

WARRIORS BETRAYED: HOW THE “UNWRITTEN LAW” PREVAILS IN JAPAN

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Unless otherwise noted, the author is responsible for the accuracy of all Japanese translations. Japanese authors are cited as they appear on the publication. Some authors followed the traditional Japanese style of placing the author’s surname first, followed by the first name; others follow the Western style. For authors in the former category, only surnames are used for subsequent abbreviated references.

[C]an't it be said that today's armies of corporate workers are in fact slaves in almost every sense of the word?¹

[T]he freedom of an individual to live and die naturally without being subjected to destruction by others is the foundation of all human rights.²

I. INTRODUCTION

Having risen from the ashes of World War II, Japan today prides itself on its global economic power.³ Japanese corporations have triumphed in marketplaces across the globe.⁴ The devotion to work by male white-collar workers, often called corporate warriors,⁵ has heavily fueled Japan's economic growth.⁶ It is the workers, not executives, who have shaped

1. NATIONAL DEFENSE COUNSEL FOR VICTIMS OF KAROSHI, KAROSHI: WHEN THE "CORPORATE WARRIOR" DIES 4 (1990)[hereinafter NATIONAL DEFENSE]. For a description of the Defense Counsel for Victims of Karoshi, see *infra* section VII.B.2.

2. NATIONAL DEFENSE, *supra* note 1, at Preface IV. For the unabridged quote, see *infra* text accompanying note 228.

3. Ronald E. Yates, *Japanese Live...and Die...for Their Work*, CHI. TRIB., Nov. 13, 1988, at 1. Japan's rapid accumulation of assets has constituted one of the most visible trends in the American financial market. *Five Ways to Fight Back*, NEWSWEEK, Oct. 9, 1989, at 71. Between 1979 and 1990, annual Japanese investment in the U.S. skyrocketed nearly eighty-fold, from 257 million to 19.9 billion dollars. Eileen M. Mullen, *Rotating Japanese Managers in American Subsidiaries of Japanese Firms: A Challenge for American Employment Discrimination Law*, 45 STAN. L. REV. 687, 729 n.13 (citing Bureau of Economic Analysis, U.S. Department of Commerce, *U.S. Business Enterprises Acquired or Established by Foreign Direct Investors in 1985*, 66 SURV. OF CURRENT BUS., May 1986, at 50, tbl. 5; Bureau of Economic Analysis, U.S. Department of Commerce, *U.S. Business Enterprises Acquired or Established by Foreign Direct Investors in 1991*, 72 SURV. OF CURRENT BUS., May 1992, at 72, tbl. 4). The U.S. media has often portrayed Japan as a zealous investor. To the majority of Americans surveyed in 1989, Japan's economic power posed a greater threat than the military power of the then Soviet Union. *Japan Goes Hollywood*, NEWSWEEK, Oct. 9, 1989, at 62.

4. Political economist Pat Choate reported the following as of 1990: the Japanese own \$285 billion of U.S. banking assets (a 14% share of the U.S. market); possess more real estate holdings in the U.S. than the members of the European Community (EC) combined; and trade up to 25% of the daily volume on the New York Stock Exchange. PAT CHOATE, AGENTS OF INFLUENCE, at Introduction. (1990).

5. "Corporate warrior" is a term often used to describe a Japanese businessman. Tatuso Inoue, *The Poverty of Rights-Blind Communitarity: Looking Through the Window of Japan*, 1993 B.Y.U. L. REV. 517, 528 (1993). See also generally Kawahito Hiroshi, *Death and the Corporate Warrior*, 37 JAPAN Q. 149 (1991); Esaka Akira & Kusaka Kimindo, *Farewell to the Corporate Warrior*, 17 JAPAN ECHO 37 (1990).

6. See Yates, *supra* note 2; Osamu Katayama, *Back to the Drawing Board*, 39 LOOK JAPAN 4 (1993); Esaka Akira, *Strong Medicine for an Ailing Labor Movement*, 13 JAPAN ECHO 65 (1986); JAPAN TRAVEL BUREAU, SALARYMAN IN JAPAN 85 (1986); JARED TAYLOR, THE SHADOWS OF THE RISING SUN: A CRITICAL VIEW OF THE "JAPANESE MIRACLE" 148 (1983).

Japan's success.⁷ Built upon a notion of lifetime commitment,⁸ the Japanese employment system has dictated that these men endure inordinately long work hours.⁹ The rigor of corporate life has stripped Japanese employees of the freedom to cultivate themselves as individuals.¹⁰ Such harsh working conditions have caused sudden collapses of some warriors; *karoshi* (a Japanese word for death from overwork)¹¹ has emerged as one of the most pressing issues facing the Japanese labor market today.¹²

7. TAYLOR, *supra* note 6, at 148.

8. Japanese business management has been distinguished by its guarantee of job security through lifetime employment. This security has obliged workers to put in extensive work hours at the cost of their private lives. Observers have described the essential nature of the Japanese employment system as feudalistic and paternalistic. See generally JAPAN: A COUNTRY STUDY 115, 116-17, & 216-18 (Ronald E. Dolan & Robert L. Worden eds., 5th ed. 1992). For a comparative analysis of employment practices in Japan and the United States, see generally Robert Abraham, *Limitations on the Right of Japanese Employers to Select Employees of Their Choice under the Treaty of Friendship, Commerce, and Navigation*, 6 AM. U. J. INT'L L. & POL'Y 475, 479-84 (1991); Marcia J. Cavens, *Japanese Labor Relations and Legal Implications of Their Possible Use in the United States*, 5 NW. J. INT'L L. & BUS. 585 (1983). For a more complete discussion of the Japanese employment system, see *infra* section V.

9. For a discussion of work hours in Japanese corporations from a comparative perspective, see generally Robert E. Cole, *Work and Leisure in Japan*, CA. MGMT. REV. 52 (Spring 1992). See also *infra* section III.A.

10. In Japan, both the workplace and the home have served as "vital mechanisms in the collectivizing of individual emotions toward the goals of increased productivity and the income-doubling program." Yamazaki Masakazu, *Signs of New Individualism*, 11 JAPAN ECHO 8, 13 (1984).

11. *Karoshi* generally involves diseases of the brain and heart. For a definition of *karoshi* by Dr. Uehata Tetsunojo of the National Institute of Public Health, see *infra* note 33 and accompanying text. See also generally KAROSHI BENGU-DAN ZENKOKU RENRAKU-KAI [THE NATIONAL DEFENSE COUNSEL FOR VICTIMS OF KAROSHI], KAROSHI! [DEATH FROM OVERWORK] (1989) [hereinafter VICTIMS OF KAROSHI]; OSAKA KAROSHI MONDAI RENRAKU-KAI [OSAKA KAROSHI ISSUES RESEARCH GROUP], KAROSHI: 110-BAN [DEATH FROM OVERWORK: 911] (1989) [hereinafter OSAKA KAROSHI MONDAI] ("110" is the Japanese equivalent of "911," the emergency telephone number in the United States); Miyuki Muneshige, *Enough is Enough*, 37 LOOK JAPAN 36 (1991).

12. See *infra* section II.

Karoshi can be called a symbolic death.¹³ It offers insights into a grave injustice resulting from the primacy of corporate welfare in Japan.¹⁴ Japanese corporations unilaterally create and enforce their own mechanisms of control and order over employees. These unwritten rules often prevail over the system of the written laws or universal principles of justice and equity.¹⁵ In the shadow of the global economic power lies a legal culture that has impoverished individual lives.

The prevalence of *karoshi* highlights two particular areas of Japanese law, which have utterly failed to protect rights of workers and their families: the work hour regulations and the workers' compensation system. First and foremost, a provision of the Labor Standards Law¹⁶ has allowed employers to impose a vast amount of overtime upon their employees.¹⁷ Second, families of *karoshi* victims face procedural and substantive obstacles as they seek the Survivors Compensation under the Workers' Accident Compensation Insurance Law.¹⁸ Claimants endure considerable hardships,

13. Inoue, *supra* note 5, at 533; Kazuhiko Komatsu, *Karo-no Shisutemu [The System of Work-Related Fatigue]*, ASAHI SHINBUN [ASAHI NEWS], June 25, 1994, at 13. Inoue elaborates on the concept of the symbolic death as follows:

Karoshi, therefore, is not an isolated personal tragedy. Just as egoistic and anomic suicides symbolize the anxiety and despair of the individualistic society, *karoshi* symbolizes the tension and distress of a hyperindustrialized and secularized communitarian society, not of a primitive and religious community.

Inoue, *supra* note 5, at 538. See also Kawahito, *supra* note 5, at 154 (discussing various cultural elements of *karoshi*, such as "the work ethic, a social value system that extols perseverance in the face of all odds, and a family structure in which the man is still the only breadwinner").

14. Japan boasts one of the world's highest GNP's per capita. Nonetheless, most Japanese "do not feel theirs is an affluent life." Their sources of complaints typically include: heavy tax burdens, long working hours, unsatisfactory housing conditions, and the skyrocketing cost of living. Cole, *supra* note 9, at 54.

15. Inoue, *supra* note 5, at 520. One observer notes that "the customary Japanese way of doing business inexorably works to defeat the stated purpose of that law." Paul Lansing & Tamra Domeyer, *The Tateme and Honne of Japan's Internationalization: The Japan-South Africa Relationship*, 5 FLA. J. INT'L L. 61, 68 (1989) (citing Iwakuni, *Laws May Change But Japanese Society Does Not*, 6 INT'L TAX & BUS. L. 300, 304 (1988)).

16. Rodo Kijun Ho [Labor Standards Law], Law No. 49 (1947) (Japan) [hereinafter LSL].

17. See Cole, *supra* note 9, at 56-57. See also *infra* section III.A.

18. Rodo Saigai Hoken Hosyo Ho [Workers' Accident Compensation Insurance Law], Law No. 50 (1947) (Japan) [hereinafter Compensation Law]. The Law covers all workers except government employees and seafarers. For the latter group, the following laws apply: (1) the Central Government Employee's Injury Compensation Law; (2) the Local Government Employee's Injury Compensation Law; and (3) the Seafarers' Insurance Law. All these laws provide benefits under coverage formulas similar to those of the Workers' Accident Compensation Law. *Id.* See generally Ryuichi Yamakawa, *The Applicability of Japanese Labor and Employment Laws to Americans Working in Japan*, 29 SAN DIEGO L. REV. 175, 184-86 (1992).

including the following: a heavy burden of proving the relationship of the death to the victim's work, lack of access to evidence, and prolongation of the proceedings.¹⁹ It is thus inaccurate to characterize *karoshi* solely as a socio-economic problem, let alone a personal tragedy; efforts to eradicate *karoshi* will be futile without legal solutions.²⁰

It is time for Japan to start building a labor force that enables its participants to work with dignity and hope. The battle against the continued dominance of corporations over the worth of the individual demands the force of law. For this reason, legislative reform should play an active role in expanding workers' protections and punishing offending employers. Enforcement of more stringent law, coupled with effective sanctions, will fulfill this goal. At the same time, families of *karoshi* victims and their advocates need to work collectively toward fostering public dialogue on the Japanese labor practice.

This paper explores *karoshi*, which offers a valuable glimpse into Japanese society, notably devoid of effective law enforcement.²¹ Issues on *karoshi* often remain confined to a sphere of labor law. This paper, however, expands the subject to include a more fundamental discussion of underlying societal values. Part II gives an overview of the general problems associated with *karoshi*. Part III critically evaluates the failure of the Japanese legal system to prevent *karoshi* and to compensate victims' families. Part IV illustrates the weak enforcement of law in Japan from a comparative perspective. Part V describes the Japanese labor practice, which has allowed corporations to exert vigorous power over individuals. Part VI discusses attitudinal changes among younger Japanese, which may profoundly affect the nation's legal landscape. Finally, Part VII concludes that the law should provide a more powerful vehicle for the full attainment of human dignity in the Japanese labor force. It also suggests that the organized efforts by the community are vital to enhance societal condemnation of employers' abuse of power.

II. OVERVIEW OF *KAROSHI*

In a few weeks, Shinji Yasuda (not his real name) would have held his third child in his arms.²² At age thirty-seven, the car engine designer died of a stroke after collapsing at his company cafeteria in August, 1987.²³ For more than three years, Yasuda had left for work before seven o'clock in the

19. See NATIONAL DEFENSE, *supra* note 1, at 94. This paper focuses on the first two of the problems.

20. See *infra* section VII.A.

21. See *infra* section IV.B.

22. NATIONAL DEFENSE, *supra* note 1, at 5.

23. *Id.*

morning and returned home as late as two in the next morning.²⁴ His death signified the ultimate sacrifice of a corporate warrior, immersed in the keen competition of the car industry, a symbol of Japan's economic superpower.²⁵

Toshitsugu Yagi, a forty-three year-old middle manager of Sogei Inc., an advertising agency in Tokyo, collapsed and died of myocardial infarction at his home on February 4, 1987.²⁶ Yagi had constantly worked overtime, even until after the last train left; he had either taken a taxi home or stayed at a hotel.²⁷ The company had no system of recording or compensating for overtime work.²⁸ After his death, Yagi's wife found the following words in Yagi's notebooks:

Let's think about slavery, then and now. In the past, slaves were loaded onto slave ships and carried off to the new world. But in some way, aren't our daily commuter trains packed to overflowing even more inhumane? And, can't it be said that today's armies of corporate workers are in fact slaves in almost every sense of the word? . . . Their worth is measured in working hours.²⁹

These words convey a powerful message, casting light on the shadows of Japan's prosperity.³⁰

24. *Id.*

25. *Id.* at 6.

26. *Id.* at 37.

27. *Id.* at 39.

28. *Id.* at 39-40.

29. *Id.* at 4-5.

30. Also, some corporate warriors have sent messages about the rigor of their working lives through *senryu*. *Senryu* is a type of Japanese poetry portraying everyday lives of contemporary people. It is intended to be short and succinct, generally with five-seven-five syllable lines. The following are samples of *senryu* that businessmen submitted to an annual contest held by a major life insurance firm.

Spent the weekend with
Perfect Strangers, or were they
My wife and kids?

The boss works me too hard,
And works himself a little too hard
Telling me not to work too hard.

Where else can a pawn
Feel like a king but at a
Karaoke bar.

Shokichi Oda, *Worker Bees*, 36 LOOK JAPAN 41 (1990).

Like Yasuda and Yagi, more than ten thousand Japanese workers³¹ fall victims to *karoshi* every year.³² Dr. Tetsunojo Uehata of the National Institute of Public Health defines *karoshi* as follows:

a condition in which a worker's normal rhythms are disrupted by continuing unsound work patterns, resulting in a buildup of fatigue. The exhaustion induced by chronic overwork aggravates pre-existent health problems, such as high blood pressure and hardening of arteries, and causes a life-threatening crisis.³³

The most often cited causes of *karoshi* include the following: subarachnoidal hemorrhage, cerebral hemorrhage, myocardial infarction, and acute cardiac insufficiency.³⁴

Victims have been found in "virtually every occupational category," ranging from "top level management to the laborer in the workshop."³⁵ Although most victims are in their prime working years of the forties and fifties, those younger have notably increased.³⁶ Reflecting the expansion of the female labor force, there are now more documented cases involving women.³⁷ A sense of vulnerability has spread among the public. According

31. This figure roughly equals the number of traffic fatalities in one year. Kawahito, *supra* note 5, at 150. Japan has a population of 120.75 million. NIPPON STEEL HUMAN RESOURCES DEVELOPMENT, NIPPON: THE LAND AND ITS PEOPLE 36 (1988).

32. Kawahito, *supra* note 5, at 150. *Karoshi* problems first emerged in Japan in the late 1970s. They have become more acute since then. NATIONAL DEFENSE, *supra* note 1, at 98. Some employees have committed suicide due to stress from overwork. For instance, in June 1991, Junichi Watanabe, then 42, killed himself by jumping off the building of Kawasaki Steel Company in Okayama Prefecture where he worked as a manager. During the six months before his death, Watanabe was able to take only two days off. Suffering from deteriorating health, he had regularly consulted a doctor. Shortly before his death, Watanabe shouted out of anger: "My work is not going very well. I wish I could die. Am I only a beast of burden?" On June 15, 1995, Watanabe's wife filed a lawsuit against Kawasaki Steel, alleging the company's negligence in failing to prevent overwork. *Otto-wa Karo-de Jisatsu [Husband Killed Himself Due to Overwork]*, ASAHI SHIMBUN [ASAHI NEWS], June 16, 1994, at 31.

33. Kawahito, *supra* note 5, at 150.

34. NATIONAL DEFENSE, *supra* note 1, at 7.

35. Kawahito, *supra* note 5, at 150. In a recent survey on 200 *karoshi* victims, white-collar workers amounted to 125 persons, comprising 62.5 percent. VICTIMS OF *KAROSHI*, *supra* note 11, at 13. The *karoshi* victims among prominent figures include former Prime Minister Masayoshi Ohira who died in 1978 and the presidents of the Fuji Sankei Group and Seiko Watches who both died in 1987. Kawahito, *supra* note 5, at 150.

36. Among 150 consultation cases dealt with by *karoshi* hotlines as of June 1991, fatalities involving those in their twenties and thirties comprised 20%. VICTIMS OF *KAROSHI*, *supra* note 11, at 225. For a description of the *karoshi* hotlines, see *infra* section VII.B.2.

37. As of 1991, more than 30 cases involving women were documented. Kawahiro, *supra* note 5, at 152.

to a poll, one out of five (and one out of four male) office workers in Tokyo fears that he or she may suffer *karoshi*.³⁸

Karoshi has captured international attention as well. The American media has used *karoshi* as a vivid and well-documented example of the backwardness inherent in the seemingly affluent society. *Rich Japan, Poor Japanese* was the title chosen for a special report on *karoshi* run in a popular program, *Twenty-Twenty*, on the ABC television network on June 22, 1990.³⁹ The problem of *karoshi* has become so acute that the United Nations formally adopted *karoshi* as part of its agenda.⁴⁰ A representative of International Education Development, a non-governmental organization headquartered in Washington D.C., reported on *karoshi* at a United Nations conference in Geneva on August 29, 1991.⁴¹

III. LEGAL PROBLEMS ASSOCIATED WITH *KAROSHI*

A. *The Failure of Work Hour Regulations*

Karoshi results from an accumulation of fatigue and stress, caused by excessive workloads accompanying long work hours.⁴² The average work hours in Japan far surpass their Western counterparts. In 1988, the peak year of overwork, 6,850,000 workers in Japan accumulated over 3100 hours annually (an average of 60 hours per week).⁴³ This compares with 1949 hours in the United States, 1947 hours in England, and 1642 hours in West Germany from 1989 statistics.⁴⁴ Currently, one out of every six Japanese

38. Inoue, *supra* note 5, at 533 (citing ASAHI SHIMBUN [ASAHI NEWS] June 2, 1992, at 26). Another survey on employees of 100 major firms reveals these startling facts: 10% of those employees were suspected to be neurotic while 20% required psychiatric examinations. VICTIMS OF *KAROSHI*, *supra* note 11, at 28.

39. NATIONAL DEFENSE, *supra* note 1, at preface IV. Similarly, under the title *Japanese Live...and Die...for Their Work*, the Chicago Tribune reported on *karoshi* of a middle manager who weekly put in 72 hours and sometimes as many as 95 hours. Yates, *supra* note 3, at 1.

40. *Karoshi: Kokuren-de Uttae [Death from Overwork: Appeal at the United Nations]*, NIHON KEIZAI SHIMBUN [JAPAN ECONOMIC JOURNAL], Feb. 17, 1992.

41. *Id.*

42. NATIONAL DEFENSE, *supra* note 1, at 8. Medical research has established that the severe work conditions can affect one's autonomic nervous system and endocrine system, triggering high blood pressure and abnormalities in lipid metabolism. *Id.* at 102. Another contributing factor is the time spent on commuting; in Tokyo, for instance, a one-way commute of over one hour is common. Recently, a sharp rise in real estate values has forced many workers to seek housing farther from the city center and to make round-trip commutes of three hours or more. *Id.* at 10.

43. *Karoshi Nintei Kanwa-o [Death from Overwork: The Need to Relax the Standard of Proof]*, ASAHI SHINBUN [ASAHI NEWS] Jan. 7, 1994, at 4 [hereinafter *Death from Overwork*].

44. Toshio Taketani, *No More 9 to 5*, 36 LOOK JAPAN 32, 33 (1991).

employees puts in more than 3000 hours annually (12 hours a day for 250 days).⁴⁵

Koji Morioka, Professor of Economics at Kansai University, has found that overtime amounts to one-third of the total work hours.⁴⁶ Japanese companies have institutionalized "service overtime," meaning overtime work unrecorded on the employees' time cards, or "*furoshiki*"⁴⁷ overtime," meaning paperwork done at home.⁴⁸ In other words, employees are prohibited from reporting their work hours officially, thereby foregoing their overtime pay.⁴⁹ Experts estimate that the value of unrecorded overtime work in Japan equaled twenty-three trillion yen, approximately five percent of the Gross National Product in 1990.⁵⁰

The work hour regulations remain problematic.⁵¹ Article 32 of the Labor Standards Law⁵² does prescribe eight hours per day or forty hours per

45. *Death from Overwork*, *supra* note 43.

46. NATIONAL DEFENSE, *supra* note 1, at 67.

47. *Furoshiki* is a Japanese word for a large square cloth used for wrapping and carrying.

48. See NATIONAL DEFENSE, *supra* note 1, at 9.

49. Cole, *supra* note 9, at 56-57. A custom known as a "Seven-Eleven" in the banking industry typifies such gratis overtime: most bank employees put in sixteen hours a day, leaving for work at seven o'clock in the morning and working overtime until eleven o'clock at night. In addition, bank employees often work at home at night or on days off. Kawahito, *supra* note 5, at 153. Nevertheless, overtime pay remains restricted. Unpaid compensation for overtime work accounts for more than 20% of the profits at the Fuji Bank and more than 10% at the Sanwa Bank. MAKOTO SATAKA, KK NIPPON: SHUSHOKU JUYO [REALITIES OF THE JAPANESE EMPLOYMENT SYSTEM] 5 (1990). One employee of another major bank explains that he puts in 120 hours of overtime monthly although compensated for only about 20 hours. *Id.* at 4. One can observe the same trend in financial institutions as well: according to the Tokyo Prefectural Labor Standards Office, over one-third of the surveyed companies failed to pay their employees for all their overtime hours. Cole, *supra* note 9, at 56. Also importantly, statistics often fail to include the amount of time spent on work-related activities such as quality control circles and socializing with co-workers and clients. In fact, a 1985 study by the Japan Federation of Electric Machine Worker's Union reveals that such activities can amount to three hours and thirty-nine minutes per week. Likewise, much time spent on commuting remains overlooked; according to the Transportation Census for Major Cities released by the Ministry of Transport in 1985, the average commuting time is about two hours roundtrip. See NATIONAL DEFENSE, *supra* note 1.

50. *Messhi Hoko* [Self Sacrifice and Public Service], SHUNKAN SHINCHO [WEEKLY SHINCHO], Dec. 2, 1993, at 111.

51. NATIONAL DEFENSE, *supra* note 1, at 96. Presently, the Japanese law fails to regulate maximum work hours with the exception of a regulation limiting overtime to two hours a day for such hazardous jobs as those involving exposure to radiation or toxic particles such as lead, and a regulation limiting overtime for women to 150 hours a year. See *id.* at 86 (referring to Article 64 of the Labor Standards Law).

52. LSL, *supra* note 16, art. 32. This Act provides general guidelines regarding labor contract, wages, work hours, safety, and health. For an overview of the LSL, see generally Yamakawa, *supra* note 18, at 178-82. For a more complete discussion of work hours in Japan, see generally NATIONAL DEFENSE, *supra* note 1, at 84-88.

week as the maximum working hours.⁵³ Nonetheless, many employers have found ways around this mandate, pursuant to Article 36 of the Labor Standards Law; Article 36 allows work hours to remain unrestricted as long as the employer's representatives have signed an agreement with the trade union or a representative of the majority of the workers involved.⁵⁴ Thus, once such an agreement has been reached, the employer can virtually force its employees to put in as many hours as the employer believes is necessary.⁵⁵

Furthermore, refusal to work overtime or choosing to take paid vacation can impair one's promotional opportunities.⁵⁶ In 1991, the Japanese Supreme Court upheld the decision of Hitachi Ltd. to dismiss its employee, Hideyuki Tanaka, who had refused to work overtime solely on one occasion.⁵⁷ The Court declared that "an individual worker has no right to

53. Article 32 of the LSL provides as follows: "1. An employer shall not have a worker work more than forty hours per week, excluding rest periods. 2. An employer shall not have a worker work more than eight hours per day for each day of the week, excluding rest periods." LSL, *supra* note 16, at art. 32.

54. The relevant part of Article 36 provides as follows:

In the event that the employer has entered a written agreement with either a trade union organized by a majority of the workers at the workplace concerned, where such a trade union exists, or with a person representing a majority of the workers, where no such trade union exists, . . . the employer may, in accordance with the provisions of such agreement, . . . extend the working hours or have workers work on rest days.

LSL, *supra* note 16, at art. 36.

55. NATIONAL DEFENSE, *supra* note 1, at 86. The following anecdote shows how the employees' rights can be exploited under Article 36. One *karoshi* victim, Satoru Hiraoka, put in 3500 hours in the year before his death; these hours included more than 110 hours of overtime in each of the three months immediately before his death. However, no violation of the Labor Standards Law was found, pursuant to Article 36. *Id.* at 71. The Chicago Tribune featured an article on Hiraoka's death on November 13, 1988. See Yates, *supra* note 2. ("For more than 28 years, Hiraoka, a middle manager, faithfully put in 12 to 16-hour days, usually working 72 hours and sometimes as many as 95 hours each week . . .")

56. NATIONAL DEFENSE, *supra* note 1, at 11; Cole, *supra* note 9, at 60. In 1990, the average Japanese employee was legally entitled to 15.5 days of paid annual vacation. This sounds modest compared to vacations in France and Germany which typically last 35 days. Nevertheless, the average Japanese worker took off only 53% (8.2 days) of his or her paid leave. Cole, *supra* note 9, at 59.

57. Inoue, *supra* note 5, at 535. Even if dismissal may be avoided, bosses and co-workers exert tremendous pressure on employees who refuse to work overtime. For example, the Osaka Karoshi Research Group tells the story of a manager in a large securities company who chose to go home after his regular work hours twice a week. He made this decision after reflecting on the meaning of his life after facing his co-worker's death from overwork. By going home early, he began spending more time with his family. At the same time, however, he had to abandon any prospects for promotion. His company viewed his refusal to work overtime (although only twice a week) as an "unforgiving act of extraordinary nature." His bosses and co-workers called him a "company pirate." OSAKA KAROSHI MONDAI, *supra* note 11, at 106.

refuse an employer's request for overtime if the time does not exceed the limit agreed upon by the employer and the union."⁵⁸ The Court evaluated Tanaka's agreement with the company and construed it as being reasonable. This agreement included ambiguous provisions such as "the necessity of working overtime to attain production goals."⁵⁹

Excessive work hours in Japan has triggered criticism overseas as well.⁶⁰ Supposedly in response to adverse publicity, the Ministry of Labor has pledged to shorten work hours.⁶¹ Despite its slogan, however, it has failed to make any noticeable improvements.⁶² Likewise, the Japanese labor unions, which consist of over 12,000,000 members, have neglected to tackle the *karoshi* issues.⁶³ According to Shinsuke Miyano, Secretary of Japan Federation of Newspaper Workers' Unions, wage-related issues preoccupy most unions; in fact, Miyano adds, it is no exaggeration to say that they act as if life can be exchanged for money.⁶⁴

B. *Failure of the Workers' Compensation System*

1. *Overview*

The tragedy of *karoshi* continues as victims' families seek survivors' benefits under the workers' compensation system. In Japan, the Workers' Accident Compensation Insurance Law (hereinafter "the Compensation

58. Inoue, *supra* note 5, at 535.

59. *Id.*

60. "United under the banner of 'Japan Inc.," one observer says, "[Japanese workers] struggle mindlessly to increase productivity and invade foreign markets." Toshio Taketani, *No More 9 to 5*, 36 LOOK JAPAN 32 (1991). Various well-known figures, such as Sony Chairman Akio Morita and former Prime Minister Miyazawa, have called for shorter working hours. Cole, *supra* note 9, at 52.

61. NATIONAL DEFENSE, *supra* note 1, at 9, 13. Against the Ministry, however, two organizations led the counterattack, arguing that Japanese workers are well treated. These organizations are *Keidanren* (the nation's most influential business organization) and *Nikkeiren* (the management organization focused on labor management relationships). Cole, *supra* note 9, at 52.

62. NATIONAL DEFENSE, *supra* note 1, at 9, 13. To take one example, many banks have made a superficial effort to adopt a five-day workweek as proposed by the government; they simply deleted their old system of extra holidays for special purposes such as weddings and birthdays while adding 40 minutes to an hour longer on regular work days. As a result, the average worker in the banking industry puts in 3000 hours a year. *Id.* As of 1992, one observer noted that Japan had made no progress in reducing working hours for the past 17 years. Cole, *supra* note 9, at 57.

63. NATIONAL DEFENSE, *supra* note 1, at 80. Many unions have opted for a policy of cooperation between labor and management; Japan reports a far fewer labor disputes than in any other developed nation. Kawahito, *supra* note 5, at 156.

64. NATIONAL DEFENSE, *supra* note 1, at 80.

Law")⁶⁵ mainly governs compensation for employees who suffer work-related injuries or their families.⁶⁶ The law requires employers to pay premiums for workers' accident insurance and to provide fixed amounts of compensation for "employment injuries," defined as "workers' injury, disease, physical disability or death resulting from employment."⁶⁷ It allows families of *karoshi* victims⁶⁸ to apply for the Survivors Compensation Pensions.⁶⁹ The claimant initially files his or her claim with the Labor Standards Inspection Office, an administrative agency located in each prefecture.⁷⁰ The Office then determines the compensability of the claim by determining whether the decedent's employment bears a sufficient relationship to the death.⁷¹

65. See generally *id.* at 89-96.

66. KAZUO SUGENO, JAPANESE LABOR LAW (Leo Kanowitz trans.) 319-20 (1992). The law covers all workers except government employees and seafarers. NATIONAL DEFENSE, *supra* note 1, at 91.

67. SUGENO, *supra* note 66, at 317 & 324.

68. Potential recipients are ranked as follows: the spouse, children (including an unborn child), parents, grandchildren, grandparents, and brothers and sisters of the worker who had been sustained by the earnings of the worker at the time of the worker's death. *Id.* at 325.

69. The amount of the Survivors Compensation Pension is determined on the basis of the number of persons who are entitled to receive the pension and the number of persons living with them who are potentially entitled to receive the pension. For instance, if the number of such persons is one, it is 153 days of the 'basic daily amount of benefit' [equivalent to the average daily wage] a year [but 175 days if the recipient is over 55 years old or is the wife who suffers from certain disabilities]. If the number is two persons, it is 193 days of the basic daily wage a year.

Id. at 329. For most wives and children, the compensability of the Survivors Pensions can materially affect their economic welfare. As noted earlier, many victims of *karoshi* are in their forties, prime working years. Their children are usually in elementary or junior high school. Because many Japanese families purchase a house when the husbands are in their late thirties or early forties, survivors are often left with little savings at the time of the husbands' death. Although some employers pay retirement allowances to the survivors, those payments may be limited. VICTIMS OF KAROSHI, *supra* note 11, at 18.

70. VICTIMS OF KAROSHI, *supra* note 11, at 210.

71. This process may take as long as one to two years. *Id.* The law lacks provisions requiring the time period within which the Office must decide a case. NATIONAL DEFENSE, *supra* note 1, at 94. If a claim is denied, claimants may appeal to the Workers' Injury Compensation Referee, an official of the Labor Standards Bureaus (agencies that are the superior of the Labor Standards Inspection Offices). *Id.* One may file a subsequent appeal with the Labor Insurance Referee Board in Tokyo. Claimants reach this stage about four to six years after filing their initial claims. It gives claimants their first opportunity to argue their cases orally. NATIONAL DEFENSE, *supra* note 1, at 94. The Board's heavy caseload often delays the review; it could take two years even before the Board sets the date for a hearing. OSAKA KAROSHI MONDAI, *supra* note 11, at 120. Following the administrative proceeding, claimants may initiate a lawsuit in the district court. It usually takes two to four years for the district court to review a case; furthermore, it takes an additional one to three years for the intermediate appellate court. NATIONAL DEFENSE, *supra* note 1, at 95. Japan has five kinds

The declared goal of the Compensation Law is two-fold: to assist victims or their dependents financially so that they can maintain a decent standard of living; and to help prevent future cases of work-related injury or disease by means of its insurance system and active investigation of working conditions.⁷² Thus, to fulfill such goals, the formula of standards governing compensation coverage, its content and the amount of funding allotted to the compensation system should be liberally construed.⁷³

In reality, however, the Ministry of Labor⁷⁴ has managed to suppress the payments of compensation benefits to the lowest level possible.⁷⁵ The Ministry has imposed upon the claimant a high burden of proving causation between one's employment and his or her death.⁷⁶ To meet this burden, the claimant must establish the following with concrete evidence: that the decedent had constantly performed "extraordinary"⁷⁷ job duties during the

of courts: the Supreme Court as the highest court, High Courts under the Supreme Court, District Courts and Family Courts under High Courts, and Summary Courts as the lowest courts. SUPREME COURT OF JAPAN, COURT ORGANIZATION IN JAPAN 4 (1970).

72. NATIONAL DEFENSE, *supra* note 1, at 89. Article 1 of the Compensation Law states as follows:

The object . . . shall be to grant necessary insurance benefits to workers in order to give them prompt and equitable protection against injury, disease, physical disability or death resulting from employment or commutation, and to promote rehabilitation of workers who have suffered injury, or contracted a disease, resulting from employment or commutation, to assist said workers and their survivors and to secure proper working conditions, . . . and thereby to contribute to the promotion of the welfare of workers.

Compensation Law, *supra* note 18, at art. 1.

73. NATIONAL DEFENSE, *supra* note 1, at 89.

74. The Ministry of Labor is a governmental body that administers the workers' compensation system in Japan.

75. *Id.* See also Kawahito, *supra* note 5, at 156. Hiroshi Kawahito, one of the nation's leading lawyers on *karoshi*, criticizes the government's indifference toward *karoshi*:

We have many problems with specific procedures. But the biggest obstacle is the basic stance of the Ministry of Labor. Since they don't even recognize the existence of *karoshi*, they will not consider measures designed to eliminate it.

They are insensitive to the fact that *karoshi* has become a household term.

Muneshige, *supra* note 11, at 37.

76. NATIONAL DEFENSE, *supra* note 1, at 89.

77. Although the definition of "extraordinary" job duties remains unclear, it must amount to a substantial increase in workload that far exceeds what the decedent had normally performed. OSAKA *KAROSHI* MONDAI, *supra* note 11, at 20-21. The Ministry's in-house manual, which was disclosed in 1991, further demonstrates the heavy burden of proof imposed on claimants: they must prove by convincing evidence that the decedent worked either at least twice as hard as usual during the week before death or three times as hard on the day of death. VICTIMS OF *KAROSHI*, *supra* note 11, at 43. This standard of proof is based on the 1987 amendment to the older standard, whose narrower scope of compensability had evoked harsh criticism. Designated in 1961, the older standard required the claimant to prove that the decedent experienced an "excessively heavy burden immediately before falling ill, at least on the same day when the illness occurred." *Id.* (emphasis added.) Due to the difficulty of

week immediately before the occurrence of the illness leading to his or her death.⁷⁸ In other words, most cases of *karoshi*, which result from the gradual development of fatigue over an extended period of time, fall outside the coverage.⁷⁹ Largely due to this difficulty in proving causation, the vast majority of claims are denied each year. In 1987, only 21 of the 499 claims of *karoshi* filed with the Ministry were approved. This result was followed by 29 of 676 claims in 1988 and 30 of 777 in 1989. More recently, at a symposium on *karoshi* held in Osaka, Japan on June 17, 1994, lawyers protested the small number of *karoshi* claims for which compensation has been awarded; in the last four to five years, the number of claims approved has averaged about thirty out of five hundred to seven hundred claims.⁸⁰ In 1992, the number further went down to eighteen.⁸¹ Also, numerous families have reported on the indifference of the Labor Standards Inspection Office; on their visits to the Office for initial consultations, they were asked to leave after being simply told that compensation would unlikely be granted.⁸² The

proving this immediacy, most *karoshi* claims were denied under the older standard. *See id.* at 43.

78. Lawyers forcefully argue that this standard remains too restrictive. OSAKA KAROSHI MONDAI, *supra* note 11, at 218. Contesting the high burden of proof, labor lawyers in Osaka, the second major city of Japan, held a symposium entitled *Challenging the Obstacle in the Workers' Compensation System* on June 17, 1994. Symposium, *Rosai Nintei-no Kabewa Naze Kaku-mo Takainoka* [*Challenging the Obstacle in the Workers' Compensation System*] (June 17, 1994)[hereinafter *Symposium*]. The Ministry of Labor acknowledges that no medical evidence supported its decision to designate "the week before death" as the period for consideration. OSAKA KAROSHI MONDAI, *supra* note 11, at 20-21. The duties performed before this period may be taken into account only as supplementary factors. *Id.* at 50-52. On December 19, 1994, the Ministry of Labor publicly announced its intent to relax the burden of proof, although only slightly, by considering the decedent's age and work experience as supplementary factors. However, lawyers remain doubtful as to the impact of this "relaxation." *Karoshi Nintei-o Kanwa* [*Relaxing the Burden of Proof for Karoshi Cases*], ASAHI SHIMBUN [ASAHI NEWS], Dec. 20, 1994, at 1.

79. A claim is denied, for instance, if a worker dies after a few months of performing heavy work on a regular basis. Ironically, the longer one worked hard, the more difficult it becomes to prove his or her death as work-related. To take one example, taxi drivers on the night shift are often required to work for more than 10 hours regularly. Because their usual work is physically demanding, death from overwork is not uncommon among them. OSAKA KAROSHI MONDAI, *supra* note 11, at 20.

80. The number of claims for which compensation was awarded was 33 in 1990 and 34 in 1991. Even the Minister of Labor admitted that he was "under the impression that the number [of the *karoshi* claims approved] has remained quite low." Handout delivered at *Symposium*, *supra* note 78 (on file with the author).

81. *Id.*

82. OSAKA KAROSHI MONDAI, *supra* note 11, at 67. At a symposium on *karoshi*, one lawyer shared with the audience the following experience of his own. He telephoned the office, calling himself a family member of *karoshi* victim, and asked questions regarding workers' compensation. The Office clerk refused to answer questions, saying: "We are sorry, but death from overwork is non-compensable." *Symposium*, *supra* note 78.

Ministry's indifference has encouraged employers to disregard the tragic consequences of overwork and make no attempt to improve the working conditions.⁸³

The claimant is likely to face an additional obstacle as he or she attempts to gather evidence necessary to establish causation between work and death. Too often, this fact-gathering process creates hostile, even angry, reactions by employers. Many employers flatly refuse to submit requested documents such as timecards and employment regulations.⁸⁴ They tend to exert pressure upon claimants, calling their request for compensation as an act of betrayal.⁸⁵ Lawyers presume that these employers, fearful of adverse publicity, attempt to conceal their severe working conditions.⁸⁶ Withdrawal of relevant records clearly violates Article 23 of the Compensation Law, which provides: "Employers must provide claimants documents necessary for compensation immediately upon request."⁸⁷ However, no sanctions exist against offending employers. In fact, the absence of sanctions constitutes a common feature of Japanese law.⁸⁸ Employers' refusal to cooperate substantially constrains the investigation necessary to establish the compensability.

In sum, families of *karoshi* victims often incur emotional injuries not only from the death itself but also from their legal experience thereafter. The procedural and substantive obstacles also tend to discourage potential applicants to go forward with their claims.⁸⁹ As a result, the inadequate compensation system "constitute[s] one more cause that tends to perpetrate the chronic long work hours and patterns of overwork that prevail in Japan today."⁹⁰

83. Kawahito, *supra* note 5, at 156.

84. OSAKA *KAROSHI* MONDAI, *supra* note 11, at 114.

85. To explain this prevailing hostile attitude among employers, the Defense Counsel uses an example of a widow whose husband died of a myocardial infarction. Before applying for compensation, she had to overcome considerable resistance of the employer, who viewed the granting of compensation as bringing dishonor to itself. VICTIMS OF *KAROSHI*, *supra* note 11, at 22.

86. *See id.* NATIONAL DEFENSE, *supra* note 1, at 81.

87. Compensation Law, *supra* note 18, art. 23.

88. *See* John O. Haley, *Sheathing the Sword of Justice in Japan: An Essay on Law without Sanctions*, 8 J. JAPANESE STUD. 265 (1982).

89. NATIONAL DEFENSE, *supra* note 1, at 89.

90. *Id.*

2. *An Illustration of the System's Failure*

The following case illustrates some of the legal constraints in the workers' compensation system as well as the government's inhuman stance.⁹¹ Koichi Fujiwara, a forty-two-year-old truck driver, died of cardiac insufficiency on September 18, 1988. There was no question that his job routine was grueling; Fujiwara was required to drive an average of six hundred kilometers per day. During the week preceding his death, Fujiwara made two long round trips, driving more than 3500 kilometers in six days. Every month his overtime exceeded 200 hours; in one month, it amounted to 340 hours. His lawyers established that Fujiwara had put in about 5700 hours yearly.⁹²

Ignoring its employees' well-being, the company had repeatedly violated the law. Between 1975 to 1991, the Nishinomiya City Labor Standards Inspection Office had given the employer as many as five warnings for its violations of the work hour provision in the Labor Standards Law; nevertheless, the company had made no effort to improve its harsh working conditions. In October 1987, about one year before Fujiwara's death, the company had received an additional warning for its failure to follow drivers' safety regulations.⁹³ Afterwards, the company notified the authority that it had ensured compliance with the regulation; in reality, however, the company had failed to make any improvements.⁹⁴

On June 18, 1990, the decedent's wife, assisted by five lawyers, applied for the Survivor's Compensation. In March 1993, the director of the Nishinomiya City Labor Standards Inspection Office ("Office") found the claimant ineligible for compensation. Disregarding the nearly 6000 work hours accumulated in one year, the Office boldly asserted that no causal relationship existed between the victim's death and work. The Office reasoned that the company's three other drivers, who put in just as many

91. Handout delivered at the symposium, *supra* note 78 (on file with the author) [hereinafter Handout].

92. There are 8760 hours in a year. When reporting this case at a symposium on *karoshi*, lawyers distributed to the audience a chart that outlined Fujiwara's work hours for each of the 20 days in June 1988, shortly before Fujiwara's death. To take one example, on June 8, Fujiwara put in 22 hours and 15 minutes, including: 12 hours and 45 minutes for driving; 1 hour and 40 minutes for loading; 5 hours of a break while on duty; and 2 hours and 40 minutes for miscellaneous work. Because his truck carried a hazardous substance, a component of whisky that catches fire easily, Fujiwara was required to carefully follow various safety regulations even during the break. Prohibited from leaving the truck, for instance, Fujiwara had to rest in the driver's seat. Receiving only 52,900 yen (about \$500 today) as the monthly base pay, Fujiwara was forced to work as hard as possible. *Id.*

93. *Id.*

94. Furthermore, the company gave Fujiwara only one of the bi-annual physical checkups required by law. *Id.*

hours, had never suffered serious illness.⁹⁵ Moreover, the Office chose not to hold the employer liable for its past violations of labor regulations discussed above. The decision was affirmed at the appellate level.

In June 1994, a group of lawyers reported on this case at a symposium on *karoshi*.⁹⁶ They emphatically stated that the government had shown its "lack of common sense" by denying Fujiwara's claim. There one lawyer posed the following question to the audience: "If the government refuses to call Fujiwara's death *karoshi*, what kind of death do they acknowledge as *karoshi*?" Indeed, the outcome of the case evoked public anger. Lawyers and labor activists have formed a support group for Fujiwara's family, protesting the gravity of the decision.⁹⁷

IV. WEAK ENFORCEMENT OF LAW IN JAPAN

The human drama of *karoshi* painfully depicts a mere ornamental role that law plays in Japan.⁹⁸ In sum, a profound difference separates the American and Japanese legal landscapes. This section illustrates the insignificance of law in Japan from a comparative perspective. For that purpose, it discusses social values underlying the American legal culture as well. It gives only a brief summary of the American legal culture, for this paper is not intended to explore in detail the comparison of the two systems.

A. *The Role of Law in the United States*

Historically, law has played a more prominent role in the West than in the East.⁹⁹ This is largely because law originally emerged as a product of Western rationalism.¹⁰⁰ Private law derived from Roman law, a system of

95. The lawyers who handled the case attacked this reasoning as follows: the Office's decision suggests that no compensation can be made unless all employees under the same working conditions had collapsed. Under such a theory, no *karoshi* would exist even in a case involving a victim who put in 8000 hours a year—unless others similarly situated have died. *Id.*

96. For more information on this symposium, see *supra* note 78.

97. On the other hand, the government has yet to soften its stance. For example, in the middle of a dispute with the claimant's representatives, a government official threatened to call the police if the representatives would not leave the office immediately. Handout, *supra* note 91.

98. NATIONAL DEFENSE, *supra* note 1, at 84, 97 (discussing the weak law enforcement concerning *karoshi*).

99. Chin Kim & Craig M. Lawson, *The Law of the Subtle Mind: The Traditional Japanese Conception of Law*, 28 INT'L & COMP. L.Q. 491 (1979) ("Westerners are accustomed to the idea of justice under a system of rational and impersonal laws.")

100. Tetsuya Obuchi, *Role of the Court in the Process of Informal Dispute Resolution in Japan: Traditional and Modern Aspects, With Special Emphasis on In-court Compromise*, 20 LAW IN JAPAN: AN ANNUAL 84 (1987).

rights that provided specific procedures and remedies to protect the claims of individuals.¹⁰¹ The Roman law maxim *ubi jus ibi remedium* ("where there is a right, there is a remedy") expresses the crux of the Western legal tradition.¹⁰² The primacy of private law and an adjudicatory process of enforcement constituted a distinctive feature of the Western legal tradition.¹⁰³

Americans in particular are noted for vigorously using law as a tool for redressing grievances.¹⁰⁴ Social problems often develop into legal problems in the United States.¹⁰⁵ A vital concern in a nation of immigrants is to build consensus. Cultural pluralism produced by the sheer number of varying races, religions, and creeds¹⁰⁶ inescapably creates tension between competing values.¹⁰⁷ Coercive powers inherent in the law help induce predictable and conforming behavior.¹⁰⁸ Law thereby articulates and enforces standards of conduct, which encourages maximization of the common good.¹⁰⁹ The

101. JOHN OWEN HALEY, *AUTHORITY WITHOUT POWER: LAW AND THE JAPANESE PARADOX* 11 (1991).

102. *Id.* The Romans asserted their rights as legally protected interests. Yoshiyuki Noda, *Nihon-jin no Seikaku to Sono Ho-Kannen* [*The Character of the Japanese People and their Conceptions of Law*], 140 MISUZU 2, 14-26 (1971), reprinted in HIDEO TANAKA, *THE JAPANESE LEGAL SYSTEM* 304 (1976).

103. "Only within an adjudicatory private law system was a mechanism for allocating control over enforcement necessary: to determine who may bring what actions against whom for what remedy or sanction." HALEY, *supra* note 101, at 21.

104. Thomas P. Walsh, *American and Japanese Legalism: Alternative Viewpoints and Approaches to Dispute Resolution*, 15 LEGAL STD. F. 103, 121 (1991).

105. Kim & Lawson, *supra* note 99, at 491.

106. See, e.g., Bill Ong Hing, *Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Multiracial Society*, 81 CAL. L. REV. 863 (1993).

107. Walsh, *supra* note 104, at 108.

108. See HALEY, *supra* note 101, at 12 (stating that the ultimate goal of law is to promote conforming conduct).

109. Thomas M. Riordan, *Coping an Attitude: Rule of Law Lessons from the Rodney King Incident*, 27 LOY. L.A. L. REV. 675, 676-679 (1994). One scholar writes that the law serves the following functions: "to enable a large mass of diversified human beings to live together, to serve as a repository of society's most cherished values, and to promote justice." Norman Bowie, *The Law: From a Profession to a Business*, 41 VAND. L. REV. 741, 748 (1988). He also points out that the law enshrines central values such as fairness; the notions of equality before the law; procedural due process; individual freedom; equality of opportunity; and justice. *Id.* at 753. See also Gerald Torres, *Local Knowledge, Local Color: Critical Legal Studies and the Law of Race Relations*, 25 SAN DIEGO L. REV. 1043 (1988) (defining legal culture and institutions as "the clearest articulations of the reigning social vision and, thus, are important elements in the function of both popular beliefs about commonplace relationships and popular acquiescence to the existing distribution of social goods and power").

legitimacy¹¹⁰ and presumed objectivity¹¹¹ of the law relieves people of the task of exercising individual judgment regarding ethics and moral choices.¹¹² When in doubt, one can point to the paper that the law is written on as a tangible frame of reference. In this respect, one may describe the role of law in America as follows: a mass of diversified individuals must confine their behavior within the limits fixed by law;¹¹³ nonetheless, they remain free, within such boundaries, to explore and carve out for themselves a place of their own.

The area within the boundaries signifies widely shared values, which appeal to conceptions of justice.¹¹⁴ The antidiscrimination principle exemplifies such a value.¹¹⁵ At the core of the American concept of justice lies individual freedom and autonomy.¹¹⁶ The following concept has been firmly embedded in the American concept of justice: one should not be penalized due to his or her immutable characteristics such as race and gender.¹¹⁷ Accordingly, judicial aid has functioned as a major device for the pursuit of civil rights.¹¹⁸ John R. Dunne, Assistant Attorney General of the

110. The legitimacy of legal rules can be defined as "community recognition of the bindingness of the [legal] norm and the appropriateness of the sanction for its violation." HALEY, *supra* note 101, at 6.

111. That something is protected by the law implies that it is protected by an objective standard equally applicable. Noda, *supra* note 102.

112. Lynne Henderson, *Authoritarianism and the Rule of Law*, 66 IND. L.J. 379, 407 (1991).

113. Law provides the "framework within which consensual ordering occurs or a means of legitimating norms around which a consensus can be formed, and thereby channels behavior." HALEY, *supra* note 101, at 168.

114. In the Western legal tradition, law continues to be fused with morality. John Haley explains as follows: "The 'good and the fair' still pervades all notions of at least an ideal legal process and ultimately determines the legitimacy of law as made and as enforced." HALEY, *supra* note 101, at 24.

115. William N. Eskridge, Jr., *Public Values in Statutory Interpretation*, 137 U. PA. L. REV. 1007 (1989).

116. Sociologist Robert Bellah has observed that "[i]ndividualism lies at the very core of American culture." Abraham, *supra* note 8, at 480. See Inoue, *supra* note 5, at 521 (discussing individual liberties in American society). Extreme emphasis on individualism, however, creates problems as well. In an article that provides a moral framework for universal access to health care, the author discusses the decline of a communal sense and civil duties among Americans. Note, *Universal Access to Health Care*, 108 HARV. L. REV. 1323, 1330 (1995). See also Inoue, *supra* note 5, at 518 (pointing out that individualism in the U.S. has caused social problems, such as crime, moral and social decay and inner-city collapse).

117. Americans "abhor the totalitarian arrogance which makes one say that he will respect another man as his equal only if he has 'my race, my religion, my political views, my social position.'" Juan F. Perea, *Ethnicity and Prejudice: Reevaluating "National Origin" Discrimination under Title VII*, 35 WM. & MARY L. REV. 805 (1994).

118. See M. Diana Helweg, *Japan's Equal Employment Opportunity Act: A Five-Year Look at Its Effectiveness*, 9 B.U. INT'L L.J. 293, 312 (1991). Employment discrimination exemplifies an area where Americans have effectively used law as an instrument of social

Civil Rights Division of the U.S. Department of Justice, explains that the rule of law has helped remedy disadvantages cast on minorities over the course of the past two generations.¹¹⁹

B. *The Role of Law in Japan*

The Japanese legal environment stands in sharp contrast to its American counterpart.¹²⁰ The diversion of the law from actual practice remains a fact of life in Japan.¹²¹ The written law in Japan may be best described as a mere "heirloom sword that is no more than an ornament or a prestige symbol."¹²² In fact, the weakness of law enforcement in Japan

reform. For instance, the United States took up the challenge of eradicating employment discrimination three decades ago. In 1964, Congress enacted Title VII of the Civil Rights Act of 1964. Title VII of the Civil Rights Act of 1964 (hereinafter Title VII), 42 U.S.C. § 2000e-2 (1988 & Supp.III 1991). Title VII prohibits discrimination by employers, labor organizations, and employment agencies on the basis of race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2 (1988 & Supp.III). The Act constitutes "the cornerstone, as well as touchstone, of employment discrimination law." *EMPLOYMENT DISCRIMINATION LAW: CASES AND MATERIALS* 15 (Mack A. Player et al. eds., 1990). At the core of Title VII is the principle of fairness to individuals. *See, e.g.,* *Diaz v. Pan American World Airways*, 442 F.2d 161, 166 (5th Cir. 1974). The Act has provided for litigants a useful tool in regulating employers' outward behavior influenced by arbitrary generalizations of particular groups. *See Int'l Brotherhood of Teamsters v. U.S.*, 431 U.S. 324, 335 n.15 (1977) (emphasizing Congressional intent to combat overt discrimination, "the most obvious evil"). Jody Armour discusses the instrumental conceptions of the law in the United States:

[T]he law cannot merely be concerned with accommodating a cultural belief system that induces individuals to repeatedly traverse stereotypical channels (and make some of us susceptible to pathological phobias). The law must also strive to lay out the channels of the maze, and to eliminate those pathways that foster the oppression of minorities.

Jody D. Armour, *Race Ipsa Loquitur: Of Reasonable Racists, Intelligent Bayesians, and Involuntary Negrophobes*, 46 *STAN. L. REV.* 781, 815 (1994).

119. In discussing the legal enforcement of civil rights, Dunne explores federal statutes such as: the Civil Rights Act of 1964, the Fair Housing Act, and the Americans with Disabilities Act. *See generally* John R. Dunne, *Civil Rights in the 1990's*, 9 *HOFSTRA LAB. L.J.* 289 (1992). For a U.S.-Japan comparison of societal commitment to job discrimination, see Uchihashi Katsuto, *Downsizing, Japanese Style*, 21 *JAPAN ECHO* 47, 48 (1994).

120. *See, e.g.,* Inoue, *supra* note 5, at 517 (comparing Americans, who have stressed the role of individual rights with the Japanese who have emphasized community values as a hallmark of society).

121. Haley, *supra* note 88, at 265. For an overview of Japanese attitude toward law, see David A. Funk, *Traditional Japanese Jurisprudence: Justifying Loyalty and Law*, 17 *S.U. L. REV.* 171 (1990); Michael Thompson, *Dispute Resolution in Japan: the Non-Litigious Way*, *LAW & SOC'Y J.*, 30, 31 (May 1986); YOSHIYUKI NODA, *INTRODUCTION TO JAPANESE LAW* 14 (A. Angelo trans., 1976).

122. Jan M. Bergeson & Kaoru Yamamoto Oba, *Japan's New Equal Employment Opportunity Law: Real Weapon or Heirloom Sword?* 1986 *B.Y.U. L. REV.* 865 (1986) (citing KAWASHIMA TAKEYOSHI, *NIHONJIN NO HOISHIKI* [LEGAL CONSCIOUSNESS OF THE

remains unparalleled in any other industrial nation.¹²³ As one observer noted, the Japanese word for law, *ho* (or *horitsu*), means only the corpus of legal rules.¹²⁴ It "carries no connotation either of subjective law or of personal rights."¹²⁵ The American values such as individual freedom and equality can be "considered as 'foreign protein' introduced into the traditional body of Japanese society."¹²⁶

Racial, cultural and linguistic homogeneity of Japan¹²⁷ has profoundly affected the nation's legal landscape.¹²⁸ Once secluded from the world for more than two centuries, Japan fully developed its own distinctive culture and mentality.¹²⁹ To protect the nation from "contamination of Christianity," the Japanese government zealously guarded its seclusion policy until 1853, when Commodore Matthew Perry arrived at Edo (Tokyo today) Bay and finally "[opened] the Japanese Oyster."¹³⁰ Even today common language, history, culture, and a shared value system unify the Japanese.¹³¹ Harmony and consensus flows from the group of people who share similar values and experiences.¹³² The resulting uniformity of behavior and thought diminishes the need to use law.¹³³

JAPANESE] 47 (1967)).

123. HALEY, *supra* note 101, at 265. Haley further stated: "To a degree that is unparalleled in any other industrial society, Japanese enjoy a remarkable freedom from legal restraints." John O. Haley, *Introduction: Legal vs. Social Controls*, 17 *LAW IN JAPAN: AN ANNUAL* 1 (1984). Tatsuo Inoue explains that individual autonomy and rights consciousness have remained alien to the Japanese view of the moral world. Inoue, *supra* note 5, at 528.

124. Kim & Lawson, *supra* note 99, at 503.

125. *Id.*

126. FRANK UPHAM, *LAW AND SOCIAL CHANGE IN POST WAR JAPAN* 206 (1987). Perhaps that explains why the egalitarian concept has failed to take root in the Japanese law. The Japanese Ministry of Justice rejected antidiscrimination legislation, asserting that "discrimination is a matter of the heart, not the law." *Id.* at 208-09.

127. Japan is characterized as racially and culturally the most homogeneous of the world's major nations. ROBERT CHRISTOPHER, *THE JAPANESE MIND* 44 (1983). See also TAYLOR, *supra* note 6, at 34 ("If the Japanese population has a homogeneity index of 99 percent -the highest in the world- the United States has an index of 50 percent").

128. See Kim & Lawson, *supra* note 99, at 496.

129. TAYLOR, *supra* note 6, at 35-36. Its physical isolation as an island nation enabled Japan to produce a national ethnic cohesion. Kim & Lawson, *supra* note 99, at 492; Dean J. Gibbon, *Law and the Group Ethos in Japan*, 3 *INT'L L. PERSPECTIVES*, 98, 107 (1990). During the period of seclusion, the Japanese developed their "deep-seated awareness of and pride in their unique identity as a people." CHRISTOPHER, *supra* note 127, at 48.

130. TAYLOR, *supra* note 6, at 35-36.

131. Emma Louise Young, in *JAPAN: A COUNTRY STUDY* 71 (Frederica M. Bunge ed., 1983).

132. UPHAM, *supra* note 126, at 24.

133. HALEY, *supra* note 101, at 165 (stating that, because of their shared attitude, the Japanese may be more tolerant of informal dispute settlement than Westerners); Kim & Lawson, *supra* note 99, at 496 (explaining that the Japanese consider it unnecessary to rely upon the formal legal order due to their prevailing belief that everyone thinks alike).

Preservation of *wa* (the spirit of harmony)¹³⁴ motivates action. In the Japanese mind, the warmth of human relations prevails over the cold eloquence of logic or rhetoric.¹³⁵ Logic can be defined as a set of rules that enables anyone to arrive at a similar conclusion¹³⁶ and rhetoric the art of persuasion.¹³⁷ Westerners have used logic and rhetoric, which help them communicate their ideas. The Japanese, however, instinctively accept things as self-evident without any explanation or persuasion.¹³⁸ Edwin Reischauer, a former American ambassador to Japan, observed as follows: "To the Westerner the Japanese may seem weak or even lacking in principles; to the Japanese the Westerner may seem harsh and self-righteous in his judgments and lacking in human feelings."¹³⁹

The Japanese have condemned litigation as subversive and rebellious.¹⁴⁰ Sharing an aversion to law,¹⁴¹ the Japanese in general perceive litigation as a threat to society.¹⁴² The people have created their own informal legal system built on loyalty, acquiescence, and group identity.¹⁴³ By seeking a legal solution to a problem, one will reach an impersonal, concrete outcome based on logical reasoning.¹⁴⁴ Litigation further divides parties into the winner and the loser in an analytical fashion.¹⁴⁵ Such a black and white

134. *Wa*, as a prime virtue, characterizes an ideal human relationship in Japan. See Kim & Larson, *supra* note 99, at 500.

135. See, e.g., *id.* at 513; TAYLOR, *supra* note 6, at 143.

136. NODA, *supra* note 121.

137. *Id.* at 298.

138. *Id.* at 297.

139. EDWIN O. REISCHAUER, *THE JAPANESE TODAY* 140 (1988).

140. Bergeson & Oba, *supra* note 122, at 868.

141. The following explanation best summarizes the Japanese aversion to law:

To an honorable Japanese, the law is something that is undesirable, even detestable, something to keep as far away from as possible To never use the law, or be involved with the law is the normal hope of honorable people In a word, Japanese do not like law.

NODA, *supra* note 121, at 263.

142. *Id.* at 14. See also REISCHAUER, *supra* note 139, at 136 ("To operate their group system successfully, the Japanese have found it advisable to avoid open confrontations.")

143. See Robert J. Smith, *Lawyers, Litigiousness, and the Law in Japan*, 11 CORNELL L. REV. 53, 54 (1985) (explaining that the Japanese have heavily relied upon implicit understanding and shared responsibility in lieu of law); HALEY, *supra* note 101, at 165 (stating that the Japanese tend to tolerate informal enforcement). Japanese attitudes toward contractual relationships exemplify such reliance on informal enforcement. Mutual trust is more important than written contracts. *Id.* at 181. Japanese legal culture bears a striking resemblance to its Chinese counterpart in numerous respects. China developed a public law order in which law functioned independently as "a less effective alternative to moral imperatives and custom as a source of legitimacy and means of social control." *Id.* at 28. See also CHRISTOPHER, *supra* note 127, at 45-47 (discussing China's enduring influence on Japanese culture).

144. See Kim & Lawson, *supra* note 99, at 496-97.

145. Mark B. Schaffer, *The Implications of Japanese Culture on Employment*

approach, the Japanese say, would disrupt human relationships built on harmony.¹⁴⁶ The social climate often discourages aggrieved individuals to go forward with their claims and forces them to internalize their grievances.¹⁴⁷ A strong cultural preference for informal dispute resolution has remained in force in Japan.¹⁴⁸

The following case vividly illustrates the enormous social pressure against Japanese litigants in general.¹⁴⁹ In 1977, a married couple sued their neighbors for failing to supervise the couple's infant son, who drowned in an irrigation pond.¹⁵⁰ In 1983, the court awarded the plaintiffs five million yen.¹⁵¹ This legal victory was followed by media headlines such as *Judgment Hard on Kind Neighbors*.¹⁵² Within the following week, the couple also received six hundred phone calls and three hundred letters, many of which were anonymous and threatening.¹⁵³ Moreover, the husband was fired from his job the day after the judgment.¹⁵⁴

Social order and control in Japan is derived from a concept of duties, not rights.¹⁵⁵ The Japanese do not perceive rights as rigidly as Westerners

Discrimination Laws in the United States, 16 Hous. J. Int'l L. 375, 389 (1993) (noting that litigation contradicts "the cultural norm of apology, forgiveness, and subsequent reconciliation between groups"). Japanese parents endeavor to instill in their children such values as restraint in the expression of desires and opinions, empathy for others, and civility. See Smith, *supra* note 143, at 55.

146. Kim & Lawson, *supra* note 99, at 497. Japanese society in general values tolerance for ambiguity in social relations. Hiroshi Wagatsuma & Arthur Rosett, *Cultural Attitudes towards Contract Law: Japan and the United States Compared*, 2 PAC. BASIN L.J. 76, 87 (1983).

147. Experts estimate that the number of civil lawsuits per capita in Japan stands between one-tenth and one-twentieth of those in common law countries. Thompson, *supra* note 121, at 31. Furthermore, Japan has only about 16,000 qualified lawyers to serve a population of nearly 118 million; per capita, the United States has seventeen times more lawyers. Donald L. Utchmann, Richard P. Blesser & Vince Maloney, *The Developing Japanese Legal System: Growth and Change in the Modern Era*, 23 GONZAGA L. REV. 349, 356-57 (1988).

148. The Japanese generally prefer social settlements such as *wakai* (compromise) or *chotei* (conciliation) to the formal legal order. Schaffer, *supra* note 145, at 389.

149. Kiyoko Kamio Knapp, *Still Office Flowers: Japanese Women Betrayed by the Equal Employment Opportunity Law*, 18 HARV. WOMEN'S L.J. 83, 102 (1995) (citing Inoue, *supra* note 5, at 542; and Judgment of Feb. 25, 1983 (Yamanaka v. Kondo), Chisai [District Court], 495 HANTA 64 (Japan)).

150. *Id.*

151. *Id.*

152. *Id.*

153. Many of them included accusations and threats, such as "Are you using your dead boy to make money?"; "Devils!"; "Do you want me to set fire to your house?" and so forth. *Id.*

154. *Id.*

155. HALEY, *supra* note 101, at 11 (exploring a concept of duties in traditional East Asian law).

do; they tend to feel more comfortable with duties.¹⁵⁶ In the Japanese mind, the distinction between legitimate exercise of rights and extortion remains blurred.¹⁵⁷ Concepts such as individual freedom and equality have remained foreign to the traditional Japanese value system.¹⁵⁸ In fact, *kojin-shugi*, the Japanese word for individualism, often suggests selfishness to the Japanese.¹⁵⁹ The following anecdote helps to explain a weak legal enforcement of civil liberties in Japan; the Japanese language did not contain a word to express the concept of individual rights until the 1870s.¹⁶⁰ Rinsho Mitsujuri, who was commissioned to translate the French Civil Code into Japanese, had to invent such a word.¹⁶¹ Likewise, *seigi*, the Japanese equivalent of the word "justice," bears no relation to legal matters.¹⁶² It contrasts with the English word "justice," which reflects the fusion of law with the notions of good and fair.¹⁶³

The limited functions of law have contributed to the suppression of individual employees' rights in Japan. Tatsuo Inoue, Professor of Law at Tokyo University, observed that the "primacy of group loyalty" has resulted in a "weak commitment to such universal principles as human rights, justice, and fairness--principles that theoretically do not discriminate between insiders and outsiders."¹⁶⁴ Such a weakness has manifested itself in the prevalence of unpaid overtime as well as in lack of adequate workers' compensation.

156. Rajendra Ramlogan, *The Human Rights Revolution in Japan: A Story of New Wine in Old Wine Skins?* 8 EMORY INT'L L. REV. 127, 133 (1994).

157. "It is regarded as extraordinary, if not avaricious, to bring a claim for damages before the courts, even when the claim is against the author of the damage suffered." NODA, *supra* note 121.

158. UPHAM, *supra* note 126, at 206.

159. REISCHAUER, *supra* note 139, at 160.

160. Ramlogan, *supra* note 156.

161. *Id.*; Utchtmann, *supra* note 147, at 351. Japan marks a sharp contrast to the United States, where people have used law as an effective tool of asserting individual rights. See, e.g., Inoue, *supra* note 5, at 517 (comparing Americans, who have stressed the role of individual rights with the Japanese who have emphasized community values as a hallmark of society); Loraine Parkinson, *Japan's Equal Employment Opportunity Law: An Alternative Approach to Social Change*, 89 COLUM. L. REV. 604 (1989) (noting that Americans have viewed law as primarily an instrument of coercion in such areas as civil rights and women's rights); *Body Politics*, NEWSWEEK, Sept. 12, 1994, at 22 (stating that "[i]t's a good American ideal -that all individuals have rights. But applied to other countries, it has explosive connotations"). But see Inoue, *supra* note 5, at 518 (pointing out that extreme emphasis on individualism in the United States has created social problems, such as crime, moral and social decay, and inner-city collapse).

162. HALEY, *supra* note 101, at 25-26; CHRISTOPHER, *supra* note 127, at 168.

163. HALEY, *supra* note 101, at 24.

164. Inoue, *supra* note 5, at 527.

V. CORPORATE DOMINANCE IN JAPAN

For further insight into the *karoshi* issues, one must understand the values at the core of the Japanese employment system. In short, the primacy of group cohesiveness distinguishes the Japanese corporate culture most sharply.¹⁶⁵ The Japanese workplace has long functioned as a clan built upon the notion of *wa* ("harmony"). Employers have condemned rugged individualism, which can disrupt the harmony in the work environment. Consequently, workers have strived to maintain harmonious relationships at the cost of the individual.¹⁶⁶ They have remained too reluctant to assert their individual legal rights against their companies.

Lifetime employment stands out as the most striking feature of Japanese labor practice.¹⁶⁷ Major firms hire fresh graduates annually, train them to value corporate loyalty, and retain them until mandatory retirement at age sixty.¹⁶⁸ As a result, homogeneity prevails in the Japanese workplace; particularly at major firms, the core labor force consists predominantly, if not exclusively, of male Japanese nationals, who join the organizations fresh out of college. William Ouchi¹⁶⁹ observed that a typical Japanese firm, which functions as a clan, tends to develop a fear of outsiders and resists

165. REISCHAUER, *supra* note 139, at 136. Tatsuo Inoue calls the following three features of the Japanese employment system as "three sacred regalia" which have helped create the communal character of corporations: lifetime employment; seniority-based wages; and incorporate labor unions based on the capital-labor conciliation policy. Inoue, *supra* note 5, at 530.

166. See Yamazaki, *supra* note 10, at 13; Okamoto Hideo, *Corporations and Social Change*, 12 JAPAN ECHO 64 (1985).

167. REISCHAUER, *supra* note 139, at 320 (discussing the characteristics of the Japanese employment system). Japanese companies value workers who can prove their long-term commitment and loyalty to the employers. At the same time, employers tend to disdain mid-life career changes, which deviate from the established norm. Because lifetime employment forms the core of traditional Japanese management, companies have long discriminated against employees who fail to make life-long commitment, such women and those hired midway through their careers. Thomas Mrozowski & Masao Hanaoka, *Continuity and Change in Japanese Management*, JAPANESE BUSINESS 271, 273 (Subhash Durlabhji & Norton E. Marks, eds. 1993).

168. JAPAN: A COUNTRY STUDY 116 (Ronald E. Dolan & Robert L. Worden eds., 1992).

169. Ouchi introduced Japanese management to an American audience in his book *Theory Z*. WILLIAM OUCHI, *THEORY Z* 74 (1981).

deviance in all forms.¹⁷⁰ Such a system notably lacks the flexibility to accommodate divergent values slowly emerging among Japanese youth.¹⁷¹

Using a broad range of motivational devices such as pep talks, boot camps, calisthenics, and company slogans, employers take every possible step to instill values such as duty and group loyalty into their employees.¹⁷² To foster the community spirit,¹⁷³ companies mandate employees' participation in non-business activities.¹⁷⁴ Through such rituals, the values of the company become the individual values.¹⁷⁵

As one of the most dominant social institutions in Japan, corporations have exerted a vigorous power that totally absorbs individuals.¹⁷⁶ Critics often portray Japan as a *kigyo-shakai* (corporate-dominant society).¹⁷⁷ Similarly, noting the spiritual dimensions in the Japanese workplace, one observer asserts that the most widespread religion in Japan is *kigyo-kyo*

170. Ouchi further asserts that Japanese companies are more sexist or racist than any other form of organizations. He explains: "[Japanese firms] simply operate as culturally homogeneous social systems that have very weak explicit or hierarchical monitoring properties and thus can withstand no internal cultural diversity." *Id.* at 74. See also Schaffer, *supra* note 145, at 385 (explaining that "[t]he concept of ethnic homogeneity is deeply rooted in the national psyche, and it is deliberately fostered by the nation's leaders as the force behind the nation's social cohesion and sense of shared purpose"); TAYLOR, *supra* note 6, at 28 (explaining that the profound sense of uniqueness isolates the Japanese mentally from the rest of the world).

171. For a more complete discussion of attitudinal changes among Japanese youth, see *infra* section VI.

172. WILLIAM C. BYHAM, *SHOGUN MANAGEMENT* 47 (1993); James R. Lincoln, *Employee Work Attitudes and Management Practice in the U.S. and Japan: Evidence from a Large Comparative Survey*, Fall 1988, CAL. MGMT. REV. 89, 99 (1989).

173. REISCHAUER, *supra* note 139, at 321 ("No one tries to demonstrate individual brilliance or aggressive leadership for fear of being considered a misfit.")

174. Examples abound. To take one example, a workday at Panasonic Inc. begins with a morning gathering where employees chant company slogans and sing the company anthem. Makoto Sataka shares his observation of the morning gathering at the Panasonic head office in Kadoma City, Osaka Prefecture. About 150 employees from accounting, personnel, and general affairs departments gathered on the first floor at 8:30. A person on duty proceeded to the front and opened a scroll embodying seven philosophical slogans. All workers repeated them in union. Next, another person on duty gave a three-minute speech. Lastly, employees sing the company anthem entitled *Love, Light, and Dream*. This is not an unusual sight among Japanese companies, including multinational firms. SATAKA, *supra* note 49, at 180-85.

175. TAYLOR, *supra* note 6, at 70. Japanese men learn to seek self-identity through companies they work for; a person's job serves as "a vital source of his self-respect, a firm basis for his self-interpretation, and a prime determinant of the social recognition he gains." Inoue, *supra* note 5, at 528.

176. See Inoue, *supra* note 5, at 520 (stating that the primacy of group conformity has enhanced corporate productivity but has also impoverished individual workers' lives).

177. See generally Atsumi Ninomiya et. al., *Kigyo Shakai-no Kokufuku-ni Mukete [How to Overcome the Corporate-Dominant Society]*, 1303 RODO HORITSU JUNPO [LABOR L. REPT.] 6, 6-32 (1993).

(corporate religion).¹⁷⁸ Life-long job security ultimately produces an enthusiastic work force that takes pride in hard work.¹⁷⁹ The spirit of corporate warriors embodies elements such as "stamina, intestinal fortitude, and dogged loyalty."¹⁸⁰ It is this spirit that has partly made Japan's unprecedented economic growth possible. Parochial values underlying corporate dominance has pervaded various aspects of Japanese society.

VI. RISE OF INDIVIDUALISM AMONG JAPANESE YOUTH

Conventional legal scholarship has focused almost exclusively on the law's limited functions in Japan.¹⁸¹ On the other hand, few observers have devoted attention to contemporary realities of Japan. The Japanese legal consciousness does not remain immune to the dynamics of social change.¹⁸² Without doubt, Japan today is in a transitional phase. The Japanese have shown their capability of making rapid and purposeful change.¹⁸³ Such capability is particularly notable among younger generations; they freely express their discontent with limitations imposed by the primacy of group conformity.¹⁸⁴

178. SATAKA, *supra* note 49, at 180. See also BYHAM, *supra* note 172, at 13 (stating that "[t]he fatherly role of many Japanese managers would seem inappropriately paternalistic and strangely out of place in the more impersonal American workplace"). The following survey on the role of the company reflects a striking contrast between Japanese and American employees:

I think of my company as:

(1) the central concern in my life and of greater importance than my personal life; Japan 9% U.S. 1%

(2) a part of my life at least equal in importance to my personal life; Japan 64% U.S. 20%

(3) a place for me to work with management, during work hours, to accomplish mutual goals; Japan 15% U.S. 37%

(4) strictly a place to work and entirely separate from my personal life; Japan 12% U.S. 37%

ARTHUR M. WHITEHILL, *JAPANESE MANAGEMENT: TRADITION AND TRANSITION* 154-55 (1991).

179. REISCHAUER, *supra* note 139, at 324.

180. Takada Masatoshi, *Woman and Man in Modern Japan*, 16 JAPAN ECHO 39, 42 (1989).

181. See, e.g., Kim & Lawson, *supra* note 99. See also UPHAM, *supra* note 126, at 1 ("When Japanese law has been dealt with at all, the focus has been on the minimal role that it plays.")

182. OUCHI, *supra* note 169.

183. Edwin Reischauer expressly rejects the perception among Westerners that Japan consists of "a uniform race of pliant, obedient robots, meekly conforming to rigid social rules and endlessly repeating the established patterns of their society." REISCHAUER, *supra* note 139, at 159.

184. *Id.* at 160. Survey results confirm that younger Japanese share American-style values. Lincoln, *supra* note 172, at 93.

Of vital importance is the growing diversification of values.¹⁸⁵ A shift in the labor consciousness marks one of the most indicative signs of such diversification.¹⁸⁶ Most strikingly, the labor mobility has considerably increased in accordance with the decline of traditional lifetime employment. Switching jobs, once an unthinkable betrayal,¹⁸⁷ has gradually gained more social acceptance. A rising number of Japanese men are now aspiring to free themselves from the rigor of corporate culture.¹⁸⁸ Work no longer occupies a central place of their lives. Polls confirm that young workers crave more freedom in their personal lives:¹⁸⁹ 31.5 percent of men responded that they view work as a means of making life more enjoyable; also, 25.3 percent of men expressed their desire to work for the purpose of maximizing their individual potential.¹⁹⁰ In contrast, only 0.4 percent stated that their main goal is to contribute to corporate development.¹⁹¹

Outside the corporate world, men are now entering a broader array of fields, including those traditionally considered women's territories. The November 1994 issue of *Nikkei Woman*, a magazine for working women, featured an article on some of these men, who work as a dog groomer, a nurse, a nurse's aid, and a kindergarten teacher.¹⁹² This article conveys a clear message: more men are now refusing to climb the corporate ladder simply to fulfill their culturally expected role as breadwinners.¹⁹³ These men view work as a means of individual self-expression.

Given the diversity of values, a naive belief that everyone thinks alike¹⁹⁴ can no longer prevail. When employees do not share the same value

185. See generally Yamazaki, *supra* note 10.

186. See generally Yoichiro Hamabe, *Inadvertent Support of Traditional Employment Practices: Impediments to the Internationalization of Japanese Employment Law*, 12 UCLA PAC. BASIN L.J. 306 (1994).

187. TAYLOR, *supra* note 6, at 150.

188. REISCHAUER, *supra* note 139, at 326.

189. *Id.* (discussing less loyalty and commitment among younger workers, who reject the paternalistic nature of traditional management and crave more freedom in their personal lives).

190. NUUY ISSEIKI ZAIDAN [JAPAN INSTITUTE OF WOMEN'S EMPLOYMENT], JYOSEI KOYO NO KANRI TO KOMYUNIKESYON GYAPPU NI KANSURU KENKYU KAI HOKOKUSHO [STUDY ON WOMEN'S EMPLOYMENT AND GENDER-BASED COMMUNICATION GAP] 6 (1993).

191. *Id.*

192. *Onna no Shigoto ni Tsuku Otoko-tachi* [Men who Enter Women's Fields], NIKKEI WOMAN, Nov. 1994, at 138-43.

193. *Id.* at 138. *Asahi Shimbun*, a major newspaper in Japan reported on the nation's first symposium on "fathers' rights" held in Kyoto City. It suggests a heightened societal awareness of men's rights which have been long ignored. The symposium also included a discussion of what should be done to eradicate *karoshi*. *Chichioya-no Tachiba-de Karoshi-o Kobamo* [Let Us Challenge Karoshi from the Father's Perspective], ASAHI SHIMBUN [ASAHI NEWS], July 6, 1994, at 14.

194. See Kim & Lawson, *supra* note 99, at 496-97.

system, the workplace will have difficulty operating as a quasi-community.¹⁹⁵ Inevitably, to seek unity out of growing diversity emerges as a new challenge.¹⁹⁶ The feudalistic nature of Japanese business management collides with some trends demanding a lasting change in society.¹⁹⁷ The Japanese can no longer heavily rely upon informal social sanctions that override the written law. Coercive legal powers should thereby play a heightened role in accommodating a divergence of visions.

The Westernization of Japanese society may heighten people's awareness of individual legal rights.¹⁹⁸ Japanese youth perhaps will feel less reluctant to assert their legal rights through a formal adjudicating process. Japanese society has long condemned legal battles against one's own employer as a "radical, threatening act to fellow employees as well as to management."¹⁹⁹ In pursuit of greater personal autonomy, however, the modern Japanese may learn the value of litigation as a tool of confronting and overcoming injustices.

A recent sexual harassment suit²⁰⁰ provides a striking example of heightened legal consciousness in Japan.²⁰¹ In April 1992, a woman won the nation's first "hostile environment" sexual harassment case in the Fukuoka District Court. Plaintiff, who worked for a publishing company, asserted that her editor had spread rumors about her private life. This legal battle, which had captured national attention, ended in the woman's victory. The court decision urged many employers to prevent potential claims by implementing sexual harassment policies. The outcome of this case is

195. Okamoto, *supra* note 166, at 64. One critic predicts that Japanese-style management will die a "quiet, peaceful death" due to the rise of individualism, as well as low growth and globalization. Osamu Katayama, *Back to the Drawing Board*, 39 LOOK JAPAN 13 (1993).

196. Gibbon, *supra* note 129, at 125. See also Inoue, *supra* note 5, at 521 (discussing an "urgent need [in Japan] to heed the voice that calls for increased respect for individual rights"); REISCHAUER, *supra* note 139, at 160 (explaining that Japanese youth are now seeking to break out of the strict molds of their society); Okamoto, *supra* note 166, at 66 (pointing out that an alternative approach to managing the workplace should "emphasize personal commitment to one's work and individual interests rather than, as in the past, the subordination of those interests to group effort").

197. See Esaka, *supra* note 6, at 70. For recent social changes in Japan, see also generally Katayama, *supra* note 6; Yamamoto Harumi, *The Lifetime Employment System*, 40 JAPAN Q. 381 (1993); Takada Masatoshi, *Woman and Man in Modern Japan*, 16 JAPAN ECHO 39 (1989); Ogata Takaaki, *Young Workers Move with Times*, 12 JAPAN ECHO 68 (1985).

198. Obuchi, *supra* note 100, at 74.

199. UPHAM, *supra* note 126, at 140.

200. For a more complete discussion of this case, see generally Nancy Patterson, *No More Naki-Neiri? The State of Japanese Sexual Harassment Law*, 34 HARV. INT'L L.J. 206 (1993).

201. Sexual harassment litigation still remains rare in Japan today. In the U.S., however, about 38,000 sexual harassment suits have been brought as of 1989. Helweg, *supra* note 118, at 316. For sexual harassment in Japan, see also generally Miyuki Muneshige & Ann Saphir, *Learning to Say No*, 36 LOOK JAPAN 22 (1990).

noteworthy, given societal pressure against litigants. Having observed the court proceedings of the case, Mikiko Taga, a journalist on women's issues, shares her impression as follows: "I was impressed by the way the plaintiff held her head high, unashamed that she should be suing a company for something unheard of in the company-is-God Japan."²⁰² As this case suggests, younger Japanese may feel less constrained to haul their employers into the legal battleground when labor disputes arise.

VII. THE FIGHT FOR HUMAN DIGNITY

A. *The Need for More Forceful Laws*

The concept of corporate loyalty is so deeply ingrained in the Japanese consciousness that its adverse impact has long remained unquestioned. Sadly, it has taken the tragedy of *karoshi* for the people to grasp the magnitude of the problem. To eradicate *karoshi*, Japan must stand firm against employers' abuse of power by seeking to expand legal protection of workers. Human rights are too precious to be buried in an abstract, ideological discussion. The battle against the primacy of corporate welfare demands the force of law.

Law is no panacea; it does not completely transform traditional patriarchy.²⁰³ In the United States, for instance, deep-rooted racial prejudice unavoidably stands beyond the reach of law,²⁰⁴ and the struggle for equality continues today.²⁰⁵ Notwithstanding such limitations, one should not disregard the critical role that legal reform has played in the area of civil

202. Mikiko Taga, *It's Time to Get Serious*, 35 LOOK JAPAN 3 (1990). Taga further adds that the concept of sexual harassment "shocked the Japanese because it broke a social taboo, one that had existed for many, many years." *Id.*

203. Law has failed to provide the complete solution to racial discrimination in the U.S. Evidence suggests that Whites have shown greater tolerance of African Americans since the 1950s; nonetheless, much remains to achieve social integration in today's America. See Richard H. McAdams, *Cooperation and Conflict: the Economics of Group Status Production and Race Discrimination*, 108 HARV. L. REV. 1005, 1056 (1995). One author discusses continued discrimination against African Americans in the U.S. and, more importantly, the law's failure to remedy the problem. She asserts that "Martin Luther King's marches and peaceful protests have done as much as the courts have for African Americans, if not more." Helweg, *supra* note 118, at 312-13. The ongoing controversy over affirmative action illustrates the difficulty of achieving true equality. See, e.g., MICHEL ROSENFELD, *AFFIRMATIVE ACTION AND JUSTICE: A PHILOSOPHICAL AND CONSTITUTIONAL INQUIRY*, Introduction (1991) ("For the past two decades, affirmative action has ranked among the most controversial publicly debated issues in the United States.") See also KATHANNE W. GREENE, *AFFIRMATIVE ACTION AND PRINCIPLES OF JUSTICE* (1989); Robert J. Samuelson, *Affirmative Action as Theater*, NEWSWEEK, Aug. 14, 1995, at 51.

204. See Torres, *supra* note 109, at 1052.

205. See *supra* note 203.

rights.²⁰⁶ One author illustrates greater tolerance of minority groups in America as follows: even the power of law fails to "force a white person to accept a black person (or vice versa)"; yet, law retains the ability to "force the two people to interact in certain areas of public life."²⁰⁷ The imposition of force is meaningful because it regulates one's outward behavior.

In Japan, regulation of management behavior, although only part of the solution, represents one essential step to be taken. Thus, a heightened role of law should serve as a vital part of a catalyst for social change in Japan. As noted, U.S. antidiscrimination legislation reflects a widely shared concept that one should be recognized for his or her intrinsic worth.²⁰⁸ Vigorous enforcement of the law, which appeals to the public sense of justice, will direct the community to move toward declared goals. Thus, societal condemnation of exploitative employers should form the core of appropriate legislation in Japan as well. Also importantly, the enforcement should include the threat of sanctions; articulation of rules, by itself, remains insufficient to induce socially desirable behavior.²⁰⁹ A mere embodiment of utopian visions would fail to bring about deep and lasting change.

The legal framework must be restructured to condemn and correct employers' abuse of power while maximizing compensation benefits for victims' families. The following are some suggestions of possible legal solutions. Not intended to be exhaustive, they only provide a few concrete examples of necessary changes. First and foremost, the maximum work hour provision of the Labor Standards Law should be strictly enforced, deterring corporations from unfairly benefiting from unpaid overtime. For this purpose, Article 36 of the Law, which has rendered the work hour regulation virtually meaningless,²¹⁰ should be amended, if not repealed. The signing of the agreement between management and its workers should be in effect only if all workers have participated, directly or indirectly, in the decision-making process. Although representatives of the workers are inevitably the ones in charge of face-to-face negotiation with the employer, those in such a responsible position must be elected through a fairly structured voting system. Furthermore, an enforcement mechanism of recording accurate work hours should be implemented; this system necessitates regular inspection of reported hours by an administrative agency as well as sanctions against violations.

206. Helweg, *supra* note 118, at 312-13. See also LESLIE BENDER & DAAN BRAVEMAN, *POWER, PRIVILEGE AND LAW: A CIVIL RIGHTS READER* (1995) (pointing out that law must validate effective social change).

207. Note, *Legal Realism and the Race Question: Some Realism about Realism on Race Relations*, 108 HARV. L. REV. 1607, 1616 (1995).

208. See *supra* notes 115-17 and accompanying text.

209. HALEY, *supra* note 101, at 5.

210. See *supra* note 54 and accompanying text.

Second, the Ministry of Labor should expand access to workers' compensation for families of *karoshi* victims by relaxing the high burden of establishing causation. The Ministry should not avert its eyes to the fact that many people engage in physically grueling work as a matter of routine; gradually-accumulated exhaustion can cause sudden death, although the workload during the week preceding death may happen to be somewhat lighter than usual.²¹¹ Based on this recognition, the amended statute should adopt a broader factual inquiry on a case-by-case basis.

Finally, the law should clearly set forth the time period within which employers must submit information requested by compensation claimants. Employers who refuse to cooperate with the investigation should be subjected to stringent penalties.

B. Possibilities of Working within the Existing System

The necessity of statutory reform cannot be overemphasized. Nevertheless, sweeping changes do not take place overnight. Tadashi Matsumaru, a lawyer and recognized authority on *karoshi*, explains that the attempt to reform has been made; yet, he adds, the progress has remained slow.²¹²

One may find it easy to criticize the failure of the legal system and to conclude that little can be gained without institutional changes.²¹³ Robert Elias, an author of a book on crime victims and victimization, cautions that such an attitude in effect will confine the oppressed to a passive role of an onlooker; one reinforces the existing structures as correctable flaws and patiently awaits future improvements.²¹⁴ Elias' caution becomes of greater importance in the Japanese setting, in which people are used to seeing themselves as onlookers. *Kaho wa Nete Mate* ("Lie down and await good news."), goes a popular saying. The Japanese tend to believe that pursuit of fairness and equity lies with some authority rather than themselves.²¹⁵ In other words, one's life is simply given; it is not to be built.²¹⁶ Society values the virtue of submission to fate as a sign of one's maturity.²¹⁷

211. OSAKA KAROSHI MONDAI, *supra* note 11, at 20-21.

212. Interview with Tadashi Matsumaru, Attorney at Law, Sakai Law Office (Osaka, Japan), June 30, 1994. Issues concerning procedural obstacles in the passage of legislation extend beyond the scope of this paper.

213. ROBERT ELIAS, *THE POLITICS OF VICTIMIZATION: VICTIMS, VICTIMOLOGY AND HUMAN RIGHTS* 210 (1986).

214. *Id.*

215. YOZO WATANABE, *HO TO-WA NANI-KA* [WHAT IS LAW?] 19 (1979).

216. *See* Yamazaki, *supra* note 10, at 14.

217. The Japanese culture has absorbed Buddhist teachings which embrace submission to fate as "the source of all true happiness." *See* NODA, *supra* note 121, at 173.

Notwithstanding the tradition, individuals should learn to accept greater responsibility for effecting social change. The Japanese Constitution proclaims that "freedoms and rights . . . shall be maintained by the *constant endeavor of the people*, who shall refrain from any abuse of these freedoms and rights."²¹⁸ (Emphasis added.) When this proclamation actually penetrates Japanese minds, that will mark one critical step toward building a better workplace. Based on that view, this section will explore what individuals and communities can undertake within the present system.

1. *Learning about Law*

The minimal role of law in Japan partly stems from lack of educational opportunities to enhance people's appreciation of law as a source of power. In the United States, people have absorbed the value of asserting one's legal rights through various means in their everyday lives, ranging from frequent trial scenes on television to mock trials in high school.²¹⁹ In contrast, the Japanese people's exposure to law, if any, remains considerably limited. Law remains no more than an ornament unless citizens enforce them. The more people become informed of their legal rights, the more likely that they will exercise them. Thus, the Japanese need to be taught that they are entitled to fight for their beliefs and that participation in the adversarial process is not a shameful act. For this purpose, education should help increase societal awareness of legal rights. To take one example, at the secondary school level, educators should broaden the regular curriculum to include lessons that impart an understanding of law. The subject areas may range from an introductory survey of the legal system to the study of contemporary issues such as those concerning *karoshi*. To stress the notion that law functions to reconcile diverse values, the teacher should substitute the conventional lecture format with various activities that will enable participants to communicate their ideas; the options include debate, group discussions, and mock trials.²²⁰ When conflicting views arise, students should be reminded that they are entitled to exercise their right to disagree. Most of all, students should learn the following lesson: conflicts inevitably become a way of life as a mass of individuals seek to pursue their best interests; although an effort to prevent or minimize the conflicts should be valued, certain problems may require legal solutions.

218. KENPO [Constitution] art. XII (Japan). Also, Article 13 of the Constitution declares that people's right to life, liberty, and the *pursuit of happiness* shall . . . be the supreme consideration." (Emphasis added.) *Id.* art. XIII.

219. See, e.g., Riordan, *supra* note 109, at 675.

220. Other methods may include making a field trip to the courthouse and inviting legal professionals as guest speakers.

For students entering the job market following graduation, the teacher should further offer seminars on the relationship between management and its workers. Currently, at most Japanese schools, job search strategies occupy a large part of career guidance. Consequently, many graduates step into the real world without making a full assessment of their occupational and personal goals. Especially among men, companies' prestige often serves as the sole motivating factor for employment. At the same time, they tend to overlook what may possibly lie in the shadows of "big names": long work hours, periodic transfers including overseas assignments, work-related socializing, and other constraints that can totally absorb one's personal freedom. These students should critically evaluate the traditional labor policy, which demands religious devotion by workers.²²¹ By exposing them to the harsh reality of corporate culture, the teacher should encourage the students to clarify their values and make responsible choices.²²²

2. *Participating in the System*

Aside from reform legislation, a battle against the workers' compensation law can start with participation in the system itself. As noted above, many families of *karoshi* victims forgo their claims, deciding that the application for benefits will not be worth the price.²²³ Their decision is perhaps understandable, given the procedural burdens inherent in each step of the application process.²²⁴ Notwithstanding the obstacles, families should be strongly encouraged to assert their compensation claims; direct involvement paves the way for bringing one's grievance to public attention. *Karoshi* is not only a personal crisis; it is a threat to Japanese society as a whole.²²⁵ Thus, instead of directing their grief inward, families should endeavor to make their voices heard, exposing the employer's abuse of power to the public.

For many, application for compensation marks their first personal encounter with formal legal proceedings. Law, which may have remained comfortably out of their reach, suddenly enters their lives. The technical rules of law operate to exclude the inexperienced.²²⁶ Saddled with

221. For this purpose, students may benefit from listening to guest speakers, such as a businessman, a lawyer working on *karoshi* cases, and a family member of *karoshi* victims.

222. More specifically, the following questions should be presented. Why is a job important to you? What do you value most in your life? What are your personal, occupational, social, economic and/or spiritual goals?

223. See *supra* note 89 and accompanying text.

224. For a discussion of the application process, see *supra* notes 69-71 and accompanying text.

225. See *supra* note 13 and accompanying text.

226. ELLEN ALDERMAN & CAROLINE KENNEDY, *IN OUR DEFENSE: THE BILL OF RIGHTS IN ACTION* (1991), at Author's Note.

procedural burdens, claimants will probably find each step of the legal process intimidating and frustrating. Thus, instead of struggling through the system on their own, claimants should seek legal counsel from workers' compensation specialists.

They can retain an attorney through the National Defense Counsel for Victims of *Karoshi* (*Defense Counsel*). Lawyers across the nation joined in 1988 to form this organization that aids and empowers families of *karoshi* victims.²²⁷ Consisting of about three hundred members, the Defense Counsel proclaims the philosophy behind its advocacy as follows:

It is said that all human rights are based on respect for the individual. We believe that the freedom of an individual to live and die naturally without being subjected to destruction by others is the foundation of all human rights. We therefore believe that conditions and practices which destroy workers' health and life should never be tolerated.²²⁸

In 1988, lawyers, physicians, and labor activists launched nationwide *karoshi* hotlines to answer the public's questions.²²⁹ On the first day alone, the phones were ringing constantly across the nation, and a total of 135 calls were answered.²³⁰ As of June 1994, the hotlines had received more than 3500 claims.²³¹ Of the 1806 cases reported to the hotlines during the first two years, about 55% came from distressed widows seeking compensation for their husbands' deaths.²³² Many calls also came from wives who feared that it was simply a matter of time before their husbands would collapse of fatigue.²³³ This consultation program, which started in seven major cities, has expanded to all forty-seven prefectures of the nation.²³⁴ Additionally, international hotlines were set up in New York and Brussels in 1991 due to a steady increase of Japanese businessmen working overseas.²³⁵

227. NATIONAL DEFENSE, *supra* note 1, at Preface IV.

228. *Id.*

229. Kawahito, *supra* note 5, at 150.

230. NATIONAL DEFENSE, *supra* note 1, at 7.

231. *Symposium*, *supra* note 78.

232. NATIONAL DEFENSE, *supra* note 1, at 7.

233. *Id.*

234. *Id.*

235. For example, wives of businessmen working or traveling overseas have consulted the hotlines related to the following claims: "He worked straight through without a break after returning from overseas[;]" "[h]e collapsed at the end of more than 150 days of business trips abroad in one year[;]" "[h]e died after being forced to go abroad on a business trip even after being warned about his high blood pressure[;]" "[h]is health deteriorated while working overseas, but he was not allowed to come home in time to seek medical attention" Kawahito, *supra* note 5, at 152.

Some claimants may need moral support more strongly than legal counsel. They should build a supportive network through an advocacy group, sharing information and consulting one another. Also, collective efforts can enable a sole grievant to publicize her compensation claim; various options are available, ranging from distributing fliers to writing letters to the media. In the past, families of victims often internalized their grievances. In the late 1980s, however, many have begun to rise in protest with the recognition that silence may only add to lasting harm to society. They began fighting against the bureaucracy, which remains insensitive to the survivors who lost their loved ones under severe working conditions.²³⁶ In 1990, they formed an organization called The Families of Karoshi Victims.²³⁷ The group's activities include campaigning to win workers' compensation benefits and helping prevent future cases of *karoshi*.²³⁸

Furthermore, in 1991, fifty wives who had lost their husbands to *karoshi* published a thought-provoking collection of their essays.²³⁹ Each essay not only gives a wrenching account of the tragic death but also sheds light on the shadows of Japan's economic triumph. Entitled *Nihon-wa Shiawase-ka* ("Is Japan a Happy Nation?"), the book sends a poignant message to its audience: it is time to begin creating a new workplace that integrates work and home, collective responsibility, and personal freedom.

The work of the Defense Counsel and the Families of Karoshi Victims will serve as a milestone in the battle to enhance public awareness of individual employees' rights. Lasting change requires organized efforts of the community. Japan should strive to breathe life into Article 1 of the Labor Standards Law, which now appears to be a mere ornament: "Working conditions shall be those which should meet the needs of workers who live lives worthy of human lives."²⁴⁰

Only with a societal commitment to challenge inequities in the workplace will Japan have embarked on the journey to the restoration of individual dignity.²⁴¹ Human lives are a very high price to be paid for economic gains.

236. *Id.* at 157.

237. NATIONAL DEFENSE, *supra* note 1, at 13.

238. *Id.*

239. NIHON-WA SHIAWASE-KA [IS JAPAN A HAPPY NATION?] (Families of Karoshi Victims ed.)(1991).

240. LSL, *supra* note 16, art. 4.

241. Armour, *supra* note 118, at 815. For attitudinal change in younger employees, see REISCHAUER, *supra* note 139, at 326 (discussing less loyalty and commitment among younger workers who reject the paternalistic nature of traditional management and crave more freedom in their personal lives).

VIII. CONCLUSION

The primacy of corporate welfare has penetrated various aspects of Japanese society. The Japanese government has utterly failed to confront the problems arising from the inhuman labor practice. The defects in the work hour regulations and the workers' compensation system reflect the mere decorative function of law in Japan.

In recent years, the Japanese labor practice is showing signs of erosion.²⁴² Accordingly, Japan will not be able to "stay drunk on the wine of postwar success much longer."²⁴³ The diversification of values will sooner or later necessitate a major change in the Japanese legal landscape. To meet that challenge, the force of law should provide a vehicle for integrating divergent values and enhancing individual rights.

242. REISCHAUER, *supra* note 139, at 326. See generally Hamabe, *supra* note 186; Uchihashi, *supra* note 119, at 47.

243. Katayama, *supra* note 6, at 13.

