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**Suing over Ostracism in Japan:**

**The Informational Logic**

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*Abstract:* Group ostracize members. Sometimes they do it to enforce welfare-maximizing norms, but other times ostracism reduces welfare. Japanese villages have long used ostracism as a tool for conformity, and the targets have sometimes sued in response. The cases that have reached the courts disproportionately involve welfare-reducing behavior by the community; for example, ostracism against targets who report corruption. The targets usually win the civil cases against ostracizers and prosecutors usually win the criminal cases. Yet the targets seem not to have sued for financial or injunctive relief, and the prosecutors seem not to have pushed for prison terms. Instead, they have used the courts for an informational end: to certify and publicize innocence. This end is of minor importance in normal litigation, but crucial fo ostracism, as we explain using a formal model. We use case examples and the model to explore the factors that cause disputes to lead to ostracism and ostracisms to lead to litigation.

**August 23 note:** We are presenting this paper on Friday August 28, 2020,10am-12:30pm Eastern, at the International Speaker Series (Online), Rethinking Cultural Constructions of Law in East Asia(7-9:30am in Los Angeles, 3-5:30pm in London, 10pm-12:30am in Beijing, 9-11:30 pm in Seoul and Tokyo), with Commentors Professor Eric Feldman, University of Pennsylvania, and Professor John Haley, University of Washington. The seminar website is  [http://eastasianlegalcultures.com/?fbclid=IwAR2Sl4EXOabCI7EzzW4NJDf5H-Paj1lOhgGWICJzCuXnAIAF7B0-sBdKlI8](%20http:/eastasianlegalcultures.com/?fbclid=IwAR2Sl4EXOabCI7EzzW4NJDf5H-Paj1lOhgGWICJzCuXnAIAF7B0-sBdKlI8). We welcome all comments, large and small, encouraging or fatal (of course we hope there are no fatal flaws, but if there are, we want to find them as early as we can). Don’t be shy.

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It happened in 1952 in a small village at the base of Mt. Fuji **(Case 1)**. For years, a village leader had gone house to house asking residents whether they planned to use their election ticket, the form that enabled them to vote. If not, he asked if they could give it to him so that it would not go to waste.

Teenager Satsuki Ishikawa thought this outrageous. Still in middle school, she wrote an article about the leader’s electoral fraud for her school newspaper. School administrators collected every copy of the issue and destroyed it. Two years later, she decided to try again. She could not complain to city hall, since the man collecting the tickets worked there. She thought of complaining to the electoral commission, but worried that they might be part of the scheme. She considered the police, but she did not trust them either. Instead, she wrote to the national Asahi newspaper. The paper sent reporters to the village, and electoral fraud hit the national news. The police arrested the village leaders, and the community responded by ostracizing the Ishikawa family.

Readers of the Asahi wrote in from around the country in support of Satsuki Ishikawa. Her teachers and classmates encouraged her. But the Ishikawa family raised rice. In the pre-mechanized 1950s, transplanting rice required community assistance. When the time arrived to transplant the Ishikawa fields, no one came to help.[[1]](#footnote-1)

Apparently, the Ishikawa family never filed suit.

A. Ostracism as a *Complementary* Mechanism of Social Control:

B. Ostracism as a *Competing* Mechanism of Social Control:

II. Ostracism in Japan

The Japanese term for it is "murahachibu" (村八分).

The Japanese government began appointing judges to handle civil and criminal cases soon after the 1868 Meiji Restoration. It adopted a Prussian-based constitution in 1889, a German-based Civil Code in 1896, and a Criminal Code in 1907.

B. Conventional Cases:

A Supreme Court case from 1921, for example, concerned a rural hamlet that had received subsidies from the larger village (mura) and county (gun) governments to build a road **(Case 2)**. Sadaji Kodama owned part of the land over which the road would pass. He refused to convey it to the community. Whether his objection was that the community wanted more land from him than it took from others; whether it offered them higher compensation than he was offered; whether the road benefited others more than him we cannot tell from the court opinion. Three times, however, the county head visited Kodama to plead with him, to no avail. After seven or eight years passed and the hamlet had still to finish the road, the county withdrew its subsidy. Furious, hamlet members assembled and voted to cut all ties with Kodama and with anyone -- "whether or not related by blood" -- who might continue to have contact with him.[[2]](#footnote-2) Kodama sued in response, and (as discussed in more detail below), the court called the ostracism a tort.

The Supreme Court faced a similar case in 1939 **(Case 3)**. Here, too, a hamlet planned to expand a road, and here, too, a landowner refused to cooperate. The hamlet needed to remove a hedge at the edge of his property, but the owner refused permission. After long and complicated negotiations involving not just the owner but his grown nephew, community workers started to clear the hedge. The owner called the police, and the community responded by imposing ostracism.[[3]](#footnote-3) In turn, prosecutors brought charges, and (as discussed below), the court called the ostracism a crime.

In the 1939 road expansion case (Case 3), the Supreme Court did conclude that the ostracism was criminal. But it held it criminal only because the offenders imposed it "without a reason deemed appropriate by social convention." As "judged by social convention, their ostracism had lacked a recognizably proper reason." Given that lack of a "proper reason," it violated "public order and good morals."

A 1952 case from the Tokyo High Court involved a hamlet's liability to the national government **(Case 4)**. Under the stringent economic controls of the early post-war years, the national government requisitioned rice from farming hamlets (effectively but not formally a tax). Community leaders then allocated that amount among the hamlet members.[[4]](#footnote-4) One of the residents in the 45-household hamlet thought his allocation unfair and refused to provide the full amount demanded. The community responded with ostracism.[[5]](#footnote-5) The farmer sued, and again (discussed below) the court held the ostracism a tort.

2. Criminal cases. Section 222 of the Criminal Code made intimidation --- conduct that would "threaten the life, body, freedom, reputation, or property of another" --- a crime.

The judges called ostracism criminal intimidation. When victims sued hamlet leaders, the courts generally called the ostracism a private wrong.

Section 709 of the Civil Code made intentional harm a tort: the "intentional or negligent invasion of another person's rights or legally protected interests." The judges called ostracism an intentional tort.

One of the earliest criminal cases reached the Supreme Court in 1911 **(Case 5)**. The case involved a man who had failed in business. He had largely brought it upon himself, and had caused his neighbors considerable harm in the process. The community imposed ostracism. Lest his friends decide to ignore the sanction, some members of the community contacted his likely sympathizers. Should the sympathizers ignore the decree, they warned, they would meet the same fate.

The court declared this threat to the sympathizers a crime.[[6]](#footnote-6) No one has a right to social interchange, it reasoned. If anyone finds that a neighbor no longer speaks to him, he has not necessarily suffered a legal wrong. But should his neighbors stop contact collectively, they do commit a crime. "When the residents in an area decide collectively to punish a member, and then declare that they will cease all contact with him, they have excluded the member from their society. They have degraded his personhood, and harmed his good name." They have, in violation of Section 222 of the Criminal Code, committed criminal intimidation.[[7]](#footnote-7)

Government skepticism toward ostracism did not start in 1911. Even during the Tokugawa shogunate the government was skeptical. In 1822, 26 villagers in Komono village (in current Mie prefecture) sued in the local (domainal) court to expel their neighbor Kishichi. He was not, they complained, "conforming to the customs of the village" **(Case 6)**.[[8]](#footnote-8) Kishichi had moved to the hamlet from a nearby village. He farmed land which his family had already owned, but the villages wanted him evicted anyway.

The court dismissed the petition and punished the village leaders. The principal leader, it banished. It ordered three other leaders to house arrest and forced labor, and nine to forced labor (Suzuki 2020):

[The men] have ignored their agricultural work, and by plotting this insistent litigation have wrecked the [social] order. The village population was so low that the residents could not even till all the paddies and fields they have. Yet here they are trying to expel a man who has moved there. This is outrageous.

Although the Supreme Court announced a flat ban on ostracism in the 1911 case **(Case 5)**, courts generally took a more measured approach.

Yet if in 1939 the court declared only unreasonable ostracism illegal **(Case 3)**, the courts usually found the ostracism in the reported cases unreasonable. One would search long to locate any village ostracism that the courts permitted.

3. Tort cases. -- Return to the 1921 Supreme Court case where Kodama refused to provide land for a road **(Case 2)**. The case did not stem from a criminal prosecution. Instead, Kodama had brought it in tort against the hamlet members who engineered the ostracism against him. Through the case, the Court made clear the tort equivalent of Criminal Code Section 222: to ostracize collectively a member of a community is an intentional tort. "Leave aside doctors and innkeepers for whom special rules exist," the court explained --- its reasoning tracked the principles it would apply in 1939 to criminal prosecutions **(Case 3)**:[[9]](#footnote-9)

If someone wants to take part in social interchange, he does not have a right to demand it. Instead, others are free to accept his invitation or to refuse. The same goes for times when he wants to sit next to someone, talk with the person, trade, or take part in other actions or inactions.

But that each person may refuse to interact with another individually does not mean that a group can refuse to do so collectively. It is somewhat like anti-monopoly law, which in most countries allows an individual firm to charge a high price or to refuse to sell to a particular customer but is mercilessly rigorous (“per se”, not “rule of reason”) when firms try to agree among themselves to do the same thing.[[10]](#footnote-10)

The Kodama defendants argued that they were merely exercising their right of "self-defense." After all, both criminal and civil law in Japan do allow people to defend themselves under appropriate circumstances (Civil Code, Sec. 720; Criminal Code, Secs. 36, 37). Kodama had "damaged the collective interest" of their community, the defendants claimed. They were trying to "preserve its good customs and order." The court would have none of it, no more than if all but one firm in the steel industry had gotten together and agreed to punish the excluded firm for ruining business by driving down prices. Should community members collectively decide to terminate contact with an offending member, they commit a tort under Section 709 of the Civil Code.[[11]](#footnote-11)

And return to the 1952 Tokyo High Court decision about the government's rice requisition program **(Case 4)**. The offending farmer refused to supply the share of the collective rice burden assigned to him by the hamlet, and the community responded with ostracism. The court declared the retaliation a tort:

This local association constitutes the base for all social activity among the residents. To participate as an individual in this activity is a right that cannot be taken away, or severely limited. ... Absent special considerations, the ostracism constitutes a tort.

4. Extortion. If neighbors vote to ostracize someone in their community, they do indeed commit criminal intimidation under Section 222 of the Criminal Code. But if they demand money in return for canceling that sanction, they commit the more serious crime of extortion under Section 249. In 1923, a man named Kurosawa in a small Akita community made charcoal with material he had stolen from the hamlet and from a local contractor **(Case 7)**. Upon discovering his theft, hamlet leaders called a general meeting and voted to terminate all contact with him.

In time, Kurosawa sought reconciliation. He asked his older brother to act as intermediary. The hamlet called a second meeting. Kurosawa apologized, and most of the members seemed inclined to end the sanction. The defendant (unnamed), however, intervened. Rather than forthrightly forgive Kurosawa, he urged the others to require that Kurosawa first pay a penalty. He demanded 200 to 300 yen. Kurosawa eventually paid 100 yen, still a massive amount for a poor farmer.[[12]](#footnote-12) Announcing the decision in 1927, the court called this extortion under Section 249.[[13]](#footnote-13)

Syndicates. Organized crime syndicates in Japan (the yakuza) routinely ostracize insubordinate members. Lest rival syndicates attribute to them any misconduct by a deviant member, they send a notice (typically a printed post-card) announcing his ostracism to their local rivals. One 2011 case, for example, involved fratricidal battles within the massive Yamaguchi gumi crime syndicate **(Case 9)**. The leader of one faction shot the boss of the Yamaguchi gumi in a hotel lounge; the syndicate expelled (hamon) the faction; war ensued.[[14]](#footnote-14)

A curious 2018 variation on this practice occurred in Shizuoka City **(Case 10)**. The unnamed plaintiff was a long-time member of the local mob. Now in his 60s with liver cancer, he was no longer of much use to the organization. Anticipating heavy medical expenses, he applied for public welfare. The welfare office turned him down. He was still in the syndicate, and the office did not pay welfare benefits to members of the mob.

The aging gangster called a police officer he knew. He explained that he needed cancer surgery and planned to leave the mob. How, he asked, could he prove to the welfare office that he was no longer a member in good standing? The officer suggested he produce the usual expulsion postcard (hamonjo). Unfortunately, the gangster replied, although his boss would sign a certificate saying he had left the organization, he was too scrupulous to circulate an ostracism notice: "You haven't done anything wrong. How can I circulate an expulsion notice?" The plaintiff pleaded with the welfare office to approve him anyway. The office refused; he sued, and the district judge told the welfare office to proceed with the application.[[15]](#footnote-15)

C. Troubling cases:

1. Introduction. -- In most of the reported ostracism cases, the community did not ostracize a member in order to enforce welfare-enhancing norms; instead, it ostracized a member to enforce seriously anti-social norms. There are exceptions, to be sure. In one case, it punished a man who imposed costs on his neighbors by repeatedly making bad bets in business **(Case 5)**; in two others, it punished a man who refused to contribute toward infrastructure improvements **(Cases 2 and 3)**; in still another, it punished a man who reneged on his share of the community tax burden **(Case 4)**.

2. Policy disagreements. -- In some cases, the community seems to punish a member for coming to a completely reasonable disagreement about village policy -- disagreement that in no way justifies so draconian a sanction as ostracism. In one 1935 Supreme Court case, for instance, a firm had planned to build a synthetic textile factory near the mouth of the Yagyu river in Toyohashi city **(Case 11)**. Most residents opposed the factory on the grounds that the effluents would slash the amount and quality of the fish, shellfish, and seaweed harvested.

When three members announced their support for the factory, the rest of the community retaliated by ostracizing the three. Absent more detail, one cannot tell what was at stake. Perhaps the three dissenters had invested in the factory. Perhaps, the factory had bribed them. The court does not say. Instead, it treats the dispute as an honest disagreement about village policy, and held the ostracism to be criminal intimidation.[[16]](#footnote-16)

A second 1935 Supreme Court case involved a small island off the southern coast of Kyushu **(Case 12)**. Part of the Amami oshima chain, it lay a 17- to 18-hour ferry ride from the city of Kagoshima. In 1935 the island became the site of what historians would call the great "Lily Bulb War."

The residents primarily grew lily bulbs for export. In 1932, a Yokohama nursery owner formed the Japan Lily Export Association and obtained exclusive control over the government-required export inspections. Now able to block rival exporters, he planned to dominate the market. Roughly contemporaneously, however, Mitsubishi Trading decided to challenge his control. Mitsubishi offered the farmers an exclusive trading contract.

The local farming association held a meeting. The farmers debated the two options; about 2,000 members voted in favor of the Mitsubishi contract; and 138 voted against. The majority worried that the 138 opponents jeopardized the deal with Mitsubishi. The 138 were risking the community welfare for private gain, they argued, and hit the 138 with ostracism. Japan did not have an antitrust statute in 1935, so the court simply held the ostracism to be criminal intimidation.[[17]](#footnote-17)

3. The village bully. -- A 2007 Niigata District Court case involved a village bully **(Case 13)**. Taro Kono (a pseudonym) dominated his village through wild and unpredictable violence. He picked fights. He beat people. His neighbors had called the police on him multiple times: when he started to strangle someone; when he swung a metal bar at someone; when he attacked a man with a sake bottle.

Kono also ran the annual village festival. According to the other residents, he ran it autocratically and stole community funds. Several members tried to distance themselves from the event. When they did, Kono retaliated by intimidating the other village members into ostracizing them. The Niigata District Court declared the ostracism a tort.[[18]](#footnote-18)

4. The snitch. -- Six decades ago, anthropologist Robert Smith (1961, 527) observed that Japanese who reported community misdeeds to the police could suffer ostracism. So they did. So they continue to do. Akimitsu Fujii ran a general store in Kumamoto with his wife and three daughters **(Case 14)**. One January afternoon, he watched the local firemen train. After practice, the firemen shared drinks. Several of them started a fight with a firefighter who had missed practice. When the police interviewed Fujii several days later, he detailed what he had seen. The firefighters retaliated by organizing a boycott of Fujii's store, and drove him and his family out of town. He sued, and the court held the firefighters liable to Fujii.[[19]](#footnote-19)

Another ostracism victim had worried that the local residents' association was cheating the community **(Case 15)**. The association was constructing a new building, and he suspected that the contractor was shaving costs. He began to circulate a complaint. Steadily, he seemed to ramp up the tension. The association leaders were (in the court's words) "crazy in the head," he asserted. They were evil. They were "liars," they were perpetrating a fraud. The community sued him for slander, and won. They also expelled him from the association. When the victim sued in response, the Tokyo District Court (2008) reasoned that expulsion from the neighborhood association would have a major impact on his life, and vacated the sanction (slander or no slander).[[20]](#footnote-20)

In 1954, the Fukuoka High Court faced a case of ostracism by an 18-household hamlet against four members **(Case 16)**. The opinion does not describe the full scope of the offending conduct (opinions rarely do), but the precipitating event seems to have been something one of the victims told the village government. The national government was still requisitioning rice from farming villages. Apparently, one of the four victims told the government how much rice it could safely demand of the hamlet. The other members were outraged, and expelled all four. The court convicted the hamlet leaders of criminal intimidation.[[21]](#footnote-21)

5. Theft. -- Tomoyuki Arakawa was a nationally prominent potter in the town of Yagusa (within Toyota city, Aichi prefecture) **(Case 17)**.[[22]](#footnote-22) His family had lived in the village since the Tokugawa period. Other than seven years in nearby Nagoya city, he himself had spent his entire life in Yagusa.

Arakawa made pots with clay he dug from the communal mountain. He built his kiln on the mountain. He fired his pots with wood he collected on the mountain. Sometimes he left his home for days on end to work at the kiln. His neighbors considered him an odd fellow, but no one much minded how he made his pots.

The mountain covered roughly 40 percent of the “town.” Gardens and paddies occupied most of the rest. The national government had conveyed the mountain to the village in 1913. Title had lain with the descendants of the 75 families who were resident in 1913 ever since, including the Arakawa family.

To manage the mountain, the constituent 1913 families used a management company. In time, a mining company discovered it contained valuable deposits of silica. Near as it was to the Nagoya metropolis, the mountain had development potential. Near as it was to the Toyota factory network, it could provide land for access roads to that network.

In short, the humble mountain had become extraordinarily valuable. Through the management company, the constituent 1913 families exploited its potential shrewdly enough that by 2008 they had amassed 2 billion yen (about $20 million). Continue the same approach and it would soon be worth much more.

When the management company decided to distribute the 2 billion yen to the constituent owners, it refused to pay Arakawa his share. Arakawa sued for the money, but he also sued to stop the development. At root, he seems to have cared less about the money than about stopping the mining, the construction, and the roads. The other villagers invented one reason after another not to pay him his share, but they mostly wanted him gone. Ostracism came naturally in this case. "Just leave Yagusa," one village official begged. As of 2020, the litigation was apparently still in progress.

6. Forced redistribution.

In 1946, the Miyamoto family on the island of Shikoku decided to cancel its leases with several families who had been renting its land **(Case 18)**. Both the Miyamoto family and the lessees had been part of the local Japan Farmers Union (Nihon nomin kumiai), a hard-left group with alliances (conflicting ones) to both the Socialist and Communist Parties. Sixty of the eighty households there were part of this Union. Once the Miyamoto family announced their plan to cancel the tenancies, the local Union expelled and ostracized them. The Miyamotos could find no one from the hamlet willing to work on their farms. The local court declared the ostracism a tort, and the parties settled out of court.[[23]](#footnote-23)

The year 1946 was also the year of the U.S.-imposed "land reform" program (see Ramseyer 2015). The Miyamotos may have cancelled the leases in the hope that they would obtain better terms for land they tilled themselves. Under the program as eventually imposed, the government took land from farmers owning more than 3 hectare (with nominal compensation) and gave it to their former renters (at a nominal price). Subject to modest variation, the redistribution applied to all farm land.

The program famously did not apply to mountain land. Although worth less than farm land, the mountains had real value. Obviously, they provided lumber. They supplied the firewood and grasses that farm households needed. Near metropolitan centers, many had development potential (as the Yagusa families discovered, **Case 17**). And many mountains also contained food -- the "mountain vegetables" (sansai) used in some dishes, and the extraordinarily expensive (sometimes $1000 per kg) mushrooms known as matsutake.

One Hyogo town managed its local mountain collectively through a voluntary association (as Yagusa did) **(Case 19)**. The group included 103 households, a majority of the local residents. In 1950, the association decided to require all villagers owning more than 2 hectare of the mountain land to transfer to the association without compensation all rights to the sansai and matsutake on their land. The national government had not redistributed the mountain land, so the locals decided to do it on their own.

Five families refused to cooperate in being expropriated. When the association withheld from them their share of the communal profits in response, they sued. In retaliation for their lawsuit, the association declared ostracism on the five and on all members of their families. In the criminal case that followed, the district court acquitted the association members on the ground that the sanctions did not bind, but the high court reversed. In 1958, the Supreme Court affirmed.[[24]](#footnote-24)

In 1913, the Supreme Court used an electoral dispute to decide perhaps the oddest of all its ostracism cases **(Case 20)**. The villagers in a hamlet had agreed to vote for a given candidate, and had further agreed to punish anyone who defected from that agreement. Two residents reneged. The others imposed ostracism and the prosecutors initiated criminal cases against several of the ostracizing villagers.

The Supreme Court reversed the convictions. Ostracism was not always criminal, it explained. Villagers can ostracize members for a wide variety of reasons, some of them morally justified but some not. In this case, the two offenders had reneged on their promised to vote for the community-chosen candidate. When a community punishes someone to force him to do something he has no obligation otherwise to do, its members commit criminal intimidation. So too when they punish someone to stop him from doing something he has every right to do. Here, however, they simply punished the two members for breach of contract. They had agreed to vote a certain way, and they had done otherwise. The court ignored the obvious electoral context, and reversed the convictions.[[25]](#footnote-25)

In 1920, the Supreme Court took a more typical approach to these electorally tied ostracism disputes **(Case 21)**. For the national Diet election in May of 1920, most of the voters in a town in Mie Prefecture favored one candidate. Katsunosuke Oku favored another. Outraged by his independence, the other villagers decided to sever all ties with Oku and his family. The prosecutor brought charges, the judge convicted, and the Supreme Court affirmed. The Court followed what would become a standard formula: no one has a right to social intercourse; no one breaks the law by refusing it; but when members of a community refuse that intercourse collectively, they commit criminal intimidation.[[26]](#footnote-26)

A Supreme Court case from 1924 followed the same pattern **(Case 22)**. In September of 1923, four people had found themselves arrested for violating electoral law in the Miyagi prefectural elections. A certain Mr. Honda, living in the same hamlet that they did, had turned them in. The arrested villagers complained to their neighbors, and the hamlet's mutual aid society voted to expel Honda and his father and to ostracize them. The trial court convicted the villagers of criminal intimidation, and the Supreme Court (1924) affirmed.[[27]](#footnote-27)

A second 1924 Supreme Court case involved not an actual hamlet sanction, but a threat by an influential leader in Nara unilaterally to oust an uncooperative villager **(Case 23)**. The leader had told the villager to vote for a particular candidate. Try anything else, he warned, and he would expel him from the village. The prosecutor brought criminal charges against the leader. Expelling someone from a village is not a technical term, of course, and the defendant's lawyer professed not to know what it meant. The Supreme Court declared it easy to see that the defendant meant "murahachibu." The lawyer also protested that the defendant had had no authority to expel someone anyway. The Supreme Court observed that the defendant was an influential man, and that a resident could reasonably worry about the threat. It affirmed the conviction.[[28]](#footnote-28)

III. Zones of Judicial Neutrality

B. Political Parties:

The best known of the political cases involved a struggle for power at the center of the Japan Communist Party (JCP) **(Case 24)**. Kenji Miyamoto, Satomi Hakamoto, and Sanzo Nozaka had helped lead the party during the stormy pre-war years. Miyamoto had studied economics at the Tokyo Imperial University; Hakamada had studied in the Soviet Union. Together, in 1933 they tortured to death Tatsuo Obata, a colleague they suspected of spying for the police. Sanzo Nozaka had found himself in Moscow during Stalin's purges, and had survived by inventing charges against another JCP member in Moscow -- a man whom Stalin promptly had shot. After the war, the American-run occupation welcomed all three into the public realm.[[29]](#footnote-29)

The three men promptly took over the JCP. Nozaka won election to the national legislature in April 1946. When Stalin ordered the Party in 1950 to abandon peaceful tactics, Miyamoto went underground and masterminded the party's bombing and sabotage campaign, while Hakamada stayed with the party's legal faction. Miyamoto returned to electoral politics after Stalin's death, and eventually (in 1970) rose to the post of central committee chairman; Hakamada simultaneously served as vice chairman. Decades later, Miyamoto continued to insist that Obata had died a natural death; Hakamada wrote that they had strangled him to death. Hakamada also nursed a long-term suspicion that Nozaka remained a Soviet spy -- an accusation that the party leadership declared treasonous (but which Soviet archives would later prove to have been true).

Late in the 1970s, Hakamada began to write about the way he and Miyamoto had murdered Obata. Once he started writing, Miyamoto moved immediately moved to eliminate him from the party. In 1977, Miyamanoto successfully dropped Hakamada from the party Central Committee. When Hakamada retaliated by publishing yet more information about the murder, Miyamoto led the party to expel him.

Since 1963, Hakamada had been living in party housing. For a house with market rental pegged by the court at 132,000 yen per month, Hakamada paid just 22,000. Having now expelled him, the party administration ordered him to leave. Hakamada refused, and the party sued. Hakamada explained that he was growing old, and -- having worked for the party at low pay his entire life -- had very little savings.

The District Court ordered Hakamada out, and the High and Supreme Courts affirmed. The courts declared internal party disputes beyond their jurisdiction. Said the High Court:

Political parties are indispensable for supporting representative democracy, and effective bodies for helping citizens structure their political thoughts.

Never mind that Miyamoto had fought for decades to end representative democracy. The court continued:

The expulsion and other punishment of party members are matters internal to the parties themselves. These matters follow from the right of party self-governance, and the courts should treat them with ample respect.

The courts would not intervene in party affairs. One might have thought this meant the state would not help the party evict Hakamada from party housing. Whatever their logic (they did not explain), the justices decided it meant the opposite.[[30]](#footnote-30)

C. Religious Organizations:

During the last decades of the 20th century, Japanese courts faced several cases involving the highest profile religious revitalization movement in modern Japan: the "Soka gakkai." The "Nichiren shoshu" Buddhist denomination had traced its roots to its namesake 13th century priest, Nichiren.[[31]](#footnote-31) In 1930, Nichiren shoshu adherents organized the Soka gakkai as their lay organization. Once the Second World War ended, the gakkai grew explosively. It remains enormously popular and has steadfastly maintained its roots in the blue-collar working class community. In 1960, gakkai leadership passed to Daisaku Ikeda. Ikeda proved to be a polarizing figure, and simultaneously brought both international publicity and domestic hostility.

In time, clerical leaders within the Nichiren shoshu denomination grew suspicious of Ikeda. By 1991, tension reached the point where the denominational leaders demanded that their priests attack the gakkai leadership and pledge loyalty to the denomination. Soon, they would expel the gakkai itself.

One of the Nichiren shoshu priests refused to attack the Gakkai **(Case 25)**. He lived with his wife in temple housing, but despite enormous pressure refused to sign the proffered statement. In response, the denomination expelled him from the priesthood, slashed his pay, and forced him and his wife out of temple housing.

The priest sued for tort damages, but the Shizuoka District Court refused. To the court, religious denominations were like political parties. The constitution protected their self-governance, and (unless they violated "public order and good morals" or threated "basic human rights") the courts would not intervene. Here, that meant that they would not order the denomination to compensate a dissenting priest whose career it had ruined.[[32]](#footnote-32)

IV. Litigating Ostracism

A. Introduction:

B. Social Welfare:

First, the members of the large group will have poorer information

Second, ostracism can result from coordination failure.

### Third, ostracism can represent simple extortion.

Of these various reasons for courts to intervene, the logic behind intervention in antimonopoly cases is closest to the third.

2. The U.S.-Japan contrast. --

(c) The actual incidence.

C. The Informational Logic to Ostracism Litigation:

In these situations, litigation can change the character of the public understanding of the dispute. If a dissenter sues and wins, the dispute now becomes the judge's word against that of the village leaders. And if the dispute has any news value, the local press will convey the judge's word broadly. Through litigation, the victim both increases the credibility of his account, and conveys that information more broadly than otherwise he could do.

This certification and dissemination matter because of the impact that information about the dispute can have on the relative reputations of the leaders and the dissenters. Those reputations, of course, determine the capacity of both groups for advantageous trade. As Blanchard (2018, 503) put it, the courts "produce information that has the power to provoke reactions by third parties that are costly for the" parties involved. The more public the information, the greater the impact on future economic transactions.

The Model. The target villager chooses to comply with village custom

(x = 0) or offend (x = 1). The village sees evidence indicating that the target complied (y = 0) or offended (y = 1). If the target offends, he is always detected: Prob(y=1|x=1) = 1. If he complies, the evidence sometimes mistakenly indicates that he offended: Prob(y=1|x=0) = m, where

0 < m < 1. If he offends, he obtains personal benefit B > 0 from that act but imposes cost C on the village and D on the rest of society. The village can ostracize the target at cost Z > 0 to itself and cost P > 0 to him.

At cost L to himself, he can go to court. At cost J > 0 to the public, the court can agree to hear it, to decide whether or not the target truly offended, and to announce its decision publicly. Whether or not the target has gone to court, in the second period the village again chooses whether to ostracize at a second cost to itself and P to the target.

(1) No-Penalty, (2) Unconstrained Ostracism, and (3) Constrained Ostracism

(1) *No-Penalty Regime. Villagers Do Not Ostracize.*

(a) The villagers never ostracize anyone.

The no-penalty regime is the base case. The target will offend, for a payoff of *B*, since he incurs no penalty for doing so. The villagers will have an aggregate payoff of *– C*. The court has no role. Society’s overall welfare is *B – C – D*.

2. *Unconstrained Ostracism Regime: Villagers Ostracize; Court Refuses to Hear Cases*

(a) The villagers ostracize if they see evidence of deviant behavior.

(b) The court refuses to hear any case brought before it.

Under unconstrained ostracism, the target’s expected payoff will be *- 2mP* if he complies, since with probability *m* he will be ostracized by mistake in both periods. If he offends, it will be *B – 2P*, since he will definitely be detected (under the model’s assumptions) and he will be ostracized. Thus, he will comply if and only if *- 2mP > B – 2P*, which is true if *B < 2P(1-m)*; that is, if the reward from offending is small compared with the ostracism penalty and if the probability of mistaken ostracism is small enough. Note that if the probability of mistaken ostracism is high enough, the target will offend even if his benefit is small, because he can expect to be ostracized whether he really offends or not. Overharshness results in noncompliance.

The village’s expected payoff depends on what the target does, so it depends on *B, P*, and *m*. If *B < 2P(1-m)* then the target complies and the village’s payoff is *- 2mZ*, the cost of mistaken ostracism. If *B > 2P(1-m)* then the target offends and the village’s payoff is *– C – 2P.*

Compare the village’s payoff in the no-ostracism regime with the unconstrained ostracism regime.If *B < 2P(1-m),* the village benefits from having the ostracism regime if *- 2mZ > - C,* which is true if *2mZ < C.* The village prefers the ostracism regime if it does effectively deter and if the cost of mistaken ostracism is small relative to the cost from the offense. On the other hand, if *B > 2P(1-m),* ostracism fails to deter and the target offends anyway. In that case, the ostracism regime is clearly worse for the village, because it just adds the cost of inflicting ostracism to the cost of the offense. Punishing offenders is worse than useless if it fails to deter.

This suggests that in the absence of courts, villages will adopt a custom of ostracizing people who commit offenses that impose a relatively high cost on the village (high *C*) but have a relatively low benefit to the target (low *B*), but only if the evidence for that kind of offense is reliable enough (low *m*) and the cost to other villagers of ostracizing someone is not too high (low *Z*) while the cost to the target is high enough to deter him (high *P*) (e.g., **Case 2**).

An implication is that ostracism will be used for relatively minor offenses, not for major ones. It is not suitable for dealing with a villager who steals his neighbor’s stash of coins. That offense is profitable for the target (high *B*), unimportant to everyone except the victim (low *C*), and false accusations can easily be made since the deed is secret (high *m*). For such offenses, villages need government courts and official penalties such as fines or jail.

In the unconstrained ostracism regime, society’s payoff will depend on whether or not ostracism deters. On the one hand, if *B > 2P(1-m*), the target offends, so the sum of everyone’s payoffs is his *B - 2P* plus the village’s *–C - 2Z,* plus outsiders’ *–D,* a total of *B – C - D- 2(P + Z).* Under the no-ostracism regime, total welfare is *B – C – D.* Thus, social welfare is lower by amount *2(P + Z)* with unconstrained ostracism*—* since it fails to deter, all it does is impose costs on society.

On the other hand, if *B < 2P(1-m*), the target complies, so the sum of everyone’s payoffs is his *-2mP* plus the village’s *- 2mZ,* a total of *- 2m(P + Z).* Under the no-ostracism regime, total welfare is *B – C – D.* Thus, social welfare is higher with unconstrained ostracism if *- 2m(P + Z) > B – C – D;* that is, if the cost of mistaken ostracism to target and village is less than the offense’s benefit to the target minus its cost to the village minus its cost to outsiders.

In sum: if ostracism fails to deter offending, it merely imposes costs and it hurts the village and society. As a result, we would not expect it to persist as a social custom unless we introduce something new, not in the model --- for example, manipulation of the problem of group action for private gain (**Case 13**), or the need to have ostracism for either all offenses or none rather than just for the kind of offences it can deter. On the other hand, if ostracism does deter, it can increase village and societal welfare, depending on how accurate and costly it is, and whether the “offense” really is harmful to the village and to outsiders.

3. *The* *Constrained Ostracism Regime: Villagers Ostracize; Court Hears Cases; Villagers Listen to the Court*

(a) The villagers ostracize if they see evidence of deviant behavior.

(b) The court hears any case brought before it.

(c) The villagers end ostracism if the court declares the target did not deviate.

Let us now introduce intervention by a court. Under unconstrained ostracism, the court either does not exist or exists but refuses to hear ostracism cases. In the constrained ostracism regime, it does hear cases, it declares the truth of whether the target really offended, and the villagers cease to ostracize if the target did not offend.

In this regime, the target may or may not choose to comply, as we will shortly discuss, depending on the parameter values. The villagers will sometimes observe apparent offending even if he does comply, and when they observe it they will ostracize the target. The target may or may not go to court if he complies and is unjustly ostracized, depending on his legal cost, *L*, but if he does, he is always vindicated.

Consider the target’s payoff. If he offends, his maximized payoff is his personal benefit *B* minus his cost of being ostracized for two periods, *2P*, for a total of *B – 2P*. If he were to go to court, he would lose and just subtract *L* from his payoff. If he complies instead of offending, and he goes to court if he is ostracized, his payoff is made up of the expected cost of one period of ostracism, *-mP*, minus the cost of going to court, *L*, but he is vindicated, so he avoids the second period of ostracism and his overall payoff is *– mP – L*. If he complies but does not bother going to court, his ostracism continues, so his payoff is *- 2mP*. Thus, he will choose to go to court if *L < mP*.

Consequently, the target will compare his offending payoff of *B – 2P* with his complying payoff of *Max(- mP - L, - 2mP)*. On the one hand, if legal costs are high (*L > mP*), he will offend if *B - 2P > 2mP*. In this case, the existence of the court is irrelevant since it is too expensive to use, and we are back to the same outcome as in the unconstrained ostracism regime; the court exists and is now willing to hear ostracism cases, but access to justice is too expensive so the result is the same as if it refused to hear cases. Thus, we can immediately conclude that for offenses complicated enough to require costly legal proceedings, the equilibrium payoffs end up being the same as in the unconstrained ostracism regime and we can refer back to those results for our explanation of what village custom will be and whether it is a good outcome for society.

On the other hand, if legal costs are low (*L < mP*), the target will offend if

*B - 2P > - mP - L.* We will continue our analysis assuming that legal costs are low, so the target will go to court if unjustly ostracized. First, consider the village’s payoff. If the target complies, the village sometimes ostracizes him unjustly, but for just one period, so its payoff is *– mZ*. If the target offends, that hurts the village directly plus it ostracizes for two periods, so the village payoff is *– C - 2Z*.

Second, consider society’s payoff, which is what the court cares about. If the target complies, we must subtract the public’s cost of the court, *J*, from the sum of his payoff, *- mP – L*, and the village’s payoff, *- mZ*, for an overall social welfare of *– J – L – m(P + Z).*

Thus, if the target offends, the implications for aggregate social welfare are composed of the target’s payoff, *B – 2P*; the villager’s payoff, *- C - 2Z*; and the harm to outsiders, *- D*; for social welfare of *B – D – 2(P + Z)*.

C. The Social Preference:

This discussion takes us to the question of whether the village and court prefer Unconstrained Ostracism or Constrained Ostracism. Stripped of details and qualifications, the former is closer to the U.S. regime, while the latter is closer to the Japanese (and Whitman's European regime; see Sec. IV.B.2.).

If the target’s personal benefit *B* is high enough, the target is going to offend no matter what. Ostracism fails to deter, and the courts are unimportant. In that case, the no-ostracism rule is best for the village and for society. This sounds bad, but if *B* is large and *C* and *D* (the costs to village and outsiders) are also large, society can simply turn to criminal law, which lies outside our model. When one villager has violated custom and obtained enormous benefits for himself at the expense of enormous costs for his village and the outside world, we criminalize that offense. The court puts him in jail and prosecutes him. Failing that, the village engages in self-help: it does not just ostracize, but lynches him.

Lynching would appear in our model as mathematically very similar to ostracism -- but with a vastly higher cost to the target (the *P* value) (on sanctions with different costs to the target, see Sec. IV.B.2.). It poses analogous disadvantages -- potential mistaken interpretation of the facts (high *m*), and breakdowns resulting from collective action problems. In societies without strong state capacity, villages do often make use of lynching: think medieval Europe, frontier America, or — perhaps, if news accounts are to be believed -- modern village India (e. g., *Wikipedia*’s article on “[Indian *WhatsApp* lynchings](https://en.wikipedia.org/wiki/Indian_WhatsApp_lynchings)”, which take Epik High one step better by actually rural village mobbing with high technology).

If *C > 0* (the offense harms the village), and *D > 0* or *D = 0* (the offense harms outsiders or leaves them unaffected), and if the cost to the public of hearing cases, *J*, is not too high, then both village and society prefer constrained ostracism to unconstrained. The villagers know that sometimes they wrongly conclude that an innocent target has misbehaved. They know they are not as accurate as adversary proceedings before an intelligent judge (and Japanese judges are very capable; see Ramseyer & Rasmusen 2001, 2003). They know that judges are skilled in weighing evidence and have the benefit of hearing both sides of the story. The villagers are happy to cease ostracizing (and save the cost *Z*) once they learn the truth. And since the target knows that any ostracism will be only temporary if he complies, he will comply rather than give up and decide to be truly as bad as they would think anyway by mistake. Increased accuracy helps everybody—as long as it is not too expensive. This is Blanchard’s theory of international law (see Sec. IV.C.): a court may not be able to enforce its judgements against foreigners, but if is is respected for its neutrality, foreigners will believe its conclusions and act accordingly, and the target will obtain its relief.

For many offences, the Constrained Ostracism Regime also dominates a fourth regime that one might call a No-Ostracism Criminal Law Regime. In this regime, villages would not ostracize, but could choose to take an offender to court (at some cost). At that point, the court would not just determine what was true, but could impose a penalty on the target (something not in the above model). The potential superiority of the Constrained or Unconstrained Ostracism regimes over this fourth possibility is that they are cheap. Village gossip is not as accurate as court proceedings, but it is quick and low-cost. For modest offenses, a cheap and quick process will often dominate more accurate but costly regimes.

V. Selection into Ostracism and Litigation

A. Introduction:

The ostracizing villages in ostracism cases almost always lose. In the civil cases, the courts find them liable. In the criminal cases, the courts find them guilty. These outcomes do not necessarily reflect any underlying pattern in community disputes, however. Instead, they reflect the decidedly non-random selection of ostracism into litigation (Subsec. 2) and of disputes into ostracism (Subsec. 3).

B. Selection into Litigation:

In the discussion earlier, we describe cases that the parties litigated to trial. Yet people who fight with their neighbors litigate only a small minority of disputes. Moreover, they litigate a decidedly non-random sample of them. In turn, prosecutors pursue to trial only a small minority of the people arrested by police. As with civil parties, they pursue a decidedly non-random sample of the people arrested.

The logic follows the well-known dynamic of litigation and settlement (e.g., W. Landes & R. Posner 1975; Priest & B. Klein 1984). Because litigation costs more than informal settlement, both sides to a dispute will usually prefer to settle out of court in the shadow of what they expect the court to decide. Suppose a community imposes ostracism on a dissenting resident, and that resident would like to challenge it. Both the dissenter and the community realize that litigation is expensive. If they both agree about what a court will do if they take their dispute to trial, they both gain by avoiding litigation. Rather than going to trial, they both gain by settling their dispute "in the shadow" (again) of the expected litigated outcome.

Note that the informational logic to the dispute (Sec. C, above) does not affect this dynamic. Suppose a plaintiff sues to obtain public certification of his account. Suppose that the plaintiff and the village leaders both agree that a court will ultimately decide in the plaintiff's favor. Rationally, both gain by negotiating an out-of-court settlement in which the village leaders publicly acknowledge the plaintiff's version of the dispute.

Note too that plaintiffs and prosecutors will tend to select cases in which the ostracism appears improper. To the extent that plaintiffs sue to have the court publicly endorse their claims of innocence, they will not sue when the court will shame them instead. Prosecutors, too, will select the cases to pursue for the message the suit might convey to the rest of the community. In no country do prosecutors have the resources to pursue all (or even most) of the cases that police forward to them. Instead, they focus on the cases that most forcefully reinforce the norms they want people to follow, the most egregiously anti-social behavior. In the case of disputes over ostracism, they will rarely spend time prosecuting a community decision most of them think reasonable. Instead, they will focus on the outrageous ones. When the village gets ostracism right, the prosecutor will leave it alone.

C. Selection into Ostracism:

The logic of litigation and settlement also applies to costly disputing tactics more generally—such as ostracism. Ostracism is a cessation of voluntary interaction, a return towards autarky. It may apply to money trades, a boycott, or to trades in favors, esteem, or company. Given that parties trade only when mutually advantageous, an end to trade necessarily hurts them both, destroying the gains from trade. Because the trade between a dissenter and his community constitutes a larger fraction of the dissenter's total trades than of the village's, it hurts the dissenter more. But it still hurts them both. As many have pointed out (see, e.g. D. Hirshleifer & Rasmusen (1989), this means that establishing ostracism as a social custom is both costly and tricky, since it requires overcoming the free rider problem of a villager wanting others to bear the cost of punishing the target while still associating with him himself.

Given these mutual costs, a dissenter and his community both gain by avoiding ostracism and settling their dispute peacefully. Provided they both anticipate the same outcome if they push the conflict into ostracism, they both benefit by avoiding that confrontation. They gain instead by settling their dispute according to the expected outcome upon confrontation.

Crucially, however, a dissenter and his community can reach this mutually beneficial negotiated settlement only if they can agree about what will happen if they push the dispute into ostracism. When a community is in stasis, with families, economy, roles, and power relations the same as they were the previous hundred years, the parties will often agree about the probable outcome of conflict. They both know how much trade, broadly defined, they would lose from ostracism. They know each other's feasible alternatives. They know whether any villager would defect from the collectively imposed sanction. Sharing similar estimates of the outcome from confrontation (i.e., ostracism), they both gain by avoiding that confrontation (ostracism).

When a community is in transition of any kind -- whether economic, social, or political -- the parties are less likely to agree on what might happen if they fight. A dissenter may believe he can find profitable employment in a nearby city; the rest of the community may know better. The community may believe they can cheaply replace the dissenter's services; the dissenter may know how much they will miss his talents. The dissenter may believe that the local police will arrest the bullying community leaders; the leaders may think the police will hold back -- and so forth and so on. With change comes uncertainty.

In Appendix 1, we summarize the context for each of cases of ostracism detailed above. Crucially, most of the disputes involve communities in flux. Most obviously, many involve agricultural villages located near rapidly expanding municipal centers. Necessarily, in these cases both sides to a dispute will need to estimate the alternatives available to each other in the greater municipal area. Necessarily, they will rely on information that is much less certain than would be the case in remote and stable agricultural villages from which there is no realistic alternative of escape to the big city and a new life.

VI. Reflections

People in a community may ostracize a resident to enforce their collective norms, if those norms benefit the members who can mobilize the community. This is different from saying that a community will ostracize a member to enforce welfare-enhancing norms. People do not necessarily ostracize their neighbors to enhance the welfare of society at large. They may not even ostracize their neighbors to enhance the welfare of their narrow community itself. Institutional design is tricky, and a first-order solution such as ostracism may need to be supplemented by a second-order solution such as appeal to official courts.

Any community has interests distinct from those of the larger entities of which it is a part. Just as a nation has separate interests from the global community, a small and cohesive community has interests distinct from those of the prefecture (or state) or of the nation to which it is a part. When a community ostracizes a member, it may ostracize him for promoting those larger social values instead of the narrower interests of the community. The community in **Case 16** had an interest in paying the least amount of rice to the country; the country may have had an interest in having it pay a larger amount (and the national statute apparently specified a larger amount). The communities in **Cases 1, 20, 21, 22, and 23** had an interest in controlling the voting within the community in order to maximize the impact of the preferences of the majority of its citizens; the country had an interest in knowing the preferences of the various voters within the community.

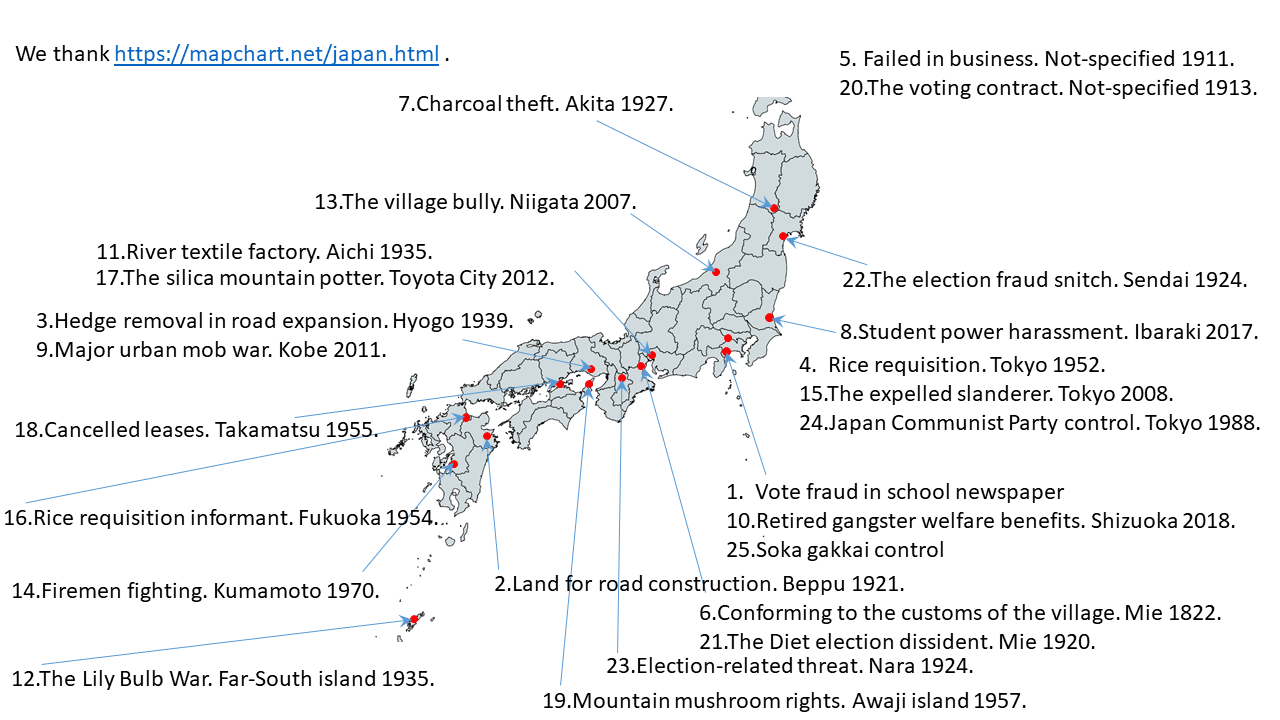
Members also have diverse interests within any given community, and ostracism may reflect the private interests of those best able to mobilize the others. Sometimes, a criminal may intimidate the others into supporting his choice (**Case 13**). Sometimes, the majority of the community may use the tactic to transfer wealth from the richer but fewer members of the community to themselves (**Cases 18, 19**).

Even when the norms are welfare-enhancing, ostracism is a tricky tool for enforcing them. In this, it has some similarity to vigilante justice. Vigilantes can deal with crime at low cost, since they require no professional, paid, government employees. The vigilantes will often improve social welfare in a society where no one otherwise enforced any norms at all. But vigilantes often get the wrong man, either accidentally or on purpose. Professional, paid, police, and professional, paid, courts offer big advantages.

Like vigilantes, like ostracism. Even if a villager seems to have done wrong, and even if local officials fail to punish him, ostracism will sometimes get it wrong. The villager needs a way to appeal -- and for this, the courts are invaluable. A properly punished villager will rarely go to court to plead his case —- since the court will just declare his shame more publicly than before. An improperly punished one, however, may well decide to fight -- and win public vindication through the informational power of the state.

And so it is that the Japanese plaintiffs in these cases brought these cases that they did, and that the courts responded to their pleas.

**Figure 1: Location of Cases**



**Table 1: Reports of Ostracism**

Panel A: Ostracism Cases in Published Court Opinions

1951-1960 13

1961-1970 10

1971-1980 20

1981-1990 33

1991-2000 27

2001-2010 27

2011- 25

Panel B: Ostracism Cases Reported to Human Rights Offices

by Year and Region

Total Hokk'do Tohoku Kanto Chubu Kansai Chugoku Shikoku Kyushu

2015 23 0 3 0 11 4 0 1 4

2016 19 0 1 2 6 1 3 3 3

2017 24 1 2 3 7 2 4 4 1

2018 23 0 4 2 5 0 0 8 4

2019 11 1 0 1 6 2 1 0 0

Total 100 2 10 8 35 9 8 16 12

2012

Popn 122.6 5.5 9.2 42.7 21.6 22.7 7.5 3.9 13.2

(millions)

Notes: Panel A gives the total number of court opinions found in the Hanrei taikei database using the search term "murahachibu" (the search also picks up "kyodo zekko" 共同絶交). We start with 1950 because of the very different (i.e., much more limited) case reporting practices before the war. Figures are as of early August, 2020.

Panel B gives "murahachibu" cases.

Sources: Daiichi hoki shuppan, Hanrei taikei [Complete Ordering of Cases] (as of August 2020); Homu sho, Jinken shinpan jiken tokei [Statistics on the Violation of Human Rights] (various years).

Appendix 1: The Ostracism Cases (abridge)

1. Vote fraud in school newspaper. Shizuoka 1952.

2. Land for road construction. Beppu 1921.

3. Hedge removal in road expansion. Hyogo 1939.

4. Rice requisition. Tokyo 1952.

5. Failed in business. 1911.

6. Conforming to the customs of the village. Mie 1822.

7. Charcoal theft. Akita 1927.

8. Student power harassment. Ibaraki 2017.

9. Major urban mob war. Kobe 2011.

10. Retired gangster welfare benefits. Shizuoka 2018.

11. River textile factory. Aichi 1935.

12. The Lily Bulb War. Far-South island, 1935.

13. The village bully. Niigata 2007.

14. Firemen fighting. Kumamoto 1970.

15. The expelled slanderer. Tokyo 2008.

16. Rice requisition informant. Fukuoka 1954.

17. The silica mountain potter. Toyota City 2012.

18. Cancelled leases. Takamatsu 1955.

19. Mountain mushroom rights. Awaji island 1957.

20. The voting contract. 1913.

21. The Diet election dissident. Mie 1920.

22. The election fraud snitch. Sendai 1924.

23. Election-related threat. Nara 1924.

24. Japan Communist Party control. Tokyo 1988.

25. Soka gakkai control. Shizuoka 1997.

1. E.g., Watashi wa machigatte imasuka? [Am I wrong], *Asahi shimbun*, June 23, 1952; Saeki san yuki wo motte ... [Be Courageous, Satsuki," *Asahi Shimbun*, June 29, 1952; other sources on the internet. [↑](#footnote-ref-1)
2. *Ogawa v. Kodama,* 27 Daishin'in minroku 1260, 1275 (Sup. Ct. June 28, 1921). [↑](#footnote-ref-2)
3. *Kuni v. Suzuki,* 4442 Horitsu shimbun 8 (Sup. Ct. Apr. 28, 1939). [↑](#footnote-ref-3)
4. See Smith (1961, 523) for a description of the requisitioning, and its ties to murahachibu. [↑](#footnote-ref-4)
5. *Ueno v. Kurokawa*, 27 Hanrei taimuzu 58 (Tokyo High Ct. May 30, 1952). [↑](#footnote-ref-5)
6. For additional case finding it a crime to threaten someone with murahachibu -- absent unusual justifying circumstances -- for violating the ban on having contact with the original offender, see *Kuni v. Nakayama*, 7 Daihan keishu 533 (Sup. Ct. Aug. 3, 1928). [↑](#footnote-ref-6)
7. *Kuni v. Mori*, 17 Keiroku 1520, 1522 (Sup. Ct. Sept. 5, 1911). [↑](#footnote-ref-7)
8. See generally Suzuki (2020). [↑](#footnote-ref-8)
9. *Ogawa v. Kodama,* 27 Daishin'in minroku at 1264. [↑](#footnote-ref-9)
10. [Add antitrust footnote on per se vs. rule of reason in US, Japanese, anttirust law.] Also Jese stat. [↑](#footnote-ref-10)
11. *Ogawa v. Kodama,* 27 Daishin'in minroku 1260, 1272 (Sup. Ct. June 28, 1921). [↑](#footnote-ref-11)
12. In 1923, farmers earned a mean income of xxx yen per year. Hitotsubashi series of LTEG. [↑](#footnote-ref-12)
13. *Kuni v. Mukogawa,* 6 Daihan keishu 361 (Sup. Ct. Sept. 20, 1927). Canceling the punishment upon negotiation through an intermediary, followed by apology was common, as Smith (1961) notes. Ali & Miller (2016) describe "tempering ostracism with forgiveness" a more efficient form of punishment than permanent ostracism. [↑](#footnote-ref-13)
14. *Kuni v. [No name given],* 2011 WLJPCA 05249002 (Osaka D. Ct. May 24, 2011). [↑](#footnote-ref-14)
15. [No names given], 2018 WLJPCA 04266020 (Shizuoka D. Ct. Apr. 26, 2018). [↑](#footnote-ref-15)
16. *Kuni v. Okada*, xx Hanrei hyoron kei 98 (Sup. Ct. Apr. 19, 1935). [↑](#footnote-ref-16)
17. *Kuni v. Shigenobu,* xx 1405 (Sup. Ct. Oct. 25, 1935); http://www.kaikou.city.yokohama.jp/journal/102/02-2.html; http://yokohama-now.jp/home/?p=6048; <http://psieboldii.blog48.fc2.com/blog-category-9.html>. [↑](#footnote-ref-17)
18. *Kono v. Kono*, 1247 Hanrei taimuzu 248 (Niigata D. Ct. Feb. 27, 2007). [↑](#footnote-ref-18)
19. *Fujii v. Ichida*, 1970 WLJPCA 03240001 (Kumamoto D. Ct. Mar. 24, 1970). [↑](#footnote-ref-19)
20. [No names given], 2030 Hanrei jiho 38 (Tokyo D. Ct. Oct. 17, 2008). [↑](#footnote-ref-20)
21. *Kuni v. [No name given]*, 7 Kosai keishu 217 (Fukuoka High Ct. Mar. 31, 1954). [↑](#footnote-ref-21)
22. Shun'ei Aikawa, "yakkaisha" no letteru wo hararete chien no rin no soto he tsukyu [Labeled a "Trouble Maker" and Thrown out of the Region, *Diamond Online*, June 26, 2012; see also Jichiku no tochi ga ookane unde ... [Communal Land Generates Massive Cash and ...], *Shukan Asahi*, Jan. 30, 2009; Toyota ga jimoto de daikibo "kankyo hakai" [Massive "Environmental Destruction" in Toyota Area], *Sentaku*, Feb. 1, 2012. A recent case of murahachibu in the city of Usa, Oita prefecture, similarly involved the distribution of subsidies to local residents. Moto komuin ga uttaeta ... [Former Government Official Complains ...], *Daily Shincho*, Oct. 18, 2018; Jichi kai shin kyu kucho ra arasou shisei [Old and New Municipal Heads Do Battle], *Asahi shimbun*, Nov. 14, 2018. [↑](#footnote-ref-22)
23. *Miyamoto v. Suzuki*, 61 Hanrei jiho 22 (Takamatsu D. Ct. Mar. 1, 1955). [↑](#footnote-ref-23)
24. *Kuni v.* *[No name given]*, 135 Hanrei jiho 32 (Osaka High Ct. Sept. 13, 1957), aff'd, 154 Hanrei jiho 5 (Sup. Ct. July 3, 1958). [↑](#footnote-ref-24)
25. *Kuni v. Okubo*, 19 Keiroku 1349 (Sup. Ct. Nov. 29, 1913). [↑](#footnote-ref-25)
26. *Kuni v. Fukuda,* 26 Keiroku 912 (Sup Ct. Oct. 12, 1920). [↑](#footnote-ref-26)
27. *Kuni v. [No names given]*, Daihan keishu 506 (Sup. Ct. June 20, 1924). [↑](#footnote-ref-27)
28. *Kuni v. [No names given*], 3 Daihan keishu 338 (Sup. Ct. Apr. 15, 1924). The prewar Supreme Court also affirmed criminal convictions in murahachibu disputes over an election in *Kuni v. Kamiya,* 13 Daihan keishu 5406 (Sup. Ct. Mar. 5, 1934), and Kuni v. [No names given], Hanrei hyoron kei 123 (Sup. Ct. Sept. 9, 1942). [↑](#footnote-ref-28)
29. On the occupation's role in all this (and the place of E.H. Norman), see Miwa & Ramseyer (GO WWP). [↑](#footnote-ref-29)
30. *Hakamada v. Nihon kyosan to*, 1085 Hanrei jiho 77 (Tokyo D. Ct. May 30, 1983)(judgment for party), aff'd, 1134 Hanrei jiho 87 (Tokyo High Ct. Sept. 25, 1984), aff'd, 1307 Hanrei jiho 113 (Sup. Ct. Dec. 20, 1988). [↑](#footnote-ref-30)
31. "Nichiren shoshu" is distinct from the larger "Nichiren" denomination. [↑](#footnote-ref-31)
32. [No names given], 1650 Hanrei jiho 109 (Shizuoka D. Ct. Aug. 8, 1997); see also *Hakuren'in v. Furuya*, 1103 Hanrei jiho 2 (Sup. Ct. July 20, 1993). [↑](#footnote-ref-32)