.” A CRAC member interviewed by Maher believed that the group’s style of protest, in which two groups of citizens confront each other, was very rare and in fact unprecedented in Japan.

A Japan Times article (Harlan 2013) recounts a Koreatown resident’s somewhat ambivalent feelings toward CRAC as follows.

“The first time Ryu [a Koreatown resident] heard the anti-Korean protesters marching on a main street below her office, she was angry enough to think about heaving wooden furniture through her fourth-floor window. But lately, she’s stayed calmer and has tried to think about the 25 Japanese staff members she employs” (*Ibid.*).

“I know they are kind-hearted said Ryu,’ who moved to Japan 18 years ago and obtained legal residency . . .” (*Ibid.*).

“Since early this year [2013], a new movement has emerged to reinforce this view. When the ultranationalists gather in Shin-Okubo, another group—a loosely organized mix of Japanese citizens and activists—gathers on the other side of the street. They jeer at the ultranationalists and use air horns to drown out their chants” (*Ibid.*).

“‘You’re a Japanese shame!’ one woman shouted to them during a recent gathering. ‘Stop the racism!’ another said” (*Ibid.*).

“The clashes have sometimes turned violent. In July, several members from both groups were arrested after they began spitting at one another and trading punches” (*Ibid.*).

“The counter-protesters have barely been mentioned in the South Korean media, but for many ethnic Koreans living in Shin-Okubo, they more accurately reflect Japanese sentiment. In some cases, the hundred or so anti-Korean protesters have been well outnumbered, according to videos of the protests, and the police try to keep the groups separate” (*Ibid.*).

“Ryu has seen this, too, from her window. The clashes make her uneasy, she said, but added, ‘Somebody is standing up for us when we can’t. So yes, they make me appreciative’” (*Ibid.*).⁷

Yasumichi Noma (Lite-ra 2014), the founder of the group, explained in an interview that the adoption of inflammatory, aggressive tactics is by design. He argued that “in order to adequately combat the racist rallies that give the finger to the residents and hurl such abusive phrases as ‘expel all Zainichi Koreans from Japan,’ we have no choice, but to use equally offensive chants such as ‘go home, bigots,’ ‘you racist pigs are a big

6 For general information on anti-racism movements in Japan today, see Akedo et al. (2015). Penney (2012) notes that in the first months of 2013, as Zaitokukai’s vile rhetoric was escalating, anti-racist protesters and flash mobs began to show up regularly on many of the group’s rallies, chanting counter slogans such as “Racists Go Home,” “Go Crawl Back to the Net.”

7 Emphasis author’s.

disgrace,' or simply, 'go home you piece of crap,' etc.". He then went on to argue that "some may accuse us of resorting to equally abusive hate speech, but please understand that our intent is not to hurt anyone but to stop their spiteful words."

CRAC's militant attitude, however, has occasioned a number of violent incidents in which its members clashed with right wing group demonstrators and were taken into custody by the police.⁸ CRAC's provocative methods have also elicited scathing criticisms.⁹ A Newsweek-Japan article (Fukada 2014) titled "*Han-sabetsu to iu sabetsu ga bōsō suru*" (discrimination in the name of "anti-discrimination" running wild) is highly critical of CRAC's methods and maintains that while Zaitokukai demonstrators have been severely outnumbered, CRAC's judgmental language is reminiscent of what American conservative writer Andrew Sullivan refers to as the gay movement's "ugly intolerance," a fanaticism that is "intimidating [to] the free speech of others," and is "no better than the anti-gay bullies who came before us."

Sociologists Kitada (Kitada et al. 2016) and Oguma (Oguma et al. 2016) refer to CRAC as a "post-311 citizen movement,"¹⁰ which they believe is significantly different from the past social activisms such as the anti-security treaty (*han-anpo*) rallies of the 1960s. Unlike the latter that was driven by conventional leftist political parties and activists, the former is dominated by recently set up networks of citizens without distinguishing their political affiliations. Active participants in the anti-hate speech movement involve not only liberal and leftist activists, but also right-wing organization members.

5.4 Anti-Hate Speech Network and "March on Tokyo for Freedom"

Unlike CRAC that prioritizes counter protests targeting racist rallies, Norikoe Net (のりこえねっと, International Network for Overcoming Hate Speech and Racism) is a loosely organized network of academics, activists, artists, lawyers, legislators, writers, and regular citizens, which focuses on the dissemination of information and networking for curbing hate speech and racism in Japan and beyond. Shibuichi (2016) points out that many of Norikoe Net representatives are well-known leftist elites or liberal/progressive opinion leaders in Japan.

Through its website (<http://norikoenet.jp/>), the group offers information on issues related to hate-speech such as racial slurs, forced adaptation, ethnic minorities, freedom of speech, and so forth, in the form of video footage of lectures, discussions, and talk shows.

The network's founding in 2013 was closely related to an event called the "March on Tokyo for Freedom," organized by scores of citizen groups condemning hate speech and discrimination. The march, which was also meant to commemorate Dr. Martin Luther King's "March on Washington" fifty years ago, took place on September 22, 2013, and was attended by 3000 people from various walks of life, epitomizing the very first mass denunciation of hate speech and racism in Japan. Norikoe Net was founded three days after the event, on September 25, 2013, with an explicit intent to enact an anti-hate speech law (Mainichi Shinbun 2013). The "March on Tokyo for Freedom" was repeated in November 2014 and November 2015, each involving approximately 2800 citizens from various backgrounds (Labornet Japan 2014). These rallies typically feature carnival like musical performances, dances, marching bands, while the participants hold signs reading, "Let's be friends!" "No H8 (hate)!" etc., drawing massive attention from the onlookers along the roadsides.

8 See Fackler (2013) and Nihon Keizai Shinbun Digital (2013) for violent incidents involving CRAC members.

9 For diverse detractors of CRAC's methods, ranging from the mainstream media to liberal leftists, see Shibuichi (2016).

10 311 is a reference to the great earthquake that hit Japan on March 11, 2011.

6. U.N. RECOMMENDATIONS AND HATE SPEECH ELIMINATION ACT OF 2016

According to *The Japan Times* (Murai 2016), “In August 2014, the U.N. Committee on the Elimination of Racial Discrimination urged Japan to take ‘appropriate steps to revise its legislation’ with penal sanctions to address the spread of hate speech against minority groups, particularly Korean residents in Japan.” The Committee noted in its recommendation that “hate speech and other behavior inciting racist violence and hatred during rallies and in the media, including the Internet, are ‘not always properly investigated and prosecuted’ by Japanese authorities” (*Japan Times* 2016).

Based upon these considerations, the Committee insisted that Japan “take appropriate measures to: (a) firmly address manifestations of hate and racism as well as incitement to racist violence and hatred during rallies; (b) take appropriate steps to combat hate speech in media including the Internet; (c) investigate and, where appropriate, prosecute private individuals as well as organizations responsible for such acts; (d) pursue appropriate sanctions against public officials and politicians who disseminate hate speech and incitement to hatred; and (e) address the root causes of racist hate speech and strengthen measures of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and among racial or ethnic groups” (the Committee on the Elimination of Racial Discrimination 2014).

The external pressure from the United Nations had a significant impact on the Japanese government. Hatano (2019, 269) points out that “[a]ccording to... an officer of the Human Rights Protection Bureau within the Ministry of Justice, the recognition of the rampant situation with hate and anti-hate speech rallies and the fact that the UN has been applying pressure on Japan seem to have been one of the factors for the change in government attitude.” As a result, “[t]he ministry subsequently began campaigning to raise public awareness of issues surrounding hate speech through such means as posters and online advertisements” (Murai 2016).

All this eventually paved the way for the enactment of Japan’s very first hate-speech restriction law. On May 24, 2016, the Hate Speech Elimination Act of 2016 was passed by the Parliament, opening up a new chapter in Japan’s long overdue efforts to restrain racism and discrimination.¹¹

While the legislation was generally welcomed as “the first such law in a country that [had] long failed to tackle the issue of racism despite its membership in the U.N.-designated International Convention on the Elimination of All Forms of Racial Discrimination” (Osaki 2016), detractors denigrated it as “ineffective” (Ibid.). This is due to the fact that while the law “condemns unjust discriminatory language as ‘unforgivable,’ it does not legally ban hate speech and sets no penalty” (Ibid.). Experts also emphasize that “the law is only intended to cover people of overseas origin and their descendants who live legally in Japan” (Ibid.), which means it “excludes many foreign residents without valid visas, such as asylum seekers and over-stayers” (Ibid.).

The law, however, has been effective in encouraging Japan’s municipalities, especially those with a large ethnic Korean population, to enforce ordinances aiming to curb hate speech and discrimination. In May 2016, Kawasaki, a city with a sizable ethnic Korean community, “prohibited rally organizers from using a park, citing the need to protect citizens from verbal abuse” (*Japan Times* 2017), and “became the first municipality in the country to take such a measure” (Ibid.). In July 2016, two months after the passing of the anti-hate speech law, in the city of Osaka, another municipality with a large ethnic Korean concentration, “Japan’s first ordinance aimed at deterring... hate speech went into effect” (Johnston 2016). All in all, according to Japan’s National Police Agency, “[t]he number of xenophobic rallies in which ultra-right-wing groups use

¹¹ The complete title of the law is 「本邦外出身者に対する不当な差別的言動の解消に向けた取組の推進に関する法律」 (The law for promoting measures to eliminate unjust discriminatory speech and action against the people of foreign origin), Law No. 68/2016.

discriminatory language has dropped by nearly half in the 11 months since the Diet enacted a law to deter hate speech” (Japan Times 2017).

Two years after the anti-hate speech act had come into force, however, the U.N. Committee on the Elimination of Racial Discrimination again called for “the strengthening of the hate speech elimination law that came into force in Japan in 2016, as discrimination against ethnic minorities persists in the country” (Japan Times 2018). Marc Bossuyt, a committee member and country rapporteur for Japan, “commended as positive the entry into force of the Hate Speech Elimination Act in 2016” (the Committee on the Elimination of Racial Discrimination n.d.), but pointed out that the law “had some defects, such as limitation to citizens of foreign origin only” (*Ibid.*), and “appeared to have only very limited effects as a remedy for minorities in Japan” (*Ibid.*); therefore, further amendment is needed.

In June 2019, marking the third anniversary of the law, Asahi Shinbun (2019) ran an editorial assessing its benefits and shortcomings. The editor points out multiple drawbacks: (1) the Internet is still awash with anonymous discriminatory comments and expressions; (2) hateful arguments are used during the election campaigns, and (3) vicious fake news surfaces in the wake of natural disasters, accusing members of the minority committing crime. The editor nevertheless believes “the law has produced significant effects (*Ibid.*),” namely: (1) the court has become more proactive in dealing with hate-speech related cases, banning rallies potentially promoting hatred or ordering website operators allowing discriminatory posts to pay compensation; (2) the law has changed the government, the judiciary and the law enforcement agencies’ stance toward hate speech, emboldened them to take a firm action; and (3) a number of municipal governments including Kawasaki, Osaka, and Tokyo have issued an ordinance to restrict the use of public facilities for hate rallies.

7. CRITICAL RACE THEORY AND JAPAN: SOCIOLOGICAL IMPLICATIONS

In Japan, the term “critical race theory” has been translated as *hihanteki jinshu riron* (批判的人種理論), and generally regarded as “a radical legal movement that aims to transform the relationship among race, law and power” or “[a] reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered minorities” (Higaki 2017).

While academic discussions on critical race theory in Japan have predominantly focused on legal perspectives relating to hate speech regulations, there are a few studies offering sociological implications of critical race theory in the Japanese context, including ones that deal with recent outbreaks of anti-Korean hate speech.

7.1 Levin: “Whiteness” of Japan’s Ethnic Majority

Levin (2008)¹² posits that Japan’s ethnic majority, Wajin,¹³ are culturally, socially, and legally endowed with what critical race theorists term the “whiteness” of white people in the United States, i.e. “a vast range of social privileges and an intricately related but separate experience described as transparency” (*Ibid.*). Privilege here refers to the benefits experienced by the majority such as whites in the United States as a result of their advantaged position, especially their ability to live without experiencing discrimination (*Ibid.*). Transparency means “the ability of whites to live without recognizing race as a fundamental operating actor and without examining the impact of race (including race-based privilege) upon their life experiences” (*Ibid.*).

¹² Unofficial English translation is accessible at https://www.law.hawaii.edu/sites/www.law.hawaii.edu/files/content/events/19765/Levin.Wajin%27s_Whiteness.Horitsu_Jiho_Feb._2008.English.pdf.

¹³ Literally means the Japanese, Wajin is a classic term referring to the Japanese as an ethnic group. The term is widely used by the Ainu to distinguish them from Japan’s ethnic majority.

Levin argues that unlike the minority groups in Japan such as Burakumin, ethnic Koreans, Ryukyu/Okinawan Islanders, Nikkei communities, and other Asian communities, Japan's ethnic majority are not subjected to discrimination and prejudices. Furthermore, through Modern Japan's mainstream racial discourse famously presenting a false myth of homogeneity of a single Japanese race, the existence of minorities as such is obscured; thereby, the transparency of the dominant majority is almost perfectly achieved. In order to amend these ongoing racial inequalities, Levin contends, Japan's ethnic majority must first become cognizant of the minorities' predicament as well as their own privileges.

7.2 Arudou: Embedded Racism and Visible Minorities

Arudou (2015) maintains that previous studies of Japan's minorities have disproportionately focused on "invisible minorities," i.e. historical under-caste Burakumin, ethnic Koreans, the Ainu and Okinawan indigenous peoples, who are "generally of 'Asian' roots and can 'pass' as 'Japanese' in many social interactions" (Ibid., 695). In his view, "[t]his approach... results in hundreds of thousands of people living in Japan, including Japanese citizens, being overlooked or omitted from studies of racism in Japan" (Ibid., 699). To use Arudou's term, they are "visible minorities," i.e. "people on first glance may not look . . . [Japanese] in terms of physical appearance and 'visual identification'" (Ibid., 701). He further notes that "[v]isible [m]inorities' are residents of Japan who are visually identified as not 'looking Japanese' (e.g., Subcontinental Indians, the African Diaspora, Caucasians, Middle-Easterners, non-Nikkei South Americans, some South Asians etc.), and are thus treated as 'not Japanese'" (Ibid., 701-702).

Arudou (Ibid., 703) contends that this oversight has "deleterious effects on otherwise sound research on racism and minorities in Japan" as there have been a number of cases involving blatant discrimination against visible minorities at a public facility such as a hot spring bathhouse and a jewelry store.

Arudou (Ibid., 723) concludes, drawing upon the concept of "Embedded Racism inspired by Critical Race Theory," that racial discrimination based on one's appearance exists in Japan "despite the claims that 'homogeneous, monoethnic Japan' has no 'races,' therefore no racial discrimination."

7.3 Higaki: Japan's Unawareness of Racial Inequalities

Higaki (2010; 2011; 2017) provides an extensive introduction to critical race theory in Japanese and analyzes in detail how it has featured in American case law jurisprudence. According to Higaki (2011; 2017), the theory was introduced to Japan in the late 1990s, but since then there has been no comprehensive discussion of it in Japanese, except for a number of articles citing it as an example of legal arguments advocating hate speech restriction.

Believing that hate speech restriction is feasible without infringing upon the right to free speech in the Japanese constitution, Higaki (2019) holds that critical race theory offers a thought provoking argument for Japan. He agrees with Levin (2008) that in Japan there is a double transparency of racial inequalities, i.e. (1) the ethnic majority's unawareness of their privileges; and (2) the general public's lack of mindfulness of the presence of racial and ethnic minorities due to the pervasive nature of the homogeneous nation myth prevalent in Japan. As an example of this, Higaki (2017) quotes a Japanese constitutional law professor, who states that "since there is no racial differences among the Japanese, racial discrimination has never posed a serious problem for Japan." Due to this double unawareness, Higaki (Ibid.) believes that the majority ethnic group's transparency in Japan is even "more serious than in America."

From a legal point of view, Higaki (Ibid.) believes that in order to enact an effective restriction of hateful expressions in Japan, a clear definition of hate speech is needed, for which one needs to first understand both

historical and present-day contexts of racial and ethnic discrimination and investigate the actual conditions of discriminatory speech going on in the country.

7.4 Shiohara: Hate Speech and a Sociology of ‘Vulnerability’

With the emergence in Japan—especially among young people who do not necessarily approve of hate speech—of an ‘atmosphere’ to tolerate and condone hateful expressions against ethnic Koreans and other minorities, Shiohara (2013; 2017)¹⁴ in his article titled “Heito supīchi to ‘kizutsukiyasusa’ no shakaigaku” (ヘイトスピーチと「傷つきやすさ」の社会学, hate speech and a sociology of “vulnerability”) sheds light on the sociological factors contributing to the climate. Drawing upon critical race theory, he suggests that one of the mechanisms that perpetuate racial inequalities is the inculcation of a strong sense of “vulnerability” into minority individuals.

To use Shiohara’s words, a sense of vulnerability is excessively “internalized” and “embodied” by the minorities so that it is extremely difficult for the majority to accurately understand the minority’s plight. This in turn creates an irrevocable gap between the minority and the majority, so when a society is undergoing fundamental changes such as rapid globalization, and the majority are beginning to feel increasingly “vulnerable,” the minorities will become an easy target of the majority’s condemnation on account of their “unjust privileges.” In his view, this replicates hate groups such as Zaitokukai, whose allegation that ethnic Koreans enjoy undeserved “entitlements” is largely unsubstantiated.

Shiohara continues that the majoritarian groups’ demand for redress for the “unjust” system is fundamentally flawed as it is based on a unilateral assumption that only the majority can rightfully determine the fairness of the system. By excluding the minorities—the concerned parties—from the decision-making process, these groups are going against the very principle of deliberative democracy.

Finally, echoing critical race theory’s advocacy of hate speech regulation, Shiohara argues that while many legal scholars in Japan are unfavorable to any hate speech restriction, as the existence of minorities as such is hardly recognized and accepted in Japan, a non-interfering approach will inevitably deprive the minorities’ right to free speech. In this sense, he believes that, multiple shortcomings notwithstanding, recently enacted anti-hate speech law is a significant development in remedying the injustices faced by ethnic Koreans and other minorities, and to start building a new relationship between these minorities and the dominant society.

8. CONCLUSION

A brief examination of recent research concerning the sociological implications of critical race theory in Japan reveals that the notion of transparency or unawareness of racial injustices, as well as that of the existence of ethnic minorities *per se*, has featured prominently in these studies. This in turn highlights their emphasis on one of the major tenets of critical race theory, i.e. social constructionism, a notion that racial and ethnic discrimination is occasioned by systemic and structural forces.

Shiohara (*Ibid.*), who specifically alludes to the recent outbreak of hate speech against ethnic Koreans, describes these societal forces as the process of the minority being forced by the dominant society to internalize and embody excessive vulnerability, which is subsequently exploited by the majority as an easy target of hateful expressions.

¹⁴ The article (2013) was originally published online, and later included in a collection of his essays (2017) with additional sections.

Informed by such observation, their discourse unanimously emphasizes that in order to achieve more equal racial relationships in Japan, it is essential that the Japanese public become cognizant of the presence and the predicament of ethnic minorities in the country. In addition, this brings to the fore the significance of the anti-hate speech movements emerging in Japan in the last few years. Some of their methods and approaches might have raised a few concerns, but it is undeniable that they have awakened the public to the harsh realities of ongoing hate speech.

Anti-hate speech movements as represented by newly emerging citizen activism such as CRAC and Norikoe Net, along with a timely external pressure exercised by a UN Committee, have all been a factor for the passing of the very first anti-hate speech act, a historical event that marks Japan's transition from the minimalist to the regulationist position with regard to hate speech restriction.

Japan's seemingly abrupt position shift indicates the relevance of another critical race theory concept, i.e. interest convergence, a notion that unforeseen significant changes can occur when the majority's and the minority's interests converge. It is well documented that as early as in 2014, Tokyo's decision to host the Olympic Games in 2020 impacted bureaucrats, legislators, and politicians as they were "coming under pressure to rein in the verbal abuse and outright hate speech directed at non-Japanese people, chiefly Koreans" (Economist 2014). Mounting needs to improve Japan's image ahead of a momentous international event undoubtedly precipitated the passing of the landmark hate speech elimination law. Furthermore, in October 2018, the Tokyo metropolitan government complied with the Olympic Charter and adopted the ordinance restricting individuals and organizations from using public space to engage in hate speech against ethnic and sexual minorities (Asahi Shinbun 2018b).

All this shows that interest convergence is not only an analytical concept to understand the political dynamics that precipitated consequential social changes, but also a strategic tool that enables individuals and groups advocating for change to identify and capitalize on the majority's crucial interests and promote remedial measures for disenfranchised members of society.

It should also be noted, however, that critical race theory has yet to generate any impact on the Japanese legal system as the recently enacted Hate Speech Elimination Act was more of a result of growing anti-racist movements, an opportune external pressure, and interest convergence. The theory, nevertheless, has featured prominently in recent legal and sociological discourse that seeks to understand the social dynamics behind the dramatic rise of anti-Korean hate speech in Japan.

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