The Politics of Extraterritoriality in Post-Occupation Japan and U.S.-Occupied Okinawa, 1952-1972

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Abstract

This dissertation locates post-occupation Japan and U.S.-occupied Okinawa during the period between 1952 and 1972 within global and transnational histories of extraterritoriality. The subject of the historical inquiry is the politics surrounding the postwar U.S. policy of retaining extraterritorial jurisdiction over criminal cases involving its military personnel and locals in Japan and Okinawa. The primary objective is to historicize the U.S. Department of Defense' seven-decades-long policy of maximizing national jurisdiction over its service members' cases committed on foreign soil as well as contemporary Japanese attitudes toward ongoing public debates about Article 17 (criminal jurisdiction provision) of the 1960 Japan-U.S. Status of Forces Agreement.

Based on archival documents collected in Okinawa, Japan, and the United States, I demonstrate how the racialized notions of civilization rooted in nineteenth-century western—and particularly U.S.—supremacy drove the rationale for the postwar American military legal regime of exception and invoked varied reactions to it. This dissertation highlights vertical interactions between state policymaking and local/transnational grassroots responses in occupied Okinawa and post-occupation Japan in order to show how U.S. diplomacy manifested on the ground, and how it coped with various forms of resistance and made adjustments in response.

Over the two decades beginning with Japan's recovery of sovereignty in 1952 and ending with Okinawa's reversion to Japan in 1972, the triangular relationship underwent a process of negotiation over each entity's legal and political subjecthood. Japanese civil society mobilized a nationalist protest movement against the specter of postwar U.S. extraterritoriality in the immediate aftermath of the Allied occupation asserting the integrity of territorial sovereignty. The lingering tensions between U.S. exceptionalism and Japanese nationalism were defused in the late-1950s as the Eisenhower administration decided to reduce the colossal presence of U.S. armed forces on the Japanese archipelago.

In U.S.-occupied Okinawa (1945-1972), the islanders' resistance to "extraterritorial" military justice also generated popular fronts. Yet, in contrast to the Japanese resistance which by and large relied on the Euro-centric Westphalian principle of national sovereignty, Okinawans came to employ the egalitarian spirit of the Universal Declaration of Human Rights by the mid-1950s to demand legal justice and proper compensation even under military rule. As most U.S. military bases in Japan were moved to tiny Okinawa resulting from Washington's realignment of U.S. armed forces in Asia in the late 1950s and thereafter, Okinawans' protest against U.S. military incidents evolved in parallel with their institutionalization of popular human rights activism, and the process invigorated the consolidation of political forces for reversion.

My research finds that as Japanese, American, and Third World activists joined Okinawans in solidarity as they all protested the postwar American military legal regime of exception, a new meaning of "civilization" was born through collective appeals for the rule of law and *universal* human rights that had long-term consequences even as Okinawa was integrated into the Japan-U.S. Status of Forces Agreement in 1972.

Acknowledgements

If I was asked to give another title to this project, “From Nagasaki to Okinawa” would be the one that best describes its status in my life. As a person born in Nagasaki City and having grown up hearing atomic-bomb survivors’ testimonies, it has been only natural for me to ask questions related to history and be immersed in memories of World War II since I was little. When I began my doctoral studies at Boston College, it felt that the Chinese character of my name “史” which means “history” finally ushered me into this direction of life.

The transition from Nagasaki to Okinawa was made thanks to warm and generous support I have received from my supervisor at Waseda University, Dr. Katsukata Inafuku Keiko, and my supervisor at Boston College, Dr. Franziska Seraphim.

When I asked Dr. Katsukata, originally from Okinawa, and specializing in gender, Okinawa, and cultural studies to write a recommendation letter for my graduate school application, she said, “Is the history of Okinawa, and not the atomic bombings, really a theme that you’ve chosen for a doctoral dissertation?” She knew how my background tied to Nagasaki has influenced my intellectual curiosity. Even though it was not that I had not thought about the prospect, her interdisciplinary course on Okinawa, as well as a trip to the island through a journalism course, exposed me to a world I had not been familiar with and made me want to find continuities between Nagasaki and Okinawa.

Since my arrival in Boston in 2013, Dr. Seraphim has encouraged me to get out of my “comfort zone” and pushed me further to undertake this project. I have wanted to work on both Japan and Okinawa since the beginning, but without her endorsement and consistent advice to stay “ambitious” and leave any type of nationalism behind, the project could have been much smaller in scope. The question of how to grapple with space and law and how to historicize modern Japan in comparative perspectives has resonated with her ongoing research project, and we have influenced each other’s work over the last several years. I am honored to be her first doctoral student and forever grateful for her dedication to my intellectual journey.

Two other members of my dissertation committee, diplomatic historian Seth Jacobs and legal historian Devin Pendas, have also enriched this dissertation in considerable ways. Dr. Jacobs, whose research and classes underscore U.S. foreign relations’ understudied impact on racialized peoples, has introduced me to innovative ways of approaching diplomatic history. Dr. Pendas has helped cultivate my analytical skills through our discussions on historiography, critical theory, and key works relevant to my project: I have always appreciated his advice to be precise with definitions to advance new ideas.

I cannot thank researcher Niihara Shōji enough for having allowed me to use his collection of declassified U.S. papers concerning Japan-U.S. negotiations on the revision of Article 17 of the 1952 Japan-U.S. Administrative Agreement for research purposes before my entry into graduate school. Since Mr. Niihara was delighted that I would be working on this project with professional support, which he could not do, I am glad that I could reciprocate his selfless contribution by completing this dissertation.

The Boston College History Department has provided me with a truly welcoming and academically inspiring environment, and taught me what it means and how to be a historian. Dr. Prasannan Parthasarathi, Dr. Julian Bourg, Dr. Priya Lal, Dr. Virginia Reinburg, and other faculty members whom I have worked for as a teaching assistant have shown me the power of history as a discipline, its cutting-edge methodologies, and historians’ roles in society. Dr. Parthsarathi’s advice to pay particular attention to the question of what/who are really in conflict

has become one of the guiding voices. Dr. Herbert P. Bix, emeritus at the State University of New York at Binghamton, also offered me an advanced Reading and Research seminar on modern and imperial histories of Japan and the United States: I am honored and grateful to be his last graduate student. My cohort and other graduate students at the History Department accommodated a warm, cooperative space where I, as an international student, was able to feel appreciated and part of the community with shared goals. Special thanks go to Matthew Delvaux, Daniel Hood, Whitney Barnes, Katherine Carper, and Felix Jimenez for their friendship, careful feedback on my project, and fun memories in Boston.

No doubt, the dissertation became a product of trans-Pacific dialogue largely thanks to Japanese scholars who have rendered me assistance at different stages of this project. Historian Hayashi Hirofumi taught me how to conduct research at the United States National Archives and Administration at College Park (NARA) and generously shared his documents relevant to my research. Political scientist Watanabe Osamu introduced me to the late historian of Okinawa Arasaki Moriteru, and they both provided me with acute advice as to how to trace patterns of social change in Japan and Okinawa through relative and comparative lenses. Historian Aketagawa Tōru allowed me to attend his graduate-level seminar on Okinawa at Hōsei University, and has always reminded me of the significance of my dissertation project in recognition of our shared research interest in the Okinawa-Japan-U.S. relationship. Historian Oguma Eiji has encouraged me to maintain the originality of my methodology, offered access to his private repository, and helped conceptualize distinct timeframes. Historian Sakurazawa Makoto has guided this dissertation with his extensive and in-depth knowledge of the Japanese-language historiography of Okinawa by, for example, confirming the importance of two understudied research themes: the trajectory of human rights activism and U.S. policy elites' observation of the locals' political mobilization in Okinawa. Legal scholar Morikawa Yasutaka called my attention to the year 1957 and militarized sexism, which proved vital for this project. Literary scholar Komori Yōichi has taught me how to interrogate the relationship between structure and subjectivity with his vast knowledge of Japanese historiography and critical theory.

Further, I am indebted to financial and other forms of support I have received from the following institutions: The Society for Historians of American Foreign Relations, Woodrow Wilson Center, Waseda University, the Clough Center for the Study of Constitutional Democracy, and the Morrissey College of Arts and Sciences at Boston College. Without their research funds and fellowship opportunities, this dissertation would have looked completely different as a final product. I would like to thank historian Umemori Naoyuki who appreciated the value of my project and hosted me during my fellowship at Waseda University where I was able to conduct exhaustive research for Japanese records. The Boston College Dissertation Completion Fellowship allowed me to be immersed in the writing process: I will be forever grateful for this precious time.

I would like to thank archivists, librarians, and staff at all the archival repositories I have visited: NARA, the Library of Congress, Princeton University, the University of Maryland, Waseda University, the National Diet Library of Japan, the Diplomatic Archives of the Ministry of Foreign Affairs of Japan, Okinawa Prefectural Archives (OPA), Okinawa Prefectural Library, Kamejiro Senaga and the People's History Museum, and Yomitanson Village Archives. At NARA, where I spent close to half a year with numerous visits over the last several years, Mr. Eric Van Slander always provided tremendous help in locating highly relevant documents, and even remotely due to Covid-19 related circumstances at the final stage of my writing process.

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Ms. Uchimura Chihiro at the People's Museum, Ms. Yamayoshi Mayumi at Okinawa Civil Liberties Union (*Okinawa Jinken kyōkai*), Mr. Izumikawa Yoshihiko at Yomitanson Village Archives, *Ishikawa Miyamori 630 kai*, Ms. Ishiki Katsumi at Okinawa City Archives, Mr. Tengan Morio, Mr. Takaesu Giichi, Mr. Jyanamoto Keifuku, Mr. Murakami Akiyoshi, Ms. Takasato Suzuyo, Mr. Arakaki Tsutomu, and Mr. Nakayama Tadakatsu.

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Before concluding the notes, I would like to thank those who supported my graduate years through special friendship. My best friend from elementary school, Kunishige Eri, and literary scholar Michele M. Mason have always made me feel at ease and motivated to continue undertaking the biggest challenge in my life. I thank Eri for her unconditional support and Michele, my "American sister," for her role as a lifelong mentor. Gian Caterina, Holly Wilson, and Ruth Lawlor also require mention here for their selfless contributions to this project and genuine friendship.

Last but certainly not least, I must thank my parents and two sisters, older and younger, for having allowed me to commit to this project throughout my late-20s and early-30s. Without their unwavering support for my life journey, whether journalism or history, I would not have been able to live my life like this. I am grateful to my mother who tells me that I can live my life in any way I want, and I am glad to be able to succeed my father's profession after his retirement.

I would like to dedicate this dissertation to the memory of my grandfather's younger sister, who survived the atomic bombing in 1945 and passed away in 2019. She taught me how life is precious, and how it is important for us who are here to live fully.

Contents

A note on Japanese names

Japanese names are given in the traditional form, i.e., the family first and the given name second. Those who have published works in English follow the Western style, and thus the other way around.

Introduction

> *Mr. Bassin pointed out that this favorable situation [Japanese authorities' significantly high rate of the waiver of jurisdiction over cases involving U.S. military personnel and Japanese citizens and the exercise of local jurisdiction over a few GI cases] reflects a great deal of arduous work and the cooperative attitudes of the Japanese. He noted that the present situation in a way bears out a previous statement by the former Foreign Minister Okazaki, that the Japanese Government does not actually want to imprison Americans but wants to exercise this jurisdiction as evidence of the restoration of sovereignty and for reasons of national sentiment.*[1]

This dissertation interrogates the politics of extraterritoriality which arose from U.S. military policies over criminal cases involving Americans and locals in post-occupation Japan (1952-) and occupied Okinawa (1945-1972). The inquiry revolves around the trajectory of postwar U.S. military criminal jurisdiction policies and the development of local resistance to U.S. "extraterritoriality" in Japan and Okinawa. By drawing on a wide array and immense collection of archival documents—both official and grassroots—yet to be utilized in the existing scholarship, my work elucidates the fraught formation of the postwar Okinawa-Japan-U.S. relationship between 1952 and 1972. This timeframe allows for an analysis of the interconnections that drove the political dynamism surrounding American military presence as they unfolded across geographical and legal boundaries. In effect, I aim to reinterpret the meaning and consequences of two pivotal moments in the triangular relationship of Okinawa, Japan, and the United States: Japan's recovery of national sovereignty in 1952 and Okinawa's reversion to Japanese sovereignty in 1972.

The U.S. State Department official Jules Bassin's remark, which opened this dissertation, was made almost four years after the end of the Allied occupation of Japan. On the eve and in the

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[1] Embassy-FEC Consultative Group, "Minutes of the 63rd Meeting," August 16, 1956, RG 153, Records of the Department of the Army, Judge Advocate General, Administrative Office, Records Branch, Records of Classified Legal Opinions, 1942-1956, Box 36, Folder: 588, National Archives II, College Park, Maryland [hereafter cited as NARA].

immediate aftermath of Japan's recovery of sovereignty in 1952, U.S. armed forces' legal immunity from Japanese criminal law sparked heated debates in the public sphere and mobilized anti-colonial, nationalist, and "anti-American" public outcry. The national protest movement grew so large rapidly that Japanese civil society—otherwise divided over allegiance to the United States in an increasing bipolariz*ed* world—forced the state elites as early as in the fall of 1953 to revise the original agreement on the Japanese arrangement for U.S. military legal immunity.

Nevertheless, this revision, which did secure Japanese jurisdiction over off-duty GI cases, materialized only after authorities of the two countries had agreed to adopt a "confidential" agreement committing Japan to waive *most* cases involving U.S. military personnel. In the summer of 1956, representatives of the U.S. Embassy in Tokyo and the Far East Command (FEC) confirmed the state of the Japanese elites' commitment to the 1953 Confidential Agreement as "favorable," as Bassin reasoned that the Japanese elites' demand for the revision had actually stemmed from their desire to secure the "evidence of national sovereignty" to pacify the "national sentiment" rather than from their incentive to achieve the substance, i.e., systematically exercise Japanese jurisdiction in practice.

The underlying objective of the dissertation is to provide a scholarly overview of the historical dimensions of contemporary Japanese reactions to Article 17 (criminal jurisdiction provision) of the 1960 Japan-U.S. Status of Forces Agreement (SOFA). The predecessor of the SOFA, the 1952 Japan-U.S. Administrative Agreement, came into force as an *executive* agreement upon Japan's recovery of sovereignty. Article 17, which saw the immediate rise of the nationalist protest movement, authorized the American military's exclusive criminal jurisdiction over all cases committed by off-duty military personnel, civilian workers, and dependents just as during the occupation period. The state elites amended Article 17 of the 1952 Japan-U.S. Administrative

Agreement in 1953 by adopting the "modern" formula identical to the NATO SOFA and authorizing Japan to exercise jurisdiction over cases involving U.S. military service members and their dependents. To repeat, however, the classified agreement simultaneously watered down the revision.

The controversy over Article 17 has originated from the U.S. Defense Department's decades-long policy of maximizing U.S. jurisdiction over beyond the official language of the Japan-U.S. SOFA. The contributors of *The Handbook of The Law of Visiting Forces* (2003) Dale Sonnenberg and Donald A. Timm acknowledged that "Japan did enter into an informal agreement [in 1953] that it would waive its primary right to exercise jurisdiction except in cases of 'special importance' to Japan, and Japan has faithfully carried out this understanding."[2] In 1960, the Japan-U.S. SOFA replaced the Administrative Agreement with the consent of the Japanese parliament, but the timing coincided with the height of anti-American military base movements in post-occupation Japan that put the legitimacy of the renewal of the 1952 Japan-U.S. Security Treaty *per se* under the brightest spotlight.

On this point, Sonnenberg and Timm stated: "Although [the 1960 renewal of the Security Treaty] would have been a perfect opportunity to replace the 'old' FCJ [foreign criminal jurisdiction] arrangement with the modern template, such an agreement could not reach."[3] Under such historical circumstances, "Procedures used within Japan to maximize US jurisdiction include a variety of methods which attempt to obtain release of cases to the US through a combination of non-indictments, US investigation of crimes involving alleged US perpetrators, lapse of time to

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[2] Dale Sonnenberg and Donald A. Timm, "The Agreements Regarding Status of Foreign Forces in Japan," in *The Handbook of The Law of Visiting Force* edited by Dieter Fleck (Oxford: Oxford University Press, 2003), 387.

[3] Sonnenberg and Timm, "The Agreements Regarding Status of Foreign Forces in Japan," 387.

provide a notice of intent to indict, and, if necessary waivers of cases already under indictment."[4] In other words, the exclusive jurisdiction formula applied to the initial, unrevised Article 17 of the 1952 Japan-U.S. Administrative Agreement has been scarcely affected for nearly seven decades.

In Japan, the American military's "extraterritorial" demands for a large percentage of cases, which have (or appear to have) fallen under Japanese jurisdiction in the official text of Article 17, have periodically mobilized popular protest movements: 1952-1953, 1957, 1972, 1974, 1995, and 2000s (most recently 2016). However, the text of Article 17 has remained the same ever since the adoption of the 1953 Confidential Agreement. The task of this dissertation is to historicize the seven-decades-long politics of Article 17.

The Politics of Extraterritoriality and Empire Building in Nineteenth-century East Asia

In order to trace the politics of twentieth-century U.S. extraterritoriality, locating its temporal foundation in the imperial history of the modern world is imperative. Indeed, the insistence of Western imperial powers on their own extraterritorial consular jurisdiction through a series of "unequal (commercial) treaties" in the mid-nineteenth century was the catalyst of Japan's quest for Western modernity, establishment of constitutional monarchy, and state-led industrialization. The system of consular jurisdiction allowed western consuls to punish crimes—both criminal and civil cases—committed by their nationals in designated treaty ports to prevent them from being subjected to local "barbaric" laws.[5]

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[4] Sonnenberg and Timm, "The Agreements Regarding Status of Foreign Forces in Japan," 388.
[5] Kal Raustiala, *Does the Constitution Follow the Flag? The Evolution of Territoriality in American Law* (New York; Oxford: Oxford University Press, 2011), 17.

However, Pär Kristoffer Cassel shows through his case studies of Japan and China, "over time, consular jurisdiction developed into a practice that granted most foreigners nearly complete immunity from both local laws and jurisdiction. These privileges often went far beyond the legal immunities that diplomatic personnel typically enjoy under international law." And because most of these treaties were not reciprocal, "East Asian sojourners in Europe or North America could not expect to enjoy the same privileged status Westerners were granted in East Asia."[6] In the 1870s, Meiji Japan's political elites insisted that Japan had merely agreed to foreigners' consular jurisdiction, not to full extraterritoriality (i.e., foreigners' complete immunity), while advocating for treaty revision and demanding equal status with Westerners. They urged foreigners to follow municipal laws and regulations in Japanese territory.[7]

What came out of this process was not only the rise of anti-Western sentiment and nationalism but also the reproduction of modern imperialism in East Asia. The geopolitical rupture set in motion by Qing China's defeat in the Opium Wars (1839-1842) produced, over the following half century, a convergence of popular sovereignty, national sovereignty, *and* imperial sovereignty in Asian countries struggling to assert themselves against Western dominance. In Japan, the aggressive nation-building program of the Meiji oligarchs generated much discontent. Some decried the government's ineffectiveness in bolstering Japan's status vis-à-vis Western as well as neighboring powers, others demanded popular sovereignty in the Freedom and People's Rights Movement. Nakae Chōmin, who translated Jean-Jacques Rousseau's writings such as *The Social Contract*, captured these dual, and dueling, sentiments memorably in his classic 1877 book, *A Discourse by Three Drunkards on Government*. Japan's intense nation-building effort in the face

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[6] Pär Kristoffer Cassel, *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* (Oxford; New York: Oxford University Press, 2012), 4-5, 153.
[7] Cassel, *Grounds of Judgement*, 153.

of Western imperialism thereby led to a demand for rights both domestically vis-à-vis government and internationally vis-à-vis foreign powers.

In this specific historical context, Japanese resistance to extraterritoriality generated two outcomes: the struggle for equality before the law with Westerners and an extraterritorial colonial empire of their own making. In theory, Westphalian principle of territoriality, which Western powers invoked as the basis of "international" law, equated national sovereignty with territorial sovereignty. It assumed a set of standards of civilization grounded in Euro-American conceptions of race, history, culture, and international law.[8] This contingent element of international law motivated Japan to undertake drastic legal reforms (including the adoption of a new penal code built on continental European models and a Prussian-style constitution) and to create a citizenry through a national assembly.[9]

Part of this process was the Meiji oligarchs' internalization of "colonial unconsciousness and colonialist consciousness" through "self-colonization," as Komori Yōichi put it.[10] Notably, the United States was the first extraterritorial empire which had introduced consular jurisdiction to Japan through the Convention of Shimoda (Harris Treaty) of 1858. Within two decades, nineteenth-century America's "legal exceptionalism," in the words of Daniel Margolies,[11] would help Japan declare its own legal exceptionalism in Asia on the unabashed basis of imperial sovereignty. Under the Eurocentric and imperialized logic of civilization, which justified state violence, exploitation, and colonial expansion, Japan imposed an extraterritorial unequal treaty on Korea in 1876 amidst treaty revision negotiations with the Euro-American empires. After winning

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[8] Raustiala, *Does the Constitution Follow the Flag?*, 15-16.

[9] Cassel, *Grounds of Judgement*, 35-36.

[10] Komori Yōichi, *Postcolonial* (Tokyo: Iwanami shoten, 2001), 1-47.

[11] Daniel S. Margolies, *Spaces of Law in American Foreign Relations: Extradition and Extraterritoriality in the Borderlands and Beyond, 1877-1898* (Athens: University of Georgia Press, 2011), 11.

the first Sino-Japanese War (1894-1895), Japan became the first Asian nation to abolish extraterritoriality, initially with Britain in 1899. In the following century, imperial Japan ran its own colonial empire gazing down at the gigantic geography of the Asia-Pacific region.

In "the long twentieth-century,"[12] which saw the United States' acquisition of hegemony, colonialism and extraterritoriality met greater ideological challenges in the world where territorial empire gradually lost legitimacy as a form of governance. Yet the tide did not bring an end to empires. In light of the trans-imperial trajectories of extraterritoriality, the treaty port system in "semi-civilized" East Asia was gradually appropriated by Japanese aggression and settler colonialism in the first half of the twentieth century, and it was later replaced by the American base empire in the aftermath of World War II. Officially, both Japan and the Allies abolished extraterritoriality in China in 1943.[13]

It was in this specific context of the postwar period, and almost a century after the conclusion of the 1858 Shimoda Convention, that policy elites of the United States and Japan concluded a classified agreement that committed Japanese authorities to waive jurisdiction over most criminal cases committed by off-duty U.S. military personnel. In occupied Okinawa, which allowed the American military to declare territoriality, "extraterritoriality" did not have to be classified, as in any other occupied or colonized territory. Both territoriality and extraterritoriality remained a means of control in the postwar world.

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[12] Giovanni Arrighi, *The Long Twentieth Century: Money, Power and the Origins of Our Times* (London, New York: Verso, 2010).

[13] Cassel, *Grounds of Judgement*, 179.

The Postwar American Military Legal Regime of Exception as A Subject of Historical Inquiry

The subject of this empirical inquiry is the dynamism of policymaking and local and transnational responses to the postwar American military's extraterritorial criminal jurisdiction policy. I call this policy "extraterritorial" not only because postwar U.S. policy makers themselves affirmed its implications either directly or indirectly. Most importantly, the term offers a valuable lens through which to view the postwar U.S. policy within broader temporal and spatial frameworks that let us engage with continuities, discontinuities, and patters of extraterritoriality across the long twentieth century and bring archival evidence in conversation with the existing scholarship.

Accordingly, the dissertation engages with concepts, arguments, and inquiries by pioneering legal scholars who have examined the United States' historical trajectories of empire-building through the lens of extraterritoriality.[14] Diplomatic historian Mary Dudziak asserts in her article "Legal History as Foreign Relations History" that "foreign relations historians have been lax in their justifications for neglecting law, even as the role of law and lawyers in foreign relations

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[14] On theoretical discussions and historical inquiries into the imperial histories of extraterritoriality see: Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge, UK; New York, NY: Cambridge University Press, 2005); Daniel S. Margolies, Umut Özsu, Ntina Tzouvala, and Maïa Pal ed., *The Extraterritoriality of Law: History, Theory, Politics (Politics of Transnational Law)* (New York: Routledge, 2019). For more contemporary, artistic, and post-colonial studies' approaches to extraterritoriality see: Ruti Sela, Mayaan Amir, *Extraterritorialities in Occupied Worlds* (Punctum Books, 2016). For major works on U.S. histories of extraterritoriality, see: Daniel S. Margolies, *Spaces of Law in American Foreign Relations: Extradition and Extraterritoriality in the Borderlands and Beyond, 1877-1898* (Athens: University of Georgia Press, 2011); Kal Raustiala, *Does the Constitution Follow the Flag?: The Evolution of Territoriality in American Law* (New York; Oxford: Oxford University Press, 2011); Teemu Ruskola, *Legal Orientalism: China, the United States, and Modern Law* (Cambridge, Mass: Harvard University Press, 2013). On nineteenth-century Japan's experience of extraterritoriality and the so-called Ansei treaties see: Michael R. Auslin, *Negotiating with Imperialism: The Unequal Treaties and the Culture of Japanese Diplomacy* (Cambridge, Mass.: Harvard University Press, 2004); Pär Kristoffer Cassel, *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* (Oxford; New York: Oxford University Press, 2012); Turan Kayaoglu, *Legal Imperialism-Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (New York: Cambridge University Press, 2010).

history has expanded through the twentieth century and after."[15] As she points out, legal scholars, rather than diplomatic historians, have been excavating empirical findings on the imperial histories of extraterritoriality through the case studies of the nineteenth-century in particular. For instance, Daniel Margolies acknowledges in *Spaces of Law in American Foreign Relations: Extradition and Extraterritoriality in the Borderlands and Beyond, 1877-1898* that "the study of the legal underpinnings of American imperial governance stretching back to the late nineteenth century and the relation of conceptions of sovereignty, territoriality, and jurisdiction to empire have not yet received adequate attention from historians of American foreign relations."[16]

As the leading contributor to the historiography, Margolies asserts that "[e]xtraterritoriality was a key attribute of nineteenth-century imperial control, achieved legally rather than exclusively by force, usually as a result of unequal treaties." Building on numerous refined surveys drawn from its manifestations in Asia and South America, he argues that "the legal core of the expansive and controversial contemporary global assertions of the hegemonic United States in the twenty first century was in fact created in a much earlier era." It was in the late nineteenth century that the United States found "many utilities of unilateral control of transnational concerns and jurisdictional autonomy."[17]

Teemu Ruskola's *Legal Orientalism: China, the United States and Modern Law* offers an eloquent post-colonial critique of legal Orientalism, which he defines as "interlocking narratives about what is and is not law, and who are and who are not its proper subjects."[18] He argues that

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[15] Mary L. Dudziak, "Legal History as Foreign Relations History," in Frank Costigliola and Michael J. Hogan, ed., *Explaining the History of American Foreign Relations*, 3rd edition (Cambridge University Press, 2016), 135.

[16] Margolies, *Spaces of Law in American Foreign Relations: Extradition and Extraterritoriality in the Borderlands and Beyond, 1877-1898*, 7, 334.

[17] Margolies, *Spaces of Law*, 334.

[18] Teemu Ruskola, *Legal Orientalism: China, the United States, and Modern Law* (Cambridge, Mass: Harvard University Press, 2013), 5.

North-Atlantic empires employed these narratives to normalize their own domestic legal codes and self-declared "international law" in Africa and Asia. Ruskola recognizes "law as an important currency in its own right in American overseas imperialism." Through his examination of U.S. extraterritorial jurisdiction in nineteenth-and-twentieth-century China, Ruskola elucidates the concept of imperial sovereignty: "Although the United States' independence was premised on the view that not only all men but also all states were born to be equal, in the mid-nineteenth century the liberal notion of sovereignty equality gave way to an imperial American sovereignty in the Pacific."[19]

With regard to the inter-connected developments of extraterritoriality in East Asia, Pär Kristoffer Cassel's *Extraterritoriality and Imperial Power in Nineteenth-century China and Japan* rejects an overly-simplified binary between the West as the oppressor and East as the oppressed in tracing their engagement with extraterritorial power. Calling attention to the legacies of personal jurisdiction inherent not only in Western demands for consular jurisdiction but also in the legal orders of Qing China and Tokugawa Japan, Cassel asserts that "[f]ar from being a *system*, in the sense of a planned and orderly arrangement, extraterritoriality is better regarded as a *practice*, which evolved and took shape in contact with a legally plural environment."[20] He contends that neither of them resisted the Euro-American imposition of extraterritoriality consistently. Marie Seong-Hak Kim urges Cassel to elaborate on this point by asserting, "Both Japan and China enjoyed unilateral extraterritorial privileges in Korea, a country conspicuously missing in this book. Some discussion about Chinese-Japanese relations over Korea during this period may have illuminated how China and Japan, in negotiating with imperialism, themselves became

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[19] Teemu Ruskola, "Canton is not Boston: The Invention of American Imperial Sovereignty," in *Legal Borderlands: Law and the Construction of American Borders, American Quarterly Special Issue* 57, No. 3, edited by Mary L. Dudziak and Leti Volpp (September 2005): 269.
[20] Cassel, *Grounds of Judgement*, 6, 7.

imperialists."[21] The implication is that the East-West interactions in the nineteenth century did not register an epoch in ending imperial demands for personal jurisdiction in East Asia.

Although the existing scholarship's scope of inquiries is predominantly centered on the nineteenth century, some key references to the following centuries have been made. Above all, Kal Raustiala's *Does the Constitution Follow the Flag? The Evolution of Territoriality in American Law* (2009) squarely historicizes postwar America's extraterritorial jurisdiction. Raustiala demonstrates how the United States, which had once advocated for territorial sovereignty for independence, came to claim extraterritoriality well beyond the protection of ambassadors initially in the nineteenth-century "uncivilized" world. The extraterritorial protection of American missionaries, diplomats, and merchants in Asia, however, had not surpassed the size of local populations subjected to new forms of extraterritoriality in the postwar period: one is the status of forces agreements (SOFAs) under which "American military personnel fall under the jurisdiction of U.S. military courts rather than local courts," and the other is "effects-based regulatory jurisdiction which aims at policing extraterritorial acts and actors" in Western allies. Against the backdrop of the Cold War and globalization, "Westphalian doctrines grew less appealing and became nettlesome obstacles to the projection of its [U.S.] power and ideals," Raustiala maintains.[22]

For the historicization of postwar U.S. FCJ policy, the United States' rise as a global base empire in the aftermath of World War II is of equal importance.[23] Understanding the specificity

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[21] Marie Seong-Hak Kim, Review of *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* by Pär Kristoffer Cassel, *Harvard Journal of Asiatic Studies* 73, no. 2 (2013): 382-392.

[22] Raustiala, *Does the Constitution Follow the Flag?*, 20-23.

[23] For major works, see: James R. Blaker, *United States Overseas Basing: An Anatomy of the Dilemma* (New York: Prager, 1990); Brooke L. Blower, "Nation of Outposts: Forts, Factories, Bases, and the Making of American Power," *Diplomatic History* 41, no. 3 (June 1, 2017): 439–59; Kent E. Calder, *Embattled Garrisons: Comparative Base Politics and American Globalism* (Princeton: Princeton University Press, 2007); Alexander

of postwar American extraterritoriality in a longue durée framework means identifying the transformation of the means of its power projection—from the treaty port system to colonialism, World War II, and a global base system followed by more military conflicts, especially in East Asia. We must ask why postwar U.S. extraterritoriality evolved in the way it did.

Historically, military control of territory via standing army is a common feature of empires. However, what has distinguished the postwar American base empire from others is its unparalleled scale of military power, its unprecedented global reach, and the size of the local populations that have come under the jurisdiction of SOFAs. "Never before had so many troops been permanently stationed overseas," as anthropologist David Vine recognizes.[24] After World War II, the number of troops stationed abroad increased exponentially: 80,000 troops in 1950; 350,000 by 1954, nearly one million United States military personnel stationed abroad in 1957.[25]

However, the permanent American military presence across the globe would not have materialized without the postwar national security state's aggressive use of executive power and crystallization of it into law in crafting global basing policy. The existing scholarship on American military bases has not fully explored the interrelated processes between the consolidation of the postwar national security state and the expansion of the base empire in the 1950s. In particular, the

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Cooley, *Base Politics: Democratic Change and the U.S. Military Overseas* (Ithaca: Cornell University Press, 2008); Robert E. Harkavey, *Bases Abroad: The Global Foreign Military Presence* (Stockholm: Stockholm International Peace Research Institute, 1989); Hirofumi Hayashi, *Beigunkichi no rekishi-Sekai network no keisei to tenkai* (Tokyo: Yoshikawa-kan, 2012); Shinji Kawana, *Base Politics: The Origins of the Post War U.S. Overseas Expansion Policy* (Tokyo: Hakutoshobo: 2012); Shinji Kawana, Mori Takahashi, *Exploring Base Politics: How Host Countries Shape the Network of U.S. Overseas Bases* (New York: Routledge, 2020);Yuko Kawato, *Protests Against U.S. Military Base Policy in Asia: Persuasion and Its Limits* (Stanford, California: Stanford University Press, 2015; Catherine Lutz and Cynthia Enloe, *The Bases of Empire: The Global Struggle Against U.S. Military Posts* (New York: New York University Press, 2009); Sheila A. Smith, *Shifting Terrain: The Domestic Politics of the U.S. Military Presence in Asia* (Honolulu: East-West Center, 2006); David Vine, *Base Nation: How U.S. Military Bases Abroad Harm America and the World* (New York: Henry Holt and Company, 2015); Andrew Yeo, *Activists, Alliances, and Anti-U.S. Base Protests* (Cambridge: Cambridge University Press, 2011).

[24] David Vine, *Base Nation: How U.S. Military Bases Abroad Harm America and the World*, 18.

[25] Raustiala, "Does the Constitution Follow the Flag?," 138.

National Security Act of 1947 bore hugely on the trajectories of postwar U.S. foreign relations, as Dudziak intimates the connection: "Much of the law of US foreign relations since 1947 is administrative law generated by federal rulemaking. Because of this, the legal history of American foreign relations is not limited to treaties, statues, and court rulings. Administrative law is foreign relations law."[26] Against the backdrop of the aggrandizement of executive power and federal lawmaking facilitating the institutionalization of the global base empire, postwar America's hegemony-inspired "national security ideology" buttressed this process with a new form of American exceptionalism, albeit built on the old creed of Manifest Destiny, as Michael Hogan's classic work on the subject has shown.[27]

The postwar U.S. national security state's making of Status of Forces Agreements (SOFAs) began in this climate. Maria H hn and Moon Seungsook's anthology, *Over There: Living with the U.S. Military Empire from World War Two to the Present*, acknowledges that "SOFAs have undermined national sovereignty in many ways and contain the contradiction of America's liberal imperialism."[28] Yet there is not a single study of diplomatic history empirically and systematically tracing the formation of U.S. SOFAs. Nor has the legal scholarship of U.S. military foreign criminal jurisdiction (FCJ) policy[29] been fully incorporated into the literature of the American

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[26] Dudziak, "Legal History as Foreign Relations History," 136.

[27] Michael J. Hogan, *A Cross of Iron: Harry S. Truman and the National Security State 1945-1954* (New York and Cambridge: Cambridge University Press, 1998), 10-13

[28] Maria H and Moon Seungsook ed., *Over There: Living with the U.S. Military Empire from World War Two to the Present* (Durham N.C.: Duke University Press Books, 2010), 15.

[29] For major works, see: Rain Liivoja, Eyal Benvenisti. *Criminal Jurisdiction over Armed Forces Abroad* (Cambridge University Press, 2017); Dieter Fleck, ed., *The Handbook of the Law of Visiting Forces*. (Oxford; New York: OUP Oxford, 2001); Dieter Fleck, ed. *The Handbook of the Law of Visiting Forces, Second Edition* (Oxford, United Kingdom: Oxford University Press, 2018); Joop Voetelink, *Status of Forces: Criminal Jurisdiction over Military Personnel Abroad, 2015 Edition* (New York, NY: T.M.C. Asser Press, 2015). For discussions on post-Cold-War Japanese civil society responses to U.S. foreign criminal jurisdiction policy on Japan mainly see: Alexander Cooley, *Base Politics: Democratic Change and the U.S. Military Overseas* (Ithaca: Cornell University Press, 2008); Jonathan T. Flynn, "No Need to Maximize: Reforming Foreign Criminal Jurisdiction Practice Under the U.S.-Japan Status of Forces Agreement," *Military Law Review* 12 (Summer 2012); Chalmers Johnson, "How American Imperialism Actually Works: The SOFA in Japan," in *Nemesis: The*

base empire. In light of its implications for broader "base politics," political scientist Alexander Cooley asserts that U.S. FCJ policy has been one of the "thorniest" disputes between the United States and its security partners.[30] As a matter of fact, legislative attorney Chuck Mason recognized in 2012 that at least ten U.S. SOFAs are kept classified under lock and key.[31]

Within the historical discipline, Hayashi Hirofumi's Japanese-language monograph on the history of American military bases has offered the most comprehensive analysis of postwar U.S. FCJ policy. Based upon his collection of statistical data recording U.S. host states' waivers of local jurisdiction from 1954 to 1958 over cases regulated by SOFAs and similar basing agreements, Hayashi acknowledges that the American military succeeded in attaining 69 percent of waivers worldwide (61 percent among NATO members and 82 percent among non-NATO members). Noteworthy is that Anglo-Saxon host nations—Britain and Canada—achieved much higher rates of local jurisdiction than non-western countries, a trend he attributes to the racist and colonialist nature of the postwar U.S. FCJ policy. In the case of Japan, official data reveal that Japan's waiver rate between 1953 and 1957 reached 97 percent. Further, Japan's significantly high rate of waiver of primary jurisdiction has continued in the 2000s. Yet, among all the cases over which the United States exercised primary jurisdiction under the Japan-U.S. SOFA between 1985 and 2004, one case was tried at a court-martial and 318 cases received a disciplinary action only (i.e., not criminal

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Last Days of the American Republic, Reprint Edition (New York: Metropolitan Books, 2008); Adam B. Norman, "The Rape Controversy: Is a Revision of the Status of Forces Agreement with Japan Necessary?," *Indiana International & Comparative Law Review* 6 (1995-1996); Andrew Yeo, *Activists, Alliances, and Anti-U.S. Base Protests* (New York: Cambridge University Press, 2011).

[30] For discussions on the controversies over U.S. foreign criminal jurisdiction policies, see: Alexander Cooley, *Base Politics: Democratic Change and the U.S. Military Overseas* (Ithaca: Cornell University Press, 2008); John W. Egan, "The Future of Criminal Jurisdiction over the Deployed American Soldier: Four Major Trends in Bilateral U.S. Status of Forces Agreements," *Emory International Law Review* 20, no. 1 (2006): 291-343; Flynn, Jonathan T. "No Need to Maximize: Reforming Foreign Criminal Jurisdiction Practice under the U.S.-Japan Status of Forces Agreement," *Military Law Review* 212 (Summer 2012): 1-69; Andrew Yeo, *Activists, Alliances, and Anti-U.S. Base Protests* (New York: Cambridge University Press, 2011).

[31] Chuck R. Mason, "Status of Forces Agreement (SOFA): What Is It, and How Has It Been Utilized? (Report)," *Congressional Research Service (CRS) Reports and Issue Briefs*, March 2012, 1.

punishment), according to the Department of Justice. Hayashi maintained that Japan's waiver of primary jurisdiction resulted in lenient punishments for U.S. military personnel.[32]

In fact, apart from historical scholarship, the U.S. Department of Defense policy of maximizing jurisdiction in host nations has been a subject of heated debates especially among legal experts and those serving the American military. For instance, Adam Norman endorsed the U.S. official rationale for the maximization policy on such grounds that: a) non-reciprocal SOFAs must compensate the U.S. military by granting judicial privileges; b) U.S. legal system treats all parties equitably; c) The objective of this policy is not to immunize them but to protect the liberty of American GIs. Norman addressed the concern that Japanese criminal system does not correspond with the American one, such as pre-indictment detention period longer than the American counterpart.[33]

U.S. military attorney Jonathan T. Flynn argued in his article entitled "No Need to Maximize: Reforming Foreign Criminal Jurisdiction Practice Under the U.S.-Japan Status of Forces Agreement" that "it would be strategic folly for the United States to underestimate Japan's building domestic pressures against its Japan based military assets," a political development bred by "a nearly 60-year-old Department of Defense (DoD) policy of maximizing jurisdiction and custody in situations of servicemember crimes." Flynn contended that because U.S. authorities have been consistently collaborating with Japanese officials to provide those military personnel

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[32] Hayashi Hirofumi, *Beigunkichi no rekishi-Sekai network no keisei to tenkai* (Tokyo: Yoshikawa-hirofumi kan, 2012); Takashi Shinobu, *Beigunkichiken to nichibei mitsuyaku--Amami, Ogasawara, Okinawa wo toshite* (Tokyo: Iwanami shoten, 2019); Yamamoto Akiko, *Nichibei chii kyōtei--Zainichi beigun to "domei" no 70 nen* (Tokyo: Chūōkōron-sha, 2019).

[33] Norman, "The Rape Controversy: Is a Revision of the Status of Forces Agreement with Japan Necessary," 17-740.

indicted and tried in Japan with sufficient constitutional protection, maximization is not necessary.[34]

Former U.S. diplomat Robert Loftis, whom I interviewed in 2016, has advocated for making "a single template" to stabilize the application of U.S. SOFAs worldwide. Loftis' position is built on his hands-on experience of leading negotiations of a SOFA with Iraq in 2008-2011. As a guest lecturer and professor at Boston University in 2013, Loftis stated:

> More importantly, with the support of the Pentagon and key elements at State, I wanted to create single template because I felt it important that the same conditions applied whether our forces where deploying to Peru or to Mali. Moreover, having a single template would ease my job as a negotiator. I could employ the argument that I was not asking my negotiating partner to accept anything that we had not already agreed with dozens of allies and friends.[35]

In response to my question regarding Iraqi government officials' visit to Japan during the negotiations, Loftis acknowledged that he (and his colleagues) had arranged their visit to Japan as well as other U.S. host nations. The U.S. team's intention was to allow the Iraqi leaders to learn from other host nations' *shared* experiences of U.S. SOFAs. However, the Iraqi government rejected the U.S. request for military related individuals' immunity from local jurisdiction upon its delegation's return. Loftis recognized that the Iraqi officials were "smart" negotiators. In response to my question regarding the Japan-U.S. SOFA and Flynn's assertion, Loftis stated that he might consider revising it, given that Japan is a democratic country, if the democratic rights of U.S. armed forces can be fully protected.[36]

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[34] Flynn, "No Need to Maximize: Reforming Foreign Criminal Jurisdiction Practice Under the U.S.-Japan Status of Forces Agreement," 4-6.

[35] The author obtained the text of the lecture directly from Robert Loftis via e-mail on May 7, 2016. The lecture was titled "Diplomacy and Statecraft: IRAQ Status of Forces Agreement (SOFA) Negotiations 2008 and 2011," and given at Boston University on November 7, 2013.

[36] The author's interview with Robert Loftis at Boston University on May 9, 2016.

I have coined the term "postwar American military legal regime of exception" to deconstruct, historicize, and supplement what is commonly known as the U.S. military "foreign criminal jurisdiction" policy. The conclusion of the NATO SOFA and the Japan-U.S. Confidential Agreement in the early 1950s marked the dawn of the postwar U.S. national security state's institutionalization of an extraterritorial FCJ policy. This was a break from nineteenth-century type of extraterritoriality brought by postwar America's unparalleled military and economic power. In the new international environment, the American military came to demand legal immunity from local jurisdiction not only in the non-Western world but also in Europe. In Asia, certain continuities with nineteenth-century extraterritoriality manifested in military elites' and legislators' openly racist and Orientalist discourses on the inferiority of Japan's legal system that seemingly justified U.S. extraterritorial jurisdiction in "democratized" Japan.

State Department elites initially resisted the Pentagon's demand for the extraterritorial policy arguing that it would impair postwar America's civilizing mission in the Cold War environment. However, given the congressional outcry against the concession of U.S. jurisdiction in host nations, the State Department ultimately supported the institutionalization of the postwar American military legal regime of exception, thereby leading negotiations on the matter worldwide. The NATO SOFA adopted a "concurrent jurisdiction formula," which authorized receiving nations to exercise local jurisdiction over off-duty cases. Yet, U.S. policy elites made confidential agreements with some NATO members and Japan that watered down the official agreements at the cost of violating fundamental democratic principles, namely, constitutional democracy and popular sovereignty.

I introduce the postwar American military legal regime of exception in recognition of scholars' joint efforts to theorize the idea of U.S. exceptionalism and its reliance on the utility of

law and its role in legitimatizing the unilateral projection of state power. In this respect, Amy Bartholomew's definition of "empire's law" is illuminative. Building on Nehal Bhuta's discussion of twenty-first-century America's search for "a global state of exception"[37] (analogical to Giorgio Agamben's and Carl Schmitt's "state of exception"), Bartholomew asserts:

> Empire's law… seeks exceptions, evasions and 'legal' arrangements that accommodate its needs and desires which in principle marginalizing others—treating them as law's mere objects, not its equal subjects or authors. That the American Empire seeks to reconstitute and refound the law virtually by unilateral fiat, with enormous pressure placed on its "coalition" and "allies," to say nothing of its enemies, both attacks the internal legitimacy of law—its egalitarian universalism—and further degrades its procedural (or democratic) legitimacy.[38]

Bartholomew squarely problematizes "the contradictory politics of human rights" in critiquing "empire's law." As she suggests, understanding the postwar American military legal regime of exception means tracing the history of postwar America's denial of egalitarian universalism, most centrally human rights. U.S. policymakers, including John Foster Dulles as the architect of the 1953 Japan-U.S. Confidential Agreement, were not active supporters of the institutionalization of legally-binding human rights laws despite the landmark adoption of the Universal Declaration of Human Rights (UDHR) at the United Nations in 1948.[39] It was in this historical and political environment that occupied Okinawans in the mid-1950s mobilized a popular movement calling for the international protection of individual rights, namely, the right to life and safety and equality before the law. In the following years, Okinawans utilized this united

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[37] Nehal Bhuta, "A Global State of Exception? The United States and World Order," *Constellations* 10, no. 3 (2003): 371-91.

[38] Amy Bartholomew, "Empire's Law and the Contradictory Politics of Human Rights," in *Empire's Law: the American Imperial Project and the War to Remake the World*, edited by Amy Bartholomew (London and Ann Arbor, MI: Pluto Press, 2006) 180.

[39] Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge: Belknap Press: An Imprint of Harvard University Press, 2012).

front for their struggle for autonomy and reversion to Japan. Samuel Moyn has asserted that what we know as "human rights," a concept understood as the international protection of individual rights, did not exert any substantial influence on international civil society until the late 1970s, because human rights advocacy before then had been couched in struggles for national self-determination. The history of the postwar American military legal regime of exception in occupied Okinawa requires a more nuanced reading.

Deconstructing the Cold War in Asia: Japan, the United States, and Okinawa as A Borderland

In 1953, 185,829 U.S. armed forces were stationed in post-occupation Japan and 23,325 in U.S.-occupied Okinawa[40] to contain the growing ascendancy of communist forces in Asia. The rivalry for world hegemony between the United States and the Soviet Union, often narrated as the "Cold War," had given birth to the postwar Japan-U.S. security relationship. Yet, treating the Cold War as if it was a natural disaster that had descended upon the world rather than as a dynamic relationship that developed out of the realities of World War II and its aftermath does not help us comprehend the post-1945 trajectory of the Okinawa-Japan-U.S. relationship.

Although there exists growing scholarly recognition of Asia's starkly different experiences of the Cold War and the urge to further investigate its manifestations on the ground,[41] the scholarship on international relations is still by and large Atlanticist. No doubt, as Bruce Cumings eloquently writes, the Atlanticist interpretation of the past itself is very much a product of history:

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[40] Hayashi, *Beigunkichi no rekishi*, 127.

[41] Jennifer H. Munger, "Introduction (to a roundtable discussion "The Cold War in Asia—Antecedents and Fall-out")," *The Journal of Asian Studies* Vol. 75, No. 4 (November 2016): 973–974; Michael Szonyi, "The Cold War on the Ground: Reflections from Jinmen," *The Journal of Asian Studies* Vol. 75, No. 4 (November 2016): 1041-48.

"The American position in the world, however, owes much to its being the first hegemonic power to inhabit an immense landmass, not an island empire like England or Pacific Century-pretender Japan, but a continent open at both ends to the world's largest oceans… The historic dominance of Atlanticists, gazing upon a Europe whose civilization gave birth to our own, averts our eyes from this fact…"[42]

Immanuel Wallerstein has similarly critiqued the premise of the dominant historical interpretation of the "Cold War (1945-1991)" that defines the United States and Soviet Russia as the "primary agents of almost everything, everywhere."[43] Such an assumption, he argued, obfuscates the two white empires' inter-imperial competition and local agents' equally significant, subjective and multi-dimensional roles in shaping cold war histories. To begin with, why is it that the Cold War was cold in Europe and hot in Asia? Wallerstein contended that "[i]f the Yalta agreement was an agreement that there would be no shooting, that neither side would attempt to change the frontiers that were established in 1945, then in this sense the Yalta agreement was a great success… But it achieved it primarily in Europe." Since the U.S.-Soviet creation of the bipolar world faced enduring, more substantial ideological conflicts between the North and South, the Cold War "didn't end in the same way everywhere."[44]

Certainly, in the case of Japan, the landscape of the massive American military presence on the islands of Okinawa did not fade with the alleged U.S. victory against Soviet Russia. In fact, the size and number of U.S. military bases in "mainland" Japan shrank dramatically first in the late 1950s and again in the 1970s before and after the reversion of Okinawa: 2,824 U.S. military

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[42] Bruce Cumings, *Dominion from Sea to Sea: Pacific Ascendancy and American Power* (New Haven & London, Yale University Press, 2009), iv, x.
[43] Immanuel Wallerstein, "What Cold War in Asia? An interpretative essay," in *The Cold War in Asia: The Battle for Hearts and Minds*, edited by Zheng Yangwen, Hong Liu, and Michael Szonyi (Leiden and Boston: Brill, 2010) 19.
[44] Wallerstein, "What Cold War in Asia?," 19-20.

facilities in 1952 were reduced to 368 in 1958 and 124 in 1970.[45] In December 1970, Washington made the decision to withdraw 12,000 U.S. service members, or one third of the total population deployed to Japan, under the climate of détente in Asia.[46] Thereafter, the partial yet drastic withdrawal of the U.S. Air Force and Army from Japan in the 1970s ultimately reduced the population from 37,512 in 1970 to 22,142 in 1980.[47]

However, these shifts in U.S. basing policy entailed an uneven distribution of U.S. military bases and personnel in occupied and post-reversion Okinawa. While the Army deployed in Okinawa shrank in the 1970s as in Japan, the U.S. Marines expanded throughout the occupation period and thereafter.[48] Importantly, this asymmetrical U.S. military presence emerged not merely as a product of the U.S. national security state's internal calculations but also as an accommodation for Tokyo's request for the continued Marine presence in Okinawa. Before the reversion, Japanese policy elites had already demonstrated a strong interest in showcasing the U.S. commitment to Japan's security in Asia with the Marines' readiness.[49]

With the American military presence concentrated in Okinawa, the Japanese pubic gradually accommodated itself to the Japan-U.S. security relationship before the collapse of the Soviet Union. As the Japanese economy grew to the second largest in the world, Okinawa had a conservative governorship from 1978 to 1990, and the ruling Liberal Democratic Party's prime ministers began using the term Japan-U.S. "alliance" in the late 1970s to describe the security

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[45] Hayashi, *Beigun kichi no rekishi*, 108.
[46] Nozoe Fumiaki, "1970 nen dai kara 1980 nendai ni okeru zai Oki kaiheitai no saihen kyōka," in *Okinawa to kaiheitai: Chūryū no rekisiteki tenkai* (Tokyo: Junpōsha, 2016), 90.
[47] Yoshitsugu Kōsuke, *Nichibei Anpo taiseishi* (Tokyo: Iwanami shuppan, 2018), 124.
[48] Gabe Masaaki, "Zainichi beigun kichi no saihei: 1970 nen zengo," *Review of Policy Science and International Relations* 10 (March 2008): 1-31; Nozoe, "1970 nen dai kara 1980 nendai ni okeru zai Oki kaiheitai no saihen kyōka," 85-114; Yara Tomohiro, "Posuto reisen to zaioki kaiheitai," in *Okinawa to kaiheitai: Chūryū no rekisiteki tenkai* (Tokyo: Junpōsha, 2016), 115-142.
[49] Nozoe, "1970 nen dai kara 1980 nendai ni okeru zai Oki kaiheitai no saihen kyōka," 85-114.

relationship with the United States. This was controversial among the public, especially among progressives, because it implied an escalating militarization of the relationship with the United States.[50] Nevertheless, Japanese civil society normalized the term "alliance" in the following decades while consenting to the Self Defense Forces (SDFs)' support for U.S.-led military operations overseas and steadily increasing the population supporting the transformation of the postwar Japan-U.S. relationship into an "alliance." Today, Japan is the most supportive host nation and the biggest benefactor of a permanent American military presence anywhere in the world.

The dissertation builds on the premise that we cannot make sense of postwar Japan's ambivalence toward extraterritoriality and increasing acceptance of the alliance without tracing the structural transformation of the Okinawa-Japan-U.S. relationship between 1952 (Japan's recovery of sovereignty) and 1972 (occupied Okinawa's reversion to Japan). By interrogating post-World War II negotiations of the inter-imperial politics of sovereignty between Japan and the United States, we can attain a deeper historical understanding of why Okinawa has remained a borderland in the post-Cold War era. The point is to observe the two decades in light of the historical trajectories of colonialism, extraterritoriality, and decolonization in Asia with an underlying analytical position that neither Japan nor Okinawa was a passive recipient of the postwar American military legal regime of exception.

The Okinawa-Japan-U.S. Relationship, 1952-1972

A historical inquiry into the postwar American military legal regime of exception in post-occupation Japan and occupied Okinawa requires an overview of the legal and political

[50] Yoshitsugu, *Nichibei Anpo taiseishi*, 102-107.

architecture of the postwar Okinawa-Japan-U.S. relationship. Toward this end, it is essential first to recognize the historical relationship between Japan and the Ryukyu islands, of which the largest island is Okinawa. Even though the Ryukyu Kingdom (1429-1879) was a loyal member of the Sino-centric tributary system, it was also subject to feudal Japan's frontier activities since the seventeenth century, the time European settlers trekked westward across North America. In 1879, Meiji Japan terminated the Ryukyu Kingdom's status as a separate political entity and incorporated it into the new Japanese nation as a prefecture. Ryukyuans became citizens of the Japanese nation-state (with limited male suffrage beginning in the first two decades of the twentieth century) while simultaneously becoming the subjects of imperial Japan.

Within a century, the U.S. intervention brought a rupture in the Ryukyu-Japan relationship. The unique legal sphere of occupied Okinawa emerged in this historical context. In the Battle of Okinawa, as the only ground battle the Allied forces fought on the Japanese metropole from March to June 1945, the asymmetrical relationship between Japanese and Ryukyuans came to serve U.S. military elites' strategic interest in positioning themselves as liberators. In conducting pre-battle analyses, the Operation Iceberg planners defined the islanders as "Ryukyuans," and not "Okinawans," and prepared for the jurisdictional separation of the island of Okinawa.[51] U.S. Navy Admiral Chester W. Nimitz issued the U.S. Navy Military Government Proclamation No. 1 in April. Because the State Department initially questioned the legality of the continued U.S. military occupation of Okinawa in post-independent Japan, the Army and Navy took charge of the occupation without an experienced civilian staff. Ad hoc directives governed occupation principles between 1945 and 1952 in the absence of a consensus on U.S. policy on Okinawa until 1948.[52]

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[51] Courtney A. Short, *Uniquely Okinawan: Determining Identity During the U.S. Wartime Occupation* (New York: Fordham University Press, 2020), 8-12.

[52] Miyazato Seigen, *America no Okinawa tōchi* (Tokyo: Iwanami shoten, 1966), 5, 25.

The other legal sphere emerged in Japan after its unconditional surrender to the Allied powers in August 1945. Under the leadership of General Douglas MacArthur as the Supreme Commander for the Allied Powers (SCAP) and the gaze of the Far Eastern Commission (FEC), the U.S. occupation of Japan showcased the democratization and demilitarization of Japan to the world. As John Dower argued in his classic monograph on the U.S. occupation of Japan, the occupation reforms "reflected an agenda inspired by heavy doses of liberal New Deal attitudes, labor reformism, and Bill of Rights idealism of a sort that was in the process of being repudiated (or ignored) in the United States."[53] Yet, while the ideological and institutional bases of the occupation regimes in Japan and Okinawa were starkly different, it does not deny the fact that they held the status as an occupied area under international law. In addition, they shared the context that the occupation regime came into effect through *force*.

The year 1952 marked a departure from this 1945 legal structure of the Okinawa-Japan-U.S. relationship. Emperor Hirohito and the Yoshida administration officials approved the jurisdictional separation of Okinawa while deepening their ties with the occupation authorities and undertaking negotiations on a peace settlement. It was not just the 1949 Chinese Revolution and the 1950 Korean War but also Japanese state elites' *subjective* role in legitimatizing the continued U.S. military occupation of Okinawa at the cost of Japan's early recovery of sovereignty that helped consolidate the U.S. position.[54] In June 1950, Washington determined to restore Japan's sovereign status under the condition that U.S. armed forces would continue the occupation of the Ryukyu islands and securing unrestricted basing rights across the Japanese archipelago.[55] Despite

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[53] John Dower, *Embracing Defeat: Japan in the Wake of World War II* (New York: W.W. North & Company, 1999), 26.

[54] Aketagawa Tōru, *Nichibei gyoseikyotei no seijishi*, (Tokyo: Hoseidaigaku shuppan, 1999), 23-96; Aketagawa Tōru, *Nichibei chiikyōte: So no rekishi to genzai* (Tokyo: Misuzu shobō, 2017), 12-44.

[55] Miyazato Seigen, *Nichibei kankei to Okinawa, 1945-1972* (Tokyo: Iwanami shoten, 2000), 41-42.

Okinawans' overwhelming support for rejoining the-soon-to-be-independent Japan, most Japanese legislators did not vote against the San Francisco Peace Treaty, which authorized the continued jurisdictional separation of Okinawa.

By the late 1960s, legal scholars in Japan and Okinawa came to call Article 3 of the San Francisco Peace Treaty "a legal monster" pointing to both the ambiguous and unambiguous declaration of U.S. authority over Okinawa. The text of Article 3 read:

> Japan will concur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole administering authority, Nansei Shoto south of 29 degree north latitude (including the Ryukyu Islands and the Daito Islands), Nanpo Shoto south of Sofu Gan (including the Bonin Islands, Rosario Island and the Volcano Islands) and Parece Vela and Marcus Island. Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters.[56]

Needless to say, the approval from the United Nations was not a feasible option for the U.S. policy makers, who were well aware of the Soviet Union's veto power endowed by the institution. John Foster Dulles, the architect of the San Francisco system, affirmed that Japan still held "residual sovereignty" over the Ryukyu islands[57].

The clash of ideas represented by the two legal orders Dulles installed in post-occupation Japan contributed to its constitutional disorder. In legal scholar Hasegawa Masayasu's "dual legal order theory (*futatsu no hōtaikei ron*)," one speaks to the postwar constitution's three fundamental principles—pacificism, popular sovereignty, and respect for fundamental human rights—and the

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[56] Treaty of Peace with Japan, signed at the city of San Francisco, the United States of America, on September 8, 1951, ratified on November 18, 1951, and entered into force on April, 28, 1952.

[57] For extended discussion on Article 3 of the San Francisco Peace Treaty, see: Koseki Shōichi, Toyoshita Narahiko, *Okinawa: Kenpōnaki sengo* (Tokyo: Misuzu shobō, 2018), 4-85, 98-100; Yuichiro Onishi, "Occupied Okinawa on the Edge: On Being Okinawan in Hawaii and U.S. Colonialism toward Okinawa," *American Quarterly* Vol. 64, No. 4 (December 2012): 753-756.

other to a body of legal documents that underwrote for the military imperatives of the postwar U.S. national security state [58] —the San Francisco Peace Treaty, the Security Treaty, and the Administrative Agreement (later the SOFA). The latter included legislation for special measures adopted to accommodate legal requirements for the presence of the American military and confidential agreements. Grounded in this dual legal order, Article 3 of the San Francisco Peace Treaty ushered Okinawa into a turbulent moment in its history until the recovery of Japanese citizenship in 1972.

Historiographies of the American Military Legal Regime of Exception in Post-Occupation Japan and Occupied Okinawa

Over the past decade, Japanese scholars and journalists have illuminated the closed-door negotiations that led to the conclusion of the 1953 Japan-U.S. Confidential Agreement utilizing declassified Japanese official papers. No historian, however, has drawn on a great volume of declassified U.S. documents to investigate the making of the Agreement and located its experience within the broader trajectory of the U.S. military legal regime of exception in postwar Japan. Nor has the literature of contemporary Okinawa provided an empirical inquiry into the operation of the extraterritorial FCJ policy and its impact on locals during the occupation period. The English-language scholarship on the postwar Japan-U.S. relationship is also devoid of these sources except for the existing scholarship's references to prominent military crimes and incidents and empirical studies on the 1970 Koza uprising. This topic has been hampered by politics, mainly in Japan.

[58] For an overview of Hasegawa's theory, see: Sugihara Yasuo, Higuchi Yōichi, Mori Hideki ed., *Hasegawa Masayasu sensei tsuitōronshū: Sengo hōgaku to kenpō* (Tokyo: Nihonhyōron sha, 2012).

In 2008, the researcher Niihara Shōji discovered the 1953 Japan-U.S. Confidential Agreement at the U.S. National Archives and Records Administration (NARA) II. Niihara held a press conference about his archival findings upon his return to Japan, which prompted the Japanese government's disclosure of its own records of the negotiations on the revision of Article 17 of the 1952 Japan-U.S. Administrative Agreement in 2011.[59] The Kan administration, however, did not recognize the confidential status of the 1953 Agreement with the rationale that it was merely a unilateral statement made by one Japanese official.[60] Journalists Fuse Yūjin and Yoshida Toshihiro introduced Niihara's archival findings in their monographs on the Agreement, and argued that recent official data attest to twenty-first-century Japan's commitment to faithful waivers of jurisdiction over criminal cases committed by off-duty U.S. military personnel.[61] Niihara's 2011 book unveiled a genealogy of "Japan-U.S. confidential agreements diplomacy" based on a collection of understudied declassified U.S. papers. He asserted that the Kan administration' denial of the 1953 Confidential Agreement fabricated history and revealed the continuity of Japan's subordinate relationship with the United States.[62]

Building on such revelations, academics have examined the informal negotiations of the revision of Article 17 in the past decade. Among the contributors, diplomatic historian Aketagawa Tōru has been most prolific in documenting diplomatic histories of the 1952 Japan-U.S.

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[59] The Kan administration formed under the leadership of the Democratic Party of Japan (DPJ) in coalition with the Social Democratic Party (SDP) and People's New Party (PNP) in 2009 ordered the Foreign Ministry to "investigate" a series of confidential agreements alleged to have been concluded by the long-ruling LDP. In 2010, the Foreign Ministry recognized the existence of four classified agreements: two related to the 1960 Japan-U.S. Security Treaty and the rest related to the 1972 reversion of Okinawa.

[60] Ministry of Foreign Affairs of Japan, "Nichibei goudou iinkai: 2011 nen 8 gatsu 25 nichi ni okeru yaritori 28 August 2011," December 12, 2012. The text is available at (Japanese: https://www.mofa.go.jp/mofaj/area/usa/sfa/pdfs/1953kaisei09.pdf; English: https://www.mofa.go.jp/mofaj/area/usa/sfa/pdfs/1953kaisei08.pdf), last accessed January 15, 2021.

[61] Fuse Yūjin, *Nichibei mitsuyaku sabakarenai beigun hanzai* (Tokyo: Iwanami shoten, 2010); Yoshida Toshihiro, *Nichibei chii kyotei to beigun hanzai* (Tokyo: Mainichi shinbunsha, 2010).

[62] Niihara Shōji, *Nichibei mitsuyakku gaikō to jinmin no tatakai: Bei-kaikinbunsho kara miru anpotaisei no uragawa* (Tokyo: Shinnihon shuppansha, 2011), 176-184.

Administrative Agreement and the 1960 Japan-U.S. SOFA. Building on his earlier studies, Aketagawa has located the 1953 Confidential Agreement within the broader framework of early-1950s U.S. policy on Japan, which defined unrestricted basing rights across the archipelago and occupied Okinawa as the most essential condition for the peace settlement. He maintained that the "Japan-U.S. Joint Committee" created by Article 25 of the Administrative Agreement allowed the state authorities to hold closed-door negotiations on the 1953 Agreement without legislative oversight. Japanese elites attained the "appearance" of national sovereignty while U.S. counterparts made sure to secure the "substance" of jurisdictional privileges, Aketagawa argued.[63]

Shinobu Takashi's monograph on U.S. base rights in Japan, Okinawa, and the Amami Islands has acknowledged U.S. FCJ policy as "the biggest problem between Japan and the United States" concerning the American military's historic assertions over legal privileges. With book chapters on the 1953 negotiations and two controversial GI cases committed by U.S. military personnel in the 1950s and 1970s, Shinobu suggested postwar America's demands for far-reaching base rights and the making of confidential arrangements for the extraterritorial U.S. FCJ policy as the manifestation of enduring national conflicts between Japan and the United States. While problematizing Japanese policy elites' commitment to the 1953 Agreement, Shinobu concluded that Japan's Self-Defense Forces (SDFs)' application of exclusive jurisdiction formula in warn-torn areas, such as Iraq, is legitimate because they lack sovereignty and reliable legal system.[64]

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[63] For his major works, see: Aketagawa Tōru, *Nichibei gyoseikyotei—sono genzai to ima* (Tokyo: Misuzu shobo, 2017); Aketagawa Tōru, "Gyoseikyotei no teiketsu to 'senryo no ronri'" in *Anpo jyōyaku no ronri—so no seisei to tenkai* (Tokyo: Kashiwa shobo, 1999); Aketagawa Tōru, *Nichibei gyoseikyotei no seijishi* edited by Toyoshita Narahiko (Tokyo: Hoseidaigaku shuppan, 1999). For English-language works, see: Richard B. Finn, *Winners in Peace: MacArthur, Yoshida, and Postwar Japan* (Berkeley and Los Angeles: University of California Press, 1992); John Swenson-Wright, *Unequal Allies? United States Security and Alliance Policy Toward Japan, 1945 – 1960* (Stanford: Stanford University Press, 2005).

[64] Shinobu Takashi, *Beigunkichiken to nichibei mitsuyaku--Amami, Ogasawara, Okinawa wo toshite* (Tokyo: Iwanami shoten, 2019), 8, 317-320.

My narrative on the making of the 1953 Confidential Agreement does not challenge the existing scholarship's readings of archival documents, some of which I have also used from my collection of declassified Japanese and U.S. papers. Instead, I bring to bear on these documents my analysis of Japanese civil society's protest movement against Article 17 and U.S. civilian and military officials' varied reactions to the nationalist resistance. Further, I draw on a great volume of declassified documents not utilized in the previous scholarship to suggest U.S. officials' joint efforts to conclude similar confidential agreements in Europe and discussions over the rapid rise of "anti-American" sentiment across the globe in the early 1950s as a vital context that coincided with Japan's experience. In effect, I demonstrate how the 1953 Agreement came into existence as a product of the time, i.e., post-World-War-II Japan-U.S. negotiations over territorial sovereignty pulled between U.S. exceptionalism and Japanese nationalism.

The literature on U.S. FCJ policy on Japan in the latter half of the 1950s is dominated by the "Girard case."[65] Unlike the 1953 Confidential Agreement, this literature has offered more references to and empirical analyses of Japanese public reactions. Aketagawa, Jennifer Miller, and Yamamoto Akiko have underscored the protest movement's impact on Washington's decision to downsize the massive deployment of GIs in Japan. The existing scholarship concurs that the Japanese demand for jurisdiction over Girard resonated with sporadic, and yet tenacious, anti-

[65] For English-language works not discussed in the following paragraphs, see: Michael Schaller, *Altered States: The United States and Japan Since the Occupation* (New York: Oxford University Press, 1997); John Swenson-Wright, *Unequal Allies? United States Security and Alliance Policy Toward Japan, 1945 – 1960* (Stanford: Stanford University Press, 2005). For major Japanese-language works not discussed in the following paragraphs, see: Ikeda Naoki, "Jirādo jiken no saikentō: Taiwan ni okeru jirei to no hikaku o chūshin to shite," *Gunji shigaku* 46, no. 2 (September 2010):127-142; Kurabayashi Naoko, "Chūryū beigun wo meguru seifu to gikai no kankei: Jirādo jiken e no taiō o chūshin ni," *Reitaku daigaku kiyō* 93 (December 2011): 25-44; Ōnuma Hisao, "'Jirādo jiken' to nichibei kankei," *Kyōai gakuen maebashi kokusai daigaku ronshū* 16 (2016): 9-30; Shinobu Takashi, "Jirādo jiken," in *Beigunkichiken to nichibei mitsuyaku*, 125-180; Suenami Yasushi, "America wa saibanken no mitsuyaku o yamenai," in *Taibei jyūzoku no shōtai* (Tokyo: Kōbunken, 2012), 140-175; Yamamoto Hidemasa, *Beihei hanzai to nichibei mitsuyaku: Jirādo jiken no shinjitsu* (Tokyo: Akaishi shoten, 2015).

American military base struggles across the archipelago, and that the case invigorated national discussions about the unequal treatment of Japan in the Security Treaty and the Administrative Agreement.

For instance, Miller argued that "the Girard case was the immediate catalyst" for the Eisenhower administration's reduction of 40 percent of U.S. forces. Despite "vocal military concerns that it effectively ended the United States' ability to defend mainland Japan from invasion," Eisenhower addressed a greater policy fear that "the United States was losing the support of its most important ally in Asia." With regard to the causal relationship between the incident and the decision, Miller maintained that Japanese anti-base activism, symbolized by the Sunagawa struggle, exerted enormous impact on this policy change, and that the controversy over the Girard case paved the two countries' diplomatic path to revising the 1952 Security Treaty.[66] Another crucial contention is that the reason why bases in Japan could be moved to Okinawa and South Korea was because "[a]s one of the United States' most significant alliance, the Japanese government and people could influence this alliance in ways that other states and people could not do." [67] Similarly, Yamamoto's analysis of the Girard case suggested that even though Eisenhower's nuclear policy required the overseas military base system, the administration prioritized "political coordination" over "rationality and efficiency of the basing system." She also underscored the causal relationship between the deterioration of anti-base sentiment across the Japanese archipelago in the late 1950s and the unequal distribution of U.S. bases to occupied Okinawa that ensued it.[68]

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[66] Jennifer Miller, "Fractured Alliance: Anti-Base Protests and Postwar U.S.–Japanese Relations," *Diplomatic History* 38, no.5 (November 2014): 980.
[67] Jennifer Miller, *Cold War Democracy: The United States and Japan* (Cambridge: Harvard University Press, 2019), 189.
[68] Yamamoto Akiko, *Beikoku to nichibei anpo jyōyaku kaitei: Okinawa, kichi, dōmei* (Tokyo: Yoshida shoten, 2017), 205.

Aketagawa argued that the biggest shock for U.S. policy makers actually came in January 1958, a month after Girard's departure from Japan. Ambassador MacArthur II was appalled by the victory of a coalition of progressive forces in occupied Okinawa's election (the Naha mayoral election) in the aftermath of the trial, which delivered a lenient sentence along with a suspended term. The event shifted U.S. civilian policy elites' concern over the continued operation of bases in the Far East and Western Pacific to an unprecedented level, and forced MacArthur to initiate a revision of the Security Treaty.[69] Aketagawa asserted that this process attests to the fact that U.S. basing policy was structurally dependent on the will of those who host bases. And for this reason, he argued, the momentum for the revision of the Security Treaty consolidated in response to the emergence of progressives' coalition (*minshu-shugi yōgo renraku kyōgikai*) in Okinawa.[70]

The dissertation enriches the existing scholarship by analyzing the tenacity of the postwar American military legal regime of exception and the ideological contradictions inherent in the Japanese resistance to postwar U.S. extraterritoriality as seen in the politics that revolved around the "Girard case." First, I demonstrate how U.S. policy makers institutionalized the regime of the 1953 Confidential Agreement in collaboration with Japanese elites through the monitoring of Japanese trials and prisons in the rest of the 1950s. Second, I show how U.S. policy elites insistently tried to declassify the 1953 Confidential Agreement against the wishes of the Japanese government. Third, I highlight the implications of the Girard case for the Anpo Movement, namely the way in which Japanese civil society protested postwar U.S. extraterritoriality under the premise of Euro-American supremacy and the slogan of territorial sovereignty and national sovereignty without cultivating egalitarianism (i.e., a human rights consciousness). In parallel, Okinawans'

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[69] Aketagawa, *Nichibei gyōseikyōtei no seijishi*, 261.
[70] Aketagawa, *Nichibei gyōseikyōtei no seijishi*, 261-262.

lack of constitutional protection, addressed by the Japan Civil Liberties Union (JCLU) in 1955, did not become a central concern for the Japanese public over the renewal of the Security Treaty.

There is no equivalent scholarship of U.S. FCJ policy on Okinawa comparable to that on Japan. This may be because Okinawa was not a sovereign country. Nonetheless, when we consider the centrality of Okinawans' resistance to the U.S. military legal regime of exception to the triangular Okinawa-Japan-U.S. relationship both before and after 1972, empirical inquiries into that history are crucial. In fact, the genealogy of the protest movement against U.S. military crimes and incidents in occupied Okinawa receives constant mention in the existing scholarship's overview of contemporary Okinawa.[71] Further, the 1995 rape of an Okinawan schoolgirl by three GIs, the most controversial case committed in post-reversion Okinawa, has comprised the largest historiography of the politics surrounding U.S. FCJ policy on Okinawa.[72]

A notable exception exists. Aketagawa's monograph, *The Japan-U.S. SOFA: Its History and the Present*, has a chapter entitled "American soldiers' crimes in Okinawa and the issue of the transfer of criminal jurisdiction." It offers a concise summary of U.S. criminal jurisdiction policy on occupied Okinawa and discusses the state of GI crimes during the latter half of the 1960s and the early 1970s. Drawing on primary sources such as an African-American GI's diary and Okinawans' accounts, Aketagawa underscored that GIs' racial hatred toward locals was rampant

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[71] For major works, see: Arasaki Moriteru, *Sengo Okinawa shi* (Tokyo: Nihonhyōronsha, 1976); Arasaki Moriteru, Nakano Yoshio, *Okinawa sengoshi,* New Edition (Tokyo: Iwanami shoten, 2005); Sakurazawa Makoto, *Okinawa gendaishi* (Tokyo: Chūōkoron sha, 2015); Miyume Tanji, *Myth, Protest and Struggle in Okinawa* (London and New York: Routledge, 2006).

[72] For major English-language works, see: Linda Isako Angst, "The Sacrifice of a School Girl: The 1995 Rape Case, Discourse of Power, and Women's Lives," *Critical Asian Studies* 33, no. 2 (2001): 243-266; Masamichi S. Inoue, "The Rape Incident and the Predicaments of Okinawan Identity," in *Okinawa and the U.S. Military: Identity Making in the Age of Globalization* (New York: Columbia University Press, 2007), 31-69; Miyume Tanji, "The third wave and beyond: the power of Unai and the dugongs," in *Myth, Protest and Struggle in Okinawa* (London and New York: Routledge, 2006). For a major Japanese-language work, see: Sakurazawa Makoto, "Okinawa shimagurumi undo no fukkatsu: '1995 nen' wa dou jyunbi saretaka," in Hirokawa Tadahide, Yamada Takao ed., *Sengo shakai undōron: Gunji taikokuka to shin jiyūshugi no jidai no shakai undo* (Tokyo: Ōtsuki shoten, 2018), 231-258.

and increased gruesome crimes in the context of the Vietnam War. As to the question of criminal jurisdiction, Aketagawa explained why an epochal event such as the Koza Riot did not compel U.S. authorities to consider transferring jurisdiction to the islanders. The military's justification was that Okinawans were not ready for the transfer in the absence of a legal infrastructure, since the Japan-U.S. SOFA had yet to be installed.[73]

Indeed, the inadequacy of empirical studies on policy aspects of the American military legal regime of exception in Okinawa does not mean that U.S. military incidents mattered little to U.S. occupation policy. The historical scholarship of occupied Okinawa focusing on the development of social movements has examined the political repercussions of some prominent U.S. military incidents, such as the 1955 Yumiko-chan case, the 1959 U.S. jet crash on Miyamori Primary School, the 1968 B-52 crash, and the 1970 Koza incident.

Noteworthy here is that Okinawans have named major U.S. military incidents after the victim's name, according to the late Okinawan governor Onaga Takeshi.[74] Referring to each case by the accused service member's name did not become a common practice maybe because Okinawa did not have jurisdiction over the American military's cases. It may also be concerned with, I argue, the Okinawan protest movement's shared focus on the victimhood and human rights of each individual.

Arguably, the most famous GI crime that occurred in occupied Okinawa is the Yumiko-chan case. Okinawans collectively continue referring to this case in their protest movement against the Japan-U.S. SOFA. In 1955, a U.S. service member's rape and murder of a local girl triggered

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[73] Aketagawa, "Okinawa behei hanzai to saibanken ikan mondai," in *Nichibei chiikyōte: So no rekishi to genzai*, 160-176.

[74] "Tuitō Onaga chiji ga hatasenakatta tsuma to no yakusoku: bansaku tsukitara fūfu de issho ni," *AERA (Shūkan Asahi)*, August 9, 2018. The text is available at (https://dot.asahi.com/wa/2018080900019.html?page=3), last accessed January 26, 2021.

an unprecedentedly large-scale protest movement demanding the protection of locals' human rights and denouncing the "extraterritorial" U.S. military justice. In the scholarship of 1950s Okinawa, the case is recognized as a critical turning point that occurred between the military's escalation of coercive land seizure in 1953 and the emergence of island-wide struggles against it in 1956.[75] So far, journalist Sasaki Ryūzō's book chapter, published in 1976, has offered the most thorough and empirical account of Okinawan responses to the incident utilizing local newspapers' coverage and his own interview with Yumiko's mother. He also introduced Okinawans' speeches made at the "All Okinawan Residents' Rally for the Protection of Human Rights (*Zen Okinawa jnken yōgo jyūmin taikai*), the largest demonstration advocating for human rights. Despite Sasaki's valuable contribution to the historiography of occupied Okinawa, scholars have not yet explored organic linkages between repercussions of the Yumiko-chan case and the broader trajectory of Okinawans' movement against the U.S. occupation.[76]

Sakurazawa Makoto provided a detailed empirical analysis of the U.S. jet crash on Miyamori Primary School in 1959 in his monograph, *Okinawa no hoshu seiryoku to shimagurumi no keifu: Seiji ketsugō, kichi ninshiki, Keizai kōsō* (*Okinawan Conservatives and the Genealogy of Island-wide Struggles: Political Consolidation, Base Consciousness, and Economic Visions)*. The event is remembered as one of the most tragic U.S. military incidents that brought into relief the plight of life under military rule and the deprivation of human rights in garrisoned Okinawa. The crash killed 17 locals, including 11 pupils. Sakurazawa examined the emergence of a community-

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[75] See Arasaki Moriteru, *Sengo Okinawa shi* (Tokyo: Nihonhyōronsha, 1976); Arasaki Moriteru, Nakano Yoshio, *Okinawa sengoshi,* New Edition (Tokyo: Iwanamishoten, 2005); Sakurazawa Makoto, *Okinawa gendaishi*, (Tokyo: Chūōkoron sha, 2015); Miyume Tanji, *Myth, Protest and Struggle in Okinawa* (London; New York: Routledge, 2006). There is also a brief mention on the incident's impact on U.S. military families in Donna Alvah, *Unofficial Ambassadors: American Military Families Overseas and the Cold War, 1946-1965* (New York: New York University Press, 2007).

[76] Sasaki Ryūzō, *Shōgen kiroku Okinawa jūmin gyakusatsu* (Tokyo: Shin jinbutsu ōraisha, 1976), 189-211.

driven, popular movement for compensation in the wake of the crash and its impact on the broader movement against the U.S. occupation. He demonstrated how this incident invoked a strong reversion sentiment on the eve of Eisenhower's visit to Okinawa in 1960, and argued that those who led the compensation movement became the central force in forming the Okinawa Prefecture Council for Reversion to the Home Country (*Fukkikyō*) in 1960. The founders of *Fukkikyō*—teachers, progressive youth, labor union activists, as well as the compensation campaigners—placed the protection of fundamental human rights and the adoption of the Japanese constitution at the heart of the organization's pleas and declared their pledge to sustain a popular front. Sakurazawa located the birth of the Okinawa Civil Liberties Union (*Okinawa jinken kyōkai*) in 1961 within this historical context, which saw the penetration of popular human rights activism in the aftermath of the 1959 jet crash.[77]

Akiyama Michihiro's monograph, *Kichi shakai Okinawa to 'shimagurumi' no undō* (*Base society Okinawa and the "Island-wide" Movements*), examined the politics of island-wide struggles against the U.S. military occupation in 1960s Okinawa with close attention to the process and repercussions of the 1968 crash of a Boeing B-52 Stratofortress. The crash injured 16 locals and destroyed 365 buildings with a series of massive explosions that ammunition stored on the jet had triggered. Locating the inception of the "island-wide" consolidation in mid-1950s Okinawa's land struggle and tracing major U.S. military incidents (on-duty cases such as jet crashes and paradrop accidents) in the 1960s, Akiyama argued that a popular protest movement against the American military presence in Kadena Village, where the B-52 crash took place, emerged from the villagers' search for "livelihood and survival" in the years prior to the B-52 crash. He asserted

[77] Sakurazawa, *Okinawano hoshu seiryoku to 'shimagurumi' no keifu*, 119-140; Sakurazawa, *Okinawa gendaishi*, 90-92.

that although concerns over poverty certainly existed among the locals in 1968, their visceral cry for "survival" invoked by the B-52 crash facilitated the formation of popular fronts calling for the withdrawal of B-52 jets and the protection of "prefectural interests" concerning not only base use related issues but also the Okinawan economy.[78]

The 1970 Koza "Riot" most dramatically exposed the culmination of Okinawans' frustration with U.S. extraterritoriality. As compared to other American military incidents, the Koza incident has drawn attention in both Japanese and English-language scholarships. The consensus in the historiography is that this incident resulted from the accumulation of Okinawans' decades-long frustration with endless U.S. military incidents (either on-duty military incidents such as the 1959 and 1968 plane crashes or off-duty soldiers' crimes and traffic accidents) and poor legal protection of the victims. For instance, Miyagi Etsujirō argued in 1981 that the military's institutionalized judicial discrimination against Okinawans was the root cause of the incident: the unequal legal relationship manifested in the local police's limited authority to investigate GI incidents and the results of military trials which tended to favor accused U.S. service members, not local victims.[79]

Christopher Aldous employed "citizenship" as an analytical framework to examine the incident. Aldous asserted: "American military rule… afforded Okinawans the lowly status of subjects rather than citizens, denying them basic human rights and civil liberties from the very outset…"Yet "[p]erhaps the greatest abuse arising from American control, and the one that caused most offense, was 'extraterritoriality,' a jurisdictional set-up whereby American citizens and their dependents were tried in courts operated by the US civil administration or court-martial, so

[78] Especially chapters 2-4 offer detailed analyses of the politics surrounding the B-52 jet crash. See: Akiyama Michihiro, *Kichi shakai, Okinawa to 'shimagurumi' no undō* (Tokyo: Hatsusaku sha, 2019), 47-153.
[79] Miyagi Etsujirō, "Koza sōdō: 1970/12/10," *Shin Okinawa bunka* No. 50, 50 (1981): 124-130.

denying Okinawan victims of their crimes access to due process." Aldous's central claim is that the incident "expressed an aspiration for citizenship, for the fights, liberties and guarantees of due process enshrined in the constitutions of Japan and the U.S." The assertion was made in response to Nicholas Sarantakes, who argued that the incident was "motivated by opposition to reversion, testifying to a deep sense of anxiety among Okinawans that their treatment by postwar Japanese government might be no less discriminatory than that handed out by their prewar/wartime counterparts."[80]

Miyume Tanji intervened in the debate through *Myth, Protest and Struggle in Okinawa*, a monograph written mostly based upon empirical findings provided by the existing historiography. She stressed the need to complicate the meaning of locals' search for "citizenship" building on Tomiyama Ichirō's claim that "the U.S. military's violence inflicted on the women in 'base towns' tended to be ignored by the protesters [who belonged to major organizations such as *Fukkikyo*], in effect, to protect the symbolic effect of the victimization of normal 'victims.[81]'" Tanji asserted, "The riot, completely outside of the organizational and ideological spectrum of the Council for Reversion [Fukkikyō], was an indication of internal divisions among the community of protest and, importantly, of the separation of the 'Okinawa Struggle,' led by the progressive parties and unions, from the day-to-day issues faced by many Okinawans in living with the US military presence."[82]

Wesley Iwao Ueunten and Yuichiro Onishi have demonstrated how the Koza incident was influenced by and resonated with GIs' transnational activism in the context of the Vietnam War, namely, Black liberation movement, anti-war activism, and Third-Worldism. Yuichiro Onishi

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[80] Christopher Aldous, "'Mob Rule' or Popular Activism? The Koza Riot of December 1970 and the Okinawan Search for Citizenship," in *Japan and Okinawa: Structure and Subjectivity*, edited by Glenn D. Hook and Richard Siddle (London: Routledge Curzon, 2003), 148-149.

[81] Tanji's quote.

[82] Miyume Tanji, *Myth, Protest and Struggle in Okinawa* (London; New York: Routledge, 2006), 103, 104.

asserted that "[t]he appeal of dissenting Black GIs to Okinawans was an effort to base their own liberation struggle within the localized project of the internationalist, anti-imperialist, antiracist, and anticolonial struggle in Okinawa. The liberation of Okinawa was linked to the liberation of Blacks and the Third World, as well as to the liberation of working-class GIs, both whites and Blacks, from the repressive military."[83] Ueunten has used the phrasing "Koza Uprising" to reject U.S. authorities' framing of it as a "riot." The islanders' solidarity activism with Third-World-spirited GIs influenced the Koza protesters, who "consciously refrained from harming African American soldiers and their property."[84] Ueunten argued that "the uprising was not about senseless killing and violence. In fact, the uprising resulted in no deaths, damage to private businesses, or looting."[85]

In recognition of such a wide array of analytical approaches to Okinawans' protest movement against American GI crimes, incidents, and extraterritoriality, I trace the trajectory of the postwar American military legal regime of exception in Okinawa from 1952 and 1972 in two phases, the first from 1952 to 1956, and the second from 1957 to 1972.

As to the first part, I narrate the legal architecture of military justice in occupied Okinawa, its manifestations and implications for the islanders' lives, and the transformation of communal petitions for compensation. I also offer the first historical analysis of the 1955 Yumiko-chan case based upon both declassified U.S. papers and Okinawan sources. To contextualize the resulting massive protest movement, I highlight the intricate architecture of transnational activism forged between the JCLU and the ACLU cofounder Baldwin which exerted dramatic impact on

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[83] Yuichiro Onishi, *Transpacific Antiracism: Afro-Asian Solidarity in 20th-Century Black America, Japan, and Okinawa* (New York and London: New York University Press, 2008), 163.
[84] Wesley Iwao Ueunten, "Rising Up from a Sea of Discontent: The 1970 Koza Uprising in U.S.-Occupied Okinawa," in *Militarized Currents: Toward a Decolonized Future in Asia and the Pacific* edited by Setsu Shigematsu, Keith L. Camacho (Minneapolis: University of Minnesota Press, 2010), 92.
[85] Ueunten, "Rising up from a Sea of Discontent," 95.

Okinawans' mobilization of popular human rights advocacy. In the mid-1950s, the postwar American military legal regime of exception in Okinawa was forced to accommodate the islanders' pleas for the expansion of their legal rights: the right to conduct joint investigations on GI incidents, the right to attend courts-martial, and the right to receive proper compensation for cases involving U.S. military personnel and locals. As to the nature of the first wave of the "island-wide" struggle against U.S. land seizures that emerged in mid-1950s Okinawa, I argue that Okinawans' visceral reactions to the Yumiko-chan case did prepare for the culmination of the land struggle in 1956. The specter resembled the 1968 protest movement against B-52.

The second part gives an overview of the operation of U.S. extraterritoriality after the adoption of the 1957 Executive Order. I discuss civilian and military officials' competing, yet shared, attitudes toward the occupation of Okinawa, the impact of the U.S. military realignment of bases on the locals' lives, and the development of local and transnational resistance to the legal regime of exception. Utilizing a great volume of declassified U.S. documents (mostly records of the USCAR Public Safety Department and Legal Affairs Department) and grassroots sources (including ACLU records) never before utilized, I demonstrate how the Koza incident embodied the synthesis of the internalization of violence and human rights accumulated in Okinawans' day-to-day experiences of postwar U.S. extraterritoriality.

In terms of my position toward the historiography of Okinawan protest movements against military crimes, incidents, and injustices, I am not in disagreement with Tanji and others underscoring internal divisions shaped by class relations and sexism within Okinawa. Nor I do undermine the existence of opposition to reversion (i.e., anti-reversion movement) represented by Okinawan intellectuals such as Arakawa Arata, Kawamitsu Shinichi, and Okamoto Keitoku who rejected Okinawa's subordination to both the Japanese and American nation-states. Rather, I

contend that the existing scholarship has spoken to different facets of Okinawans' reactions and resistance that all existed: long for citizenship, fear over reversion, internal class and political divisions, base-town workers' and especially prostitutes' marginalized statuses, and solidarity between Okinawans and Afro-American GIs. In the long-run, and as one unit of community/entity, though, Okinawans institutionalized human rights advocacy to form a popular front for reversion in 1959, and turned it into a massive popular movement in the following years. It led to Okinawa's reversion to Japanese sovereignty in 1972.

The OCLU activists, who actively supported *Fukkikyō*'s activities, engaged in human rights activism for marginalized people such as prostitutes, workers, women raising GIs' children, and any other group of socially or politically oppressed people. And after the Koza incident, the OCUL also supported the legal rights of the protesters, the majority of whom were base-town workers. In short, I do not narrate the Koza incident as an aberration of Okinawans' struggle against the U.S. occupation and the extraterritorial military justice but rather as an outgrowth of it. In the 1960s, human rights advocacy, which had initially emerged in response to military injustices, played an integral role in negotiating and translating varied political forces' voices and unification.

At the same time, I refuse to project an image that Okinawans launched activism against the occupation consistently under the spirit of the UDHR. For instance, I point to the connection between the escalation of GI violence against Okinawans and Okinawans' violent retaliation against GIs. Especially in the era of the Vietnam War, violence became the language—as Franz Fanon would put it—not for all but for some residents living under the military legal regime of exception. I also narrate the creation of a network of state surveillance among Okinawan, Japanese, and U.S. military police agencies in the late 1960s and their collaborative effort to limit the civil

and political rights of anti-base activists with any nationality. In addition to this phenomenon arising from the postwar U.S. national security state and Japanese police agency, Okinawa's ambivalence toward human rights also manifested in conservative legislators' advocacy for a legislation in the aftermath of the Koza incident which would punish participants of a similar disorderly act in the future. They did so while condemning military injustices and demanding the transfer of jurisdiction to Okinawa at the Legislature of the Government of the Ryukyu Islands.

I argue that it is with all these pieces together that we can finally grasp a richer historical background to understand how Okinawa came under the regime of the Japan-U.S. SOFA in 1972.

Methodologies and Sources

In line with the "new" diplomatic history project, this dissertation engages with the above historiographies from the standpoint that national history (i.e., nationalist historical writing) cannot adequately historicize the present. I adopt transnational history as a methodology especially given the dominant narrative in the public sphere which frames the ongoing controversy over the Japan-U.S. SOFA as an enduring conflict between "Japan" and "the United States." To begin with, the concept of contemporary Japan requires incorporation of the unique experiences of occupied Okinawa. Further, even though nationalism exerted non-negligible influence on one's position on the question of postwar U.S. extraterritoriality especially in the 1950s, opposition to postwar U.S. extraterritoriality was not necessarily the indicator of one's position on extraterritoriality per se. In addition to nationality, other analytical categories such as class, race, and gender must also be brought in to analyze the specificities of each nationalism and the transnational dynamism surrounding postwar U.S. extraterritoriality.

Departing from state-centric and elitist historical writing means adopting a transnational history as analytical framework. In accordance with diplomatic historian Paul Kramer's assertion that the adoption of transnational history ought to be a question of "how" rather than "what,"[86] I highlight three ways to characterize the dissertation as a work of transnational history.

First, the periodization of this project, 1952-1972, is set to reconceptualize the specificity and meaning of each epoch within the global and transnational historical trajectory of extraterritoriality and decolonization. Two centuries before Western empires declared extraterritorial power in East Asia, Japan and the United States had begun subjugating their imagined peripheries through internal colonialism—i.e., the Ryukyu islands and Hokkaido in the case of Japan and native Americans' lands and neighboring insular states in the case of the United States—and gradually incorporated them into what they claimed as the national core. Tightly linked to nineteenth-century colonialism was the emergence of extraterritorial powers in East Asia declaring the authority to demarcate uneven legal boundaries between the West and East with their own definition of civilizational hierarchies. The period 1952-72 is a particularly potent time when the legacies of extraterritoriality, the contemporary "cold" war, and decolonization saw the dramatic negotiations of U.S. and Japanese extraterritorial power dynamics and shaped the terrain of post-1945 Okinawa.

Second, I interrogate the transnational dimensions of power relations. My methodology traces Japanese and American state elites' reciprocal decision-making processes *and* narrates, interpretively, how their policymaking manifested on the ground given the transnational structures of social change. To be sure, it was not necessarily the case that grassroots activism consistently

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[86] Paul A. Kramer, "Race, Empire, and Transnational History," *Colonial Crucible: Empire in the Making of the American State* edited by Alfred W. McCoy and Francisco A. Scarano (Madison: University of Wisconsin Press, 2009), 199–209.

countered the imposition of state power and brought positive social changes. However, grassroots actors crossed ideological and national lines in often surprising ways that generated momentum for shifts in policymaking. Positive change in high politics always came from below. At the same time, it is imperative to recognize that states do not monopolize repressive power. My research shows how "power flows across borders"[87] through the synergy of local actors in Okinawa and Japan as well as an emerging Third-World solidarity across Asia. But these sub-national power flows had their limitations, working both for and against rights struggles in Japan and Okinawa. In other words, my approach augments diplomatic history with its focus on state-level decision-making by bringing an analytical lens to the vertical connections between state policy and social movements.

Third, the dissertation draws on Japanese and English historiographies to make most use of diverse historiographies and materialize the two approaches outlined above. In terms of the Japanese-language scholarship of diplomatic history, the large body has been keen to analyze elites' perceptions of "geopolitics" or "international" environments rather than the consequences of diplomacy and its constant interactions with grassroots activism. Sakurazawa asserted that the existing scholarship's heavy reliance on external conditions and determinist methodologies have tended to treat Okinawa as an abstract object rather than one with its unique structural underpinnings: the remark was made in response to diplomatic historians' question as to why his studies have been narrowly focused on Okinawa.[88] My methodology responds to Sakurazawa's critique[89] by bringing in methodologies adopted in the English-language scholarship that

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[87] Kramer, "Race, Empire, and Transnational History," 201.

[88] Sakurazawa Makoto, "Okinawa gendaishi kenkyū no genzai," *Nijusseiki kenkyū* 17, no. 1 (December 2016): 12.

[89] Yuichiro Onishi makes a similar argument concerning the analytical treatment of Okinawa in the existing English-language scholarship. Yuichiro Onishi, "Occupied Okinawa on the Edge: On Being Okinawan in Hawaii

deconstruct the elitist concepts of "geopolitics" and "international," and then synthesizes both historiographies' inquiries.

I have adopted the politics of imperial civilization to serve as the main analytical lens to examine the stated project. The premise is the centrality of "racialized power" to the making and transformation of the imperial modern world appearing in two modes: "absolutizing power" and "civilizing power," in the words of Kramer. In the history of U.S. foreign relations, absolutizing power relied on "a language of fixity," by which "individuals were assigned to single, all-encompassing social categories defined by unchangeable features; social groups were seen as unable to alter their fundamental characteristics; salient difference was grounded in transcendence, especially in God or natural order." On the other hand, "civilizing power was grounded in process: individuals and groups were assessed precisely in terms of their position and potential with respect to advancement in hierarchical, evolutionary time." Based on this conceptualization, Kramer cautions us not to treat racialized power "primarily or exclusively a matter of mind," given a substantial body of scholarship analyzing racism as a problem produced and perpetuated by discourse only. Rather, it has functioned as "a mode of power with material, behavioral, social-structural, institutional, and spatial dimensions, alongside ideological ones." [90]

Given the large body of the interdisciplinary scholarship of the post-1945 Okinawa-Japan-U.S. relationship,[91] my methodological approach joins the pioneering scholars of race relations in

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and U.S. Colonialism toward Okinawa," *American Quarterly* Vol. 64, No. 4 (December 2012): 741-765.

[90] Paul Kramer, "Shades of Sovereignty: Racialized Power, the United States and the World," in *Explaining the History of American Foreign Relations*, edited by Frank Costigliola and Michael J. Hogan, 3rd ed (Cambridge: Cambridge University Press, 2016), 250-251.

[91] For an overview see: Paul Midford, "Japan-United States Relations" in *The SAGE Handbook of Modern Japanese Studies,* ed. James D. Babb (Thousand Oaks, CA: SAGE Publications Ltd, 2015). For major diplomatic works see: John W. Dower, *Empire and Aftermath: Yoshida Shigeru and the Japanese Experience, 1878–1954* (Cambridge: Harvard University Asia Center, 1988); Eiji Takemae, John Dower, *Inside GHQ: The Allied Occupation of Japan and Its Legacy* (New York: Continuum Intl Pub Group, 2002); Richard B Finn, *Winners in Peace: MacArthur, Yoshida, and Postwar Japan* (Berkeley: University of California Press, 1992); Makoto Iokibe, ed, *The Diplomatic History of Postwar Japan* (London; New York: Routledge, 2011); Jennifer M. Miller,

this field, who have complicated and supplemented the state-centric and/or political economy-based approaches to the development of the Japan-U.S. diplomatic relationship.

Kramer's call to investigate racialization as a dynamic process, not merely as a matter of ideology, resonates with the assertions and methodologies adopted by Oguma Eiji and Takashi Fujitani who have produced milestone monographs in the field. For instance, Oguma in his *The Boundaries of the Japanese: Okinawa 1818-1972—Inclusion and Exclusion* underscored that "real politics produces linguistic discourses." That is, "the Japanese government and U.S. military include the people of Okinawa in 'the Japanese or exclude them as being 'Okinawans' due to military and economic factors. On the other hand, with the goal of political and economic rights, the people of Okinawa aim for inclusion into the 'Japanese' or try to stand on their own feet as 'Okinawans.'"[92] Fujitani's *Race for Empire: Koreans as Japanese and Japanese as Americans During World War II* traced the politics of inclusion and exclusion by identifying the patterns and qualitative shift of racialization embedded in Japanese and American empires' conduct of the total war. In both cases, "[t]he wartime shift toward inclusionary practices entailed a complex recalibration of strategies of managing racialized minority and colonial subjects that may be understood as a transition from what I call 'vulgar' to 'polite' racism." The transformation served both empires' material needs to incorporate more usable bodies.[93]

Cold War Democracy: The United States and Japan (Harvard University Press, 2019); Michael Schaller, *Altered States: The United States and Japan Since the Occupation* (New York: Oxford University Press, 1997); John Swenson-Wright, *Unequal Allies? United States Security and Alliance Policy Toward Japan, 1945 – 1960* (Stanford: Sandford University Press, 2005). For major diplomatic studies on Okinawa, see: Robert D. Eldridge, *The Origins of the Bilateral Okinawa Problem: Okinawa in Postwar US-Japan Relations, 1945-1952* (New York: Routledge, 2001); Fintan Hoey, *Satō, America and the Cold War: US-Japanese Relations, 1964-72* (New York: Palgrave Macmillan, 2015); Nicolas Evan Sarantakes, *Keystone: The American Occupation of Okinawa and U.S.- Japanese Relations* (College Station: Texas A&M University Press, 2000).

[92] Oguma Eiji, T*he Boundaries of the Japanese, Volume I: Okinawa 1818-1972—Inclusion and Exclusion*, translated by Leonie R. Stickland (Melbourne: Transpacific Press, 2014), 8.

[93] Takashi Fujitani, *Race for Empire: Koreans As Japanese and Japanese As Americans During World War II* (Berkeley and Los Angeles; London: University of California Press, 2013), 25.

In terms of the racial hierarchies between Japan, the United States, and Okinawa after the fall of the Japanese empire in 1945, Yukiko Koshiro's *Trans-Pacific Racisms and the U.S. Occupation of Japan* provided a vital trans-imperial analytical lens to conceptualize the postwar triangular relationship. The book contended that the Japanese perception of its inferiority complex toward "white" Westerners, which had emerged in the nineteenth century, was still deeply rooted in the minds of a wide segment of the population in the immediate aftermath of World War II, which U.S. authorities actively exploited for the remaking of Japan and Asia. U.S. occupation authorities noted already in 1946 that "in Japanese psychology an antiforeign complex—not mere xenophobia but in fact an anti-white race feeling—was combined with great admiration for the superb achievements and learning of Western civilization." The occupiers analyzed that Japanese feelings toward Americans could be better characterized as envy and jealousy rather than hatred.[94]

What about the racial consciousness of postwar Americans who participated in the U.S.-led occupation of Japan? Naoko Shibusawa's *America's Geisha Ally: Reimagining the Japanese Enemy* adopted maturity and gender as analytical lenses to examine how postwar American liberals rationalized power hierarchies with Japanese. Shibusawa defined maturity as an ideology that "white Americans believed nonwhites had not attained, signified ability, wisdom, and self-control—characteristics that supposedly entitled adult white men to status and power." Yet, "[u]nlike gender or race… immaturity was not a permanent fate, but a transitional stage." Shibusawa argued that it was through the feminization and paternalistic treatment of Japan as a woman and a child that postwar America turned the former non-white enemy into an acceptable ally in the early postwar period (the 1940s-1960s).[95]

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[94] Yukiko Koshiro, *Trans-Pacific Racisms and the U.S. Occupation of Japan* (New York, 1999), 32.
[95] Naoko Shibusawa, *America's Geisha Ally: Reimagining the Japanese Enemy* (Cambridge: Harvard University Press, 2006), 5, 1-12.

The racial and patriarchal hierarchy between Japanese and Americans also manifested in their encounter on the ground through violence, romance, prostitution, and any other form of communication. Michael Cullen Green's *Race in the Making of American Military Empire after World War II* demonstrated the emergence of the national hierarchy between the two nations which shaped African-American soldiers' attitudes toward peoples in Japan and Korea. According to Green, most black GIs "value[d] the obvious economic benefits and relative prestige" while the influence of pre-war Afro-Asian solidarity sentiment declined in this context. "Although still subject to discrimination at home, these soldiers welcomed the indefinite deployment of American military power abroad," he asserted.[96] The important implication here is that the material benefit brought by the rigid legal hierarchy between Japanese and Afro-Americans in the early postwar period mattered for black people's attitudes toward their government's foreign policies.

Okinawa's place in the relationship[97] has not yet been fully integrated into the historiography of Japan-U.S. race relations. Courtney Short's recent monograph, *Uniquely Okinawan: Determining Identity During the U.S. Wartime Occupation*, makes a valuable contribution in this regard. She demonstrated how "American soldiers began to link Okinawan obedience and cooperation in camp life to Okinawan culture and identity" upon arriving on the island. Noteworthy is that "[s]oldiers compared Okinawans to other cultural groups, such as Filipinos and Japanese, and used these comparisons in their favorable assessments of Okinawan behavior." In the context of the Battle of Okinawa and its immediate aftermath, some GIs "viewed

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[96] Michael Cullen Green, *Black Yanks in the Pacific Book Subtitle: Race in the Making of American Military Empire after World War II* (New York: Cornell University Press, 2010), 4

[97] For a quality historical analysis of the formation of Okinawans' renewed identity during the early phase of the U.S. occupation, see: David John Obermiller, "The U.S. Military Occupation of Okinawa: Politicizing and Contesting Okinawan Identity, 1945-1955," Ph.D. dissertation, (University of Iowa, 2006).

the Okinawans 'a lot more amenable to discipline than Filipinos and [with a] better standard of living."[98]

Through Short's study, we can identify the immediate aftermath of the Battle of Okinawa as a moment of U.S. occupation forces' initial awakening to the utility of inclusionary racism. Yet the broader racial hierarchy between Okinawans, Japanese, and Americans must be added to the picture in light of the starkly different U.S. occupation regimes installed in 1945 and a greater divergence followed in 1952. After all, in the eyes of postwar U.S. policy makers, Japanese were "gifted children, at the top of the class [in Asia]" unlike the Lao, who were called "retarded children," according to Seth Jacobs.[99] My collection of declassified U.S. documents suggests the place of Okinawans in the broader racial hierarchies somewhere between Japanese and Lao, or equal to the status of the Lao.

I conceptualize the racialized power relationship between Okinawa, Japan, and the United States between 1952 and 1972 as a "politics of imperial civilization." By "imperial," I follow Kramer's definition suggesting it as "a dimension of power in which asymmetries in the scale of political action, regimes of spatial ordering, and modes of exceptionalizing difference enable and produce relations of hierarchy, discipline, dispossession, extraction, and exploitation."[100] By so doing, I acknowledge the long trajectory of extraterritorial power which existed beyond the world of nineteenth-century imperialism and avoid projecting an essentialist interpretation of postwar U.S. extraterritoriality. By combining the lens of "civilization" with that of the "imperial," I aim to conceptualize patterns of extraterritorial power in the modern world that developed in tight

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[98] Courtney A. Short, *Uniquely Okinawan: Determining Identity During the U.S. Wartime Occupation* (New York: Fordham University Press, 2020), 84.
[99] Seth Jacobs, *The Universe Unraveling: American Foreign Policy in Cold War Laos* (New York: Cornell University Press, 2012), 13.
[100] Paul A Kramer, "Power and Connection: Imperial Histories of the United States in the World." *The American Historical Review* 116, no. 5 (December 1, 2011): 1349.

relation with the ideologies of civilization defined as "modernity" in the nineteenth century and "democracy" in the twentieth century.

It is with this analytic of the politics of imperial civilization that I examine the postwar exercise of U.S. extraterritorial power, the responses of legislators, journalists, legal authorities, intellectuals, and activists, and the way this changed over the crucial two decades of the American occupation of Okinawa after Japanese independence. Just as nineteenth-century extraterritoriality exploited cultural and institutional differences between the West and East to claim legal exceptionalism, postwar U.S. extraterritoriality also relied on the logic of cultural and institutional differences between Japan and the United States to construct and run the military legal regime of exception in postwar Japan. Although the parochial ideologies of civilization undoubtedly contained progressive ideas of egalitarianism and human rights in both historical periods, the dominant power's legal privileges were legitimatized by the combined logic of military dominance and civilizational superiority and at the cost of congruence between belief and practice.

By exploring the workings of absolutizing power and civilizing power in these dynamics, I show how military officials were inclined to justify exclusion and absolutizing power as evidenced by their internal discussions and debates with State Department elites about Japanese legal culture and Okinawans' capability of self-rule. Overall, however, I narrate that the U.S. State Department ensured civilizing power to justify postwar U.S. extraterritoriality in the face of nationalist and/or popular resistance. In Okinawa where the military acted as the State Department with its obligation to civilian affairs, the occupation authorities increasingly relied on civilizing power to explain why exception could be justified. This means that distinct roles and environments—not primarily institutional affiliation—shaped U.S. elites' engagement with exclusionary and inclusionary policy making.

The politics of imperial civilization also calls attention to its interaction with other systems of oppression and how they buttressed each other to subjugate individuals in distinct ways. As a model case-study, Ruth Lawlor's dissertation "American Soldiers and the Politics of Rape in World War II Europe" interrogated the racialized and gendered power dynamic under which "military law and the officers who enforced it… shield[ed] white soldiers from rape by limiting the ability of certain women to testify against them."[101] Works on the U.S. occupation of Japan and Okinawa have also offered critical analyses of how the patriarchal military institution produced gendered and gendering power and subjugated women to sexual exploitation, violence, discrimination, and the deprivation of legal protection.[102] Tracing the politics of imperial civilization involves investigating gendered consequences of the extraterritorial U.S. FCJ policy—eminently rape and the possibility of impunity from it—crafted by white male policy makers and implemented given the assistance of "colored" male ruling elites.

At the same time, in considering the "intersectionality of powers," as Lisa Yoneyama would phrase it,[103] we also need to pay attention to the plurality of each actor's role and identity in history. Mire Koikari's *Cold War Encounters in US-Occupied Okinawa: Women, Militarized*

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[101] Ruth Grace Lawlor, "American Soldiers and the Politics of Race in World War II Europe," Ph.D. dissertation (University of Cambridge, 2019), 9.

[102] For major English-language works, see: Mark Mclelland, *Love, Sex, and Democracy in Japan During the American Occupation* (New York: Palgrave Macmillan, 2015);Sarah Kovner, *Occupying Power: Sex Workers and Servicemen in Postwar Japan* (Stanford: Stanford University Press, 2012); Robert Kramm, *Sanitized Sex: Regulating Prostitution, Venereal Disease, and Intimacy in Occupied Japan, 1945-1952* (Oakland, California: University of California Press, 2017); Naoko Shibusawa, *America's Geisha Ally: Reimagining the Japanese Enemy* (Cambridge: Harvard University Press, 2006); Yuki Tanaka, *Japan's Comfort Women* (New York: Routledge, 2001); Brian Walsh, "Sexual Violence During the Occupation of Japan," *Journal of Military History* 82, no. 4 (October 2018): 1199-1230. For major Japanese-language works, see: Sawada Kayo, *Sengo Okinawa no seishoku o meguru poritikkusu: Shushōryoku tenkan to onna tachi no konshō* (Tokyo: Ōtsuki shoten, 2014); Onozawa Akane, "Beigun tōchika A sain bā no hensen ni kansuru ichi kōsatsu jyosei jyūgyōin no taigū wo chūshin toshite," *Nihon tōyō bunka ronshū Ryukyu daigaku hōbungakubu kiyō* 12 (November 2005); Kikuchi Natsuno, *Posuto koroniarizumu to jendā* (Tokyo: Seikyū sha, 2010).

[103] Lisa Yoneyama, *Cold War Ruins: Transpacific Critique of American Justice and Japanese War Crimes* (Durham and London: Duke University Press, 2016).

Domesticity and Transnationalism in East Asia succinctly argued this point as follows: "Far from being mere victims of US military domination, Okinawan women actively participated in the occupation, generating an extraordinarily dynamic picture of women, the home, and empire in the Cold War context. The current [existing scholarship's] emphasis on the violent, coercive, and masculine nature of American military domination in Okinawa thus elides the significance of other, more feminine and domestic dynamics that also informed the occupation, leaving a lacuna in the critical understanding of women, power, and hegemony in Cold War American nation and empire-building."[104] Similarly, Oguma warned of the resurgence of anti-colonial movements embedding imperial traits of the nation-state, for they could create another colored empire following Japan.[105] The late historian of postwar Okinawa Arasaki Moriteru's take on occupied Okinawans' discrimination against migrants from the Amami Islands, which held an uneven relationship with the Ryukyu Kingdom, also speaks to that point.[106]

Lastly, the methodologies outlined above are built on a wide array of archival documents collected in archival repositories of Okinawa, Japan, and the United States. In order to write a diplomatic history from below, I have relied on both state and grassroots documents to show the entangled and reciprocal relationship between American and Japanese state and grassroots actors and how this operated and shifted. More concretely, I utilized a large body of declassified U.S. documents from the National Archives and Records Administration, College Park, that includes the Army Department Judge Advocate General records, the State Department records compiled in Washington, Tokyo, Okinawa, and other U.S. base outposts (such as the Philippines, Taiwan, and Turkey), the United States Civil Administration of the Ryukyu Islands records (the Public Safety

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[104] Mire Koikari, *Cold War Encounters in US-Occupied Okinawa: Women, Militarized Domesticity and Transnationalism in East Asia* (Cambridge, UK: Cambridge University Press, 2017), 4.
[105] Oguma, 628-666.
[106] Arasaki, *Sengo Okinawa shi*, 358-368.

Department and Legal Affairs Department in particular), and declassified Public Safety Department records of the 1970 Koza incident, which I have obtained under the Freedom of Information Act (FOIA) in 2017. Added to this collection are materials from the Dwight D. Eisenhower Presidential Library and the Lyndon Baines Johnson Presidential Library. The court-martial records of the 1955 Yumiko-chan incident were obtained through online database. For the analysis of the making of the 1953 Confidential Agreement, I have also incorporated declassified Japanese papers. Local documents include newspapers, legislative statements, legal journals, political magazines and periodicals, and grassroots organizations' publications (compiled by the Okinawa Teachers Association, ACLU, JCLU, and OCUL), and interviews with Okinawans. To my knowledge, these primary sources, except for a few exceptions, have not been used in previous scholarship.

Outline of the Dissertation and Arguments

The structure of the dissertation consists of two parts: "Chapter 1 The Postwar American Military Legal Regime of Exception in History" and four chapters solidly built on empirical inquiries. Chapter 1 serves to build the basis of the dissertation by placing the histories of postwar U.S. extraterritoriality in post-occupation Japan and occupied Okinawa within trans-imperial and global contexts. In conversation with the existing scholarship, and based on archival evidence, I make a bridge between the historiography of the U.S. FCJ policy and the repository of declassified U.S. documents.

The remaining chapters chronologically trace the making and operation of the postwar American military legal regime of exception in Japan and Okinawa. With the empirical coverage

of the period between 1952 and 1953, Chapter 2 investigates the birth of the regime in Japan with an extensive analysis of the political climate that ensued the making of the 1953 Confidential Agreement. I underline transformation of the protest movement against Article 17 of the 1952 Japan-U.S. Administrative Agreement which evolved with anti-colonialism, nationalism, "anti-Americanism," and neutralism, mostly in this order. Further, I call attention to the State Department's strategic use of "Japanese inferiority complex" during the informal negotiations to secure the Defense Department policy of maximizing national jurisdiction over cases involving U.S. military personnel at any cost. Overall, as in the previous century, Japanese resistance to U.S. extraterritoriality relied on the parochial and exclusionary logic of nation-bound territorial sovereignty, the premise of Western supremacy, and proximity with the West. Indicatively, it was reflected in a caution made by the president of Japan Federation of Bar Associations of the time that Japanese engagement with U.S. military crimes revealed the lack of "human rights" as a political demand.

Chapter 3 examines "extraterritoriality" in occupied Okinawa with an empirical inquiry into the period between 1952 and 1956. For the purpose of comparison with Japan, I discuss the racialized legal architecture of extraterritorial American military justice system, the state of the American military's crimes and incidents, and the development of the islanders' petition movements for compensation. I also narrate the islanders' struggles against the occupation authorities' coercive confiscation of native land and local prisoners' revolt against the deprivation of basic legal rights in the first-to-mid-1950s to contextualize the political dynamism surrounding the legal regime of exception on the island. The rest of the chapter demonstrates how the 1955 protest movement against the extraterritorial American military justice emerged as the convergence of the local and transnational activism: Japanese lawyers' human rights advocacy in

Japan and the Third World and Okinawans' awakening to the promise of the 1948 Universal Declaration of Human Rights generated a popular social movement that transcended nation-bound demands for legal rights.

Chapter 4 traces the aftermath of the making of the 1953 Confidential Agreement in 1954-pre-Anpo Japan. I discuss how U.S. policy elites in Tokyo closely monitored the first GI trial in 1954 and made conscious efforts to ensure American military personnel receive complete legal protection under the values of the U.S. and Japanese constitutions. By the mid-1950s, U.S. elites praised the smooth inauguration of Japan's general waiver policy, and the congressional delegation also affirmed sufficient legal protection upon their visit to a Japanese prison where GIs were imprisoned. The 1957 Girard case altered the tide. Washington recognized the endurance of postwar Japanese nationalism and the subversive impact of the politics of extraterritoriality, which resulted in the Eisenhower administration's decision to defuse it with the dramatic spatial ordering of bases. In the latter half of the 1950s, postwar America urged Japan to declassify the 1953 Agreement to present the arrangement as a norm in other U.S. outposts. The stalemate between U.S. exceptionalism and Japanese nationalism remained intact.

Chapter 5 analyzes the consequences of the 1957 U.S. military realignment in Japan by interrogating occupied Okinawa's reactions to it between 1957 and 1972. The analytical focus is placed on the development of the protest movement in Okinawa as a *site*, which existed as sharp contrast to Japan where the nationalist protest movement against twentieth-century U.S. extraterritoriality was downsized during the period. By interchangeably drawing on state and grassroots documents, I demonstrate how the penetration of violence in locals' livelihood and human-rights-based advocacy evolved in parallel and shaped the local environment that would ultimately lead to the 1970 Koza protest against the backdrop of the Vietnam War. By so doing, I

highlight the local protest movement's constant interactions with ideas drawn from external solidarity activism. The 1970 Koza protest carried out by a people called "docile" and "amenable" at the dawn of the occupation in 1945 dramatically exposed the limits of the extraterritorial American military justice in its power to contain discontent. The post-1972 legal architecture of the Okinawa-Japan-U.S. relationship incorporated Okinawa into a place with national sovereignty. Yet, the reversion of Okinawa also entailed its entry into a place where aspiration for national sovereignty has existed in close proximity to imperial sovereignty since the previous century.

The central thesis of the dissertation asserts that the American military's criminal jurisdiction policies exercised in Japan and Okinawa from 1952 and 1972 reveal the imperialized logic of civilization embedded in twentieth-century U.S. assertion over extraterritorial jurisdiction. It also asserts that postwar U.S. policy elites' contingent use of executive power, law, and space for the continued operation of extraterritoriality in the two legal spheres was made possible by the collaboration of Japan as a former colonial empire. In terms of change over time in post-occupation Japan, I highlight the tenacity of the politically ambivalent environment which allowed the 1953 Confidential Agreement to remain effective during the two decades (and later well beyond the period). In terms of the case of occupied Okinawa, the islanders' protest movement during the two pivotal decades saw a more substantive transformation by acquiring the language to define the meaning of the rule of law with the protection of *universal* human rights and claiming civility under the spirit.

Chapter 1

The Postwar U.S. Military Legal Regime of Exception in History

> *A problem of inevitable delicacy involves the exercise of criminal jurisdiction over American servicemen abroad—a relatively new problem resulting from the stationing of large numbers of troops in friendly countries in time of peace. The issue has not to date seriously affected US military operations, Free World solidarity, or other US national objectives and policies. Potentially, however, the exercise of jurisdiction has seeds of serious danger to the ability of the US to continue effectively its operations abroad, and to the support and cooperation of allied peoples and governments for the Free World alliance. It can be exploited by hostile groups to arose opposition to arouse opposition both at home and abroad against the policy of collective security through Free World alliance.*
>
> Frank C. Nash, President Eisenhower's Special Envoy[107]

This opening chapter lays out what I call the "postwar U.S. military legal regime of exception." I coined this term as I read declassified state papers against the recent literature of extraterritoriality more broadly and that on U.S. military foreign criminal jurisdiction policy specifically. In tracing the emergence of this regime in global history, I argue that the U.S. military's foreign criminal jurisdiction (FCJ) policy is an extension of the United States' centuries-long contentious practices of territoriality and extraterritoriality. To understand both the continuities of this regime of exception through the twentieth century and its specifically American characteristics necessarily requires a transnational historical approach.

This chapter outlines three historiographic objectives that guide the dissertation as a whole. The first is to demonstrate how the findings of recent works on the legal aspects of U.S.

[107] United States Overseas Military Bases, Report to the President Dwight D. Eisenhower by Frank C. Nash, December 24, 1957, Appendix Studies, File: Nash Report – US overseas Military Bases (1), Eisenhower, Dwight D.: Papers as President of the United States, 1953-1961, Ann Whitman File, Administration Series, Dwight D. Eisenhower Presidential Library, Abilene, Kansas, 53.

FCJ policy may be incorporated into the existing scholarship of U.S. diplomatic history. Although diplomatic historians have underscored the historicity of North American experiences of extraterritoriality in previous centuries,[108] curiously little attention has been paid to the politics of extraterritoriality that gave rise to and has sustained the American network of military bases around the world. In the dissertation, I show what such a historical approach reveals with respect to Japan and Okinawa.

The second objective is to clarify the relevant global contexts within which Japan and Okinawa encountered the postwar U.S. military legal regime of exception. U.S. FCJ policy, and the local resistance it produced, drew upon transnational connections amidst the Cold War and the global dynamics of decolonization. The great volume of declassified documents I gathered over the last several years attest to the interlinkages between a good number of allied countries and U.S. territories across the globe where American military personnel were stationed. Telegrams or messages reporting on U.S. military incidents and accidents at times had "Japan" or "Okinawa" highlighted or circled at the top. It is a reminder that no matter how enormous an impact a particular incident might have on the locals, the sheer amount of traffic and responsibilities this far-flung military empire generated for U.S. policy elites in Washington rendered much of it peripheral to their concerns.

The third goal is to narrate both the continuities and discontinuities embedded in the postwar U.S. military legal regime of exception. This is vital to move beyond the nationalist narratives of the ongoing controversies surrounding U.S. SOFAs, and to better locate the problems

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[108] For historiographical essays' references, see: Mary L. Dudziak, "Legal history as foreign relations," *Explaining the History of American Foreign Relations* 3rd edition., Frank Costigliola and Michael J. Hogan, eds. (New York: Cambridge University Press, 2016), 135–50; Paul A. Kramer, "Power and Connection: Imperial Histories of the United States in the World," *The American Historical Review* 116, no. 5 (2011): 1348-391. For a recent work on the subject, see: Nancy Shoemaker, "The Extraterritorial United States to 1860," *Diplomatic History* 42, no. 1 (January 2018): 36–54.

themselves in a pervasive, and enduring, history of extraterritoriality. More specifically, I argue that the legal Orientalism and imperial interpretation of the Westphalian principle of sovereign equality that is evident in the postwar basing system need to be seen as part of a longer global history of colonialism and white supremacy. What is new about the postwar situation is rather the scale at which people who bore the brunt of the U.S. military legal regime of exception have been affected: quantitively as a direct result of the global extent of the basing system, and qualitatively by being stripped of their rights to exercise judicial power over U.S. service members' crimes against their own people and on their own soil. U.S. hegemony expressed itself most potently in the ideology of global civilizational superiority in matters of the law.

Territory, Territoriality, and Extraterritoriality

The recent interdisciplinary scholarship on extraterritoriality[109] exposes the complex nature of human struggles for territorial sovereignty that have caused untold tragedies of death, violence, oppression, discrimination, as well as profound political and social change. The etymological root of the term "territory," according to William E. Connolly, captures precisely the contending meanings of land as sustenance and land as terror in human history and geography.

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[109] For theoretical discussions about and historical inquiries into the imperial histories of extraterritoriality see: Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge, UK; New York, NY: Cambridge University Press, 2005); Daniel S. Margolies, Umut Özsu, Ntina Tzouvala, and Maïa Pal ed., *The Extraterritoriality of Law: History, Theory, Politics (Politics of Transnational Law)* (New York: Routledge, 2019). For more contemporary, artistic, and post-colonial studies' approaches to extraterritoriality see: Ruti Sela, Mayaan Amir, *Extraterritorialities in Occupied Worlds* (Punctum Books, 2016). For major works on U.S. histories of extraterritoriality, see: Daniel S. Margolies, *Spaces of Law in American Foreign Relations: Extradition and Extraterritoriality in the Borderlands and Beyond, 1877-1898* (Athens: University of Georgia Press, 2011); Kal Raustiala, *Does the Constitution Follow the Flag?: The Evolution of Territoriality in American Law* (New York; Oxford: Oxford University Press, 2011); Teemu Ruskola, *Legal Orientalism: China, the United States, and Modern Law* (Cambridge, Mass: Harvard University Press, 2013).

> Terra means land, earth, nourishment, substance; it conveys the sense of a sustaining medium, solid, fading off into indefiniteness. But the form of the word, the OCE says, suggests that it derives from terrere, meaning to frighten, to terrorize. And territorium is "a place from which people are warned." Perhaps these two contending derivations continue to occupy territory today. To occupy a territory is to receive sustenance and to exercise violence. Territory is land occupied by violence.[110]

Yvonne Whelan's definition of territory suggests "a portion of geographic space which is claimed or occupied by a person or group of persons or by an institution." She then rearticulates the intricate relationship between territory, land, and violence invoked by Connolly: "'The claiming' and 'occupation' of space is significant… for territory in many ways is about claiming ownership, taking over and occupying a particular terrain." She argues that "[t]he bounded social spaces that go hand-in-hand with territory are invariably a result of the adoption of strategies of territoriality, thereby people, groups or organizations exercise power and control over a particular place and its component parts." Whelan makes the crucial assertion that the workings of power are involved in this process (i.e., the constitution and maintenance of territoriality) mobilizing everyday spaces and social relations on various scales.[111] Indeed, the Japanese expression of territory "ryōdo (領土)," invokes the similar context with the employment of two Chinese letters, with "ryō (領)" meaning "govern" or "control" and "do (土)" meaning "land" or "soil."

Similarly, the editors of the anthology, *The Extraterritoriality of Law: History, Theory, Politics*, begin by first questioning the normalized treatment of territoriality as an ahistorical and depoliticized concept. "What are we to make of the fact that the very idea of extraterritoriality

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[110] William E Connolly, 'Tocqueville, territory and violence," in *Challenging Boundaries: Global Flows, Territorial Identities*, edited by M. Shapiro and H. Alker (Minneapolis: University of Minnesota Press, 1996), 141–164, quoted in Yvonne Whelan, "Territory and Place," in *Key Concepts in Historical Geography: Territory and Place* (California, SAGE Publications Ltd, 2014), 53.

[111] Yvonne Whelan, "Territory and Place," in *Key Concepts in Historical Geography: Territory and Place* (California, SAGE Publications Ltd, 2014), 53, 54.

seems to presuppose the authority and legitimacy of territoriality—perhaps as an objective, even 'natural' framework of organization and engagement? In priority[z]ing that which exceeds or transgresses a given set of 'territorial' frontiers, are we not backhandedly—and for the most part surreptitiously—reinforcing the very state system that so many have struggled to destabli[z]e, both practically and conceptually?," they ask. According to the editors, a standard definition of legal extraterritoriality would be "the assertion and exercise of jurisdictional powers beyond a specific territorial framework." Yet, given the influence of the state system that naturalizes the reliance on territoriality, they urge us to pay greater attention to "the highly uneven distributions of extraterritorial privilege" arising from distinct geographical and historical contexts. In the processes of "state-building, imperialist rivalry, and capitalist expansion," the distinct experiences of extraterritoriality have generated "multiple uses and meanings" as well as "complex jurisdictional disputes."[112] The implication here is that historicizing the territorial state system and defining the particularity of each geographical and historical context is crucial for a sound empirical inquiry into extraterritoriality.

Another anthology, *Extraterritorialities in Occupied Worlds*, edited by Ruti Sela and Mayaan Amir, also places the question of power at the center of the book's theoretical inquiries. Building on the assumption that hierarchical human relationships have been essential for the production of extraterritorial arrangements, the editors argue that there are two modes of extraterritoriality.

> In the first case, extraterritorial arrangements could either exclude or exempt an individual or a group of people from the territorial jurisdiction in which they were physically located; in the second, such arrangements could exempt or exclude a space from the territorial jurisdiction by which it was surrounded. The special status accorded to people and spaces had political,

[112] Daniel S. Margolies, Umut Ozsu, Maia Pal, and Ntina Tzouvala, Introduction, in *The Extraterritoriality of Law: History, Theory, Politics* (New York: Routledge, 2019), 1, 2.

> economic, and juridical implications, ranging from immunity and various privileges to extreme disadvantages.[113]

These two models of extraterritoriality, one involving the designation of people and the other the designation of spaces, are critical for conceptualizing postwar U.S. extraterritoriality. The American military's exercise of "personal jurisdiction" and the designation of a military base as a "state of exception," to adopt Carl Schmitt's and later Giorgio Agamben's term, have both served to maintain the hierarchical legal relationship between military personnel and the locals.

Kal Raustiala, the author of *Does the Constitution Follow the Flag? The Evolution of Territoriality in American Law*, understands extraterritoriality as a means of power expansion in the international arena of realpolitik and global capitalism in place of naked military force. Raustiala defines territoriality as "the organizing principle of modern government,"[114] and takes the position that the 1648 Treaty of Westphalia embarked on the internationalization of territorial sovereignty.

Building on the case of North America, Raustiala sees two byproducts of territoriality: extraterritoriality and intraterritoriality. Intraterritoriality is a system under which distinct legal regimes operate within one sovereign state whereas under extraterritoriality "domestic law extends beyond national borders." According to Raustiala, while the logic of intraterritoriality has often been applied to legal disputes over Native Americans' land, extraterritoriality has been employed for the policing of "activities that occur offshore, yet affect markets or individuals at home," for the "projection of U.S. territory abroad" as seen in consular jurisdiction, and for the application of

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[113] Ruti Sela, Mayaan Amir, *Extraterritorialities in Occupied Worlds* (Santa Barbara: Punctum Books, 2016), 13.

[114] Kal Raustiala, *Does the Constitution Follow the Flag? The Evolution of Territoriality in American Law*, 1st edition (New York: Oxford University Press, 2011), 20

U.S. constitutional rights to those outside the legal boundaries of the nation state.[115]

These various forms of extraterritoriality have served to "manage, minimize, or sometimes capitalize on legal differences" when powerful states could not resort to conquest as a means to project power.[116] In other words, as juxtaposed with imperialism, extraterritoriality can be understood as a form of supplementary power exercised in a setting where partial recognition of the receiving end's territorial sovereignty is deemed important in the international arena. Raustiala writes:

> Imperialism mitigated difference by colonizing foreign places; international agreements by consensually negotiating shared rules. Whether focused on policing, projecting, or protecting, extraterritoriality provides a kind of middle ground between these two extremes, enabling the United States to unilaterally manipulate legal difference so as to better serve its interests.[117]

In sum, the recent scholarship of territoriality and exterritoriality urges scholars to think with the genealogy of violence inherent in the concept and geographical manifestations of territoriality. Doing so means making a conscious effort to challenge the state's arbitrary demarcation of legal boundaries between peoples residing in distinct geographical spaces. "Extraterritoriality," as a byproduct of territoriality resulting from each state's expansion of commercial activities in the modern world, has generated multiple forms and distinct effects. In the economic, military, political, and cultural arenas, extraterritorial jurisdiction projects dominance over a particular space or a particular people. In recognition of the diversity and history of extraterritoriality, the essential task of this dissertation is to identify the particularities of the workings and transformation of extraterritoriality in service of military power in the postwar

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[115] Raustiala, *Does the Constitution Follow the Flag?*, 5-6.
[116] Raustiala, *Does the Constitution Follow the Flag?*, 7.
[117] Raustiala, *Does the Constitution Follow the Flag?*, 7

history of the Okinawa-Japan-U.S. relationship.

North America Between Territoriality and Imperial Extraterritoriality

Extraterritoriality, as the United States came to practice it, was originally shaped by its relationship with Europe, even before the colonists asserted their territorial sovereignty against the British crown. As Raustiala contends, the Declaration of Independence "reflects the profound ways in which the founding generation drew on prevailing conceptions of sovereignty and international law in creating their nation."[118] Eighteenth-century North America began following the European tradition of the Capitulations, a series of arrangements that functioned to adjudicate legal difference between Christian states and the Ottoman Empire. Under this system of personal jurisdiction established before the Peace of Westphalia (1648), Christians sojourning in the Ottoman Empire were subject to their own states' laws, not Muslim laws. By participating in the system of the Capitulations widely adopted in Europe and partly in Africa and the Middle East, the United States exercised extraterritorial jurisdiction even before creating its own constitution, first in Morocco in 1787, and consecutively in Muslim states such as Algiers, Tunis, Muscat, and Persia.[119]

Building on such experiences of mutual extraterritoriality, U.S. Supreme Court declared to Europe in the nineteenth century its position to respect a foreign state's personal jurisdiction over its military personnel in prosecuting a crime committed within U.S. territory. In *Schooner Exchange v. McFadden* (1812), Chief Justice John Marshall ruled that a ship named *The Exchange*,

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[118] Raustiala, *Does the Constitution Follow the Flag?*, 33.
[119] Raustiala, *Does the Constitution Follow the Flag?*, 62; Teemu Ruskola, *Legal Orientalism: China, the United States, and Modern Law* (Cambridge, Mass: Harvard University Press, 2013), 272.

which had been owned by a U.S. citizen (McFaddon) but was later confiscated and claimed as a naval vessel within U.S. territorial waters by the French government under the order of Emperor Napoleon, could not be returned to the owner. The decision was made even though the ship made port in Pennsylvania.[120] Marshall's reasoning was that because armed forces represent a sovereign nation, the state must bear responsibility for the discipline of visiting warships.[121]

Marshall's Supreme Court decision gave birth to the "law of flag," a doctrine that came to authorize U.S. military forces operating on foreign soil to assert personal jurisdiction. Regarding this historical case, Marshall stated, "All exceptions… to the full and complete power of a nation within its own territories must be traced up to the consent of the nation itself. This full and an absolute territorial jurisdiction, being alike the attribute of every sovereign and being incapable of conferring extraterritorial power, would not seem to contemplate foreign sovereigns nor their sovereign rights as its objects."[122] The sovereign's declared power to define *exceptions* in effect meant that sovereignty, territory, and jurisdiction were unified in the hands of the sovereign, and exceptions to this could only be created by the sovereign himself, as Daniel Margolies argued in his 2011 book, *Spaces of Law in American Foreign Relations: Extradition and Extraterritoriality in the Borderlands and Beyond, 1877-1898*.[123]

The tensions between anti-colonialism rooted in the declaration of the American republic and its imperative for imperial expansion intensified in the following decades. In light of the interconnected developments of internal colonialism and the construction of military bases, basing

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[120] Dieter Fleck and Stuart Addy, *The Handbook of the Law of Visiting Forces* (Oxford; New York: Oxford University Press, 2001), 99.
[121] John W. Egan, "The Future of Criminal Jurisdiction over the Deployed American Soldier: Four Major Trends in Bilateral U.S. Status of Forces Agreements," *Emory International Law Review* 20, no. 1 (2006): 295.
[122] Quoted in Daniel S. Margolies, *Spaces of Law in American Foreign Relations: Extradition and Extraterritoriality in the Borderlands and Beyond, 1877-1898* (Athens: University of Georgia Press, 2011), 6-7.
[123] Margolies, *Spaces of Law in American Foreign Relations*, 6-7.

started with European settlers' frontier in the Northwestern territory in 1785.[124] By 1850, the United States had acquired most of the former European colonies in North America, and the Supreme Court reversed course on its earlier ruling to grant Native Americans the constitutional protection of citizenship. According to Raustiala, "[i]n the American experience the tensions between imperialism and constitutionalism helped develop and cement constitutional doctrines that reflect intraterritoriality, which entailed the differentiation of legal rights and privileges within sovereign borders of the state. Differentiation corresponded to location, distinguished core from periphery, and aided the growth and exercise of American power."[125]

In the nineteenth century, the imperialization of extraterritorial jurisdiction overseas became prominent in parallel with this process at home. While relying heavily on intraterritoriality in subjugating Native Americans, aggressive expansion into the Caribbean and the Asia-Pacific region in search of guano, markets, and above all military strongholds and colonial territory with the defeat of the Spanish empire produced similar relationships with local people overseas through extraterritoriality. The broader historical context was "free trade imperialism," which transformed East Asia into a site of intense competition for economic hegemony in the second half of the nineteenth century. Euro-American imperialist powers collectively created a "treaty port system" through which to incorporate first Qing China and later Tokugawa/Meiji Japan into the capitalist world economy they dominated. A series of commercial treaties, or the so-called "unequal treaties," were designed to facilitate trade to the imperial powers' advantage. Modeled after the Capitulations, extraterritorial agreements were codified in these commercial treaties. Consular jurisdiction allowed foreign consuls to exercise extraterritorial power (personal jurisdiction) involving their

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[124] David Vine, *Base Nation: How U.S. Military Bases Abroad Harm America and the World* (New York: Metropolitan Books, 2015), 19.
[125] Raustiala, *Does the Constitution Follow the Flag?*, 14-16, 39-43.

nationals. The treaty port system secured Westerners' commercial and legal privileges in the name of Western civilizational superiority.[126]

In profitable Asia, American elites came to demonstrate their power to justify extraterritoriality more eloquently than the British did. Americans had previously refrained from codifying extraterritoriality in the Treaty of Amity and Commerce with Siam in 1833 unlike the British, who more openly imposed extraterritoriality on populations categorized as uncivilized or semi-civilized. But this changed after the first Opium War (1839-1842), which demonstrated Qing China's military inferiority to the British. The Treaty of Wanghia of 1844 established U.S. extraterritoriality in China, followed by similar treaties with Japan, Korea, and the Ottoman Empire. To the extent that the Treaty of Wanghia became a template for subsequent unequal treaties, American consuls in fact "exercised a dubious mix of executive, legislative, and judicial functions, and many were notorious for their incompetence and corruption… Although American extraterritoriality in China ostensibly violated the principle of exclusive national territorial jurisdiction, its very point—the Chinese were told—was to prepare for its own demise and help China take full legal control of its territory," according to Teemu Ruskola.[127]

Similarly, the Convention of Shimoda of 29 July 1858 imposed an extraterritorial legal order on Japan, which led to two decisive transformations in Japan. It generated a fierce movement among local Japanese elites against the ruling Tokugawa shogunate calling for the expulsion of foreigners and the abolition of the unequal treaties, accelerating the end of the regime and the Meiji

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[126] Michael R. Auslin, *Negotiating with Imperialism: The Unequal Treaties and the Culture of Japanese Diplomacy* (Cambridge, Mass.: Harvard University Press, 2004); Pär Kristoffer Cassel, *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* (Oxford; New York: Oxford University Press, 2012); Turan Kayaoglu, *Legal Imperialism-Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (New York: Cambridge University Press, 2010).

[127] Teemu Ruskola, "Canton is Not Boston: The Invention of American Imperial Sovereignty," in *Legal Borderlands: Law and the Construction of American Borders*, edited by Mary L. Dudziak and Leti Volpp (Baltimore: The John Hopkins University Press, 2006), 278, 282-283.

Revolution. By adopting the European system of governance and legal codes within a few decades, Japan became the first Asian nation to abolish the unequal treaties in 1899.[128] The second and related transformation was the emergence of Japan as an extraterritorial power in its own right. The Meiji elites internalized the Euro-American ideology of civilizational superiority while creating a Western-style nation-state and later running its own colonial empire. Along the way, they emulated the unequal treaties for their colonial encroachment on Korea (beginning with the Korea-Japan Treaty of 1876), and gradually expanded its extraterritorial jurisdiction in other parts of Asia. Despite distinction in the degree and timing, the Euro-American creation of extraterritorial legal orders invoked nationalism, anti-colonialism, westernization, and revolution in East Asia.

World War I (1914-1918) inaugurated the practice of stationing armed forces on the territory of allied nations in times of war, which then necessitated the conclusion of formal agreements on the status of these armed forces on foreign soil. These agreements collectively authorized each military's immunities from local laws, although the U.S. and British authorities ultimately did not sign formal agreements which would authorize mutual exclusive criminal jurisdiction policy at that time.[129] But the U.S. military came to secure a greater number of extraterritorial arrangements even without formal agreements, first with Panama in 1925.[130] In the following decades, the United Kingdom followed suit. The British concluded interwar agreements with Iraq in 1925 and Egypt in 1937 that granted the British visiting forces immunities from local jurisdiction.[131] According to Joop Voetelink, the Central Powers' mutual waiver practices over

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[128] Kayaoglu, *Legal Imperialism-Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China*, 66.
[129] Joop Voetelink, *Status of Forces: Criminal Jurisdiction over Military Personnel Abroad*, 36.
[130] Panama's Supreme Court ruling on the agreement—T*he Republic of Panama v. Schwartzfinger*—was incorporated into the 1928 Convention on Private International Law, and this formula was adopted by most Latin American countries. See: Fleck and Addy, *The Handbook of the Law of Visiting Forces*, 100.
[131] Peter Rowe, "Historical Developments," in *The Handbook of the Visiting Forces* (Oxford Press: 2018), 16.

cases involving their armed forces stationed abroad were secured on the executive level. They appeared, for instance, as "military agreements concluded by general staffs," and "not all formally published, obscuring details on the practice of the parties."[132]

During World War II, and quite symbolic of the shift of the U.S. status in relation to its ally Britain, was the British parliament's authorization of the U.S. unilateral application of extraterritorial FCJ policy on British soil in 1942.[133] For the first time in British history, the 1942 Act authorized extraterritorial arrangements for U.S. armed forces whether "the offense was committed against a British national or another member of the US forces or against its property." They concluded a reciprocal agreement only in 1944.[134] The British, for their part, also concluded agreements securing host states' waiver of criminal jurisdiction in overseas occupied territory, as did the Netherlands and Brazil, often without formal agreements.[135] But only with the United States' victory in World War II and its massive military presence as liberators in the European and Asian theaters did the unilateral application of extraterritorial U.S. FCJ policy become a ubiquitous aspect of global power.

A declassified U.S. Army document entitled "Jurisdiction over Military Personnel in Russia," dated April 1944, confirms the above summary of the development of U.S. FCJ policy informed by the recent legal literature. The document states:

> All members of a foreign force are subject to their own courts martial only, when in a friendly country by permission of that country. All leading writers on international law and the highest courts of the United States and British Empire recognize this principle.[136]

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[132] Voetelink, *Status of Forces: Criminal Jurisdiction over Military Personnel Abroad*, 38.
[133] John W. Egan, "The Future of Criminal Jurisdiction over the Deployed American Soldier: Four Major Trends in Bilateral U.S. Status of Forces Agreements," *Emory International Law Review* 20, no. 1 (2006): 295-6.
[134] Rowe, "Historical Developments," 19.
[135] Rowe, "Historical Developments," 39.
[136] Myron C. Cramer, Major General, The Judge Advocate General, "Jurisdiction over Military Personnel in Russia," [ineligible] April 1944, RG 153, Office of the Judge Advocate General (Army), Legal Opinions, Box 1,

Regarding the principle's historical background, it explains:

> [i]n the first World War, with respect to troops of friendly nations on the soil of France and Belgium, this principle was recognized. Great Britain, British Dominions and Colonies, China, India and Egypt have in the present war confirmed the exemption of all our military personnel and in most cases also of civilians accompanying our forces from criminal jurisdiction of local courts.[137]

As to the actual procedures,

> [i]n both wars, under arrangements with countries mentioned, local police have turned over promptly to the commanding officers United States military personnel charged with offenses, and such officers have undertaken to try by court-martial our military personnel against whom prima facie evidence of having committed an offense is presented.[138]

The document is worthy of our attention from the perspective of the status of U.S.-Soviet arrangements as well. The Judge Advocate General stated in April 1944:

> In both world wars, the United States has obtained recognition of the immunity of our forces and a like immunity was conceded friendly foreign forces in this country. Since in any arrangement between two governments the negotiations are handled by the Department of State, the first step should be a request from the Secretary of War from formal representation to the Soviet Government.[139]

The final document stored in the same folder is a memorandum which states:

> Col. Maddux says that there are a number of other matters of great importance than this

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Folder: 153-3099-1-73, National Archives II, College Park, Maryland [hereafter cited as NARA].

[137] Myron C. Cramer, Major General, The Judge Advocate General, "Jurisdiction over Military Personnel in Russia."

[138] Myron C. Cramer, Major General, The Judge Advocate General, "Jurisdiction over Military Personnel in Russia."

[139] Myron C. Cramer, Major General, The Judge Advocate General, "Jurisdiction over Military Personnel in Russia."

> pending between us and the Russians; and that he thinks it inadvisable to raise an issue on this point with the Russians at the present moment. Specifically, he thought it inadvisable for me to approach the State Department about it now. I shall, therefore, drop the matter at present."[140]

The postponement of U.S.-Soviet negotiations on extraterritorial jurisdiction foresaw the intensification of the Cold War after the war which was already under way.

Ruptures from the Past: The Postwar U.S. Military Regime of Exception

The complexities surrounding the formation of the postwar U.S. military legal regime of exception arise from the interplay between the global politics of the Cold War, the emergence of the postwar national security state in the United States, and the rise of nationalism and anti-colonialism in war-torn Asia and Europe. As shown in the previous section, the U.S. military's effort to expand the unilateral application of extraterritorial jurisdiction on foreign soil built on its long history of extraterritorial practices in Asia and achieving military hegemony in the first half of the twentieth century. The explosive growth of the U.S. base empire around the world after the Second World War entrenched its military legal regime of exception. Postwar U.S. FCJ policy has relied on the dual use of extraterritorial jurisdiction, for personal jurisdiction over military personnel's criminal offenses committed outside bases on foreign soil as one, and the designation of the privileged legal status of military bases as the other, a critical point to remember despite the dissertation's analytical focus on the former.

Like FCJ policy itself, the emergence of the base empire did not occur abruptly. The U.S.

[140]Archibald King, Colonel, JAGD, Chief, International Law Division, "Memorandum for the Files: Jurisdiction over Personnel of the U.S. Army Forces in Russia," April 2, 1945, RG 153, Office of the Judge Advocate General (Army), Legal Opinions, Box 1, Folder: 153-3099-1-73, NARA.

acquisition of *permanent* military bases was an indispensable part of the Roosevelt Doctrine. Roosevelt wanted to retain base rights the U.S. had in the Atlantic and Caribbean since the late 1930s, and requested the Joint Chiefs of Staff to draft proposals for the extension of U.S. basing in December 1942.[141] In 1943, a Joint Chiefs of Staff paper declared that "adequate bases… are essential and their basing policy became part of the Roosevelt Doctrine, and acquisition and development must be considered as amongst our primary war aims."[142] As early as October 1945, JCS adopted the plan (JCS 570/40) to expand the network of American bases scattered in the Western hemisphere and the Pacific to the North Atlantic, North African, and Middle Eastern areas.[143] Truman declared in 1947: "Though the United States wants no profit or selfish advantage out of this war, we are going to maintain the military bases necessary for the complete protection of our interests and of world peace. Bases which our military experts deem to be essential for our protection we will acquire. We will acquire them by arrangements consistent with the United Nations Charter."[144] The Truman Doctrine, codified by NSC-68 as a response to the Korean War in 1950, led to the massive deployment of U.S. forces overseas, topping 3.6 million military personnel in June 1952.[145]

The making of U.S. FCJ policy, and basing policy more broadly, went hand in hand with the explosive growth of the postwar U.S. national security state and the production of national security ideology at home. Policy planners smoothed out internal ideological divides and reformed the administrative structure of the federal government by concentrating executive power at the

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[141] C.T. Sandars, *America's Overseas Garrisons: The Leasehold Empire* (Oxford: Oxford University Press, 2000), 3-5.
[142] Vine, *Base Nation*, 37.
[143] Shinji Kawana, *Base Politics: The Origins of the Post War U.S. Overseas Expansion Policy* (Tokyo: Hakutoshobo: 2012), 4.
[144] Sandars, *America's Overseas Garrisons*, 5.
[145] Kawana, *Base Politics: The Origins of the Post War U.S. Overseas Expansion Policy*, 6.

National Security Council. The creation of the Department of Defense in 1947 symbolized the rise of military elites within the federal government,[146] who would exert a long-lasting impact on postwar U.S. FCJ policy. Michael Hogan argues that "national security ideology" embodied a new form of American exceptionalism. The core documents of early Cold War strategy—George Kennan's 1946 long telegram and 1947 X article, the Clifford-Elsey report, Truman's speech to Congress in March 1947, and NSC-68 of 1949[147]— declared the United States' historic mission under the spirit of Manifest Destiny to spread democracy on the global scale. They invoked legitimacy from "Providence," the UN Charter, the Constitution, the Bill of Rights, and the Declaration of Independence.[148] This national security ideology "framed the Cold War discourse in a system of symbolic representation that defined America's national identity by reference to an un-American 'other,' usually the Soviet Union, Nazi Germany, or some other totalitarian power."[149]

This emergent postwar U.S. national security state undertook the making of FCJ policy. Mary L. Dudziak asserts that "[m]uch of the law US foreign relations since 1947 is administrative law generated by federal rulemaking," and thus "[a]dministrative law is foreign relations law."[150] The development of postwar U.S. FCJ policy offers a prime example of how postwar American policy planners resorted to administrative power under the name of law—i.e., federal lawmaking—to institutionalize its hegemonic military presence and expand the military legal regime of exception on the globe. When viewed from a world-historical perspective, the expanse of the

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[146] Michael J. Hogan, *A Cross of Iron: Harry S. Truman and the National Security State 1945-1954* (New York and Cambridge: Cambridge University Press, 1998), 2-5.
[147] Hogan, *A Cross of Iron*, 10-13
[148] Hogan, *A Cross of Iron*, 15-17
[149] Hogan, *A Cross of Iron*, 17
[150] Mary L. Dudziak, "Legal History as Foreign Relations History," in Frank Costigliola and Michael J. Hogan, ed., *Explaining the History of American Foreign Relations*, 3rd edition (Cambridge University Press, 2016), 135, 137.

postwar American military regime of exception is unprecedented in terms of its geographical scale, the size of local populations subjected to it, and the material impact it has exerted on global civil society.

Nevertheless, the U.S. military legal regime of exception did not immediately take root worldwide in the aftermath of World War II. In fact, U.S. armed forces produced "anti-American" sentiments in Europe, Asia, and the Middle East as early as 1946 despite their role as keepers of the peace.[151] GI crimes became a grave concern for the locals, directly proportional to the number of service members stationed at any given place.[152] In Europe, the Truman administration conceded wartime extraterritorial privilege by concluding the Brussels Agreement with Britain, France, the Netherlands, Belgium, and Luxemburg in 1948.[153] The Filipinos, winning independence in 1946, also resisted the U.S. imposition of extraterritoriality. The 1947 U.S.-Philippines Military Bases Agreement authorized the U.S. military to retain jurisdiction over all crimes committed by GIs and Filipinos inside American military bases and the Filipinos to assume jurisdiction over offenses committed by off-duty military personnel on their soil except for the time of an emergency. The Filipinos were also authorized to indict service members inside U.S. installations upon a responsible U.S. commander's permission.[154]

The adoption of the North Atlantic Treaty Organization Status of Forces Agreement (NATO SOFA) shifted this tide. Before the adoption of the NATO SOFA which came into force in 1953, the State Department endorsed local jurisdiction over criminal offenses committed by off-

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[151] Egan, "The Future of Criminal Jurisdiction over the Deployed American Soldier: Four Major Trends in Bilateral U.S. Status of Forces Agreements," 53.
[152] Thomas J. Kehoe and E. James Kehoe, "Crimes Committed by U.S. Soldiers in Europe 1945-1946" *Journal of Interdisciplinary History* 47, no. 1 (2016): 53-84.
[153] Fleck and Addy, *The Handbook of the Law of Visiting Forces*, 101.
[154] Alexander Cooley, *Base Politics: Democratic Change and the U.S. Military Overseas* (Ithaca: Cornell University Press, 2008), 66; iyūhōsōdan kanjikai, "Anzen hosho jyoyaku ni motozuku nitibei gyōsei kōtei ni taisuru ikensho," *Rōdō hōritsu jyunpō* 90 (April 1952): 10.

duty U.S. military stationed on allied states. Yet, the Defense Department argued that U.S. exclusive jurisdiction in host states was "necessary to preserve the morale of the members of the security forces." According to the Judge Advocate General at the Department of the Army, granting local jurisdiction was considered a) "detrimental to morale and deprives the personnel concerned of rights under United States military justice procedures;" b) "imposed an unnecessary administrative burden upon the Army;" c) "interferes with its mission;" and d) "is destructive of discipline."[155] Further, as Japan recovered its sovereignty, the Joint Chiefs of Staff "fe[lt] that the position of Japan, as a conquered nation and as an oriental nation is not analogous to that of the NATO nations," and that "it is necessary that the United States have in time of peace those jurisdictional rights which it would require in war," as noted by a State Department diplomat in 1951.[156] The State Department's memorandum "Principles to be applied in stationing U.S. forces in Japan" restated its fundamental position in August 1951 in the wake of Japan's recovery of sovereignty: "all arrangements and administration of the security arrangements with Japan should not be less favorable to Japan than such arrangements with the NATO or other sovereignty countries, particularly in such matters as jurisdiction."[157]

The tension between the national security state's exceptionalism and global aspirations for self-determination and sovereignty was captured in congressional debates on the question of whether the Constitution follows the flag. Especially, so-called "isolationists," such as Senator John W. Bricker, challenged the Eisenhower administration's concurrent jurisdiction formula

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[155] Memorandum for General Mickelwait, "Reports of Cases in which United States Personnel are Subjected to Local Jurisdiction," November 17, 1952, RG 153, Records of Department of the Army, Judge Advocate General, Administrative Office, Classified Legal Opinions, 1942-1956, Box 44, Folder: 798, NARA.

[156] Deputy to Consultant of State for Far Eastern Affairs to Assistant Secretary of State (John Moore Allison), "Memorandum," August 22, 1951, to Assistant Secretary of State for Far Eastern Affairs (Dean Rusk) Foreign Relations of the United States, 1951, Japan Vol. 6, 1285-1287.

[157] Memorandum by the Director of the Office of Northeast Asian Affairs (Johnson), "Principles to be applied in stationing U.S. forces in Japan," August 29, 1951, Foreign Relations of the United States Vol. 6, 1309.

asserting also that maintaining a standing army overseas would weaken the domestic economy and undermine the principle of civilian supremacy.[158] The isolationists' opposition to the permanent American military presence overseas did not stem from the position to reject U.S. exceptionalism: rather they reiterated the military elites' remarks on the superiority of U.S. legal system. The key difference was their resistance to the deployment of U.S. armed forces unless the Constitution followed individual soldiers. It meant that U.S. jurisdiction had to surpass local jurisdiction in proceeding offenses committed by off-duty service members, the civilian component, and their dependents on those states which accepted U.S. military presence.

The clashes between U.S. exceptionalism and the "host" states' anti-colonialism and nationalism eventually increased the role of the State Department in securing confidential agreements with NATO members and Japan on U.S. exclusive jurisdiction. The NATO SOFA, whose draft the Defense Department began preparing in February 1950 and the State Department revised, officially adopted the policy of maintaining the system of concurrent jurisdiction, under which both the United States as the sending state and its host state as the receiving state held primary and secondary jurisdiction over criminal cases involving U.S. military personnel and locals. Article 7 of the NATO SOFA authorizes the sending state to retain the right to primary jurisdiction over cases "arising out of an act or omission done in the performance of official duty," and the receiving state to retain primary jurisdiction over off-duty cases. In the following chapter I reveal, however, how confidential agreements in Europe and Japan, concluded in the early 1950s, in reality undermined the official agreements. In this process, not only non-European countries, long categorized as "uncivilized" or "semi-civilized," but also those in supposedly "civilized" Europe found themselves at the receiving end of extraterritoriality. Eisenhower's Secretary of State

[158] Hogan, *A Cross of Iron*, 19-20.

and a former lawyer, John Foster Dulles, became the architect of postwar U.S. FCJ policy.

By the mid-1950s, however, President Eisenhower felt it necessary to investigate the nature of the growing anti-American military base movements overseas. Upon his request, the former Assistant Secretary of Defense for International Security Affairs, Frank C. Nash, submitted a report entitled "United States Overseas Military Bases: Report to the President" in December 1957. In this 93-page report recognizing the United States' unparalleled military power achieved within a decade, Nash addressed "criminal jurisdiction" as one of three "major common problems"—in addition to "concept of mutuality and Quid Pro Quo" and "atomic weapons"—arising from the existing overseas basing. He analyzed that "the exercise of criminal jurisdiction over American servicemen abroad is a relatively new problem resulting from the peacetime stationing of large numbers of troops in friendly countries. The issue has not yet seriously affected U.S. military operations, Free World solidarity, or other US national objectives and policies, but potentially it contains the seeds of serious danger."[159]

In the report, Nash described the current status of and pressing challenges to U.S. FCJ policy as follows:

> Perhaps the most significant development has been the willingness of allied nations to waive to the United States their right to exercise jurisdiction. A few countries have followed the lead of the Netherlands, by agreeing in advance to waive jurisdiction in all cases except those they consider of particular importance… Where [legal] standards are not equal to our own, the United States should insist upon either a greater measure of US jurisdiction (NATO-Netherlands Formula, for example), or further fair trial guarantees that will insure fair treatment to accused US personnel, or a combination of that two…. Jurisdiction arrangements should be unclassified unless there are compelling reasons to the contrary. The fact that the Japanese counterpart of the NATO-Netherlands Formula is classified has complicated Congressional presentations and seriously prejudiced our recent negotiations with the Filipinos, who have maintained that the US proposal to them was less favorable than what we have agreed to with a former enemy, Japan.[160]

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[159] United States Overseas Military Bases, Report to the President Dwight D. Eisenhower by Frank C. Nash, December 24, 1957, 53.

[160] United States Overseas Military Bases, Report to the President Dwight D. Eisenhower by Frank C. Nash, December 24, 1957, 54, 60.

As such, the report unequivocally encouraged the executive branch to secure "satisfactory standards (arrangements on criminal jurisdiction) in terms and *practices* (emphasis added by the author)." The NATO SOFA was used as a referential text to suggest a minimum standard to determine whether or not U.S. forces should withdraw from a certain country or foreign territory unless both State and Defense officials find "overriding national interest" in the continued stationing. Indeed, this minimum standard implied not the official language of Article 7 of the NATO SOFA but Congress' 1953 Reservation on the NATO SOFA. It declared the legislative body's constraints on the federal government's secretive FCJ diplomacy.[161] The National Security Council Planning Board commented on the Nash Report's policy recommendation as follows:

> In view of public concern and Congressional sensitivity on the exercise of criminal jurisdiction that the recommended position is the appropriate standard and that the national policy should be to achieve that standard wherever possible. In those cases where this standard cannot be met, it is believed appropriate that the decision not to insist on the standard should be taken only at a high level.[162]

As recognized by Nash, the exceptionalist implications of U.S. FCJ policy invoked antagonism and resistance from former empires including Japan, Turkey, France, and Germany, and also from former (semi-)colonies such as China and the Philippines. In fact, the Eisenhower administration was in the midst of holding negotiations for basing arrangements with China, Korea, the Philippines, and West Germany in the mid-1950s. While undertaking these negotiations simultaneously, U.S. policy makers increasingly realized strategic value in informing negotiating partners of the existence of official and classified arrangements on U.S. "host" nations' waiver

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[161] United States Overseas Military Bases, Report to the President Dwight D. Eisenhower by Frank C. Nash, December 24, 1957, 54, 53-63.

[162] "U.S. Overseas Military Bases: The NSC Planning Board Comments and Recommendations on the Main Issues of the Nash Report, Undated," RG 319, Records of the Army Staff, Records of the Office of the Chief of Civil Affairs, Security Classified Correspondence of the Public Affairs Division, 1950-64, Box 7, Folder: "Criminal Jurisdiction in Japan, 1953-1963."

practices. Inevitably, such recognition led them to explore the possibility of using Japan's case as a reference to secure informal arrangements, as will be discussed in Chapter 4. It was by this logic that Nash called on the U.S. global base empire's practitioners to make conscious efforts to standardize the extraterritorial FCJ formula.

> It has become increasingly difficult to secure more favorable arrangements in one country where US forces are stationed than in another. It is remarkable how closely one country follows the arrangements reached with another. This "common denominator" pattern means that compromises adopted to secure agreement to urgently needed requirements are being reflected more and more in the demands of other countries with whom we are negotiation and in several instances have suggested to other countries the advantage of renegotiating arrangements already in effect…. It has thus become vitally important to define clearly our basic policies on all means common to the establishment and operation of our overseas bases and to develop the most effective means possible of coordinating our actions in every country where US forces are stationed.[163]

Within five years after Nash declared, "Our base system is key to our survival as a nation," and provided exhaustive policy recommendations accordingly, Turkish authorities reluctantly accepted postwar U.S. extraterritoriality. A declassified U.S. Army document, dated 31 May 1963, provides a succinct overview of Turkey's attitude toward U.S. FCJ policy:

> In the past, all requests for waiver of jurisdiction were summarily denied. However, Mr. Ezgu said that under the new policy, each request will be reviewed in the office of the Turkish Ministry of Justice and an investigation will be made along the following lines: (1) What is the nature of the crime; (2) Has the victim been compensated and (3) has public opinion been aroused as a result of the crime. If the result of the investigation appear favorable, waivers of jurisdiction will be granted in appropriate cases. Mr. Ezgu said he was authorizing the Acting Judge Advocate to inform the highest officials of his government of this change in attitude and policy… This message is classified confidential because the public dissemination of this information might adversely affect the accomplishment of the mission of the US forces in Turkey.[164]

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[163] United States Overseas Military Bases, Report to the President Dwight D. Eisenhower by Frank C. Nash, December 24, 1957, 176.

[164] Message from CH JUSMMAT, Ankara, Turkey to RUEPDA/DA, May 31, 1963, RG 153, Office of the Judge Advocate General (Army), International Agreements, Box 3, Folder: Turkey-Vol II, NARA.

On the same day, the U.S. Embassy in Ankara informed Secretary of State Dean Rusk, "Although… most Turkish officials are basically well disposed to us, they also tend [to] be in [an] emotional mood where such things as SOFA, which bears sensitive prestige nerve, acquire inflated importance."[165] These documents speak volumes about the tenacity of the imperialized politics of extraterritoriality. First is the presence of resentment toward the specter of extraterritoriality rooted in the former Ottoman Empire which had been on the receiving end of extraterritoriality like Japan. Second is the U.S. elites' racialized understanding and framing of Turkish reactions as "emotional" rather than a rational demand consistent with fundamental pillars of liberal democracy. Third is state elites' reluctant acceptance of extraterritoriality with their ambivalence toward the Westphalian principle of sovereign equality, constitutionalism, and popular sovereignty. Evidently, Japan and Okinawa were not alone in rejecting a new form of twentieth-century "extraterritoriality" the United States brought to the world in the first postwar decades.

Conclusion

This opening chapter provided an overview of the temporal and spatial background of the postwar U.S. military legal regime of exception. Building on the recent literature of extraterritoriality, it underscored the utility and special role the modern nation-state assigned to extraterritorial jurisdiction in maintaining legal hierarchy between the imposer and the receiver. With regard to the specificity of the history of U.S. extraterritoriality, I argued that the United States' search for global capital—facilitated partially through its successful operation of extraterritorial regimes in

[165] U.S. Embassy, Ankara to the Secretary of State (Rusk), May 31, 1963, RG 153, Office of the Judge Advocate General (Army), International Agreements, Box 3, Folder: Turkey-Vol II, NARA.

nineteenth-century Asia—and its acquisition of military hegemony in the twentieth century gave rise to postwar U.S. legal exceptionalism and underpinned its explosive use of military extraterritorial jurisdiction overseas. In the aftermath of World War II, the U.S. national security state's increased federal lawmaking power enabled the State Department to conduct secretive negotiations on extraterritorial U.S. FCJ policy on behalf of power elites in the Department of Defense and Congress who demanded postwar U.S. extraterritoriality on the ground of the United States' military and legal superiority. Ever since the 1950s inception, the postwar U.S. FCJ policy's ambivalence toward the Westphalian principle of sovereign equality has inevitably provided its "host" states across the globe with reason to resort to nationalism to resist it.

Chapter 2

The Birth of the American Military Legal Regime of Exception in Post-Occupation Japan

Japanese sensitivity about extrality is, of course, a special case of what has been variously called their "national pride," "nationalism," "anti-foreignism," or, before the war, "the Japanese inferiority complex." This sensitivity does in fact have some elements of paranoid unreality in it, as well as a "cultural" element: the traditional Japanese scale of social values is that of a vertical hierarchy ("monolith," pyramid," etc.); hypersensitivity and some frustration are produced in the attempt to fit international relations into this pattern. On the other hand, "real" grounds for sensitivity are provided by the undeniable existence in many quarters (not exclusively European, either) of the assumption that Japanese are inferior to the European races.

D. L. Osborn, U.S. Consul in Kōbe, Japan[166]

A dispatch sent from Kōbe entitled "The Japanese Extraterritoriality Complex," which U.S. Counselor of Embassy William Turner shared with Washington along with Osborn's comment above, interpreted the Japanese response to the privileged status of U.S. armed forces in post-Occupation Japan in a familiar orientalist vein. Since before the San Francisco Peace Treaty came into effect on April 28, 1952, State Department officials had been admonishing military officials against signaling the distinct treatment of Japan from that of European nations in the making of the "free world" alliances. Having closely monitored the Japanese debate of the continued colossal presence of American military forces in the context of the Korean War, the State elites asserted the thesis in 1953 that the Japanese population's "pride unsurpassed anywhere" was rooted in nineteenth-century Japan's urge "to gain recognition as an equal member in the community of

[166] David. L. Osborn, "The Japanese Extraterritoriality Complex: Kobe's Despatch 537," May 26, 1953, RG 84, Records of the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 13, Folder: 320 Japan-United States, NARA.

nations." Turner informed Washington that "the Embassy believes that the advantages of the extension of the NATO formula to Japan clearly and unequivocally outweighs the disadvantages and that the political risks of an indefinite delay in revision [of Article 17 of the 1952 Japan-U.S. Administrative Agreement] might have serious effects for the entire range of Japanese-American cooperation."[167] Clearly, U.S. State Department elites had to admit that seven years of censorship had failed to eradicate Japanese understandings of international relations as hegemonic in a deeply racial sense.

This chapter visits the foundational moment of the postwar Japan-U.S. diplomatic relationship in Cold War Japan. It examines the political dynamism which evolved with postwar U.S. foreign criminal jurisdiction policy involving state elites, politicians, and citizens of both nations in the early 1950s. The debate about U.S. extraterritoriality emerged on the eve of Japan's restoration of independence when the local population, as the new sovereign of "democratized" Japan, began problematizing the adoption of the Japan-U.S. *Administrative* Agreement, whose twenty-nine articles granted far-reaching basing rights to U.S. forces without legislative approval. Above all, the occupied paid particular attention to criminal jurisdiction provisions of the Administrative Agreement which secured the privileged legal status (i.e., immunities from local jurisdiction) of both on-duty and off-duty U.S. military personnel, the civilian component, and their dependents residing in post-occupation Japan. Amidst the Korean War, not only American but also UN military personnel's criminal offenses added the Japanese concern over the regime of exception enjoyed by Westerners in independent Japan. Although the specter of extraterritoriality in the vanquished Japanese empire invoked recent memories of Japan's own colonial rule imposed

[167] William T. Turner, Counselor of Embassy, "Transmittal of Kobe's Despatch No. 537, 'The Japanese Extraterritoriality Complex,'" RG 84, Records the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Folder: 320 Japan-United States, Box 13, NARA.

on Korea and China among a small population, an older memory—that of Japan's position at the receiving end of the extraterritorial unequal treaties in the nineteenth century—was much more prevalent. In 1950, the question as to how postwar Japan could position itself in the emerging bipolariz*ed* world was deepening the ideological divide rooted in history before 1945. Yet the shared discontent with the extraterritorial criminal jurisdiction provisions of the Administrative Agreement unified all the political forces in post-occupation Japan, fostered anti-U.S. military presence sentiment, and boosted the Leftist Socialist Party' popularity in the early 1950s. This was a decisive moment when the Japanese were engaging in another landmark debate of the time, rearmament.

In the mid-twentieth-century United States, the debate about the military personnel's immunity from local jurisdiction belonged to its own historical question on the global reach of the U.S. constitution with its claim to imperial sovereignty. In the context of the Cold War, technocrats of the postwar U.S. national security state, President Truman, Congress, and home grassroots organizations such as the American Civil Liberties Union (ACLU) did not immediately form a consensus on the question of the extraterritorial dimension of postwar U.S. foreign criminal jurisdiction (FCJ) policy. The State Department and President Truman, both of whom were keen to showcase the success of Japan's democratization in accordance with the free world appeal for respect for sovereign equality, endorsed Japan's local jurisdiction over cases involving off-duty U.S. military personnel. The ACLU was a rare supporter of such a position in U.S. civil society. Military leaders and prominent senators claimed military rationale, constitutionalism, legal Orientalism, anti-communist sentiment in opposing local jurisdiction. Notably, some believed that the "law of the flag" must be asserted not only in the non-Western world but also in Europe. Ultimately, the clash between those who supported Japan's local jurisdiction and those who

opposed it in early-1950s Japan and the United States against the background of the globalizing Cold War resulted in the classification of executive arrangements for the institutionalization of the American military legal regime of exception in post-occupation Japan. In 1953, the Yoshida and Eisenhower administrations signed a confidential agreement that committed the Japanese authorities to waive local jurisdiction over most cases involving off-duty U.S. military personnel, the civilian component, and their dependents. Since this Agreement entailed the adoption of other related informal agreements, U.S. policy planners came to refer to them as "confidential agreements" or "confidential arrangements."

The process that led to the 1953 Confidential Agreement—along with other informal agreements—reveals the symbolism of racial and legal inequalities attached to extraterritoriality. In fact, it was so visible, and thus politically provocative, that it actually created a momentum to shift the ties of, if not change, the early-1950s geopolitics. The birth of the American military legal regime of exception in post-occupation Japan rested on the tenacity of "western civilization" as a contingent ideology and an arbitrary practice of a dominating power, in this case by the United States. The local political forces' concerted critique of extraterritoriality with the invocation of the historical analogy of the nineteenth-century unequal treaties showed both the subversive nature and the vulnerability of their nationalist demand for territorial sovereignty. The temporal strength of the Japanese protest movement lay in its employment of the ideological and rhetorical power of "civilization," "national independence," and "sovereign equality" crystallized as a popular political demand. Sharply contrasted and juxtaposed with them were the actualities of "subordinate independence" and "undemocratic" governance handled by the "subservient" Yoshida cabinet.

Paradoxically, Japan's vulnerability lay in the nationalist claim of territoriality in its campaigns against extraterritoriality, as opposed to Okinawans' collective egalitarian appeal for *universal* human rights under the U.S. military occupation. This parochial vision of the rights of others was certainly linked to "mainland" Japan's lack of humanistic concern over the former subjects of the Japanese empire—including Okinawans, the indigenous Ainu, and Koreans and Taiwanese living in Japan—whose legal statues were distinguished from or placed outside their own after the war. Japanese state leaders were the first to compromise their struggle against twentieth-century extraterritoriality when they learned that U.S. policy planners were simultaneously introducing extraterritorial FCJ policy as a norm in Europe. At the heart of this process was the imperialized logic of civilization which served to legitimize a militarily and economically dominant power's creation of extraterritorial space outside its borders under the auspices of a new form of U.S. exceptionalism. Indeed, the inception of postwar diplomatic collaboration between Japan and the United States continued to undermine the Westphalian logic of sovereign equality.

The Conditional Democratization and A Military Legal Regime of Exception during the Occupation Period

As John Dower's characterization of the U.S. occupation of Japan (1945-1952) as a "neocolonial revolution"[168] indicates, the period belonged to a transnational history of empire and social change. Upon fascist Japan's acceptance of unconditional surrender in August 1945, postwar American elites retained the right to exclusively monitor the occupation of Japan under the leadership of

[168] John Dower, *Embracing Defeat: Japan in the Wake of World War II* (New York: W.W. Norton & Co Inc, 2000), 203-224.

Douglas MacArthur who represented General Headquarters (GHQ) of the Supreme Commander for the Allied Powers (SCAP). This form of occupation was different from that of Germany, where the Allied powers jointly monitored reform programs. The necessity of indirect governance in Japan simply stemmed from the lack of "linguistic and technocratic capacity to effectively govern the country directly," Dower noted. Yet this indirect system of control strictly held Japan's central government and the other governmental organs responsible for enforcing occupation directives.[169] Under the Truman administration's policy of security *against* and *for* Japan, the immediate occupation reforms served the two pillars of the occupation: "democratization and demilitarization."

In November 1945, MacArthur declared that the underlying objective of the occupation was "to foster conditions which will give the greatest possible assurance that Japan will not again become a menace to the peace and security of the world." The occupation was therefore aimed for "strengthening of democratic tendencies and processes in governmental, economic and social institutions" and for "the encouragement and support of liberal political tendencies." MacArthur believed it was the United States' historic mission to bring "the blessings of liberty" to the Japanese nation. And his universalist and exemplarist ideology of civilization was even more unambiguously encapsulated in the statement that "History will clearly show that the entire human race, irrespective of geographical limitations or cultural tradition, is capable of absorbing, cherishing and defending liberty, tolerance and justice, and will have maximum strength and progress when so blessed."[170] Such a vision of democratization of Japan was shared with the New

[169] Dower, *Embracing Defeat*, 212.
[170] Quoted in Kurt Steiner, "Foreword," in Alfred C. Oppler, *Legal Reform in Occupied Japan: A Participant Looks Back* (New Jersey: Princeton University Press, 1976), vii, viii.

Dealers who held significant influence over the occupation policies especially during the early phase of the occupation (1945-1947).

The New Dealers headed by MacArthur upheld a twentieth-century universalism fulfilling the United States' "civilizing" mission. Grounded in their belief was that individuals must be equal before the law, and thus legal reforms stood at the heart of Japan's occupation reforms. The Meiji Constitution, which had entitled the Emperor to be the sovereign, was abolished, and a new constitution with three pillars of principal values—popular sovereignty, pacifism, and respect for fundamental human rights—was promulgated in 1946.

For a more comprehensive effort, the reformers were urged to "re-modernize" Japan's legal institutions and culture that had been built upon German and French models, this time upon the Anglo-Saxon legal system. Within this particular context, Alfred C. Oppler, who had served as a judge of the Prussian Supreme Administrative Court during the Weimar Republic, and later migrated to the United States for his political antagonism toward the Nazi regime, held the position of Chief of the Legislation and Justice Division of Legal Section of GHQ. Oppler wrote in 1949: "The unique nature and gigantic scope of such an experiment [U.S. democratization of Japan aiming for its "psychological disarmament"] when tried on a less advanced and oriental civilization must easily have discouraged the skeptic, who does not believe in the possibility of influencing the thoughts and customs of a strange people."[171]

Despite the classic orientalist phrasing in the opening of his article, Oppler's intention was to detach himself from people whose racialist attitudes toward the Japanese had not changed much from the wartime. Eschewing the logic of exclusive racism, or "vulgar racism" as phrased by

[171] Alfred C. Oppler, "The Reform of Japan's Legal and Judicial System Under Allied Occupation," *Washington Law Review*, 24: 3 (August 1949), 1.

Takashi Fujitani (initially Franz Fanon) rampant but slowly challenged by "polite racism" during the wartime,[172] Oppler highlighted the importance of fostering spontaneous indigenous development, albeit under the supervision of Euro-American reformers. He argued that U.S. occupiers had to "take into consideration the two factors on which the Japanese legal system was based: (a) its continental character and (b) the strength of customs and traditions." And thus, "[t]he occupation lawyers… had to beware of any overeagerness to impose the blessings of Anglo-Saxon legal institutions upon the continental law of Japan." As part of that effort, "[t]he Allied representatives frequently served as the controversies between different Japanese groups such as public procurators, on the one hand, who stressed the interest of the state in a vigorous enforcement of the criminal law, and the lawyers, on the one hand, who jointly with the representatives of the [Japan] Civil Liberties Union [JCLU] put the emphasis upon individual rights."[173]

His reference to the procurators' fidelity with the state and the JCLU's emphasis on individual rights requires special attention. While the legal reforms were shaping the fundamental structure of the post-fascist Japanese state during the early phase of the occupation, General MacArthur invited founder of the ACLU Roger Nash Baldwin to Japan and a group of progressive lawyers established the JCLU in 1947. Clearly, the ideological bond between the occupiers and the Japanese lawyers who sought to enhance the protection of individual rights through the postwar legal reforms was tighter than the ideological bond between the occupiers and the Japanese bureaucrats who were eager to maintain state power and limit the adoption of the new rights.

Another key fact to be noted is that the occupation executors did not suggest the Anglo-Saxon writ of habeas corpus as a model for Japanese legislation due to the reformers' emphasis on

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[172] Takashi Fujitani, *Race for Empire: Koreans As Japanese and Japanese As Americans During World War II* (Berkeley; Los Angeles; London: University of California Press, 2013).
[173] Oppler, "The Reform of Japan's Legal and Judicial System Under Allied Occupation," 1, 8.

spontaneous development at this particular moment. Ultimately, though, the Habeas Corpus Act was enacted in 1948 after it was "thoroughly studied and discussed among the judges of the Supreme Court and lawyers and members of the Diet."[174] Overall, Oppler was confident with the removal of the legacies of "the police state" and the level of constitutional protection stipulated in the revised Criminal Code and the Code of Criminal Law Procedure which came into effect in 1947 and 1949, respectively.[175]

As Oppler repeatedly maintained, SCAP's reliance on the representative government of Japan served the occupiers' ideological imperative to demonstrate the Japanese' autonomous engagement with the occupation reforms. "It is too early to arrive at a fair judgement as to what extent the occupation… has avoided the mistake of imposing or even suggesting reforms for which the Japanese were not yet ripe…"[176] Yet Oppler wrote: "it should be pointed out that General MacArthur's consistent policy… has been toward inspiration and encouragement of the Japanese government rather than authoritative direction by fiat."[177] In the mid-twentieth-century context, therefore, the renovation of the Japanese legal system through the adoption of the Anglo-Saxon model served to exemplify the United States' "civilizing" power as well as Japan's capability to "civilize" within a short period of time, as in the previous century. Though the following quote is lengthy, Oppler's own words speak volumes about his philosophy summarized in this above section.

> The main objectives of this legislation [concerning legal reforms] have been the independence of the judiciary and the strengthening of its prerogatives; the promotion of fundamental human rights; and the protection of the individual from too much governmental interference with his private life… In evaluating this change, the fact should be taken into account that under the prevailing circumstances the implementing legislation has to be enacted in a breathtaking tempo. While the drafting of important Codes took sometimes twenty years in continental countries, the

[174] Oppler, "The Reform of Japan's Legal and Judicial System Under Allied Occupation," 17-18.
[175] Oppler, *Legal Reform in Occupied Japan*, 120-129 (on Criminal Code); 136-149 (on Criminal Procedure).
[176] Oppler, "The Reform of Japan's Legal and Judicial System Under Allied Occupation," 2.
[177] Oppler, "The Reform of Japan's Legal and Judicial System Under Allied Occupation," 2-3.

> weapon against suppression of civil liberties, provided it avoids extremism. The final outcome is tied up with the political feature of Japan, which will be influenced by unpredictable international developments and domestic economic and social conditions. Only if the people make courageous use of their new rights for the prevention of any authoritarian form of government, regardless of the brand, will the broad program visualized in the reforms be fulfilled.[178]

The New Dealers' ideals were messier and less consistent than they wished them to be. To begin with, the universalism underpinning the liberal democratic objective of the occupation had limitations as to who could be included in the renewed Japanese nation- state. Under the direct rule of U.S. military, Okinawans did not enjoy "mainland" Japan's new constitution enacted in 1947, as will be discussed in greater detail in the following chapter. Further, labor rights and political rights of dissents—communists, labor right activists, and Koreans living in Japan in particular—became the first target of suppression in the late 1940s despite the New Dealers' lenient, and even collaborative, attitude toward Japanese communists during the war and shortly after Japan's defeat.[179]

On this volatile condition for the U.S. democratization of Japan, intellectual historian Victor Koschmann wrote: "In the early stage of the Occupation, SCAP's somewhat conflicted combination of individual rights—oriented liberal democracy on the one hand and limited political pluralism on the other brought significant results, not only in the reform of institutions but also through catalyzing a set of practical, egalitarian expectations throughout society—aspects of a 'democratic imaginary'—that encouraged a variety of new antagonisms and conflicts. Yet, this upsurge soon exceeded the bounds of the classically liberal bedrock of SCAP's philosophy, leading to a reaction that defused the popular movement [calling for labor rights, for instance]..."[180]

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[178] Oppler, "The Reform of Japan's Legal and Judicial System Under Allied Occupation," 20-21.
[179] Henry Oinas-Kukkonen, *U.S. Attitudes towards the Japanese Communist Movement, 1944-1947* (Oulu: The University of Oulu, 1999), 21.
[180] J. Victor Koschmann, *Revolution and Subjectivity in Postwar Japan* (London: The University of Chicago

Similarly, Susan Pharr has underscored SCAP's uneven interest in *universal* human rights: "top SCAP policy makers generally saw only the human rights issue inherent in promoting the status of women, and not the controversial redistributive issue it raised."[181] The existing scholarship highlights the continuities between classical liberalism and New Deal social democracy, best seen in the way it restricted the protection of individual rights and political freedom, not to mention the application of universal human rights in their imagined peripheries.

No doubt, the conditional U.S. democratization of Japan, or "Cold War democracy" as phrased by Jennifer Miller, reflected American policymakers' attitudes toward rights struggles unfolding across the globe. During the early phase of the occupation, the internal conflict was encapsulated in the political dynamism surrounding the birth of the Universal Declaration of Human Rights (UDHR) at the General Assembly of the United Nations in 1948. Franklin D. Roosevelt's widow Eleanor Roosevelt, as Chair of the United Nations Commission on Human Rights (UNCHR), was determined to represent the New Dealers' social democratic ideals on the global stage. Yet, earlier, legislators and prominent political figures such as John Foster Dulles, who would lead the negotiations of a peace settlement with Japan and direct negotiations on the 1953 confidential agreement from Washington, had opposed Roosevelt's nomination for the Chair due to the prospect of spreading her vision of human rights on behalf of the U.S. government. Dulles resisted racial equality, redistribution, and the UDHR's legal enforcement of U.S. law.[182] In the aftermath of the internal and international debates over the definition of "universal human rights," with varied emphases on political, civil, economic, social, and cultural rights, the adopted UDHR declared the inherent equality of all peoples. Symbolically, Article 3 guaranteed "the right

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Press, 1996), 22.

[181] Koschmann, *Revolution and Subjectivity in Postwar Japan*, 17.

[182] Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), 21.

to life, liberty and security," and Article 7 "the right to equal protection of the law." As a whole, the UDHR incorporated civil, political, social, economic, and cultural rights into the preamble and thirty articles. Indeed, the New Dealers' social democratic visions were more multilateralist than the postwar U.S. national security state's visions of civilization. The U.S. technocrats' premise of the superiority of the U.S.-led capitalist world system and militarized security employed as a means to secure it made the U.S. democratization of Japan conditional.

The American military legal regime of exception came into existence in occupied Japan in this historical context. Although the vanquished people's experience of GI crimes was one of many aspects of the personal relationships and social phenomena that shaped the Allied occupation of Japan, their own or witnessing of others' experiences of violence remained an unerasable marker of their status as the occupied. Komiyama Ryōhei, who edited the book, *Graves Without Flower: Records of the Allied Occupation Forces' Murders of the Japanese*, reflected on his own experience of GI violence before he published the book in 1959. When Komiyama was hungry and homeless in Tokyo upon his return from the war in the winter of 1945, he encountered three drunk GIs who hit his eyelid with a ring. What dismayed Komiyama was that the accuser was an African-American soldier. He had special sympathy for marginalized black people in the United States. The soldier's ring reminded him of the "spartan" Japanese Imperial Army's ban on rings and how the "spartan" Japanese soldiers still became a ferocious mob. A "democratic" soldier was no different, it turned out, Komiyama thought then.[183] His experience was testament of the transformation of the power relationship between Japan and the United States manifested in individuals' encounters. Even though officially recorded murders committed by U.S. military

[183] Komiyama Ryōhei, "Jyo: Konobohyōni," in Arai Kiōchi, *Hananonaibohyō—Chūryūgun niyoru nihonjin gyakusatsu no kiroku [Graves Without Flowers: Records of the Allied Occupation Forces' Murders of the Japanese]*, (Tokyo: Rironsha, 1959), 1.

personnel during the occupation period (1945-1952) is a mere 3,903, scholars such as Fujime Yuki have argued, the official toll cannot be treated as comprehensive statistics.[184]

The occupiers' racialized violence committed against the occupied disproportionately targeted women of different ages, occupations, and class status. Yet since the Allied solders' assaults often occurred in close proximity to prostitution, and within the social environment which normalized that institution, prostitutes were more likely to be at the receiving end of GIs' violence and sexual diseases. The author of the book, *Graves Without Flowers*, Arai Kōtaro, decided to investigate the state of Allied crimes in 1952 for his indignation at the death of a woman who was a prostitute. It all began with Arai's acquaintance with a family who had just lost a young pedicab driver in Sasebo, Nagasaki. The man, who was also a father, had been stabbed to death by an American GI in 1945. Upon an unexpected encounter with the widow, Arai learned in 1950 that she became a prostitute at the age of thirty-four to support five other family members. Neither the police nor the municipal office had offered assistance for her husband's death. Two years later, when Arai stopped by her family in Sasebo, the widow's old mother said that she had been inflicted with what a physician referred to as "Sasebo disease." The mother told she had been raped by an American GI and died in 1951. Arai thought that the death could have had to do with her prostitution for an American GI who was back from the war in Korea.[185] Arai's introduction of this episode alone encapsulates multi-layered violence committed against women in occupied Japan.

The unequal legal relationship between the occupier and the occupied was inevitably linked to the rigid hierarchical relationship between the Japanese police and the Allied military police

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[184] Fujime Yuki, "Rengōkoku senryōgun no jiko hanzai ni yoru jinshinhigai," *Heiwa kenkyū nyūmon* (April 2014): 43.
[185] Arai, *Hananonaibohyō*, 235-238.

(MP). Under the directives of GHQ, the Japanese police was not authorized to investigate Allied soldiers' criminal offenses. Even those who had witnessed GIs' assaults and tried to help the victims on site were eventually prosecuted for having violated the authority of the occupation.[186] Added to the structural barrier to seeking legal justice was the near-total absence of compensation. The victims and their families were not entitled to seek compensation from the Allied forces. Ill-equipped with legal means to cope with the victims' grievances, the Japanese government began compensating the victims of explosion accidents committed by the occupation forces in May 1946. The eligibility of those who could seek compensation from the Ministry of Health was extended to all victims of occupation mishaps in January 1947. Nevertheless, many victims gave upon receiving them because these official consolatory payment programs were too complex and too little.[187]

Further, under the strict regime of censorship regulated by the Press Code, the victims had little information not only on details concerning the occurrence of GI crimes but also the official compensation programs. The collection of newspaper coverage of the Allied soldiers' crimes, once censored, and now stored at the University of Maryland,[188] gives a glimpse of the degree of the regulation on the dissemination of information pertaining to the military personnel's criminal cases placed until 1949. The Civil Censorship Detachment (CCD) translated the following article entitled "A couple of GI Thieves." The publication of it was "DISAPPROVED" for its "criticism of Allied forces" in 1947.

> During those five days following October 31, a couple of American soldiers, pretending to sell tobaccos [sic] to Japanese passengers-by, suddenly threatened them with pistol or knife in order to rob them of watches and purses. And on November 4, a Japanese saw their threatening scene

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[186] Arai, *Hananonaibohyō*, 192.
[187] Fujime, "Rengōkoku senryōgun no jiko hanzai ni yoru jinshinhigai," 47.
[188] Gordon W. Prange, a Navy officer, and also a historian, served as chief of GHQ's historical staff between 1946 and 1951. Prange taught at the University of Maryland before and after his service in Japan. Over 600,000 documents, which had been subjected to the Press Code, are preserved at the university.

> by chance. As soon as the MP's got the information, they hurried to the place and caught the rascals after much struggle. Being examined, they confessed their crimes and were considered guilty. On November 23 they were put on military trial consisting of nine officers of the 41st Division Heaters in Kiro. The two criminals were deprived of their military rank and were sentenced to fifteen years labor. [189]

For another example, the CCD stamped "Detected" on the following United Press article that the *Mainichi shinbun* had planned to share with the readers the same year.

> Five Fifth Air Force soldiers will face a Far East Air Forces general court martial on murder charges for having killed five Japanese and injured some 20 others when they shot up the town of Hachijōji west of Tokyo, it was officially announced here Sunday. The official Army statement said that "five Fifth Air Forces soldiers from Tachikawa Army base near Tokyo have been apprehended after a 10 day search and investigation by Eighth Army Military Office.[190]

What these unpublished articles help us grasp, along with the actual scope of the Press Code and supplementary details on a range of criminal assaults committed by the Allied forces in occupied Japan, is how the regulatory regime of speech made it difficult for the occupied to frame the Allied forces' criminal offenses and lack of compensation as a social problem per se. They also speak to the lingering historical context of the Asia Pacific War as the "war without mercy," a phrase that John Dower took from a U.S. wartime propaganda for the title of his seminal monograph.[191]

To summarize, it was not just the Cold War that gave birth to the American military legal regime of exception in post-occupation Japan. The United States' exercise of emergency powers incorporated ideological and practical war experiences into the administration of the occupation. The politics of extraterritoriality emerged from the combination of imperial Japan's unconditional

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[189] *Shinhochi*, December 6, 1947, Censored Newspapers, Prange Collection, University of Maryland (hereafter cited as UMD). 47-9

[190] *Mainichi Shimbun*, February 16, 1947, Censored Newspapers, Prange Collection, (UMD).

[191] John Dower, *War without Mercy: Race and Power in the Pacific War* (New York: Pantheon, 1987).

surrender, the New Dealers' conditional democratization, and the U.S. military legal regime of exception installed in the context of the occupation.

Toward the Recovery of Sovereignty: The Cold War and the Specter of Extraterritoriality in Mid-Twentieth-Century Japan

As Bruce Cumings has suggested, the year 1947, not 1949, was the commencement of the American "reverse course" in occupied Japan. The imperative for the policy change grew large in the eyes of Washington when the technocrats came to prioritize the reconstruction of the Japanese and German industrial economies to buttress the capitalist powers.[192] The New Dealers believed that the free-market economy required the decentralization of economic power. SCAP facilitated the dissolution of Japan's wartime military industrial complex between 1945 and 1947 in order to prevent the resurgence of Japan's "irresponsible militarism," as declared in the Potsdam Declaration.[193] In 1949, Washington's urge to prioritize the global network of U.S.-led capitalist economy over multiculturalist social democracy was further incentivized by the Chinese Communist Revolution that October. U.S. elites allowed Japanese wartime leaders to reoccupy parliamentary and bureaucratic positions and big business conglomerates to remain functional. Communists, labor activists, Koreans, and dissents, who came to confront the anti-communist occupation policies, were purged from major public positions, paralleling McCarthyism in the United States.

U.S. policymakers' internal debate about the terms of Japan's recovery of its national sovereignty was shaped in this context. The State Department appointed the former lawyer and

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[192] Bruce Cumings, "Japan in the World System," in *Postwar Japan as History*, ed. Andrew Gordon (Berkeley and Los Angeles: University of California Press, 1993), 37.
[193] Dower, *Embracing Defeat*, 220.

prominent Republican strategist, John Foster Dulles, in April 1950 as chief coordinator to lead the debate. The Joint Chiefs of Staff (JCS) opposed Japan's recovery of sovereignty to secure the unrestricted use of U.S. bases in Japan in the wake of the Chinese communists' ascendancy. MacArthur took a different position. He was reluctant to authorize permanent U.S. basing because of concerns over the rise of "anti-Americanism," and argued, from a strategic point of view, that the continued U.S. occupation of the Ryukyu Islands was sufficient. But in the wake of the adoption of NSC 68, which outlined the gist of U.S. Cold War policy in April 1950, MacArthur endorsed the deployment of U.S. armed forces in Japan for the eradication of communism, not "irresponsible militarism." In June, MacArthur and Dulles confirmed the strategic necessity of U.S. military bases in the Japanese archipelago to secure human resources and material support for military operations.[194] With the consensus on "get[ting] the right to station as many troops in Japan as we want where we want and for as long as we want" consolidated in Washington (NSC 60/1),[195] the Japan-U.S. negotiations on the peace treaty began in early 1951.

As Dulles repeatedly reminded the Japanese state elites, Washington's preconditions for Japan's recovery of sovereignty lay in unrestricted far-reaching basing rights. In January-February 1951, the U.S. State Department and the Japanese Foreign Office negotiated specific conditions for post-occupation security cooperation. Dulles, as chief negotiator appointed by President Truman, requested the continued U.S. occupation of the Ryukyu Islands, the free use of U.S. bases in Japan, and remilitarization in return for sovereignty. The primary concern of the Japanese

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[194] Aketagawa discusses the shift of MacArthur's strategic thinking on the question of permanent U.S. basing in post-Occupation Japan in his numerous works. For a succinct overview, see Aketagawa Tōru, Chapter 2 Gyō seikyotei no teiketsu to senryō no ronri," in *Anpo jyoyaku no ronri, so noseisei to tenkai* edited by Toyoshita Narahikio (Tokyo: Kashiwashobō, 1999), 55-58.

[195] Memorandum by Robert A. Fearey of the Office of Northeast Asian Affairs "Minutes-Dulles Mission Staff Meeting," January 26, 1950, in *Foreign Relations of the United States East Asia and the Pacific, Vol. VI* (Washington, DC, 1977), 1294.

negotiators, led by State Minister Okazaki Katsuo, was to secure Japan's equal status as a host nation of U.S. armed forces with members of the North Atlantic Trade Organization (NATO) in Europe. And thus, Okazaki requested the U.S. negotiators to close GHQ's main office in Tokyo on the scheduled day of independence to drive home the termination of the occupation.[196] Under the vision of the Yoshida administration, joining the U.S.-led capitalist bloc was inevitable for the crusade against international communism. This was despite Yoshida's long-held diplomatic philosophy that Japan must maintain good relationships with China regardless of its form of government.[197] Before the negotiations, in April 1950, Finance Minister Ikeda Hayato had intimated the Yoshida administration's offer to seek American military presence for peace settlement.[198] And this ultimately founded the basis of U.S. policy planners' rationale for the adoption of the security agreement which did not hold U.S. forces legally binding for the defense of Japan.[199]

The intricate legal framework for the basing arrangements in Japan and Okinawa was laid out in three documents expected to function as international law: The Peace Treaty, the Security Treaty, and the Administrative Agreement. The 1951 negotiations did reach an agreement to conclude the Peace Treaty. Yet detailed language and arrangements concerning the Security Treaty and the Administrative Agreement were intentionally left for later negotiations. Dulles recognized that the stipulation of detailed agreements on basing rights had to be materialized through a "private *understanding*"—not a treaty—between the two governments to avoid sabotage by legislative bodies.[200] In a staff meeting held in Tokyo, Dulles concluded: "it would be advisable

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[196] Okazaki Katsuo, "Gyōseikyotei no butai ura," *Bungei shun jyū* (September 1956), 72.

[197] John Dower, *Empire and Aftermath: Yoshida Shigeru and the Japanese Experience, 1878-1954* (Cambridge: Harvard University Press, 1979), 1-12.

[198] Aketagawa, "Gyōseikyotei no teiketsu to senryō no ronri," 70.

[199] Aketagawa, "Gyōseikyotei no teiketsu to senryō no ronri," 114-115.

[200] "Minutes-Dulles Mission Staff Meeting," January 31, 1951, RG 84, Records of the Foreign Service Posts of

prior to detailed discussions of the bilateral [treaty] to have the garrisoning and security problem gone over carefully to see what should go in the treaty, what should go in the bilateral, and what might possibly be private understanding between the United States and Japan which would not have to be approved by the Diet or registered with the UN."[201]

In early 1951, W. J. Sebald, Chief of Diplomatic Section of the Office of U.S. Political Advisor (USPOLAD) in Japan, contended that despite growing pacifist movements in Japan opposing U.S.-centered peace settlement, the general public was supportive of the conclusion of a peace treaty regardless of its form. At a press conference held in Tokyo on January 31, Dulles stressed that the U.S. government held authority to determine the future of the Ryukyu Islands "for its own reasons," a statement stemmed from his concern over the Japanese reaction to the continued U.S. occupation of Okinawa.[202] Yet Sebald later reported: "While many Japanese [were] undoubtedly disappointed over evident failure [to] obtain concession [of the] return [of] former overseas territories, this feeling appears outweighed by gratification over proposed security agreements and clear-cut assurances that US will not permit power vacuum in post-treaty Japan." Sebald argued: "Ambassador Dulles' public statements, conferences with leaders [of] major political parties, and informal conversations with representatives [of] Japanese have one hand provided convincing evidence of US desire to bring Japan back into family of nations on [the] basis [of] self-respect, and one other hand served to remind Japanese that as defeated people must 'work own passage home.'"[203]

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the Department of State, Japan, Office of U.S. Political Advisor, Classified General Records, 1945-1952, Box 60, Folder: 320.1 Peace Treaty, January-March, 1951, NARA; John Swenson-Wright, *Unequal Allies? United States Security and Alliance Policy toward Japan, 1945-1960* (Stanford, California, Stanford University Press, 2005), 96-97.

[201] "Minutes-Dulles Mission Staff Meeting," January 31, 1951, NARA.

[202] "Minutes-Dulles Mission Staff Meeting," January 31, 1951, NARA.

[203] Telegram 1556 from W. J. Sebald, Chief, Diplomatic Section to Secretary of State, February 12, 1951, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Office of U.S. Political Advisor,

In analyzing locals' ideological differences, Sebald expected that conservatives would collectively endorse the early peace settlement with the capitalist bloc and the centrist population would join this move. Although "Opposition already asserting PRI[me] M[i]N[ister] owns people full information," "[p]resent indications are Liberals [Yoshida's ruling party] and Democrats [another conservative opposition party] will present united front on treaty." And "at least at outset Socialists will continue [to] assert over-all peace principle and oppose military tie with US." Regardless of the Socialist Party's opposition, "in general however close unity of public opinion on overriding issue of treaty has for time being overshadowed partisan political differences over details of settlement."[204]

Building on the consensus of the necessity of garrisoning in post-occupation Japan, U.S. policy elites began discussing the legal status of U.S. armed forces within the broad framework of a peace settlement. Since the late 1940s, the question whether U.S. armed forces could maintain immunity from local jurisdiction over criminal offenses committed by off-duty service members deployed in the allied nations had been triggering debates among military and civilian elites. In August 1951, Chairman of the JCS Omar N Bradley requested that the Dulles Mission's draft of the Administrative Agreement received in mid-February insert a new paragraph on jurisdictional matters: "In order to secure to the commanding officers of the United States forces powers necessary for the effective accomplishment of their respective military missions and to preserve the morale of their members in Japan where the standards and system of justice are not familiar and do not accord with those recognized in the United States inherent to its citizens, it is considered essential that the U.S. armed forces exercise to the fullest extent possible exclusive jurisdiction

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Classified General Records, 1945-1952, Box 60, Folder: 320.1 Peace Treaty, January-March, 1951, NARA.

[204] Telegram 1556 from W. J. Sebald, Chief, Diplomatic Section to Secretary of State, February 12, 1951, NARA.

over their members." Bradley unequivocally asserted that "An agreement with Japan along the lines of the NATO agreement is not only inappropriate, but it would be unacceptable from the military point of view." Grounded in the rationale, "it is necessary that the United States have in time of peace those jurisdictional rights which it requires in war."[205]

The State Department's stance on the question of criminal jurisdiction was best summarized by Deputy of the Consultant of State for Eastern Affairs John More Allison's denunciation of the JCS' position. Already in April 1951, Allison was aware of the Judge Advocate General "treating Japan as an uncivilized country with supposedly barbaric laws and jails, etc.," despite the Defense Department's "see[ing] merit in the Japanese position on criminal jurisdiction," expressed through the negotiations on peace settlement. Allison contended that the JCS' attempt to secure personal jurisdiction in post-occupation Japan "exhibits complete ignorance of Japanese history as well as lack of confidence in the achievements of the Occupation undertaken in great part by the representatives of the Defense Department." He further argued:

> In 1899 Japan became the first Asiatic land to free itself of extraterritoriality. This was because the Occidental powers at that time recognized Japan as an equal and full-fledged member of the family of nations which had recognized its political institutions in conformity with Western patterns and that its legal system was up to Occidental standards of justice and humanness. To act now on the assumption that the Japanese had retrogressed to the situation prevailing prior to 1989 [sic] in spite of the complete renovation of Japan's legal system during the Occupation and its reorganization by the Occupation to bring it more into accord with American standards and procedures, would not only be a grave insult to the Japanese but also to the untiring efforts of all those from General MacArthur on down who have worked to make it possible for Japan to be treated as a sovereign and equal member of the world community.[206]

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[205] Chairman of the Joint Chiefs of Staff Omar N Bradley, Memorandum for the Secretary of Defense, "Documents Regarding to the Japanese Peace Treaty," August 8, 1951, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Office of U.S. Political Advisor, Classified General Records, 1945-1952, Box 60, Folder: 320.1 BST September-December, 1951, NARA.

[206] The Deputy to the Consultant (Allison) to the United States Political Advisor to SCAP (Sebald), April 3, FRUS 1951, Part I, 956.

The civilian elite Allison's bare accusation of the JCS' position encapsulates the tension between mid-twentieth-century legal orientalism and the liberal democratic logic of civilization.[207] Having served as a foreign service officer since 1932, Allison was keenly aware of the ideological contradiction the United States would prove to the world if orientalist and essentialist traces were to be embedded in post-treaty U.S. policy on the former fascist empire. The JCS "fe[lt] that the position of Japan, as a conquered nation and as an oriental nation is not analogous to that of the NATO nations." Yet such a treatment of Japan would be "at complete variance with the underlying sprit of the Peace Treaty as presently drafted and put before Congress and the people of the United States as well as the rest of the world in the many public statements and speeches of Mr. Dulles, to say nothing of the proposed speech by the President which will be given at the opening of the San Francisco Conference." Allison went on to assert that he would consider "requesting a different assignment [not a proposed Ambassador post in post-occupation Japan]" "if the military forces of the United States are permitted through the State Department's acquiescence to operate in a post-treaty Japan under the philosophy inherent in the above quoted excerpts…"[208]

Dulles shared Allison's assertion that the United States' civilizing mission must entail disavowal of exclusionary racism in a country where "democratization" was declared to be completed. During the peace conference held in September 1951, Dulles raised the matter in conversation with top State and Defense officials, including "Mr. Rusk, Mr. Allison, Mr. Sebald and myself, and Assistant Secretary Johnson, General Magruder and Mr. Nash." At their rare joint meeting in San Francisco, however, they concluded that "the problem was difficult and should be

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[207] Mark Mazower, "The End of Civilization and the Rise of Human Rights: The Mid-Twentieth–Century Disjuncture," in *Human Rights in the Twentieth Century*, edited by Stefan-Ludwig Hoffmann (Cambridge: Cambridge Univ. Press, 2010), 29–44.

[208] Deputy to Consultant of State for Far Eastern Affairs to Assistant Secretary of State (John Moore Allison), "Memorandum," August 22, 1951, to Assistant Secretary of State for Far Eastern Affairs (Dean Rusk) FRUS 1951, 1285-1287.

affirmatively dealt with, and it was suggested that Secretary [of Defense] Marshall should be asked to set up a group which would assume the responsibility for positive educational actions." Two days after the conference, Dulles problematized the military elites' projection of exclusionary racism reflected in their draft of the Administrative Agreement, for it stipulated that U.S. armed forces would continue exercising exclusive jurisdiction over all cases committed by military personnel, the civilian component, and their dependents. It "discloses a disposition on the part of the Armed Services to continue to treat the Japanese as defeated enemies and as orientals having qualities inferior to those of the occidentals." It was expected that "[t]o change this point of view will be a major task of education," and yet "it should be begun at once."[209]

While U.S. elites' in-person meeting on the legitimacy of the postwar U.S. military legal regime of exception ended in a stalemate, the Yoshida government signed the Peace Treaty in the absence of the Soviet bloc and non-allied countries on September 8, 1951. On the same day, Yoshida signed the Japan-U.S. Security Treaty inside a military facility at the Presidio of San Francisco. Article 3 of the Security Treaty, consisting of only five brief articles, stipulated the expected adoption of the Administrative Agreement.

Following the "peace" conference which stirred controversies in Japan, the Soviet bloc, and the non-aligned world, a coalition of liberals and leftists denounced the Yoshida government's uneven diplomacy and military dependency on the United States. Intellectuals, rather than political parties, took the initiative in mobilizing this early postwar peace movement. The opponents defined the time not only in the context of the "Cold War" but also in light of the multi-layered historical trajectories of capitalism, imperialism, decolonization, and peace. Through the

[209] The Consultant to the Secretary (Dulles) to the Under Secretary of State (Webb), September 10, 1951, FRUS 1951, Vol. 6, 1369.

legislators' debate on these treaties at the national parliament held in October and November, it became evident that the political consensus of the Japanese population still leaned toward prioritizing the diplomatic relationship with the United States. While the Left Socialist Party and other leftist parties opposed both treaties, other parties including the Right Socialist Party endorsed both treaties. The Peace Treaty was adopted with 307/47 votes and the Security Treaty with 289/71 votes.[210] Although detailed provisions of the Administrative Agreement had not yet been negotiated, not to mention announced, its controversial nature gradually surfaced as seen in a group of conservative representatives' refusal to vote for the Security Treaty *in opposition to* the Administrative Agreement.[211]

The State Department closely observed the Japanese reactions to the Administrative Agreement while exploring ways to resolve its own debate with military officials. On October 4, State official Sebald alerted Secretary of State Acheson that "Interest in provisions AA continues high and lack of details stimulates public concern." He warned that "both leftists and nationalistic Japanese" began criticizing the Yoshida administration for having given the "US [a] blanket check."[212] Immediately, State officials in Tokyo analyzed the growing Japanese controversy over the Administrative Agreement to prepare for their preliminary comments on the JCS Drat of Administrative Agreement. They agreed that the following four points must constitute the premise of the State Department's position.

> 1. The Japanese retain bitter memories of 'unequal treaties' with Western powers concluded during the Meiji period, the cancellation of which they have regarded as a national victory.

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[210] Kato Bunzō et al. eds, *Nihonrekishi ge*, revised edition (Tokyo: Shinnihon shuppan, 1995), 183.
[211] "Rinji kokkai no shoten," *Sunday Mainichi*, October 1951; Yoshitsugu Kosuke, *Nichibei Anpo taiseishi* (Tokyo, Iwanami: 2018), 18.
[212] Telegram No. 674 from Sebald to Secretary of State, October 4, 1951, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo, Office of U.S. Political Advisor, Classified General Records, 1945-1952, Box 60, Folder: 320.1 BST September-December 1951, NARA.

> 2. The Japanese have demonstrated an extreme sensitivity towards matters involving sovereignty and national pride. They have reacted particularly against any suggestion that Japan was being discriminated against or was otherwise being placed in a subservient status.
>
> 3. The signing of the peace treaty has created a psychological climate in which the Japanese are eagerly looking forward to the restoration of sovereignty limited only such conditions as can be accepted as essential to national security.
>
> 4. Although the Japanese accepted foreign occupation troops as an unavoidable consequence of defeat, their acceptance of foreign security forces has been based on an expression of Japanese desires, so that they may be far more sensitive to impingement on sovereignty involved in the security arrangements than to those involved in the occupation.[213]

In this report the Tokyo staff noted that "the Japanese press has already printed outlines coming close to the present draft—there would be the prospect of public pressure and opposition criticism which would either weaken the government or make it adopt a more intransigent and nationalist attitude in relations with the US."[214] Only a month after the peace conference, the State Department elites feared that "the prevailing attitude of the Japanese people toward the projected post-treaty security arrangements with the United States appears to be becoming increasingly a negative one, compounded of sentiments ranging from disinterest, through deep concern, to outright opposition."[215]

Gradually, the Japanese Diet members' focus shifted from the Peace Treaty and Security Treaty to the Administrative Agreement recognized as a basing agreement. In late October, *Sunday*

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[213] Niles W. Bond to Charles Nelson Spinks, Esquire, Office of United States Political Adviser for Japan, Tokyo, "Preliminary Comments on Undated JCS Draft of US-Japan Administrative Agreement," October 4, 1951, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo, Office of U.S. Political Advisor, Classified General Records, 1945-1952, Box 60, Folder: 320.1 BST September-December 1951, NARA.

[214] Niles W. Bond to Charles Nelson Spinks, Esquire, Office of United States Political Adviser for Japan, Tokyo, "Preliminary Comments on Undated JCS Draft of US-Japan Administrative Agreement," October 4, 1951, NARA.

[215] Rusk, Johnson, Bond, "Views of Office of United States Political Adviser for Japan Regarding Implementation of Security Treaty," October 8, 1951, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo, Office of U.S. Political Advisor, Classified General Records, 1945-1952, Box 60, Folder: 320.1 BST September-December 1951, NARA.

Mainichi discussed turmoil which could arise from this *executive* agreement about to be adopted by the Yoshida government without their consent. "The problem of the Security Treaty lies in the Administrative Agreement that is expected to determine where bases would be built, which lands would be used, how to deal with extraterritoriality and [provisions of] criminal jurisdiction, and how much Japan's fiscal burden would be." The journalist commented that "given [Japan's historical background] that extraterritoriality and criminal jurisdiction stirred up controversies and fueled public anger in the early years of the Meiji period, nothing might not give the Japanese a sense of humiliation than these provisions."[216]

In post-occupation Japan, the State Department's policy rationale for the spatial ordering of American military bases was invoked in this political climate. The Tokyo officials asserted that "any arrangements for the stationing of United States forces in Japan which give the appearance of continuing the Occupation regime into the post-treaty period will inevitably tend to be destructive of the will of the Japanese nation." They stressed that bases would become "the most vivid symbol of the humiliation of defeat and military occupation." It is therefore "highly important" that "the post-treaty United States security force in Japan be removed to specified garrison areas outside of Tokyo and the other great urban centers of population."[217] Already since the fall of 1949, the State Department had been addressing concern over the scattered deployment and unlimited population of U.S. military personnel in post-occupation Japan, for it would irritate the residents adjacent to bases and destabilize U.S. military presence.[218] In the summer of 1951, the rationale for the strict designation of U.S. military presence transformed into a proposal for the transfer of bases to areas "outside Tokyo and the other great urban centers of population."

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[216] "Rinjikokkai no shōten: Anpo jyōyaku o meguru teiryū," *Sunday Mainichi*, October 21, 1951, 11.
[217] Rusk, Johnson, Bond, "Views of Office of United States Political Adviser for Japan Regarding Implementation of Security Treaty," October 8, 1951, NARA.
[218] Aketagawa, *Nichibei gyōsei no seijishi*, 44.

By the end of the year, the State Department came to voice deep contradictions of the postwar U.S. national security state in undoing democratization. In a memorandum entitled "Future Problems in the United States Relations with Japan," Charles Nelson Spinks discussed a dilemma of the post-treaty U.S. policy which required the Japanese leadership eager to revive pre-war ideologies: "Japanese politics is destined to become even more polarized with a strong conservative party having many rightist aspects confronting a left wing under Communist or ultra-radical Socialist leadership bridged by a weak and indecisive political center. Japan will thus remain in all probability under extreme conservative leadership." They feared that "[t]his conservative leadership will, moreover, foster and encourage various conservative trends in Japanese life, many of which will endeavor to revive pre-war institutions and concepts."[219]

The observation contained Spinks' analysis of the components and rapid transformation of the protest movement against American military presence. "Opposition to the Security Treaty is based on two general considerations." For one, "[i]t is unnecessary because Japan is supposedly not menaced and can derive adequate security by neutrality and reliance upon the United Nations." For the other, "[i]t is undesirable because alignment with the United States makes Japan choose sides in the cold war thereby alienating Japan from normal relations with Communist Asia and exposing Japan to attack in the event of an East-West conflict." In addition to this population opposing rearmament not only for the economic burden but also for the revival of militarism, "there are many Japanese who are not opposed to the Security Treaty in principle but fear that its implementation through the Administrative Agreement will compel Japan to assume heavy financial burdens as well as onerous if not humiliating obligations, such as providing what appear

[219] Charles Nelson Spinks, Memorandum "Future Problems in United States Relations with Japan," December 3, 1951, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo, Office of U.S. Political Advisor, Classified General Records, 1945-1952, Box 59, Folder: 320 United States-Japan 1951-1952, NARA.

to the Japanese as extravagant living facilities and extraterritorial privileges and immunities for the United States garrison forces."[220] In December 1951, Spinks recognized the political impact of the Administrative Agreement and—"extraterritorial privileges and immunities" in particular—on the Japanese attitudes toward the Japan-U.S. relationship. This was *before* the 1952 Japan-U.S. negotiations on the Administrative Agreement.

Keenly aware of the ideological differences among the Japanese and continuities of beliefs from the past, Spinks shared the Japanese critics' assertion in his own words: "The polarization of Japanese politics combined with the present conservative trend in Japan and the United States efforts to establish a practical means of providing for Japan's security have gone to alienate from the United States the Japanese liberals and intelligentsia who in many ways may be regarded as the most democratic element in the country. The United States is thus finding itself in the difficult position of undermining its own previous efforts to make Japan a democratic country."[221]

Lacking support for U.S. Cold War policy from the "political center" and "the most democratic element of the country," U.S. policy elites would continue relying on Yoshida's "Liberal" Party in adopting, and later revising the Administrative Agreement.

1952 Japan-U.S. Negotiations on the Administrative Agreement and UN Soldiers' Bank Robbery

The controversy about the Administrative Agreement in Washington raged throughout the year 1951, but would come to be finally resolved by Truman by the end of the year. Earlier in the year,

[220] Charles Nelson Spinks, Memorandum "Future Problems in United States Relations with Japan," December 3, 1951, NARA.
[221] Charles Nelson Spinks, Memorandum "Future Problems in United States Relations with Japan," December 3, 1951, NARA.

the NATO Status of Forces Agreement (SOFA)—signed on June 19, 1951—provided provisions granting the host nations primary criminal jurisdiction over offenses committed by off-duty American military personnel. The adoption of this formula in Europe, however, did not translate easily to post-occupation Japan. In October, the Assistant Secretary of State for Far Eastern Affairs Dean Rusk informed the Assistant to the Secretary of Defense for International Security Affairs Frank Nash that "the Department of State considers it to be of the greatest importance that arrangements for the stationing of United States forces in Japan in the post-Peace Treaty period be such as not to appear to the Japanese in any way to be a continuation of the Occupation, as to meet insofar as possible Japanese sensitivity regarding their national sovereignty and equality, as to avoid any appearance of an attempted reversion to extraterritoriality, and as to guard against giving the Japanese any basis for belief that our policies are motivated by considerations of racial inequalities."[222]

It turned out, however, that Defense Department officials were equally determined not to lose the military's jurisdictional privileges after the occupation. In November, Allison denounced Commander-in-Chief, Far East (CINCFE) General Ridgway's "extreme position" to demand "exclusive jurisdiction over its personnel, including U.S. civilian employees and dependents, of the U.S. armed forces…" At this point, the stalemate finally forced Allison to recognize that it was imperative to "obtain a White House directive" on this policy. He had the knowledge that "the President told Mr. Dulles that he was generally in sympathy with our approach to the problem of American troops in Japan after the Peace Treaty."[223]

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[222] The Assistant Secretary of State for Far Eastern Affairs (Rusk) to the Assistant to the Secretary of Defense for International Security Affairs (Nash), October 24, 1951, FRUS 1951, Vol. 6, 1382.
[223] Memorandum by the Deputy to the Consultant (Allison) to the Assistant Secretary of State for Far Eastern Affairs (Rusk), November 8, 1951, FRUS 1951, Vol. 6, 1394.

By the end of the year, President Truman himself intervened in the debate, and requested the State Department to assert the United States' right to exercise exclusive jurisdiction over criminal offenses committed by off-duty military personnel, civilian personnel, and their dependents under the condition that the United States would conclude an agreement on criminal jurisdiction similar to the NATO's upon its ratification.[224] On January 20, 1952, Secretary of State Acheson cabled Tokyo that "President has decided that NATO Formula is basis [of] US position on jurisdiction point. Will wish to discuss with you [Sebald] immed[iately] upon arrival ways and means of impression historical importance this decision upon Japan in order to enlist full cooperation on other aspects and in carrying out other share this burden."[225] The Japan-U.S. negotiations on the Administrative Agreement in early 1952, therefore, inserted a paragraph at the very top of Article 17 that stipulated: "Upon the coming into force with respect to the United States of the Agreement between the Parties of the North Atlantic Treaty regarding the Status of their Forces,' signed at London on June 19, 1951, the United States will immediately conclude with Japan, at the option of Japan, an agreement on criminal jurisdiction similar to the corresponding provisions of that Agreement."[226] The Japan-U.S. Joint Committee, stipulated by Article 25 of the Administrative Agreement, authorized the state elites to hold informal discussions on basing agreements without either informing or consulting with legislative bodies of the two countries.

In February, despite the clause intimating the adoption of the NATO model upon its ratification and the ruling Liberal Party's "little objection" to the draft of the Administrative

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[224] Aketagawa, *nichibei gyōsei no seijishi*, 194.
[225] Telegram 2019 from Acheson to Sebald, January 20, 1951, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo, Office of U.S. Political Advisor, Classified General Records, 1945-1952, Box 60, Folder: 320.1 BST January 1952, NARA.
[226] Japan and the United States of America, "Article XVII of the Administrative Agreement under Article III of the Security Treaty between the United States of America and Japan," came into force on April 28, 1952. The text is available at (http://www.ioc.u-tokyo.ac.jp/~worldjpn/documents/texts/docs/19510908.T2E.html), last accessed January 15, 2021.

Agreement, all the political parties began denouncing the Yoshida administration for having conceded the extraterritorial arrangements for U.S. armed forces, the civilian component, and their dependents in post-occupation Japan. In the midst of the Korean War, the Administrative Agreement and the prospect of Japan's rearmament dominated the Diet members' inquiries and debates. There is, no doubt, a link between the highly-publicized, nationwide debate about the Administrative Agreement throughout the year of 1952 and the emergence of postwar Japanese nationalism during this period.

Although the legislators were divided over the question of Japan's rearmament, what they had in common in their resistance to Article 17 was personal experience of being occupied by a foreign power. Left-Socialist Kobayashi Susumu recalled an encounter with a drunk GI punched him in the stomach in Ginza, Tokyo in 1951. Even though there was a police box nearby, Kobayashi had no confidence that the Japanese police would help him against a delinquent American soldier. "For a week, suffering pain in the stomach, I felt the despair of a defeated nation. There must be many people crying about small troubles like this, and the legislators must have similar experiences as well."[227]

Added to the landscape of foreign occupation was the stench of coloniality in Japan's new legal status in the world. Kobayashi compared it to U.S. jurisdictional arrangements for the Philippines in 1947. He argued in parliament that "even in the Philippines" the local authorities are authorized to exercise criminal jurisdiction over cases of off-duty GI crimes outside U.S. military bases. "We don't receive the level of treatment granted to the Philippines: Japan doesn't have jurisdiction over cases committed either on-duty or off-duty." Kobayashi criticized "the bureaucrats [who] know how to cling to power but lack the capacity to think for the national

[227] Henshūbu, "Gyōseikyōtei saigunbi wo meguru kokkai ronsō," *Chūōkōron*, April 1952, 80-81.

population." State Minister Okazaki dismissed Kobayashi's comparison as one-sided. He reasoned that U.S. authorities in the Philippines held the right to exercise jurisdiction inside large military bases regardless of the nationality of the victim, and in return Filipinos could exercise local jurisdiction over off-duty GI cases outside bases. In this exchange with Kobayashi, Okazaki stated flatly that Japan would have the freedom to choose either the current formula (U.S. exclusive jurisdiction) or shared jurisdiction formula when the NATO SOFA comes into force.[228]

On February 27, Sebald cabled Washington for his report on the growing Japanese opposition to the Administrative Agreement. "Early comment from Opposition unfavorable, generally critical, sometimes bitter." Progressive Reformist Party's Chief Miki, for instance, framed Article 17 as "subservient and disgraceful." Even "Upper House Ryokofukai, although generally satisfied with the Agreement as a whole, expressed dissatisfaction… contending NATO principle more appropriate for 'sovereign nation on equal footing.'" Sebald also commented that both the right and left wings of the Socialist parties opposed the Administrative Agreement because of their concern over the violation of sovereignty and equality between Japan and the United States. Further, the opposition parties' protest statement was shared with the State elites in Washington that read: "Government and its Party are secretly concluding agreement that restricts sovereignty of state and basic human rights of people. Moreover, they have used majority power force through budget bill which inseparably related to Administrative Agreement. This is dictatorial politics, ignoring Diet's right of deliberation."[229] Indeed, alarming for Washington was the opposition parties' accusation of constitutional disorder.

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[228] Henshūbu, "Gyōseikyōtei saigunbi wo meguru kokkai ronsō," *Chūōkōron*, 80-81.

[229] Telegram 1795 from Sebald, USPOLAD, Tokyo, to Secretary of State, February 27, 1952, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo, Office of U.S. Political Advisor, Classified General Records, 1945-1952, Box 60, Folder: 320.1 BST February 1952, NARA.

The tone and development of media reactions to the Administrative Agreement were also included in Sebald's analysis. "Although text of Agreement will not be released until tomorrow, editorial comment today on basis substantial leak yesterday almost universally adverse, suggesting press ready criticize for criticism's sake. Most criticism directed at criminal jurisdiction which some felt tantamount to extrality." And this growing dissatisfaction was exacerbated by "general feeling disappointment Administrative Agreement not brought before Diet for approval." Sebald acknowledged that "Some of frankest criticism came from Asahi which said 'There is not a clause in Agreement that reminds us of appearance of independent Japan. We recognize no evidence of Yoshida Government, which is high-handed in domestic administration but conciliatory in foreign relations, having tried protect our line of autonomy and independence." Sebald also mentioned the *Asahi Shinbun'*s reference to a robbery case committed by UN soldiers temporarily deployed for the Korean War.[230]

The "Senju Bank robbery," to which Sebald referred, became a highly publicized case. It occurred in mid-day Tokyo, at Fuji Bank, on February 19 when the state leaders were still negotiating arrangements for detailed provisions of the Administrative Agreement. The *Stars and Stripes* wrote on the day of the incident: "Japan had its most sensational band robbery in years."[231] It involved two French soldiers—one of whom was a deserter—and several Japanese collaborators. No one was hurt. Eventually, the French government retained the soldiers' custody, and only the Japanese were tried in Japan.[232]

In the wake of the incident, national newspapers and political magazines ran feature articles linking the incident and the controversial extraterritorial arrangements for the massive population

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[230] Telegram 1795 from Sebald, USPOLAD, Tokyo, to Secretary of State, February 27, 1952, NARA.
[231] Quoted in "Jīpu no sannin: Fuji ginkō gyangu jiken," *Shūkan Asahi*, March 9, 1952.
[232] "Eikoku suihei jiken (Kōbe) to kongo: Shakuhō ka jyukei ka o megutte kōron otsubaku," *Sunday Mainichi*, August 24, 1952, 10-13.

of U.S. military personnel, expected to be stipulated in the Administrative Agreement. *Shūkan Asahi* highlighted the great impact this incident had "not only in the Diet but also at banks and in town," where legal questions on cases involving foreign soldiers drew much public attention. Japanese civil society learned through this case that the Japanese police were not authorized to arrest UN soldiers without the presence of the police on the crime site and that their cases were beyond the reach of Japanese jurisdiction.[233] *Sunday Mainichi* also ran an investigative report entitled "The Administrative Agreement: How It Will Affect Citizens' Lives." The article reminded the readers that Allied personnel's criminal cases often resulted in the lack of compensation—"being burnt for nothing or being hit [via vehicle] for nothing"—throughout the occupation period. The article also referred to recent accidents of the U.S. military, such as a Boeing B-29 Superfortress' crash, which released bombs in the mountains. The position of the article, however, suggested that "The Administrative Agreement might be a necessary evil that makes the sky of independent Japan gloomy, not blue."[234]

Gradually, legal scholars came to intervene in the debate in the popular press and prestigious legal journals. The conservative legal journal *Tokinohōrei* took the position in March 1952 the analogy to nineteenth-century extraterritoriality was not accurate because unlike the system of consular jurisdiction, which exempted foreigners from Japanese law, post-treaty U.S. armed forces were legally subject to Japanese laws.[235] But the qualified definition of "extraterritoriality," which was echoed by the Justice Ministry,[236] did not gain support among the general public.

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[233] "Eikoku suihei jiken (Kōbe) to kongo: Shakuhō ka jyukei ka wo megutte kōron otsubaku," 10-13.
[234] "Gyōseikyōtei: Kokumin ni donna eikyō wo ataeru ka," *Sunday Mainichi*, March 16, 1952, 14-15.
[235] "Nichibei gyōseikyōtei no kaisetsu," *Tokinohorei* 54, no. Rinjizōkangō (March 1952), 1.
[236] "Gyōseikyōtei ni okeru saibanken no mondai nit suite," *Hōsōjihō* 4, no. 4 (April 1952), 174.

Rather, most legal scholars agreed with popular sentiment that Article 17 spelled the postwar U.S. military legal regime of exception. Through the media, they offered analyses of U.S. arrangements for the provisions of criminal jurisdiction in Europe and in the Philippines. The liberal legal scholar at Tokyo University Yokota Kisaburō became the most prominent figure in expressing his views on Article 17. Yokota argued that the U.S. granted its allies different levels of authority in exercising local jurisdiction over U.S. military personnel, with the U.K. retaining the greatest control followed by NATO countries, and then the Philippines. An outspoken supporter of the Japan-U.S. security relationship, Yokota urged that the Japanese government to demand the NATO model, or "at least the level granted to the Philippines."[237] Regardless of difference in attitude toward the U.S. military presence, legal scholars, just like others in broader society, saw Japan's legal status in light of the modern history of colonialism.

Japan's military dependency on the United States and the residents' collective demand for national liberation generated the public media's ambivalence toward the U.S. military presence on the eve of independence. An anonymous writer for a business magazine ventured that the Yoshida government could have fired State Minister Okazaki even for performance to show the public its resistance.[238] In other words, appearance was more important than substance. Similarly, *Shūkan Asahi* argued that the Liberal Party was constrained by its position in government, not its nationalist ideology. The Liberal Party would resist the Administrative Agreement "ardently and nationalistically" if it was an opposition party. "Whether it was fortunate or unfortunate, the Liberal Party was placed in the position to claim that such a humiliating Agreement… was built…

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[237] Yokota Kisaburō, "Beigunjin hanzai to gyōseikyōtei," *Shūkan Asahi*, March 9, 1952, 13.
[238] Unnamed editor, "Gyōseikyōtei o ronzu: Gyōseikyōtei ga dekirumade," *Keizai ōrai*, April1952, 52.

on respect and friendship… as equals."[239] Such a cynicism encapsulated the contradictions at the heart of Japanese nationalism in the early 1950s.

The State Department examined such a "new" political situation arising from the U.S. policy toward Japan. Acting Chairman of Allied Council for Japan Niles Bond put it this way in early April 1952: "Disillusionment result[s from] war and defeat combined with disarmament and anti-militarist sentiment attitude among Japs, which [was] strengthened by Korean stalemate, current Commie propaganda lines and increasing preoccupation problem of economic survival." He also noted that the U.S. armed forces were "becoming increasingly unpopular among most elements [of the] population. Strong criticism of Administrative Agreement continues, particularly with regard [to] jurisdictional features interpreted as extrality." The combined impact was the Japanese people's changing attitude toward the Japan-U.S. relationship. Bond further wrote:

> Considerable feeling prevails Peace Treaty mere blind behind which Security Treaty and Administrative Agreement stalked. While bulk population appear presently resigned to situation, certain key elements including intellectual leadership becoming restive and increasingly receptive anti-American Commie propaganda. In consequence foregoing, increasing public criticism Yoshida cabinet as "puppet" of US noted… Opposition parties' view Admin Agreement should be submitted Diet and related charges of "secret diplomacy" against Yoshida cabinet gained wide popular support.

Bond also noted that "labor, intelligentsia and other liberal elements once most friendly to US have been considerably alienated by necessity subordinate democratic reforms to demands of security against Communism and to such elements repeated statements re achievements Occupation now have hollow ring." Neutralism was spreading "in most segments of Jap[anese] society, but particularly noticeable among business interests, intelligentsia, youth and women's groups."[240]

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[239] Kondō Hidezō, "Koredakewa kokoroe raretai gyōsei kyōtei no oboechō," *Shūkan Asahi*, March 1952, 11.
[240] Telegram 2120 from Niles Bond to Secretary of State, April 4, 1952, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo, Office of U.S. Political Advisor, Classified General Records, 1945-1952, Box 59, Folder: 320 United States-Japan 1951-1952, NARA.

Given this political dynamism, Bond called on his colleagues to acknowledge that "Not only can we no longer count on authority of Occupation regime of control to obtain our way with Japs, but we must reconcile ourselves to realization that US desiderata will no longer constitute frame of reference within which Jap policies will be formulated. This can be expected true if Yoshida Govt and Liberal Party survive next gen election, but even more true if opposition party less sympathetic to US objectives should gain power..." And thus, "question of survival of Yoshida Government may in large part depend upon extent to which we successful in adjusting to this new situation."[241] Japan was about to regain its status as a sovereign nation at this decisive moment for U.S. policy elites. As Bond foresaw the vital task of negotiating with and containing the growing neutralist trends, revision of Article 17 of the Administrative Agreement would come to serve as a litmus test for the "question of survival of Yoshida Government."

After the Allied Occupation: Anti-Colonial Nationalism and Japanese Resistance to Article 17 of the Administrative Agreement

On 28 April 1952, the San Francisco Peace Treaty, the Japan-U.S. Security Treaty, and the Japan-U.S. Administrative Agreement came into effect simultaneously. With facilities and areas available for the basing numbering 2,824[242] and over 185,000 GIs stationed across the Japanese archipelago in 1952, the landscape of colossal U.S. military presence blurred the demarcation line between the occupation period and thereafter. GI crime, prostitution in base towns, and the "mixed

[241] Telegram 2160 from Niles Bond to Secretary of State, April 9, 1952, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo, Office of U.S. Political Advisor, Classified General Records, 1945-1952, Box 59, Folder: 320 United States-Japan 1951-1952, NARA.

[242] Hayashi Hirofumi, *Beigunkichi no rekishi-Sekai netowārku no keisei to tenkai* (Tokyo: Yoshikawahirofumi kan, 2012), 108.

children problem" signified the continuation U.S. domination. According to the Japanese Ministry of Defense's records, 5,985 (1,518 on-duty and 4,467 off-duty) criminal cases, which led to 114 deaths in total, were committed by U.S. military personnel in 1952 alone. In 1953, the total cases reached 7,010, with 2,099 on-duty and 4,911 off-duty cases.[243] These numbers, however, do not reflect those cases which did not meet the requirements for official compensation.

Between this immediate aftermath of the occupation and early 1953, nationalism, anti-colonialism, "anti-Americanism," and neutralism invigorated by the debate on Article 17 led to Prime Minister Yoshida' declined popularity both within his own party and in the Diet, as evidenced by two general elections. Instead, two socialist parties—yet Leftist Socialist Party in particular—gained popularity. In June, a *Mainichi Shimbun* reporter wrote: "As far as I know, young intelligentsia, either men or women, feel no attraction to the Liberal Party. It is because the Liberal Party does not have a well-reasoned body of theory to appeal for the young intelligentsia. The Liberal Party's absolute majority would fall apart and show its vulnerability more easily than expected when these young intellectuals become the central force in society."[244]

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[243] The total number of crimes committed by U.S. military personnel stationed in Japan since the occupation (1945-1952) is unknown. Nonetheless, official data released by the Japanese government in recent years help us visualize the scale. According to the data submitted by the Ministry of Defense to a member of the House of Representatives, Akamine Seiken, the total number of cases—including both crimes and accidents—that were caused by on-and-off-duty U.S. military servicemembers in Japan between 1952 and 2013, and that have elicited the Japanese government's consideration of compensation to the victims or their families, is 209,577. The number of deaths incurred by these cases is 1,090. Those figures, as well as the amount of compensation paid to the victims and their families, listed in the same statistical data, have been tracked since 1952. The Defense Ministry, however, specifies in this record that the number of cases indicated in the list does not include those who did not enlist consideration of compensation. Furthermore, this record does cover those cases that had been committed in Okinawa until its reversion to the Japanese sovereignty in 1972. More specifically, of the above 209,577 cases, 49,101 cases were caused by on-duty service members, and 160,476 (approximately three times higher than the former number) by off-duty service members. The Ministry of Defense, Japan. *"Beigun jiko nitsuite nendo betsu, koumujyou-gai betsu kensuu. Shibousha, baishoukin, showa 27-heisei 25 nendo"* 2014. All the official records were provided to the author by Takeuchi Makoto, the secretary of Akamine, on July 10, 2014.

[244] "Itsutsu no fushin Yoshida shushō e no kōkaijyō," *Sunday Mainichi*, June 29, 1952, 4.

To be sure, the Liberal Party's precarious status was tied not only to the stalemate of the Korean War, as Bond noted, but also to the emergence of anti-colonial discourse and attitude toward Yoshida diplomacy in the public sphere. In the first months after the occupation, intellectuals' intervention diversified historical perspectives on Article 17. The fullest exercise of the freedom of speech was ensured by the post-occupation political environment ready to provide a forum to condemn racism, sexism, violence, and uncompensated victimhood that the occupied endured under the U.S. military legal regime of exception.

Above all, Marxist scholars' positioning drew public attention, owing to major political periodicals' circulation of their essays quite openly. During this period, the Japanese Communist Party was losing popularity due to the sectarian politics and adventurist influence. Yet outspoken Marxist intellectuals had been engaged in peace activism with liberals since before independence. On the question of Article 17, they located Article 17 within global histories of colonialism. Marxists' focus was placed on which aspects and periods of colonial history could be utilized to analyze it through the lens of historical materialism. Not to mention, they all called for diplomatic and military independence from the United States.

Legal scholar Hirano Yoshitarō referred to the U.S. jurisdictional arrangements for the Philippines and the invoked the analogy of the unequal treaties just like many other opponents of Article 17. He argued that extraterritoriality secured by the nineteenth-century unequal treaties was applied for a much smaller population of Western merchants, who were authorized to live in designated areas. The contemporary situation was more urgent in that over one hundred-thousand foreigners, including military personnel and their families, could be protected under the U.S. legal regime.[245] Historian Inoue Kiyoshi stressed the importance of reading Article 17 with a more

[245] Hirano Yoshitarō, "Kanashimu beki dokuritsu," *Keizaiōrai*, April 1952, 15-16.

recent history of Japanese colonialism: He proposed to compare Article 17 with the 1932 Japan-Manchukuo Protocol rather than the unequal treaties.[246] Philosopher Tanaka Kichiroku synthesized Inoue's analysis with an observation of U.S. neocolonialism. He argued that postwar Japan's trajectory paved by the Peace Treaty, the Security Treaty, the Administrative Agreement, and remilitarization would not only deny national independence but also revive fascist adventurism ironically serving U.S. monopolist capital. Tanaka maintained that "such a tragedy must be rescued by the Japanese themselves."[247]

On the repetitions of extraterritoriality in global history, legal scholar Nakamura Akira, who later became a unified Socialist Party's legislator, also invoked the historicity and tenacity of the arbitrary logic of civilization. With his attention to the ideological underpinnings of Article 17, Nakamura drew on U.S. diplomat Caleb Cushing's imposition of extraterritoriality on nineteenth-century China. Nakamura asserted that extraterritoriality was justified under the name of protecting American citizens' lives and liberties and on the ground that China was a "un-Christian barbaric nation." Before "the revival of extraterritoriality" abolished a century earlier, Nakamura encouraged fellow Japanese to recognize the coexistence of two legal orders in early-1950s Japan: one basing on the newly adopted Japanese Constitution and the other basing on the San Francisco Peace Treaty.[248] Later, the assertion would be elaborated by Hasegawa Masayasu's prominent "two-legal orders theory (futatsu no hōtaikei ron)."

Marxists were not the only caustic anti-colonial critics of Article 17. Among them was the prominent ultranationalist legal scholar Ninagawa Arata, who had the experience of attending the 1919 Paris Peace Conference and the 1921-22 Washington Naval Conference, and was later

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[246] Quoted in Tanaka Kichiroku, "Minzoku no dokuritsu to saikin no shakai shichō," *Keizaiōrai*, May 1952, 67.
[247] Tanaka Kichiroku, "Minzoku no dokuritsu to saikin no shakai shichō," *Keizaiōrai*, 62-66.
[248] Nakamura Akira, "Shuken to dokuritsu dokuritsugo no kokuhōtaikei no kihonmondai," *Hōritsujihō* 24, no. 7 (July 1952): 579-582.

purged from the occupation authorities. Ninagawa contended that the Yoshida administration's "presentation of extraterritoriality unprecedented in history allowed a U.S. empire to emerge in the Japanese territory."[249] Defining Japan's legal status as a semi-colonial state reduced to the United States' military protectorate, Ninagawa denounced the Liberal Party's abandonment of racial equality and cession of sovereign Japan's diplomatic authority. He called for Japan's rearmament, the recovery of diplomatic relationships with the Soviet Union and China, and independence from the United States.[250]

In this emergent intellectual context where the Left and Right found s shared political agenda to attack the Yoshida government, Yokota Kisaburō elaborated on his earlier take on the jurisdictional agreements. As a modernist, he attributed the level of controversy attached to Article 17 to the nature of criminal jurisdiction recognized in modern society as one of the most essential functions of a sovereign nation. He also pointed out that added to the inevitable linkage between criminal jurisdiction and sovereign power was special impact crime had on society: "Crimes draw ordinary people's attention and stimulate their emotions…" Building on this premise, Yokota reiterated his endorsement for the NATO SOFA formula, for it was "more of a *modern* standard" in the postwar world. The inclusion of U.S. military employees' dependents was not authorized under the NATO SOFA, given that "their crimes would be irrelevant to military duties." Yokota believed that U.S. basing in Japan and the revision of Article 17 could be compatible, and that reversion was a precondition for the durability of the Japan-U.S. relationship.[251]

Honda Seigi, a former prosecutor who had served at the Japanese consulate in Beijing, refrained from taking an unequivocal position on Article 17, but explicitly noted the inevitable

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[249] Ninakagawa Arata, "Handokuritsu kara dasshutsu suru michi," *Keizaiōrai*, June 1952, 17.
[250] Ninakagawa, "Handokuritsu kara dasshutsu suru michi," 16-29.
[251] Yokota Kizaburo, "Kokusaiteki ni mita gyōsekyotei," *Tokinohōrei* 100 (Mid-June 1953): 13-15.

links between personal jurisdiction, extraterritoriality, and colonialism. Honda reflected on his experience in semi-colonized China of having provided legal assistance to save a Japanese national, whose wife had received a severe sentence at a Chinese court. Eventually, his assistance ended in vain because the Chinese legal authorities believed in their own interrogation and investigation as much as Honda did with the Japanese. "It may be the nature of human empathy, regardless of one's race, to place greater trust in assertions made by one's own race than those made by others." Honda asserted that the adoption of Article 17 would imply de facto extraterritoriality for Japan.[252] The tension between imperialism and anti-imperialism emerged in the intellectuals' debate, as did on the question of Japan's rearmament. Yet the debate of Article 17 crystalized their consensus on anti-colonialism. The specter of "extraterritoriality" was increasingly framed as a real thing rather than an illusion.

Given the ideological context surrounding Article 17, the possibility of a "united front" between labor and business was intimated in the spring of 1952. Leader of the largest labor union *Sōhyō* (General Council of Trade Unions of Japan) Takano Minoru offered his reading of the time that the political climate for the Yoshida administration was so severe that Washington might seek a different national leader. As a prominent organizer engaged in both labor and peace activism since before independence, Takano called for the mobilization of Japan's national united front while seeking international solidarity. For concrete actions, he urged the Labourers and Farmers Party and Left Socialist Party to maximize this unusual political momentum to be more involved in grassroots organizing.[253] A year later, Vice President of Japan Business Federation Uemura Gorō maintained that Article 17 was not a pure economic problem, and thus the Federation did not

[252] Honda Seigi, "Gyōsei kyotei to keiji saiban ken," *Hōritsu no hiroba,* May 1952, 5, 36.
[253] Takano Minoru, "Gyōseikyōtei to rōdōsha kaikyū," *Shakaishugi* 11 (April 1952): 2-7.

include the article into its demands for the revisions of the Administrative Agreement. Yet he added that under this particular climate where the Japanese' "emotional reactions could influence the economic partnership between Japan and the United States," Article 17 could be recognized as an economic problem.[254] Uemura's statement suggested the degree of influence the protest movement came to exert on the Japanese business circles.

Synchronizing with the discussion of Article 17 was the popular media's coverage of base issues. In May, *Shūkan Asahi* carried an article entitled "One Thing to Tell the U.S. Military in Japan for the Future Relationship." In this feature article, diverse individuals, including writers, critics, a politician, scholars, a musician, animation artist, an actress, chief editor of the *Nippon Times*, secretary general of *Sōhyō*, and public safety commissioner, expressed their perceptions of the occupation forces, namely things they liked and disliked about them. Positive commentary referred to movies, manufactured goods, respect for women, GIs donating money to injured former Japanese soldiers on the street, the new Constitution, democratized labor laws, a GI who left his uniform over a woman who committed suicide, and GIs giving a seat to an elderly woman on the train. [255]

While the positive commentary indicated the interviewees' admiration for "American" culture and recognition of the United States' status as a democratic nation, the negative commentary projected contradictory perceptions. Most dealt with each individual's experience of witnessing or being the subject of racial discrimination, violence, and sexism. "I've seen twice a man who was carrying a heavily loaded cart hit by a GI who drove a jeep." "Drunk U.S. officers forced everyone on the train to stand up." "A GI began hitting a prostitute repeatedly all of a

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[254] Uemura Kōgorō, *Tokinohōrei* 100 (June 13, 1953): 18.
[255] "Zainichi beigun ni hitokoto," *Shūkan Asahi*, May 1952, 3-11.

sudden." "A GI grabbed a small elderly bus driver by the lapels when the driver said something with an intimidated look [to caution about the GI's behavior]." "A GI forced me to stand up and my wife to sit down on the train although I was the one who was sick." "A GI peed on a girl." "The MP didn't trust me and demanded non-Japanese evidence when I asked a local watch shop owner to repair a watch I had bought in Switzerland."[256] Along with these comments, the interviewees' requests for the U.S. military included the revision of the Administrative Agreement. Some demanded the complete withdrawal of U.S. armed forces while one interviewee called for the removal of U.S. bases out of Tokyo. It is important to remember that the U.S. elites in Tokyo also proposed the transfer of U.S. military bases to those areas they perceived as periphery in October 1951. In this sense, the seeds of the Japanese perceptions of periphery and the logic of spatial ordering of base burden resonated with the U.S. elites' already in the early 1950s.

The mounting anti-U.S. military presence sentiments and ongoing anti-colonial critiques of Article 17 generated outcry for territorial sovereignty when the public learned about two British sailors' robbery and wringing of a taxi driver's neck which occurred in Kōbe on June 29. The incident generated an outcome that the Yoshida administration had not expected. The prosecutors' quick indictment of the British sailors and Kōbe District Court's pronouncement of a two-and-half-a-year sentence on August 5 caught the Yoshida cabinet and the British authorities by surprise. The general election was scheduled to be held on October 1. In the wake of the incident, the press reported on British Foreign Minister Anthony Eden's protest letter, which contained Prime Minister Yoshida's confidential letter to U.S. Ambassador Robert Murphy sent in May. It confidently confirmed the transfer of the custody of UN military personnel to the individual countries' prosecutorial authorities upon the occurrence of a criminal incident until Japan and the

[256] "Zainichi beigun ni hitokoto," *Shūkan Asahi*, 3-11.

UN members conclude jurisdictional agreements. It turned out later that the local legal authorities had not been informed of the existence of Yoshida's letter. The Assistant Police Inspector told the press that even though the British authorities had demanded the sailors' custody at the time of the arrest, he had insisted that it be dealt with at a Japanese court, for it would become a critical model case. Prosecutor Yukawa commented: "The prosecutors were most cautious in dealing with this case. We waited for the Supreme Public Prosecutor's agreement to indict them. Isn't the problem on the side of the British authorities still treating Japan like an occupied nation, and not even recognizing our criminal jurisdiction?" Judge Ogawa, who gave the sentence, maintained: "I am convinced that the fairest court proceedings were provided. Regardless of Anglo-Saxon laws, a Japanese court makes its own judgment based upon Japanese laws."[257]

This time the leading conservative intellectual Ninagawa Arata's take on the incident did not resonate with the mainstream, but his theory was proven coherent. "The British Foreign Minister's request for the same privilege granted to another nation was legitimate, given that Japan had made itself a semi-independent state with the Security Treaty. The Japanese government abandoned the right to equality. We must accuse the Japanese government's illegitimate diplomacy."[258] It became clear that Ninagawa's take on extraterritoriality recognized the legitimacy of imperial sovereignty as long as one had it. On the other hand, the *Asahi Shimbun* reporter was more ambivalent in interpreting this phenomenon. With the knowledge of the British citizens' opposition to U.S. efforts to maximize jurisdiction over off-duty incidents in Britain, the journalist analyzed that the U.S. authorities were urged to save the face of the British, thereby securing British extraterritoriality in Japan. Further, the Japanese government was expected to

[257] "Eikoku suihei jiken (Kōbe) to kongo: Shakuhō ka jyukei ka o megutte kōron otsubaku," 10-13.
[258] "Eikoku suihei jiken (Kōbe) to kongo: Shakuhō ka jyukei ka o megutte kōron otsubaku," 10-13.

receive "the most favored nation status" in participating in the General Agreement on Tariffs and Trade (GATT).[259] The journalist essentially shared Yoshida's dilemma. With such voices explicitly or implicitly leaning towards endorsement for imperial sovereignty, broader civil society created a political atmosphere resembling nineteenth-century Japan with the "Revere the Emperor, Expel the Barbarians" campaign, as another *Asahi Shinbun* reporter put it.[260]

Amidst the campaign period for the October general election, the Yoshida administration endured severe criticisms over the issue of extraterritoriality. In this context, all the political parties, including Yoshida's ruling party, demanded the revision of the Administrative Agreement. The Liberal Party's Sase Shōzō asserted that the adoption of the NATO SOFA was "only natural" under the current international law and from the perspective of the Japanese people's "emotional" attitude toward rampant GI cases.[261] The Progressive Reformist Party's Nakasone Yasuhiro, best remembered for "Ron-Yasu" friendship with U.S. President Ronald Regan when he held prime ministership (1982-1987), argued that the Yoshida administration's submission to the British and U.S. authorities revealed Japan's subordinate status in the world, acting like "Korea before Japan's annexation in 1910."[262] The Right Socialist Party's Tokano Satoko admitted that her party had compromised pacifist ideals for the Cold War rationale. Nevertheless, she asserted the significance of protecting territorial jurisdiction for the sake of Japan's historical struggles for sovereign statehood. "Toward the end of the Edo period, Ii Naosuke [who concluded the first unequal treaty with the U.S. in 1858] saw the bloody ending of his life… having been charged with coward diplomacy. Even in the Meiji period, [then Foreign Minister] Okuma Shigenobu left his leg

[259] "Kōbe 'suiheijiken' no haikei Eden eigaishō no kangaekata," *Shūkan Asahi*, August 24, 1952, 16-17.
[260] "Shokan gaikō wo shikaru ei suihei jiken wa naze motsureta ka," *Shūkan Asahi*, September 7, 1952, 16-17.
[261] "Kakutō no taido wa dō ka," *Nihonshūhō*, September 5, 1952, 30-32.
[262] "Kakutō no taido wa dō ka," *Nihonshūhō*, 32.

because of … the controversy over extraterritoriality. Many tragedies and sacrifices have been paid for the nation's acquisition of real independence."[263]

The Left Socialist Party's Katsumata Seiichi urged the general population to look beyond Article 17 and ask more broader questions on Japan's security relationship with the United States. "Though the Liberal Party, Progressive Reformist Party, and Right Socialist Party are… focusing their attention on the criminal jurisdiction provisions, it would be naïve to think that the essential problem lies in the question of whether we should adopt the UN SOFA or not… We have to pay greater attention to the fact that the Administrative Agreement is making overall peace between Japan and its Asian neighbors impossible. Further, because of this Agreement Japan must be thrown amidst the conflict between the two superpowers… [T]he possibility of being forced to be involved in a war in Asia will always be *the* threat to Japan." His reasoning was that the Security Treaty, whose Article 3 authorized the adoption of the Administrative Agreement, must be abrogated to abolish extraterritoriality.[264]

The Japanese Communist Party also demanded the abandonment of the Japan-U.S. Security Treaty, not to mention Article 17. Its monthly magazine *Zenei* published a list of provisions of the Administrative Agreement that the Communist Party understood to be violating Japan's sovereignty and constitutionalism. It argued that the level of legal privileges granted to U.S. military personnel, the civilian component, and their dependents was unprecedented on the global scale. "If the Japanese accept this Article, American military personnel may claim self-defense [at a court martial] and receive no criminal charges, as had been the cases of consular

[263] "Kakutō no taido wa dō ka," *Nihonshūhō*, 33.
[264] "Gyō seikyotei wa dōnaru ka," *Sunday Mainichi*, 15.

jurisdiction."[265] The Communist Party joined this nationalist protest movement, but prioritized the theoretical take of analyzing and abolishing the Security Treaty.

By this time, all the political forces' attitudes toward Article 17 came to center on racial equality, territorial sovereignty, national independence, and constitutional democracy. What appeared to be missing from the Japanese positioning on the postwar U.S. military legal regime of exception was the protection of universal human rights—namely the international protection of individuals rights including the right to life and safety and equality before the law—as a political demand. President of Japan Federation of Bar Associations (*Nihon bengoshi rengōkai*) Nagano Kunisuke argued that voices calling for the protection of human rights were hardly seen in the ways in which the Japanese dealt with GI crime. This was even in places like Kure City in Hiroshima where UN soldiers' crime rate was particularly high. The government did not take any measures to solve the problem, and the victims gave upon holding the criminals accountable in the meantime.[266]

As a matter of fact, it was not that the phrase "human rights" never appeared in the public sphere and the Diet. Yet, as historical sociologist Oguma Eiji has articulated the limits of early postwar Japanese nationalism shared by both the right and the left, leftists' criticism of the right still did not depart from an understanding that the nation-state constituted the basis of the individual's political belonging.[267] It made the imagination of the rights of marginalized others,

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[265] "Nihon kokumin wa gyōsei kyōtei haiki no tameni tatakau," *Zenei*, May 1952, 75-81.

[266] Nagano Kunisuke, "Nihon kokumin no jinken wo Kurālku (Clark) taishō ni uttaeru," *Keizaiōrai*, October 1952, 67-68.

[267] For extended discussion on and empirical inquiries into the subject, see: Oguma Eiji, Tanitsu minzoku shinwa no kigen (Tokyo: Shinyō sha, 1995); Oguma Eiji, *"Nihonjin" no kyōkai: Okinawa, Ainu, Taiwan, Chōsenshihai kara fukki undo made* (Tokyo: Shinyōsha, 1998); Oguma Eiji, *Minshū to Aikoku: Sengo nihon no nationalism to k*ōkyōsei (Tokyo: Shinyōsha, 2002). For Oguma's monographs published in English, see: Eiji Oguma, *A Genealogy of Japanese Self-Images* translated by David Askew (Melbourne: Transpacific Press, 2002); Oguma Eiji, T*he Boundaries of the Japanese, Volume I: Okinawa 1818-1972—Inclusion and Exclusion*, translated by Leonie R. Stickland (Melbourne: Transpacific Press, 2014); Oguma Eiji, *The Boundaries of the Japanese: Korea, Volume II: Taiwan and the Ainu, 1868-1945,* translated by Leonie R. Stickland (Melbourne: Transpacific Press,

especially outside the borders of Japan, but also within "Japan" as an imagined community, difficult.

In this sense, progressive lawyers' joint protest statement on the Administrative Agreement—with their premise that the Administrative Agreement was "constraining constitutional democracy and human rights—was historically significant. In a joint statement compiled by over thirty attorneys in April 1952, the Japanese Lawyers Association for Freedom (*Jiyū hōsōdan*) called on the Yoshida cabinet to revoke the Administrative Agreement that "violated" the newly adopted "Constitution and human rights." The Association's underlying assertion was that "Not to mention the rights of fundamental human rights of our nation, social effects of the Agreement in each field—politics, economy, and laws concerning [national] finance—are too broad to be authorized only by Article 3 of the Security Treaty that did not provide detailed agreements on U.S. basing in the text." Further, the Diet, authorized as "the highest organ of state power" in the Japanese Constitution, did not participate in the negotiations over the Administrative Agreement. The statement did not repeatedly employ the phrase human rights, but the criticisms of Article 17 and other provisions centered on deprivation of the rights of the geographically, legally, or/and politically marginalized: residents who lived adjacent to bases and maneuver areas, victims of GI crime, and political dissents, for instance.[268]

Mobilizing these lawyers' collective initiative, the Japan Federation of Bar Association under the leadership of Nagano established a special committee to investigate the state of problems arising from UN military personnel's incidents. In August, the committee submitted letters of protest and petition "from the standpoint of the protection of human rights of the victims" to the

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[268] Jiyū hōsōdan kanjikai, "Anzen hoshō jyō yaku ni motozuku nitibei gyōsei kōtei ni taisuru ikensho," *Rōdōhōritsujyunpō* 90 (April 1952): 2-3, 10.

Prime Minister, Justice Minister, Attorney General, and Commander of the United Nations Command Mark W. Clark. Nagano commented that Clark's reply was sincere unlike the attitudes of the Japanese leaders who ignored their letters, and that the social repercussions of the lawyers' letters were "effective."[269]

The shift of the political tide in the immediate aftermath of the Allied occupation was well felt on the ground. In September 1950, in the wake of the Korean War, 55 percent supported pro-U.S. diplomacy as opposed to 22 percent who advocated for neutralist diplomacy. In June 1953, however, the pro-U.S. population dropped to 35 percent and the pro-neutralist population raised to 38 percent. In May 1952, a month after Japan's independence, 48 percent of the Japanese population endorsed U.S. military presence, as opposed to 20 percent who did not. In June 1953, two months before the revision of Article 17, the ratio completely reversed: 53 percent opposed American military presence while only 27 percent supported it. In the general election held in October, the Yoshida's ruling party barely maintained half of the seats at the House of Representatives with the loss of 43 seats (dramatic decrease of the ratio from 61 to 52 percent). Further, 64 members of the Liberal Party created a sect under the leadership of Hatoyama Ichiro after the election. Instead, opposition parties increased their influence—albeit with significantly distinct ideological traits—materialized by the Progressive Reformist Party's 89 seats and the Right and Left Socialist parties' 116 seats. Evidently, the debate of Article 17 gradually nurtured anti-colonial consciousness among the postwar Japanese, weakening the centrists' support for the embryonic Japan-U.S. security relationship even less than half a year since Japan's restoration of sovereignty.

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[269] Nagano, "Nihon kokumin no jinken wo Kurālku (Clark) taishō ni uttaeru," 67-68.

The Making of the 1953 Confidential Agreement

Given the radically changing political landscape in Japan, State and Defense elites in Washington began concerted efforts to shift the tide. The State Department's draft of "Information Operational Plan Concerning U.S. Personnel in Japan,"[270] dated November 19, discussed the ways in which the U.S. agencies could defuse growing nationalism in post-occupation Japan. The drafted plan indicated that State elites in Washington were less interested in tightening military discipline or reducing the number of criminal cases that fell into the U.S. jurisdiction than altering technical responses in dealing with the problem. The U.S. Embassy staff in Tokyo did not participated in crafting the draft because they received it "too late to permit careful examination or discussion with FEC (Far East Command)."[271]

Two underlying assumptions were employed to craft plans for solutions: a) military's conflicts with the locals as a normal trend and b) the enduring impact of racial and cultural differences. "It is obvious that whenever military forces of any nation are stationed upon the soil of another, problems are created in the relationship of the military forces, their civilian employees, and dependents, to the local population… This is particularly true in the case of U.S. personnel in Japan because many of the political and social forces at work in the situation are not conductive to harmony and because common denominators of race, language, religious, and cultural patterns between these personnel and the native population are almost non-existent."[272]

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[270] The Department of State, POC D-38/2a (Draft), "Information Operational Plan Concerning U.S. Relations in Japan," November 19, 1952, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1953-1955, Box 13, Folder: 320 Japan-United States, NARA.
[271] Letter from William T. Turner, Counselor of Embassy and Deputy Chief of Mission, American Embassy, Tokyo to Commander-in-Chief, Far East, January 7, 1953, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1953-1955, Box 13, Folder: 320 Japan-United States, NARA.
[272] The Department of State, POC D-38/2a (Draft), "Information Operational Plan Concerning U.S. Relations in Japan," NARA.

Building on the convenient generalization of civil-military relationships and the racialist and essentialist particularization of the Japanese, the Departments of Defense and State were already coordinating efforts to solve "the problem of acceptance of U.S. personnel in Japan" in the fields of diplomacy and intelligence. On the diplomatic level, the State officials "have attempted in appropriate ways to encourage the Japanese Government to make explanations as required and to undertake other actions on a continuing basis which would serve to reduce public misconceptions as to the mission of our personnel and which would otherwise contribute to a harmonious relationship between the Americans and the Japanese people." Inevitably, because "the problem of acceptance" appeared to be attributable to the Japanese "misconceptions," policy emphasis was placed on publicity. To that end, "all agencies concerned have sought to emphasize and exploit the favorable and deemphasize the unfavorable factors in the situation created by the presence of our people in Japan."[273]

The Defense Department's "similar" initiatives were also taking place. "Quarters and offices have been moved away from urban centers; the military personnel are encouraged to wear mufti when off-duty; many military vehicles have been painted black." These were, however, "only a few of the long list of other actions" having been taken by Defense authorities already. Nevertheless, the State Department argued that the "genuine attempts" made by various U.S. agencies in Japan failed to solve the "acceptance problem" because of the lack of the Japanese government's "full cooperation." For the State policy efforts, the most "ideal" shift to combat this problem was obvious, that is "the Japanese Government… carrying on an extensive public

[273] The Department of State, POC D-38/2a (Draft), "Information Operational Plan Concerning U.S. Relations in Japan," NARA.

relations program at all levels designed to persuade the public to understand and accept the presence of our personnel on Japanese soil."[274]

With the analyses mentioned above, the interdepartmental guidance took the position that the high rate of GI crime was not a structural problem of U.S. military justice that required reforms. Nor was it suggestive of a failure of the post-treaty U.S. policy on Japan per se. Notably, one of the publicity related instructions encouraged the involved U.S. agencies to project the image of American soldiers as "highly trained, well equipped, and efficiently led." The "CAUTION," however, suggested that "We should avoid any implication that all U.S. soldiers are angels. There are always a few who become drunk and rowdy on strange potions, just as there are among any civilian population. It would be well to treat this situation with humor, to appeal to understanding of others who have served in uniform, and develop a feeling camaraderie among old soldiers and new."[275] The intimation about to be shared among U.S. officials was that the locals' encounter with GI crime and their failed attempts to seek legal justice and proper compensation did not require policy reforms, and the delinquent GIs' problem could rather be taken with "humor."

Further, the instruction emphasized higher-ranking officers' ability to "understand" the locals and capability to "cooperate" with local Japanese leaders. The image of civility projected here was contrasted with "few" delinquent soldiers' superior officers who were "seasoned" and "professional" in "approach[ing] their jobs with assurance, with understanding of the people of the area in which they are stationed, aware of the need for cooperation with other U.N.C. [United Nations Command] military forces and with the governments of the countries where our forces are stationed." More specifically, the PR campaign aimed to emphasize "[p]unishment for crimes

[274] The Department of State, POC D-38/2a (Draft), "Information Operational Plan Concerning U.S. Relations in Japan," NARA.
[275] The Department of State, POC D-38/2a (Draft), "Information Operational Plan Concerning U.S. Relations in Japan," NARA.

committed by American forces is swift." And yet "[m]ention of legal punishment should be avoided if it needlessly publicizes a crime. Where civilians have already been aroused by a criminal act, attempt to localize publicity in a village, town, or an area by announcement from military sources."[276] In November 1952, the State preparations for the interdepartmental guidance on "the problem of acceptance" of UN armed forces made it clear that these high-ranking U.S. officials who were supposed to have a deep "understanding of the people of the area" did not have concrete plans to prevent further abuses of human rights other than blaming the Yoshida administration's administrative skills and defusing opposition movements with PR campaigns.

The following year, 1953, saw the materialization of the PR campaigns to promote the acceptance of over 185,000 U.S. military personnel stationed in Japan.[277] On January 9, 1953, State officials in Tokyo instructed U.S. consulates in Yokohama, Kobe, Nagoya, Fukuoka, and Sapporo to engage in activities outlined in the guidance entitled "Psychological Task Number One: Maintain and Strengthen Japanese Acceptance of U.S. Security Forces." By this time, some field officers had already initiated activities with local armed forces commanders and Japanese officers, which Tokyo Embassy lauded as resulting in "a considerable measure of success." In a letter addressed to all the consulates in Japan, the Embassy encouraged them to "assume the [local Japanese officials'] greatest possible degree of initiative and responsibility in regard to explaining to their own people the necessity for the stationing of United States forces in Japan." The Embassy also stressed the necessity of collaboration with military leaders in each designated area: "Liaison should be established (or continued) on a friendly and informal basis with local commanders of armed forces personnel to insure [sic] their fullest understanding and cooperation."[278] The

[276] The Department of State, POC D-38/2a (Draft), "Information Operational Plan Concerning U.S. Relations in Japan," NARA.
[277] Hayashi, *Beigunkichi no rekishi*, 127.
[278] American Embassy, Tokyo to Consular Division of American Embassy, Tokyo; American Consulate General

guidance covered a wide range of areas where they could exert further influence to promote better images of U.S. military personnel: 1) collaboration with the U.S. Armed Forces on troop instruction, public relations, etc.; 2) press and publications; 3) mopix (i.e. movies); 4) radio; 5) cultural centers; and 6) general (such as academic exchanges, collaboration with grassroots organizations, and education of the Japanese employees of U.S. Information Service on U.S. policy).[279]

While the PR campaigns for the acceptance of U.S. military personnel were under way to counter the volatile political atmosphere across the Japanese archipelago, the Yoshida administration announced on February 6 to seek the revision of Article 17 in the Diet if the U.S. Senate did not to ratify the NATO SOFA by April 28, the date the Administrative Agreement came into effect the previous year. On February 11, Murphy reported to Washington: "Prog[ressive Reformist] and Socialist interpolators in Diet have at present session sharply criticized Security Treaty and Administrative Agreement as unequal, even Socialists going so far as to say Japan [was being] reduced to colonial status." Further, he noted that the Progressive Reformist Party adopted on February 9 a "policy program calling for revision of 'one-sided' Security Treaty," not to mention the application of the NATO formula to the Administrative Agreement. Murphy warned that the House of Councilors' election on May 5 would renew Japanese civil society's attention to Article 17.[280]

(Yokohama); American Consulate General (Kobe); American Consulate (Nagoya); American Consulate (Fukuoka); American Consulate (Sapporo), "Operations Memorandum," January 9, 1953, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1953-1955, Box 13, Folder: 320 Japan-United States, NARA.

[279] American Embassy, Tokyo, "Psychological Task Number One: Maintain and Strengthen Japanese Acceptance of U.S. Security Forces," January 9, 1953, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1953-1955, Box 13, Folder: 320 Japan-United States, NARA.

[280] Telegram 2606 from U.S. Embassy, Tokyo (Robert Murphy) to Secretary of State, "Administrative Agreement Revision," February 11, 1953 to Secretary of State, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1953-1955, Box 18, Folder: 320.1

Despite the urgent political climate demanding the replacement of Article 17 with the concurrent jurisdiction model, the U.S. civilian and military elites had not been able to form consensus on U.S. FCJ policy on Japan. Murphy wrote on March 26: [T]he "Joint Chiefs of Staff will not be satisfied with anything but exclusive jurisdiction in Japan. I am also convinced that they are not actually in favor of the NATO formula for status of our forces in those countries. I can foresee that this could be an exceedingly thorny issue here as time goes on."[281] This brief comment reflected Murphy's observation on the memorandum of conversations between his colleagues, Allison and McClurkin, concerning the military elites' attitudes toward this matter.

The memorandum of the State officials in Washington titled "Criminal Jurisdiction in Japan" acknowledged: "The problem is complicated by the fact that high military authorities are convinced that the military should retain exclusive jurisdiction under whatever guise… General Bradley, General Clark and General Lemnitzer are all convinced that we must retain exclusive jurisdiction in Japan." In State-Defense policy negotiations, the Assistant Secretary of Defense Frank Nash was expected to highlight their consensus on "the fact that the jurisdiction provisions of the Administrative Agreement are tied to the NATO kite is in itself enough to upset the balance and defeat the NATO agreements." And thus, Nash's suggestion would find a way "to tell the Senate that the Japanese have agreed or will agree to give de facto exclusive criminal jurisdiction, whatever the de jure situation."[282]

BST January-May 1953, NARA.

[281] Robert Murphy to William Turner, Jules Bassin, "Criminal Jurisdiction in Japan-NATO Status of Forces Agreement," March 26, 1953, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST January-May 1953, NARA.

[282] Allison, McClurkin (Robert J. G. McClurkin, Office of Northeast Asian Affairs, Department of State, Washington D.C.), Memorandum, "Criminal Jurisdiction in Japan," March 13 (ineligible), 1953, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST January-May 1953, NARA.

Based on the observation, it was expected that Nash would make two proposals: a) "make the NATO jurisdiction formula applicable in Japan, but immediately to invoke the hostilities clause on the basis of the fact that there are hostilities in Korea which are being supported from Japan," or b) "make the NATO jurisdiction formulate applicable to Japan, but work out *operating arrangements* with the Japanese Government under which the Japanese would waive their right of primary jurisdiction in particularly every case." Eventually, the latter proposal would materialize the 1953 confidential agreement with the Yoshida government. By this time, the State officials were aware of U.S. jurisdictional "arrangements in the world which are somewhat comparable to this second proposal" although "[n]one of them" was "public." Canada, Italy, Iceland, and Denmark were the listed countries.[283]

Finally, the Japanese and U.S. policy elites' informal negotiations on the revision of Article 17 began. On March 16, the State elites in Washington informed Japanese Ambassador Araki Eiichi of a possibility to conclude an "informal" agreement on this matter. According to Dulles, "[i]t was pointed out to Araki that in many cases it had been found most countries were willing through informal agreements to allow criminal jurisdiction to be exercised in most cases by authorities of troops concerned while maintaining de jure right to exercise such jurisdiction." Yet he cautioned the Tokyo Embassy that "at this time as whole matter will depend in large part upon progress ratification NATO ag[ree]m[ent]."[284]

In the meantime, Murphy made one of his last attempts before the termination of his assignment as Ambassador to convince his colleagues in Washington to continue adhering to the

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[283] Allison, McClurkin (Robert J. G. McClurkin, Office of Northeast Asian Affairs, Department of State, Washington D.C.), Memorandum, "Criminal Jurisdiction in Japan," March 13 (ineligible), 1953, NARA.
[284] Telegram 2281 from Dulles to Tokyo Embassy, Japan, March 24, 1953, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST January-May 1953, NARA.

position to adopt the NATO formula for U.S. FCJ policy on Japan. Murphy stated three reasons why this was the case. The first factor referred to the Japanese' "emotional" reactions to the U.S. military legal regime of exception.

> [W]e are faced with the Japanese emotional factor. The Japanese, and I refer to all levels of responsible Japanese opinion in and out of government, do not seem to approach the problem with any degree of realism. They will admit quite frankly that the jurisdiction issue is a question of national sentiment, and do not appear to be able to face the issue on a practical basis…[285]

The second reason was the Japanese desire to achieve the NATO formula understood as the "internationally-approved formula." "[T]he Japanese are convinced that the present international law supports their position for split jurisdiction along the lines of the NATO formula, and they refer constantly to the NATO agreement as their authority for this view." Murphy explained that the Japanese were well aware of President Truman's endorsement of the NATO formula and the Eisenhower administration's pressure on the Senate to ratify the NATO SOFA.

Third, "criminal jurisdiction in Japan is a political football, with the Japanese more interested in kicking the ball than in running with it." Murphy had adequate knowledge and evidence to argue that "If there is any one thing that all political parties agreed upon it is the desire for the NATO split… I would venture to say that if a Japanese in political affairs should undertake to espouse United States exclusive jurisdiction, his career would be in jeopardy." Most symbolically, although "Yoshida appeared to have complete control of a majority in the Diet, he did not dare to take to the Diet the issue of exclusive jurisdiction for U.N. forces in Japan."[286]

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[285] Letter from Murphy to Kenneth T. Young, Director, Office of Northeast Asian Affairs, Department of State, Washington, D.C., March 27, 1953, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST January-May 1953, NARA.

[286] Letter from Murphy to Kenneth T. Young, Director, Office of Northeast Asian Affairs, Department of State, Washington, D.C., March 27, 1953, NARA.

With the above presumptions, Murphy synthesized his day-to-day observations of the Japanese debate on Article 17 by reducing the three factors to two particular historical contexts surrounding Japan: namely, the Allied occupation and the enduring impact of "inferiority complex." "There may be a number of explanations for these Japanese attitudes. I would explain them by saying that they are the reaction to the many years of occupation, and also a reassertion of the national pride of a sensitive people." State Minister Okazaki told Murphy directly in the fall of 1952 that "the Japanese are people suffering from an inferiority complex which is reflected in their strong desire to exercise jurisdiction in the present instance."[287]

Nevertheless, Murphy's letter did *not* propose the rigid application of the NATO formula. He instead encouraged his colleague to pay special attention to the nature of the Japanese "inferiority complex." For instance, during negotiations on the UN Agreement in the fall of 1952, albeit now with the status of outstanding, "[t]he Japanese were interested in exercising jurisdiction only in a limited category of major offenses—five in all." In consideration of this experience, Murphy assumed "[i]f the Japanese are given jurisdiction over our troops in Japan, they make use of it for an initial period to assert their authority and satisfy their so-called inferiority complex." When it was the case, it seemed that "we would be in a position at the same time to arrive at some working arrangement with the Japanese whereby they would relinquish more and more of their jurisdiction on an informal basis, other than by means of written comment, perhaps on the Provost Marshal-Japanese police level."[288]

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[287] Letter from Murphy to Kenneth T. Young, Director, Office of Northeast Asian Affairs, Department of State, Washington, D.C., March 27, 1953, NARA.
[288] Letter from Murphy to Kenneth T. Young, Director, Office of Northeast Asian Affairs, Department of State, Washington, D.C., March 27, 1953, NARA.

Eventually, Murphy shared this letter with the Commander in Chief, Far East (CINCFE) General Mark Wayne Clark.[289] Two crucial points must be noted here. First, Murphy already showed interest in exploiting the Japanese desire for appearance in protecting sovereignty in the realm of U.S. FCJ policy, compromising on constitutional democracy. Second, Murphy's analysis correctly highlighted the vulnerability of the Japanese campaigns against Article 17 which placed emphasis on appearance rather than substance, i.e., the protection of the victims' due process and human rights.

While Japanese civil society and politicians were eagerly waiting for the U.S. Senate to ratify the NATO SOFA, American legislators' debate across the Pacific evolved around the questions of U.S. constitutionalism, the aggrandizement of executive power, asymmetrical military power between the United States and its allies across the world, "host" governments' ideological inclinations, and the rationale for refusing the non-Western world's local jurisdiction in similar basing agreements with countries such as Japan, Iran, and Turkey. Most questions could be well represented by one's attitude toward White supremacy and the law of the flag—i.e., a legal theory recognizing military's exclusive jurisdiction over its personnel outside its borders, which emerged in North America with the case of *Schooner Exchange v. McFaddon* in 1812. Yet U.S. exceptionalism articulated by congressional leaders and military elites exhibited its postwar discontinuity in the realm of the historical trajectories of U.S. extraterritorial policy. It crystalized as a desire to expand the reach of U.S. jurisdiction over cases involving Americans (i.e., not only military personnel and the civilian component but also their dependents) and local residents anywhere in the world.

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[289] Letter from Murphy to General Mark Wayne Clark, Commander-in-Chief, Far East, April 2, 1953, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST January-May 1953, NARA.

Like in Japan, postwar U.S. politicians became preoccupied with the question on the legal status of post-World War II U.S. armed forces in debating the Eisenhower administration's urge to ratify the NATO SOFA. The prominent Republican lawmakers, such as John W. Bricker and William Fife Knowland, vehemently criticized the split jurisdiction formula to be adopted in Europe and possibly other countries. On May 7, Senator Bricker—probably better known for his staunch opposition to the legal enforcement of international human rights law in the United States—argued in the Capitol: "I doubt that there is a Senator among us who can describe criminal law and procedure as it actually operates in Japan. I doubt that there is a member of the Committee on Foreign Relations who understands it."[290] Contrasted to the otherness of Japan's legal system was his familiarity and belief in the democratic nature of the U.S. legal system. "Even trials before courts-martial, Americans are guaranteed the presumption of innocence; protected against cruel and inhuman punishment; convicted only on proof of guilt beyond a reasonable doubt; granted the privilege against self-incrimination; and granted the rights to various appeals, even up to the President of the United States. None of these safeguards for American forces is guaranteed by the Status of Forces Treaty, which will be before the Senate next week."[291]

Without slight interest in pretending to have the background knowledge of U.S. legal reforms in Japan, Bricker vaguely responded to the Japanese accusation of postwar U.S. extraterritoriality. "I suppose that has been dated back to the time when extraterritoriality was looked upon as something invidious, as applied to the civilian population. It has been done away with in most places in the world today, and it should be wiped out. But that is an entirely different problem from dealing with troops under the command of the United States."[292] Indeed, Bricker's

[290] U.S. Congress, Senate, *The NATO Status of Forces Treaty*, 99th Congress, 1953, 4673.
[291] U.S. Congress, Senate, *The NATO Status of Forces Treaty*, 99th Congress, 1953, 4673.
[292] U.S. Congress, Senate, *The NATO Status of Forces Treaty*, 99th Congress, 1953, 4673.

assertion was grounded in his exceptionalist belief in the United States' civility. "So long as Americans insist on a higher standard of civil and political rights than their neighbors, they will, to that extent, seem to stand alone as a special, privileged class. Of course, the contrast would not be so great, if Americans were willing to accept European concepts of freedom." This way, his nationalism and limited definition of human rights offered an optimistic speculation that "[i]f Americans, by reason of their unique respect for fundamental human rights, are a special or privileged class, they have not shirked their responsibility to people less fortunate."[293]

It was not Bricker's interest in the rights of the accused and the imprisoned that diminished the validity of his argument. Rather, attention must be paid to his groundless argument over the democratic operation of the American military justice and the degree of legal rights granted to the less "privileged" classes outside its borders. Further, it is equally important to note that the postwar U.S. national security state's containment of ideological contradictions with the extended use of executive power validated the lawmakers' legitimate criticism of secretive administrative lawmaking. Notably, both the Japanese critics of Article 17 and U.S. advocates for imperial sovereignty were less interested in departing from nationalist positioning than demonstrating internationalist and egalitarian positioning before the question on extraterritoriality.

Meeting the lawmakers' mounting pressure not to grant the split jurisdiction formula to other "host" nations (such as Japan and Iran), Under Secretary of State Walter Bedell Smith testified at the hearings that the application of the concurrent jurisdiction model to the NATO SOFA would be "unprecedented."[294] Although Bricker's call for a reservation on the NATO-SOFA was eventually rejected in the Senate, the ratified NATO SOFA declared with a resolution

[293] U.S. Congress, Senate, *The NATO Status of Forces Treaty*, 99th Congress, 1953, 4673.
[294] U.S. Congress, Senate, *The NATO Status of Forces Treaty*, 99th Congress, 1953, 4673.

that "the criminal jurisdiction provisions of Article VII [of the NATO SOFA] do not constitute a precedent for future agreements."[295] The Senate eventually ratified the NATO SOFA on July 15, 1953. In effect, this historic congressional debate shifted the State Department's tentative position to conclude an informal agreement with Japan for the waiver arrangements to a more supportive one. It then came to have a far-reaching and long-lasting impact on postwar U.S. FCJ policy.

In Japan, State officials were busy incorporating the Japanese historicization of the Japanese "extraterritoriality complex" into their analyses of what was now transforming into the rise of "anti-Americanism." This was all the while they were closely monitoring the American legislators' debate on U.S. FCJ policy. In June, the Tokyo Embassy reasserted its position that "With regard to the risk of punitive or prejudicial standards by Japanese courts [assumed to have been rooted in Confucianist legal philosophy], the Embassy believes that the advantages of the extension of the NATO formulate to Japan clearly and unequivocally outweigh the disadvantages and that the political risk of an indefinite delay in revision might have serious effects for the entire range of Japanese-American cooperation."[296] The remark was made amidst the State elites' historical—rather than ongoing policy-focused—discussion of "the Japanese extraterritoriality complex" introduced at the opening of this chapter.

In July, the Tokyo Embassy alerted that the Japanese nationalist and anti-colonial struggle against Article 17 was galvanizing anti-Americanism. Its 15-page draft of a report entitled "Anti-Americanism in Japan," dated July 29, 1953, noted that "The Embassy has become increasingly

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[295] Dale Sonnenberg and Donald A. Timm, "The Agreements Regarding Status of Forces in Japan," in Dieter Fleck and Stuart Addy ed., *The Handbook of the Law of Visiting Forces* (Oxford; New York: Oxford University Press, 2001), 386.

[296] Air porch 2565 from American Embassy, Tokyo to the Department of State, "Transmittal of Kobe's Despatch No. 537, May 26, 1953, "The Japanese Exterritoriality Complex," June 1, 1953, RG 84, Records of the Foreign Service Post of the Department of State, Classified General Records, 1953-1955, Box 13, Folder: 320 Japan-United States, NARA.

apprehensive in recent weeks over the growth of anti-American feeling in Japan." It was to the extent that the phenomenon "has become an everyday topic of conversation" in diplomatic, journalistic, and American business circles. Further, shifting from Bond's April analysis of the ideological components of the anti-Administrative Agreement movement which still placed emphasis on the effect of "commie propaganda," the report stated that "We have collected enough evidence to say categorically that the rise in Anti-American feeling cannot be brushed aside as largely communist-inspired and therefore of limited significance, which is the view the Government is holding."[297] Mentioned in the report was the link between "anti-Americanism" and growing anti-American military base movements across the archipelago in places such as Uchinada (Ishikawa) and Tachikawa (Tokyo). Films—such as "Mixed Blood Children" and "Children of the A-Bomb"—and books—such as "Children of the Base Areas" and "Chastity of Japan"—were labelled as "communist-inspired anti-American activity."[298] Yet they could not dismiss major newspapers, business magazines, and professional journals as "communist-inspired." Given the trend, "something of the order of 30 percent of Japan's adult population support those parties or movements [opposing U.S. military presence]."[299]

Further, the greatest concern was that every political party, including Yoshida's Liberal Party, was increasingly distancing from the U.S. government. "[M]any Yoshida Liberals, like those in all other parties, have found that anti-Americanism is good politics, and they do not mind on occasion to indulge in themselves. The United States, which is today inextricably involved in

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[297] U.S. Naval Attache American Embassy, Tokyo, "Secret Security Information: Anti-Americanism in Japan," July 28, 1953, RG 84, Records of the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 13, Folder: 320 Japan-United States, NARA.
[298] U.S. Naval Attache American Embassy, Tokyo, "Secret Security Information: Anti-Americanism in Japan," July 28, 1953, NARA.
[299] U.S. Naval Attache American Embassy, Tokyo, "Secret Security Information: Anti-Americanism in Japan," July 28, 1953, NARA.

domestic Japanese politics, finds in the political arena no party, group, or leader able and willing to oppose the tide." For the Tokyo Embassy staff, it unquestionably reflected "the arithmetic weakness of the Government's minority position and an unwillingness to be too forthright in defending U.S. policy lest they alienate some of their own followers or those in other conservative parties on whom they now depend for survival."[300] The report proposed the National Security Council to ask the questions: "Is it absolutely essential to U.S. military strategy to keep U.S. troops in Japan? Can we not protect our strategic position from Okinawa just as well or almost as well?"[301] In the summer of 1953, the Tokyo Embassy 's proposal to transfer bases in Japan to Okinawa arose from concern over the loss of support for U.S. Cold War policy, visualized by the militarized landscape and subordinate independence, from the centrist population in Japan.

With the ratification of the NATO SOFA and the State elites' urgent call to shift the U.S. post-treaty policy on Japan, the momentum to revise Article 17 of the Administrative Agreement consolidated in Washington. On July 29, the Tokyo Embassy reviewed the draft of proposals for revision which "provides, inter alia, for the suspension of the split jurisdiction formula in the event of hostilities in Japan area and for the waiver by Japan of its primary jurisdiction except in cases of particular importance to Japan." It highlighted three points of dispute which could arise from reliance on the pretext of hostilities: a) "Will Japan agree to the U.S. proposal for exclusive jurisdiction in the case of hostilities in the Japan area?; b) "Will Japan agree to waiver of its primary jurisdiction except in cases of particular importance to Japan?; c) "Should the jurisdictional provisions in the Administrative and U.N. Agreements be negotiated simultaneously or successively?" The Embassy did not consider the suspension of the split-jurisdictional

[300] U.S. Naval Attache American Embassy, Tokyo, "Secret Security Information: Anti-Americanism in Japan," July 28, 1953, NARA.
[301] U.S. Naval Attache American Embassy, Tokyo, "Secret Security Information: Anti-Americanism in Japan," July 28, 1953, NARA.

arrangements in the context of emergency would raise the Japanese state elites' objection because there was a similar clause in the NATO SOFA. However, the U.S. request for the "waiver of jurisdiction" was "expected to offer considerable difficulty because it is a reversal of the NATO formula…"[302]

Therefore, the Embassy's position was set to "test the Japanese reaction to our formula and make every effort to secure as firm and as authoritative a waiver as possible without prejudicing our broader objectives in Japan." Simultaneous negotiations on the revision of Article 17 and the conclusion of the U.N. Agreement were not adopted, for they seemed to cause trouble and inflexibility due to its multilateral nature. Yet the Embassy proposed to "offer the Commonwealth opportunity for full consultation and exchange of views and information, to secure a Japanese commitment to extend to the forces under the U.N. Agreement the treatment accorded to the U.S. forces, and at the same time seek to obtain for the Commonwealth representatives the position of observer in the Administrative Agreement negotiations," a position supported by General Clark.[303] Regardless of the document's unsigned status, John Moore Allison, who had resisted the JCS' exclusive jurisdiction formula and even intimated his declination of an ambassador position for that very reason in 1951, was in Tokyo just succeeding Robert Murphy's task, ambassadorship. Ironically, Allison came to preside over the entire process of the making of the 1953 Confidential Agreement while accommodating even the British elites' request for the de facto most favored nation status in post-occupation Japan.

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[302]American Embassy, Tokyo, "Negotiations on Criminal Jurisdiction Provisions for the Administrative and U.N. Status of Forces Agreements," August 6, 1953, RG 84, Records of the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST September Administrative Agreement, NARA.

[303] American Embassy, Tokyo, "Negotiations on Criminal Jurisdiction Provisions for the Administrative and U.N. Status of Forces Agreements," August 6, 1953, NARA.

On August 18 and 19, informal meetings between the Japanese and U.S. negotiators were held to "discover areas of difference and fix negotiation points."[304] Representative of the Secretary of Defense John B. Henderson arrived in Tokyo on August 8 and began monitoring the negotiation process. Through the first meetings, the negotiators confirmed that one of the essential areas that needed further discussions concerned the U.S. proposal to authorize the Japanese authorities to exercise local jurisdiction only over cases deemed "particular importance." While the Japanese negotiators contended it would "nullif[y] concept of split jurisdiction," the Embassy representatives replied that what they needed was a "reasonable Japanese position that they will not wish to exercise jurisdiction except in cases particular importance." Further, the Japanese representatives requested the effective date of the Protocol "apply to all cases except those pending at court martials as of effective date, thus intending to make Protocol retroactive April 28, 1952." Due to the U.S. representatives' "adverse reaction," the Japanese negotiators replied they would "reconsider" the position. The Japanese representatives also responded that they would consider accommodating "one or two Commonwealth" observers' participation in the negotiations" for what the Tokyo Embassy described as "strong requests by Commonwealth."[305]

On August 21, 1953, a person-to-person lunch meeting was held between Jules Bassin from the Tokyo Embassy and Miyake Kijirō from the Foreign Office. An informal meeting scheduled on the prior day was cancelled due to the press leak of the earlier Japan-U.S. meetings. Miyake told Bassin that "it was important to arrive at a satisfactory settlement… in order to prevent increase in anti-American sentiment in Japan and to further the cordial relations between the

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[304] American Embassy, Tokyo, "Negotiations on Criminal Jurisdiction Provisions for the Administrative and U.N. Status of Forces Agreements," August 6, 1953, NARA.

[305] Telegram 468 from Allison, American Embassy, Tokyo to Secretary of State, August 20, 1953, RG 84, Records of the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST September Administrative Agreement, NARA.

United States and Japan." Then, he made a proposal which caught Bassin by surprise. It was the deletion of the U.S. minute on waiver, which entailed intimation that in return the chief negotiator Matsudaira "might give Mr. Parsons [at the Tokyo Embassy] oral assurances that the Japanese authorities would not exercise its primary jurisdiction in 'minor cases.'" Bassin replied that oral assurances would not satisfy the U.S. authorities. Bassin explained the U.S. side had two basic requirements for the revision: "an understanding with Japan that it would not exercise its primary jurisdiction except in cases of particular importance to it," and such understanding be reduced to written form so as to eliminate any possibility of misinterpretation or misunderstanding." Miyake asked if Bassin "was intimating that the understanding on the waiver of primary jurisdiction should be in the form of a confidential understanding." Bassin's response was "that there were disadvantages inherent in any confidential understanding on the subject and that it would be preferable to have a waiver agreement that was not classified."[306]

On the same day, their superiors, Matsudaira and Parsons, covered a wider range of issues concerning the revision of Article 17: U.S. representatives' right to attend trials in Japan, the hostilities clause, the determination of official duty, the custody of persons arrested by the Japanese authorities, and jurisdiction over dependents. Yet Allison reported to Dulles that setting up a working committee at this time could be waited because "it will be difficult for [it to] accomplish much before basic principles on waiver, custody and official duty are established." He further noted that "referral to working committee such matters as jail conditions and related problems

[306] Jules Bassin, U.S. Embassy, Tokyo, Memorandum of Conversation with Miyake and Shimoda (Foreign Office), "Waiver of Jurisdiction in Administrative Agreement," August 21, 1953, RG 84, Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST September Administrative Agreement, NARA; Telegram 476 from Allison to Secretary of State, August 21, 1953, RG 84, Records of the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST September Administrative Agreement, NARA.

might give [the] impression we in fact expect to have considerable numbers [of] our people under Japanese jurisdiction." Henderson supported Allison's position.[307]

While the Japanese and U.S. elites in Tokyo finally began exploring how best to contain nationalism in both countries through the revision of Article 17, the Japanese elites in Washington continued communicating with the top State officials in Washington. Though the exact date is not provided, Kagei Umeo at the Washington Embassy wrote in one of his letters to Miyake that "the issue of the criminal jurisdiction will involve tremendous difficulty." Kagei shared his reflection on Washington officials' responses:

> The U.S. side told us that they will be in trouble if we make noise about this. [Nationalist] China is not making an issue out of it, and they are afraid to awaken sleeping lions in the West… For Japan, having such an agreement in statutory form will be unbearable… I looked with great curiosity at the U.S. side's tentative translation of the documents on the revision of the Administrative Agreement, which incorporated slight modifications [written in English] made by the State and Defense departments. My sense is that we will not be able to accept it unless there is a dramatic change on the part of the Japanese emotional sentiment.[308]

Another lunch meeting between Bassin and Miyake on August 25 took a critical turn in the negotiations. Bassin showed Miyake "U.S. Proposal for Waiver of Primary Jurisdiction."

1. Form: The U.S. side is not wedded to a waiver in the form of a minute. Other possible forms are an exchange of notes or a unilateral letter to the Embassy.
2. Substance: It is believed that the negotiations will be expedited if the Japanese Government will provide the Embassy with a statement of policy which will contain the substance of the U.S. proposed minute for waiver, and be considered appropriate from the Japanese point of view.

Bassin wrote in a memorandum:

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[307] Telegram 476 from Allison to Secretary of State, August 21, 1953, RG 84, Records of the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST September Administrative Agreement, NARA.

[308] Letter from Kagei Umeo, Japanese Embassy, Washington to Miyake, undated, Nichibei anzen hoshōjyōyaku kankei ikken—Dai sanjyō ni motozuku gyoseikyotei kankei—keijisaibanken jyōkō kaisei kankei, Folder 2, Code Number: 100-000312, Diplomatic Archives of the Ministry of Foreign Affairs of Japan.

> After Mr. Miyake read the paper he smiled and said it seems to him that "ice is broken." I inquired whether a classified understanding on waiver would cause any embarrassment if it were to be public. Mr. Miyake replied that it would not be a serious problem with the Japanese authorities because under Japanese practice the procurators exercise discretion as to whether prosecution should be initiated. He intimated that the classified understanding would be a concession designed to satisfy the American side for a definitive statement of Japanese policy.[309]

On the question of "substance," Bassin stated that the Japanese side's request for the right to determine "cases of particular importance" could be accepted by the U.S. side. Yet it was expected that "the Japanese authorities would use utmost discretion in deciding which case were of particular importance with the object of keeping the prosecutions down to the barest minimum." Miyake replied that "he fully understood this viewpoint." On the question of line-of-duty cases, Miyake said: "if we could make available to him on a confidential basis a copy of the pertinent portion of the NATO proceedings on this subject, which had been given to the Japanese side orally, the question might then be decided in our favor." Bassin replied that he would "undertake the necessary action to get clearance." On the problem of "custody," Bassin stated that it "could be treated in the same way as the matter of waiver of Japan's primary jurisdiction," i.e., the adoption of a confidential agreement which would satisfy the Japanese side in appearance and the U.S. side in practice.[310]

On August 26, Allison cabled Dulles with his detailed report on the progress of two informal and private luncheon meetings. Allison noted: "Although we suggested exchange notes or unilateral Foreign Office letter, containing substance our minute on waiver, Japanese prefer

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[309] Jules Bassin, U.S. Embassy in Tokyo, Confidential Memorandum of Conversation "Waiver of Jurisdiction in Administrative Agreement," August 25, 1953, RG 84, Records of the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST September Administrative Agreement, NARA.

[310] Jules Bassin, U.S. Embassy in Tokyo, Confidential Memorandum of Conversation "Waiver of Jurisdiction in Administrative Agreement," August 25, 1953, NARA.

agreed statement in confidential record proceedings negotiations, to be initialed by both sides." Further, "we have objected classified waiver arrangement but have taken no final position." On other matters, it "seems likely that form finally agreed to for waiver arrangement will also be applicable other key issues, such as custody and determination of official duty." Yet Allison added that the Japanese request for extract from NATO proceedings on the determination of official duty "obviously involves calculated risk extract may become public and in such event Embassy not in position judge whether this may have adverse effect in NATO." Allison noted that the final major problem would be the hostilities clause. The FEC and Henderson agreed the Embassy's negotiation position on these matters.[311]

On the same day Dulles cabled the Tokyo Embassy and other embassies in U.S. "host" nations urgently asking them to analyze the locals' attitudes toward Washington. Dulles wrote: "We have been disturbed by recent reports from various sources both official and unofficial indicating possible confusion on part of our allies as to US policy and perhaps lessening of confidence in US leadership." Required were "frank confidential estimate and views on how US is regarded both by government and public in country to which you are accredited… Is there mistrust of confidence in US intensions adequately to support its allies both individually and collectively in measures designed [to] strengthen free world solidarity[?]… [W]hat major factors… should be borne in mind over coming months in determining US lines of action?"[312] Unquestionably, the Tokyo Embassy had adequate evidence to respond to these questions as discussed earlier. There was sufficient reason to argue that the underlying objective of the "revision"

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[311] Telegram 516 from Allison to Dulles, August 26, 1953, RG 84, Records of the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST-August, NARA.

[312] Telegram 488 from Dulles to Allison, August 28, 1953, RG 84, Records of the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST-August, NARA.

of Article 17 had to be compatible with the concrete policy objective, that is the stabilization of the Yoshida administration.

Dulles replied to Allison on August 28. His suggestion was that although "US can understandably not supply documents which contain specific arrangements on subject, the existence of similar agreements concerning "waiver and custody" can be "divulged" to the Japanese officials "in confidence." Therefore, Allison was authorized to inform that "US has agreement in 1 NATO country of type now sought with Japan but agreement classified, and that [s[imilar arrangements currently being sought in 2 more NATO countries." In the telegram, Dulles revealed that "[f]or your information US may seek waiver arrangements [in] other NATO countries where they seem to be needed and can be obtained without prejudice [of] large objectives. Iceland only NATO country with which US had understanding. Believe Embassy has copy [of] Icelandic agreement. Italy and Greece are countries in which negotiations of understandings [are] in progress. Such understandings… are reached [sic] likely to be classified."[313] As Dulles highlighted Washington's continuing efforts to secure the postwar U.S. military legal regime of exception through normalization and expansion, the Japan-U.S. negotiations on the "revision" of Article 17 of the Administrative Agreement marked a critical moment for the trajectory of U.S. basing policy. A document sent from the Tokyo Embassy to the State Department on the same day is still classified; it was withdrawn on January 17, 1995.

By the end of September, the Japanese and U.S. negotiators reached detailed agreements on the implementation of revised Article 17, given participants from the Japanese Ministry of Justice. In fact, the Japanese Foreign Office had not been able to persuade the Justice Ministry

[313] Telegram 510 from Dulles to Tokyo, August 28, 1953, RG 84, Records of the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST -August, NARA.

bureaucrats to proceed with the U.S. proposals on waiver, off-duty determination, and custody. On September 1, Chief of the Criminal Affairs Division of the Ministry of Justice Tsuda Minoru attended a meeting with Bassin and Henderson, accompanying Foreign Office officials. At the meeting Vice Minister of Foreign Affairs Matsudaira "explained that the Japanese requested this meeting in order to go into more detail on the background of our waiver proposal, and to discuss exactly what we had in mind by the particular language we have recommended." Following Dulles' instructions, Bassin and Henderson framed the receiving nation's waiver of jurisdiction as a normal practice among U.S. allies. "[O]our experience in other allied countries indicated the host country would as a matter of policy follow the practice of waiving jurisdiction over our servicemen *in most cases* [added by the author] and that the United States believed Japan would wish to follow the same policy, both for administrative convenience to Japan and to eliminate possible friction between our Governments." Then, Tstuda asked, through an interpreter, about the language that would be put in the confidential agreement. The question was "what significance we attributed to the adjective 'exceptional' which modifies 'importance.'" Bassin and Henderson replied that "since there were large United States forces in Japan, the word importance needed some modifier…" They stressed again that "the important thing was… that the Japanese did not intend to exercise jurisdiction except in the fewest possible number of cases…"[314]

Eventually, the negotiators "reached the uneasy area of the mathematical extent of jurisdiction to which we wished the Japanese to limit themselves." Based upon "[f]igures available to the Japanese…, fairly serious offenses, that is offenses for which the penalty can be dishonorable

[314] Bassin, Henderson, Matsudaira, Miyake, Kanbara, and several others from Japanese Foreign Office, Tsuda, Chief of the Criminal Affairs Division, Ministry of Justice, "Memorandum of Conversation: Criminal Jurisdiction Negotiations," September 1, 1953, RG 84, Records of the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST September, NARA.

discharge or a year's confinement, or more, were running at the rate of about thirty a month." "Certainly," the Tokyo Embassy's memorandum stated, "we would not wish Japan to consider many of these cases to be cases of particular importance." And therefore, they unambiguously explained: "We were merely asking Japan to promulgate a policy now to the effect that not many cases in toto would be deemed of particular importance to Japan."[315] Tsuda, however, wondered "how a phrase like 'cases of particular importance,' if disseminated in Justice Ministry regulations to local Procurators, could possibly be uniformly interpreted." Bassin and Henderson responded that "in all likelihood the interpretation could *not* [emphasis added by the author] be left to local decision and suggested that while the Procurator should know the policy, recommendations for assuming jurisdiction should be forwarded to the Justice Ministry here for final decision." Tsuda then stated that "the Justice Ministry had in the past asked the military authorities for statistics on handling of 200 cases which they had deemed to be of importance to Japan." As a matter of fact, in about 100 cases, whose figures had been disclosed, "only less than 15 percent conviction with confinement," Tsuda stated. Bassin and Henderson replied: "while we did not know the facts in these cases, it was often very hard to marshal sufficient evidence to warrant conviction after the initial charge has been made… [W]e would be glad to arrange a meeting with Justice representatives at which we would have present representatives of the JAG [Judge Advocate General]'s. At this meeting we could discuss information about future handling of alleged offenders."[316]

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[315] Bassin, Henderson, Matsudaira, Miyake, Kanbara, and several others from Japanese Foreign Office, Tsuda, Chief of the Criminal Affairs Division, Ministry of Justice, "Memorandum of Conversation: Criminal Jurisdiction Negotiations," September 1, 1953, NARA.

[316] Bassin, Henderson, Matsudaira, Miyake, Kanbara, and several others from Japanese Foreign Office, Tsuda, Chief of the Criminal Affairs Division, Ministry of Justice, "Memorandum of Conversation: Criminal Jurisdiction Negotiations," September 1, 1953, NARA.

Then, the questions of classification and custody were raised. The Justice Ministry believed "it will be nearly impossible to keep secret the implementation of any oral statement in the record respecting waiver." And thus, the Foreign Office took the position that "the oral statement must be made public, in view of the bad effect propaganda-wise which a substantial leak would have." Bassin and Henderson concurred and offered some changes in their earlier proposal. With regard to custody, the Justice Ministry believed "the Japanese Government must have the right to retain custody, even though as a matter of practice they will generally be prepared to waive it." The U.S. negotiators' concern was "the dangerous effect on the [bilateral] relations… which could come from exaggerated statements made by U.S. servicemen held in Japanese custody, if these statements made by U.S. servicemen were forwarded to Congress." The Japanese negotiators told that "they rarely would wish custody prior to indictment, but said as a matter of principle the agreement must show they have the right to retain custody."[317]

The following day, Allison informed Dulles of the gist of arrangements needed for the revision of Article 17, adding that "Japanese will not concur Commonwealth observer status until commencement [of] 'formal negotiations' to confirm Agreement reached thru informal agreement."[318] On the same day, September 2, Prime Minister Yoshida was informed of the progress of the negotiations by Vice Minister of Foreign Affairs Matsudaira Tsuneo: "There is an equivalent agreement to Japan's which was already adopted between the U.S. and one NATO member. The U.S. is confidentially negotiating this matter with two other NATO members... They [American officials] repeatedly stated that this has been treated as an utmost secrecy, and thus it

[317] Bassin, Henderson, Matsudaira, Miyake, Kanbara, and several others from Japanese Foreign Office, Tsuda, Chief of the Criminal Affairs Division, Ministry of Justice, "Memorandum of Conversation: Criminal Jurisdiction Negotiations," September 1, 1953, NARA.
[318] Telegram 590 from Allison to Dulles, September 2, 1953, RG 84, Records of the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST September, NARA.

will trouble them if this secrecy were leaked to, needless to say, the Diet as well as any other entity."[319]

Dulles replied to the Tokyo Embassy immediately. "In event classified agreement… desirable include in public minutes provisions which can be used as basis for explanation [of] future handling of cases so Japanese public will not suspect existence [of] classified agreement by reason apparent inconsistency between terms [of] public agreement and actual handling [of] cases." His suggestion was to add to the official minute the following paragraph: "Arrangements will be made through *joint committee* [emphasis added by the author] concerning manner in which Japan shall notify United States of decision not to exercise jurisdiction and concerning manner in which request for waiver shall be presented to Japanese authorities by United States military authorities." On custody, "[if] possible, desire some basis be provided in public minutes for explaining to Japanese public that transfer of custody does not necessarily mean that jurisdiction waived." The sentence expected to be added to the public minute was as follows: "Agreements may be made in agreed cases through joint committee for transfer of custody of persons arrested by Japanese authorities. If in any case Japanese Government chooses to exercise its primary right of jurisdiction United States military authorities will return accused person to Japanese custody at time he is charged by Japanese authorities."[320] Securing the legal basis for utilizing "the joint committee" in future informal negotiations on jurisdictional matters with the Japanese elites, Dulles just invented a system which would enable the confidential operation of the American military legal regime of

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[319] Tsuneo Matsudaira, Ministry of Foreign Affairs of Japan, "Item regarding the negotiations on the revision of the criminal jurisdiction clause in the Administrative Agreement," September 2, 1953, Nichibei anzen hoshō jyōyaku kankei ikken—Dai sanjyo ni motozuku Gyōseikyotei kankei—keijisaibanken jyoko kaisei kankei, Folder 2, Code Number: 100-000312, Diplomatic Archives of the Ministry of Foreign Affairs of Japan.

[320] Telegram 545 from Dulles to Tokyo Embassy, September 2, 1953, RG 84, Records of the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST September, NARA.

exception, only with the administrative lawmaking power of the Eisenhower and Yoshida administrations.

Now that both governments' consensus on the classification of the agreement on waiver was consolidated, the rest of the informal negotiations proceeded rather smoothly. On September 5, Allison informed Dulles that the meetings held in the last two days reached agreements on custody and official duty. On the question of waiver, however, the Japanese elites still found the wording of "particular importance" difficult to accept.[321] At this stage, the policymakers' efforts shifted to solving technical matters—i.e., deciding what language ought to be placed in which text for the required procedural arrangements in such a way that would later help the state elites fend off the public accusations of extralegal policymaking.

Having received Dulles' instructions the previous day, Allison sent on September 10 a draft of what would later be referred to as "confidential agreement," "confidential agreements," or "confidential arrangements" by U.S. policy planners. On this day, Allison cabled Dulles that an informal meeting attended by representatives of the Far East Command (FEC) "reached agreement on waiver only after lengthy discussions over 3 day period." In this meeting, the state elites agreed to restrict Japan's jurisdiction with the sole exception being cases of what they framed as "material importance to Japan," a wording suggested by the FEC representatives. Allison informed Dulles that the Japanese negotiators "propose [to] make their policy known to procurators in conferences scheduled next month. Furthermore, they state flatly that any decision by local prosecutor that case is of 'material importance' will be referred to Justice Ministry in Tokyo. We believe this is acceptable handling of waiver agreement." This is because "[i]f arrangements do in fact leak

[321] Telegram 612 from Allison to Secretary of State, RG 84, Records of the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST September, NARA.

opposition parties should not be able to make much of 'secret agreement' argument since subcommittee records are definitely unclassified." Through this telegram, the finalization of the hostilities clause, which stipulated each side's right to suspension upon 60 days' notice, the Japanese negotiators' agreement on Commonwealth observers in their formal meeting, as well as several other items were reported to Washington.[322]

While drafts of the Protocol, the Official Minutes, the record of negotiations with statements on waiver (i.e., the confidential agreement), and Allison's remarks prepared for the occasion of signing the Protocol to Amend Article 17 were being prepared, Allison met Okazaki Katsuo, now holding the position of Foreign Minister, on 17 September. Symbolic of the deepening relationship between the Japanese and U.S. leaders through their informal negotiations on the "revision" of Article 17 was these two leaders' personal relationship, later recalled by Allison as "the best of friends" in his autobiography. Their first encounter dated back to 1938 when Okazaki, then as the Japanese Consul General in Shanghai, had given an official apology to Allison, then a foreign service officer, for a Japanese soldier's slapping.[323] Fifteen years later, Allison's meeting with Okazaki took place in a drastically different context:

> I pointed out that present general court martial cases involving offenses against Japanese nationals have been running at rate of about 30 per month and that we hoped that great majority of these cases would be ones on which Japanese would not wish to assume jurisdiction. Okazaki replied that important thing was for right of Japanese to assume jurisdiction to be recognized and that if this was done, he was certain Japanese officials would not wish to take jurisdiction except in serious cases of real importance to Japan. He said that British sailors case in Kobe last year had "taught both sides much" and he then added, "Don't you worry."

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[322] Telegram 647 from U.S. Embassy, Tokyo (John M. Allison) to Secretary of State, "Criminal Jurisdiction," September 10, 1953, RG 84, Records of the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST September, NARA.

[323] John M. Allison, *Ambassador from the Prairie or Allison Wonderland* (Boston: Houghton Mifflin Company Boston, 1973), 41-233.

In this telegram to Dulles, Allison noted: "At early occasion I intend to make similar statement to Justice Minister Inukai."[324]

The "formal meeting" took place on September 28. The joint statement declared: "Representatives of Governments of Japan and the United States held a meeting at the Japanese Ministry of Foreign Affairs on September 28, 1953… to revise the provisions on criminal jurisdiction of the Administrative Agreement between Japan and the United States after NATO pattern in accordance with the provisions of paragraph 1 of Article XVII of the Agreement."[325] The following day the *Yomiuri Shimbun* ran an article entitled "Towards Complete Territorial Sovereignty." The article celebrated the adoption of the NATO SOFA as the achievement of "tireless discussions and negotiations undertaken by Special Assistant to Foreign Minister Matsudaira and Legal Attache at U.S. Embassy in Tokyo Bassin." Referring to the deducted Official Minutes, the *Yomiuri Shinbun*'s journalist wrote in a positive tone that the American military authorities finally accepted Japan's territorial sovereignty: "U.S. policymakers finally recognized that Japan's legal system was no less advanced than those of the West."[326]

The following day, on September 29, when the *Yomiuri Shimbun*'s article was circulated, Okazaki and Allison signed the Protocol to Amend Article XVII of the Administrative Agreement Under Article III of the Security Treaty Between the United States of America and Japan. The revised article, which followed the NATO SOFA formula in appearance, authorized the Japanese authorities to maintain primary criminal jurisdiction over offenses committed by off-duty

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[324] Telegram 704 from Allison to Dulles, September 17, 1953, RG 84, Records of the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST September, NARA.
[325] Telegram 805 from Embassy Allison, Tokyo to Secretary of State, September 28, 1953, RG 84, Records of the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST September, NARA.
[326] *Yomiuri shinbun*, August 29, 1953.

American military personnel, the civilian component, and their dependents.[327] The two governments invited the press to their signing ceremony. The joint press statement declared: "The Agreement specifically provides a series of protective provisions for U.S. Forces members who may be tried in Japanese courts, including right to a prompt and speedy trial, legal counsel, confrontation by witness, provision of interpreters and the presence of U.S. Government representatives at the trial. The accused would also have all rights provided by the Japanese Constitution, which in many respects parallels the American Bill of Rights."[328] The evening editions of Japanese newspapers commended the revision with headlines such as "The Administrative Agreement, having been denounced as 'extraterritoriality' and 'unequal treaties' since its adoption, presents a new appearance after one and a half years since the day of independence (*Mainichi Shinbun*)," [329] and "The proceedings of U.S. military crimes will be transferred to Japan. The problem of compelled concessions will be resolved (*Yomiuri Shinbun*)."[330]

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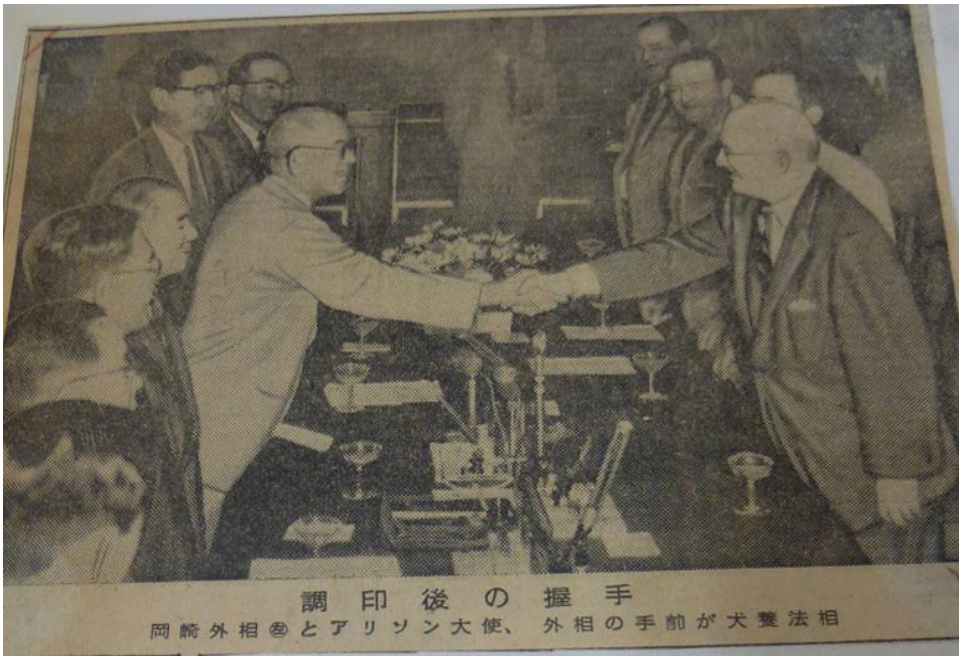
[327] "Protocol to Amend Article XVII of the Administrative Agreement Under Article III of the Security Treaty Between the United States of America and Japan," October 29, 1953, RG 84, Records of the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST October-November-December, NARA.

[328] Telegram 805 from Allison to Secretary of State, September 28, 1953, RG 84, Records of the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST September, NARA.

[329] *Mainichi shinbun*, evening edition, September 29, 1953.

[330] *Yomiuri shinbun*, evening edition, September 29, 1953.

Yomiuri shinbun's 29 September 1953 evening edition. The photo shows State Minister Okazaki and Ambassador Allison signing the Protocol to Amend Article XVII of the Administrative Agreement Under Article III of the Security Treaty Between the United States of America and Japan.



Tokyo Shinbun's 29 September 1953 evening edition: The photo shows Okazaki and Allison shaking hands after the signing.

"Unusually extensive and very favorable press coverage reinforce our impression that revision of criminal jurisdiction provision has symbolic importance out of all proportion to number of cases in which Japan will actually take jurisdiction. Agreement is regarded as another milestone towards genuine independence." Most probably with excitement and in great relief, Allison cabled Dulles immediately to convey Tokyo's atmosphere. After the signing ceremony, Allison confirmed with Okazaki and Justice Minister Inukai "privately" that "in actual practice Japan would wish to exercise its right of jurisdiction in very few cases." The Justice Ministry's response was convincing. Allison noted: "Inukai, I am confident, will… exert his influence along the right lines."[331]

These state elites' conversation did not end there, however. Allison reminded the Japanese ministers of the urgent need to resume negotiations on the UN Agreement. "In that connection I said attached great importance to equality of treatment as between US and UN forces." Okazaki "anticipated little trouble over criminal jurisdiction provisions but he feared financial provisions would be difficult." Indeed, Okazaki's concern stemmed from the "[m]ood of Diet," which put the "Govt not in strong position."[332] They just learned how to classify the existence of the American military legal regime of exception in post-occupation Japan with the full deployment of immensely enhanced, sprawling administrative power. Yet the result of the April 1953 general election, which had exposed the declining popularity of the conservative parties with the loss of approximately

[331] Telegram 820 from U.S. Embassy (John M. Allison) to Secretary of State, September 29, 1953, RG 84, Records of the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST September, NARA.
[332] Telegram 820 from U.S. Embassy (John M. Allison) to Secretary of State, September 29, 1953, NARA.

one million voters,[333] made Okazaki nervous to accommodate additional demands from the Eisenhower administration.

The *Asahi Shinbun* introduced legal scholar Yokota's comment the day after the signing ceremony. Yokota asserted that the utmost significance of this revision lay in Japan's acquisition of an equal status to European nations. "Indisputably, the former Article 17 held Japan under a lower status, for it had restricted Japanese jurisdiction recognized by scholars as one of the most essential functions of the state." Yokota praised the state leaders' collaboration: "[We] just witnessed a positive case where a big power accepted what appeared to be a reasonable request made by a smaller nation… Don't be too pessimistic thinking that only force can be the language…" Yokota believed that the U.S. government could now ask for further collaboration with the Japanese"[334] Among the population who supported the Japan-U.S. security relationship, the revision of Article 17 signified a success of the Yoshida administration's intimate diplomacy with the United States, as symbolized by Yokota's comment.

The Japanese authorities compiled classified manuals on the implementation of the Unofficial Agreed Minutes on the amendment of Article 17. The manual entitled "Arrangements Implementing the Administrative Agreement" containing 49 provisions was circulated among the Japanese ministries.[335] On October 7, the Detective Superintendent of the Department of Justice notified the Superintendent and Chief of Public Prosecutor that Japan would remain compelled to waive criminal jurisdiction over all cases except for those deemed "material importance to Japan." On October 13, Allison reported to Washington Inukai's confirmation that "he had recently meeting with Japanese procurators from various parts of country and that in his talk to them he

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[333] Ishikawa Masumi, Yamaguchi Jirō, *Sengo seijishi*, Third edition (Tokyo: Iwanamishoten, 2015), 66.
[334] Yokota Kisaburō, "Gyoseikyoteinokaitei wo yokorokobu," *Asahi shimbun*, September 30, 3.
[335] Hōmushō keijikyoku (Criminal Affairs Office, Department of Justice, Japan), Kensatsushiryō 158, Confidential, "Gasshukoku guntai kouseiin ni taisuru keijisaiban kankei jitsumu shiryo," March 1955.

stressed importance of broad understanding of new AA provisions on jurisdiction and that he had urged them to 'read between the lines' of Agreement and to use utmost discretion in implementing agreement." Allison was confident that "Inukai has real understanding of necessity of keeping Japanese exercise jurisdiction over American troops to absolute minimum and will do in his power to see that this becomes standard practice."[336]

On October 28, the signing ceremony of the "confidential agreement" took place at the Sub-Committee on Jurisdiction of the Japan-U.S. Joint Committee. The designated form of the agreement made Minoru Tsuda, Chief of the Criminal Affairs Division of the Ministry of Justice, with the title of Chairman of Japanese Sub-Committee on Jurisdiction, *unilaterally* initialize this document with his statement on the Japanese policy. Tsuda stated: "As to practical operation of the provisions paragraph 3 of the Protocol, I can state that as a matter of policy the Japanese authorities do not normally intend to exercise the primary right of jurisdiction over members of the United States Armed Forces, the civilian component, or their dependents subject to the military law of the United States, other than in cases considered to be of material importance to Japan. In this respect, I should like to point out that the Japanese authorities retain their freedom of discretion in the determination of which cases are of material importance to Japan." Further, "[w]hen the Japanese authorities have decided to bring an indictment with respect to a case over which Japan has the primary right to exercise jurisdiction, they will so notify the United States military authorities. The notification will be made in such forms, by authorities, and within such time as the Joint Committee may prescribe." [337]

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[336] Telegram 940 from Allison to Secretary of State, October 13, 1953, RG 84, Records of the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST October-November-December, NARA.

[337] Jurisdiction Sub-committee of the Joint Committee, Administrative Agreement Matters, Criminal Panel, "Statement by the Japanese Side of the Criminal Panel, Jurisdiction Sub-committee of the Joint Committee with respect to Paragraph 3 of the Protocol of 29 September 1953, concerning Article XVII of the Administrative

Six days earlier, the arrangement on custody had also been secured through the Sub-Committee on Jurisdiction of the Japan-U.S. Joint Committee. In this confidential document dated October 22, 1953, Lieutenant Colonel of the Judge Advocate General's Corps (JAGC) Alan Todd and Tsuda Minoru stated their governments' policies on this matter. Todd stated: "I wish to assure the Japanese representatives that upon release of an offer to the custody of the United States military authorities, such offender shall, on request, be made available to the Japanese authorities, if such be condition of his release." In response, Tsuda stated: "In view of the assurance by the United States representative, I wish to state that there will not be many cases in which the custody of such offenders will be retained by the Japanese authorities."[338] On the determination of official duty, the Japanese negotiators had "rejected to encroach upon the prerogative of the court to determine in a criminal case whether an offense was committed in the line of duty," Bassin noted in 1955. However, the state leaders finally agreed in 1953 to "give… a U.S. certificate of official duty a precompetitive value rather than a conclusive vale."[339] The commanding officer of the accused was authorized to issue a certificate of official duty. Yet the vague demarcation of boundary between "official" and "unofficial" exclusively determined by U.S. elites came to generate controversies in the coming years and decades.

When Japanese bureaucrats were about to institutionalize the system of waiver through interdepartmental coordination, U.S. civilian and military elites began reframing the rationale for

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Agreement (signed by Minoru Tsuda, Chairman, Criminal Panel, Japanese Sub-committee on Jurisdiction)," October 28, 1953, RG84, Foreign Service Pots of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1953-1955, Box 19, Folder: 320.1 Criminal Jurisdiction Box 19, NARA.

[338] Jurisdiction Sub-committee of the Joint Committee, Administrative Agreement Matters, Criminal Panel, "Statement by the Japanese Side of the Criminal Panel, Jurisdiction Sub-Committee of the Joint Committee with respect to Paragraph 3 of the Protocol of 29 September 1953, concerning Article XVII of the Administrative Agreement (signed by Minoru Tsuda, Chairman, Criminal Panel, Japanese Sub-committee on Jurisdiction)," October 28, 1953, NARA.

[339] Letter from Jules Bassin to Ambassador Morgan, Manila Embassy, "Exercise of Japanese Jurisdiction in 'Official Duty' Cases," June 16, 1955, RG84, Foreign Service Pots of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1953-1955, Box 19, Folder: 320.1 Criminal Jurisdiction Box 19, NARA.

the revision of Article 17 before the U.S. and global audiences and assisting colleagues across the globe facing similar problems with local governments and civil societies. Given the experience of the "revision" of Article 17 of the Japan-U.S. Administrative Agreement, State officials in Tokyo came to introduce the Japanese formula and critical lessons as to how to counter "anti-Americanism." On September 30, a day after the signing ceremony of the revision of Article 17 was held, the Tokyo Embassy received a telegram from Manila which stated: "Embassy would appreciate receiving text of recently-concluded Administrative Agreement provisions regarding jurisdiction, as well as interpretive documents, understandings, protocols, etc. Similar problems arise under Article XIII United States-Military Base Agreement." The task was undertaken by Bassin.[340]

Within the military community, the U.S. Army Troop Information and Education Section devoted one entire bulletin to the publicized amendment of Article 17. The edition entitled "You and the Japanese Law: An Amendment to the U.S.-Japanese Administrative Agreement" explained in simple language how the amendment could affect daily life of the employees of the U.S. military and their dependents aged under twenty-one. The Army suggested the premise that "Only a very small percentage of the U.S. forces ever become connected with or involved in criminal activities."[341] Yet the readers were reminded that they were still "subject to military law in Japan at all times," and that at times they could be tried at a Japanese court for a violation of Japanese law.[342]

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[340] Telegram 30 from Manila Embassy to Tokyo Embassy, September 30, 1953, RG 84, Records of the Foreign Service Post of the Department of State, Tokyo Embassy, Japan, Classified General Records, 1953-1955, Box 18, Folder: 320.1 BST September, NARA.

[341] The Troop Information and Education Section, U.S. Army, "You and the Japanese Law: An Amendment to the U.S.-Japanese Administrative Agreement," FEC Troop Information Bulletin, No. 18, 1953, 2, Nichibei anzen hoshō jyō yaku kankei ikken—Dai sanjyo ni motozuku gyōseikyotei kankei—keijisaibanken jyōkō kaisei kankei, Folder 2, Code Number: 100-000312, Diplomatic Archives of the Ministry of Foreign Affairs of Japan.

[342] The Troop Information and Education Section, U.S. Army, "You and the Japanese Law: An Amendment to

In fact, this bulletin noted explicitly that in those cases where Japan could exercise primary jurisdiction, "the U.S. has the right to request that Japan give up its authority if the matter is of particular importance. Japan will give 'sympathetic consideration' to these requests. In addition, there may be many cases where Japan simply decides not to exercise its authority for one reason or another." The Army also unambiguously explained the expected procedure concerning custody: "If the Japanese arrest a person [U.S. military employees and their dependents] they will promptly notify the military authorities, and in most cases the U.S. will be given custody until the accused person has been formally charged by Japan. If military authorities arrest a person for violation of Japanese law, they will hold him in custody until he has been charged by Japan." [343]

The employed rationale for this "change" were the liberal democratic principles of "equality" and "mutual trust" between Japan and the United States.

> The NATO Status of Forces Agreement, which was closely followed in drawing up the new agreement with Japan, gave a large degree of criminal jurisdiction over our forces to the NATO nations. This transfer of authority was believed to have a direct bearing on the success of NATO itself. It was recognized that there could be no effective action for joint European defense against Communism unless we respected the sovereignty of the various nations in the North Atlantic Organization…. It was logical that Japan, also a partner in defense against Communism, and a sovereign nation, should expect that we would make a similar agreement with her.[344]

The Army, who had been the most vocal opponent of the prospect of U.S. service members tried under "Oriental" law, stated: "The big change for all Security Forces personnel, of course, is that we are all subject to trial in a Japanese court. This is no cause for alarm. Japanese courts proceed much like our own." And indeed, "[t]he purpose of the arrangement is to establish a means by

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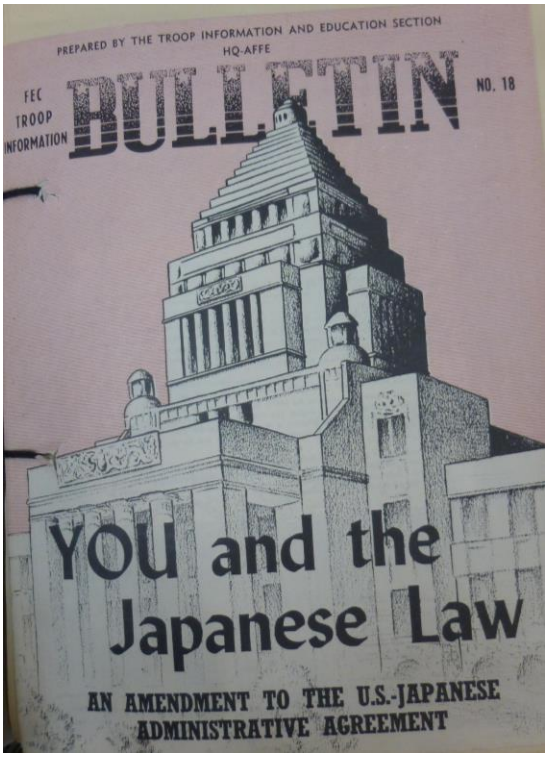
the U.S.-Japanese Administrative Agreement," FEC Troop Information Bulletin, No. 18, 1953.

[343] The Troop Information and Education Section, U.S. Army, "You and the Japanese Law: An Amendment to the U.S.-Japanese Administrative Agreement," FEC Troop Information Bulletin, No. 18, 1953.

[344] The Troop Information and Education Section, U.S. Army, "You and the Japanese Law: An Amendment to the U.S.-Japanese Administrative Agreement," FEC Troop Information Bulletin, No. 18, 1953.

which we can live side by side with the Japanese without friction and misunderstanding." [345] Toward the end of 1953, the Army's rhetoric appeared much like the State Department's.



Conclusion

As Alfred C. Oppler expressed his hope for the Japanese people's "courageous use of their new rights for the prevention of any form of government" in 1948, Japanese civil society asserted its political agency to the fullest extent and resisted the Yoshida administration's unconstitutional governance in the aftermath of the occupation. Some writers, introduced in the above analyses or

[345] The Troop Information and Education Section, U.S. Army, "You and the Japanese Law: An Amendment to the U.S.-Japanese Administrative Agreement," *FEC Troop Information Bulletin*, no. 18, 1953.

reviewed for the chapter, asked how historians and playwrights would later interpret the time they were living in, and narrate it.

This chapter has shown how the politics surrounding the postwar U.S. military legal regime of exception registered a pivotal moment for the embryonic postwar Japan-U.S. diplomatic relationship. U.S. elites in the Defense and State departments had internal debates over the legitimacy, conditions, and means of projecting legal and extralegal power outside the United States for their shared objective in leading the "free world." Eventually, the military leaders' exceptionalist rationale for the extraterritorial FCJ policy became dominant given the ideological support from the prominent U.S. Senators who led the movement to adopt a reservation to the NATO SOFA in July 1953. Notably, it coincided with a time when some State officials in Japan began expressing concern over the otherness of Japan's legal system and exploring possibilities of running the regime of exception only via executive machinery. In this context, the ways in which the extraterritorial FCJ policy was introduced to Japan came to rely heavily upon the State Department's observation of the dynamism of post-occupation Japanese nationalism. In the end, the Tokyo Embassy officials' admonition that the controversy over Article 17 could alter the entire Japan-U.S. relationship did not materialize.

On the part of the population who came under the regime of the 1953 Agreement, the Yoshida administration was the first to compromise on its pledge for the recovery of national sovereignty and assertion over territorial sovereignty. The Foreign Office elites meticulously studied the NATO SOFA before the negotiations on the "revision" of Article 17, yet knowledge of the existence of similar arrangements in Europe—introduced orally—was sufficient to find legitimacy in their commitment to the making of the confidential arrangements for the colossal presence of U.S. armed forces. In civil society, the unique coalitions between the Right and Left

and labor and business, if not on organizational levels, reinforced the protest movement against Article 17. Yet, as soon as the state leaders announced the adoption of the NATO formula in September 1953, such coalitions faded away. By the establishment of the 1955 system, under which the mergers of the conservative parties and the two Socialist parties came to symbolize the postwar Japanese ideological divides, anti-base struggles were shifted to other fronts. They were undertaken by leftists and residents living adjacent to bases mainly until the emergence of the second wave of the national protest against postwar U.S. extraterritoriality in 1957, which is the subject of Chapter 4.

However, Japanese civil society's efforts to deconstruct "anti-Americanism" and strengthen solidarity with American civil society were also under way. The sociologist, Shimizu Ikutaro, contributed an open letter titled "Dear American Soldiers in Japan" to the magazine, *Heiwa* (Peace). Marxist Shimizu, as one who "owed much to American scholars' science and philosophy," wrote: "During the wartime…, I walked around Lagoon, Singapore, Bangkok, Saigon, and other towns in Southeast Asia. Since I knew Japan's actions were imperialist invasions, I always felt an unspeakable sense of embarrassment and a sense of guilt toward the native peoples… Are you also having this sense of embarrassment walking around the towns in Tokyo?" Shimizu asserted, "The fascists who could not help but think only about killing your fellow soldiers are now turning extremely pro-U.S." He called for solidarity with those who had long loved the United States like himself and those Japanese who were determined to protect peace and freedom from the government.[346] Intellectual historian Takeda Kiyoko's article entitled "Ms. Roosevelt and Japanese People's Problems—Possibilities and Impossibilities between Japanese and U.S. Understandings" more squarely grappled with the relationship between peace, democracy, and

[346] Shimizu Ikutarō, "Nihon ni iru America no heitai e," *Heiwa*, March 1953,1.

human rights, reflecting on Eleanor Roosevelt's visit to Japan in June 1953. She wrote that even though Roosevelt and Japanese scholars could not agree on whether or not the Soviet Union and China would invade Japan, Takeda was impressed with Roosevelt's keen human rights consciousness and commentary written after the visit. Roosevelt encouraged American citizens to perceive things from the perspectives of locals around the world, and mentioned that she started having a second thought on Japan's rearmament for a people who staunchly resisted the resurgence of militarism, Takeda commented.[347] Shimizu and Takeda sought internationalist thinking rather than transnational actions to overcome the boundaries between the United States and Japan.

Human rights activism against extraterritoriality would be taken up by Okinawans, which will be the subject of the following chapter.

[347] Takeda Kiyoko, "Lūzuberuto fujin to nihon jin mondai—Nichibei rikai no kanōsei to genkai," *Sekai* 92, no. 8 (August 1953): 28-36.

Chapter 3

"Extraterritoriality" in Occupied Okinawa

The statement made by Secretary Dulles makes us realize the importance of "base Okinawa," and at the same time reminds us that we have a grave responsibility for every social unrest that is created here.

Okinawa Shinbun[348]

In Schubert's signature song "Erlkönig" a child feels the breath of the devil. Yet the parent holding the child does not feel it at all. We are a people whose sorrows stem from the fear that plays on the land and in the sky of Okinawa like in the song "Erlkönig."

Ryūkyū Shinpo[349]

On September 13, 1955, an Okinawan local newspaper's editorial invoked Franz Schubert's signature composition, "Er g," based on a poem by Johann Wolfgang von Goethe. In the wake of the rape murder of a local five-year-old girl by an American soldier, the author compared the heinous incident to *Erlking*, in which a father could not feel the presence of evils despite his small son's repeated warnings. The fear that children could be taken away without adults noticing was in the air in Okinawa. Yet unlike in *Erlking*, where mere mortals could do nothing to stop evil spirits from seizing their children, Okinawans seized on the 1948 Universal Declaration of Human Rights (UDHR) to demand legal justice under the American military legal regime of exception. In the eyes of the islanders, the incident demonstrated the undeniable existence of a system of racist and sexist oppression that characterized Okinawa's inferior status in relation to internationally recognized sovereign states that housed U.S. bases, such as Japan and the Philippines. This case

[348] *Okinawa shinbun*, March 11, 1955.
[349] *Ryūkyū shinpo*, September 13, 1955.

which came to be referred to as the "Yumiko-chan incident" by the locals registered a critical moment not only in Cold War Okinawa but also for globalizing struggles for decolonization and human rights in the 1950s.

This chapter traces the development of the politics surrounding the American military legal regime of exception with a focus on post-1952 Okinawa and its interaction with human rights activism. Narrating 1950s-Okinawa from a perspective of transnational history, it demonstrates how the historic 1955 protest movement came into existence building upon a conjuncture between the embryonic "island-wide" struggle against the military's systemic confiscation of native land and the emergence of solidarity activism for occupied Okinawa launched by the Japan Civil Liberties Union (JCLU) in 1955. The *Asahi shinbun*'s extensive coverage of a JCLU report titled "Human Rights Problems in Okinawa," published several months prior to the "Yumiko-chan incident," compelled Japanese civil society to engage with the "Okinawa problem" for the first time. Owing much to the JCLU's attempt to raise international awareness of the enormity of human rights abuses committed under the military rule, the repercussions reached not only Okinawa but also the Third World.

The chapter argues that the operation of the American military legal regime of exception in occupied Okinawa reveals the vulnerability of civilization as a contingent ideology and an arbitrary practice of the United States as the dominating power: this inadequacy was exposed by Okinawans' own articulation of "civility" in their struggle for the universal application of human rights. Further, it asserts that mid-1950s Okinawans' collective appeal for egalitarianism under the spirit of the UDHR created a critical conjuncture between Okinawans' human rights advocacy and their "island-wide" struggles against the occupation. The following year saw the culmination of the land struggle, which would give rise to a coalition of progressive forces in the rest of the 1950s.

Before Japan's recovery of sovereignty in 1952, Okinawans had debated the location of their identity, invoking the memories of Japan's annexation of the Ryukyu Kingdom in 1872 and the Asia Pacific War they fought as the "Japanese." Eighty-four percent of the population, however, demanded reversion to Japan, as shown in 1951 opinion polls.[350] Despite Okinawans' popular plea for reversion, the San Francisco Peace Treaty, which was adopted by the Japanese legislators with an overwhelming majority of votes, authorized the jurisdictional separation of the Ryukyu Islands from Japan. The United States claimed to retain administrative power until Okinawa and other neighboring southern islands come under UN's control through trusteeship. But it never happened. For Okinawans, therefore, the military's extraterritorial foreign criminal jurisdiction (FCJ) policy inevitably belonged to the larger structure of legal questions concerning U.S. military governance posed by the Japanese and U.S. states without their consent. Under the occupation, Okinawans were not granted local jurisdiction over all cases involving U.S. military personnel, the civilian component, and their dependents. Despite the lack of "national sovereignty" per se, Okinawans made tenacious efforts to receive compensation for deaths and injuries caused by U.S. military related individuals since the early days of the occupation without securing concrete policy changes. But in the mid-1950s, ongoing local struggles against the military's land seizure and solidarity movements in Japan and the Third World generated an unprecedented popular movement for legal justice, open trials, compensation, and respect for Okinawan lives under the banner of human rights.

As in the previous chapter, American state elites' ideas about the U.S. military legal regime of exception is best understood in relation to that of locals, in this case Okinawans. Indeed, the United States' exercise of imperial sovereignty was far greater in scale in Okinawa than in Japan.

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[350] Sakurazawa Makoto, *Ogkinawa gendaishi: Beikokutōchi, hondofukki kara 'ōru Okinawa' made* (Tokyo: Chuōkōronsha, 2015), 22-23.

This meant that U.S. policy makers and congressional representatives' heated debate on the conclusion of status of forces agreements (the administrative agreement in the case of Japan) had little influence on U.S. military justice in Okinawa. Nevertheless, the ways in which State and Defense Department officials projected their power over Okinawans reflected their broader differences in addressing policy priorities: namely, the Pentagon presiding over strategic readiness of the Cold War containment policy on the one hand, and civilian elites expected to maneuver political relationships among various actors to buttress the ideological basis of the "free world" alliances on the other.

It is, therefore, necessary not to lose sight of the development of postwar U.S. policy on Okinawa with attention to competition over policy priorities. Most symbolically, in the aftermath of World War II, the State Department proposed to return Okinawa to Japan in accordance with non-expansionism enunciated in key official statements such as the 1941 Atlantic Charter and the 1943 Cairo Declaration. Given Emperor Hirohito and Japanese elites' consent on the continued occupation of Okinawa and the rise of communist influence in East Asia, however, the State Department, under the leadership of George Frost Kennan, came to rationalize U.S. administration of the Ryukyu Islands as an act of liberation.[351]

At the same time, it is equally important not to lose sight on the supplementary roles each department played in maintaining the U.S. military presence on Okinawa for their shared crusade against communism. The chapter illustrates how their negotiation of ideas surrounding suppression and conciliation helped counter Okinawans' 1955 struggle against the U.S. military legal regime

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[351] Aketagawa Tōru, *Okinawa kichi mondai no rekishi: Hibu no shima, ikusa no shima* (Tokyo: Misuzushobō, 2008), 102-143; Robert Eldridge, *The Origins of the Okinawa Bilateral Problem: Okinawa in Postwar U.S.-Japan Relations, 1945-1952* (New York, Garland Publishing, 2001), 9-41; Miyazato Seigen, *Nichibei kankei to Okinawa* (Tokyo: Iwanami shoten, 2000), 23-32; Gabe Masaaki, *Nichibeikankei no naka no Okinawa* (Tokyo: Mitsuishobō, 1996), 35-58; Kōno Yasuko, *Okinawa henkan wo meguru seiji to gaikō: Nichibei kankeishi no bunmyaku* (Tokyo: Tokyo daigaku shuppan, 1994), 7-14.

of exception. In spite of the fragile institutional basis of authority, the State Department's representative on Okinawa provided vital policy making recommendations, thereby persuading the military officials not to employ high-handed measures to quash the rapid mobilization of the protest movement, but to publicize a civilized, democratic operation of military justice. The adopted tactic exerted tangible influence on the polarization of the protest movement.

The death of a local girl evoked a public outrage of unprecedented proportions on the island that highlighted the plight of military occupation at a particularly precarious moment in 1955. Not only progressives but also conservatives came to place "human rights" at the heart of their joint appeal for legal justice and compensation while asserting the dignity of the "Okinawan race" to popularize the protest movement. The islanders collectively raised suspicion of the U.S. elites' definition of "civilization," with ample evidence of the military's dehumanizing treatment of the locals. This contrasted sharply with the Japanese campaign against Article 17 of the Japan-U.S. Administrative Agreement, which collectively relied upon the logic of national sovereignty with links to imperial sovereignty to a varying degree. Further, as compared to the Japanese counterpart, the role of women in invigorating the protest movement was more prominent in occupied Okinawa. This was despite the military's attempt to mobilize local women as a depoliticizing force.

From the Battle of Okinawa to the Cold War Island

The history of postwar Okinawa was profoundly shaped by the war that the Japanese and U.S. empires had fought in the Asia-Pacific theater. The Japanese Imperial Army fought the first, and only, home-front battle against the American armed forces on Okinawa, then-the southernmost prefecture. The state elites in Tokyo predicted their defeat in the war against the Allied powers

before the Battle of Okinawa. Yet the ground battle was planned to save time and preserve the national polity. The establishment of a U.S. military government was announced on April 5, 1945, shortly after U.S. armed forces arrived on the Island of Okinawa and U.S. Navy Admiral Chester W. Nimitz issued the U.S. Navy Military Government Proclamation No. 1. Within years, the island transformed from an agriculture-based economy to a service-based economy dependent on the American military presence, and became the hub of postwar America's global war against communism. The Battle of Okinawa claimed 12,520 U.S. soldiers' lives and 188,136 Japanese lives including non-combatants, of whom 122,228 were Okinawans, approximately one fourth of the entire population. Further, over 10,000 Koreans employed as military personnel or wartime sex slaves, called "comfort women" by the Japanese military, died in the American invasion.[352]

Before the end of the war, the U.S. armed forces' separation of Okinawa from Japan served the concrete strategic objective to attack mainland Japan from a place of geographical proximity. As early as in October 1945, the Joint Chiefs of Staff (JCS) declared the Ryukyu Islands of paramount strategic importance to postwar U.S. basing policy (JCS570/40).[353] At the time, Washington's policy concerning "Far" Asia was still focused on China. The State Department was skeptical of the idea to maintain permanent military bases in Okinawa for concern over the Soviet Union's reactions. The frequent occurrence of typhoons also raised concerns over permanent basing. Since Washington did not form a consensus on the gist of its policy until 1949, the U.S. Navy and Army governed the island by their own directives without consistent orders from Washington.[354] Against the backdrop of the consolidation of U.S. containment strategy in Europe and Asia, however, State Department strategist George Kennan maintained in 1948 that the

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[352] Sakurazawa, *Okinawa gendaishi*, 4.

[353] Kōno, *Okinawa henkan o meguru seiji to gaikō*, 9.

[354] Miyazato Seigen, *America no Okinawa tōchi* (Tokyo: Iwanami shoten, 1966), 5, 25.

continued U.S. occupation was necessary for the "free" use of bases, a right unattainable in soon-to-be sovereign Japan and the newly-independent Philippines. Kennan's logic suggested that the "protection" of the conquered natives became necessary for that very objective. In this process, the adoption of NSC 13/3 authorized the allocation of a U.S. federal budget for the long-term military presence and its responsibility for the welfare of Okinawans.[355] Importantly, just as the New Dealers' democratization of Japan came to an end with the "reverse course," Washington decided to "democratize" Okinawa. This had to do with the postwar U.S. national security state's definition of "democracy" built around the militarized concept of liberal democracy.

In U.S. postwar planning, the "geopolitical" location of Okinawa was not the only factor that shaped the trajectory of the occupation of Okinawa. Following Japan's unconditional surrender, the colonial legacy of the historical relationship with Japan was also integrated into U.S. policy. The Japanese leadership, including the Shōwa Emperor, explicitly expressed his support for the continued U.S. occupation of Okinawa before and during negotiations of the peace settlement. The Emperor's message conveyed via his aid to General MacArthur in 1947 indicated his attitude toward the future governance of Okinawa. A memorandum for General MacArthur dated 20 September 1947 indicated: "the Emperor hopes that the United States will continue the military occupation of Okinawa and other islands of the Ryukyus. In the Emperor's opinion, such occupation would benefit the United States and also provide protection for Japan." This message of the Emperor, who had been exempt from war crimes charges for U.S. policy elites' recognition of the utility of his political power in occupying Japan,[356] went beyond suggesting his personal support for garrisoning Okinawa. It included more elaborate calculations: "The Emperor further

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[355] Kōno, *Okinawa henkan o meguru seiji to gaikō*, 15-28.
[356] Takashi Fujitani, "The Reischauer Memo: Mr. Moto, Hirohito, and Japanese American Soldiers," *Critical Asian Studies* 33, No. 3 (November 2010): 379-402.

feels that United States military occupation of Okinawa (and such other islands as may be required) should be based upon the fiction of a long-term lease—25 to 50 years or more—with sovereignty retained in Japan. According to the Emperor, this method of occupation would convince the Japanese people that the United States has no permanent designs on the Ryukyus Islands, and other nations, particularly Soviet Russia and China, would thereby be estopped from demanding similar rights."[357] This strategic design of the continued U.S. military presence offered by the Emperor—now as "symbol" of Japan under the new constitution—was endorsed by the Yoshida administration, and translated into the ambiguous legal concept of "residual sovereignty" developed by John Foster Dulles.[358] Article 3 of the San Francisco Peace Treaty authorized the jurisdictional separation of the Ryukyu Islands from Japan and the United States' strategic control over the islands, namely executive, legislative, and judicial power.

Okinawan islanders thereby became stateless in the world after World War II. In the immediate aftermath of the Battle on Okinawa, the residents were placed in temporary camps. The United States Military Government of the Ryukyu Islands (USMGR) divided jurisdiction over the islands into four—Okinawa, Miyako, Yaeyama, and Amami—and authorized each to form an advisory committee (later assembly). On the island of Okinawa, the Okinawa Advisory Committee (*Okinawa shijunkai*) was established in August 1945. Under the governance of the USMGR, the authority of each assembly was limited to providing advice and opinions to executive leaders appointed by the occupation authorities. The 1949 adoption of NSC 13/3 replaced the USMGR with the U.S. Civil Administration of Ryukyu Islands (USCAR) in 1950.

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[357] W.J. Sebald, Counselor of Mission, United States Political Advisor for Japan to the Secretary of State, "Emperor of Japan's Opinion Concerning the Future of the Ryukyu Islands," General Records of the Department of State, Central File, 1945-49, Box 7180, Folder: 1, Record Code: 0000017550, Okinawa Prefectural Archives [hereafter cited as OPA].
[358] Aketagawa, *Okinawa kichimodai no rekish*, 132-143.

For the purpose of reinforcing local incentives and autonomous support for the U.S. military presence, Major General Joseph R Sheets undertook the "democratization" of Okinawa. The prime objective was the reconstruction of the Okinawan economy. Sheets believed Okinawans' free election of executive leaders was essential, but left the island due to an illness in July 1950. After all, Okinawans' free election of chief executive did not materialize until 1968. Under the rule of the USCAR, which could exercise institutional constraints with veto power and the right to appoint chief executive, "Ryukyuans" were authorized to form an "autonomous" government: Okinawa Gunto Government in 1950, the Ryukyu Provisional Central Government in 1951, and the Government of the Ryukyu Islands (GRI) from 1952 to 1972. As for the leadership of governance, the Commander- in-Chief of the Far East Command (FECOM) was appointed as governor of the USCAR, whereas the Commander of the Ryukyu Command (RYCOM) presided over the administration of Ryukyuan affairs as deputy governor. In 1957, Presidential Executive Order 10713 expanded the State Department's role in policy formation concerning the Ryukyus' foreign affairs, but the rigid military rule was maintained by a high commissioner (Army general), who was appointed by the Secretary of Defense and authorized by president.[359]

In 1952, Ordinance No. 68 "Provisions of the Government of the Ryukyu Islands" was enforced to serve as a modern constitution. The provisions, however, limited the application of individual rights, as declared in Article V of Section II: Status, Duties and Rights of the People: "All of the people shall be respected as individuals and hold equal under the law. Their right to life, liberty, and the pursuit of happiness shall, *to the extent that it does not interfere with the public welfare,* be supreme consideration in legislation and in other governmental affairs. (emphasis

[359] Sakurazawa, *Okinawa gendaishi*, 3-20; Miyazato, *America no Okinawa tōchi,* 1-32, 111-115.

added)"[360] Japan's new constitution also introduced the concept of the "public welfare," but the tension between human rights and the "public welfare" existed nowhere near the level that existed in occupied Okinawa. Among many other constraints on civil and political liberties, publishers had to be approved by the occupation authorities before exercising the freedom of speech,[361] and labor unions were prohibited.[362] Regardless of difference in title, form, and internal organization, the structure of military government ensured its exclusive and absolute administrative power, albeit the gradual demise of it. Deputy governor (high commissioner from 1957) held the right to veto any legislation the GRI Legislator passed.[363]

With both contesting and shared visions of Cold War geopolitics, postwar U.S. military and civilian elites declared to the world that the prolonged occupation of Okinawa served the fight for the "free world," and that it was part of the United States' civilizing mission. In 1948, General MacArthur unambiguously told George Kennan: Okinawans, assumed to be "simple and good-natured people," had been "looked down on" by the Japanese, but they could now "pick up a good deal of money and have a reasonably happy existence from an American base development."[364] Historian Steve Rabson, commenting on MacArthur's racial ideology, argued that "perhaps after seeing people in a sense of destitution who thankfully accepted relief and such jobs as were offered them, U.S. officials were deluded into thinking that local residents would always be grateful for

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[360] United States Civil Administration of the Ryukyu Islands: Office of The Deputy Governor APO 719, CA Ordinance Number 68, February 29, 1952.

[361] Monna Naoki, *Okinawa genron tōsei shi: Genron no jiyū e no tatakai* (Tokyo: Yūzankaku shuppan, 1996), 23-24.

[362] Nagumo Kazuo, *America senryōka Okinawa no rōdōshi: shihai to teikō no hazama de* (Kōbe: Mizunowa shuppan, 2005), 66-70.

[363] Steven Rabson, "Introduction," in *Okinawa: Two Postwar Novellas* by Ōshiro Tatsuhiro and Higashi Mineo (Berkeley: The Institute of East Asian Studies, University of California, Berkeley), 14-16.

[364] Quoted in Steven Rabson, "Introduction," in *Okinawa: Two Postwar Novellas* by Ōshiro Tatsuhiro and Higashi Mineo (Berkeley: The Institute of East Asian Studies, University of California, Berkeley), 7.

Okinawan 'protection' and for the kind of livelihoods offered by a military-service economy."[365] As Okinawan diplomatic historian Miyazato Seigen argued in 1966, Major General Sheets' conditional democratization of Okinawa was rooted in the trajectory of Manifest Destiny. Sheets regarded Okinawans as "primitive people" devoid of the basic knowledge of political philosophy such as Marxism.[366] Sheets, therefore, optimistically believed that a quasi-democratic form of government would make Okinawans "pro-America."[367]

Secretary of State John Foster Dulles more eloquently reiterated the exceptionalist logic of civilization. In 1953, Dulles asserted: "The United States intends to remain as custodian of these islands [the Ryukyus] for the foreseeable future. However, in exercising its treaty rights, the United States will… do all in its power to improve the welfare and well-being of the inhabitants of the Ryukyus…"[368] Diplomatic historian Seth Jacobs highlighted Dulles' projection of hierarchical racial ideology on the locals viewing Japanese as "gifted children" and Laotians as "child(ren)."[369] U.S. policy elites' underlying logic suggested that the level of civilization could be measured by the ability to industrialize and run an empire, not bold enough to challenge U.S. hegemony, but to come under it. And their racialized understanding of the Cold War geopolitics was translated into the so-called "blue sky" position, a phrase initially articulated by Dulles in 1953. The position maintained that U.S. occupation of Okinawa could be prolonged as long as "emergency" remain in Asia.[370] Contradictions of the U.S. elites' positioning as "liberators" could be easily identified in their enlistment of collaboration from Japanese elites, who had been exploiting Okinawans'

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365 Rabson, "Introduction," in *Okinawa: Two Postwar Novellas*, 7.
366 Miyazato, *Sengo Okinawa no seiji to hō*, 22-24.
367 Miyazato, *America no Okinawa tōchi*, 30-32.
368 Quoted in Marian A. Pearl, "American Oppression in Okinawa," *Contemporary Issues* 7, no. 25, (October-November 1955): 17.
369 Seth Jacobs, *The Universe Unraveling: American Foreign Policy in Cold War Laos* (Ithaca: Cornell University Press, 2012), 13.
370 Kōno, *Okinawa henkan o meguru seiji to gaikō*, 94.

marginalized position, most intensely in the Battle of Okinawa, ever since Meiji Japan's annexation of the Ryukyu Kingdom in the nineteenth century.

Okinawans of diverse ideological convictions debated Okinawa's future on the eve of Japan's independence in the early 1950s. The Okinawan People's Party (OPP), as the most vocal opponent of the U.S. military occupation with ties to the Japanese Communist Party (JCP), argued that "democratic forces" in Japan would support garrisoned Okinawa's struggle for reversion, suggesting reversion was the most ideal path for Okinawa. Those who demanded independence from Japan and entry into the capitalist bloc even under the condition of trusteeship for a certain period of time eventually formed the conservative indigenous government naming themselves the Ryukyu Democratic Party (RDP). Eventually, the pro-reversion movement, with enthusiastic support from the OPP and centrist Okinawa Socialist Mass Party (OSMP), gained preponderance.[371]

Upon the establishment of the GRI under the leadership of the RDP, the OSP and OPP formed a united front, the Committee for Joint Struggles against Colonization (*shokuminchika hantai kyōtō iinkai*) in 1953. When their joint candidate Tengan Chōkō was taken out of running in the GRI Legislatorial election, the Committee approached the executive government led by Chief Executive (CE) Higa Shūhei and occupation authorities with five demands: a) the abrogation of Article 3 of the Peace Treaty (i.e., immediate reversion to Japan); b) opposition to colonization in the Ryukyu Islands (i.e., opposition to the continuation of occupation); c) the adoption of labor laws; d) opposition to land seizure and forced eviction; e) the abolition of the Higa government and free CE election.[372] The OSMP remained anti-communist and vulnerable in the face of U.S.

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[371] Sakurazawa Makoto, *Okinawa no fukki undō to hokaku tairitsu—Okinawa chiiki shakai no henyō* (Tokyo: Yūshisha, 2012), 39-64.
[372] Arasaki Moriteru, *Sengo Okinawa shi* (Tokyo: Nihonhyōronsha, 1976), 97-98.

occupation forces' labeling them as communists throughout this joint struggle.[373] Other than political parties, various grassroots organizations such as the Okinawa Teachers Association (OTA), Okinawa Youth Confederation (OYC), Okinawa Women's Association (OWA), and Okinawa Association for the Protection of Children (OAPC) also became active participants in social movements in occupied Okinawa in the early 1950s.

The politics surrounding the American military legal regime of exception emerged with such specificities, shaped not just by the hot war in Asia but also by the new phase of the imperial politics of Japan and the United States and the existing ideological rivalry among Okinawans themselves.

GI Incidents, Petitions for Compensation, and Early Human Rights Advocacy

Unlike post-occupation Japan, which attained a legal order built upon the newly adopted constitution, the legal structure of occupied Okinawa was built on proclamations, ordinances, and directives that functioned as fundamental law. The dualistic legal order was regulated by military courts, USCAR courts, and GRI courts, and essentially divided jurisdiction between Okinawans and Americans.[374] Yet the absolute power of the deputy governor (later high commissioner) was ensured by the system under which U.S. occupation forces were authorized to extradite cases deemed crucial for the United States "national security." Article 1 of Civil Administration Proclamation No. 12 "Ryukyuan Court Systems," which came into effect on January 3, 1952,

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373 Sakurazawa Makoto, *Okinawa no hoshu seiryoku to 'Shimagurumi' no keifu* (Tokyo: Yūshisha, 2016), 31-33.

374 "Courts int the Ryukyu Islands: Jurisdiction of Courts in the Ryukyu Islands (Application of the UCMJ to contractors: Exercise of Civil Jurisdiction over Persons subject to the UCMJ)," undated, RG 319, Records of the Army Staff, Office of the Chief of Civil Affairs, Security Classified Correspondence of the Public Affairs Division, 1960-1964, Box 6, Folder: Courts and Law Enforcement, NARA.

declared:

> 1. The Ryukyuan Court Systems consist of the Magistrate Courts, the Circuit Courts and the Court of Appeals of the Ryukyus. The Ryukyuan Court Systems shall be, hereafter, functions of the Judiciary of the Provisional Central Government and its successor, the Government of the Ryukyu Islands, both of which being referred to hereinafter as the "government."
>
> 2. Subject to such ordinances as may from time to time be promulgated by the Deputy Governor such courts shall have civil jurisdiction over all persons in the Ryukyu Islands, and criminal jurisdiction over all persons except nationals of the United Nations.
>
> 3. The Ryukyu Court Systems shall have criminal jurisdiction over offenses committed within the territorial jurisdiction of the government, upon vessels and aircraft of Ryukyuan registry and also over offenses committed beyond the territorial jurisdiction when so provided be laws.[375]

Essentially, Proclamation No. 12 declared amidst the Korean War that the judicial branch of the Government of the Ryukyu Islands (GRI) was expected to exercise civil and jurisdiction over cases involving Okinawans only.

Four years later, Civil Administration Ordinance No. 144 "Code of Penal Law and Procedure," dated March 16, 1955, elaborated the regulations. Its "Jurisdiction over Persons" (1.2.5, Chapter 2) stipulated that "Jurisdiction of every Civil Administration Court shall extend to all persons in the Ryukyu Islands, except: a) Persons subject to the Uniform Code of Military Justice or the Military or Naval law of allied powers; however, this proviso shall not operate to deprive any court of jurisdiction over a person referred to it for trial by the Deputy Governor; b) Persons having diplomatic immunity." Further, "Jurisdiction over Offenses" (1.2.6, Chapter 2) read: "Civil Administration courts shall have jurisdiction over: a) Offenses under any proclamation,

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[375] United States Civil Administration of the Ryukyu Islands Office of The Deputy Governor, "Civil Administration Proclamation No. 12: Ryukyuan Court Systems," signed by Robt. S. Beightler, Major General, United States Army, Deputy Governor on January 2, 1952, and came into effect on January 3, 1952, RG 59, Records of the Department of State, Office of the Legal Advisor, Office of the Assistant Legal Advisor for Far Eastern Affairs, Subject and Country Files, 1941-1962, Ryukyus, Command, Ordinances to Vietnam Task Force, Box 4, Folder: Ryukyus Command Proclamations 1-35, NARA.

ordinance or directive promulgated by or under the authority of the Civil Administration; b) Offenses under any provision of the penal law of the Ryukyu Islands as defined in Section 1.1.2 above; provided, that the Deputy Governor or an officer acting his authority shall have ordered the trial of the case by a Civil Administration Court." 1.2.6.1, Chapter 2 added: "A civil administration proclamation, ordinance, directive, order or other regulation or change thereto shall become law and enforceable upon the following: a) Signature by the Deputy Governor or Civil Administrator, as the case may require; and b) Passage of twenty (20) days after delivery in writing to the Office of the Chief Executive of the Ryukyu Islands; provided that if a different effective date is prescribed therein, said effective date shall govern after completion of delivery."[376]

This system in effect amounted to an illusion of the rule of law (*hō no shikūchitai*), as the legal scholars Ushitomi Toshitaka at Tokyo University and the JCLU member Ōno Masao argued in 1959. They contended that the GRI's legislations, which adopted the Japanese civil and criminal laws, were useless before the military's proclamations, ordinances, and directives, and that they denied rights protected under the U.S. and Japanese constitutions.[377] As discussed in the previous chapter, the making of the 1953 Japan-U.S. Confidential Agreement revealed the postwar Japanese and U.S. elites' loose handling to the rule of law. But in occupied Okinawa, Ushitomi and Ōno wrote, there was no more semblance of democracy when the norm of governance consisted of exceptions to democracy.[378]

Crimes and accidents involving U.S. military personnel and Okinawans became rampant

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[376] United States Civil Administration of the Ryukyu Islands Office of The Deputy Governor, "Ordinance Number 144: Code of Penal Law and Procedure," March 16, 1955, RG 59, Records of the Department of State, Office of the Legal Advisor, Office of the Assistant Legal Advisor for Far Eastern Affairs, Subject and Country Files, 1941-1962, Ryukyus, Command, Ordinances to Vietnam Task Force, Box 3, Folder: Ryukyus Command Ordinances 117-169, NARA.

[377] Ushitomi Toshitaka, Ōno Masao, "Okinawa—'Hō no shihai' no shinku chitai," *Sekai* 161 (May 1959), 66-80.

[378] Ushitomi, Ōno, "Okinawa—'Hō no shihai' no shinku chitai," 77.

in this milieu. "Okinawa has become a dumping ground for Army misfits and rejects from more comfortable posts, an article in *Time Magazine* declared in 1949 under the heading "Okinawa: Forgotten Island." According to the report's statistics, "In the six months ending last September, U.S. soldiers committed an appalling number of crimes—29 murders, 18 rape cases, 16 robberies, 33 assaults." The article also underscored the uneven and racialized triangular relationship between Okinawa, Japan, and the United States: "the U.S. has sometimes treated Okinawans less generously in occupation than the Japanese did." [379]

The GRI's official document entitled "Offenses Committed by U.S. Military Personnel Toward Ryukyuans" indicates that a total of 473 cases were recorded during the period between 1946 and 1952, which included 24 murders, 5 assaults resulting in death, 102 rapes, 1 burglary and rape, 18 arsons, 9 burglary and assaults, 313 assaults and batteries, and 1 accidental homicide. In order to prevent rape and home intrusion, Okinawans formed neighborhood watch groups, and warned each other with bells when GIs came into their communities.[380]

Another GRI record entitled "Casualties of Ryukyuans Caused from Traffic Accidents Made by U.S. Personnel" indicates that during the same period (1946-1952) U.S. military personnel's traffic accidents resulted in 84 deaths, 101 with serious wounds, and 181 with slight wounds. "Explosion and others" suggest 4 in total,[381] even though it does not include the largest bomb explosion that costed 103 Okinawans' lives on Ie Island in 1948.[382] As these figures included only reported and deliberately selected cases, the real number lay exponentially much

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[379] Frank Gibney, "Okinawa: Forgotten Island," *Time Magazine*, November 28, 1949, 26.
[380] The author's interview with Nakamatsu Yōzen in Itoman City, Okinawa, Japan, July 15, 2014.
[381] Shuhei Higa, Office of the Chief Executive, Government of the Ryukyu Islands, Naha, Okinawa to Civil Administrator, U.S. Civil Administration of the Ryukyu Islands, "Request of Compensation for the Casualties Caused from Offenses, Traffic Accidents & etc. Committed by U.S Military Personnel," December 9, 1952, Code Number: R00165537B, OPA.
[382] Toriyama Atsushi, *Okinawa kichi shakai no kigen to sōkoku, 1945-1956* (Tokyo: Keisō shobō, 2013), 64.

higher.

On the eve of Japan's recovery of sovereignty, Charles N. Spinks, a high-ranking State official who was directly involved in the occupation reforms, received a letter from "a close personal friend" residing on the island of Okinawa. Serving at the Office of the United States Political Advisor in Tokyo, Spinks forwarded the letter to Kenneth Young, Director of the Office of Northeast Asian Affairs of the State Department in Washington, in April 1952. Withholding the author's name, Spinks noted on the cover letter: "[Y]ou will be interested in the very frank observations expressed therein…"[383] This unusual letter, titled "Text of letter received March 22, 1952," which had been probably typed by his staff, denounced the state of American military justice and the fundamental structure of the U.S. military occupation. Spinks' friend, who appeared to be a member of the U.S. government, argued that a "judge" in the legal section of the USCAR would "make a funny looking judge in any court in the USA," and shared one illustrative episode as follows:

> I have been told directly of an instance in which a number of GI's decided to "go out and shoot 'em a few gooks" five years after the end of the war [in 1950]. So they took carbines [rifle] and went up on a ridge... They got seven Okinawans working in the fields below. These included a child of four, an old man, and others. Two died. One – a woman – was shot through the back of the head and paralyzed for the rest of her life. What happened? A desultory investigation, then pressure to drop it. When the civilian in charge of Public Safety (my host and informant) went to the top general and threatened to blow the whole thing wide open, the case was revived and the GIs brought to court-martial. One was tried for the death of one "gook." He was acquitted – and so were the rest. The court-martial was unable to find any means of determining who had shot which bullet which killed which person... My informant has been torn between blowing the case publicly or silence.[384]

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[383] Letter from Counselor of Mission (Charles N. Spinks), Office of the United States Political Adviser for Japan to Tokyo to Director (Kenneth Young, Esquire), Office of Northeast Asian Affairs, Department of State, April 15, 1952, RG 59, General Records of the Department of State, Records of the Bureau of Far Eastern Affairs, Office of Northeast Asian Affairs, Records Relating to Japan and Korea, 1945-1953, Attitudes-Miscellaneous, Box 1, Folder: Field Correspondence, Embassy Japan, 1952-1953, NARA.

[384] Letter from Counselor of Mission (Charles N. Spinks), Office of the United States Political Adviser for Japan to Tokyo to Director (Kenneth Young, Esquire), Office of Northeast Asian Affairs, Department of State, April 15, 1952, NARA.

The author of the letter rightly questioned the qualification of judges working for the military government in Okinawa, for many were not qualified lawyers in the United States: their earlier careers had been with the police. Even when a case ended with a conviction, the sentence was often suspended. Instead, courts-martial functioned to publicize U.S. policy objectives. The letter warned that the record of U.S. military injustices could empower "reds" in Japan and trigger international denunciation of the occupation:[385]

> It is my belief (with virtually no formal reasons) that the Peace Treaty will be a signal for the Japanese to throw all this at us at some appropriate time. Records of the severe prosecutions and punishments being meted out to Okinawans over six years, presented with the record of acquittals of American Army personnel who have committed every form of arson, rape, and violence upon Okinawans, are on the books. If the Army doesn't arrange for a convenient fire to destroy all Okinawan records at the governor's office or the Police Department, they may turn up in Japan someday, and from there go into the UN or other international body. If the Reds in Japan should lay hold of a record of this kind, they could strike a fearful blow.[386]

The letter then problematized the military's denial of self-governance. The described landscape of seizure of native land "in these miserable islands" invoked a colonial empire's exercise of unlimited power, dehumanization of the locals, and the destruction of their livelihood.

> Can't the military be restricted to military reservations as in Hawaii and now in Japan? Aren't 50,000 acres of the best agricultural land (poor enough at that) enough for their purposes in these miserable islands? Only in recent weeks the boys have been trying to establish yet another golf links… Of all the services which they should be required to do without, that is certainly one. It takes up many acres of level land (rare enough here) and serves only a very, very few officers among the total military. Yet the Okinawans have to level the tombs, fill in the rice paddy or potato fields and then keep the greens in time. It's a cruel business.[387]

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[385] Nakano Ikuo, "Beigun tōchikano gunsei kara minsei e no ikō," *Senshūshōgaku-ronshū* 92 (January 2011), 80.

[386] Letter from Counselor of Mission, (Charles N. Spinks), Office of the United States Political Adviser for Japan, Tokyo to Director (Kenneth Young, Esquire), Office of Northeast Asian Affairs, Department of State, April 15, 1952, NARA.

[387] Letter from Counselor of Mission, (Charles N. Spinks), Office of the United States Political Adviser for Japan, Tokyo to Director (Kenneth Young, Esquire), Office of Northeast Asian Affairs, Department of State, April 15, 1952, NARA.

In short, the letter went beyond condemning systematic impunity secured by the American military legal regime of exception. It was a severe critique of postwar U.S. foreign policy from within.

> I cannot help but feel that what's going on here now, unrestrained by any public opinion at home and by no very visible authority in the civil government at Washington, is worth tens of victories to the Reds. It is an enormously complex American disaster. To mention only three levels, I'd say that in the administration of "justice," in the distortion of economy, and in the vicious abuse of most elementary standards of respect toward another society's members, we have chalked up an all-time record for Americans.[388]

The proposed action was Washington's demilitarization and democratization of policy on Okinawa.

The islanders' objection to the American military legal regime of exception emerged in this milieu. Initially, their actions took the form of individual and collective petitions for compensation similar to occupied Japan. Since before the San Francisco Peace Treaty came into force, U.S. occupation authorities had been compiling Okinawans' complaints about uncompensated deaths and injuries caused by U.S. military related incidents. On October 4, 1950, the Police Superintendents' Conference of United States Military Government of the Ryukyu Islands (USMGR) discussed "a fatal accident caused by a fuel tank falling from an airplane on the home of Higa Jiei in Kina Village." After the conference the incident was discussed among numerous officers who thought it was necessary to bring it "to the attention of the Commanding General 20th Air Force who might authorize some unofficial relief measures such as a few truckloads of salvage lumber to repair the damaged house."[389]

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[388] Letter from Counselor of Mission, (Charles N. Spinks), Office of the United States Political Adviser for Japan, Tokyo to Director (Kenneth Young, Esquire), Office of Northeast Asian Affairs, Department of State, April 15, 1952, NARA.

[389] James B. Bhahan, Acting Director, Government and Legal Department, "Fatal Accident Caused by Military Airplane," November 13, 1950, RG 260, Records of the United States Occupation Headquarters, World War II, Records of the Civil Administration of Ryukyu Islands, The Legal Department, The Legal Division, Box 36 of HCRI-LE, Folder: 6 Claims (1950-1960: General Correspondence), Code Number: USCAR LE_00036_006, OPA.

Eventually, the matter was discussed with the 20th Air Force Staff Judge Advocate. Authorities at the Staff Judge Advocate, however, responded that "they had no authority to settle claims of this nature." Major Lovenbury, Chief of the Office of Special Investigations, Headquarters 20th Air Force, who had contacted the Judge Advocate, recorded in a memorandum that "although he was in sympathy with the natives concerned, he would not recommend any unofficial relief measures because it would open the door for a lot of other requests for aid." The Judge Advocate staff "pointed out that a number of natives are killed each month by military vehicles and other accidents and it would be hard to draw the line in deciding how far to go in providing unofficial relief." James Shahan, Acting Director of the Government and Legal Department, who compiled the memorandum, concluded that "In view of the foregoing it is felt that nothing further can be gained by forwarding any official correspondence on this subject to the Commanding General 20th Air Force. It is recommended that this case be considered closed until such time as higher authorities authorize settlement of claims of this nature."[390]

On August 23, 1951, when another petition was submitted to Office of the Deputy Governor of USCAR, it responded that "Although many petitions of this nature have been forwarded by this Office to the military commands concerned, there has been no indication of any action being taken for the requirement of the injured party. Attention is therefore called to the provisions of AR 25-90 of 22 June 1951, entitled 'Claims Act,' which, it is believed, provides a procedure for the settlement of such claims provided that 'the local military commander' shall determine that the claimant is friendly to the United States." Further, the Office of the Deputy Governor stated that "[i]t is requested that this Office be informed of the decision of the

[390] Bhahan, Acting Director, Government and Legal Department, "Fatal Accident Caused by Military Airplane," November 13, 1950, OPA.

Commanding General, Rycom, concerning claims of this type and any action which may be undertaken by USCA in the implementation of procedures which may be established..."[391]

When the structure of the local government was centralized and reorganized in 1950, Okinawan leaders came to officially petition for compensation on behalf of victims and their families affected by U.S. military related incidents. On September 29, 1951, conversations between Taira Tasuo, Governor of Okinawa Guntō Government, and Chief of Okinawa Civil Administration Team at the Legal Department of USCAR included the subject of "Compensation for the casualties," according to the memorandum. Taira stated:

> No reply has been received for our memo… requesting relief to the afflicted families by the gasoline tank fallen down from the airplane from Yomitan Air Port in jurisdiction of the 20th Air Force Division on 2nd of August 1951, and no compensation has been granted to the casualties. Even though that matter was unavoidable [sic] incident, the sufferers are so annoyed, and we can't restrain our sympathy to their torture. The villagers are doubtful whether military authorities will not guarantee the indigenous people's life and property, and thus we have not [sic] the heart to leave that matter. Accordingly, the prompt compensation for such sufferers is sincerely desired, for such matter is deplorable in view of a special problem. The distressed and pitiful sufferers have requested the compensation and also Yomitan-son authority has petitioned as the attached paper. It is therefore, recommended that the poor families be relieved through your favorable consideration. Your prompt action is appreciated.[392]

Still, Taira's petition became one of the numerous others which did not result in receiving proper compensation.

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[391] Robert F. Hartman, Major to Chief of Adm, United States Civil Administration of the Ryukyu Islands Office of the Deputy Governor, APO 719 to Commanding General Ryukyus Command, 20th Air Force, APO 331, "Petition for Compensation," August 23, 1951, RG 260, Records of the United States Occupation Headquarters, World War II, Records of the Civil Administration of Ryukyu Islands, The Legal Department, The Legal Division, Box 36 of HCRI-LE, Folder: 6 Claims (1950-1960: General Correspondence), Code Number: USCAR LE_00036_006, OPA.

[392] Governor of Okinawa Gunto Government (Tatsuo Taira), Office of the Governor Okinawa Gunto Government, Memorandum No. 588 "Compensation for the casualties" for Chief, Okinawa Civil Administration Team, September 29, 1951, RG 260, Records of the United States Occupation Headquarters, World War II, Records of the Civil Administration of Ryukyu Islands, The Legal Department, The Legal Division, Box 36 of HCRI-LE, Folder: 6 Claims, 1950-1960, General Correspondence, Code Number: LE_00036_006, OPA.

Upon the establishment of the GRI on April 1, 1952, Okinawans began taking more concrete actions to receive proper compensation. One concrete action was taken by the GRI Legislature which adopted a statement entitled "About Ryukyuans' Fundamental Human Rights." This statement was proposed by the OPP legislators including Senaga Kamejirō, and adopted unanimously in November 1952. The statement unequivocally declared that the 1948 Universal Declaration of Human Rights must be applied to occupied Okinawa where U.S. and other nationals' endless incidents committed against Okinawans were threatening their community: "From the standpoint of protecting life, liberties, and safety of Ryukyuans grounded in the spirit of the UDHR, we demand the eradication of misconducts and proper compensation for victims, and thus adopt this legislation."[393] It must be added that such a legislative move was taking place in parallel with the Japanese heated debate on the British sailors' case and the possibility of continued "extraterritoriality" in post-occupation Japan. The news appeared in Okinawan local newspapers' daily coverage. The vocabulary of "extraterritoriality," however, did not find an immediate utility in Okinawa, where U.S. occupation forces held territoriality.

The immediate context within which Okinawans passed the legislation "About Fundamental Human Rights of Ryukyuans" was the loss of two Okinawan schoolboys' lives by a U.S. military vehicle driven by a Filipino soldier in October. This generated a community-driven protest mobilizing a rally for the protection of human rights in the local district of the two victims in Misato Village.[394] Chief Executive of the GRI Higa Shūhei, appointed for his early career as an English teacher,[395] also petitioned Civil Administrator Vonna F. Burger for compensation on December 9, 1952. Higa's letter entitled "Request of Compensation for the Casualties Caused from

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393 *Ryūkyū shinpo*, November 16, 1952.
394 Toriyama, *Okinawa kichi shakai no kigen to sōkoku, 1945-1956*, 190.
395 Sakurazawa, *Okinawa gendaishi*, 41.

Offenses, Traffic Accidents & etc. Committed by U.S. Military Personnel" read:

> It is understood that there have been many cases including the offenses… committed by U.S. military personnel and its civilian employees against the Ryukyuan inhabitants since the end of the War, which cases have brought heavy casualties toward the lives and properties of the inhabitants. Among the cases, some of the persons concerned lost their sole children, bring them desperateness in their future lives, and others were robbed of their sole supporters, bring them miserable livelihood therefrom.[396]

According to Higa, although Okinawan authorities "tirelessly worked… pleading to the U.S. Authority for the compensation," responses suggested that they "cannot practice the compensation due to the condition that there [wa]s no such regulation concerning compensation" and there was "no available budget." Having received such dire responses, Higa asked the Civil Administrator to recall an earlier statement that "a 'Compensation Committee' might be established" upon the adoption of the Peace Treaty. Nevertheless, no announcement had been made on the establishment of such a committee even after the San Francisco Peace Treaty came into force and Japanese civil society began challenging Article 17 of the Japan-U.S. Administrative Agreement collectively. Higa further wrote: "Above all, the people were much shocked to hear the recent case that two school children were killed by being r[u]n over by a Filipino driver…" and the incident mobilized "Mass Meeting of Defending Human Right in Misato Village. Higa concluded the letter stating: "if things of this kind be left undone, to our great regret, there might arise a misunderstanding or two in the relationship between the U.S. military and the Ryukyuans, I am afraid."[397] Just like the Japanese counterpart, i.e., the Yoshida administration, Higa resorted to the rhetoric of mutual

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[396] Chief Executive of Governor of the Ryukyus (Shuhei Higa), Government of the Ryukyu Islands Office of the Chief Executive, Naha, Okinawa to Civil Administrator of U.S. Civil Administration of the Ryukyu Islands, "Request of Compensation for the Casualties Caused from Offenses, Traffic Accidents & etc. Committed by U.S Military Personnel," December 9, 1952, Code Number: R00165537B, OPA.

[397] Chief Executive of Governor of the Ryukyus (Shuhei Higa), Government of the Ryukyu Islands Office of the Chief Executive, Naha, Okinawa to Civil Administrator of U.S. Civil Administration of the Ryukyu Islands, "Request of Compensation for the Casualties Caused from Offenses, Traffic Accidents & etc. Committed by U.S Military Personnel," December 9, 1952, OPA.

interest. In fact, the application of the Foreign Claims Act, a U.S. federal law which authorized official compensation for incidents committed by U.S. military personnel against foreigners, to occupied Okinawa had been announced a few days earlier, on December 4. Higa advocated for the institutionalization of an official compensation program for Okinawans.

The following years saw the rapid spatial expansion of U.S. military presence on the Ryukyu Islands—not only land for bases but also for military personnel's' residence and golf fields—and, in turn, the crystallization of Okinawans' political demands. The right to elect chief executive, proper compensation for U.S. land seizure, and the protection of fundamental human rights stood at the top of the agenda. Political parties, various grassroots groups (those led by teachers and the youth in particular), and community organizations sporadically and collectively launched political campaigns and labor activism. Above all, the most popular political movement in post-treaty Okinawa became the campaign against the coercive confiscation of land, as alerted by State official Spinks' "personal friend" in 1952. Given the USCAR's declaration of the "Land Expropriation Ordinance (U.S. Civil Administrator Ordinance No. 109)" in 1953, the GRI Legislature adopted the petition entitled "Four Principles for the Protection of Land" on April 30, 1954. The petition listed a) opposition to the military's one-time payment, b) proper compensation for the seizure, c) compensation for damages caused by the seizure, and d) opposition to additional land seizure. Regardless of internal ideological differences, executive and legislative leaders of the GRI as well as municipal and grassroots organizations began consolidating their efforts to campaign together for these demands.[398]

Against the backdrop of the intensifying land struggle, an incident with direct links to the U.S. legal system in occupied Okinawa took place. On November 7, 1954, approximately eight

[398] Sakurazawa, *Okinawa gendaishi*, 50-51.

hundred Okinawan prisoners launched a revolt at the Okinawa Central Prison to protest poor prison conditions and violent treatment by guards. At that time, the Central Prison was filled with regular convicts and a growing number of political activists. Included were members of the OPP represented by the prominent politician Senaga, who had proposed the GRI legislation for the protection of Ryukyuans' human rights. The prisoners enlisted Senaga's advice and raised their collective demand as the protection of fundamental human rights inside the prison. Later, the USCAR authorities blamed Senaga for having instigated the revolt. Yet prosecutors could not find evidence confirming the instigation. In the end, the USCAR was compelled to improve prison conditions.[399]

These local events would lead to the mobilization of transnational human rights activism the following year, and create a moment for Okinawans' first massive protest against the American military legal regime of exception.

The *Asahi* Coverage: Japanese and Transnational Solidarity Activism Intervenes in the Question of Human Rights Under Occupation

Chronologically speaking, the series of events which would eventually lead to Okinawans' popular resistance to the extraterritorial U.S. military justice began with Baptist Reverend Otis W. Bell's article entitled "Play Fair with Okinawans!" published by *The Christian Century* in January 1954. The article described the military's use of menace against farmers in a land seizure he had witnessed: "The soldiers came with machine guns, burp guns and fixed bayonets. The Okinawans were armed with nothing but the right to stand on their own land. However, in the face of the odds

[399] *Ryūkyū shinpo*, November 13, 1954.

against them they could not stand long. Fortunately no one was injured. But what about the future? The army believes that there will be no further such incidents, for "we have shown them our might." Denouncing the confiscation of native land "without agreement and without pay," Bell refuted the military's framing of the issue as a "communist" conspiracy: "One would expect to find a small percentage of the people affected by communist propaganda, but in a country that has been occupied by the U.S. army for eight years one would not expect to find 98 percent of the landowners communists or sympathetic to communism." Like the 1952 whistleblower, Bell predicted the emergence of a popular challenge to the U.S. military occupation, in his mind by Okinawans themselves: "The Okinawan leaders know better. They know there will be trouble until the land problem is settled…" [400]

The lawyer and chairman of the American Civil Liberties Union Roger Nash Baldwin read Bell's article by chance. On February 23, 1954, Baldwin wrote a letter to the president of the Japan Civil Liberties Union (JCLU), Unnno Shinkichi, requesting an investigation on the military occupation of Okinawa.

> I have just had a report based on some dispatch in an American periodical that U.S. authorities in Okinawa are mistreating native land owners by forcing sales of land at very low prices arbitrarily fixed, and exacting high rents for land leased also arbitrarily fixed. Protests by Okinawans are said to be answered by American military authorities with charges of communism. We have no correspondence in Okinawa, but I suppose you do. Can you get the facts which perhaps the Japanese has published, and let us have your judgement? We will then take it up with American authorities. Or is it possible that you might effectively protest to American command in Tokyo. We presume Tokyo is controlled by the Tokyo Far Eastern Command.[401]

Certainly, Baldwin's role in writing this letter and intervening in the "Okinawa problem" in the

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[400] Otis W. Bell, "Play Fair with Okinawans!" *The Christian Century,* January 20, 1954.

[401] Roger Baldwin, Chairman, to Shinkichi Unnno, Japanese Civil Liberties Union, February 23, 1954, American Civil Liberties Union Records MC #001, 1917, Subject Files, International Civil Liberties, 1946-1977, Box 1173, Folder: 32 Japan Correspondence, 1954-1956, Seeley G. Mudd Manuscript Library, Princeton University.

following years would prove vital for Okinawans and Japanese' mobilization against the U.S. military occupation of the Ryukyu Islands. Yet Baldwin's direct contact with U.S. officials prior to receiving the JCLU's belated response did not prompt his immediate engagement. A declassified U.S. Army report records that Baldwin contacted the Secretary of Defense on July 16, 1954 "asking for information on the settling of the land problem in Okinawa." Secretary of Defense Wilson read Baldwin's letter on November 12, and defense officials provided the information Baldwin had asked for. The defense officials and "presumably Baldwin" considered the matter "closed."[402]

Meanwhile, some members of the JCLU—which had grown its membership to over three thousand—strenuously compiled a report entitled "Human Rights Problems in Okinawa" based on their own investigation. When the *Asahi shinbun* ran a feature article on the results of the JCLU's investigation on January 13, 1955, Japanese civil society woke up to the plight of Okinawans under U.S. military rule.

Legal scholar Hagino Yoshio, who coauthored the report, later reflected on his own awakening to the grave violations of human rights violations committed in Okinawa when he and other Japanese legal scholars visited Amami Island (close to the island of Okinawa and placed under U.S. jurisdiction between 1945 and 1953) shortly before the JCLU received Baldwin's letter in 1954. A collection of documents obtained on Amami revealed that "Okinawans [were] treated as slaves, not humans." They learned about "the rape of a girl reaching or nearly reaching the age of entry into an elementary school (six) that went unresolved." Hagino pointed out two major

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[402] "Allegations of Japan Civil Liberties Union Against U.S. Administration of Okinawa, Chorological Record, July 1954-May 1955," undated, RG 319, Records of the Army Staff, Records of the Office of the Chief of Civil Affairs, Security Classified Correspondence of the Public Affairs Division, 1950-1964, Box 1, File: Allegations of Japanese Civil Liberties Union Against U.S. Administration of Okinawa, Volume 1, July 1954-May 1955, NARA.

reasons as to why the investigation took almost a year. One reason stemmed from ideological conflicts within Japanese civil society: those who spoke about the "Okinawa problem" were labelled as communists and there was direct and indirect interference in publishing the report even inside the JCLU. Another reason came from "the tight regulation of the U.S. military" which made it immensely difficult for Japanese lawyers to gather information on Okinawa, not to mention on-site. Legal scholar Ushiomi Toshitaka, who taught at Tokyo University, was responsible for compiling the entire report. The investigation was completed thanks to oral and documentary sources donated by Okinawan students residing in Japan, writers, and journalists.[403]

The report problematized the legal structure of the U.S. military occupation, racialized unequal wage difference between Okinawan base-construction workers and others with Japanese or Filipino nationalities, the coercive land seizure authorized by the "Land Expropriation Ordinance," the undemocratic handling of court martial involving Senaga and another OPP member without an attorney in 1954, and the high rate of military related incidents. On the last point, the report wrote:

> Lastly we must mention cases involving the violation of simple human rights in Okinawa. There is a high frequency of murder and assault by the personnel of the United States Forces against Okinawan inhabitants. While these cases amount several hundred, including a case of murder, committed by GIs of an Okinawan youth at the Momohara hamlet in the central part of Okinawa in August 1953, they have for the most part been hushed up. Numerous cases of people being run over and killed by the cars of the United States Forces also occurred. However, since this type of case has been placed outside the jurisdiction of the Okinawan police and courts, criminals have escaped with impunity after running over an innocent person and no compensation has been paid to the surviving relatives. Since military guards have lately been replaced by dogs, injuries have also been committed by military dogs. For instance, one woman farmer and her children, who went to dig for potatoes at Tahara District of Oroku Village in June, 1954, were bitten by a military dog. There are three other cases similar to this one. Yet not even the first steps of paying compensations have thus far been initiated. Meanwhile the strict repressive measures have been taken against those who protest about these cases or criticize land seizures by the

[403] Hagino Yoshio, *Okinawa ni okeru jinken no yokuatsu to hatten* (Tokyo: Seibundō, 1973), 45-48.

United States Forces, as mentioned above.[404]

The political repercussions of the "*Asahi* coverage" in Japan were enormous. The *Asahi* printed Baldwin's letter to JCLU Chairman Unnno on its front page, gave summaries of the JCLU report, introduced legal scholars' comments on the revelation, and reported on the legal team's plan to deliver a presentation on the "Okinawa problem" at the Asian Jurists Conference organized by International Association of Democratic Lawyers (IADL) and scheduled to be held in Calcutta, India, later that month. Unnno admitted that he was embarrassed to have been informed of "things related to fellow Okinawa" from Baldwin as an American. But Ushitomi told the *Asahi shinbun* that informing U.S. citizens of this problem might be of help in changing U.S. policy on Okinawa.[405] On the 14th, Deputy Governor of the Ryukyu Islands Ogden rejected the allegation that the military paid Okinawans too little for the lease of their land was communist propaganda. He also argued that the JCLU had not conducted an on-site investigation.[406] Follow-up articles run by the *Asahi shinbun* introduced Ogden's dismissive comment along with the JCLU's refutation that "the sources were reliable."[407]

The Far East Command (FECOM) also responded on the 16th that "The nature of the exhaustive 'investigation' is not known to this h[ead]q[arters] because the 'investigators' did not even visit Okinawa... Stories about Okinawa, based on hearsay, rumor, misinformation and prejudice, are not unique. As recently as Dec 30 and 31, 1954, a series of 2 such art[icle]s, advancing strang[e]ly similar groundless allegations, appeared in Akahata, the organ of the

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[404] The Japan Civil Liberties Union, "Human Rights Problems in Okinawa," printed in *Contemporary Issues* 25.4 (October-November 1955) (16-17)" American Civil Liberties Union Records MC #001, 1917, Subject Files, International Civil Liberties, 1946-1977, Box 1173, Folder: 36 Japan Documents and Press Material (Okinawa) 1955-56, Seeley G. Mudd Manuscript Library, Princeton University.
[405] *Asahi shinbun*, January 13, 1955.
[406] *Asahi shinbun*, January 15, 1955.
[407] *Asahi shinbun*, January 17, 1955.

Communist Party in Japan." Further, the FECOM argued that wage difference resulted from consideration of the skills of Filipino and Japanese workers that Okinawan workers lacked. On the allegation of military trials against Okinawans without lawyers, the FECOM argued that it was because the accused requested the appointment of Japanese lawyers and tried to delay the trials. Political freedom was, the FECOM's press release added, protected as seen in free discussions on the land problem in local Okinawan newspapers.[408]

The military authorities' attempts to defuse accusations of U.S. policy on Okinawa with the most classic use of anti-communism did not find many supporters in Japan. Japanese were increasingly leaning toward neutrality in the Cold War, especially after the U.S. nuclear test on the Bikini atolls killed a Japanese fisherman and contaminated the ocean in March 1954. Soon Diet members began pressuring the Hatoyama administration to make greater efforts to improve the welfare of Okinawans living under U.S. military administration. In response, Prime Minister Hatoyama stated in the Japanese Diet, "Although it is natural that I am obliged to maintain tight cooperation with the United States, I will still insist boldly and honestly where insistence is due, for I believe that by doing so, the relation between Japan and the United States will be improved. Following the course of action suggested by the United States is the root of anti-American feelings today."[409]

By and large, however, the way in which Japanese civil society responded to the JCLU report appeared to lack the awareness it bore responsibility for having created the "Okinawa problem" by adopting the San Francisco Peace Treaty. Okinawan journalist Ikemiyagushiku Sūi later

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[408] Message from Department of the Army Staff Communications Office, CINCFE Tokyo, Japan (J5) to DEPTAR Washington DC for CAMG, CINFO DEPTAR Washington DC, January 16, 1955, RG 319 Records of the Army Staff, Records of the Office of the Chief of Civil Affairs, Security Classified Correspondence of the Public Affairs Division, 1950-1964, Box 1, File: Allegations of Japanese Civil Liberties Union Against U.S. Administration of Okinawa, Volume 1, July 1954-May 1955, NARA. (108)

[409] *Okinawa Times*, January 26, 1955.

reflected on his own articles on Okinawa, including the land problem, that had appeared in the *Mainichi shinbun* since 1953, and that did not create the public impact the *Asahi* coverage garnered. It used to be the other way around, he recalled, when only the *Mainichi shinbun* reported on Okinawa, sometimes running front-page articles in the "international section." To be sure, no members of the Communist or Socialist parties, journalists or liberal writers were allowed to travel to Okinawa. Public concern about Okinawa, even among the progressive political parties, was slow to emerge in Japan, according to Ikemiyagushiku.[410]

Japanese novelist Ashihei Hino also squarely criticized this very point in his essay "Japan lacks self-realization" published in the *Ryūkyū shinpo* on February 5. Hino argued that despite his contribution of articles to newspapers and magazines as well as lectures on the "hardship and perseverance of the Ryukyuan people" based on his own visit to Okinawa in February 1953, "it had no impact." He had talked to a Diet member about his visit, but "he did not show the slightest interest." Instead, "a letter by Mr. Baldwin, an American, threw the Japanese into a state of confusion… The Japanese people are in the habit of becoming agitated and confused when their own problems are pointed out by outsiders."[411] Hino's due criticism unveiled a profound problem embedded in the political culture of postwar Japan. Most focused on the NATO SOFA, i.e., Europe, to challenge the U.S. military legal regime of exception rather than asserting their own authority and universal human rights. There certainly existed a link between the Japanese repose to Article 17 of the 1952 Japan-U.S. Administrative Agreement and their response to the "Okinawa problem" in 1955.

The State Department closely monitored the repercussions of the *Asahi* coverage in and

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[410] Ikemiyagushiku Sūi, *Okinawa Journalist no kiroku—Okinawa no America* (Simul Shuppan: Tokyo, 1971), 176-179.
[411] Ashihei Hino, "The Japan that lacks self-realization," *Ryūkyū shinpo*, February 5, 1955.

outside Japan. On January 14, Ambassador Allison reported to Dulles that the *Asahi shinbun* pressured the Hatoyama administration to "correct mistreatment Okinawans as necessary step in his effort to eliminate anti-Americanism." The Ambassador also mentioned that a group of Japanese lawyers would problematize the American military's human rights violations in Okinawa at the Asian Jurists Conference in India. Allison warned Dulles that it "could become prominent in Japanese election [general] campaign [to be held in February]. Embassy investigating possible leftist inspiration of timing publication JCLU statement on Okinawa."[412] Observing the growing neutralist trends in Japan since 1953, Allison echoed the view expressed by Deputy Governor Ogden and the FEC—at least on the rhetorical level—that the allegations of human rights violations in Okinawa themselves were secondary to the possibility of leftist influence on the JCLU report. A day earlier, on January 13, Commander in Chief of the Far East (CINCFE) General Hull warned at the Tokyo Correspondents Club of the "danger of possible aggression from Kunashiri, the Kurile Islands and the Asiatic mainland" and decried those who believe "Japan can not (repeat not) afford the money or resources to provide for her self-protection."[413]

As had been cautioned by Allison, the Japanese lawyers' assertion of grassroots solidarity with Afro-Asian countries for the international protection of Okinawans' human rights created opportunities for the rise of transnational activism on the eve of the Bandung Conference of April 1955. At the Asian Jurists Conference held in Calcutta on 25-31 January, attended by 300 lawyers from 28 countries, Assistant Professor Ushitomi delivered a lecture entitled "Human rights

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[412] Telegram 1695 from Allison (Tokyo Embassy) to Secretary of State, January 14, 1955, RG 319, Records of the Army Staff, Records of the Office of the Chief of Civil Affairs, Security Classified Correspondence of the Public Affairs Division, 1950-1964, Box 1, Folder: Allegations of Japanese Civil Liberties Union Against U.S. Administration of Okinawa, Volume 1, July 1954-May 1955, NARA.

[413] Telegram 1697 from Allison (Tokyo Embassy) to Secretary of State, January 14, 1955,
RG 319, Records of the Army Staff, Records of the Office of the Chief of Civil Affairs, Security Classified Correspondence of the Public Affairs Division, 1950-1964, Box 1, Folder: Allegations of Japanese Civil Liberties Union Against U.S. Administration of Okinawa, Volume 1, July 1954-May 1955, NARA.

problems in Okinawa" on January 27. The *Asahi shinbun* reported the evening before that the delegates who read the text of his six-page-long conference paper were "by and large enormously sympathetic." An Indian delegate spoke to the press about human rights violations in Goa ruled by the Portuguese, compared it with Okinawa's case, and condemned the naked legacies of colonialism in Asia. A Sudanese delegate, who was familiar with British human rights violations in Kenya, said that Sudan would be the first to send delegates to Okinawa for an international investigation. The prominent former judge of Tokyo War Crimes Trial Radhabinod Pal also encouraged Japanese citizens, who "cannot assert things to be asserted against the United States, to widely use his [anti-colonial] assertions."[414]

Before and after the conference, the State and Defense departments mobilized their own global networks to minimize the political impact of the conference on the Japan-U.S. relationship and the wider world. Four days prior to the conference, Dulles, also a lawyer, wrote a joint State-USIA (U.S. Information Agency) message addressed to Calcutta, New Delhi, Tokyo, and Naha:

> Summary JCLU charges as reported major Japanese newspaper Asahi and summary far East Command reply being cabled. Full text FEC reply being airpouched. Defense today sending message FEC requesting press material supporting U.S. position from Okinawan sources be sent soonest USIS Calcutta and Tokyo for discretionary use. Only very limited quantity such materials expected. Our job to present materials (FEC statement and Okinawan stories) preferably through indigenous channels, supporting US administration and showing exaggeration or falsity JCLU charges if charges presented and publicized. Otherwise do not undertake publicity our side of controversy.[415]

Dulles continued advising U.S. policy elites dispatched across the globe to cope with the possibility of an international delegation's visit to the Okinawa Island.

In the following months the State Department's increased its role in advising defense

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[414] *Asahi shinbun*, evening edition, January 26, 1955.

[415] Telegram from Dulles to Calcutta, New Delhi, Tokyo, Naha, "Joint State-USIA message," January 21, 1955, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1952-1963, Code Number: 084-02828A-00024-009-093, OPA.

officials on the governance of Okinawa. On January 24, various agencies' working group on NSC 125/2 and NSC/6 discussed measures to counter the JCLU's allegations as requested by the Defense Department.[416] The State-Defense discussion on the State Department's reassertion of the right to exercise "all powers of the U.S. with respect to the relations of the Ryukyu Islands with foreign governments and international organizations" was already under way before the *Asahi* coverage. Yet State Department officials in Tokyo and Washington had already been sharing the complaint before the meeting that "we consider the Defense Department's outline and clarification of our foreign relations responsibilities to be inadequately defined; we consider Defense's terms of reference to be excessively restrictive…"[417] A memorandum initially prepared for Assistant to the Secretary of Defense and distributed at the meeting on January 24 recognized that "A basis apparently exists for certain legitimate grievances on the part of Okinawans in connection with the U.S. land acquisition program and U.S. employment of indigenous labor." The meeting reached a conclusion to adopt "[a] mild approach" in diminishing the impact of the allegations after considering whether or not "a major effort should be made to counter the allegations" such as a higher-level statement than the FEC's.[418]

Eventually, authorization of the international delegation's on-site investigation in Okinawa was discouraged by military officials, and it did not materialize. Nevertheless, the Department of State expanded its consular unit in Naha, given the authorization of the Consul General's role in consulting "the Governor or the Deputy Governor on all Ryukyuan matters affecting the foreign

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[416] Operations Coordinating Board, "Memorandum of Meeting: Working Group on NSC 125/2 and NSC 125/6," January 24, 1955, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1952-1963, Code Number: 084-02828A-00024-009-080, OPA.

[417] Letter from J. Graham Parsons (Deputy Chief of Mission) to Noel Hemmendinger, Esquire, Office of Northeast Asian Affairs, January 10, 1955, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1952-1963, Code Number: 084-02828A-00024-009, OPA.

[418] Operations Coordinating Board, "Memorandum of Meeting: Working Group on NSC 125/2 and NSC 125/6."

relations of the U.S. and of the Ryukyu Islands, including such matters as the negotiation of agreement with foreign governments, activities, in connection with international organizations, and policy considerations regarding the documentation and protection of Ryukyuans outside the Ryukyu Islands and Japan."[419] Further, after observing diminished press coverage of the JCLU allegations in Japan, the State Department and U.S. Information Agency informed the involved civilian and military officials on February 24 that "US should avoid public debate, refutation charges unless major adverse campaign develops, but instead undertake long-range program providing fairly steady flow in and to Japan of favorable materials concerning Okinawa."[420]

While the JCLU report was creating a momentum for Japanese civil society to urgently engage with the "Okinawa problem" and for the authors of the JCLU report to enlist support for an emergent "Thirdwordism," Baldwin took a step back. The Army Department's dense file entitled "Allegations of Japan Civil Liberties Union Against U.S. Administration of Okinawa" cynically records that Baldwin must have been "embarrassed by the uproar" to learn about the *Asahi* coverage during his temporary stay in Egypt.[421] In the aftermath of the *Asahi* coverage, Baldwin made excuses about the JCLU's spontaneous activism in his exchange of letters with defense officials. On March 5, Baldwin wrote to "My dear General Marquat": "I want you to know—and General Hull too—that we did not inspire the inquiry made by the Japanese Civil Liberties Union, which was widely publicized in the press in January. I would not have solicited aid from a foreign organization concerning any matter under the jurisdiction of our government. I

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[419] Tokyo Embassy, "Draft Message to CINCFE," February 2, 1955, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1952-1963, Code Number: 084-02828A-00024-009, OPA.

[420] Telegram from Streibert to Tokyo Embassy, "Joint State-USIA 1462," February 24, 1955, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1952-1963, Code Number: 084-02828A-00024-009, OPA.

[421] "Allegations of Japan Civil Liberties Union Against U.S. Administration of Okinawa, Chorological Record." undated, RG 319, Records of the Army Staff, Records of the Office of the Chief of Civil Affairs.

would have gone directly to the proper official."[422]

This way, Baldwin exercised his influence on the JCLU to detach Japanese human rights activism from the political stance of neutralism in Asia and Europe while persuading the military and later civilian elites of his allegiance to the U.S. policy in Cold War Asia. On April 22, Baldwin warned Unnno not to connect with the International Association of Democratic Jurists assumed to have communist members: "We strongly urge you to desist from further cooperation in that direction and to rely upon ourselves and whatever non-partisan agencies may be interested. As for ourselves, you will appreciate that patience is necessary to deal with so complicated a situation of law and practice. But I can assure you that the Departments of our Government are giving very serious considerations to a whole series of proposals for reforms and I, therefore, would not think it timely to make an investigation on the spot now."[423]

Facing the U.S. policy elites' countermeasures against the Japanese advocacy for Okinawans' human rights and Baldwin's pressure not to go beyond destabilizing U.S. Cold War policy, the JCLU renegotiated its position. On January 29, the JCLU held an emergency meeting of the board of directors and concluded that it was advisable not to "hurt the U.S. government's feelings" to solve the issue. Chairman Unnno stated in a legal journal's roundtable discussion published in March that "We are not necessarily opposed to America concentrating its forces in the Ryukyus for defense of the free nations. We simply hope she will take such a policy as will

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[422] Letter from Ernest Angell (Chairman, Board of Directors) and Roger Nash Baldwin, International Civil Liberties Committee, American Civil Liberties Union, to Major General William F. Marquat, March 24, 1955, RG 319, Records of the Army Staff, Records of the Office of the Chief of Civil Affairs, Security Classified Correspondence of the Public Affairs Division, 1950-1964, Box 1, Folder: Allegations of Japanese Civil Liberties Union Against U.S. Administration of Okinawa, Volume 1, July 1954-May 1955, NARA.

[423] Letter from Roger Nash Baldwin to Shinkichi Unnno (Chief Director), Japan Civil Liberties Union, April 20, 1955, RG 319, Records of the Army Staff, Records of the Office of the Chief of Civil Affairs, Security Classified Correspondence of the Public Affairs Division, 1950-1964, Box 1, Folder: Allegations of Japanese Civil Liberties Union Against U.S. Administration of Okinawa, Volume 1, July 1954-May 1955, NARA.

fully convince Ryukyuans and will respect their basic human rights."[424]

On Okinawa, local newspapers seized the opportunities to exercise freedom of speech and run a stream of articles on the far-reaching impact of the *Asahi* articles. But occupied Okinawans turned out to be much more sensitive to being labelled "communists" than people in Japan. The political climate of Okinawa was captured in the debates by the GRI Legislator about whether or not a law to ban communist movements was necessary—a question raised by possible "intellectual" influence of Senaga on the prisoners' 1954 revolt—the day before the *Asahi* publication.[425]

On January 14, 1955, Mayor of Naha Tōma Jūgō from the conservative Ryukyu Democratic Party (RDP) denied the JCLU allegations. Tōma commented "it was extremely disappointing" that the JCLU report appeared to be "anti-American." Praising U.S. occupation authorities' continuing efforts to solve the land problem, Tōma criticized leftists' attempt to use GI crimes "to instigate anti-Americanism."[426] Chief Executive Higa expressed disappointment the following day that the JCLU allegations appeared to be "one-sided" and undermined Deputy Governor Ogden's collaboration in drawing Washington's attention to the land problem.[427] Higa spoke again on January 19 after an-hour-long meeting with Ogden that direction confrontation with the military must be avoided to demonstrate Okinawans' ability for autonomous rule and materialize their own free chief executive election: "We cannot forget there exists a ruler above us."[428]

Although individual Okinawans' positive comments on the JCLU allegations rarely appeared in the local newspapers, Japanese civil society's popular support for the *Asahi* coverage

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[424] Morikawa Kinjyu, Nakamura Tetsu, Unnno Shinkichi, Yokota Kisaburō, "Okinawa o meguru hōritsu mondai," *Hōritsujihō* 27.3 (March 1955): 301-315.
[425] *Ryūkyū shinpo,* January 13, 1955.
[426] *Ryūkyū shinpo,* evening edition, January 14, 1955.
[427] *Ryūkyū shinpo,* January 16, 1955.
[428] *Ryūkyū shinpo*, January 19, 1955.

and the development of transnational activism in Asia were widely reported, especially in the *Okinawa Times*. Unlike the RDP, the OPP and the Okinawa Socialist Mass Party (OSMP) more explicitly welcomed Japanese civil society's growing attention to garrisoned Okinawa. OSMP legislator Ōyama stated he was "overjoyed" by Japanese residents' increasing familiarity with Okinawans' "persistent efforts to solve the land problem," which he believed would trigger the Japanese government's proactive attitude."[429] The subalternity shared among Okinawans was vividly encapsulated in *Okinawa Times*' editorial comment:

> If the Okinawan leaders had taken up the land problem at an early date, and exerted themselves in negotiating with the American authorities with sincerity and persistence, asserting where assertion is due, the land problem would not have become as bad as it is today… However, we are not blaming the government alone. The Okinawan leaders are in the habit of fawning up the powerful, maintained the philosophy of life that to be at odds with the authority is unprofitable, good friendship means to take orders without questions since our rehabilitation is possible only by American aid and it is presumptuous for us to try to demand anything to complain… [430]

Gradually, the *Asahi* coverage triggered more frequent references to the politics surrounding Okinawans' "human rights" in the local press. On January 27, the *Okinawa Times* published an article entitled "The Promise of the Universal Declaration of Human Rights—Also Declared in the Provisions of the Government of the Ryukyu Islands," which was based on a similar article published by the *Sunday Mainichi* on January 20. It was a summary of Japanese legal scholar Iriye Keishirō's comments on the JCLU report. In fact, Iriye was one of few Japanese intellectuals who were closely observing the global politics of human rights and understood the contending positions within the United States on making the UDHR legally binding. Iriye argued that despite the legal constraint posed by the San Francisco Treaty, the UDHR adopted at the UN declared the protection of human rights for "the peoples of territories under their [member states']

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[429] *Okinawa Times*, January 15, 1955.
[430] *Okinawa Times*, January 26, 1955.

jurisdiction." Iriye taught readers that the promises of the UDHR were not unique but often ensured by "civilized nations' constitutions."[431]

Gradually, articles such as Iriye's and those reporting on the Asian Jurists Conference and the Afro-Asian Conference (Bandung Conference) held on April 18 convinced Okinawans of the utility of human rights as defined by the UDHR in the international arena and the emergent solidarity activism in the Third World. Okinawan intellectual Kamiyama Seiryō, who assumed leadership in mobilizing the reversion movement in Japan, shared his experience of meeting with Indian Premier Nehru's daughter after attending the Bandung Conference. The *Okinawa Times* reported that Kamiyama was surprised at the depth of her knowledge of Okinawa and conveyed Nehru's message that Okinawans "must not lose courage."[432]

The intersection of the Okinawans' restrained resistance to the U.S. land seizure and the loosely connected transnational network for human rights and decolonization—the local and the global—would prove critical for the islanders' unprecedented protest against "extraterritoriality" in occupied Okinawa.

The 1955 Yumiko-chan Incident: The Rise of Popular Human Rights Activism and Resistance to "Extraterritoriality"

On the night of September 3, 1955, five-year-old Yumiko Nagayama went missing. The residents of Ishikawa City, where she resided, and visitors from neighboring cities were enjoying a summer festival. Streets were busier than usual, filled with young people who were performing *eisā*, a

[431] *Okinawa Times*, January 27, 1955.
[432] *Okinawa Times*, April 19, 1955.

famous folk dance inviting back the spirits of their ancestors each summer. With sugar *tenpuras* in her hands, Yumiko was watching *eisā* dancers passing by her parents' Nagayama Photo Studio.[433] From there, the dancers were headed to a local school where a movie was to be screened open-air. Around 8:00 P.M. Yumiko's mother first noticed her absence from her viewing position near the studio. Since Yumiko failed to return home by 10:00 P.M., a time when the movie ended, her parents contacted the local police and assisted a broad search. Three young Okinawan construction workers found Yumiko's body on the eastern shore of Kadena Village, roughly 12 miles away from Ishikawa City. When GRI police from Koza City arrived at the site, representatives of the U.S. Criminal Investigation Command (CID) were already present. Two GIs had found Yumiko's body before the Okinawan police's arrival. The CID officials shouted at the Okinawan police, including the chief of the Koza Police Station: "No touch!" Yumiko's corpse lay on U.S. military property.[434] According to a court martial record of the U.S. Army Sergeant Isaac J. Hurt,

> At about 0730 hours 4 September 1955, in Okinawa, the dead body of five-year old Yumiko Nagayama was discovered in a quarry about fifty meters from the beach on the China Sea coast… Deducing from the state of rigor mortis, death had occurred about 2200 hours on the night of 3 September 1955 with a possible variation of two hours either way. The cause of death was suffocation and could have been caused by the fingers of an adult on the neck obstructing the windpipe. Bruises about the chest indicated an attempt to revive the victim with artificial respiration...[435]

On September 4, Chief of the GRI Department of Prosecutors Hirata told the press: "This is a heinous crime unprecedented in the history of … the Ryukyus. In order to dispel the fears of parents, we will arrest [the suspect] at any cost. We will also conduct detailed examinations on the motive of the crime and the criminal's personality to formulate a policy. It would allow us to prevent this kind of tragedy from ever happening again." Chief of the Okinawan police Nakamura

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[433] Sasaki, *Shōgen kiroku Okinawa jūmin,* 191-193.
[434] *Okinawa Times*, September 5, 1955.
[435] United States v. Isaac J. Hurt, CM 389037, United States Army Board of Review, December 28, 1956.

commented: "I myself as a parent cannot help but feel infuriated. The problem with this case is that we [police officers] do not have the right to investigation… We, therefore, beg for the military's cooperation." More frequent patrols in areas frequented by off-duty GIs were ordered immediately.[436] Prior to this incident, U.S. authorities had not disclosed the procedural details and results of courts martials of GIs arrested by GRI police. Only now were USCAR officials compelled to authorize GRI police to collaborate in finding the suspect.[437] As part of the joint effort, a local doctor conducted an autopsy at an army hospital under the supervision of U.S. physicians.[438] Further, one hundred local police officers—sixty from Koza City and forty from Ishikawa City—were involved in round-the-clock investigations.[439] The military police arrested Hurt on September 6.[440]

The quick arrest and the immediate rise of the protest movement owned much to the extensive press coverage of what came to be known as the "Yumiko-chan incident." On September 5, the media reported on "curled brown hairs" found in Yumiko's private parts and a nine-year-old local boy's testimony of Yumiko's abduction by an American with "red hair." Providing details of the investigations, the *Okinawa Times* ran articles with sensational headlines: "Never again another Yumiko-chan;" "How can we protect children from such crimes exposing the ugly aspects of human nature?"; "The unhesitating girl: 'Why on earth did she end up like this?' Parents broke down crying."[441] The following day, the *Okinawa Times* reported that about sixty children mourned her death at the kindergarten Yumiko had attended. The children sang "Crows' Song," a

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436 *Okinawa Times*, evening edition, September 5, 1955.
437 *Okinawa Times*, September 6, 1955.
438 *Okinawa Times*, September 12, 1955.
439 *Okinawa Times*, September, 14, 1955.
440 *Okinawa Times*, September 7, 1955.
441 *Okinawa Times,* September 5, 1955.

song they had learned with Yumiko, and wept, "we mourn Yumiko."[442] The more conservative *Ryūkyū Shinpo* also provided day-to-day updates on the repercussions of the incident and the changing Okinawa-U.S. relationship in the wake of the incident.

Okinawan educators were the first to translate their despair into concrete political actions. The Okinawan Teachers Association (OTA), as one of the two main drivers of 1950s-Okinawan social movements with the highest ratio of female teachers in elementary school,[443] played a leading role in publicizing their political agenda. A local elementary school principal commented: "I was very shocked at the newspapers' reports. Since such crimes arise from military bases, we have to expand the Okinawa Association for the Protection of Children (OAPC)'s activities. Our school will consult with the Okinawa Teachers Association (OTA) and the PTA to implement preventive measures." The OAPC scheduled a board members' meeting on September 9 to mobilize collaboration with other grassroots organizations, including the Okinawa Youth Confederation (OYC or *Seiren*), Okinawa Women's Association (OWA or *Furen*), and the PTA.[444] Founded in 1953, the OAPC had been conducting surveys and proposing measures to improve children's public safety destabilized by the U.S. military presence.[445] In the wake of the rape-murder of the pre-school girl, the OAPC planned to conduct its own thorough investigation and to demand an open trial and the disclosure of information on the legal proceedings of the accused for its immediate action.

In this early stage of the development of the protest movement, however, gender functioned to divide the way in which local women reacted to the incident. A representative of the Ishikawa

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442 *Okinawa Times,* September 6, 1955.
443 Sakurazawa, *Okinawa no fukki undō to hokakutairitsu*, 65, 109.
444 *Okinawa Times*, evening edition, September 5, 1955.
445 Okinawa kodomo o mamorukai, *Kodomo wa mamorarete iruka* (Naha:Ryukyu seifu shakaifukushi ka, 1955), 17-18.

Women's Organization (*Ishikawa fujinkai*), for instance, encouraged parents to raise children with "discipline" and pay greater attention to their living environment, arguing that "parents' neglect can result in an irreversible outcome."[446] In response, the OTA board members adopted a statement that cautioned against incriminating the parents for their "neglect," thereby exonerating U.S. military service members. Instead, they deemed it necessary to demand the harshest sentence and disclosure of the court proceedings if a court martial was held.[447]

Scarcely a week after Yumiko's death, another rape incident brought public anger to the boiling point. The nine-year-old victim's father testified that he was unable to prevent his young daughter's violent rape by a black GI intruder despite calling for neighbors' help.[448] Soon, the case came to be referred to as the 'S-ko-chan incident,' presumably named after her initial.

The OTA unequivocally expressed its indignation at the military's racism, protest to "extraterritoriality," and call for the protection of Okinawans' human rights. At a general assembly, the teachers agreed: "Nothing will change whether we adopt a statement or we feel infuriated about it… This time, really, we have to tell the United States without fail that we Okinawans are also humans." The assembly voted unanimously to organize a rally against GI violence[449] and adopted the following statement:

> The abduction and rape murder of Yumiko Nagayama… terrorized eight hundred thousand Okinawan residents… We, as five thousand teachers as well as parents who are responsible for the education and [protection] of the lives of one hundred eighty thousand small children, cannot repress our grief and indignation. Before this horrifying reality, we as educators and parents have unified with the Okinawa Association for the Protection of Children to protect children's lives from sins and prevent such calamities from happening again… We the Second General Assembly of Okinawa Teachers Association in 1955 demand the U.S. military to reflect on these cases seriously and the Government of Ryukyu Islands to rise up. Punish the criminal regardless of race and nationality… Authorize Okinawan legal authorities to attend court-martial as judges. The root cause of these

[446] *Okinawa Times*, September 9, 1955.
[447] *Okinawa Times*, September 8, 1955.
[448] *Okinawa Times*, September, 11, 1955.
[449] *Okinawa Times*, September 12, 1955.

> endless crimes lies in the extraterritorial reality and [the U.S. occupation policy of] withholding information on such cases. Further, it must be recognized that it [such a reality] is an indication of American military servicemembers' colonialist, discriminatory sentiment.[450]

The statement also challenged the military's positioning as the democratic force by asserting: "It is regrettable that the crime was committed by a member of U.S. forces "proud to have the tradition of justice, humanity, liberty, and democracy." The OTA unambiguously demanded the transfer of U.S. military personnel's crimes committed against Okinawans to the GRI courts under the principles of equality and the protection of human rights.[451] The teachers thereby exposed the very real colonialism of the U.S. military legal regime of exception in opposition to its anticolonial principles.

Yumiko's parents, educators, and the media were joined by local law-enforcement—in particular Chief of the GRI Department of Prosecutors Hirata and Chief of the Okinawan Police Nakamura mentioned earlier—in calling out the existing structural barriers against seeking legal justice for Okinawans. In Naha City, sixty-eight cases involving U.S. military personnel had been recorded in the previous nine months since January 1955. The Naha police told the press: "The reason why crimes are endlessly committed by foreigners is because the Okinawan police cannot arrest them unless we witness the scene of the crime. We can only ask the military [to prevent crimes] but cannot do anything to prevent them."[452] The status of the Okinawan police without the right to legal enforcement exacerbated the public safety of areas such as Maehara City, where the residents were confronting an increasing number of GI cases since the transfer of Marines from Japan in April. The Maehara police provided statistical data on U.S. service members' criminal

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[450] *Okinawa Times*, September 14, 1955.
[451] *Okinawa Times*, September 14, 1955.
[452] *Okinawa Times*, evening edition, September 8, 1955.

offenses suggesting a correlation between the number of GIs and the frequency of GI crimes: they recorded an increase from two cases per month in January-March 1955 to 25 cases from April to August the same year, or one case in six days, occasionally four cases a day, most of whom involving assault or murder. Chief of the Maehara Police Station urged residents in Gushikawa City to have alarm bells in individual houses, as was common in the immediate aftermath of the war, to leave untouched any possible mark of the criminal, and to remember any noticeable characteristics of the attacker.[453]

Other grassroots organizations, legal authorities, and various individuals followed suit. The chairman of the OWA also condemned the second rape, which came to be referred to as the "S-ko-chan incident," and called for a demonstration. "They [the U.S. military] are insulting Okinawan people. We want to organize residents' rally and appeal to the people in mainland Japan and the United States." A college student studying education commented on the second rape: "All these unprecedentedly heinous crimes committed recently result from base Okinawa…, which makes me filled with sorrow to live in such a society." The chairman of the OYA stressed the need for collaboration with other grassroots organizations to collectively appeal for Okinawans' human rights. "We want to address this problem concerning [military] bases from the standpoint of protecting Okinawans' human rights. No information had been disclosed to Okinawans concerning previous incidents involving U.S. military personnel, but from now on, the military needs to investigate such cases thoroughly, hold fair trials, and give criminals sentences that everyone can accept… We demand a letter of apology from the supreme leader of the military."[454]

Legal elites in Okinawa supported the ever-intensifying protest movement against the U.S.

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[453] *Okinawa Times*, September 12, 1955.
[454] *Okinawa Times*, September 12, 1955.

military legal regime of exception with their expertise and social status. Lawyer Nakaima argued "the military must show evidence that they are protecting human rights and humanity in every process when trials are being held and the results are implemented. In consideration of all the previous classified cases, I would like to see the application of the most rigorous legal enforcement [this time]. That will be a wedge for the relationship between Ryukyu Islands and the United States."[455] The judge of a GRI court Matsushima demanded the death sentence for Hurt in concert with the military prosecutor's petition for the death sentence in the case of an Okinawan boy's murder of a U.S. military service member: "When the military demands the harshest sentence for the future of Ryukyuan society and the U.S. government, the same logic must be applied to the rape murder [of Yumiko]." A prosecutor refused to be content with the disclosure of court martial: "We would have no way to find out if the sentences were implemented. When the criminal returns to the United States, it will be over."[456]

On September 13, the GRI Legislature unanimously adopted the "Statement of Petition for An Open Trial of the Murder, Violence, and Abduction Committed Against A Young Girl and Disclosure of the Results of Previous Courts Martial Cases." The statement asserted that "a crime worse than that of demons" had been committed by a military service member of the "civilized" United States. Further, since the results of court martial were not released to the victims, not to mention the Okinawan public as a whole, Okinawans' lives appeared to be treated as if "being killed for nothing, being kicked for nothing, being raped for nothing." The statement asserted that such realities force the islanders to "feel Okinawans' human rights were violated and the spirit of the Universal Declaration of Human Rights was neglected… [and that made them] live in fear and

[455] *Okinawa Times*, September 12, 1955.
[456] *Okinawa Times*, September 12, 1955.

grief." [457] As in 1952, but with a much severer criticism of contradictions of U.S. civilization, the legislators demanded the application of the UDHR in occupied Okinawa calling for open trials and the disclosure of the results of court martial.

Clearly, the legislators' denunciation of the legal injustices challenged the hegemonic use of "civilization" by the occupation authorities, who operated extraterritorial "military justice" and claimed the knowledge to teach Okinawans the meanings of democracy and legal justice. Deprived of constitutional democracy, the legislators sought authority in the UDHR as a referential text to demand open trials and the disclosure of the results of court martial.

Closely following this new political climate in mid-1950s Okinawa, the *Okinawa Times* discussed changes in society brought by the recent U.S. military incidents. "Generally speaking, previous [GI] cases were of adults' interests no matter how sensational they were. Yet the recent cases are—exaggeratedly speaking—of the interests of everyone, including the elderly and children… Young girls, who cannot understand what a sexual crime means, learn about U.S. military service members' crimes… Parents may not explain the nature of such crimes and just tell them not to approach any foreigner." Recognizing social unrest shared among all the segments of Okinawan society, the editorial expressed concern over the deteriorating relationship with the military: "fear over foreigners can stand against amity between the United States and Ryukyu Islands... Good Americans must be heartbroken by this series of GI incidents. We must not forget that there are many good Americans." The editorial proposed readers that because "appeals adopted by multiple grassroots organizations must represent the will of all Okinawans,"

[457] The Legislature of the Government of the Ryukyu Islands, The Tenth Statement of the Sixth Assembly (Regular Session): "Statement of Petition for An Open Trial of the Murder, Violence, and Abduction Committed Against A Young Girl and Disclosure of the Results of Previous Court Martial Cases—Yōjo satsujin, yūkai jiken saiban no kōkai narabini kako ni okeru gunji saiban no zenbō kōhyō ni taisuru yōbō ketsugi," September 13, 1955.

Okinawans must convey the military "each organization's constructive opinions."[458]

In the wake of the rapid spread of this unusual protest movement, the USCAR authorities were forced to respond to the Okinawans' outcry. In the process, the State Department's John M. Steeves, Foreign Relations Consultant to the U.S. military authorities in Naha, played an essential role in altering the military's plan to resort to high-handed handling of the situation.

Steeves' presence in Okinawa reflected Washington's policy change accelerated by Japanese civil society's shifting attitudes toward the plight of Okinawans in the wake of the *Asahi* coverage. Since his arrival in May, Steeves had been monitoring the Army's governance and sending policy analyses to colleagues in Tokyo and Washington. Steeves' immediate concern was the additional deployment of No. 117 Marines to Okinawa: "If Marines eventually come here land problem now acute will become practically insoluble."[459] Yet State officials were reluctant to squarely confront the Defense Department's occupation policy. George A. Morgan at U.S. Embassy in Tokyo responded to Steeves that "it was well within your responsibilities to bring up this matter and we trust that [State colleague] Bob's action, if any, in Washington will not embarrass the local military command or jeopardize your position in any way."[460] Concerning Okinawans' attitudes toward reversion to Japan, Steeves observed that "My first impression is that the sentiment for reversion is much stronger in Japan than it is here. The attention of those Ryukyuans that I have met is so completely absorbed in the local land problem that they have little

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[458] *Okinawa Times*, September 13, 1955.
[459] Telegram from Steeves, Naha to Tokyo Embassy, May 17, 1955, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1952-1963, Code Number: 084-02828A-00024-009, OPA.
[460] Telegram from George A. Morgan, Acting Deputy Chief of Mission, American Embassy, Tokyo, to John Steeves, American Consul General, American Consulate General, Naha, Okinawa, June 1, 1955, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1952-1963, Code Number: 084-02828A-00024-009, OPA.

time to think about the broader aspects of reversion."[461]

In mid-September, the situation was rapidly changing, especially after the additional deployment of the Marines in the spring. Steeves reported to the civilian staff in Tokyo and Washington on September 16 as follows:

> Due heavy adverse press comment; resolutions by number[s] [of] private organizations and somewhat provocative letter from Chief Executive USCAR urging immediate actions, Deputy Governor called me and commanders of services in conference this morning. USCAR came up with firm recommendation to place entire island[s] off limits (1) to facilitate control forces personnel and (2) to punish populace for anti-American outburst and wholesale criticism of forces personnel by depriving them of economic benefits resulting from forces personnel patronage.[462]

Immediately noting the adverse political consequences, Steeves "urged command to calm and moderate and not to respond to intemperance on peoples' part by being rash ourselves." The military's proposal of making the "entire island" off-limit" to U.S. military personnel had been on the table since the early 1950s as a means to quash Okinawans' protests against the American military presence, thereby banning military personnel and other Americans from entering designated districts where Okinawans made a living providing services to Americans. The military explained the rationale as aiming to prevent confrontations between the Okinawans and military personnel. Yet these measures practically limited the political freedom and actions of locals whose livelihood depended on the military.[463]

At the USCAR's urgent meeting, Steeves asserted that "off limits order would accentuate

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[461] Letter from John M. Steeves, American Consul General to John M. Allison, American Ambassador, American Embassy, Tokyo, Japan, May 24, 1955, RG 84 Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1952-1963, Code Number: 084-02828A-00024-009, OPA.

[462] Telegram 19 from Steeves, Naha to Tokyo Embassy, September 16, 1955, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1952-1963, Code Number: 084-02828A-00024-010, OPA.

[463] Okinawa Times, *Okinawa dai hyakka jiten* (Naha: Okinawa Times-sha, 1983), 614.

cleavage, would intensify mistrust and animosity and that no good could result from blanket punitive measures involving innocent as well as guilty." Besides, he added that "it would give ammunition to extremists by admitting American [and] Okinawan populations cannot associate together normally on island which would be inimical our long range interests." To prevent Okinawans' popular uprising, Steeves highlighted the effectiveness of conciliatory measures by "urg[ing] rather to ride out storm and continue emphasiz[ing] fact that American sense of justice requires criminals be tried in due process of law and if guilty punished, but refuse to be panicked by public clamor." Other measures Steeves proposed included "carry[ing] out intensive instructions service personnel on conduct" and.. hold[ing] General Moore's press conference in the afternoon." Concluding the report, Steeves wrote: "I believe if time can be allowed for tempers to cool and if offenders brought to trial and justice done no permanent ill effects need result," and that "[i]s highly undesirable for accused personnel to be taken out of Okinawa for trial."[464] Clearly, Steeves recognized the subversive nature of Okinawans' human rights advocacy confronting Washington's self-declared "civilizing mission," which constituted the very basis of U.S. Cold War rationale.

The military officers decided to follow Steeves' advice. In the afternoon, the USCAR held a "Special Meeting" of the Ryukyuan-American Community Relations Advisory Council at the Ryukyus Command Headquarters. Top USCAR officials included Major General James E. Moore as Deputy Governor of the Ryukyu Islands and Brigadier General Vonna F. Burger as Civil Administrator of the Ryukyu Islands. Invited Okinawans were Higa Shūhei (Chief Executive of the Ryukyu Islands), Ohama Kunihiro (Speaker of the Legislature), Nakamatsu Keiso (Chief Justice of the Ryukyu Islands), Asato Genshu (President of University of the Ryukyus), Tomihara

[464] Okinawa Times, *Okinawa dai hyakka jiten*, 614.

Moriyasu (President of Bank of the Ryukyu and Chairman of Okinawan Chamber of Commerce), Takeno Mitsuko (President of Okinawa Women's Association), Takamine Choko (President of *Okinawa Times*), Tamaki Katsunobu (Managing Editor of Ryukyu Shinbun), and Takehara Hisamitsu (Managing Editor of *Ryūkyū shinpo*).[465] The U.S. newspaper *Morning Star*'s reporter Robert Prosser was also present. The main organizers of the protest movement such as the OTA were not invited.

Opening the conference, Moore informed the Okinawan representatives that the Council "has been set up to provide a friendly medium of liaison, discussion and consultation for the purpose of: a) Receiving and studying the reports of local Community Relations Advisory Committees; b) Exchanging information of mutual interest; c) Studying problems affecting the community and the United States; d) Evaluating the possible effects of contemplated courses of action at the request of the interested party; e) Furthering understanding and implementation of appropriate laws, decisions, directives and regulations."[466]

Then, Moore explained, as advised by Steeves, that the U.S. military's legal procedures were rigorous and thorough, and that the U.S. Code of Military Justice treated rape cases more harshly than did the Japanese Penal Code Article 17. He asserted, "To my knowledge, there never has been an attempt at whitewashing or covering up of any case. They are all tried impartially and the findings and sentence are based on the evince in each instance. The rights of the accused to a fair trial are fully provided for but no commander can maintain discipline in his organization if he

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[465] Headquarters Ryukyus Command, Public Information Office APO 331, Minutes of Meeting, "Special Meeting of the Ryukyuan-American Community Relations Advisory Council," September 16, 1955, RG 319, Records of the Army Staff, Records of the Office of the Chief of Civil Affairs, Security Classified Correspondence of the Public Affairs Division, 1950-1964, Box 6, File: Criminal Jurisdiction, NARA.

[466] Headquarters Ryukyus Command, "Special Meeting of the Ryukyuan-American Community Relations Advisory Council," September 16, 1955, NARA.

countenances violations for the law at any time."[467]

Added to the above reasons as to why the USCAR held the authority to exercise personal jurisdiction over cases committed by U.S. military personnel was Okinawa's international legal status: "Now, although we have by Treaty granted to some friendly sovereign powers the right to try military personnel for violations of local laws, it would hardly be proper to grant this right in the Ryukyu Islands, since the United States exercises the power of sovereignty here."[468]

Instead, Moore encouraged the Okinawan representatives to leave the ever-growing protest movement: "I do want to point out to you thinking people that a situation of this kind provides a fertile field for agitators who are up to no good purpose and it is a situation made to order for Communist activities. What I am concerned about is that if public discussion continues to build up to a fever pitch, the situation may well get out of hand. Under such conditions, I can foresee irresponsible persons, Ryukyuans and Americans, taking matters into their own hands, acts of violence occurring, and a feeling of resentment developing between the two races which will not be good for the community." Dismissing the undeniable legal hierarchy between Americans Okinawans and the political nature of this problem, Moore in this particular context stressed harmony between "the two races."[469]

Sitting before the USCAR's top leaders, most Okinawan representatives toned down their earlier criticisms of the occupation. Chief Executive Higa stated, "The objective of this meeting and of all Okinawans having meetings should not lie in taking advantage of these instances to accomplish something else but in the re-examination of these matters to devise a means of

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[467] Headquarters Ryukyus Command, "Special Meeting of the Ryukyuan-American Community Relations Advisory Council," September 16, 1955, NARA.

[468] Headquarters Ryukyus Command, "Special Meeting of the Ryukyuan-American Community Relations Advisory Council," September 16, 1955, NARA.

[469] Headquarters Ryukyus Command, "Special Meeting of the Ryukyuan-American Community Relations Advisory Council," September 16, 1955, NARA.

preventing recurrence of incidents of this nature in the future. I believe that the political alliance of these instances has stirred up more agitation, and it has not contributed at all toward solving a solution for these incidents." Higa then added: "To tell the truth, I was rather shocked to hear that the Deputy Governor had proposed placing the entire island off limits. It is obvious to me that the off limits idea has to be last resort and the enforcement of this off limits idea will bring destruction the economic life of the Okinawans, thereby placing should lie in the prevention of similar instances in the future and also to wipe out these elements who always appeal to the public through agitation."[470] As mentioned earlier in the chapter, Higa was one of those Okinawan conservatives who had advocated for the Ryukyu Islands' independence from Japan. Higa and others who founded the Ryukyuan Democratic Party (RDP) believed that collaboration with the United States was a necessary step to achieve Okinawa's economic development and eventual independence.

Many Okinawan representatives asked for the military's preventive measures but followed Higa in echoing the premise that they would continue supporting the U.S. military occupation. Takamine representing the *Okinawa Times* briefly commented: "I believe that there must be various means by which the military can prevent a recurrence of such instances. But to me the urgent problem is [to] increase the number of military police and other patrols to cover villages such as Peri-ku [district] which seems to see violence every day." Conservative GRI legislator Ohama expressed his previous concern over those cases which had been tried at court martial and whose results remained [a] "mystery" for Okinawans. Yet "The statement that these trials will be open trials and that the sentences will be made public has pacified my feelings and no doubt a similar reaction can be expected from many other people. As for the Legislature, it will place trust

[470] Headquarters Ryukyus Command, "Special Meeting of the Ryukyuan-American Community Relations Advisory Council," September 16, 1955, NARA.

in the spirit of democracy and America. The Americans who committed these incidents were probably ignorant or mentally ill."[471]

Chief Justice Nakamatsu also backed away. Nakamatsu first remarked: "I wholeheartedly concur with General Moore's statement that trials should be held in courts and not in the newspapers." He then criticized the OTA's protest statement, which contained "a request pertaining to permission to have Okinawa legal experts sit on the bench as observers. Would it be possible for Okinawan judges to be in the military trials? My doubt lies in the usage of the term "*baiseki*" which means to sit on the bench as a judge and not as an observer. I do not think it is possible…" Nakamatsu also dismissed the teachers' demand for the extension of local jurisdiction. "The fourth item is a request of transfer of trials to civil courts of all crimes involving Okinawans or committed while in Okinawan jurisdiction. Incidents involving Okinawans include a large scope. To advocate that such cases be tried by civil courts doesn't make sense at all."[472] Certainly, the OTA's statement did not specify the difference between on-duty and off-duty cases, but it is essential to note that the teachers' call did resonate with post-occupation Japan's popular demand for personal jurisdiction over off-duty cases. Colonel Gaynor replied, endorsing Nakamatsu's position, that "[i]f some of the members of the Ryukyu Bar Association wish to be present at the trial as spectators, we will arrange for places for them to sit."[473]

As the only female participant, President of the OWA Takeno resisted the tide of the discussion. She first revealed the visceral impact the recent rape murder had on her. First, Takeno expressed her respect for "the United States" like any other fellow representative. "Following the

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[471] Headquarters Ryukyus Command, "Special Meeting of the Ryukyuan-American Community Relations Advisory Council," September 16, 1955, NARA.
[472] Headquarters Ryukyus Command, "Special Meeting of the Ryukyuan-American Community Relations Advisory Council," September 16, 1955, NARA.
[473] Headquarters Ryukyus Command, "Special Meeting of the Ryukyuan-American Community Relations Advisory Council," September 16, 1955, NARA.

termination of the war, I always had the feeling that the United States is a first-class country from what I heard from people such as those who received material assistance or medical assistance… Each time I visited Japan I told them that America is a first-class country and that they did not discriminate against us and were very friendly." Yet Takeno revealed the visceral impact the Yumiko-chan incident had on her. "The Yumiko-chan incident was the most brutal I have ever heard of throughout the world. Every time I think of it [sic] chills run through my spine. And whenever I see children of that age I cannot help thinking of that incident."[474]

On behalf of Okinawan women who were not invited, Takeno gave her definition of civility, referring to the meaning of "virtue" rooted in Confucianism. "I don't know about moral standards of foreign countries but I do know the women of Japan think more of their virtue than of their lives. There are many stories in Japanese books and in dramas that because they place their virtue beyond life if women are sexually attacked even though it was through no fault of their own, they commit suicide. Women of Okinawa feel exactly the same way as women do in Japan…" Takeno's provocative statement was nonetheless sexist and classist when she stated: "You might say that there are thousands of women selling their bodies but these women are doing so because of their ignorance. Besides, they are not true Okinawans." Still, highlighting the particular shared values with Japan, not the United States, Takeno demanded that the military put preventive measures in place, and did not show her unconditional pledge to continue supporting the occupation. "I feel that unless an effective means is devised to prevent future occurrences, I believe it will be very harmful [to] us all. My request is that something be done to ensure that there are no more of these instances in the future."[475]

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[474] Headquarters Ryukyus Command, "Special Meeting of the Ryukyuan-American Community Relations Advisory Council," September 16, 1955, NARA.
[475] Headquarters Ryukyus Command, "Special Meeting of the Ryukyuan-American Community Relations Advisory Council," September 16, 1955, NARA.

After Takeno spoke, Asato (President of University of the Ryukyus), Tomihara (President of Bank of the Ryukyu), and Takehara (Managing Editor of *Ryūkyū shinpo*) requested the military's discipline, but did not say anything controversial. Asato emphasized the significance of quality education on both young Okinawans and Americans. Tomihara stated: "To prevent such instances from occurring in the future, the military have to control the soldiers somehow. At the same time, we have to think of the protection of children by ourselves. First of all, I strongly request control of the soldiers. To prevent such incidents in the future, the military and the people should get together and should cooperate with each other's effort." Takehara echoed their comments asserting that "the crimes committed by a few rotten ones, who should be attacked for what they have done, should not be the basis for criticism of their country… But, to me, it is necessary that all U.S. servicemen be taught [about local conditions] which is the most important thing at the present time."[476]

Managing editor of the *Ryūkyū shinbun* Tamaki's comment was distinct from the others in that he saw parallels between U.S. military personnel's racist and sexist treatment of locals in Okinawa and Japan and the Japanese imperial army's similar treatment of natives during the war. Although Tamaki failed to recognize the prevalent nature of sexism in the West by sharing a rumor that "no rapes are committed in the United States," he nonetheless reminded the audience of the inevitable links between racism, sexual violence, dominating power's authority to declare impunity.

> According to a letter to the editor appearing in our newspaper today, American servicemen stationed in Japan are ill-mannered and are often in a state of intoxication while in streetcars, trains or busses, as contrasted to the excellent way they conduct themselves while in London and Paris. It is not possible for such atrocious nature to have occurred in civilized countries. No or little regards for the people of Japan on the part of U.S. servicemen seem to be the basic cause of all these incidents. Americans seemingly maintain a similar attitude towards Okinawans. If such is the case, then it's about time Americans and Ryukyuans both

[476] Headquarters Ryukyus Command, "Special Meeting of the Ryukyuan-American Community Relations Advisory Council," September 16, 1955, NARA.

> do something about it… the rapes committed by American servicemen are always in areas other than the United States, such as Okinawa. I made a trip to Saipan and other South Seas Islands about 13 years ago. It was noted at that time, that the way the Japanese treated the natives there was quite uncivilized and inhuman. Many murders were committed, but if the victims were natives, the offenders were set free…[477]

In a way, Tamaki's positioning shared the logic of postwar Japanese anti-imperialist resistance to the U.S. military legal regime of exception. Yet just as most of the Okinawan participants of the meeting did, he alleviated the USCAR authorities' concern by stating, "Okinawans and Americans have to live together on the island, and therefore measures must be taken to prevent such things in the future."[478]

In concluding the meeting, the Deputy Governor of the Ryukyu Islands did not fail to enlist the final conciliatory measure to divide the protest movement. "We all deplore these incidents. As a matter of fact, had we known that we had men wishing to enter the service who were capable of committing such acts, we never would have enlisted them in the first place. I can understand Mrs. Takeno's feeling with respect to the virtue of womanhood and I can assure her that Mrs. Moore and other women feel the same way."[479] By homogenizing Okinawan and American women, who were alleged to share "the virtue of womanhood," More expected Okinawans to continue supporting the occupation and its legal regime of exception.

In the meantime, the State Department began discussing possible consequences of the protest movement on the Japan-U.S. relationship and U.S. Cold War policy. The day after the conference, Secretary of State John Foster Dulles responded to Steeves' urgent telegram: "[The

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[477] Headquarters Ryukyus Command, "Special Meeting of the Ryukyuan-American Community Relations Advisory Council," September 16, 1955, NARA.
[478] Headquarters Ryukyus Command, "Special Meeting of the Ryukyuan-American Community Relations Advisory Council," September 16, 1955, NARA.
[479] Headquarters Ryukyus Command, "Special Meeting of the Ryukyuan-American Community Relations Advisory Council," September 16, 1955, NARA.

State] Department concurs with [the] position you adopted and commends you for your effective presentation. You should continue mak[ing] every effort [to] assure moderation and discourage responsible authorities deal with this situation in reasonable and restrained manner."[480]

A few days later, Ambassador Allison also warned that the military's confrontational response to the protest movement could reinforce the growing anti-U.S. military base movement in Japan. Allison wrote: "Embassy fully concurs Steeves position. I believe resort to punitive measures against population would be exploited by unfriendly elements here as evidence inability Americans rule except by force as an argument for reversion. Might also be seized upon by organizers anti-base campaign in Japan and linked with local issues to detriment of US military."[481]

On September 20, Allison elaborated on his earlier comment in his telegraph to Deputy Assistant Secretary of State William Sebald: "I was really appalled at the sudden glimpse of military government at work on a delicate situation which John Steeves gave in his telegram No. 26 to the Department, describing the initial extreme reaction of USCAR to popular outcry over two child rape cases. Hence I was much gratified by the Department's prompt endorsement of John's position." As one who had once staunchly opposed the extraterritorial FCJ policy on Japan and demanded postwar America's commitment to liberal democratic principles, Allison pointed to the structural problem rooted in the U.S. occupation of Okinawa: "it seems a pity that the nature of John's relations with the military seems to make it impossible for the Embassy or the Department to intervene with active support in situations like this without jeopardizing his position." Observing the stalemate, Allison expressed interest in "work[ing] out some discreet

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[480] Telegram from Dulles, Secretary of State, The Department of State, to John Steeves, U.S. Consulate, Naha, September 17, 1955, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1952-1963, Code Number: 084-02828A-00024-010-079, OPA.

[481] Telegraph from John M. Allison, Tokyo Embassy to Secretary of State, September 19, 1955, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1952-1963, Code Number: 084-02828A-00024-010-078, OPA.

means of meeting this problem" with Steeves' help. This is because "the particular case described in his telegraph offers excellent ammunition for supporting" the view shared among State officials that "a change from military to civilian government in Okinawa is urgently needed." Allison even asked: "Perhaps John would not mind your mentioning the case orally to some high-level defense officials such as Gordon Gray if the Department should decide to act on John's recommendation." Yet he did not fail to forward the telegram to Steeves "so that he may object if he feels that even that much use of the information would be too risky." [482] Later, Steeves did object to Allison's proposal.

While the top State Department elites in Naha, Tokyo, and Washington were discussing how to transform the exclusive military governance of the Ryukyu Islands, Okinawan grassroots organizations held meeting after meeting. More resolutions were adopted, and more rallies were also organized. The day before the USCAR's special meeting with the Okinawan representatives, the OAPC released its own statement on September 15, which declared the structural connection between racism and extraterritoriality: "the root cause of these cases derives from racial discrimination as seen in the extraterritorial reality of Okinawa…" The OAPC contrasted such a reality confronting occupied Okinawa with "the fundamental democratic principle that all humans are equal."[483] On September 16, more than a thousand residents of Ishikawa City, where Yumiko was born, held a rally for Yumiko. The participants, more than eighty percent of whom were mothers, shouted, "No more tragedies like this," and "Record and air the trial!" Their demands included a death sentence for Hurt, the abolition of extraterritoriality, and the military's tighter

[482] Letter from Allison John M. Allison, Tokyo to Willian Sebald, Deputy Assistant Secretary of State, Bureau of Far Eastern Affairs, Dept of State, Washington, September 20, 1955, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1952-1963, Code Number: 084-02828A-00024-010-075, OPA.
[483] *Okinawa Times*, September 16, 1955.

implementation of regulatory and disciplinary measures.[484] Other areas adjacent to U.S. military bases, such as Goeku, Maehara, Chatan, Kadena, Ginowan, Peri, and Yonabaru, also held communal rallies under the leadership of the OAPC.[485]

The same day, representatives of grassroots organizations such as the PTA, OTA, OAPC, and OYA as well as all three political parties gathered at the OSMP's building. They agreed to spread local activities according to each organization's capacity and hold their joint rally either at the end of the month or the following month. The same day the Okinawan Lawyers Association also agreed to publish its position from "the standpoint of human rights."[486]

The OTA organized its own rally on September 17. The *Okinawa Times* ran the headline: "The OTA's rally: crowded participants exploded with indignation and listened to [speeches about] the rape of young children with tears." 2,200 participants silently prayed for Yumiko and adopted a statement which called for the establishment of an association for the protection of human rights and organizing all the islanders' rally against American GI crimes.[487] The *Okinawa Times* welcomed the OTA's entreaty to found a human rights association and regretted that the absence of it had made it "difficult for Okinawans to unify public opinions."[488]

In this context, Steeves asked his colleagues in Washington and Tokyo, Sebald and Allison, on September 26 not to bring up the problem of the military occupation in communicating with high-ranking defense elites: "I am not sure that it would serve our interests to bring any of these matters, piecemeal, to the attention of higher authorities in the Pentagon. If it resulted in efforts to correct faults committed here in the Command and the report which led to the reproof were

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484 *Okinawa Times*, September 17, 1955.
485 Okinawa daihyakka jiten kankō jimukyoku, *Okinawa daihyakka jiten-Gekan* (Okinawa: Okinawa Times sha, 1983), 784.
486 Okinawa daihyakka jiten kankō jimukyoku, *Okinawa daihyakka jiten-Gekan,* 784.
487 *Okinawa Times*, September 18, 1955.
488 *Okinawa Times*, September 19, 1955.

traceable to me, my position would indeed become untenable."[489] Instead, Steeves proposed a more gradual and systemic approach to achieve the transfer of responsibility of Okinawan governance from the Pentagon to civilians—first Americans and later Okinawans.

> The only way to gain unqualified acceptability here would be to swallow the Army policy in dealing with civilian affairs hook, line and sinker, and assure them you had, which I cannot do in good conscience. I am convinced… that the only corrective action which would be effective is a complete change in the system. The only way to accomplish that objectives in a clear and orderly fashion is to plan for it carefully and set a date for the transfer of responsibility for civil administration. The reason I suggested the study group is that any substitute plan must be a good one and a realistic one if it is to gain the support of the Congress and other interested agencies, including, Defense. The complete package transfer of responsibility easier for the Army and other armed services to accept than individual criticism of their administration.[490]

To some degree, Steeves' support for more democratic governance in Okinawa was a reflection of the dehumanizing way of treating Okinawans he saw among the USCAR officials. Steeves wrote: "I am quite certain that although my relationships with the Generals are quite cordial, I am always slightly suspect officially. Any civilian official, especially from the Department of State, would be." To elaborate on this point, Steeves shared one episode.

> As for instance; in recharging his reply the Chief Executive's letter on the rape cases in which Mr. Higa had said that he feared that while the front gates of installations were well checked that the rear exits were relatively open for mischievous personnel to come and go as they pleased, General Moore remarked, "I told Higa that those fences were not there to keep our boys in but to keep his g.[od] d.[amn] thieving Okinawans out and that it was none of his business as to how we managed our affairs.[491]

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[489] Letter from John M. Steeves, American Consul General to William J. Sebald, Deputy Assistant Secretary for Far Eastern Affairs, Department of State, Washington, D.C., September 26, 1955, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1952-1963, Code Number: 084-02828A-00024-010-073, OPA.

[490] Letter from Steeves to Sebald, September 26, 1955, OPA.

[491] Letter from Steeves to Sebald, September 26, 1955, OPA.

Although Steeves questioned the Deputy Governor's "vulgar racism,"[492] directed at the top Okinawan leader, Steeves still supported the project of garrisoning Okinawa with his belief in American exceptionalism and the postwar U.S. national security state' underlying objective to achieve military hegemony in the new international order.

> I regret that this brief comment sounds a little pessimistic in discussing the civil affairs aspect of the situation here. I am sure that it is largely the result of concept of mission, for one cannot but help but be tremendously impressed by what is being accomplished in accomplishing in fulfilling the military mission on the island. That which is already in existence is impressive enough and when the present building program is finished in two or three years' time, this will not doubt be one of the best-built, commodious bases in the world.[493]

On October 5, Deputy Governor Moore also informed Department of the Army Staff Communications Office of the developments of the Okinawan protest movement. Moore informed his colleagues in Washington that "The civil administrator and DEPGOV made pub[lic] expressions of regret and concern over the incidents." Regarding the protest movement, Moore offered this account: "Instigated by the Okinawa Teachers Association, Parent Teachers Association, Youth Association and Child Protection Association, the in[di]vi[dual] crimes were broadened into social and national issues of human rights. Lo[cal] press cooperated with these organizations giving primary coverage to all pu[blic] rallies and meetings. Resolutions and declarations adopted were given full coverage and amplified by editorials."[494]

Moore explained that the special meeting of Ryukyuan American Community Relations

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[492] Franz Fanon has initially used this expression, Takashi Fujitani has adopted it to analyze Japanese and American empires' engagement with exclusive forms of racism during World War II. See Takashi Fujitani, *Race for Empire: Koreans As Japanese and Japanese As Americans During World War II* (Berkeley and Los Angeles; London: University of California Press, 2013).

[493] Letter from Steeves to Sebald, September 26, 1955, NARA.

[494] Message from Deputy Governor, USCAR, Okinawa to CAMG Department, Washington DC, October 5, 1955, RG 319, Records of the Army Staff, Records of the Office of the Chief of Civil Affairs, Security Classified Correspondence of the Public Affairs Division, 1950-1964, Box 6, File: Criminal Jurisdiction, NARA.

Advisory Council was held "to combat anti-US expressions," and that "Full expl[anation] of C[ourt]M[artial] pro[cedures] and US justice [was] given." For further steps, "Mil[itary] police patrols have been increased and organizational courtesy patrols have been estab[lished]; "Macro com[man]d[e]r has personally rendered apology to parents of one of children in which a member of his comd was implicated and has furn[ish] transportation for parents to hosp[ital]; In add[ition] pers[onnel] of USCAR have held numerous private meetings with mayors, business people, editors, politicians, etc to find a more reasonable approach." Overall, Moore admitted that "Incident viewed here as causing severe damage to US Ryukyuan relationship." And this was giving Okinawans "Opportunity… to agitate for reversion which appears to be primary motive, to demand that trials of crimes committed off mil[itary] installations be handed by native courts, to appeal violations of human rights, and to establish racial controversy."[495]

Yet his hope was the tangible impact of the USCAR's conciliatory measures: "Mayors and business people [were] rep[or]t[ed] to have declined participation in another 'people rally' and campaign proposed by Teachers Association. Believe agitation will consequently decline. Press now starting to voice serious concern over its own anti US campaign. Appears that agitation has presently subsided however trials may result in renewed program. Ryukyuan people have already deter[mined] accused guilty and are demanding max punishment. People also fear if punishment to be imposed outside Ryukyuans criminals will be freed." However, Moore thought that no support was required from Washington. Rather, he recognized that "P[erio]d of time will be required to reconst[ruct] good will, trust and friendship maj[or] factor in coming sit[uation] will be open, sincerely prosecuted trials of the accused persons."[496]

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[495] Message from Deputy Governor to CAMG Department, October 5, 1955, NARA.

[496] Message from Deputy Governor to CAMG Department, October 5, 1955, NARA.

As Moore had expected the upcoming political impact of the "people rally," the occupied residents' first popular rally unequivocally demanded the protection of fundamental human rights. On October 22, from around 7:40 to 10:00 P.M. in the capital city, Naha, "All Okinawan Residents' Rally for the Protection of Human Rights (*Zen-Okinawa jnkenyōgo jyumintaikai*) was packed with approximately 5,000 residents, including 19 grassroots organizations and all the political parties. Large banners were dropped behind speakers' stage. A student representative asked all Americans to reflect on the racist nature of the Yumiko-chan incident, which had kept her in fear ever since. The OWA's president Takeno stated: "The animals' world is ruled by the law of the jungle. The same phenomenon is happening to us because we are powerless and poor. We must never forget that we are a superb people." A teacher representative stated: "It is extremely regretful that we have to see American soldiers as demons and devils. I want to ask Americans if they think the Ryukyuans are worthless people. If their answer is no, and if they do not see [Okinawa] as their colony, I ask them to show gentle behavior. I demand complete autonomy." Other representatives asked the audience to reflect on other human rights violations, such as poor working conditions, unregulated layoffs, the land problem, and the shooting of Okinawan fishermen by unidentified soldiers on the ocean. Japanese grassroots organizations as well as local organizations sent solidarity messages celebrating and endorsing the concept of the rally.[497]

Chief Executive Higa was expected to attend the demonstration, but he did not appear. A prominent politician from the same conservative political party, Nagamine Akio, who also did not attend the rally, conveyed an official message as Vice Chairman of the GRI Legislature: "We cannot call it a civilized society when the majority of people have not heard of the phrase 'human rights'… I will make every effort for the protection of human rights in Okinawa, thereby enhancing

[497] *Okinawa Times*, September 23, 1955.

moral principles and defending the conscience and virtue of Okinawan race."[498] Despite his absence in the rally, Nagamine's message signified a moment where Okinawans as a collective began countering not only the U.S. military legal regime of exception but the occupation itself with their collective appeal for the protection of human rights and articulation of "civilization" on their own terms. The adopted declaration read:

> A decade has passed since the end of the war and four years have passed since the conclusion of the Peace Treaty. Although the world is turning brighter and moving towards peace, Okinawa is still placed in an abnormal position, and our lives are exposed to poor conditions both materially and spiritually. Fear created by frequent rapes make people—albeit limited to particular areas—unable to sleep in peace at night and stay alone even during daytime. The seizure of land that gives life to people has reached the Ie island, Isahama… and great threat posed by the grand, new confiscation plan is befalling all across Okinawa. Workers are suffering not only merely because of the racialized wage difference: Labor unions cannot have expected functions, and thus workers struggle with low wages, layoffs, and fear of unemployment that make their lives filled with hardships. Furthermore, agony brought by the condition that does not allow us to speak freely dwells in all Okinawans. Most victims endure pain without compensation. Yet now we see peoples in the mother country, Japan, and other parts of the world showing us empathy and hope for the protection of Okinawans' human rights. Just as any member of human society, we have inalienable rights to the inherent dignity and equality, which underpin liberty, justice, and equality. We declare that we will overcome this crisis incurring on the Okinawan race by demanding livelihood and rights that allow us to live as humans and by tightening our solidarity for the protection of peace and liberty regardless of difference in our ways of thinking and positions.[499]

In their joint struggle against a-decade-long 'extraterritorial' American justice, Okinawans' collective demands in the realm of legal justice converged on the disclosure of information on court martial. It was added to one of five demands adopted by the rally: the overall protection of human rights, the removal of racialized wage difference, labor unions' rights, and legitimate solutions to the land problem.

Although Okinawans' 1955 protest movement did not collectively seek the exercise of local

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[498] *Okinawa Times*, September 23, 1955.
[499] *Okinawa Times*, September 23, 1955.

jurisdiction over cases involving U.S. military personnel, their popular demands for open court martial for the protection of human rights eventually expanded their legal rights to the extent that they were authorized to attend the court martial that held the two rapists accountable. Okinawans also saw the application of the Foreign Claims Act for the first time: Yumiko's parents received 2,000 dollars for compensation.[500] On December 6, 1955, Isaac J. Hurt received a death sentence at the court martial held in Okinawa.

As feared by some Okinawans, however, the Hurt case eventually left the hands of the locals and the Island of Okinawa. President Eisenhower reduced Hurt's sentence to forty-five years of hard labor in prison in 1961.[501] Eisenhower made the decision after visiting Okinawa in 1960 where he witnessed a large number of protesters surrounding the GRI building, which forced him to shorten his stay and leave from the rear door.[502] Still, Eisenhower's commutation for Hurt and five other U.S. service members did not make them eligible for parole. In 1977, President Ford took a step further. Ford's presidential clemency removed the prohibition against parole. About two decades after the Yumiko-chan incident, Hurt was able to apply for parole and turn the decision over to the Parole Commission.[503]

How can we understand this historical process, which resulted in only a minimal expansion of Okinawans' legal rights in the immediate aftermath of the Yumiko-chan incident, and then incurred presidential pardons of Hurt's sentence in the 1960s and 70s? Indeed, in recognition of the legitimacy of capital punishment from a standpoint of human rights, it still demonstrates Okinawans' defeat in their efforts to secure the rule of law and equality before the law and to force the American military to acknowledge the racist and colonial nature of its alleged "civilizing"

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[500] *Okinawa Times*, October 20, 1956. Sasaki, 210.
[501] Sasaki, *Shōgen kiroku Okinawa jūmin gyakusatsu*, 210.
[502] Arasaki Moriteru, Nakano Yoshio, *Okinawa sengoshi,* New Edition (Tokyo: Iwanami shoten, 2005), 119-120.
[503] *The Lawton Constitution*, vol.75, no. 121, January 21, 1977.

mission in Okinawa. The occupation authorities did not question the rationality behind the legal regime of exception, and thus blatantly continued its "extraterritorial" rule.

Although Steeves had warned the Army's high-handed authoritarian regime and proposed the State Department's initiative in installing a "civil administration," his presence on the island gradually transformed his ideas surrounding Okinawans' civility closer to those expressed by the military officials. On November 15, in a letter addressed to Washington, Steeves reported that he "had one of the longest and best exchange of views with General Moore." On the governance of Okinawa, Steeves stated that "General Moore and I do not see eye to eye with respect to the relative ability of Ryukyuans. I have a tendency to feel that they have much more potential than he feels they do. He was much more conciliatory in his attitude toward them the other night than I have heard him before, but faced with the day-to-day problems which result from their failures, he has a tendency to feel frustrated, discouraged, and at times, annoyed with them." While positioning himself as a representative of the State Department and distancing himself from the military elites' exclusionary racism, Steeves admitted that he came to understand Moore's frustration with Okinawan politicians' capacity of self-rule: "The sad truth is that so far as one can judge from present progress and performance, it is not getting us very far along the road of developing responsible democratic leadership."[504]

Steeves and Moore found the Okinawan legislators unreliable since "there is the refusal of the Legislature to even seriously consider the anti-subversive legislation which the Deputy Governor and the Civil Administrator have been wanting them to pass for a long time." Further, both of them doubted Chie Executive Higa's leadership and political ideal. "He [Moore] says that

[504] Letter from John M. Steeves, American Consul General to Robert J. G. McClurkin, Esquire, Office of Northeast Asian Affairs, Department of State, November 15, 1955, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1952-1963, Code Number: 084-02828A-00024-010-024, OPA.

Higa in all seriousness has suggested to him that he believes the Ryukyuans should eventually look forward to an independent status. He says that Higa has drawn parallels between the U.S. handling of the Philippine situation and what conceivably should be done toward the Ryukyus. Moore very rightfully told him that any such idea to him seemed utter nonsense." Steeves agreed that Higa must change because, as Moore told him, "He does not stand up to anybody, face to face, has a tendency to be obsequious and agrees with anybody he happens to be with at the moment." Moore "contrasted Higa's attitude with that of Mayor Tōma of Naha who is a rather forthright gentleman not all adverse to taking issue with you to your face concerning any subject with which he does not agree."[505]

Although Higa's appointment as the first Chief Executive of the GRI was made by the military officials themselves, who had wanted a congenial leader with English skills, by 1955 Higa appeared untrustworthy in their eyes, just as Prime Minister Yoshida did in the eyes of the State Department officials in 1953. Unlike in the early 1950s, the Okinawans began expressing their opposition to the occupation policies more vocally and collectively than ever. It was this particularity of the political climate of 1955-Okinawa that made Tōma Jūgō better qualified as a leader, as proven by previous acts including his immediate denial of the JCLU allegations on human rights abuses in occupied Okinawa. Okinawa's first Chief Executive Higa, who handed his own protest letter to the Deputy Governor, suddenly died of angina at the age of 56 on October 25, 1956 at the height of the island-wide land struggle. The USCAR appointed Tōma to succeed Higa's position. With both the inclusionary and exclusionary racist ideologies of the U.S. military legal regime of exception challenged, yet whose institution unharmed, its operation continued in Cold

[505] Letter from John M. Steeves, American Consul General to Robert J. G. McClurkin, Esquire, Office of Northeast Asian Affairs, Department of State, November 15, 1955, OPA.

War Okinawa.

With regard to the trajectory of the Okinawans' protest movement, which placed the spirit of the UDHR at the heart of their unprecedented struggle against the military legal regime of exception, the locals' reactions to the murder of a thirty-three-year-old woman, Yonamine Etsuko, by a GI on April 8, 1956, signified this movement's special and tenacious role in transcending ideological conflicts and mobilizing a popular front. Yonamine was shot in the back while collecting scrap inside a U.S. military base to support her impoverished family.[506] Following the Yumiko-chan incident, which invigorated the island-wide opposition to the U.S. land policy in the latter half of 1955, the "Etsuko-san incident" inflamed the locals' fury even further just as the land struggle was coming to a head in June 1956. When fifty-six out of sixty-four towns across the Ryukyu islands held rallies against the release of the Price Report, a U.S. congressional report that endorsed the USCAR's policy, Higa indicated his intention to resign from the CE position if Okinawans' demands were not met.[507]

The GRI Legislature adopted another protest statement in the wake of the "Etsuko-san incident" on May 29 reasserting the military's need to protect Okinawans' human rights. The protest statement referred to themselves as "Ryukyuans." Yet this time the legislators showed greater distance from the U.S. occupiers phrasing in such a way, "It was unheard of even at the apex of Japanese militarism in the prewar time that a soldier shot a civilian." Despite recent memories of the Japanese Imperial Army's discriminatory and even ruthless attitudes toward the locals during the Battle of Okinawa, the Okinawan legislators prioritized their resistance to the occupiers, mentioning "the death of five to six locals every year caused by U.S. soldiers' firearm

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[506] *Okinawaren*, October 1, 1956; "Jirādojiken Okinawa ban," *Jyurisuto* No. 136 (August 15, 1957): 31.
[507] Sakurazawa, *Okinawa gendaishi*, 57-59; Arasaki, Nakano, *Okinawa sengoshi*, 83-88.

incidents even in the age when human rights, which underpin freedom, justice, and peace, are respected worldwide."[508] Recognizing "human rights" as the basis of the other mentioned values, the legislators urged the military to respect its military codes which prohibited the fatal use of firearms against those who committed minor crimes. The court martial found the accused not guilty in May 1956.

Conclusion

A decade into its operation, the U.S. military legal regime of exception installed in the aftermath of the Battle of Okinawa was confronted with fierce resistance by the local population. Despite the GRI Legislature's plea in 1952 for the establishment of an official compensation program for the victims of U.S. military related incidents for the protection of their human rights, it took the islanders three more years to finally secure minimum legal protections upon encountering such cases. A series of events that took place outside Okinawa set important conditions for the transformation of the political environment on the "forgotten" Cold War island: Reverend Bell's article "Play Fair with Okinawans," the ACLU-JCLU communication on the U.S. occupation of Okinawa, the JCLU's ten-month-long investigations on Okinawa, and the Japanese lawyers' appeal for international solidarity for Okinawans' human rights in India in January 1955. Indeed, the additional deployment of the Marines and the Okinawans' internal struggle against the military's land seizure, which their representatives' delegation took to Washington in June 1955, had its own dynamism and influence in altering the tide of the occupation.

[508] The Legislature of the Government of the Ryukyu Islands, The First Statement of the Eighth Assembly (Regular Session): "Statement Regarding the Protection of Life—Jinmei ni kansuru ketsugi," May 29, 1956.

In September, the Yumiko-chan incident became the catalyst for invigorating the locals' popular protest against the occupiers, animating the *Ryūkyū shinpo* to describe the island as the world of "Er g." The local press, Okinawans grassroots organizations, legislators, and Chief Executive Higa protested rampant GI crimes, extraterritoriality, closed court martials, the lack of compensation for victims, and U.S. military personnel's naked racism against Okinawans. The protest movement expanded Okinawans' legal rights, including the right of the local police to join investigations of those cases involving U.S. military personnel and Okinawans (albeit limited to the gathering and exchange of information) as well as the residents' rights to attend court martials and receive compensation on the ground of the Foreign Claims Act announced in 1952.

Nevertheless, these changes did not alter the military legal regime of exception as an institution. General Moore explained to the Okinawans the superiority and rigorous nature of the U.S. legal system, as advised by Naha Consulate General Steeves, and attempted to divide the protest movement by reaffirming Ryukyu-U.S. friendship. Behind the scene, Moore explicitly insulted Chief Executive Higa and agreed with Steeves that the Okinawan leaders lacked the qualification of self-rule. Ultimately, the two U.S. presidential clemencies declared by Eisenhower in 1961 and Ford in 1977 invalidated the islanders' effort to install the rule of law and safeguard equality before the law.

The post-1961 history of Hurt's case spelled the locals' defeat in the struggle for legal justice. However, the Okinawans' popularization of resistance to postwar U.S. extraterritoriality in the mid-1950s demonstrated the power of human rights activism and its tenacious role in consolidating political forces. Building upon this pivotal moment, the 1948 UDHR became a key referential text for right struggles in occupied Okinawa.

Chapter 4
Uneven Trajectories:
Japan between Civilization and Resistance

Americans commended that the trial in Japan was held properly and fairly. Last night at the Chief Judge's press conference, even those journalists who must have adequate knowledge of Japan asked unwarranted questions such as "Will Girard be handcuffed? Because the Americans appeared to have held the image of a medieval-styled dark trial, they looked fairly surprised at the civilized atmosphere of the courtroom.

Sunday Mainichi[509]

So long as the nation is an occupier and one is a soldier of that occupier nation, the tragedy of "dehumanization" dwells in them. When the occupier is the United States and misconducts are committed by American soldiers, protests take shape in the form of "anti-Americanism." Agitation reduced to the level of "anti-Americanism" is easy to understand but can be easily burnt out… As I have stored numerous dehumanizing incidents [committed by GIs] in my mind over the past five and then ten years, I could not help but be struck by the thought that we cannot grasp this immense history of the tragedies only with the sentiment of victimhood and the vindictive urge of a person belonging to one nation against another person belonging to another nation.

Komiyama Ryōhei[510]

Scantly a year before thirty million Japanese took to the streets to protest against the renewal of the Japan-U.S. Security Treaty in 1960 (Anpo movement), Arai Kōichiro published his meticulously-researched book, *Graves Without Flower: Records of the Allied Occupation Forces' Murders of the Japanese*.[511] Komiyama's editorial foreword pointed out the link between the use of the Japanese archipelago as a military garrison, Japan's rearmament, and the specter of nuclear genocide. It asserted that the American military victimized and dehumanized Japanese at the hands

[509] "Jirādo no omatsuri saiban," *Sunday Mainichi*, September 8, 1957, 12-13.
[510] Arai Kiōchi, *Hana no nai bohyō—Chūryūgun ni yoru nihonjin gyakusatsu no kiroku* (Tokyo: Rironsha, 1959), 2.
[511] Nick Kapur, *Japan at the Crossroads: Conflict and Compromise after Anpo* (Cambridge, Massachusetts: Harvard University Press, 2018), 1.

of violent GIs and at the hands of nuclear weapons, just as black Americans suffered under white supremacy in the United States.[512] More to the point, under the radar of Japan's second wave of popular resistance to postwar U.S. extraterritoriality, the 1953 Confidential Agreement was institutionalized in the form of a tacit waiver system, in which Japan refrained from exercising its right to hold American military personnel criminally responsible for atrocities committed against its citizens. As the number of people not protected under revised Article 17 increased, a political consensus emerged in Japan on the need for expanding national sovereignty. This contradiction was solved by shifting much of the U.S. military regime's presence from Japan to occupied Okinawa, which henceforth carried the lion's share of the burden, relatively out of sight for Japanese.

I argue in this chapter that the destabilized U.S. logic of civilization in early-1950s Japan and mid-1950s Okinawa survived "democratized" Japan's second popular challenge to the postwar U.S. military legal regime of exception by accommodating the Japanese urge to be recognized as a civilized people and transferring physical problems arising from the colossal U.S. military presence and classified extraterritoriality to occupied Okinawa.

As is well recognized by the existing scholarship, the durability of the Japan-U.S. diplomatic relationship was never a given nor affirmed by the state leaders in the 1950s. This pivotal moment for Japan-U.S. relations underwent two major transformations in the realm of history surrounding the postwar U.S. military legal regime of exception. First, the period saw the institutionalization of a tacit waiver system. Immediately after the 1953 Confidential Agreement came into effect, Japanese officials began waiving primary jurisdiction over cases involving off-duty military personnel, civilian workers, and their dependents at rate higher than ninety-five

[512] Arai, *Hana no nai bohyō,* 5-6.

percent. Still, in December 1953, a Japanese trial of a GI was held under the supervision of U.S. military and civilian elites. When members of Congress visited Tokyo in October 1955 to inspect a Japanese prison where GIs were imprisoned, the State and Defense Department elites expressed satisfaction with the waiver system and convinced the legislative delegation from home of the constitutional protection of GIs. This was the very moment when occupied Okinawans were mobilizing their first massive protest movement against GI crimes.

The second transformation, which cut down on the operation of the U.S. military legal regime of exception in Japan, resulted from the rising demand of neutrality in place of security relationship with the United States, especially as the public learned about the legal injustices and lack of compensation that resulted from the waiver system. Notably, this transformation occurred in parallel with the Eisenhower administration's New Look, which aimed to reduce the postwar U.S. national security state's ever-growing military budget by partially replacing U.S. military personnel stationed across the globe with an advanced nuclear weapon system. As part of this effort, Eisenhower's envoy Frank C. Nash undertook a secret mission to compile a comprehensive survey of U.S. overseas military bases in 1956-1957. Nash's report concluded that the U.S. military legal regime of exception must be maintained and expanded through either formal or informal agreements with receiving governments to safeguard U.S. military personnel's rights across the globe. The public outcry over the murder of a Japanese woman by an American soldier, William S. Girard, in the midst of Nash's on-site investigations was both a visible reminder of the power of local resistance to U.S. extraterritoriality and a valuable lesson for the future exercise of foreign criminal jurisdiction policy. The so-called Girard case accelerated the withdrawal of U.S. ground troops from Japan and transfer of the Marines to Okinawa, and it urged the renegotiation of the 1952 Japan-U.S. Security Treaty and Administrative Agreement. Reflecting this broader change of

the bilateral relationship, the Japanese second popular protest movement against U.S. extraterritoriality led to a downsizing of the regime's operation with a drastic decrease in the number of U.S. military personnel from 121,619 in 1957 to 47,182 in 1961. Conversely, U.S. armed forces deployed in Okinawa increased throughout the 1950s: 21,248 in 1950, 27,778 in 1955, 29,237 in 1957 and 38,658 in 1961.[513]

Through this process, neither U.S. policy elites nor the Japanese protest movement explicitly articulated the protection of *universal* human rights in debating means to solve the Girard case. The politics of extraterritoriality that unfolded between Japan and the United States in the 1950s not only shines light on the nature, ideological basis, and function of the postwar U.S. military legal regime of exception, but it also helps to understand the defeat of the 1960 Anpo protests and their demands of the protection of constitutional democracy and peace (i.e., anti-militarism) *in* Japan. The following four sections alternate between narrating the negotiations of the U.S. FCJ policy and detailing the Japanese resistance in order to show how high politics and grassroots movements shaped the regime in tandem. U.S. policy elites learned that the normalization of extraterritorial FCJ policy was key to the continuous expansion of the military regime of exception on the global stage.

Institutionalizing the Regime of Exception: The First GI Trial and U.S. Congressional Delegates' Prison Inspection in Japan

Upon the adoption of the 1953 Confidential Agreement, which had successfully contained the first

[513] Hayashi Hirofumi, *Beigunkichi no rekishi-Sekai network no keisei to tenkai* (Tokyo: Yoshikawa-hirofumi kan, 2012), 127.

wave of the nationalist resistance, the postwar U.S. military legal regime of exception came to operate through bilateral and interdepartmental collaborations made by Japanese and U.S. authorities. The post-Confidential Agreement political atmosphere continued to alarm U.S. policy officials. Yet the Japanese ruling authorities' faithful fulfillment of the 1953 Confidential Agreement managed to eschew close public scrutiny, for other events continued shaking and shaping the Japan-U.S. security relationship. The conclusion of the Japan-U.S. Mutual Defense Assistance Agreement and establishment of Japan Defense Agency and Self-Defense Forces in July 1954 proceeded despite the diplomatic crisis between the two countries in the wake of the Bikini Incident of March 1954 and the rise of a nation-wide protest movement against nuclear weapons. The tension between U.S. demands for Japan's rearmament and ever-growing popular pacificism in Japan was written into Japan's domestic political system as it consolidated in 1955 around the Liberal Democratic Party (LDP) in power and the Japan Socialist Party (JSP) in opposition. Hence, these two main parties competed over the direction of Japan's diplomacy, the LDP supported by the United States and the JSP reluctant to recognize the Japan-U.S. Security Treaty for the next four decades.

In this political climate, the Japanese ruling authorities remained committed to waiving local jurisdiction over GI cases that legally fell under Japanese jurisdiction under the revised Article 17 of the 1952 Japan-U.S. Administrative Agreement. According to the U.S. Defense Department's declassified records, during the period between October 29, 1953 and November 30, 1956, "a total of 12,581 United States personnel were involved in incidents which were subject to the jurisdiction of Japan. Of this total, 56 cases were pending as of 30 November 1956. In the remaining 12,525 cases only 396 were tried by Japanese courts. In the remaining 12,129 cases Japanese courts either waived their jurisdiction or dropped the charges. All in all, only 87 cases

led to prison sentences that were actually carried out." The statistics suggest that Japanese authorities exercised jurisdiction only at the rate of three percent among all the cases (excluding pending ones) in the first three years since the adoption of the 1953 Confidential Agreement. Further, the rate of confinement of those tried in Japan was 0.7 percent. Based on the data, the Defense record noted in 1957 that "the Japanese authorities have been conscientious in protecting the welfare of confined American personnel and have also been most cooperative with American authorities."[514]

Only in exceptional cases did the Japanese legal system exercise primary jurisdiction after first announcing the intent to indict accused off-duty U.S. military personnel. John B. Henderson, who represented the Department of Defense during the negotiations on Article 17 of the Administrative Agreement, stated in a memorandum titled "First Trial of U.S. Soldier in Japan" that "[m]y personal guess is that the Japanese will wait for a good case before they try a U.S. soldier, and hence, that they will not try this one unless the assault was really aggravated."[515] On December 21, 1953, a U.S. Army soldier, James K. Overton, appeared at the Sapporo district court in Japan's northernmost prefecture, Hokkaido, charged with an assault on a Japanese male, Hajime Yasuda, in violation of Article 204 of the Criminal Code of Japan. Ambassador Allison appointed Lt Colonel of the Judge Advocate Generals of the U.S. Army, Far East, Arthur R. Barry, to monitor his trial as the U.S. representative. Barry's report measured the level of rights protection granted

[514] Bernard F. Door, Chief Military Liaison Branch Division of Acquisition and Distribution, Department of State, Memorandum for Office of the Judge Advocate General, Department of the Army "U.S. Security Personnel in Japanese Prisons," May 13, 1957, RG 153, Records of Office of the Judge Advocate General (Army), International Affairs Division, Reports of Visits to Foreign Penal Institutions, 1955-1963, Box 2, Folder: Visits to Fuchu Penal Institution, NARA.

[515] John B. Henderson, Office of the Assistant Secretary of Defense, Memorandum for Mr. Arnold Fraleig, Deputy Director, Northeast Asian Affairs, "First Trial of U.S. Soldier in Japan," December 11, 1953," RG 84, Records of the Department of State, Confidential US State Department Special Files, Japan, 1947-1956, Lot Files, Box 30, Folder: Administrative Agreement, November-December, 1953, NARA.

to Overton with his comments and analyses provided in the following sections: The Indictment; The Japanese Criminal Code; Pleas and Locations; The Judgment; Evidence before the Court; Discussion; and Conclusions. Building on consideration given these seven sections, Barry concluded:

a. The preliminary proceedings and trial in the Overton case conformed to the letter and spirit of the Protocol. The trial was speedy by American standards, and unusually so by Japanese standards.

b. The offense was proved beyond a reasonable doubt. The conduct of the trial was eminently fair and just. The penalty imposed was not excessive.

c. The major difficulty in the preparation and trial of the case was interpretation. Although the court interpreter was well qualified, his translation from Japanese came forth as "English," as distinguished from "American." Thus, significant shades of meaning where I lost when this case demonstrates the need for top-notch Japanese court interpreters; moreover, it is evident that great patience and cooperation by all concerned are essential to obtain maximum results.[516]

Despite his recognition of the "need for top-notch Japanese court interpreters" in future cases, Barry appeared to be content with the "speedy" trial (December 21-28, 1953) "by American standards" and stated the "conduct of trial was extremely fair and just." The result of the Japanese trial showed stark differences with the recent French trial of two American soldiers who had stolen a taxi driver's vehicle and injured him seriously in October 1953. The case had drawn strong reactions from the mass media and Congress in the United States.[517]

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[516] Arthur R. Barry, Lt Colonel JAGG, United States Representative, "Report of the United States Representative for the Trial of James K. Overton in the Sapporo District Court, Hokkaido, Japan (21 December 1953-28 December 1953)" to Commander in Chief, Far East, January 6, 1954, RG 153, Records of Department of the Army, Judge Advocate General, Administrative office, Records Branch, Classified Legal Opinions, 1942-1956, Box 45, Folder: 825, NARA.

[517] Robert H. McCaw, Colone, JAGC, Chief Military Affairs Division, "A Draft of a Proposed Letter in Reply to Congressman Fulton's Inquiry Concerning the Trial of Private Anthony Scaletti, US 52 106 050, by a French tribunal on 27 October 1953" to Chief of Legislative Liaison, Army Liaison Office, March 15, 1954, RG 153, Records of Department of the Army, Judge Advocate General, Administrative office, Records Branch, Classified Legal Opinions, 1942-1956, Box 45, Folder: 825, NARA.

Upon reviewing Barry's report, Ambassador Allison assured Secretary of State John Foster Dulles that the Japanese legal authorities demonstrated through this case their intention to provide "lenient" treatment —the expression used in the negotiations on the revision of Article 17—for an accused GI. In his telegram to the architect of the 1953 Confidential Agreement on January 14, 1954, Allison wrote: "U.S. representative has submitted six-page detailed report on the trial of Overton. Report concludes preliminary proceedings and trial confirmed not only to letter but to *spirit* [emphasis added by the author] of protocol; offence proved beyond reasonable doubt; trial eminently fair and just; penalty not excessive; although interpreter well-qualified, his translation from Japanese was literal 'English' as distinguished from colloquial 'American.'" The original report was air-porched to Dulles.[518] After the first GI's trial in Japan, Criminal Jurisdiction Subcommittee came into existence on January 7, 1954, under the auspices of the Japan-U.S. Joint Committee, whose routinized use was authorized by Article 26 of the Administrative Agreement. At this subcommittee, representatives of the U.S. State and Defense departments and representatives of the Japanese Foreign Office and Justice Department held closed-door meetings to "exchange complaints and suggestions concerning the implementation of the Protocol [of Article 17 of the Japan-U.S. Administrative Agreement] on a frequent and informal basis," according to the U.S. Army Judge Advocate General.[519]

Barry's monitoring of Overton's trial in Hokkaido comprised an essential function of the waiver system that enabled the smooth operation of the postwar U.S. military legal regime of exception. Yet the extent of sovereign power that the postwar U.S. national security state exercised

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[518] Telegram 1740 from Allison to Secretary of State, January 14, 1954, RG 153, Records of Department of the Army, Judge Advocate General, Administrative office, Records Branch, Classified Legal Opinions, 1942-1956, Box 45, Folder: 825, NARA.

[519] "Reports of Investigation of Conditions in Japanese Prisons," February 14, 1957, RG 153, Records of Office of the Judge Advocate General (Army), International Affairs Division, Reports of Visits to Foreign Penal Institutions, 1955-1963, Box 2, Folder: Visits to Fuchu Penal Institution, NARA.

in post-occupation Japan went much beyond trial monitoring. It was a multilayered system that began with the U.S. military's retention of "the pre-trial custody of U.S. military personnel who are to be tried by Japanese courts in all cases except those in which the Japanese determine that their retention of custody." The 1953 Senate Resolution on the NATO SOFA helped the Defense Department to declare that "it is the policy of the Department of Defense that a waiver of foreign jurisdiction will be sought in all cases involving American personnel" not only in Japan but also elsewhere. For this underlying objective of maximizing U.S. jurisdiction, military authorities were assigned to "require immediate reports of all cases in which the Japanese, as well as other foreign authorities, deny the United States either the custody of our jurisdiction over our personnel." Upon the adoption of the 1953 confidential agreement on pre-trial custody that came into effect with the waiver agreement, U.S. military authorities "have, almost without exception, been given the pre-trial custody of such personnel" in Japan.[520] In 1957, the Army confirmed the consistency of the Japanese practices adding, "no reports have been received from any Service commander in Japan which would indicate that the Japanese have held our personnel in a pre-trial confinement status for an unreasonable period of time or that trials by Japanese courts have not been advised of charges against them properly to defend against them."[521]

Securing Japan's general waiver policy concerning pre-trial custody and jurisdiction allowed the U.S. military to serve its own interests by claiming that it needed to "monitor" the level of "civility" at Japanese trials through appointed legal authorities. The basic rule stated that "a qualified United States representative, who except for minor cases, is required to be a lawyer,

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[520] "Reports of Investigation of Conditions in Japanese Prisons," February 14, 1957, NARA.

[521] Bernard F. Door, Chief Military Liaison Branch Division of Acquisition and Distribution, Department of State, Memorandum for Office of the Judge Advocate General, Department of the Army "U.S. Security Personnel in Japanese Prisons," May 13, 1957, RG 153, Records of Office of the Judge Advocate General (Army), International Affairs Division, Reports of Visits to Foreign Penal Institutions, 1955-1963, Box 2, Folder: Visits to Fuchu Penal Institution, NARA.

is present at every trial of United States personnel to insure that their rights are protected." And "[i]n any case where a denial of rights is reported by this representative, the Department of State, in coordination with the Department of Defense, would promptly undertake appropriate corrective action through diplomatic channels." In brief, the rights protection for indicted GIs included "to a prompt and speedy trial; to confrontation of witnesses; to have legal representation; to have the services of an interpreter, and, when the rules of the court permit, to have a representative of the United States present at the trial."[522]

The Army recognized that in addition to access to these basic legal rights,

> an accused: (a) may not be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel, nor detained without adequate cause and, upon demand of any person, such cause must be immediately shown in open court in his presence and in the presence of his counsel; (b) enjoys the right to a public trial by an impartial tribunal; (c) may not be compelled to testify against himself; (d) must be permitted full opportunity to examine all witnesses; and (e) may not be subjected to cruel punishment." Further, "Pursuant to legislation proposed by the Department of Defense (Public Law 777, 84 Congress, 70 Stat. 630), responsible authorities of three Services are authorized, upon request of the defendant, to provide him in all serious cases civilian counsel of his own choice at Government expense.[523]

The Army Judge Advocate General wrote in May 1957 that the only problem "occurring prior to August 1954" was that "certain interpreters in Japan were not qualified." When this matter was brough to the attention of the Japanese, "it was promptly remedied."[524]

Rights protection, however, did not end with trials of American soldiers. The post-trial

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[522] Bernard F. Door, Chief Military Liaison Branch Division of Acquisition and Distribution, Department of State, Memorandum for Office of the Judge Advocate General, Department of the Army "U.S. Security Personnel in Japanese Prisons," May 13, 1957, NARA.
[523] Bernard F. Door, Chief Military Liaison Branch Division of Acquisition and Distribution, Department of State, Memorandum for Office of the Judge Advocate General, Department of the Army "U.S. Security Personnel in Japanese Prisons," May 13, 1957, NARA.
[524] Bernard F. Door, Chief Military Liaison Branch Division of Acquisition and Distribution, Department of State, Memorandum for Office of the Judge Advocate General, Department of the Army "U.S. Security Personnel in Japanese Prisons," May 13, 1957, NARA.

constitutional protection of imprisoned GIs was also necessary for ideological consistency and smooth operation of the postwar U.S. military legal regime of exception. The post-trial inspection of Japanese penal institutions, Fuchū and Yokosuka Prisons, was mainly conducted by military officials. An appointed Army Liaison Officer's duties included "frequent visits to the U.S. Security Forces inmates, checking on their health and comfort items when the prisoners are destitute and health personal and administrative matters for the prisoners."[525]

More exhaustive inspections were conducted by a "Tri-Service Inspection Team" consisting of representatives of the Army, Navy and Air Force. They inspect each inmate and "a complaint period is held, during which times any prisoner can speak to an officer and voice any grievances or request aid in personal problems." In addition to monthly visits, "the full-time service of a Master Sergeant of the U.S. Army, assigned by the Tri-Service Liaison Team, visits Yokosuka twice weekly and Fuchu once each week." The Tri-Service Inspection Team inspected the prisoners quarterly as well to hold "a complaint session at the time of each visit." Further, "the Chief Surgeon of the U.S. Navy Hospital at Yokosuka conducts inspection monthly with close attention to water supply, mess cleanliness and general sanitation, sanitary inspection."[526]

Through regular inspections, the military authorities protected the constitutional rights of U.S. military imprisoned in Japan in addition to their rights protection under the Japanese constitution. The range of rights protection included religious freedom (attendance at either a Protestant or Catholic mass weekly), food requests, choice of individual or group cell, heated accommodation, and recreational activities (such as two motion pictures a week and cards and small games in their cells). Owing to the military officers' inspections and the Japanese

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[525] Door, "U.S. Security Personnel in Japanese Prisons," May 13, 1957, NARA.

[526] Door, "U.S. Security Personnel in Japanese Prisons," May 13, 1957, NARA.

accommodation of their requests for improvement, prison conditions improved year by year. For instance, with regard to food served for GIs, the Defense Department's 1957 report noted that "whale meat was served prisoners at Fuchu in 1954 but as a result of complaints from our servicemen… the whale meat was eliminated from the diet and meat was thereafter acquired from new sources."[527]

The institutionalization of the 1953 Confidential Agreement necessitated not only the closed-door interdepartmental collaborations among the Japanese and U.S. authorities but also U.S. legislators' on-site prison inspection in Japan. Chairman of the Subcommittee of the House Armed Services Committee, Melvin Price, visited Fuchu Prison in the outskirts of Tokyo, accompanied by Congressman Bates on October 21, 1955. This was the day before the All Okinawan Residents' Rally for the Protection of Human Rights, which demanded the adoption of the 1948 Universal Declaration of Human Rights in occupied Okinawa. Price became well-known in occupied Okinawa for his role in compiling a report which endorsed the Army's policy on land confiscation and compensation. The so-called "Price Report," which endorsed the military's policy on behalf of the U.S. Congress, triggered Okinawans' island-wide struggle in 1956. Notably, Price's visit had taken place almost a year after the Okinawan prisoners' revolt in 1954.

According to Lieutenant Commander W. J. McMahon, "The purpose of the [Congressmen's] trip was to determine the conditions of confinement of American servicemen who were tried and convicted by local courts in accordance with the agreement between the United States and Japan dated 29 October 1953." In the afternoon, McMahon and the Congressmen "inspect[ed] the prison and talk[ed] to certain of the prisoners in addition to the warden and other Japanese officials." MacMahon noted in a memorandum that although they had heard complaints

[527] Door, "U.S. Security Personnel in Japanese Prisons," May 13, 1957, NARA.

from the American prisoners they interviewed, they appeared to be "general reference to prison life." Price appeared to hold "the same opinion" after his own questioning with the prisoners. The memorandum, therefore, concluded: "My impression—and it is a very strong one—was that the Congressmen were very well pleased with the confinement conditions at Fuchu. The prison was exceptionally clean, and not discontinuing the probability that it was policed prior to the arrival of our party, there was certain evidence which would indicate that the prison was equally clean on all occasions. It was well lighted, freshly painted, and well organized." [528]

Further, McMahon's memorandum compared this successful model of prison inspection in Japan with that in France. "Admittedly, the itinerary and certain conditions beyond the control of the Subcommittee did not allow for inspection of prisons in France, of which there have been many complaints. However, the manner in which the prison at Fuchu was run, the cooperation of the prison officials with the American military authorities, in addition to the personal conversations with the members of Congress had with the warden, all combined to give… a very favorable picture."[529] Indeed, the comparison served to reinforce postwar America's confidence in the ability to continue civilizing the Japanese even after the Allied Occupation.

The U.S. Embassy in Tokyo also provided assistance to ensure the delegation of legislators from home that the U.S. military legal regime of exception was functioning properly and did not necessitate their concerns. After Congressmen Price and Bates' visit to Fuchu Prison, the Embassy provided members of the Subcommittee of the House Armed Services Committee, who did not visit the prison, photos showing "the conditions under which American prisoners work,

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[528] Memorandum by Lieutenant Commander W. J. McMahon, Head, Branch I, Division, Via Captain E.J. Bodziak, Head, Division I for Commander B.B. British, Head, Division IX, December 6, 1955, RG 153, Records of Office of the Judge Advocate General (Army), International Affairs Division, Reports of Visits to Foreign Penal Institutions, 1955-1963, Box 2, Folder: Visits to Fuchu Penal Institution, NARA.
[529] Memorandum by Lieutenant Commander W. J. McMahon, December 6, 1955, NARA.

eat, live, and recreate." These members asked Price and Bates about the conditions of Fuchu Prison, but "seemed to be very favorable" after their discussions. MacMahon confidently stated in his report on the Congressional members' visit that "As a matter of fact my feeling, on the basis of what we saw in Fuchu, is that the military had gained friends in the controversy over the status of forces agreement."[530] The U.S. authorities in Japan received additional legislators' visits for prison inspection in 1956. Senator Hennings and Representatives Keating and St. George visited Yokosuka Prison and "it was concluded [based on their comments] that all members of the party were satisfied with conditions and facilities."[531]

Hence, the postwar U.S. military legal regime of exception's assertion over legal privileges was secured by the military's retention of the pre-trial custody of accused U.S. military personnel, the Japanese prosecutors' commitment to minimizing the exercise of local jurisdiction, and the State-Defense monitoring of Japanese trials, and U.S. military officers' and legislators' prison inspection. Under this mechanism that included "diplomatic channels" as one of ultimate means to "undertake appropriate corrective action," Jules Bassin at the Tokyo Embassy acknowledged in 1956 that "this favorable situation reflects a great deal of arduous work and the cooperative attitudes of the Japanese." He believed that "the present situation in a way bears out a previous statement by the former Foreign Minister Okazaki, that the Japanese Government does not actually want to imprison Americans but wants to exercise this jurisdiction as evidence of the restoration of sovereignty and for reasons of national sentiment."[532]

Although the revision of Article 17 served the state elites' attempt to present it as "evidence"

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[530] Memorandum by Lieutenant Commander W. J. McMahon, December 6, 1955, NARA.

[531] "Reports of Investigation of Conditions in Japanese Prisons," February 14, 1957, NARA.

[532] Embassy-FEC Consultative Group, Minutes of the 62nd Meeting, August 2, 1956, RG 153, Records of Department of the Army, Judge Advocate General, Administrative Office, Records Branch, Classified Legal Opinions, Box 36, Folder: 588, NARA.

of the "free" world's respect for "democratized" Japan's post-occupation sovereignty, contradictions that arose from the postwar U.S. military legal regime of exception were inevitably felt by the victims of GIs' criminal incidents who were deprived of means to seek legal justice and proper compensation under the regime of the 1953 Confidential Agreement. Without acknowledging the effects of this U.S. minimization of rights protection for the legally marginalized victims, Bassin raised concern over what appeared to be side-effects of the smooth operation of the U.S. military legal regime of exception and the undeniably asymmetrical power relationship that manifested even inside a Japanese prison: "Japanese prison authorities appear to be more reluctant to impose punishment than US authorities would in comparable cases. Six ringleaders of a major disturbance were transferred from Yokosuka back to Fuchu earlier this year to prevent further disturbances rather than as punishment. Other infractions of prison regulations have netted the violators only short periods of disciplinary segregation, and this only in a few instances. For similar offenses in our prisons, the violators would also have been placed on restricted diets. The Japanese have the right to impose this form of punishment, but their reluctance to do so typifies their constant endeavor to confirm to the spirit as well as the letter of the Administrative Agreement."[533]

American Military Bases and the Global Politics of Declassification of the 1953 Confidential Agreement

Though the classified regime of the 1953 Confidential Agreement was institutionalized with relatively few obstacles in post-treaty Japan, Washington faced the dilemma of needing to contain "host" states' nationalist resistance to extraterritorial U.S. FCJ policy while working to expand and

[533] Embassy-FEC Consultative Group, Minutes of the 62nd Meeting, August 2, 1956, NARA.

normalize the American military legal regime of exception on the global scale. Such a dilemma became inevitable in the 1950s because the Eisenhower administration's foreign policy relied on the global network of permanent American military bases. Japan's case—i.e., the successful institutionalization of the 1953 Confidential Agreement—taught the postwar U.S. national security state a valuable lesson as to how to cope with the clash of nationalisms that could emerge from the question of U.S. military legal privileges in the postwar world. Yet the classified status of the jurisdiction agreements with Japan created its own problem resulting from each free world member state's desire to retain the split jurisdiction formula stipulated in the NATO SOFA and the revised Japan-U.S. Administrative Agreement on paper.

On January 15, 1955, State and Defense Departments in Washington compiled a joint message to Ambassador Allison at the U.S. Embassy in Tokyo to inquire whether the declassification of the 1953 Confidential Agreement was feasible for their forthcoming negotiations on the legal status of U.S. armed forces with the state elites of West Germany, another vanquished empire of the Axis powers. A telegram entitled "State-Defense Message" from the Department of State to the American Embassy in Tokyo read:

> Germans sure raise jurisdiction agreement concluded with Japanese September 29, 1953. Obviously would be exceptionally valuable from US negotiating point view able inform Germans in strict confidence of confidential agreements existing between US and Japan in this field. Unless you deem it inappropriate request you contact Japanese Foreign Office and seek obtain permission for confidential disclosure jurisdiction arrangements to Germans, indicating that this information will not be divulged unless US deems it essential to do so.[534]

Even though this "State-Defense Message" was not attached to the Tokyo Embassy's reply, the Embassy's series of documents concerning Japan's declassification indicates that the Hatoyama

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[534] Telegram 1415 from Murphy, Department of State to American Embassy, Tokyo, "State-Defense Message," January 15, 1955, RG 153, Records of Department of the Army, Judge Advocate General, Administrative office, Records Branch, Classified Legal Opinions, 1942-1956, Box 1, Folder: 21, NARA.

administration denied this request. The Army report "Proposed United States Position on Criminal Jurisdiction Arrangements in Negotiations with Germans to Replace Forces Convention," drafted by John B. Henderson on January 18, 1955, provided detailed instructions on how to switch negotiation positions responding to the West German authorities' responses. According to the document, Greece, Turkey, Italy, and the Netherlands were listed as the model countries for West Germany to follow in accepting the U.S. maximization policy, and yet Japan was not included in this category.[535] Eventually, the West German government officially accepted the policy of general waiver by concluding the NATO Supplementary Agreement (Agreement to Supplement the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces with respect to Foreign Forces stationed in the Federal Republic of Germany) in 1959. These records indicate that Henderson's direct experience of the negotiations with Japan and preparation for the negotiations with West Germany had prompted the State-Defense joint message concerning the declassification of the 1953 Confidential Agreement.

The same year, the Taiwanese state elites were also resisting the U.S. imposition of the exclusive jurisdiction formula in their status of forces agreement. According to a memorandum of conversation recorded by American Embassy in Taipei on September 23, 1955, a Taiwanese representative told the U.S. elites that "they were far from ready to continue the negotiations [on the SOFA]" because "the Foreign Ministry felt that it would be 'politically dangerous' to present to the Legislative Yuan the agreement on exclusive jurisdiction as drafted by the United States." Taipei "carefully stud[ied] the NATO and Japanese jurisdictional agreements, and the United States proposal for China goes far beyond these agreements." In response, the U.S. Embassy in

[535] J. B. Henderson, "Proposed United States Position on Criminal Jurisdiction Arrangements in Negotiations with Germans to Replace Forces Convention," January 18, 1955, RG 153, Records of Department of the Army, Judge Advocate General, Administrative office, Records Branch, Classified Legal Opinions, 1942-1956, Box 2, Folder: 35, NARA.

Taipei encouraged the Taiwanese authorities to "refer to the several resolutions introduced in the United States Congress denouncing these agreements with relinquished jurisdiction over American troops."[536]

In 1956, another State-Defense request for the declassification of the 1953 Confidential Agreement arrived in Tokyo. This time, it was to aid negotiations with the Filipino government. On November 14, 1956, Ambassador Allison responded with a joint message with the Far East Command. For him, it was evident that the success of the waiver system in Japan owed much to its classification as a "secret" or informal agreement. "Jurisdiction arrangements here working smoothly…, in large part apparently as result of effective maintenance of secrecy of 'understanding.' It is most doubtful whether Japanese would be willing [to] declassify statement on waiver and thus open Government to criticism of 'secret agreement' and to Diet investigation into jurisdiction question." In this political climate, Allison wrote that "[d]eclassification [is] likely to force Japanese government to exercise jurisdiction over more cases and possibly even to renounce waiver arrangement." Further, the nullification of this Agreement would not be burdensome for the Japanese authorities because it was "merely [a] statement made by Japanese Chairperson of Criminal Panel of Jurisdiction Subcommittee of Joint Committee." In fact, Allison continued, "subcommittees can only make recommendations to Joint Committee and Chairperson of Subcommittees lack authority to commit their governments." Allison's reading of the 1956 Japanese domestic status quo, therefore, suggested that "Japanese [will] never [be] willing [to] repeat statement in Joint Committee and thus they might contend that statement does not constitute formal Japanese government commitment." Instead, as contrast to Washington's policy interest,

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[536] Memorandum of Conversation by American Embassy, Taipei, "Status of Forces Negotiations," Participants: Hsu Shao-ch'ang, Director, American Department, Ministry of Foreign Affairs and John J. Conroy, First Secretary of Embassy, September 22, 1955, John Foster Dulles State Department Documents, 1953-1959, Mc #74, Box 1, Folder: 9, East Asia especially Japan, Seeley G. Mudd Manuscript Library, Princeton University.

"revision of Administrative Agreement… and Security Treaty is being publicly discussed and revelation… of Statement in question would focus additional attention on this issue." [537]

Only a week after cabling back to Dulles on the request for declassification, Allison received a letter from Washington revealing Eisenhower's secret order to undertake a rigorous study on a wide range of problems arising from the postwar U.S. global basing policy. In the letter dated November 21, 1956, Acting Secretary of State Herbert Hoover informed Allision that Eisenhower appointed Frank C. Nash, a former Assistant Secretary of Defense for International Security Affairs, to conduct a comprehensive study on problems facing permanent U.S. military bases in thirty-six countries and territories. "President refers to a number of factors which have combined to sharpen local opposition in many countries to vitally important United States bases and facilities, even on the part of non-Communist elements." The purpose of this investigation lay on the "preserv[ation] of these essential facilities." Hoover's letter emphasized the secrecy of this project: "The fact that Mr. Nash has been requested to undertake this study…, for obvious reasons, been treated as highly confidential." Hoover noted that "if knowledge concerning this study should reach other governments, serious damage could be done to negotiations under way or in prospect." Allison was called to "respond to a questionnaire focused on the political aspects of the base problem in Japan and Okinawa" with urgency.[538] The "base problem" in Japan and Okinawa resonated with problems elsewhere in the American military empire. Allison forwarded a copy of this letter to Counsel General John Steeves at Naha.

While the Tokyo Embassy staff were busy gathering and synthesizing analyses of "the

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[537] Telegram 1068 from Tokyo to Secretary of State, "Joint Embassy-FEC Message for State and Defense," November 14, 1956, RG 59, General Records of the Department of State, 1955-1959, Central Decimal Files, Box 3966, Folder: 794.0221 12-1656, NARA.

[538] Letter from Hebert Hoover, Jr. (Acting Secretary of State) to John M. Allison, November 21, 1956, RG 59, General Records of the Department of State, 1955-1959, Central Decimal Files, Box 2918, Folder: 711, NARA.

political aspects of the base problem," General Counsel of the Department of Defense, Mansfield D. Sprague, was still not sure about the Embassy's and the FEC's dismissive reply regarding the U.S. request for declassification of the jurisdiction agreement with Japan. On December 19, 1956, Legal Advisor for the Department of State, Herman Phleger, received Sprangue's inquiry about the feasibility of further exploration with the opening sentence: "I have for some time been interested in securing the declassification… As you know, as far as the public record shows, our agreement with the Japanese on criminal jurisdiction is practically the same as Article 7 of the NATO SOFA. However, there is a Confidential Minute of Understanding…" Indeed, this was despite the adoption of "similar arrangements… made with the Netherlands and with Greece," which were both "unclassified and in the public domain." Sprangue admitted that the Defense Department had been insistent on this matter, yet confronted the State Department's reluctant position on this matter. "I believe there may have been some misconception in the State Department regarding the purpose of the Defense Department suggestion. While it is true that the impetus for the suggestion arose from our consideration of the Philippine situation—where the host government had rejected our proposals regarding jurisdiction on the ground that they went beyond the published Japanese Agreement—our reasons are much more broadly based."[539] Sprangue's letter evidently, albeit implicitly, revealed the power of anti-colonialism demonstrated by both Japan as the former colonial empire and the Philippines as the former colony of the United States. Yet his greater emphasis was placed on the enduring impact of demands for imperial sovereignty and/or open diplomacy made at home:

> We have found in our frequent appearances before Congressional committees in defense of status of forces agreements that one of the most difficult problem is explaining why agreements relating to the trial of American soldiers in foreign courts are classified. We would like in every

[539] Letter from Mansfield D. Sprangue at General Counsel of the Department of State to Hermen Phleger (Legal Adviser at the Department of State), December 19, 1956, RG 59, General Records of the Department of State, 1955-1959, Central Decimal Files, Box 3966, Folder: 794.0221 12-1656, NARA.

way possible to remove the classification so that we can convince Congress and the public that the whole story is being made public.[540]

Sprangue noted that "A change of classification now will be of no assistance so far as the Philippine negotiations [begun in July 1956] recently terminated are concerned." However, he added, "I assume new negotiations will be commencing sometime next year. In that event a declassification of the Japanese Minute of Understanding prior thereto could conceivably have a very favorable effect on such negotiations." And there will be "great advantages to be derived with respect to our Congressional relations if the Japanese do classify."[541] Soon Sprangue's speculation would be tested upon the occurrence of the 1957 Girard case.

The 1957 "Girard Case"

What came to be referred to as the "Girard case," initially by American policymakers and later by Japanese civil society, was one of more than 12,000 criminal cases involving U.S. military personnel over which the Japanese authorities had held primary jurisdiction since the revision of Article 17 of the 1952 Japan-U.S. Administrative Agreement. Nonetheless, as shown in the above section, the rate of Japan's exercise of jurisdiction had been kept merely at three percent.[542] Despite the official statistics which contradicted the widely celebrated revision, only a few leftist legal scholars, raised concern over the existence of a secret agreement. Still, backed by the early 1950s anti-colonial, anti-base sentiment, the Hatoyama administration began asserting the revision of other articles of the Administrative Agreement and the Security Treaty in 1955. The stalemate in the bilateral negotiations on the structural reform of the Japan-U.S. relationship was created by

[540] Letter from Sprangue to Phleger, December 19, 1956, NARA.
[541] Letter from Sprangue to Phleger, December 19, 1956, NARA.
[542] Door, "U.S. Security Personnel in Japanese Prisons," May 13, 1957, NARA.

two objective conditions. Externally, the Eisenhower administration demanded Japan's rearmament in exchange of the revision. Internally, the growing anti-nuclear movement and anti-American base movements across Japan thwarted the conservative push for constitutional revision and the war-renouncing Article 9.[543] Japanese civil society and legislators finally came to grapple with the "Okinawa problem" resulting from the *Asahi shinbun's* publication of the Japan Civil Liberties Union (JCLU)'s report "Human Rights Problems in Okinawa" in January 1955. Finally, the Hatoyama administration acknowledged Japan's political obligation to improve the welfare of "fellow Okinawans." Japan's normalization of the diplomatic relationship with the Soviet Union materialized in this milieu.

The second wave of popular resistance to the American military regime of exception emerged at this particular moment in Japanese history. The normalization of relations with the Soviet Union in 1956 and the election of Ishibashi Tanzan, a long-time liberal journalist and politician eager to restore relations with China, as prime minister in December opened up the possibility of an alternative to the close security relationship with the United States. In their prospective for the new year 1957, political journals weighed the option of pursuing neutralism in order to gain economic independence against the task of maintaining a close diplomatic relationship with the United States. The New Year's edition of the *Sunday Mainichi* called for Ishibashi's visit to Washington to explain Japan's desire to forge friendly relationships with Asian countries, including Communist China, and to adopt a new, equal security treaty.[544] *Sekai shūhō* addressed major concerns of the Japan-U.S. relationship referring to the revision of the Administrative Agreement and the Security Treaty, trade and economic relations, and Okinawa

[543] Yoshitsugu Kōsuke, *Nichibei anpo taiseishishi* (Tokyo: Iwanami shoten, 2018), 19-24.
[544] "57 nen no Nichibei kankei wa dōnaru," *Sunday Mainichi*, January 6, 1957, 18-23.

and Bonin islands, and urged that Japan continue collaborating with the United States while acting as a responsible member of the UN for world peace.[545]

Into this context of heightened political debate exploded the so-called Girard Incident, the shooting of a Japanese woman at the Camp Weir temporal American firing range in Sōma Village, Gunma Prefecture, on January 30, 1957. The woman, Sakai Naka, was collecting empty cartridge cases with five other villagers on the range when U.S. military personnel conducted shooting exercises. Although she had been discouraged from doing this by her husband, a local LDP politician, villagers in the area—sometimes three to four hundred—supplemented their income by selling empty cartridge cases. Village revenues were heavily dependent on the central government's compensation for the use of their land for the U.S. military, which amounted to thirty million yen annually (Sōma Village's annual revenue was nine million yen) and boosted the villagers' votes for the ruling Liberal Democratic Party.[546] The Japan-U.S. Joint Committee notified locals of the schedule of the military firing exercises in advance. Yet villagers saw this not as a warning but as another opportunity to earn money.[547] On that fateful day in January, Army Specialist Third Class William S. Girard and Army Specialist Third Class Victor N. Nickel were ordered to guard a machine gun in the maneuver area during a short recess early in the afternoon. According to Nickel's testimony, Girard encouraged Sakai and another villager to collect empty cartridge cases but then suddenly opened fire on them and shot Sakai in the back, killing her.[548]

Fourteen incidents involving empty cartridge collecting had already occurred in Sōmagahara between 1953 and 1957, resulting in seven deaths, eight heavy injuries, and seven

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[545] "Tenki ni tatsu nichibei gaikō," *Sekai shuhō,* January 21, 1957, 30, 35-36.
[546] "America ni mono mōsu: Kyō no mondaishū Nihonjin wa dōbutsu ka! Kokumintekina ikidōri Sōmagahara jiken," *Shūkan Yomiuri*, March 3, 1957, 19; Yamamoto, *Jirādo jiken no shinjitsu*, 62.
[547] "America ni mono mōsu," *Shūkan Yomiuri*, 19.
[548] "Draft Memorandum for the President Prepared in the Department of State" May 25, 1957, *Foreign Relations of the United States Dwight D. Eisenhower Vol. XXIII, Japan, Part I* (Washington, DC, 1991), 158.

minor injuries.[549] The Sōmagahara shooting was the last straw in a series of such cases that had seen no legal justice or compensation. It hit the political establishment in Tokyo at a particularly volatile moment, when the sudden resignation of prime minister Ishibashi due to illness provided an opportunity for the opposition Socialists to bring this case to full public attention at the Japan-U.S. Joint Committee. With the direct experience of having been involved in anti-base struggles since before undertaking a political career in 1955, the JSP legislator from Gunma, Akanegakubo Shigemitsu, demanded in the Diet on February 6 that the Japanese government exercise primary jurisdiction over this case.[550] Responding to the media's increasing attention to this incident, not only the Socialists but also the ruling party's prominent legislators, such as Nakasone Yasuhiro and Kōno Ichirō, conducted onsite investigations in Sōma in early February, where some villagers continued gathering expended shells even during the investigations.[551]

On February 14, Akanegakubo argued in the Diet: "Unfortunately, detailed facts of the incident revealed the naked realities of [then acting Prime Minister] Kishi's independent diplomacy… I feel that the Japanese public is moved by this incident more than by the Sunagawa struggle, which even brought about bloodshed. Regardless of what you say, the Japanese people are feeling in their veins the naked reality of Japan under American control."[552] Kishi responded: "The Japanese people are outraged about the Sōmagahara case. For genuinely independent Japan, facts have to be clarified through investigations, [judicial] procedures, etc., based upon which I would like to clearly state our position [toward the U.S. government]." Kishi also signaled his interest in revising the Security Treaty and the Administrative Agreement: "the many humiliations

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[549] Ōnuma Hisao, "'Jirādo jiken' to nichibei kankei," *Kyōai gakuen maebashi kokusai daigaku ronshū* 16 (2016), 10.
[550] *Asahi shinbun*, evening edition, February 6, 1957.
[551] Tama hiroi Sōmagahara jiken no haikei," *Shūkan Asahi*, February 24, 1957, 3-9.
[552] Quoted in Ōnuma, "'Jirādo jiken' to nichibei kankei," 17-18.

Japanese people have had to endure are unbearable. Indeed, I don't think that the Security Treaty and the Administrative Agreement can stay as they are."[553] In the following years, the Japan Socialist Party, including former members of the right wing of the Socialists, who had endorsed the adoption of the Security Treaty, arrived at a unified position demanding the abolition of the Security Treaty and the Administrative Agreement altogether rather than seeking partial revisions.[554]

Beyond the Diet, Girard's murder of Sakai drew the mainstream media's full attention. Major newspapers, political magazines, legal journals, and radio shows gave extensive coverage of the incident especially in the first half of February.[555] Journalists sympathetically discussed the plight of Sōma villagers who were forced to compete over GIs' used bullets to make a living. Just as Okinawans reacted to the racism they saw in the 1955 Yumiko-chan incident, the Japanese called out their dehumanization as highlighted by the incident. *Shūkan Asahi* commented: "We tell Americans the Japanese are not sparrows."[556] *Shūkan Yomiuri*'s anti-racist critique in the article entitled "Here's something to tell Americans: Are the Japanese animals? National indignation at the Sōmagahara Incident" linked what the author called Sōma villagers' "convenient realism (anina realism)" and the subservient status of racialized Japan. The reporter lamented that the villagers "did not even stop shell picking activities [during the journalist's on-site investigations] because they believed the American military would not go away anyway, and because penalties were negligeable compared to how much they would earn in total, albeit with some risks." The journalist wrote that such an attitude was testament to their "slave spirit." The article called for nation-wide

[553] Quoted in Ōnuma, "'Jirādo jiken' to nichibei kankei,"17-18.
[554] Ōnuma, "'Jirādo jiken' to nichibei kankei," 18.
[555] Arase Yutaka, "Sōmagahara jiken kara Girādojiken e," *Sekai*, January 1958, 268-270.
[556] "Tamahiroi Sōmagahara jiken no haikei," *Shūkan Asahi*, *3-9.*

self-reflection and closed with an anti-racist critique of the United States.[557]

> When you are bothered by a wild dog, you throw food; you don't have the intention to kill. I just would like to assert how lightly life can be taken away due to a mischievous conduct… If this incident happened in the United States and if the victim was an American, the military authorities would realize their attitudes [toward this case] had been wrong. Evidently, some Americans cannot lose arrogant occupiers' consciousness and a sense of superiority over colored peoples. If this is the kind of feeling the Japanese revived because of this case…, it's unfortunate for the United States.[558]

The U.S. Embassy in Tokyo alerted the State Department of the reemergence of the debate over the American military's legal privileges in Japan in early February. On February 8, Acting Ambassador Horsey met with Kishi. The Acting Prime Minister stated in this meeting that "three principal issues would arise when facts had been fully established—jurisdiction, fair compensation and prevention of recurrence." He also noted that the Justice Minister advocated for local jurisdiction and leftists were "exploiting [the] issue." Horsey agreed that the case could generate "potentially serious consequences," and thus it was important for the Japanese and U.S. governments "to minimize adverse effects." Framing it as his "personal hope," Horsey did not fail to address the "dimensions of our own public opinion" on the question of criminal jurisdiction. Implicitly reminding Kishi of the peremptory rationale for the U.S. military legal regime of exception, Horsey stated that "even if facts and circumstances should suggest the possibility of Japanese jurisdiction, means would be found for GOJ to avoid attempting to exercise it."[559]

On that day, Horsey informed his colleagues in Washington of the Sōmagahara Shooting Incident's growing impact on anti-base activism and shared the gist of his conversation with Kishi. He warned that "Socialists have seized on issue to add fuel to anti-base campaign, organizing local rallies, pushing Diet investigation charging 'deliberate murder,' demanding GOJ take jurisdiction

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[557] "America ni mono mōsu," *Shūkan Yomiuri*, 18-19.
[558] "America ni mono mōsu," *Shūkan Yomiuri*, 20.
[559] Telegram from the Embassy in Japan to the Department of State, February 8, 1957, FRUS 1955-1957, Vol. 23, Part I, 261.

of case, protest occurrence and demand strong measures to prevent recurrence. Government in considerable difficulties as result." Further, the "[p]ress has carried variety of conflicting accounts, some highly sensational and claiming death not accidental. Editorial comment more restrained than Socialists, but shows strong concern. When expression of regret on part of local commander failed to stern residing tide of public reaction, Embassy believed it essential to make prompt additional expression of official regret, which would not compromise case but would stress understanding of human factors, essential in dealing with Japanese."[560]

Only within two weeks since the occurrence of the incident, the State elites noted that the Sōmagahara Shooting Incident was mobilizing its own social movement. The immediate dynamism was shaped by the popular media's extent and tone of the coverage, the local base politics, trade unions' varying reactions, and leftist organizations' immediate mobilization of protest movements. On February 14, Horsey reported to Dulles that the "duty status of soldier at time of shooting" was still an "open issue" and provided the analysis below.[561]

> Press reports on current developments Somagahara Shooting Incident have taken on much more moderate and objective tone last few days… We have confirmed items appearing in Asahi, Mainichi, and Sankei-jiji that socialists and other leftist opponents of military bases are sponsoring major Tokyo rally February 20 to protest shooting. Sohyo plans to participate. Regional and local councils of rightwing labor unions, Chihyo, Keshoku and Sodomei have decided not to sponsor any anti-base activities against Cam Weir because of deference on camp for work. Number of local village mayors and village leaders in general area of Camp have decided continue permit shell picking activities of villagers and refused cooperation with Socialists. Proposals for more orderly system of gathering expended shells reported under Joint consideration by local US military and Japanese officials. [562]

The major protest movement was organized by the Japan Socialist Party (JSP) and the

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[560] Telegram from the Embassy in Japan to the Department of State, February 8, 1957, FRUS 1955-1957, Vol. 23, Part I, 261.

[561] Telegram 1776 from Tokyo (Horsey) to Secretary of State, February 14, 1957, RG 59 General Records of the Department of State, Central Decimal Files, 1955-1959, Box 2918, Folder: 711.56394/1-457, NARA.

[562] Telegram 1776 from Horsey to Secretary of State, February 14, 1957, NARA.

National Liaison Council against Military Bases (*Zenkoku gunjikichi hantai renrakukai*) established in 1955. They had a joint meeting on February 6, and as cautioned by Horsey, the National Liaison Council held a "National rally to demand truth about an American soldier's shooting of a Japanese woman" (*Beihei no nihon fujin shasatsu shinsō kyūmei kokumin taikai*) in Tokyo on February 20. Attended by a man who had also been shot by Girard, the demonstration demanded Girard's custody and proper compensation for Sakai's death. The JSP attempted to invigorate the protest movement by utilizing the network of the Buraku Liberation League (*Buraku kaihō dōmei*[563]). Yet, by and large, the Sōma villagers were reluctant to cooperate and reached the conclusion on February 7 to decline the Socialist Party's invitation to join the broader anti-base campaign.[564]

After joint investigations were conducted by the Japanese and U.S. authorities, the Japanese government requested local jurisdiction over the Sōmagahara Shooting Incident. On February 9, Maebashi District Procurator's Office officially notified the U.S. authorities of its objection to Girard's commander's duty certificate, arguing that the incident was an off-duty case of injury resulting in death.[565] On February 11 and 12, Japanese prosecutors interrogated Girard while informing him of the right to remain silent. Girard denied his intention of deliberate murder, yet the testimonies of his fellow soldier Nickle and Sōma villagers and a polygraph's findings contradicted his claim. On February 14, the High Public Prosecutors Office officially took the position that Japan held primary jurisdiction over the case. The decision was presented as the Japanese government's position at the Joint-Committee, which held a series of closed-door

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563 In Japanese, "buraku" refers to outcast people.

564 *Asahi shimbun*, evening edition, February 8, 1957; Yamamoto Hidemasa, *Beihei hanzai to nichibei mitsuyaku: Jirādo jiken no shinjitsu* (Tokyo: Akaishi shoten, 2015), 62-63.

565 Telegram 1776 from Horsey to Secretary of State, February 14, 1957, NARA.

meetings from March 12. By the end of April, however, the Japanese and U.S. representatives found themselves in a stalemate, still disagreeing on Girard's "on duty" status.[566]

The impasse generated a conflict between the State and Defense Departments. The internal debate resulted from the Army's unilateral intervention in authorizing the Commander in Chief, Far East (CINCFE), Lemnitzer, to "allow Girard to be tried by Japanese authorities." The Department of the Army had the knowledge of Article XXVI of the Japan-U.S. Administrative Agreement, which required the Joint Committee to resort to diplomatic channels in solving disputes, but believed such measures would be "unproductive and unwise." The Army Department also believed that the Girard case did not provide sufficient legal basis to defend the on-duty status, and that Japanese courts' interpretation of the definition of "on-duty" must be avoided. Furthermore, "In view of possibility of Congressional interest this matter," the Army authorities considered that "it is obviously to our interest that Japanese charge Girard for least serious offense possible and consistent with administration of justice, and it may be possible for you [Lemnitzer] to secure Japanese agreement on this point prior to agreeing to release of Girard for Japanese trial."[567]

The Army's unilateral decision and order, however, provoked the State Department, whose responsibilities included interpretations of the Administrative Agreement. Ultimately, since the Japanese authorities had been notified of the Army's instructions already, the State Department agreed that the U.S. side would not exercise jurisdiction over the Sōmagahara Shooting Incident.[568] According to Assistant Secretary of State Robertson, "[t]his was done without prejudice to the

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[566] Shinobu Takashi, *Beigunkichiken to nichibei mitsuyaku--Amami, Ogasawara, Okinawa wo toshite* (Tokyo: Iwanami shoten, 2019), 138-144.
[567] Telegram (DA 921933) from the Department of the Army to the Commander in Chief, Far East (Lemnitzer) Washington, April 26, 1957, FRUS 1955-1957, Vol. 23, Part I, 283.
[568] Telegram 231 from the Department of State to the Embassy in Japan, May 1, 1957, FRUS 1955-1957, Vol. 23, Part I, 284.

United States position that alleged offense of Girard arose in the performance of official duty." After all, both State and Defense officials were well aware of the far-reaching impact this single case could have on the American military legal regime of exception operating on the global scale. In consideration of the global impact of authorizing Japan to challenge the military's definition of "official duty," Dulles found it effective to use a minute attached to Article 17 that allowed the United States to grant *sympathetic* [emphasis added by the author] consideration for Japan's request for a waiver.[569]

Such a compromise would have been more difficult, or even impossible, without the authorized function of the Japan-U.S. Joint Committee. "As part of this compromise," in the words of Robertson, "a confidential agreement was concluded [on April 26] in accordance with which Japan agreed to indict Girard on no greater charge than wounding resulting in death, under Article 205 of the Japanese Penal Code, for which it is reasonable to indict Girard under Japanese law. Japan also agreed to recommend, through Japanese procuratorial channels, that the Japanese court mitigate the sentence to the maximum practicable extent, considering the circumstances of the case."[570] After three years of its operation, the Joint Committee made another confidential arrangement that bore the same contradictions of the 1953 Confidential Agreement. Neither the Defense nor State Departments voiced concern over the violations of popular sovereignty and the separation of three branches of power, not to mention the deprivation of Sakai's human rights and their own involvement in creating constitutional disorder in "democratized" Japan.

The controversy over the Sōmagahara Shooting Incident grew in the United States when the state authorities announced that the Joint Committee reached the conclusion to allow Japan to

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[569] Memorandum from the Assistant Secretary of State for Far Eastern Affairs (Robertson) to the Secretary of State, May 20, 1957, FRUS 1955-1957, Vol. 23, Part I, 293.
[570] Memorandum from Robertson to the Secretary of State, May 20, 1957, FRUS 1955-1957, Vol. 23, Part I, 293.

exercise jurisdiction. On May 16, the U.S. media reported that the State Department was responsible for allowing the Japanese authorities to exercise jurisdiction over the Girard case.[571] Republican Congressman Bow "called Robertson to ascertain reasons for this decision," according to Dulles' telegram to Tokyo on May 20.[572] The immediate rise of U.S. public opinion critical of Girard's trial in Japan and the congressional involvement in this matter compelled highest-ranking officials from State and Defense Departments to gather at Dulles' Office on May 21 to escape from this quagmire altogether. The state elites discussed the possibilities of withdrawing from the earlier permission for the Japanese to try Girard or "inquir[ing] whether the Japanese would find it beneficial if a U.S. courts martial were to be initiated immediately and proceed concurrently with the diplomatic discussions." Their discussion reached the agreement to fully inform Ambassador MacArthur of the urgent situation at home and wait for his verdict, especially given Kishi's planned visit to Washington in June.[573]

The following day, the newly appointed Ambassador for Japan and nephew of General Douglas MacArthur, Douglas MacArthur II, met with Kishi, and cabled back to the Department of State immediately. MacArthur's verdict essentially denied the option of the simultaneous court martial. He argued that "such a proposal put forward at this time would, I feel sure, seem to Japanese to be entirely inconsistent with notion of settling question of jurisdiction through diplomatic channels, particularly when we ask them to take no further judicial steps while discussions between two governments in process. I should note that at this particular juncture sentence by US court-martial, even if possible under applicable agreements, would in our opinion

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[571] Shinobu, *Beigunkichiken to nichibei mitsuyaku*, 160.
[572] Telegram 2560 from the Department of State to the Embassy in Japan, May 20, 1957, FRUS 1955-1957, Vol. 23, Part I, 299.
[573] Memorandum of a Meeting by Secretary Dulles' Office, Department of State, May 21, 1957, FRUS 1955-1957, Vol. 23, Part I, 307-308.

have no effect on Japanese desire exercise jurisdiction this case." Dulles could not give up on the courts martial option immediately, and thus asked MacArthur to explore this option again. Yet, on May 23, MacArthur elaborated on his earlier reply questioning "what two governments would be discussing while courts martial was in process."[574]

On May 24, MacArthur asserted more concretely as to why the present course of action, Girard's trial in Japan, seemed to be the best option. First, he stated that Japanese authorities would not accept the waiver over the Girard case at this stage, especially after the indictment. MacArthur was attentive to the shifting political atmosphere on the archipelago much more than his colleagues in Washington. A month earlier, the Tokyo Embassy had already noted the LDP government's changing attitude toward the existing structural framework of the Japan-U.S. relationship. On April 5, "In the past few months, Japanese consideration of revision of the US-Japan Security Treaty and Administrative Agreement, particularly among responsible Conservative elements, has apparently entered a new and more practical stage." This was unprecedented for the U.S. elites who had been working closely with the anti-communist Japanese elites since before the end of the Occupation. The report alerted: "Treaty revision has become more than an appealing political slogan. The government and the ruling Liberal-Democratic Party are beginning to focus on the concrete problems involved and to study alternatives to the present treaty structure."[575]

Additionally, MacArthur stressed that Japanese authorities were not in disagreement with the U.S. counterparts' legal opinion that Girard intended to murder Sakai outside his official duties. A consensus on a legal opinion was essential, for this meant that Washington's standard of justice

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[574] Telegram from the Embassy in Japan to the Department of State, May 23, 1957, FRUS 1955-1957, Vol. 23, Part I, 314.

[575] American Embassy, Tokyo, "Current Thinking on Revision of the Security Treaty and Administrative Agreement," April 5, 1957, RG 84 Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1956-1958, Box 45, Folder: 320.1 Administrative Agreement, NARA.

would be served in Japan upon the confidential agreement with the Japanese. MacArthur wrote: "I am told that the record of Japanese trials is excellent and that sentences are on the whole lighter than would have been given by United States courts martial for similar offenses… But in addition to the question of fairness of trial," MacArthur continued, "of over fourteen thousand offenses since October 1953 in which Japanese had the right to exercise jurisdiction, they in fact ceded jurisdiction to us in all but four hundred and thirty. This is three percent compared to what I am told is the worldwide average in similar circumstances of twenty-eight percent."[576] MacArthur also noted that "the Japanese also resent very much implications in the American press dispatches that their courts do not give fair trials." Fully aware of the Japanese concern over the western gaze over their level of civilization, he did not question the hypocrisy of U.S. civilizing missions represented by the equation—asserted by the U.S. elites since the early 1950s—that legal justice and fairness for GIs meant their lighter sentences or impunity in Japan. Essentially, the postwar U.S. legal regime of exception denied the Westphalian principle of sovereign equality.

Another essential dimension of the postwar U.S. legal regime of exception was unequivocally addressed in this same telegram MacArthur sent to Dulles on May 24. The timing coincided with another controversial U.S. service member's crime, committed in Taiwan, and the locals' uprising against the acquittal of this case at a U.S. court martial. MacArthur acknowledged global implications of the Girard case, the vulnerabilities of the American military legal regime of exception seeking to spread across Asia, and the contemporariness of the local resistance to the U.S. imposition of imperial sovereignty.[577]

The Girard case has the most grave and far-reaching implications not only for both Japan and

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[576] Telegram 2733 from the Embassy in Japan to the Department of State, May 24, 1957, FRUS 1955-1957, Vol. 23, Part I, 315.

[577] Telegram 2733 from the Embassy in Japan to the Department of State, May 24, 1957, FRUS 1955-1957, Vol. 23, Part I, 315.

> the United States in terms of our vital interests in and future relations with Japan but also in terms of our entire posture throughout free Asia. We know for example that the Philippine Govt is following this case closely and in detail and that its outcome will affect successful conclusion of our base negotiations with the Philippines. The recent Reynolds case in Taipei, which is carried in the Japanese press comes at most unfortunate time in terms of Asian opinion.[578]

In Washington, Dulles was urged to finalize the U.S. position on the handling of the Girard case in consultation with President Eisenhower. Early in the morning of May 24, Dulles spoke to Eisenhower over the phone that "the situation in Asia on the status of forces has gotten us into a most terrible predicament." Now, in the face of the Taiwanese uprising, "if we don't turn this fellow over in Japan as Defense originally agreed we might as well write Japan off." Still, the President expressed concern over U.S. civil society and congressional reactions to such a move and its implications for the operation of the NATO SOFA in Europe. Eisenhower stated that his administration's earlier decision to authorize the Japanese authorities to try Girard had been a mistake because "[h]e knows," according to the memorandum of this conversation, "the American army and they won't let their people be tried by anyone else." Dulles and Eisenhower recognized that "[i]t is in Taiwan a question of sentence not of jurisdiction." Yet, it was irrefutable that locals' indignation was directed at the routinized impunity that could signify the unequal power relationship between the U.S. base empire and the local states. In consideration of such political weight and symbolic meanings attached to U.S. FCJ policy, Eisenhower stated: "we have to look at the Asiatic countries and see if they should stay there. If they hate us, can't do it."[579]

After conversing with Eisenhower, Dulles finally consolidated his position to accept Japan's exercise of jurisdiction over the Sōmagahara Shooting Incident. At his staff meeting,

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[578] Telegram 2733 from the Embassy in Japan to the Department of State, May 24, 1957, FRUS 1955-1957, Vol. 23, Part I, 316.

[579] Memorandum of a Telephone Conversation Between the President and the Secretary of State, May 24, 1957, FRUS 1955-1957, Vol. 23, Part I, 316-317.

Dulles stated that Eisenhower "was not sympathetic to turning Girard back." Yet, for the future operation of the American military regime of exception, they both agreed that "our SOF treaties were unclear and perhaps should be modified to reflect clearly that a member of the Armed Services should be tried by US court martial when committing a crime 'when on duty' and not 'in performance of duty.'" In order to avoid recurrence, Dulles suggested that "taken in conjunction with the Reynolds case in Formosa… the Girard case may point up the need for a basic review of our policies in stationing of troops abroad but in particular in Oriental countries." Dulles stressed that "[it] was [also] the President's strong feeling that prompt and radical steps had to be taken to cut down the number of our armed forces in foreign territories." The President feared that "they would sooner or later produce strong anti-American feeling."[580] On May 28, Dulles and Secretary of Defense Wilson agreed to be responsible for surrendering jurisdiction to Japan, and Eisenhower approved it.[581]

It was this unanimous decision made by the executive branch that triggered congressional leaders' alliance with U.S. civil society to demand Girard's trial in the United States. The mass media, Girard's family, and grassroots organizations such as Veterans of Foreign Wars and American Legion joined the protest movement.[582] As in Japan, the question of the U.S. armed forces' legal status abroad had been simmering especially since the early 1950s. The Army's report "U.S. Security Personnel in Japanese Prisons" of 13 May 1957, cited in the first section of this chapter, was compiled in this climate. On June 4, Eisenhower himself met with influential legislators to explain the rationale for his decision, namely the Japanese state leaders' systematic

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[580] Editorial Note, The Girard case was discussed at the Secretary's Staff Meeting, May 24, 1957, 155, FRUS 1955-1957, FRUS 1955-1957, Vol. 23, Part I, 317.
[581] Memorandum for the Record of a Meeting, White House, Washington, Noon, May 28, 1957, 1955-1957, FRUS Vol. 23, 333-334.
[582] Kurabayashi Naoko, "Chyūryūgun o meguru seifu to gikai no kankei," *Reitaku University Journal* 93 (December 2011): 29.

waiver practice and deliberate lighter sentences granted to GIs. Eisenhower stated "the Japanese had voluntarily relinquished jurisdiction" over 13,642 cases out of "some 14,000 cases." Still, Republican Senator Knowland, who believed that the peacetime deployment of American soldiers must promise their immunity from local laws,[583] contended that the legislators' advocacy would continue regardless of Eisenhower's position.

Prime Minister Kishi visited Washington in late June in the midst of heightened nationalism in both countries. The President's Special Consultant Nash, who had just visited Japan in May, briefed Dulles extensively on the new Prime Minister Kishi's leadership, the prospect of rearmament in Japan, and foreseeable challenges concerning the revision of the 1952 Security Treaty. Nash said that in order to avoid "leaving Japan a complete vacuum as far as military security were concerned," U.S. leaders were urged to "indoctrinate[e] Mr. Kishi on the strategic position which Japan should occupy as a world power, and how to be a world power Japan had to develop for herself a proper security force." It was his assessment that "Japan had excellent potential in the way of an industrial backup… for a substantial Japanese Defense Force." In consideration of this underlying strategic objective, i.e., Japan's rearmament, Kishi appeared to be "the best bet" for a Japanese leader. Nash even proposed a scenario to generate a political momentum for the Japanese to publicly accept the automatic waiver policy by making the most use of Girard's trial in Japan under Kishi: if "the turnover of Girard to the Japanese is finally accomplished, the good will engendered thereby in Japan, might well be utilized by asking the Japanese to agree to present an out-on-the-table formula like the NATO-Netherlands [automatic waver of jurisdiction] agreement." The scenario was unrealistic but appealing for Nash in the summer of 1957, for he believed "this would help us greatly in the Philippines and could further

[583] Kurabayashi, "Chyūryūgun o meguru seifu to gikai no kankei," 34.

the uniformity of our agreements with respect to jurisdiction for U.S. forces abroad." Indeed, Nash's paramount concern lay in how to rationalize and expand the American military regime of exception without routinely and sporadically coping with local resistance that had been threatening the very basis of U.S. military presence, i.e., the sovereign's consent. Normalizing de facto U.S. military extraterritoriality was an answer for Nash. Without explicitly noting the connection, he suggested the continued occupation of Okinawa was essential for the stabilization of the American military presence in Asia: "Okinawa, I felt, had to remain in the United States' hands in its present status for an indefinite term and I felt Mr. Kishi should be so advised.[584]

Kishi's visit to Washington, which coincided with the reemergence of the debate over postwar U.S. extraterritoriality, marked a turning point for the postwar Okinawa-Japan-U.S. relationship. In order to maintain the anti-communist conservative rule in Japan, the Eisenhower administration agreed to consider reviewing the 1952 Security Treaty and Administrative Agreement. Above all, the most remarkable outcome was the total reduction of U.S. forces by 40 percent, including all ground troops from Japan. Eisenhower had been preparing for this move before the Sōmagahara Shooting Incident.[585] Yet the announcement served the state leaders' shared interest in winning the undecided centrist Japanese over to supporting the Japan-U.S. security relationship.

In terms of the trajectory of the American military legal regime of exception in Japan, the realignment of U.S. armed forces in Japan did not mark a substantial discontinuity. During Kishi's stay in Washington, Assistant Secretary of State Walter S. Robertson asked Ambassador Asakai about the feasibility of declassifying the 1953 Confidential Agreement at the special request of

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[584] Memorandum for the Record of a Meeting Between the Secretary of State and the President's Special Consultant (Nash), June 5, 1957, FRUS 1955-1957, Vol. 23, Part I, 339-342.
[585] Jennifer Miller, "Fractured Alliance: Anti-Base Protests and Postwar U.S.–Japanese Relations," *Diplomatic History* 38, no.5 (November 2014): 956, 980-981.

Secretary of Defense Wilson. Robertson "explained [to Arasaki] that in substance this confidential agreement was identical with the so-called 'Netherlands Formula' supplementing the NATO status-of-forces-agreement which appears in published form in base agreements with the Dutch and the Greeks, and which has also been agreed to by the Germans as a basic formula for future applications to the Federal Republic." Robertson "emphasized that such declassification would greatly facilitate our status-of-forces negotiations with the Philippines and other countries." Asakai responded to this request the following day: Kishi "felt that the declassification of this arrangement at this time would subject his Government to severe attack by the Socialists and Communists, and would be extremely embarrassing to his administration."[586] The political risk of declassification was no lesser in 1957 than in the early 1950s, given the greater influence of neutralism on the political landscape of Japan.

Even the Prime Minister's rejection did not satisfy the Defense elites, however. On July 31, a high-ranking State official in Washington wrote to Outerbridge Horsey at the American Embassy in Tokyo: "In recent months, there have been a number of attempts, emanating from Defense, to declassify the Japanese confidential statement in order to facilitate the Philippine negotiations. To date we have succeeded in holding the line against this onslaught by maintaining that the game is not worth the candle—any benefits which might be gained in the Philippines by a declassification of the Japanese statement would be far outweighed by the adverse effect on our jurisdiction agreements with Japan."[587]

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[586] Memorandum of Conversation by the Department of State, "Declassification of Japanese Jurisdiction Arrangements," Participants: Koichiro Asakai, Ambassador of Japan and Walter S. Robertson, Assistant Secretary of State for Far Eastern Affairs, June 20, 1957, John Foster Dulles State Department Declassified Documents, Box 2, Folder: 6, East Asia especially Japan, Seeley G. Mudd Manuscript Library, Princeton University.

[587] Letter from Howard L. Parsons, Director of Office of Northeast Asian Affairs to Outerbridge Horsey, American Minister, American Embassy, Tokyo, July 31, 1957, RG 84, Records of the Foreign Service Posts of the Department of State, Japan, Tokyo Embassy, Classified General Records, 1956-1958, Box 45, Folder: 320.1

After Kishi's visit to Washington, the judicial branch was called on to solve the controversy over the Sōmagahara Shooting Incident. Girard's family sued the executive branch for surrendering Girard to the Japanese authorities on the ground of habeas corpus. The legislators led by Knowland supported the family calling for the constitutional protection of U.S. service members stationed abroad. They invoked the racialized image of an uncivilized "Other," paired with the naked memories of Japanese brutality during World War II, and focused American public attention on the uniqueness of Japan's legal system—such as the absence of a jury system—despite the sweeping legal reforms directed by GHQ.[588] Given this dynamic, even board members of the American Civil Liberties Union (ACLU), who had been calling for the U.S. military's respect for local jurisdiction since the early 1950s, unanimously approved the decision "not to enter the Girard case, and that any public statement should be limited to an explanation as to why there was not a constitutional civil rights question involved."[589]

Ultimately, on July 12, the Supreme Court endorsed the Eisenhower administration's position to claim the legally-binding status of Article 17 the Administrative Agreement, which authorized the United States to waive its jurisdiction upon Japan's request. In delivering this verdict, Chief Justice Warren reiterated Chief Justice John Marshall's remark on the absolute nature of territorial jurisdiction and the sovereign's right to declare exceptions made in *Schooner Exchange v. McFadden* (1812): "A sovereign nation has exclusive jurisdiction to punish offenses against its laws committed within its borders, unless it expressly or impliedly consents to surrender its jurisdiction."[590] Essentially, Warren's decision authorized the mid-twentieth century United

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Administrative Agreement, NARA.

[588] Kurabayashi, "Chyūryūgun wo meguru seifu to gikai no kankei," 32.

[589] "Extracted from Board Minute," June 24, 1957, American Civil Liberties Union Records MC #001, 1917, Subject Files, International Civil Liberties, 1946-1977, Box 1157, Folder: 2 Case-Japan; Girard, William S., 1957, Seeley G. Mudd Manuscript Library, Princeton University.

[590] Telegram from the Department of State to the Embassy in Japan, Washington, July 11, 1957, FRUS 1955-

States' commitment to its temporary waiver of personal jurisdiction in order to continue seeking extraterritorial jurisdiction with the consensus of the receiving "nation" of U.S. armed forces, abstractly defined. For the postwar U.S. national security state, the "host nation" meant the state elites of Japan who undermined popular sovereignty. In the summer of 1957, all the three branches of power in the United States endorsed the ideology of imperial sovereignty. Ironically, this outcome was tied to the executive branch's growing reliance on Kishi, a former member of the Tōjō Cabinet that had declared war against the United States in 1941 and created the conditions for Japanese soldiers' wartime brutality.

The Second Divergence: Girard's Trial, the Nash Report, and Occupied Okinawa in Pre-Anpo Japan

Across the Pacific Ocean, Japanese civil society repositioned itself in the wake of what it understood as the former occupier's enduring racism against the colored Japanese. Americans' reactions to the Japanese demand for local jurisdiction compelled the Japanese to reflect on their own civility and assert more vocally the integrity of national sovereignty. This was reflected in the general public's—including conservatives'—greater attention to the causal relationship between permanent U.S. basing on the Japanese archipelago and rampant GI crimes perpetrated by the de facto and racialized extraterritoriality. In August, another controversial GI case—this time a playful, extremely low-altitude flying by a U.S. military pilot resulted in the death of a woman and injury to her son. Along with reports coming in from the United States discussing the opposition to Japanese jurisdiction, the incident added outrage about rampant GI crimes that appeared to be

1957, Vol. 23, Part I, 425-426.

racially motivated. One magazine article sarcastically praised the U.S. military's recent radio campaign for respecting Japanese lives through the Voice of America aired between "jazz and news": "It's better than nothing."[591] Amid the process of the formation of the second resistance to extraterritoriality in postwar Japan, not only the Socialist Party and grassroots organizations but also intellectuals, legal scholars in particular, participated in this debate. In this context, the media and legal scholars discovered Japan's systematic waiver practices since the revision of Article 17 of the Administrative Agreement and questioned it.[592]

At the same time, the second popular protest movement revealed the Japanese' uneven interest in the question of jurisdiction. Rights protection of the victim and public inquiry into the LDP administrations' systematic waiver of Japanese jurisdiction became secondary to the acquisition of sovereignty. According to media analyst Arase Yutaka at Tokyo University, the Japanese media came to use the term "Girard case" instead of "Sōmagahara Shooting Incident," thereby imitating the foreign sources on which they relied. Even though the media coverage of the incident increased quantitatively during the period between May and December 1957, much of it was gossip on Girard, his friends, and his family.[593]

As in the early 1950s, the protest movement stirred Japanese civil society's interest in white-supremacist racism, legal justice and uncompensated victimhood, the unequal Japan-U.S. relationship, shared characteristics and practices of the Japanese and American empires, and the constitutional protection of individual rights. But what was new in the late 1950s was greater support for Japanese neutrality in the Cold War, around which a popular consensus emerged to

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[591] "America taiseika no nihon no kunō: 12 nen me no kentai," *Shūkanshinchō*, July 1, 1957, 26-27.
[592] Ōhira Kaname, Furukawa Kenjirō, "Zainichi gaikokujin ni taisuru saibanken" *Hōsōjihō* 9, no. 3 (March 1957): 28-48; "Beigunhanzai no saiban nitsuite," *Rōdōhōritsujyunpō* 281 (September 1957): 2; "Nihon ni okeru beichūryūkichi no jyōkyō," *Tokinohōrei* 240 (April 1957): 19-25; "America taiseika no nihon no kunō 12 nenme no kentia" *Shūkan shinchō*, July 1, 1957, 26-32.
[593] Arase Yutaka, "Sōmagahara jiken kara jirādojiken e," *Sekai,* January 1958, 270.

revise the 1952 framework of the Security Treaty. It stemmed from an accumulation of victimhood during the five-year experience of life under the postwar U.S. military legal regime of exception.

In order to understand the ideological dynamism of the second nationalist resistance to postwar U.S. extraterritoriality and permanent U.S. basing in post-occupation Japan, the shift in attitude toward the Japan-U.S. security relationship among those who had supported it looms large. Responding to the U.S. nationalist challenge, major newspapers called for reforming the existing unequal Japan-U.S. relationship as symbolized by Girard's controversial shooting of Sakai. On May 27, the *Yomiuri shinbun*'s editorial stated that American citizens' stance "undermined the United States' long-held preaching about respect for human rights," and that the incident represented not only one tragedy but also many others incurred on those who lived adjacent to American military bases and for all the Japanese public. Notably, though, it also asserted that this tragic incident must serve to reinforce "friendship between Japan and the United States, linking "the complexities and ambiguities surrounding the base problem" to the death of Sakai.[594] Similarly, the *Asahi shinbun* questioned, "Isn't it time for us to take a second thought [on the question of U.S. basing]?"[595]

Those on the Left demanded Girard's trial in Japan for the protection of national sovereignty and constitutional values while protesting U.S. armed forces' enduring racism against the Japanese with those on the Right and Center. Legal scholar Nakamura Akira, who had been criticizing the United States' historic employment of extraterritorial power in Asia since the nineteenth century, as introduced in Chapter 1, stated that the Japanese public learned through this case that Americans' naked racism existed "not only against Okinawans but also against Japanese."

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[594] *Yomiuri shimbun*, May 27, 1957.
[595] *Asahi shimbun*, May 26, 1957.

In his article titled "The Hungarian Tragedy in Japan," contributed for a special magazine article debate on the need to revise the 1952 Security Treaty, Nakamura underscored the recently discovered death toll of over 4,000 caused by U.S. military personnel's incidents during the Allied occupation, and contended that the Sōmagahara Incident was only one of many. Nakamura argued that such "humanitarian problems" were dealt with at the Japan-U.S. Joint Committee via "political negotiations" authorized by "a series of unequal treaties."[596]

Observing the transpacific debates on the Sōmagahara Shooting Incident, public intellectual Nakano Yoshio criticized the way in which *The New York Times* challenged the Eisenhower administration. "This kind of argument [the assertion that Eisenhower must not submit to the Japanese public opinion because American soldiers were protecting Japan] might be accepted in the United States but nowhere else in the world… If the American public react with such an emotional theory, that is to say, the assumption that the Japanese trials of American soldiers would be too arrogant because the United States is protecting Japan, why can't we react with another emotional theory: 'Please do go home right away because we don't need you to protect us.'" While representing the nationalist line of argument in a blunt way, Nakano did not fail to address ideological divides within the protest movement and Japan's own past as an extraterritorial ruler. "There is a group of Japanese who keep saying, 'Thank you for protecting us.' If such a fact is generating Americans' emotional response, it is unfortunate… [because] the protection of interests of a particular class of people does not mean the protection of all the Japanese." Further, he invoked the Kwantung Army's colonization of Manchuria and reminded readers of *Shūkan Asahi* that the Japanese Imperial Army's court martials had assumed jurisdiction over all cases

[596] Nakamura Akira, "The Hungarian Tragedy in Japan: Anpo jyōyaku wa kaitei subeki ka," *Nihon shūhō*, March 25, 1957, 43-46.

committed by soldiers and the civilian component. "A correct public opinion is fine, but behaving like a righteous person out of ignorance can cause big injury."[597]

Rather than squarely criticizing the political establishment of the two nations, legal scholar Iriye Keishirō cautioned Japanese civil society's uneven interest in the location of jurisdiction over Girard. "I cannot help but think that we are not seeing the other half of the problem of the incident, that is to say, the state is neglecting its expected duty. We are captivated by an individual's act and the question of criminal jurisdiction." Iriye drew on the Japanese Constitution to urge the Japanese to pay greater attention to the violation of Article 25 that declared the individual's right to life and welfare. He warned that even after Girard's trial Sōma villagers would continue their dangerous cartridge gathering at the cost of their lives.[598] Iriye, who had been encouraging Okinawans to employ the 1948 Universal Declaration of Human Rights in their struggle against U.S. occupiers, grappled with this problem, and articulated the limits of the nationalist take on the question.

Conservatives were divided over the feasibility of neutrality and the drastic shift of the existing Japan-U.S. relationship. Yet a discontinuity in their political demands was seen in assertions made by those who explicitly endorsed the logic of the postwar U.S. military legal regime of exception. In April, the legal journal *Toki no hōrei* published a roundtable debate on the fifth anniversary of the Security Treaty and Administrative Agreement among prominent conservative intellectuals. In the opening, the journal asserted that it was time for the Japanese to review the Security Treaty and the Administrative Agreement with references to the development of "numerous base related conflicts" as seen in Uchinada and Tachikawa, frequent GI misconducts symbolized by the Sōmagahara Shooting Incident, and more than five hundred prominent

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[597] Nakano Yoshio, "Jirādo no saiban to kokumin kanjō," *Shūkan Asahi,* June 9, 1957, 12-13.
[598] Iriye Keishirō, "Jirādo saiban no mondaiten," *Sekai shūhō*, July 13, 1957, 20-24.

individuals' petitions for the abrogation or revision of the Security Treaty.[599]

None other than the international law scholar Yokota Kisaburō revealed the weak spot of the nationalist resistance to postwar U.S. extraterritoriality: the nationalist claim for territorial sovereignty without demanding the end, i.e., the protection of human rights of the legally marginalized—to the imperial politics of spatial ordering. In this debate, Yokota, who had been the leading vocal critic of the unrevised Article 17, endorsed the claim that Girard could be tried at a U.S. court martial. Without replying to the moderator's question concerning numerous GI cases which resulted in suspension of indictment and the lack of compensation for the victims, Yokota referred to the assertion that U.S. court martials tended to give harsher sentences than Japanese courts, and supported it. Further, Yokoto unequivocally asserted that because "unfunny things happen in mainland Japan," [referring to political scientist Yabe Teiji's comment on various conflicts and problems arising from permanent U.S. basing]," U.S. forces could be transferred to Okinawa. This is because, Yokota described, Okinawa held the distinct legal status and also because receiving military assistance from the United States would take time if no American military bases were left on the Okinawa Island. "Unless there comes dramatic change in the international environment, the transfer of U.S. forces from Japan to Okinawa would be the first step." With respect to voices calling for the 1952 framework of the Japan-U.S. relationship, Yokota optimistically commented that the U.S. government would accept Japanese proposals when the Japanese make "rational" demands, as seen in the revision of Article 17 of the Administrative Agreement[600]

Nevertheless, Yokota was not alone in theoretically supporting the logic of the postwar U.S.

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[599] "Tokushū Anzenhoshōjyōyaku Gyōseikyōtei 5 shūnen zadankai: Anzenhoshōjyōyaku gyōseikyōtei no kaihai o megutte," *Tokinohōrei* 240 (April 1957): 2.
[600] "Tokushū Anzenhoshōjyōyaku Gyōseikyōtei 5 shūnen zadankai: Anzenhoshōjyōyaku gyōseikyōtei no kaihai wo megutte," *Tokinohōrei* 240, 15-17.

military legal regime of exception in post-occupation Japan. Referring to "the law of the flag" theory in his journal article, lawyer and former Navy University professor Enomoto Shigeharu also endorsed the U.S. exercise of jurisdiction over Girard. He dismissed those demanding U.S. withdrawal from Japan as unrealistic, and instead argued that it would be essential for U.S. armed forces to reflect on the significance of respecting each society's distinct manners and feelings. Quite ironically, Enomoto introduced the Imperial Japanese Navy's disciplinary code to caution U.S. armed forces, which stated that commanders and subordinates must neither discriminate nor exercise violence against locals—as if it had been effective at all.[601] Enomoto's assertion symbolically illuminated the shared histories of imperial sovereignty embraced by the two empires in the Pacific.

Before this ideological dynamism in the late-1950s Japanese resistance to extraterritoriality, the accused 21-year-old GI's trial began in the summer of 1957. Girard made his first appearance at Maebashi District Court on August 26. A flood of articles reported on the progression of the trial until he received the verdict of a three-year suspended sentence on November 19. The *Sunday Mainichi's* article titled "Girard's Festive Trial" perfectly encapsulated the superficial judicial treatment of the case itself. During the trial, major U.S. media, including *AP*, *UP*, *Life*, *Time*, *Reuters*, and *INS*, had their own temporary "branches" near the court and a helicopter flew over it. Approximately three hundred journalists were present on the first day, with one-third of seats at the courtroom occupied by a non-Japanese audience. Those inside the court could hear the Socialist Party's campaign car publicizing the opening of the trial.[602] Chief Justice Kawauchi told Girard three times that he had the right to remain silent.[603] After the trial, the judges, the legal authorities

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601 Enomoto Shigeharu, "Taiwan bōdō to sōmagahara jiken no saibanken," *Nihonshūhō*, June 15, 1957, 14-15.
602 "Jirādo saiban bōchōki," *Shūkan Asahi*, September 8, 1957, 12-13.
603 "Jirādo no omatsuri saiban," *Sunday Mainichi*, 12-13.

of Japan and the United States took a group photo.[604] By the end of the year, Girard and his Japanese wife left for the United States.

As in 1953, the Japanese racial consciousness and desire to be recognized as a civilized nation served the Eisenhower administration's strategic objective in safeguarding the postwar U.S. military legal regime of exception. A *Shūkan Asahi* reporter expressed his frustration with American journalists' projection of the image of Japanese trials as uncivilized. He commented that "the media frenzy had arisen from the U.S. side, who must have thought Girard's trial would be a sort of a barbaric nation's beheading." He complained about court authorities ignoring U.S. journalists' visible violation of the prohibition of taking notes while checking Japanese journalists' belongings meticulously upon their entry.[605] A *Sunday Mainichi*'s reporter also commented that American journalists appeared to be surprised at "Japan's up-to-date trial given their preconception of dark trials from the medieval time." According to the journalist, a representative of the U.S. war veterans' organization praised Japan's trial, commenting: "It was not barbaric at all. It was fair, and the freedom of the accused was better protected than in the United States."[606]

Japanese civil society expressed mixed reactions to the verdict. The Socialist Party's Akanegakubo argued that prosecutors must appeal the ruling, for Girard's intentional shooting was obvious and it reflected loose military discipline.[607] Lawyer Hayashi Itsurō, who defended Girard, stated: "It would be up to Girard to appeal the ruling, but I am glad that the world recognized Japan's excellent court system." His motivation had been to show Japan's civility to those Americans who mocked Japan's trials as "cats' trials or dogs' trials."[608] *Shūkan Asahi* introduced

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604 Yamamoto, *Beihei hanzai to nichibei mitsuyaku: Jirādo jiken no shinjitsu*, 5.
605 "Jirādo saiban bōchōki," *Sunday Mainichi*, 12-13.
606 "Jirādo no omatsuri saiban," *Sunday Mainichi*, 12-13.
607 *Asahi Shinbun*, evening edition, November 19, 1957.
608 *Asahi Shinbun*, evening edition, November 19, 1957.

a prosecutor who argued: "I think this kind of verdict would foment disregard for human life, and I am afraid this kind of light-headed way of thinking would make European legal communities disdain our justice system." Yet, the journalist commented that it was erroneous to regard the verdict was an act of submission to the U.S. military.[609] A *Sunday Mainichi* article reviewing the year of 1957 commented that "Even though Japan's jurisdiction had been accepted, it left a bad state in our mouth."[610] In 1959, Sakai's husband told the press: "the incident was not a waste for Japan because we could show America a civilized nation's trial could be held in Japan."[611]

In the immediate aftermath of Girard's "festive trial," the confidential Nash Report was submitted to Eisenhower on December 24, 1957. This policy report entitled "United States Overseas Military Bases" identified U.S. FCJ policy as one of three "Major Common Problems" in the table of contents. In the opening of the section on "Criminal Jurisdiction," Nash defined the problem in the following overview:

> A problem of inevitable delicacy involves the exercise of criminal jurisdiction over American servicemen abroad—a relatively new problem resulting from the stationing of large numbers of troops in friendly countries in time of peace. The issue has not to date seriously affected US military operations, Free World solidarity, or other US national objectives and policies. Potentially, however, the exercise of jurisdiction has seeds of serious danger to the ability of the US to continue effectively its operations abroad, and to the support and cooperation of allied peoples and governments for the Free World alliance. It can be exploited by hostile groups to arose opposition to arouse opposition both at home and abroad against the policy of collective security through Free World alliance.[612]

More specifically on the "seeds of serious danger," Nash further explained, "Opposition parties

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609 "Jirādo hanketsu o kiite," *Shūkan Asahi*, December 1, 1957, 14-15.
610 "Souzoushikatta 57 nen," *Sunday Mainichi*, December 29, 15-16.
611 "Jirādo jiken no hitobito sonogo Sōmagahara to irinoi," *Shūkan Asahi*, December 6, 1959, 26-39.
612 United States Overseas Military Bases, Report to the President Dwight D. Eisenhower by Frank C. Nash, December 24, 1957, Appendix Studies, File: Nash Report – US overseas Military Bases (1), Eisenhower, Dwight D.: Papers as President of the United States, 1953-1961, Ann Whitman File, Administration Series, Dwight D. Eisenhower Presidential Library, Abilene, Kansas, 53.

and forces hostile to allied cooperation can and do exploit this [when "American soldier appears to be beyond the law"] as U.S. 'occupation' or 'imperialism,' reminiscent of the extraterritoriality for citizens of colonial powers which many of our allies, as well as today's neutrals, violently rejected in achieving their independence."[613] The analysis indicated Nash's recognition of non-western nations' antagonism toward postwar America's racialized diplomacy and their keen interest in measuring the level of decolonization secured for one's status in comparative terms. U.S. policy on criminal jurisdiction over its armed forces on a "friendly" territory became the visible marker of the measurement of civility postwar America projected in each population who saw it as the degree of sovereignty guaranteed by the United States.

The warning, however, did not usher in an expansion of local jurisdiction in basing agreements. Instead, Nash recommended other means to cope with locals' nationalist and neutralist resistance. "Jurisdiction agreements should be unclassified unless there are compelling reasons to the contrary. The fact that the Japanese counterpart of the NATO-Netherlands Formula is classified has complicated Congressional presentations and seriously prejudiced our recent negotiations with the Filipinos, who have maintained that the US proposal to them was less favorable than what we have agreed to with a former enemy, Japan." Given Japan's privileged status, Nash proposed, "The United States should place emphasis on the development of informal agreements between US military officials officers in the field and local officials, to the end that, through sympathetic cooperation on the part of the local officials, the jurisdiction of the United States may be maximized." In short, the report suggested greater efforts be made to secure unclassified agreements by all means and conclude informal agreements if necessary in order to convince more

[613] United States Overseas Military Bases, Report to the President Dwight D. Eisenhower by Frank C. Nash, December 24, 1957, Appendix Studies, File: Nash Report – US overseas Military Bases (1), 53.

local governments to accept the postwar U.S. military legal regime of exception. Far from an impetus for change, the Girard Shooting Incident once again confirmed the importance of informal agreements to enlist "sympathetic cooperation on the part of the local officials."[614]

Another policy recommendation entailed the distinct use of space existing under unequal legal orders, albeit not explicitly listed in the section on "Criminal Jurisdiction." With regard to the state of broader U.S. basing policy on "Far East," the Nash Report recognized that no other countries apart from South Korea and Nationalist China "regard the Sino-Soviet bloc as the immediate military threat that we do. They are preoccupied with their internal affairs, and are inclined to allow the day-to-day irritants of US military presence obscure the fundamental purpose of why we are there." Further, the premise suggested that "In Asia, lack of the ingredients which made NATO possible in Europe, the many and complex political problems, and the vast differences in living standards and cultures make the US position difficult and delicate."[615] Despite the otherness of the "Far East" articulated in this policy report, Nash wrote: "Japan represents the most valuable US military base complex in the Pacific area. It is not only the great strategic prize in the area; it also affords port facilities, tool shops, skilled labor, and industrial back-up that could not be duplicated elsewhere in Asia." Therefore, Nash asserted, it was "essential to US security that Japan become militarily secure and remain politically aligned with the United States. Even if there were a present alternative to the varied base complex in Japan, we could not permit the Japanese industrial reservoir and military potential to be used against us." This rationale led to the suggestion: "The most important step toward erasing the Japanese feeling of inequality… is

[614] United States Overseas Military Bases, Report to the President Dwight D. Eisenhower by Frank C. Nash, December 24, 1957, Appendix Studies, File: Nash Report – US overseas Military Bases (1), 60-61.
[615] United States Overseas Military Bases, Report to the President Dwight D. Eisenhower by Frank C. Nash, December 24, 1957, Appendix Studies, File: Nash Report – US overseas Military Bases (1), 29.

reversion of the Security Treaty."[616]

With regard to occupied Okinawa, however, Nash flatly stated, "The security of the area requires US military presence in the Ryukyus for the indefinite feature, and therefore it must constantly be emphasized that the US position in the islands [i.e., the continued occupation] is not a negotiable matter." That said, "Pressures in Japan, and sentiment in the Ryukyus for reversion of the islands to Japan, pose the most difficult problem for the continued stability of our key bases on Okinawa."[617] Nash insisted on the unquestioned utility of maintaining Okinawa as a distinct legal space, which "stems from Article 3 of the Japanese Peace Treaty," and the emerging Japanese and Okinawan solidarity as the "most difficult problem" in maintaining U.S. military bases on the Island.

Negotiations toward the revision of the Security Treaty with Japan while entrenching U.S. military rule in Okinawa proceeded simultaneously. Post-occupation Japan's militarized landscape was rapidly demilitarized through the drastic reduction of U.S. armed forces, which entailed the second sweeping transfer of Marines to Okinawa. On October 11, 1959, Ambassador MacArthur captured this moment in the post-1945 Japan-U.S. relationship this way:

> Period of next few months is probably the most critical juncture in U.S.-Japan relations since the war. We have successfully passed two such periods: first, when Japan under U.S. guidance, in critical early phases of occupation, moved into Free World camp; and second, when at time of Peace Treaty Japan entrusted its security to U.S. forces based in and about its territory. Third and present period will coincide with public debate and Diet ratification of new Security Treaty, and on it will depend whether we consolidate our past gains or begin to see them slip away. This period will be of decisive importance for formulation of main lines of our subsequent policies towards Japan. [618]

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[616] United States Overseas Military Bases, Report to the President Dwight D. Eisenhower by Frank C. Nash, December 24, 1957, Appendix Studies, File: Nash Report – US overseas Military Bases (1), 30.
[617] United States Overseas Military Bases, Report to the President Dwight D. Eisenhower by Frank C. Nash, December 24, 1957, Appendix Studies, File: Nash Report – US overseas Military Bases (1), 31-32.
[618] Airgram 747 from American Embassy in Tokyo to Secretary of State, October 9, 1959, RG 59 of General Records of the department of State, Central Decimal File, 1955-1959, Box 2580, Folder: 611.94/11-359, NARA.

In this lengthy report written on the eve of the Anpo protests, MacArthur echoed Nash in suggesting Japan's unusual status in the free world and thereby the urgency of revisions of the Security Treaty and Administrative Agreement, much like how Euro-American empires abrogated the unequal treaties upon Japan's entry into "the family of nations" in the previous century.

> The presence of over 60,000 members of the U.S. Armed Forces in Japan is bound to create irritation and in itself cause a certain number of problems. However, such frictions and problems as result from the presence of our military forces in Japan can be kept in manageable proportions as long as our basic security relationships with Japan rest on concepts of sovereignty and equality and mutual respect. The U.S. cannot expect Japan, which has resumed its position as one of the leading nations of the free world, to be treated as a second class partner. In the new AA, which is under discussion, it is imperative that the U.S. be forthcoming and offer to Japan administrative arrangements governing the presence of our troops in Japan which are equal to or commensurate with the arrangements which we have with West Germany and our other allies.[619]

On the future of Okinawa, however, MacArthur articulated indefinitely: "for the present, the U.S. should continue to administer the Ryukyus. While the time may eventually come when we will wish to return part or all of the administration to the Japanese, this moment has most definitively not yet been reached..."[620]

What happened afterwards in "mainland" Japan is well known. In this volatile moment in the postwar Japan-U.S. relationship, the largest mass protests in Japanese history challenged the domestic political status quo as revealed through the foreign politics of the Security Treaty's renewal in 1960. A new socio-economic phase, having been prepared by a series of economic booms since the Korean War, underpinned this spectacular scene in the political arena. The Japanese did not concertedly call for independence from the United States, but about one-third of the population opposed the renewal under the Kishi administration and about half of the population

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[619] United States Overseas Military Bases, Report to the President Dwight D. Eisenhower by Frank C. Nash, December 24, 1957, Appendix Studies, File: Nash Report – US overseas Military Bases (1), 130.
[620] United States Overseas Military Bases, Report to the President Dwight D. Eisenhower by Frank C. Nash, December 24, 1957, Appendix Studies, File: Nash Report – US overseas Military Bases (1), 130.

preferred neutrality to the security relationship with the United States.[621] The opposition movement's collective political demands became peace and democracy—two of the three pillars of the Japanese Constitution—in the process of the formation of a national united front. The third pillar "respect for human rights" was not added to the slogan.

What happened to the Japanese awakening to the "Okinawa problem" in the mid-1950s? It was not that Okinawa did not draw any attention from the Japanese politicians and public during this turbulent moment in Japan. The Kishi administration attempted to include the Okinawa and Bonin islands into the designated defense area under the new treaty to appease progressives and some members of his own party. Yet the Socialist Party took the position that such a revision would increase the risk of Japan's involvement in a war in the Korean peninsula and Taiwan Strait.[622] In effect, this clash between the two main parties' visions marginalized the much-needed discussions over the future of occupied Okinawa. The popular political periodicals provided separate—rather than integrated—analyses of Okinawa in their reports on the direction of the renewal of the Security Treaty. The *Shūkan Asahi* ran a feature article titled "The U.S. Ground Troops' Withdrawal: What's the Background?" in July 1957, recognizing Okinawa's added strategic value: "Nuclear weapons banned from Japan can be deployed there." But it conceded that as long as Japan's national sentiment opposes nuclear weapons, the United States will continue resisting the reversion of Okinawa.[623] In *Sunday Mainichi's* "Top Ten News" of the year 1959, détente was ranked as number one and the revisions of the Security Treaty as number two. The "Okinawa problem" was nowhere on the list.[624] Essentially, it was the repetition of 1952 when the Japanese

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[621] Yoshitsugu, *Nichibei Anpo taiseishi*, 52.

[622] Nakano Yoshio, Arasaki Moriteru, *Okinawa sengo shi, 9th printed edition* (Tokyo: Iwanami shoten, 1994), 113-116.

[623] "Beigun chijyōgun no tettai: Sate kono mondai no haikeiwa," *Shūkan Asahi,* July 7, 1957, 10.

[624] "Kotoshi no jūdai nyūsu o saiten suru," *Sunday Mainichi*, December 13, 1957, 26.

adopted the San Francisco Peace Treaty at the Diet.

At the cost of Kishi's resignation, a new security treaty came into existence in 1960. It removed controversial articles (such as Article 1 authorizing the U.S. military's right to intervene in Japan's internal strife) and committed the United States to defend Japan in a time of emergency with the defense area designated as the Far East. Simultaneously, the Administrative Agreement was replaced by the Japan-U.S. Status of Forces Agreement (SOFA) with some revisions based upon the NATO formula. Although the state elites' fundamental concern regarding the Administrative Agreement was the absence of legislative bodies' approval, sufficient time was not allocated for parliamentary debates on the conclusion of the SOFA. In parallel to this process, new confidential agreements were adopted as in the early-1950s, this time to authorize the U.S. introduction of nuclear weapons and immediate attack on the Korean peninsula without pre-consultation with the Japanese. Under this new direction of the Japan-U.S. relationship declaring political equality and the reinforcement of economic ties, the 1953 Confidential Agreement remained untouched.

It is not accurate, however, to assume that Japanese civil society did not address its obligation to integrate Okinawa into parliamentary debates on the revision of the Security Treaty at all. Some intellectuals, especially those who had been producing scholarship on occupied Okinawa and engaged in human rights activism for the occupied since the early-to-mid 1950s, did assert the Japanese obligation to incorporate Okinawa into their heated debates over the future treatment of the 1952 Security Treaty. For instance, Iriye Keishirō assertively demanded Japanese people's greater efforts to enhance the legal status of Okinawa in May 1957. He argued:

> We must not sacrifice Okinawa and Bonin again and again while revising or abrogating the Security Treaty. Okinawa not only paid the greatest sacrifice in the war. It was also separated from mainland regardless of the residents' consensus. It is unreasonable for the southern islands' legal status to remain the same and the revision or abrogation of the Security Treaty to

> normalize Japan's legal status. Saving the Okinawan and Bonin hostages must be our priority or parallel duty, and for that reason it would be necessary to compromise with the U.S. to some degree in revising or abrogating the Security Treaty.[625]

Ushitomi Toshitaka, who delivered a speech in Calcutta shortly after publishing the JCLU report "Human Rights Problems in Okinawa" in 1955, also highlighted the political responsibility of the Japanese. His article titled "Okinawa: A Vacuum of the Rule of Law," co-authored with the JCLU member Ōno Masao in May 1959 contended:

> Okinawa residents, who are under complete U.S. rule, are not recognized as U.S. citizens, and as long as they are in Okinawa, they are "Ryukyuans," separate from the Japanese. They cannot receive the protection of Japan. Because they are under the dual control of the United States in practice and Japan with its residual sovereignty, they are placed in a vacuum of the rule of law, not entitled to belong to either side. Can human beings endure such a condition? Can it be left like that?[626]

Certainly, the connection existed in the late 1950s between the absence of human rights as a political demand in the Japanese popular opposition to postwar U.S. extraterritoriality and the absence of human rights as a political demand in the Japanese popular engagement with occupied Okinawa. It anticipated the failure of Anpo whose national united front could not envision or articulate what kind of peace it wanted and what kind of democracy it really meant.

Conclusion

Chapter 4 shed light on the development of the 1953 Japan-U.S. Confidential Agreement in the latter half of the 1950s in light of its institutionalization, global implications, and the emergence of the second popular resistance in Japan. It identified the continuities in the racialized ways in which the postwar U.S. military legal regime of exception articulated and accommodated its needs

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625 Iriye Keishirō, "Masani fubyōdōjyōyaku no tenkei," *Cūōkōron*, May 1957, 117.
626 Ushiomi Toshitaka, Ōno Masao, "Okinawa—'Hō no shihai' no shinkū chitai," *Sekai* 161 (May 1959), 69.

while institutionalizing the waiver system. The level of English interpretation provided at a Japanese courtroom, the Diet and cultural activities of imprisoned GIs, and the architectural modernity of penal institutions were improved for the protection of GIs' constitutional rights in post-1953 Japan. Under this successful mechanism achieved through the collaboration of the Japanese and U.S. state leaders by the mid-1950s, the American government secured Japan's systematic waiver practices as promised in 1953.

With growing confidence in the stability of the postwar U.S. military legal of exception in post-occupation Japan, Defense Department officials came to explore and even assert ardently the value of the declassification of the Confidential Agreement for negotiations on the legal status of U.S. armed forces in other countries, including West Germany, Taiwan, and the Philippines. The Japanese government, nevertheless, continued refusing U.S. requests throughout the 1950s in a political climate where nationalism, anti-colonialism, and "anti-Americanism" persisted and thereby nudged the Japanese leadership's foreign policy toward neutralism.

The 1957 "Girard case," which occurred two years after Japanese civil society's first popular awakening to the "Okinawa problem," distilled and tested the state of postwar Japanese political consciousness. Widespread anti-racist critiques of Girard's shooting of Sakai evidently showed continuities with the early 1950s protests and a common plight with occupied Okinawa. Despite the tremendous policy impact the incident exerted on the direction of the postwar Japan-U.S. relationship in the following years, however, the postwar U.S. legal regime of exception remained in place with its racialized ideology and institutionalized mechanism unchallenged.

Without calls for the protection of fundamental human rights of the victims and occupied Okinawans, the contradictions, i.e., material realities of the deprivation of territorial sovereignty and the protection of fundamental human rights of the legally marginalized, were transferred to

occupied Okinawa, which is the subject of the following chapter. Arase Yutaka, who alerted the Japanese obsession with criminal jurisdiction, stated this vital connection in 1958: "Although Americans who had opposed Japan's exercise of jurisdiction over Girard, as a minority group, lost to the national policy on the surface, their protest contributed to the nation. It shifted the Japanese public attention from the Sōmagahara Shooting Incident as a base problem to the question of jurisdiction. A UP article of 10 June 1957 entitled 'The Girard Incident Reinforces the U.S. [Strategic] Attitude: The Control of Okinawa Not Loosened' clearly illustrates this point.[627] The postwar U.S. military legal regime of exception learned a valuable lesson from the "Girard case" that the normalization and expansion was key to its maintenance even at the cost of concluding more confidential agreements with policy elites of the "host nations" in the "free" world.

[627] Arase, *Sekai*, 272.

Chapter 5

From the Anpo to the Koza Rebellion: An Overture to Okinawa's Entry into the Japan-U.S. Status of Forces Agreement

Our best information indicates that the servicemen made comments to the effect that the Okinawans were "ne'er do wells and beggars" and were constantly asking for something. The Okinawan youth who is alleged to have done the stabbing supposedly ran down the alley, returned with a knife and stabbed [name] and also allegedly stabbed [name] on the wrist… The Okinawan youth is presently imprisoned in the Koza Police Station. Both Okinawan youths turned themselves in voluntarily to the GRI police.

A report titled "Death of Marine on Morning 4 November [1968]"[628]

On November 13th [1969] a hundred thousand Okinawans went on a general strike and staged a demonstration against the U.S. military bases in Naha City, in which many people are injured. Do you understand why such a number of people took part in the general strike? … the people of Okinawa are fighting for freedom, equality and peace. And so are you, colored folks. Let's FIGHT TOGETHER! The oppressed people all over the world are crying and struggling for "liberation." We, the oppressed, have to refuse to be oppressors to other people… Moreover, we have to fight for our own "liberation" and others'.

Students of the English Department, University of the Ryukyus[629]

I recall that you pointed out that one of the great tragedies of France was the its unwillingness to accept the handwriting on the wall in Indochina, Morocco, Tunisia, and Algeria and its inability to take difficult decisions and timely steps to adjust its policies to a changing situation before matters got completely out of control.

Letter from U.S. Ambassador Douglas MacArthur II to U.S. Secretary of State John Foster Dulles[630]

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[628] Col Liliard, "Death of Marine on Morning 4 November," November 4, 1968, RG 260, Records of United States Occupation Headquarters, World War II, the United States Civil Administration of the Ryukyu Islands, Public Affairs Department, Operation Division, Administrative Files, 1951-1972, Box 11, Folder 530-05: Local Intelligence and Security, 68, NARA.

[629] "An Appeal from the Oppressed People of Okinawa to Those of America," November 19, 1969, RG 260, Records of United States Occupation Headquarters, World War II, the United States Civil Administration of the Ryukyu Islands, Public Affairs Department, Operation Division, Administrative Files, 1951-1972, Box 19, Folder 503-05: Local Intelligence & Security, 69, NARA.

[630] Letter from Douglas MacArthur II, American Embassy, Tokyo to John Foster Dulles, Secretary of State, February 1, 1958, February 1, 1958, RG 84, Records of the Foreign Service Post of the Department of State,

These three excerpts speak volumes about what happened in occupied Okinawa in the late 1960s. The first one belongs to a series of declassified U.S. records discussing the murder of two U.S. service men by two Yanbaru Gang members compiled by the United States Civil Administration of the Ryukyu Islands Public Safety Department on November 8, 1968. It encapsulates vulgar racism—in the words of Takashi Fujitani—and grotesque violence fed by the unequal legal, political, and economic relationship between Okinawans and U.S. military personnel. The incident symbolizes Okinawans' ever-growing frustration with the military's colonialist rule and the fatally heightened tension, which characterized the final years of the U.S. occupation. Yet the local gangs and the GIs very likely shared a similar class background. The second excerpt speaks to the ways in which such a class consciousness could translated into the political consciousness of anti-imperialist and anti-racist international solidarity. A year after the incident, the Ryukyu University students tried to get U.S. soldiers, and particularly racially marginalized Afro-Americans, to join their struggle to end the occupation. The eventual reversion of Okinawa to Japan is accurately predicted in the third quote taken from U.S. Ambassador MacArthur's letter to Secretary of State John Foster Dulles in 1958.

This final chapter illuminates the politics of the U.S. military legal regime of exception that finally brought Okinawa into the Japan-U.S. Status of Forces Agreement (SOFA) in 1972, fifteen years after the drastic spatial reordering of U.S. military bases on the Japanese archipelago. Focusing on the dynamism of postwar U.S. extraterritoriality and the protest movement, and locating it within the broader context of the postwar Okinawa-Japan-U.S. relationship, I show how the different trajectories of the American military presence in Japan and Okinawa led to the 1970

Tokyo Embassy, Japan, Classified General Records, 1952-1963, Box 48, Folder 323.3: Ryukyus, NARA.

Koza rebellion, in which thousands of islanders protested the military's twenty-five-year long system of extraterritoriality. The uprising evidenced how much human rights activism had in fact taken hold in Okinawa and was available to articulate the locals' indignation at the absence of the rule of law over a quarter-century. Okinawa's reversion to Japan two years later quieted, for some time, the demand for the rule of law and human rights with the island's incorporation into the regime of the 1960 Japan-U.S. SOFA. But because the SOFA included the regime of the 1953 Confidential Agreement, the year of 1972 in fact marked far less of a transformation than meets the eye. It changed neither the U.S. practice of extraterritoriality nor Okinawans' opposition to it.

The period between 1957 and 1972 accelerated Japan's greater economic reliance on the United States, the United States' greater military reliance on Okinawa, and Okinawa's protest of the ramifications that this relationship entailed on the island. In the aftermath of the 1957 "Girard case," ever-growing anti-base sentiment on the Japanese archipelago led to the withdrawal of U.S. ground troops and the relocation of most U.S. military installations to Okinawa and Korea. The year of 1957 also marked Eisenhower's Presidential Executive Order 10713, which installed a new system of military governance in Okinawa led by a high commissioner appointed by the president endowed with a greater degree of discretion than previous deputy governors. But in the early 1960s, the national energy mobilized in opposition to "subordinate Japan" in the wake of the renewal of the 1960 Japan-U.S. Security Treaty forced the Ikeda and Kennedy administrations to refashion the existing bilateral relationship into a less-garrisoned "equal partnership." The period between 1957 and 1972, therefore, highlight the link between the contradictions of Japanese resistance to extraterritoriality and the U.S. military presence and the corresponding radicalization of Okinawan resistance to extraterritoriality and the U.S. military presence, with important consequences for this trilateral relationship.

Throughout this time, the U.S. military legal regime of exception continued its systematic operation both in Japan and Okinawa, albeit within distinct legal environments. In March 1961, the U.S. Department of State "studied the agreements between the United States and Japan, including understandings and arrangements related documents, in order to determine whether any action is necessary with respect to those agreements which contain references to the old Security Treaty and Administrative Agreement." The State Department concluded that "no action need be taken with respect to most of these agreements," including Article 17 and other related confidential agreements.[631] In other words, the replacement of the Administrative Agreement with the SOFA in 1960 did not register discontinuities for the implementation of extraterritorial foreign criminal jurisdiction policy in Japan. In 1963, Kenneth J. Hodson, representing the Judge Advocate General, testified at the Sub-Committee on NATO Status of Forces Treaty of Senate Armed Services Committee that Japan waived jurisdiction over cases of "unusual local importance" at the rate of about 90 percent, three percent higher than France.[632] The case of Okinawa did not require such a testimony at the Capitol, since the United States Civil Administration of the Ryukyu Islands (USCAR) was authorized to retain the absolute extraterritorial system of military justice upon the adoption of Executive Order 10713.

However, the stark differences between Japan and Okinawa in structural background and the number of those subjected to the regime of exception made the Okinawa-based resistance more persistent, popular, transnational, and dynamic. In Japan, the number of U.S. military related

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[631] Message from the Department of State (SGD Bowles, Acting) to U.S. Embassy, Tokyo, "Agreements Containing Reference to Old Security Treaty and Administrative Agreement," March 31, 1961, RG 153, Records of OTJAG-DA, International Affairs Division, International Agreements, Box 2, Folder 101-02: Japan Vol. V, January 1960-1963, NARA.

[632] Telegram 03642 from Department of State to American Embassy, Tokyo, December 7, 1963, RG 153, Records of OTJAG-DA, International Affairs Division, International Agreements, Box 2, Folder 101-02: Japan Vol. V, January 1960-1963, NARA.

incidents began dropping in 1958 despite some fluctuations between 1957 and 1972. By and large, given the institutionalization of the 1953 Confidential Agreement and the dramatic decrease of U.S. armed forces in the 1950s, the Japanese protest movement against postwar U.S. extraterritoriality lost its nationalist character and neutralist aspirations in the 1960s. In contrast, the *de jure* operation of the U.S. military legal regime of exception in occupied Okinawa increased the number of those affected by it proportionate to the constant increases of U.S. military personnel deployed to the island. The number of U.S. military incidents rose in the late 1950s. Yet, steeper and much greater increases followed in the second half of the 1960s.

The decisive context was the escalation of U.S. involvement in the Vietnam War. After the culmination of the island-wide land struggle, the Okinawans' protest movement against U.S. military incidents and extraterritorial military justice became the central force in mobilizing people under the banner of human rights. A U.S. military jet crash on Miyamori Elementary School in 1959, which killed seventeen locals, became the catalyst in transforming the land-struggle movement into a reversion movement. Making most of American Civil Liberties Union (ACLU)'s prominent lawyer Roger Nash Baldwin's visit to the island in 1959, Okinawans' public debates over U.S. military incidents, legal extraterritoriality, and human rights evolved inextricably tied to each other, and it characterized the Okinawans' resistance to the U.S. military presence before, during, and after the Koza incident.

During the 1960s, Japan's engagement with Okinawa deepened on both governmental and grassroots levels and emerged as a prime concern in the Japan-U.S. relationship in its second half. Japanese progressives—activists, politicians, lawyers, and intellectuals—as well as the national media transformed the structure and culture of solidarity activism with Okinawa and generated the "age of Okinawa struggle" in the latter half of the decade. By then, Okinawa's political

environment had been decisively shaped by Japanese and Okinawan social movements as well as by thousands of anti-war activists among American soldiers stationed in Okinawa.

Okinawa under 1957 Presidential Executive Order 10713

In 1957, President Eisenhower's special envoy Frank C. Nash warned the architects and practitioners of the global network of U.S. military bases to treat the rising tide of decolonization and neutralism in Asia with special caution. Presidential Executive Order 10713 was at odds with this call. On June 5, 1957, shortly before Prime Minister Kishi visited Washington in the midst of the growing transpacific conflicts over the Girard case, Eisenhower issued "Executive Order 10713: Providing for Administration of the Ryukyu Islands." As the historian and the former governor of Okinawa from 1990 to 1998 Ōta Masahide argued in his classic monograph, *Emperors in Okinawa: High Commissioners* (*Okinawa no teiō: Kōtōbenmukan*), the Executive Order aimed to stabilize the occupation by empowering the high commissioner as "an almighty."[633] Between 1950 and 1957, five deputy governors had held administrative, legislative, and judicial powers, including the authority to appoint a local chief executive, veto any legislation of the local Government of the Ryukyu Islands (GRI), and extradite any legal case from local to U.S. courts. Thereafter, six high commissioners with higher military ranks than the deputy governors ruled Okinawa directly by appointment and discretion of the secretary of defense and the president.[634] Further, the third section of the Executive Order 10713 gave the military exclusive authority and limited that of the Department of State, which was to "the conduct relations with foreign countries

[633] Ōta Masahide, *Okinawa no teiō: Kōtōbenmukan* (Tokyo: Kumeshobō, 1984), 4-24.
[634] Ōta, *Okinawa no teiō: Kōtōbenmukan*, 4-24.

and international organizations" in the Ryukyus.[635]

With regard to judicial powers in the Ryukyu Islands, Section 10 on "criminal jurisdiction" read:

> Criminal jurisdiction over all persons except (a) members of the United States forces or the civilian component, (b) employees who are United States nationals even though not subject to trial by courts-martial under the Uniform Code of Military Justice (10 U.S.C. 801 et seq.), and (c) dependents of the foregoing, provided, nevertheless, that subject to paragraph (c), below, criminal jurisdiction may be exercised by Courts of the Government of the Ryukyu Islands over dependents who are Ryukyuans. Criminal jurisdiction may be withdrawn from the courts of the Government of the Ryukyu Islands by the High Commissioner in any case which affects the security, property, or interests of the United States and which is do designated by him.[636]

With regards to human rights, Section 12 simply stated: "the High Commissioner shall preserve to persons in the Ryukyu Islands the basic liberties enjoyed by people in democratic countries, including freedom of speech, assembly, petition, religion and press, and security from unreasonable searches and seizures, and from deprivation of life, liberty or property without due process of law." But rather than a universal right, this was subject to the High Commissioner's will to promulgate laws, ordinances, or regulations insofar as "such action is deemed necessary for the fulfillment of his mission" (Section 11)."[637] An amendment (Executive Order 11010) in 1962 made a minor change to the judicial system, but the *de jure* extraterritorial military justice remained intact until 1972.[638] In the late 1950s, however, the rising tides of neutralism in Japan and political upheavals in Okinawa got State Department officials worried over the direction of U.S. policy on Okinawa that was exclusively directed by the Department of Defense under the strong leadership

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[635] Dwight D. Eisenhower, "Executive Order 10713: Providing for Administration of the Ryukyu Islands," June 5, 1957. The text is available at (https://www.hsdl.org/?abstract&did=464629), last accessed January 15, 2021.
[636] Eisenhower, "Executive Order 10713."
[637] Eisenhower, "Executive Order 10713."
[638] Executive Order 10713 as amended by Executive Order 11010, 19 March 1962 Providing for Administration of the Ryukyu Islands, RG 260, Records of United States Occupation Headquarters, World War II, U.S. Civil Administration of the Ryukyu Islands, Legal Affairs Department, Legal Division, Box 126, Folder 1, NARA.

of the Department of the Army.

Local politics reflected the changing political climate in Okinawa in the late 1950s. After the sudden passing of the first Chief Executive Higa Shūhei, the United States Civil Administration of the Ryukyu Islands (USCAR) appointed Tōma Jūgō for the second Chief Executive on November 1, 1956. By this time the island-wide struggle against the land seizure had lost support from conservatives, such as Tōma and local business leaders, who came to accept the military's lump-sum payment for the partial compensation of the loss of native lands. In response, progressives formed a coalition named the Liaison-Council for the Protection of Democracy (*Minshushugi yōgo renraku kyōgikai*) to squarely challenge the Tōma administration. In the mayoral election of Naha City on December 25, 1956, the leader of the most vocal leftist party (Okinawan People's Party or OPP), Senaga Kamejirō, beat conservative candidates. His victory in the lion's den of the United States' military empire made headline news worldwide. Despite USCAR's effort to oust Senaga from his position via a combination of legal, political, and economic measures, Naha residents reelected Senaga's successor, Naneshi Saichi, in the following election in January 1958.[639]

Within a year since the adoption of Executive Order 10713, Secretary of State John Foster Dulles wrote in his letter to Secretary of Defense Neil H. McElroy, "I suggest that at this time would be appropriate for our two Departments to re-examine the Executive Order with the experience of the past seventeen months in mind." Dulles called for revisions "to spell out in greater detail the responsibilities of this Department and its representative in the Ryukyus with regard to Ryukyuan affairs and to provide for continuing liaison between the two Departments."[640]

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[639] Sakurazawa Makoto, *Okinawa gendaishi* (Tokyo: Chūōkoron sha, 2015), 59-62.

[640] From John Foster Dulles, the Secretary of State to Neil H. McElroy, Secretary of Defense, undated, RG 59, General Records of the Department of State, Miscellaneous Lot Files, Box 13, Folder 1.5: The Executive Order Policy for Administration of the Ryukyus, NARA.

Defense Department officials staunchly opposed the State Department's proposal even though they agreed on the significance of securing Japanese support for U.S. cold war policy. In August 1957, Deputy Assistant Secretary of Defense John N. Irwin, II recognized that the Defense-State conflict over U.S. policy on Okinawa stemmed from the question of "how best to reduce the revisionist activity and sentiment which is the basis of many of our problems in the Ryukyus and a source of constant friction with Japan." Irwin argued that "nothing the United States can do in the Ryukyus or in Japan will reduce effectively current revisionist activity until the Ryukyuan and Japanese people first are convinced that the authority and control now exercised by the United States will be maintained for the foreseeable future, at least for a generation or more…" Yet he noted that the Defense Department shared the State Department's consistent effort "to convince the Japanese that the United States and Japan have common interests in the security of the Far East and we recognize that our long range security interests in the Orient are dependent in vital measure on our relations with Japan."[641]

Assistant Secretary of the Army George H. Roderick reacted to the State Department's proposal with much more explicit aversion in February 1958. In a letter addressed to Assistant Secretary of State Walter S. Robertson, Roderick wrote: "While I recognize the unfortunate political aspects of the recent election [the victory of Senaga's successor in the Naha mayoral election], I do not believe that because we continue to have problems there, our situation is deteriorating… It will be impossible to achieve our objectives there without criticism from local elements or from neighboring countries whose objectives do not always coincide with ours." Like Irwin, Roderick noted the interconnected dimension of U.S. policies on Japan and Okinawa: "We

[641] From John N. Irwin, II, Deputy Assistant Secretary of Defense to Walter S. Robertson, Assistant Secretary of State Far Eastern Affairs, August 2, 1957, RG 59, General Records of the Department of State, Miscellaneous Lot Files, Box 13, Folder 1.4: Ryukyus State-Defense Coordination on the Ryukyus, NARA.

cannot demand a complete change of program… Nor can we vacillate weekly in the face of revisionist agitation emanating from Japan. In this connection, it would appear to be in our mutual interest to decrease the emphasis we place on Japan's 'residual sovereignty' in the Ryukyus and to increase emphasis on our determination to retain our administration of the Islands. This point becomes increasingly important as we reduce our forces in Japan." For the Defense Department, the continued military governance and the rejection of Japanese sovereignty over Okinawa were the solution to Okinawan and Japanese resistance to the U.S. occupation of Okinawa. As Roderick flatly stated, "We are always cognizant that under Executive Order 10713, all administrative, legislative and jurisdictional powers of the U.S. over the Ryukyus are exercised by the Secretary of Defense, who, as authorized by the Order, has delegated the task to the Department of the Army. The administration of the Ryukyus is, therefore, a responsibility of the Department of the Army…"[642]

Responding to the debate, Ambassador Douglas MacArthur II wrote a lengthy letter to Dulles, whose short excerpt was introduced at the opening of this chapter. The letter addressed two reasons as to why the Army's authoritarian governance in Okinawa was not desirable: "1) Okinawa will no longer be a dependable military base which we could count on using effectively in the event of hostilities; 2) our over-all relations with Japan will be so adversely affected by the Okinawa situation that they will steadily deteriorate to the point where they jeopardize our vital interests in the part of the world and our relations with not only Japan but with other friendly Asian countries." MacArthur argued that a pragmatic solution was the appointment of a civilian high commissioner.[643]

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[642] From George H. Roderick, Assistant Secretary of the Army to Walter S. Robertson, Assistant Secretary of State, February 6, 1958, RG 59, General Records of the Department of State, Miscellaneous Lot Files, Box 13, Folder 1.4: Ryukyus State-Defense Coordination on the Ryukyus, NARA.
[643] From MacArthur II to Dulles, February 1, 1958, February 1, 1958, NARA.

Further, MacArthur invoked Dulles' reference to French colonialism's failures in Morocco, Tunis, and Indochina to suggest the limit of military power projected on local populations in Asia.

> I think we place ourselves under an intolerable handicap not only in terms of Okinawa and Japanese but general Asian opinion in perpetuating 'military government' in Okinawa thirteen years after the war has ended. If I am not mistaken, Okinawa is just about the only free world territory which we or our allies occupied where military administration has been continued since the end of the war. 'Prolonged military government' in peacetime is a heavy political and psychological burden for which we pay a great price—particularly in Asia, where military administration has always been equated with colonialism.[644]

Ambassador MacArthur, who had sought to deflate Japanese nationalist resistance to U.S. extraterritoriality over the "Girard case" through inclusionary diplomacy, found the exclusionary attitude of military leaders toward Okinawan elites highly concerning.

> I was greatly shocked when I visited Okinawa last May, and a dinner was given in my honor, to find that General Lemnitzer, myself and all the admirals and generals were seated at the head of the table, with the Okinawans, including the Chief Executive Mr. Thoma [Tōma], judges from the Supreme Court, and members of the Legislature, at the bottom of the table below the salt. I inquired about this and was told that this was regular protocol… I was also shocked when the Chief Executive took his departure that no one had any intention of accompanying him to the door. I mentioned this to our military as he was leaving and was told that he was used to leaving parties with no one seeing him to his car. Accordingly, since I was guest of honor, I escorted him to the door and saw him into his car… I have also been told by a number of people, including pro-American Japanese and Okinawans that if they argue with our Military Government people about policies or solutions to problems, they are treated thereafter with a certain hostility and suspicion and are ignored…[645]

MacArthur's observation of the USCAR elites' treatment of the Okinawan leaders, including Tōma and legal authorities, offers a glimpse of the subaltern status of Okinawans, as a racialized and legally marginalized people. It also speaks to the very context in which U.S. military justice operated on the island. The military rule was vulnerable in that "our military rely for advice in

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644 From MacArthur II to Dulles, February 1, 1958, February 1, 1958, NARA.
645 From MacArthur II to Dulles, February 1, 1958, February 1, 1958, NARA.

Okinawa to a great extent on a very small group of Okinawans who have become unbelievably wealthy through their ownership of companies and enterprises which do business with our Military Government…" as well as "Nisei officers (of Okinawan or Japanese or origin) who "represent rank and power" in Okinawa.[646]

Based upon such an analysis, MacArthur explained much more assertively than the defense elites how the stabilization of U.S. rule in Okinawa could prevent the rise of anti-base movements and solidarity activism in Japan.

> Japanese attitudes about Okinawa strongly reflect Okinawan attitudes. If the situation is quiet in Naha, it is not likely to be too successfully agitated in Tokyo. Every time Japanese sentiment has been whipped up on the Okinawa issue recently it has been the result and reflection of unrest in Okinawa itself. While it is true that there are elements in Japan and Okinawa which will always make trouble about Okinawa, I believe there is a reasonable possibility that the situation here can be kept without manageable cooperation in this critical period provided it is well managed there. We cannot, however, prevent the trend in Japan continue even more strongly against us on this issue if the trend is not arrested in Okinawa itself.[647]

While the State and Defense elites continued debating long-term policy impact of the rigid military rule authorized by Executive Order 10713 on U.S. policy on Japan and Asia, U.S. military related crimes and incidents continued destabilizing local communities on the island. The *Ryukyu Shimpo* reflected on the year 1957 running an article titled "The year 57 was filled with base related crimes: A series of tragic incidents." The article recapitulated various incidents committed by both Okinawans and U.S. military personnel and summarized them as follows:

> The year of 1957 recorded many incidents committed not only by Okinawans but also by foreigners. Especially due to the transfer of U.S. ground troops from Japan in the latter half of the year, many foreigners' incidents occurred and horrified Okinawan residents. Yet, because many of them happened abruptly, there were not many cases—except for one or two—which

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646 From MacArthur II to Dulles, February 1, 1958, February 1, 1958, NARA.
647 From MacArthur II to Dulles, February 1, 1958, February 1, 1958, NARA.

awoke the entire island. Nevertheless, it feels that the year started with crimes and is ending with crimes.[648]

This high rate of U.S. military related crimes and incidents continued in the following years. The range of crimes included murder, rape, arson, robbery, car crash, strife, and mischief. In November 1958, there were even GIs' gang attacks on a Government of Ryukyu Islands (GRI) police station for their attempt to rescue fellow soldiers.[649] The *Okinawa Times* published an article titled "Horrified Nago Residents: Sixteen Marines' gang violence: About twenty Okinawan residents were injured last night." On December 19, 1958.[650] According to GRI police, these cases were one of 3,300 cases committed by "foreigners against Okinawans" during the period between January 1951 and June 1959.[651]

In this climate, the lack of compensation remained a major concern for Okinawans even after the first application of the Foreign Claims Act in the wake of the Yumiko-chan Incident in 1955. In July 1958, the *Ryukyu Shimpo* reported that only 15 cases out of 120 officially recorded U.S. military related cases resulted in official compensation during the period between 1948 and May 1958. The majority of the victims, including the family of Etsuko Yonamine, did not receive compensation. The *Ryukyu Shimpo* argued that Okinawans' human rights were not sufficiently protected under Executive Order underscoring the GRI Legal Affairs Department's lack of the authority to solve such issues.[652]

Nevertheless, as MacArthur commented in his letter to Dulles in February 1958, Japanese civil society's engagement with the "Okinawa problem" was never consistent. On February 13-15, 1958, *Ryūkyū shimpo* published the Japanese critic Fujishima Udai's article entitled "Two Faces

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[648] *Ryukyu Shimpo*, evening edition December 29, 1957.
[649] *Okinawa Times*, November 25, 1958.
[650] *Okinawa Times*, December 19, 1958.
[651] *Ryukyu Shimpo*, July 31, 1959.
[652] *Ryukyu Shimpo*, evening edition, July 10, 1958.

of the Okinawa Problem:" it was originally contributed to the Japanese political magazine, *Chūō kōron*. In this article, Fujishima argued that the Japanese still did not understand two essential aspects of the "Okinawa problem:" one was "the question of U.S. military colonialism" and the other was "the deep historical question of how Okinawa could recover its proper status in Japan."[653] His speculation suggested that ninety-nine percent of the Japanese probably did not know about the status of the land problem in Okinawa three years after the *Asahi* coverage.[654] Okinawans closely monitored political developments in Japan, including the controversies over the Girard case and the Kishi administration's policy on Okinawa, which was not promising.

In the meantime, Okinawan communities in Japan and few grassroots organizations and intellectuals—legal experts in particular—gradually expanded solidarity movements with Okinawa in the late 1950s, albeit mostly on the intellectual level. For instance, the Japanese legal scholar Katō Ichirō shared his experience of living in Okinawa as an invited scholar at the University of Ryukyus in the influential political journal *Sekai* in May 1957. In it, Katō reflected that he often discussed with students how to maximize freedom in occupied Okinawa and persuaded them to build on each small gain of freedom. But he later learned through a student's letter how easily those freedoms could be reversed, for example, when the University of Ryukyu expelled six student activist leaders upon pressure by USCAR (the second Ryukyu University incident, or *Dainiji Ryudai jiken*). Katō thus called on the readers of *Sekai* to raise Japan's public awareness of Okinawa because "Japan was responsible for Okinawans' tragedy."[655]

Legal scholars' engagement with the "Okinawa problem" during this period anticipated their greater role in the following decade.

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653 *Ryūkyū Shimpo*, February 14, 1958.
654 *Ryūkyū Shimpo*, February 15, 1958.
655 Katō Ichirō, "Okinawa no 'jiyū,'" *Sekai*, May 1957, 45-47.

The 1959 U.S. Jet Crash on Miyamori Primary School and the Birth of the Okinawa Civil Liberties Union

The year 1959 marked another turning point in the history of resistance to the U.S. military legal regime of exception in occupied Okinawa. The revised Penal Code (Ordinance 23), adopted on May 13, 1959, stirred controversy because it prohibited Okinawans' interaction with "foreigners," including Japanese, which would threaten the United States' "security," with punishment up to the death penalty. While this animated legal scholars in particular, a military jet crash on Miyamori Primary School in Ishikawa City, on June 30 shocked the entire island. Among the seventeen dead were eleven children, and the injured reached over two hundred, with dozens of homes destroyed. The pilot who escaped the crash attempted to drop the plane on the ocean but in vain.[656] High Commissioner Donald Prentice Booth's report to the Department of the Army, dated June 30, gives a glimpse into how it became an unprecedentedly urgent matter for both U.S. military and Okinawan authorities in the immediate aftermath of the crash: "Within minutes of news of crash, Army helicopter airlifted GRI Chief Executive Jūgō Thoma [Tōma], two GRI Medical officials, USCAR Public Health and Welfare Department Director Colonel Irvine H. Marshall, and his Welfare, Medical and Nursing Staff members from Ishikawa to Naha… Fragmentary unconfirmed reports indicate casualties as follows: 16 dead, 106, injured and 30 Okinawan homes destroyed…"[657]

Okinawans collectively mourned the incident. As in 1955, local newspapers ran a steam of articles, humanizing all the victims and providing extensive coverage of issues concerning

[656] *Okinawa Times*, July 4, 1959.
[657] Message from HICOMRY OKINAWA RYIS to DA WASH DC, CINCUSARPAC FT SHAFTER TH, June 30, 1959, RG 153 Records of OTJAG-DA, International Affairs Division, International Agreements, Box 3, Folder: Ryukyus III 57-63, NARA.

compensation. Their shared understanding was that this "on-duty" military incident was well beyond the islanders' search for legal justice. Instead, Okinawans focused on demanding sufficient compensation while proactively engaging in human rights activism. As an effort in this struggle, a father who lost a child due to the crash called on High Commissioner Booth to adherence to the spirits of UDHR and compensate for the children's deaths. He argued:

> the victims were forced to collaborate in the defense against the free world regardless of their opinion and had to sacrifice their lives which are unreplaceable with anything else. I am convinced that our lives, the lives of Okinawans, are equal to those of Americans and we must not be discriminated as the Declaration of Human Rights, adopted at the United Nations in 1948, authoritatively declares that "humans are equal before the law and must not be discriminated because of one's race."[658]

Daily press coverage of the jet crash invoked public discussions on uncompensated deaths and injuries caused by U.S. armed forces, especially those prior to the adoption of the San Francisco Peace Treaty in 1952.

Booth's weekly report to the Department of the Army in Washington, dated July 29, 1959, dealt with the growing controversies over the Penal Code and the impact of an emergent Okinawan-Japanese grassroots solidarity on the Japanese government's attitude toward U.S. occupation policy. Entitled "Ishikawa plane crash," the report stated that "HICOM approved awards from civil affairs standpoint." Without concrete directives from the Department of the Army, HICOM's staff evaluated proper compensation: "Awards based on 1000 days wages plus 60 days wages for funeral expenses, as provided by Japanese law and practice… Final amounts more than double Japanese standard. Award for children over six years of age uniform $2525. Highest $4624; lowest $2305." Booth explained that "[w]hile awards are higher than would be

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[658] Father of a second-year student of Miyamori Primary School, Letter "Reasons for Petition for Compensation" addressed to High Commissioner Donald P Booth, undated, in *Ishikawa Miyamori Jet ki tsuiraku jiko shiryō shōgen shū: Inochi no sakebi*, edited by Inochi to heiwa no kataribe NPO hōjin Ishikawa Miyamori 630 kai (Urazoe: Chitose insatsu, 2013), 141.

normal in Japan, they are considered fully justified on grounds (1) Ryukyuans have no sovereign government to appeal to and consequently United States must protect their interests, (2) Magnitude of disaster shocked world," and (3) Generous settlements will go far to offset possible adverse political reactions." He expressed concern over the Okinawans' reactions to the amount, but "believe[d] they will be acceptable, although less than amounts claimed."[659]

In the section titled "Political," the weekly report discussed repercussions of the revised Penal Code in Okinawa and Japan. With regard to Okinawa, it reported, "An anti-Penal Code rally was held in Koza on 26 July under sponsorship of Koza City Youth Association, according to local press. Principal speakers at rally attended by some 1,500 representatives of labor and left-wing organizations." [660] Booth also discussed the Japanese government's forced involvement in questioning the legitimacy of the new Penal Code.

> Okinawa Times carried dispatch from Tokyo on 24 July in which it was reported Okinawa prefectural people's association and liaison council for settlement of Okinawan problems presented resolution requesting Japanese government intervention on Penal Code question to Prime Minister Kishi, Secretary General Shiina and Director General Fukuda. Latter was reported to have started investigation [and] officials were to be sent to Okinawa to secure data… most Japanese government could do under present circumstances was to seek clarification of certain points in code, and in absence of request from GRI, Japanese government cannot negotiate with United States on problem.[661]

All the while these major issues in the midst of an increase of GI incidents united local forces against the occupation and forced the Kishi administration to take a more assertive stance on U.S. policy on Okinawa, according to the *Ryūkyū shimpo*.[662]

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[659] Message from HICOMRY OKINAWA RYIS to DA WASH DC, "Weekly Summary No 107, 20 Jul through 26 Jul 59," July 29, 1959, RG 153 JAG-DA, International Affairs Division, International Agreements, Box 3, Folder: Ryukyus III 57-63, NARA.
[660] Message from HICOMRY OKINAWA RYIS to DA WASH DC, "Weekly Summary No 107, 20 Jul through 26 Jul 59," July 29, 1959, NARA.
[661] Message from HICOMRY OKINAWA RYIS to DA WASH DC, "Weekly Summary No 107, 20 Jul through 26 Jul 59," July 29, 1959, NARA.
[662] *Ryūkyū shimpo*, evening edition, July 28, 1959.

The following month, the ACLU co-founder Roger Nash Baldwin and his daughter visited Okinawa. On August 19, the *Okinawa Times* asked readers, "Are human rights protected inside bases? Chair of International League for Human Rights Mr. Baldwin's Visit to the Island." The phrasing "inside bases" conveyed their sense of instability and precarious life under the strict legal regime of exception run by the American military. The knowledge that Baldwin's letter had triggered the 1955 Asahi coverage of the "Okinawa problem" was enough for the islanders to appreciate his role in drawing international attention to their plight. Having an American on their side made it easier for the islanders to question the military's monopoly on defining the meaning of civility and generally justifying anything they liked as "American."

Baldwin's visit provided the legally-marginalized Okinawans with opportunities to expand the boundaries of their political freedom and legal rights. They made conscious efforts to get Baldwin to state his stance on the state of human rights abuses in occupied Okinawa. Baldwin met Chief Executive Tōma, legal authorities, GRI politicians, various grassroots organizations' representatives, and the victims and related individuals of U.S. military incidents, including the latest Miyamori Primary School jet crash and the 1948 bomb explosion on the Ie island which had killed 103 Okinawans. Baldwin's "MEMORANDUM on Okinawa," dated August 18-21, 1959, cover various issues he discussed with the locals, some of which also appear in local newspapers. He noted, for instance: "The legal basis for the human rights of Okinawans should be the Universal Declaration of Human Rights and not the absolute power of the High Commissioner; The qualifications for legislators should not depend upon whether a jail term has been served since it is possible to jail people for political offenses; The High Commissioner has dismissed three officials and vetoed many bills; The Penal Code, now suspended, is offensive to Okinawans,

because it treats Japan as a foreign country demand loyalty to the United States."[663]

As a prominent U.S. lawyer who had been invited to occupied Japan by General Douglas MacArthur in 1947 and pressuring both State and Defense officials to review policies on Okinawa on his own initiative since the 1955 *Asahi* coverage, Baldwin took a stance somewhere between the hard-core Cold War spirits of the national security state and the UDHR during his stay on the island. He was sympathetic with those who demanded the Ryukyu islands' reversion to Japan, but supported the military's effort to prevent the spread of communist ideology inspired by the Soviet Union at the cornerstone in Asia. For example, at a symposium Baldwin addressed the need to reverse occupation policies such as the travel ban, the prohibition of chief executive elections, and Executive Order 10713, which provided the legal basis for the U.S. military's rule through exceptions.[664] But the OPP's leader, Senaga, challenged Baldwin's rationale for nonetheless supporting the military regime. Senaga argued that the United States' "premodern and undemocratic" occupation policies went counter to its claim of being a democracy, and that Okinawans were capable of governing themselves.[665]

During his stay in Japan, Baldwin discussed U.S. policy on Okinawa with renowned intellectuals, such as the legal scholar Ushitomi Toshitaka, who compiled the JCLU report "Human Rights Problems in Okinawa," and the critic and poet, Fujishima, whose analysis of the Japanese attitude toward the U.S. occupation was introduced in the previous section. Fujishima challenged Baldwin on various issues. In response to Baldwin's dismissive comment about occupied Okinawans' livelihood and political freedom, Fujishima shared his experience of encountering the

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663 "Memorandum on Okinawa," August 18-21, 1959, American Civil Liberties Union Records MC #001, 1917, Subject Files, International Civil Liberties, 1946-1977, Box 1175, Folder 5: On the Scene Notes from Baldwin 59, Seeley G. Mudd Manuscript Library, Princeton University.
664 *Ryūkyū shinpo*, August 20, 1959; *Okinawa Times*, August 21, 1959; *Ryūkyū shinpo*, August 21, 1959; *Okinawa Times*, August 26, 1959, evening edition; *Okinawa Times*, August 27, 1959.
665 *Okinawa Times*, August 20, 1959.

victims of unreported and uncompensated GI violence. He also criticized the military's use of native land which had been agriculturally productive and culturally rich before the U.S. land seizure. Baldwin replied, "Please don't forget that U.S. forces modernized Okinawa's infrastructure, and it is here to stay." While Baldwin echoed the State Department's line of argument highlighting postwar America's civilizing mission, Fujishima's likewise touched a nationalist tone when he asked Baldwin how he thought the "Japanese" felt about Okinawans' struggles and their desire to fly the Japanese flag.[666]

In his meeting with Ushitomi, Baldwin spoke more concretely about how he saw the future of Okinawa. Although Baldwin recognized that "Okinawans are well aware of their rights and have a deep understanding of autonomy and the principles of liberties," he stated that Okinawa would remain occupied as long as the Cold War lasted in Asia. His stance was that Okinawans' human rights were protected under the occupation for the most part, despite the alleged constraints on political and civil liberties. In response, Ushitomi pointed out the many documents on the abuses of human rights in occupied Okinawa and asked Baldwin to pay attention to the military's systemic deprivation of democratic rights—including the right to a fair trial—supposedly for reasons of national security. For Ushitomi, this was, after all, the same justification used by the Japanese wartime state.[667] The local press made much of these discussions, some noting that Baldwin's human rights activism could only go so far given that he was an American.[668]

In the aftermaths of the plane crash and Baldwin's visit, a series of controversial GI cases ensued. Above all, the islanders were infuriated at two murders committed by off-duty U.S. service

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666 "Okinawa no jinken o dō miru ka: Taidan Rojyā Borudowin Fujishima Udai," *Chūō kōron*, October 1959, 74-81.
667 "Okinawa jiyū jinken: Roger Baldwin, Ushitomi Toshitaka, and Ōtake Takeshichirō," *Hōritsujihō* 1, no. 11 (October 1959): 24, 27.
668 *Okinawa Times*, January 6, 1960.

members, both of which appeared to be racially motivated. On December 26, 1959 and December 10, 1960, two locals were shot many times "by mistake" as the soldiers mistook them for a boar or a bird, respectively.[669] Both service members received only a light sentence at a court martial. The locals saw the first case as an Okinawan version of the "Girard case."[670] The high rate of murder cases among local maids working for U.S. military and civilian personnel similarly agitated public life.[671]

Okinawans began reinforcing human rights activism and transforming it into the reversion movement in this post-1957-Executive-Order context. After Baldwin's departure, the victims' families of the plane crash, who were not satisfied with the military's compensation, founded the Okinawa League of Victims of the United States Forces (*Beigun higaisha Okinawa renmei*) on December 13, 1959.[672] On April 28 the following year, a coalition of seventeen organizations founded the Okinawa Prefecture Council for Reversion to the Home Country (*Fukkikyō*) under the leadership of Okinawa Teachers Association, Youth Council, and *Kankōrō* (Union of Public Servants) hoping to establish a cross-party platform. With many members deeply committed to the Ishikawa compensation movement, *Fukkikyō* placed respect for human rights at the heart of its organizational spirit from the beginning.[673] Although the ruling Liberal Democratic Party (LDP) did not join *Fukkikyō* then, the number of umbrella organizations increased rapidly in the following years (28 in 1961 and 57 in 1963).[674]

In the following three years, the rapidly spreading reversionist sentiment on the islands became a force to contend with in the military government. Responding to pressure from below,

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669 *Okinawa Times*, December 27, 1959; *Ryūkyū shinpo*, December 10, 1960.
670 *Ryūkyū shinpo*, December 27, 1959.
671 *Okinawa Times*, evening edition, November 10, 1959,
672 *Ryūkyū shinpo*, December 14, 1959.
673 Sakurazawa, *Okinawa no hoshu seiryoku to 'shimagurumi' no keifu*, 141-178.
674 Sakurazawa, *Okinawa gendaishi*, 86-88.

the Japanese government began supplying technical and financial assistance to aid economic recovery in Okinawa. Not only did this result in a GDP growth rate at astonishing over ten percent in the following decade, but it guaranteed the LDP's popular support, especially in the first half of the 1960s.[675]

The tension between reversionist sentiment and collaboration with the occupation came to a head when President Eisenhower visited the island on June 19, 1960. Chief Executive Ōta Seisaku honored the president's visit with the following letter:

> It is indeed a great honor to have this opportunity to meet you, and on behalf of people I wish to express our profound appreciation for the special visit you are making to our island. It is certainly a true manifestation of the deep interest and concern for the welfare and well-being of the Ryukyuan people which you and the people of the United States hold, and I wish to express my sincere gratification. Through the assistance of the United States and the Ryukyu Islands are making steady progress in social, economic and cultural areas. Our objective is an era of prosperity during the 1960s' as we leave the era of reconstruction seen during the 1950s…[676]

Approximately 20,000 demonstrators protested Eisenhower's visit with signs saying "Self-determination" and "Give us back Okinawa." Some waved the Japanese *hinomaru* flag and others red flags. An estimated10,000 Okinawans participated in a rally calling for reversion, and members of the Ishikawa plane crash victims' organization walked two days to participate in the rally in Naha City.[677] Evidently, Okinawans were more confident of their political freedom than ever. Still, they felt that the Japanese public did not pay sufficient attention to U.S. policy on Okinawa due to their narrow focus on matters related to the renewal of the Japan-U.S. Security Treaty. For instance, one Okinawan activist said to Japanese activists in person in March 1959, "I hope [the Japanese]

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675 Sakurazawa, *Okinawa gendaishi*, 105-107.

676 Letter from Seisaku Ōta, Chief Executive, to Dwight D. Eisenhower, President of the United States of America, June 19, 1960, RG 319, Records of the Army Staff, the Office of the Chief of Civil Affairs, Security Classified Correspondence of the Public Affairs Division, 1950-1964, Box 24, Folder: Petition to the President, NARA. 49

677 *Okinawa Times*, evening edition, June 19, 1959.

sympathy would generate [concrete] policy changes."[678]

Okinawans found "human rights" to be the best slogan with which to confront the U.S. military rather than the Japanese Anpo protesters' "peace and democracy." On April 4, 1961, about two hundred people participated in the opening ceremony of the Okinawa Civil Liberties Union (OCLU). The founders decided to affiliate with the International League for Human Rights. The high school teacher and leading activist member of the OTA, Fukuchi Hiroaki, led this movement and became Secretary-General. Fukuchi recalled later that Baldwin's call on Okinawans to fight for liberties on their own had inspired them to have their own branch. Further, the experience of conducting on-site investigations in 1959 and 1960 on what appeared to be the Okinawan versions of the Girard case with the representatives of eight organizations made him realize that they needed an organization to protest military's legal proceedings.[679] Renowned individuals—Ikemiyagusuku Sūi and Uechi Kazufumi (chief editors of *Ryūkyū shinpo* and *Okinawa Times*, respectively), Oyadomari Hidetaka (Chief of the Committee for the Protection of Human Rights of the Ryukyuan Lawyers Association), Akamine Yoshinobu (legal scholar at the University of Ryukyus), Chinen Chōkō (GRI legislator), and Yara Chōbyō (President of Okinawa Teachers Association) served on the executive board to demonstrate their cross-ideological front and squarely undertake legal activism against military occupation. Lawyer Shimoji Toshiyuki, who founded the Democratic Party on Miyako island in the immediate aftermath of the war, and had just finished his term as the chief of the Ryukyuan Lawyers Association, became the first president.[680]

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[678] *Okinawa Times*, evening edition, March 4, 1959.
[679] Fukuchi Hiroaki, *Okinawashi wo kakenuketa otoko: Fukuchi Hiroaki no hansei* (Tokyo: Dōjidaisha, 2000), 68.
[680] Okinawa jinken kyōkai, *Sengo Okinawa no jinkenshi: Okinawa jinken kyōkai* (Tokyo: Kōbunken, 2012), 56.

The charter of OCLU opened with the statement that all individuals are born free and equal and such rights are inalienable. "Such a philosophy has underpinned the very foundation of democracy since the French Revolution and the United States' Declaration of Independence, and it is proclaimed even more loudly in the 1948 Universal Declaration of Human Rights." It asserted that "human rights underpin the foundation of popular sovereignty and guarantee freedom to life, survival, happiness, speech, religion, and belief." Notably, they also referred to Okinawan forerunners' popular rights movement in the early twentieth century. In a historic sense, most provocative was probably the charter's celebration of Japan's new democratic Constitution, which recognizes fundamental human rights as "eternal and inviolate rights." The charter declared the OCLU's commitment to building a democratic society by overcoming ideological differences among themselves.[681]

Within days of its establishment, the OCLU received an avalanche of requests for legal assistance with a wide range of issues concerning conflicts with the U.S. military as well as among Okinawans. Requests concerning allegations on human rights abuses reached 130 in 1961 alone and reached 500 within five years.[682] The OCLU regarded human rights violations which arose from military service members' offenses with the utmost urgency. Other prominent human rights abuses concerned the human trafficking of maids and prostitutes, base workers' union activism, and wives and children abandoned by GIs.[683] Yet, the work of the OCLU was inevitably influenced by political rivalries within the GRI Legislature, resulting in uneven advocacy in many cases. For instance, the GRI Legislature opted not to adopt a statement on getting involved in the "Kokuba-kun incident" despite massive outcry expressed by a number of grassroots organizations

681 Okinawa jinken kyōkai, *Jinkenyōgo no ayumi* (Naha: Nansei insatsuho, 1966), 1.
682 Fukuchi Hiroaki, Kichi to jinken: Okinawa no sentaku (Tokyo, Dōjidaisha, 1999), 81.
683 Okinawa jinken kyōkai, *Sengo Okinawa no jinkenshi: Okinawa jinken kyōkai*, 57-70.

either with or without political affiliations.

On February 28, 1963, a Marine truck ran over thirteen-year-old Kokuba Hideo in the street. A court ruling on May 1 acquitted the soldier. As per military law, no Okinawan observers had been allowed to be present at the court martial, and the judgment had been an entirely internal affair: prosecutor, judge, and lawyers all worked in the same office.[684] The OCLU denounced the ruling as "colonialist" and criticized the occupier's "extraterritoriality." It demanded soldiers' discipline, open trials, the expansion of Okinawan legal rights to include criminal investigations, and the transfer of cases involving U.S. military personnel and Okinawans to the GRI court.

Although the GRI did not itself issue a protest statement, it was clear from the public response to the Kokuba-kun case just how pervasive the human rights discourse had become among the youth. At a prefectural protest rally held on March 2, a student protester declared, "We have been learning about democracy… and taught that fundamental human rights are inalienable minimum rights that allow humans to live as humans… The military people say they would compensate, but [our] invaluable life is not something you can buy with money.'"[685]

It was arguably the 1965 "Takako-chan incident," that marked that year as a "point of no return" for Okinawa's reversion. It reflected a decisive transformation of Okinawan attitudes toward the occupation and the reemergence of the island-wide struggle against the U.S. military legal regime of exception. The victim was a ten-year-old girl. A Department of Defense Intelligence Information Report filed 18 months later, on November 30, 1966, described the incident with respect to the protest movement that had ensued in the meantime in response to this and further such crimes.

> On 11 June 1965, a trailer, paradropped from a C-130 of the 6315th Operation Group, Naha Air Base, missed the boundaries of a military reservation, landed in a small village street in Oyashi Village, Yomitan, Okinawa, and killed an eleven-year-old Ryukyuan girl. Public reaction to the

[684] Okinawa jinken kyōkai, *Jinken yōgo no ayumi* (Naha: Okinawa jinken kyōkai, 1966), 50-52.
[685] Fukuchi Hiroaki, *Beigun hanzai: Ima mo tsuzuku Okinawa no kanashimi to ikari* (Tokyo: Rōdō kyōiku sentā, 1992), 94-97.

> incident was extreme. The English and Japanese language press reported sharp protests from Ryukyuan political and civic circles; the GRI Legislature passed a protest resolution; various agitational groups, including the Okinawa Prefectural Council for the Prohibition of A&H Bombs (GENSUIKYO), the Council for the Reversion of Okinawa Prefecture to the Fatherland (FUKKIKYO), and the Okinawa Teachers Association issued protests; and a large protest rally was held to display public displeasure to the death.[686]

Referring to a yet more recent incident, the report noted, "While the 29 November 1966 incident resulted in only negligible damage, it is expected that it will, nevertheless, result in much public protest, and will be the theme of leftist propaganda attacks for some time… Protest statements will criticize the accident itself, and will also make demands for the removal of US bases from Okinawa and will oppose the use of Okinawa as a support base for US efforts in Vietnam."[687] Though the Defense Department did not mention it, the OCLU adopted another protest statement influencing other organizations and political parties' responses. This time, the GRI Legislature unanimously adopted a provocative protest statement. The legislators condemned the military's neglect of Okinawan lives as proven by the military's continuous exercise of dangerous military exercises in residential areas despite the residents' repeated warnings.[688] When Chief Executive Matsuoka Seiho and military officials visited the victim's family, the local residents told the press, "I want to speak loudly: The U.S. military, GO HOME!"[689]

Collective experiences such as these ushered Okinawa into the final years of the U.S. occupation.

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[686] "Department of Defense Intelligence Information Report (Report No. 1 650 0028 66, Originator OSI Dist 43, Kadena AB, Okinawa)," November 30, 1966, RG 260, Records of United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 10, Folder: Range Incidents (68), NARA.
[687] "Department of Defense Intelligence Information Report (Report No. 1 650 0028 66, Originator OSI Dist 43, Kadena AB, Okinawa)," November 30, 1966, NARA.
[688] *Okinawa Times*, June 13, 1965.
[689] *Okinawa Times*, evening edition June 12, 1965.

The Vietnam War, GI Violence, and the Emergence of Trans-Pacific Resistance to the American Military Legal Regime of Exception

The first half of the 1960s altered the structure of the Okinawa-Japan-U.S. relationship that had come into existence the decade before, reflecting Japan's rising economic power. The incoming administrations, in 1960, of Ikeda Hayato in Japan and John F. Kennedy in the United States both had a stake in recovering the popularity of the ruling Liberal Democratic Party in the aftermath of the Anpo Movement by focusing on Japan's "miraculous" economic growth. Politically, it helped mitigate neutralist sentiment and propagate the image of an "equal relationship" in Japan. Still, the lingering "Okinawa problem" remained a visible marker of the asymmetry of the bilateral relationship, reminiscent of Japan's defeat in the Asia Pacific War and the enduring inequality between Japan and the West. But Japanese progressives, too, seized this post-Anpo moment, shaped by economic high growth, to challenge the government's existing policies on Okinawa in the Diet, the media, and civil society. USCAR's ultimate failure to adopt the new Penal Code revealed the power of this solidarity activism.

In 1966, President Kennedy's ambassador to Japan, Edwin O. Reischauer, compiled a detailed report on the transformation of the Japanese attitude toward Okinawa. It is worth quoting at length for its interpretation of the changes that took place in the 1960s, linked to post-Anpo Japan's nationalism, and the much greater breadth of public concern about Okinawa, now including conservatives and middle-of-the-roaders:

> In years immediately following Peace Treaty, Japanese opinion on Ryukyu was passive except for extreme left, which has always opposed both U.S. administration and U.S. bases. While eventual reunification with Ryukyus with homeland was expressed objective, Govt attitude was one of preoccupation with tasks in home islands and feeling that defeat and surrender had deprived Japan of any important opinions vis-à-vis decisions of U.S. overt expressions of attitude tended to reflect the situation in the Ryukyus. That is, when situation grew tense, as,

> for instance, in controversies over "lump sum" land settlements, Japanese people and govt took notice and expressed concern… […]
>
> During past few years, however, recovery by Japan of position as the major nation in the Far East and an important nation on world scene has been accompanied by resurgence of national pride. This has led inevitably to increased concern at fact that part of Japan's territory and population long after end of war and conclusion of Peace Treaty still remained under foreign rule." […]
>
> The Japanese are awakening from their postwar dream of a naturalist, de-nationalized, neuter sort of Japan and are feeling strong need for national assertion and for a position of equality among first-nations."[690]

This change was also reflected in a 1966 opinion poll conducted by the *Mainichi shinbun* that showed that 50.7 percent wanted reversion of Okinawa and Bonins to be a major foreign policy objective, which the report quoted.

The embassy report quoted the LDP government declaring that it "fully recognized the importance of the U.S. military installation of the Ryukyu Islands for the maintenance of security in the Far East." This was despite Prime Minister Satō's unabashed advocacy for Okinawa's reversion and his visit to the island in August 1965, a year into his premiership. Reischauer, therefore, warned that "a breakdown in the cooperative relationship between the U.S. and Japan over Ryukyus… would probably undermine the effectiveness of bases and do permeant damage to the overall U.S.-Japan relationship."[691]

Ambassadors from MacArthur II to Reischauer had pointed out the correlation between the intensification of Okinawans struggles against the U.S. occupation and Japanese civil society's deeper engagement with Okinawa. At its annual rally on April 28, 1961—the nineth anniversary of the day the San Francisco Peace Treaty came to effect—*Fukkikyō* called it "the day of shame

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[690] Telegram 25811 from American Embassy, Tokyo to Secretary of State, Washington, June 26, 1966, National Security File, Country File: Asia and Pacific, Box 25, Lyndon Baines Johnson Presidential Library.
[691] Telegram 25811 from American Embassy, Tokyo to Secretary of State, Washington, June 26, 1966, Lyndon Johnson Presidential Library.

for Okinawans." Conservative and progressive politicians such as the LDP's Nagamine Akio and OPP's Senaga came together to sing a song for reversion with arms on each other's shoulders.[692] The following year the GRI Legislature unanimously adopted a statement demanding reversion to Japan. The statement condemned the United States' violation of the principle of sovereignty and equality in the "Japanese territory" of Okinawa, invoking the United Nations' "Declaration on the Granting of Independence to Colonial Countries and Peoples" adopted on December 14, 1960.[693] Needless to say, such a dramatic change in Cold War Okinawa resonated with the global politics of decolonization and reflected the deepening ties between Japan and Okinawa. Japanese lawyers, journalists, politicians, corporations, and government officials headed to the island in greater and greater numbers.

The U.S. military legal regime of exception in the second half of the 1960s operated in this milieu. As the 1966 Defense Department intelligence alerted the impact of U.S. military incidents on locals' anti-base activism and protest movement against the Vietnam War, physical and structural violence the war brought to the island inevitably expanded the operation of extraterritorial U.S. military justice and radicalized resistance. According to statistical data compiled by the USCARA Public Safety Department, "Offenses allegedly committed by US Forces Personnel against Ryukyuans (1965-1970)" were as follows: 1,003 (1965), 1,406 (1966), 1,079 (1967), 905 (1968), 778 (1969), and 960 (170).[694]

On December 19, 1966, High Commissioner F. T. Unger instructed the Civil Administrator to

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[692] Sakurazawa, *Okinawa gendaishi*, 88-89.
[693] The Government of Ryukyu Islands Legislature, "Shiseiken henkan ni kan suru yōsei ketsugi," February 1, 1962.
[694] Harritman N. Simons, Director, Public Safety Department, Attachment "Offenses allegedly committed by US Forces Personnel against Ryukyuans (1965-1970)," to "Crime Trends on Okinawa," March 15, 1971, RG 260, Records of United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 33, Folder 1605-03: Major Incidents Report (71), NARA.

expand MP's patrol activities and assist GRI police to cope with the rise of GI incidents. At the opening of the letter, he wrote: "I have noted with dissatisfaction the high incidence of disorderly conduct by U.S. Forces personnel in the Ryukyuan communities." His instruction on joint patrols was made upon "a comprehensive survey of the types of offenses, location of major trouble areas, degree of police coverage and the several military and civilian environmental influences which might be possible causative factors." He asserted, "The results of this survey manifest the need for positive, immediate actions, one of which is to reinforce the deterrent program already in being." The major problem was that in major base towns such as Koza, Kin Village, Futenma, Naminoue, Henoko, and Old Koza, where most incidents occurred, "there is usually one civilian police box with no more than one or two civilian police on duty. Hence, the civilian police point of view, their prompt response to requests for assistance is highly improbable, and their operation of roving foot patrols is impossible." Further, he pointed out that "many cabarets, night clubs, and bars fail to halt the sale of liquor at midnight, as required by law." This made some GIs "remain off-post during the early morning hours, thereby prosperity conditions which contribute to serious offenses." As such, Unger attributed the rise of military incidents to the lack of patrol and "the Ryukyuan contributors."[695]

In a separate letter addressed to "each major commander," Unger urged these military leaders to educate and train soldiers not to harm the locals. "The pride of each of us in our service, and the honor of the nation which we represent both on and off field of battle are scarred by the disorderly acts or the drunken behavior of only a few." He asked the commanders to "take prompt and

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[695] Letter "Ryukyuan Police Assistance" from F. T. Unger, Lieutenant General, United Sates Army, CINCPAC Representative Ryukyus, to Gerald Warner, Civil Administrator, U.S. Civil Administration of the Ryukyu Islands, December 19, 1966, RG 260, Records of United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 12, Folder 1604-05: Police Liaison (68), NARA.

appropriate disciplinary action against offenders, but also that they institute programs providing for incentive awards to units establishing exemplary disciplinary records." The letter required commanders to "submit to me by 31 December 1966 your detailed plans and implementing programs for insuring that positive measures are taken to effect a significant improvement in the off-duty conduct of personnel under your command."[696]

Inevitably, Unger's concern over the staggering increase of U.S. service members' criminal offenses grew not only because of the plight itself but also due to GRI legislators' mounting pressure to cope with the problem. The USCAR Public Safety Department's position paper titled "Investigation of Crimes Involving U.S. Personnel," dated November 29, 1966, discussed the problem of "Request for Joint GRI/U.S. Investigation of Crimes Involving U.S. Personnel." It explained the background as follows: "The Democratic Party [the ruling conservative party] legislators requested authority for the GRI police, together with U.S. military forces to jointly 'investigate cases and pursue them to their core.' The recent Koza shooting case [MP's controversial shooting of Okinawans] was cited as an example. Other elements of the GRI, and in particular the opposition parties, are more forthright and demand that GRI be given jurisdiction to try U.S. Forces personnel in GRI courts."[697] USCAR recognized that the locals' request for the expansion of joint U.S.-Okinawan joint patrols was a widespread political demand.

The Public Safety Department produced numerous identical position papers in the following years, concluding always that "[s]o long as Executive Order 10713 remains in effect, no

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[696] From F. T. Unger, Lieutenant General, United Sates Army, Commanding, "Off-Duty Conduct of Military Personnel," December 16, 1966, RG 260, Records of United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 12, Folder 1604-05: Police Liaison (68), NARA.

[697] "Investigation of Crimes Involving U.S. Personnel," dated November 29, 1966, RG 260, Records of United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 4, Folder 1601-01: Civil Affairs Instruction Files, 1966-1969, NARA.

consideration be given to the transfer of jurisdiction to try U.S. Forces personnel before GRI courts."[698] Its general understanding of the state of the problem was as follows:

> Joint investigation of incidents involving U.S. Forces and local residents has been standard practice for years. CA Ordinance 87 and 144 establish the procedures and powers of apprehension for both the military and GRI Police. CA Ordinance 144 further specifies that "nothing herein contained shall be construed as limiting or restricting in any way the authority, powers and/or procedures of civilian police." In practice, there is a spirit of mutual cooperation and assistance between the military and GRI police. A GRI detective from Police Headquarters is assigned to duty at USARIS Provost Marshal's Criminal Investigation Division to assist with the coordination of investigative efforts of U.S./GRI police. GRI and the local general public often get the erroneous impression that no disciplinary action was taken in a particular case because such action was not announced publicly. Such information is available to anyone who asks for it.[699]

The Public Safety Department's patronizing and defensive comments on the handling of disclosure of courts martial results revealed the occupier's consciousness.

On the ground, "a spirit of mutual cooperation and assistance between the military and GRI police" was fraught with problems. On September 14, 1966, Horace E. Ervin noted, "The chief complaint [concerning joint patrols] is that very few policemen provided by the Naha Police Station have the capacity to speak English. Naturally, a Civilian Policeman who is unable to converse with his Armed Forces Police partner is of marginal value in support of our patrol efforts." The presumption suggested the problem lay on the GRI police's language skills, not the other way around. Further, Ervin complained that the GRI police officers were swamped with various tasks and sometimes took over two hours to arrive at the site of a crime/accident.[700] Both the naturalized asymmetrical relationship between GRI police and military police and the problem of the shortage of GRI police— another structural problem imposed on the island—suggested, however, that the

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698 "Investigation of Crimes Involving U.S. Personnel," dated November 29, 1966, NARA.
699 "Investigation of Crimes Involving U.S. Personnel," dated November 29, 1966, NARA.
700 "Problem areas concerning joint patrols," September 14, 1966, RG 260, Records of United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 23, Folder 1605-04: Public Safety Files, 70 (Memorandum of Understanding), NARA.

state of GI violence was a U.S. foreign relations problem. As seen in the Safety Department's employment of Executive Order 10713 and ordinances in discussing public disorder and service members' disorderly conduct, it was partially true that the problem was beyond USCAR's control.

The year 1968 marked an epoch in the history of occupied Okinawa as one of momentous change, not unlike elsewhere in the world. Against the backdrop of the deteriorating relationship between Okinawans and the military, the Johnson-Satō Joint Communique agreed in 1967 to set a timetable for Okinawa's reversion to Japan within three years. But it was Okinawans' human rights activism, transformed into the reversion movement, that forced the issue into high politics. Post-Anpo Japanese civil society' solidarity activism and Baldwin's continuous communication with U.S. policy elites also played vital roles in deconstructing the state elites' definition of security and highlighting the uneven legal treatment of Okinawans. Due to the relaxation of the travel ban, more Japanese activists visited Okinawa, and began to understand Okinawa as part of the Third World in the context of the Vietnam World. Okinawan and Japanese activists came to speak the same political language and denounced the Satō administration's subordinate relationship with the United States. The year prior to 1968, *Fukkikyō* had declared its opposition to the U.S. military bases and brought the base workers' labor union, *Zengunrō*, in to join.[701] In this political climate, an increasing number of Okinawan progressives came to collectively oppose not only the occupation but also U.S. military bases.[702]

This dramatic change was reflected in the victory and rise of progressive forces in three major elections, including the first democratic election of chief executive. In the CE election held on November 11, Okinawans elected Yara Chōbyō. He had held chief executive positions in the

[701] Sakurazawa, *Okinawa gendaishi*, 130-131.
[702] Sakurazawa, *Okinawa gendaishi*, 130-132.

Association for the Protection of Children, in the OCLU, and the OTA. To secure the coalition of progressive forces, Yara had shifted from demanding the abolition of the Japan-U.S. security relationship and the complete removal of U.S. bases to the position of unequivocally declaring opposition to the Japan-U.S. Security Treaty as a whole.[703] The result of this election and the rise of a unified anti-base movement in Japan and Okinawa posed the gravest challenge to U.S. basing policies on Japan and Okinawa. The strategic bomber B-52's major crash at Kadena Air Base on November 19 only contributed further to the strain in U.S. military-Okinawan relations, especially given local knowledge of the nuclear arsenal deployed on the island.[704]

At the same time, Okinawans' resistance to the occupation and the legal regime of exception became more transnational than ever, for it incorporated a new group of participants: U.S. service members who were engaged in anti-war activism and anti-racism inside and outside military bases. Okinawa emerged as a decisive space to interrogate the interconnected nature of violence imposed on non-white populations, the legally marginalized, and the politically oppressed. The Ryukyu University students' flyer entitled "An appeal from the oppressed people of Okinawa to those of America" introduced at the opening of this chapter, asked GIs in English, "Why did you come all the way from America to kill the Vietnamese who are seeking freedom? Why do you occupy Okinawa with military bases and put us under the threat of the nuclear weapons and poisonous gas… Don't you have to join your brothers who are fighting for their freedom in their country? LET'S UNDERSTAND EACH OTHER!"[705] On November 20, 1969, Director of Public Safety Department Harriman N. Simmons attached this appeal to a memorandum titled "Efforts to

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703 Sakurazawa, *Okinawa gendaishi*, 130-138.
704 Sakurazawa, *Okinawa gendaishi*, 138.
705 "An Appeal from the Oppressed People of Okinawa to Those of America," November 19, 1969, RG 260, Records of United States Occupation Headquarters, World War II, the United States Civil Administration of the Ryukyu Islands, Public Affairs Department, Operation Division, Administrative Files, 1951-1972, Box 19, Folder 503-05: Local Intelligence & Security, 69, NARA.

Persuade Negro Servicemen to Join Radical Students," compiled for Civil Administrator. The memorandum stated:

> 1. The attached handbill was passed out to negro servicemen by persons unknown, in the "Four Corners" section of old Koza, 19 November 1969.
> 2. At 0850 hours, 20 November Public Safety received information that a few (2 or 3) negro servicemen belonging to the "Bushmasters" (a negro organization with a total membership of 55 on Okinawa) may go to Ryukyu University this morning to contact the Ryukyu University students.
> 3. GRI Police and Provost Marshal are alerted and will monitor.[706]

Another memorandum titled "Attempt to Defect," dated November 17, 1969, provides one of many examples of how Okinawans and GIs carried out solidarity activism opposing the Satō and Johnson administrations' policies on Vietnam. It read:

> 526th MI Detachment apprised this office this morning that a Caucasian, allegedly assigned to a military unit in Futenma and a veteran of the Vietnam War, has visited the Japanese Government Okinawa Office (JGOO) with an Okinawan girl this morning at 0930 hours to request political asylum. 526th agents immediately visited the JGOO; however, the individual had already departed when he was told that the office could not provide him the protection he had requested.[707]

The first memorandum's reference to GRI Police and Provost Marshal's surveillance demonstrates that the occupation authorities' counter-measures to remove challenges to U.S. basing policy depended upon intelligence. The targets of surveillance were no longer leftist Okinawans, like Senaga, alone: U.S. citizens engaged in anti-war activism—either soldiers or others—and Japanese activists were added to the list. While citizens of these three sites deepened their relationship, their state authorities placed equal emphasis on deepening intelligence

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[706] Memorandum for Civil Administrator "Efforts to Persuade Negro Servicemen to Join Radial Students," November 20, 1969, RG 260, Records of United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 19, Folder 503-05: Local Intelligence and Security, 69, NARA.

[707] Memorandum "Attempt to Defect" for Deputy Civil Administrator, November 17, 1969, RG 260, Records of United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 19, Folder 503-05: Local Intelligence and Security, 69, NARA.

collaboration. For instance, on November 26, 1968, at a meeting held among high-ranking military officials at Kadena Air Base, Lt. Col. Perry stated, "Four [GRI] police officials have indicated concern as to what was going to happen to their security files, particularly those pertaining to anti-Government of the Ryukyu Islands (GRI) activities after Yara takes office… Some police officials have expressed the feeling that the only way they can safeguard their files is to turn them over to CIC (Counterintelligence Corps)."[708] Further, USCAR's memorandum for High Commissioner F. T. Unger titled "Evaluation of GRI Police Department by GOJ Officials (Hirotsu and Watanabe)" reported that "[t]he capabilities of the Ryukyu Police Force as regards the monitoring and copying with activities of communist and leftist oriented groups in Okinawa is alarming. The force numbers 1,800 of which 48 are assigned to counterintelligence activities, but because of other duties only 10 can be considered as being directly engaged in CI activities." The report noted, "Japanese police organization and manning is such that intelligence activities are a major function and receive greater emphasis than they do in U.S. police systems."[709]

Protest against the Vietnam War, the fusion of cultures of resistance, and state-sponsored anti-leftist intelligence collaborations were rapidly transforming Okinawa into a hotbed of dismantling the Japan-U.S. security partnership. GI violence, including crimes committed by those who did not want to be sent to Vietnam, brought minor, yet important, policy changes in the U.S. handling of GI cases. On April 17, 1967, "A memorandum of Understanding, relative to joint

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[708] Memorandum for the Record, "Special Projects Group Meeting 18 November 1968," 26 November 1968, RG 260 Records of United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 9, Folder 1605-05 Police Activities Files (68), NARA.

[709] William J Truxal, Col, GS, Assistant Chief of Staff, G2, Department of the Army, Memorandum for High Commissioner: "Evaluation of GRI Police Department by GOJ Officials (Hirotsu and Wtanabe)," August 5, 1968, RG 260, Records of United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 9, Folder 1605-05 Police Activities Files (68), NARA.

investigation of crimes and offenses alleged to have been committed by a member of the U.S. Forces... [was] signed and placed into effect by the Director, GRI Police and the Provost Marshal, USARYIS." Under this agreement "A GRI directive from Police Headquarters is assigned to duty at USARYIS Provost Marshal's Criminal Investigation Division to assist with the coordination of investigative efforts of US/GRI Police."[710] Still, GRI police were not authorized to enter U.S. military facilities for apprehension and investigations, and a series of heinous cases committed after 1967 remained unresolved.[711] Three years later, however, USCAR would conclude that more changes in the area of joint investigations were necessary to cope with locals' furor over public disorder and mistrust in U.S. military justice and Japanese civil society's growing attention to such a climate.

A particularly gruesome stabbing of a high school girl by a GI in an attempted rape in Gushikawa City on May 30, 1970, incited large-scale, island-wide protests. Immediately after the incident, which gravely injured but did not kill the victim, about 2,500 protesters—the local residents of Gushikawa City, teachers, students, and grassroots organizers—held a rally on May 31 in front of a military base where the suspect was stationed. They called for an open trial and the removal of military bases from Okinawa.[712]

Protest movements immediately spread across the island, followed by Okinawan and Japanese media's sympathetic coverage. Protest signs called the accused "a beast" and even

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[710] The United States Civil Administration of the Ryukyu Islands Public Safety Department, "Position Paper: Crimes and Traffic Accidents Involving U.S. Personnel," August 11, 1970, RG 260, Records of United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 21, Folder: 1601-03a: Civil Action REF Papers (Position Papers) (70), NARA.

[711] Joint Memorandum "GRI Police" from HICOM/CINCPACREP RY to CINCPAC, August 11, 1970, RG 260, Records of United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 22, Folder 1605-04 Police Liaison Files (70) (Press Release), NARA. 232; *Ryūkyū shinpo*, evening edition, November 18, 1970.

[712] *Ryūkyū shinpo*, June 1, 1970.

demanded, "hang the GI."[713] The GRI Legislature adopted a statement of protest on June 6 linking the root cause of the incident to military "extraterritoriality."[714] A few days later, the *Ryūkyū shinpo* reported that the apprehension rate of heinous cases was much lower in those cases involving GIs (22 percent in 1968 and 34 percent in 1969) than those cases involving civilians only (70 percent in 1968 and 78 percent in 1969). The article explained that restrains on GRI police's rights to investigation and apprehension had led to this outcome.[715] Japan's most-read conservative newspaper's periodical, the *Shūkan Yomiuri,* sympathized with Okinawans' demand for human rights. It urged the Japanese to pressure the military to take preventive measures immediately, recognizing the root cause as U.S. basing, noting: "Otherwise we will face a flood of foreign soldiers' crimes, an issue that questions the dignity of an independent nation, in 1972." Still, the article also critiqued post-occupation Japanese civil society's tendency to frame U.S. extraterritoriality as an issue of territorial/national sovereignty rather than one of fundamental human rights.[716]

In this political climate, USCAR recognized the occurrence of similar incidents and the urgency to cope with the protest movement against U.S. FCJ policy and military justice.

> Barring the recurrence of another strongly emotional incident comparable to the 30 May attack on the high school girl, we may have seen the worst of the allegations of a "U.S. Crime Wave' on Okinawa." To this end, we developed the improvements to our crime prevention and control procedures set forth… Indications are that the Okinawans, will, nevertheless, continue to be hypersensitive on "extraterritoriality" issue, tend to magnify instances of alleged GRI police importance in handling U.S.-Ryukyuan incidents, and continue to push for GRI police and court jurisdiction over Americans.[717]

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[713] *Ryūkyū shinpo*, evening edition, June 2, 1970.
[714] *Okinawa Times*, evening edition, June 2, 1970.
[715] *Ryukyu shinpo*, evening edition, June 6, 1970.
[716] "Okinawa Beihei hanzaishi: Aete senryōgun o kokuhatsu suru," *Shūkan Yomiuri*, July 10, 1970, 13.
[717] HICOMRYU, OKINAWA RYUIS, "Allegations on U.S. Crimes on Okinawa," July 30, 1970, RG 260, Records of United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 22, Folder: 1605-04 Police Liaison Files 1970 (GRI Police Role), NARA.

As indicated in the above excerpt, the occupation authorities recognized that Okinawans' aversion to "extraterritoriality" reached an unprecedented level in the summer of 1970 even though the reversion was still two years ahead.

"Continuing public concern in Okinawa and Japan over offenses/incidents involving US service personnel make it imperative that announcement of agreed expansion of GRI police role be made at earliest possible date as demonstration of tangible steps by US authorities to ameliorate problem," noted USCAR on August 7, 1970.[718] On August 24, USCAR and GRI police held a joint press conference to explain the following major revisions to the previous agreement: a) GRI police would be allowed to enter U.S. military facilities for the purpose of assisting criminal investigations accompanied by military police; b) the military would consider authorizing GRI police to be present at interrogations on base; c) the military would announce dates of court martials in advance; and d) information on autopsies would be available for Okinawans.[719] Even as the announcement discussions between GRI police and USCAR continued, the signing ceremony of the revised memorandum of understanding took place on November 18.[720]

Behind the scene, however, USCAR elites relied on closed-door communications with GRI police to secure the strict legal hierarchy between U.S. forces and the Okinawans, as State Department officials did in 1953. For instance, they discussed at a High Commissioner's conference: "During the 1 July talks with GRI police, it was evident that in many situations 'form' was more important than actual 'substance' suggesting certain rewordings and public image oriented changes could satisfy the GRI's interests without interfering with essential US authority

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[718] Joint Memorandum "GRI Police Role," August 7, 1970, RG 260, Records of the United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 22, Folder 1605-04: Police Liaison Files, 70 (Press Release), NARA.
[719] *Okinawa Times*, August 25, 1970.
[720] *Ryūkyū shinpo*, evening edition, November 18, 1970.

and responsibility."[721] Further, Simmons noted on July 21: "Mr. Arakaki [Chief of GRI police] stated anything interfered by Mr. Tamanaga [crossed and replaced with another person's name] GRI police were dissatisfied with US Forces relationship was, in his opinion, purely a statement for political purposes. The Chief stated that relationship with US Forces were excellent with a few minor operational procedures presently being reviewed."[722]

However, another aspect of the policy change was undeniably the level of Okinawans' resistance to the U.S. military legal regime of exception which even made U.S. elites cautious not to grant legal privileges the Japanese did not have under the SOFA. For instance, a joint message compiled by the U.S. Embassy in Tokyo and High Commissioner noted, "Amb[assador] will appreciate necessity for U.S. side to exercise care not to exceed practices in Japan under SOFA arrangements."[723] Or, more concretely, the U.S. authorities noted, "It is assumed that the provisions of Article XVII, SOFA (criminal jurisdiction article), the arrangements and agreements thereto, will be applied to Okinawa. It is recommended that the practices in US in Okinawa now or to be applied prior to the reversion, should not be more liberal in favor of GRI than the procedures currently in effect under the US-Japan SOFA."[724] While adopting the policy change,

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[721] HICOM Conference "US-GRI Police Relationship," July 6, 1970, RG 260, Records of the United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 22, Folder 1605-04: Police Liaison Files, 70 (Press Release), NARA.

[722] "Memorandum for the Record," July 21, 1970, RG 260, Records of the United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 21, Folder 1601-03: Civil Action Ref Paper (Memo to CA or HICOM), NARA.

[723] Joint message form from HICOMRY OKINAWA RYUIS to AMEMB TOKYO, "Improved U.S.-GRI Police Cooperation," August 14, 1970, RG 260, Records of the United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 22, Folder 1605-04 Police Liaison Files 1970 (GRI Police Role), NARA.

[724] From COMUSJAPAN to RUAOADA/HICOM RYUIS, "GRI Police Role," August 7, 1970, RG 260, United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 22, Folder 1605-04 Police Liaison Files 1970 (GRI Police Role), NARA.

they recognized that "US GRI police memorandum will go a long way to blunt efforts by antibase elements… seeking to make major issue over allegations involving US crimes on Okinawa."[725]

The 1970 Koza "Riot"

The 20 December 1970 protests embodied the synthesis of violence and human rights demands generated by Okinawans' experience of the U.S. military legal regime of exception. It showed how deeply embedded in the community was the experience of fear, indignation, inequality, and sorrow brought by twenty-five years of the military occupation. In the second half of the 1960s, international solidarity came to change the ways in which Okinawans perceived GIs and advocated for social change. At the same time, the scale of the military's dominating power and violence, both physical and structural, experienced by the islanders of all social strata, turned violence into the language of retaliation and resistance for some locals. Clashes, sometimes involving violence, occurred between Okinawan and GI accusers, between Caucasian soldiers and Afro-American soldiers, between Afro-American soldiers and military police, and between Okinawan gangs and GIs.

Most frequently, though, taxi drivers became the victims of GI violence. The *Okinawa Times* of 6 June 6 1970 reported on a taxi driver in Koza whose left ear was bitten by a GI when the taxi driver followed him and demanded that he pay the fare of the ride.[726] Yet Okinawans, including taxi drivers, also resorted to violence in confronting U.S. service members, sometimes

[725] Joint message from HICOM/CINCPACREP RY to CINCPAC, "GRI Police Role," August 11, 1970, RG 260, Records of the United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 22, Folder 1605-04 Police Liaison Files 1970 (GRI Police Role), NARA.
[726] *Okinawa Times*, June 5, 1970.

entirely disproportionate to the crime as fourteen to fifteen Okinawans lynched a GI in the Henoko area after they had found him throwing rocks into a woman's house.[727]

The local newspapers kept up meticulous coverage of GI crimes and the state of military justices on the eve of the Koza rebellion. On June 16, the *Okinawa Times* reported that an Afro-American MP officer helped an Afro-American soldier escape into a base before the local taxi driver received his pay.[728] A few days later, the *Ryūkyū shinpo* reported on a drunk MP officer's car crash into a house off-base. The article reported that the MP officer tried to escape without even investigating the damage let alone taking responsibility. Apparently the MP officer even pulled out a pistol to scare off onlookers.[729] The *Okinawa Times* expressed indignation at too light a sentence given to the GI who had injured the high school girl in Gushikawa (three years of hard labor), compared to the another GI having received the same sentence for the possession of marijuana on the same day."[730] A *Ryūkyū shinpo* editorial shed light on what an "open trial" meant for the locals: it was held in English by judges, prosecutors, and lawyers inside a military base where Okinawans' entry was strictly regulated. It contended under such circumstances Okinawans would not be able to find out whether all these court martial sentences were actually carried out and which cases would undergo the process of court of review and court of appeal in Washington. The editorial concluded that such a system under which they had difficulty even obtaining information on the results of military justice was a testament to "the rulers' sense of superiority and contempt for the locals."[731] Three months prior to the Koza rebellion, one local even called a court martial a "monkey trial" after observing one which acquitted a GI who allegedly attempted

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[727] *Ryūkyū shinpo*, August 15, 1970.
[728] *Okinawa Times*, June 16, 1970.
[729] *Ryūkyū shinpo*, June 25, 1970.
[730] *Okinawa Times*, August 14, 1970.
[731] *Ryūkyū shinpo*, August 13, 1970.

to rape a local woman.[732]

In mid-December, Okinawans' indignation reached another unprecedented stage. It emerged with their reaction to a fatal traffic accident that killed a middle-aged woman in Itoman City on September 18, which became one of two major controversial cases in 1970. After the crash, the locals made sure the damaged car was available as evidence to urge military police conduct proper investigations, but a court martial acquitted the perpetrator on December 11, nonetheless.[733] About 5,000 people came out to protest the result of the court martial at a prefectural rally on December 16.[734] At a USCAR Staff meeting two days later, a civil administrator reflected on his conversation with Acting Chief Executive Chinen Chōkō, the legal scholar who had served as an executive member of the OCLU in the early 1960s, with respect to the acquittal:

> As for the Ward case, Chinen's voice and hands had shaken with anger during his call to protest the acquittal. It had been a painful meeting. CA said that he hoped, if possible, to be able to read a transcript of the trial, simply for his own information on how the acquittal had occurred. The political consequences were obviously all bad, but we would simply have to live through it. The discussion of the matter with the OLDP [Okinawa Liberal Democratic Party] leaders had followed the same painful pattern as with Chinen.[735]

On December 20, a massive, disorganized, and destructive protest against extraterritoriality finally occurred in Koza City: It has since then been dubbed the "Koza Riot." The day before, a coalition of grassroots organizations had held a "Prefectural Rally against the Removal of Poisonous Gas" in the neighboring village Misato. It was held in response to a report in the *Wall Street Journal* on the leak of poisonous gas, including master gas, sarin, and VX gas, from a U.S.

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[732] Shimabukuro Mitsuo, "Watashi no iken—Saibanken o torimodosō," *Ryūkyū shinpo*, September 22, 1970.
[733] Okinawa jinken kyōkai, S*engo Okinawa no jinkenshi*, 73-74.
[734] *Okinawa Times*, December 17, 1970.
[735] Department of the Army, U.S. Civil Administration of the Ryukyu Islands, "Memorandum for the Record: Summary of Topics Discussed at USCAR Meeting, 1040 Hours, 17 December 1970," December 18, 1970, RG 260, Records of the United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 21, Folder 1601-03: Civil Action Reference Paper, Staff Meeting (70), NARA.

military facility a year and a half earlier.[736] Even at midnight, the base-town Koza was crowded with people, including those who had just participated in the rally against the leak of the poisonous gas. According to a GRI police report, a non-fatal traffic accident involving a GI car at one o'clock was the final straw that got the crowd out of control and led to a six-hour violent revolt by hundreds of protesters and thousands of onlookers.

> Accident Disposition: Policeman TAMINATO went immediately to the scene by motor cycle upon being informed of the accident. The accident-causing foreign automobile was stopped on the Naha-bound outer lane of the road. The injured Okinawan male was lying face down in front of the vehicle. Two civilians were attending to the injured while the driver was standing beside the involved vehicle. Policeman TAMINATO asked the injured person, "Are you all right?" and the injured person nodded in the affirmative. The injured person appeared to be quite intoxicated. At that time a crowd of about 50 persons had already gathered at the accident site and was claiming that this is a "second Itoman accident." As soon as Policeman TAMINATO observed the situation, he motorcycled to the main Police Station to report the accident and call for an ambulance.[737]

The "Source" of the GRI police report acquired in Naha on January 16, 1971 had been redacted and classified. Yet, the same document which I obtained under the Freedom of Information Act on September 22, 2017 reveals it was "A Government of Ryukyu Islands police official who has been reporting generally reliable information since late 1969 and who has been trained in and has considerable experience in information gathering..."[738]

The GRI police report, which the USCAR Public Safety Department obtained via the informant, continues:

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[736] Sakurazawa, *Okinawa gendaishi*, 142.

[737] Memorandum of Dissemination, "Summary Police Report on Koza Riot of 20 December," December 20, 1970, RG 260, Records of the United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 32, Folder 1605-02: Koza Disturbance (71), NARA.

[738] Memorandum of Dissemination, "Summary Police Report on Koza Riot of 20 December," December 20, 1970, RG 260, Records of the United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 32, Folder 1605-02: Koza Disturbance (71). It was released under the Freedom of Information Act on September 22, 2017.

> During the investigation, there was no direct obstruction by the crowd which engaged in jeering. Thus, the investigation proceeded rather smoothly to the end. At the time the injury-causing vehicle was about to be moved, the crowd had swelled to more than 200 persons. Shouting phrase, such as "Don't let the MPs have the car," "If you let them go like that, it will become a second Itoman," and "Try them at a people's court," the crowd surrounded the car and blocked its forward movement. At the same time, the car was being pounded by fists and kicked. Therefore, Assistant Inspector Shinzato attempted to reason with the crowd, asking them to go home since the police would… conduct a fair and impartial investigation and that the car would be kept in the custody of the police. The crowd retorted with remarks, "What's fair and impartial. The police investigation cannot be trusted," "Don't let them go since the case will end up not guilty as in the case of Itoman," and would not respond. [739]

Afterwards, a group of people who witnessed the MP allowing the accused driver to escape from the scene via a military vehicle started throwing rocks. They shouted, "Yankee, go home!" and started overturning military vehicles. About twenty military police officers arrived at the site and shot in the air. The *Okinawa Times* reported through its daily edition of December 20 that the crowd "reached over two thousand at 3:30 now."[740] During the rebellion, eighty-two military vehicles were damaged and 40 people were injured (40 U.S. servicemen, 5 Okinawan guards, 16 U.S. civilians, 14 local residents, 7 suspects, and 6 military police officers). 21 people were arrested.[741] Many base town workers and taxi drivers were alleged to have been involved in the protest. However, an *Okinawa Times* reporter commented at a roundtable debate in the immediate aftermath that "the crowd were sympathetic with black soldiers for some reason. There was a drunk black soldier, but the crowd said, 'poor guy, let him go.'"[742]

The majority of the Okinawans supported the rioters.[743] On December 20, the GRI

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[739] Memorandum of Dissemination, "Summary Police Report on Koza Riot of 20 December," December 20, 1970, NARA.
[740] *Okinawa Times*, December 20, 1970.
[741] "Koza Riot of 20 December 1970," undated, RG 260, Records of the United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 32, Folder 1605-02: Koza Disturbance, NARA (71).
[742] *Okinawa Times*, December 21, 1970; *Okinawa Times*, evening edition, December 21, 1970.
[743] Ōta Masahide, "Tan naru hanbei kanjō kara dewa nai," *Shūkan Asahi,* January 8, 1971, 152-153.

Legislature protested High Commissioner Lampert's high-handed remark that the removal of poisonous gas could be delayed as long as such a "threat" existed in Okinawa.[744] The December 21 editorial of the *Okinawa Times* entitled "Lessons of the 'Koza turmoil': It cannot be dismissed with assertion over anti-violence'" argued that locals' deep distrust in military justice, accumulated over a quarter century from the Kokuba-kun incident to the recent Itoman incident, caused this disorder, and that Okinawans' human rights were not protected despite the provision of Executive Order 10713 concerning it. "Okinawans overcame wall after wall to protect human rights with the power of popular resistance. This time the spontaneous popular resistance deviated from its usual path. Yet a chain of similar events could happen if one [military] fails to solve the root problem and quell the surface only," asserted the editorial. In other words, the positioning was that the Okinawans islanders, who used to be seen as a "docile" people by U.S. rulers, just demonstrated how they could also rebel like anti-colonialists in Southeast Asia if the they continued to be subjected to colonialist rule. And the most concrete solution the newspaper demanded was the transfer of criminal jurisdiction over cases committed by off-duty U.S. military personnel to the locals.[745] On December 25, GRI legislators left for Tokyo to collectively call on Japanese authorities to request local jurisdiction and the removal of poisonous gas on behalf of Okinawans.[746] On December 26, Chief Executive Yara told Foreign Minister Aichi, "There's nothing other than local jurisdiction we want."[747]

It would be a mistake, however, to conclude that Okinawans' reactions to the Koza rebellion were monolithic. In the GRI Legislature on December 24, LDP legislators proposed to add a statement expressing Okinawans' regret for the incident and showing their commitment to

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[744] *Okinawa Times*, December 21, 1970.
[745] *Okinawa Times*, December 21, 1970.
[746] *Okinawa Times*, December 26, 1970.
[747] *Okinawa Times*, December 27, 1970.

introducing a better system of public safety control. Opposition parties demanded the deletion of the statement, which they argued would be taken as an apology. In the end, the LDP's proposal was not adopted, and the opposition parties agreed to withdraw from criticizing High Commissioner Lampert in the statement. Instead, they collectively called for the transfer of jurisdiction, the military's tighter discipline, the proper conducts of court martial, the disclosure of information on the results of trials, and sufficient compensation for victims and their families.[748]

By the Koza incident, Japanese civil society's attention to Okinawa's reversion had been growing rapidly in parallel with the development of the locals' struggles as well as the reemergence of anti-base sentiment in Japan. The Vietnam War and the occurrence of major base-related incidents—most prominently the 1968 U.S. military jet Phantom crash on Kyūshū University—in the midst of the rising student movement compelled the Japanese public to look beyond the economic "miracle" in reassessing the post-Anpo Japan-U.S. security relationship. As if to prove Ambassador Reischauer right, Ambassador Meyer and High Commissioner Lampert's semi-annual report of November 1969 on Okinawa recognized that "[t]he events of this period [the last six months] have moved the entire question of Okinawa reversion to a more immediate and pressing stage and made it by far the most urgent issue of US/Japanese relations and of domestic Japanese politics… The strongly adverse reaction in Japan and Okinawa to the November 19 B-52 crash in Okinawa accentuated the already growing feeling in conservative circles that it may no longer politically prudent to risk isolation from what may be the mainstream of public opinion by… going very far down the road toward giving the Americans what they say they want on Okinawa."[749] In this political context, the Japanese government had been negotiating with U.S.

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[748] *Okinawa Times*, December 25, 1970.

[749] "OKINAWA: SEMIANNUAL AMBASSADOR/HICOMRY SIG-IRG SUBMISS10N ON REVERS10NARY PRESSURES IN APAN AND OKINAWA," November 1, 1969, RG 260, Records of the US Civil Administration of the Ryukyu Islands Records of the Liaison Department (HICRI-IN), Box 2, NARA.

authorities on the reversion treaty and requesting the expansion of GRI police's legal rights. In the wake of the incident, Foreign Minister Aichi commented, "I am greatly shocked by such an unfortunate incident like this which happened when the government is making an effort to achieve 'nuclear-free and home-land level reversion in 1972.'" He stated that the Japanese government would urge the U.S. government to take preventive measures.[750]

The Japanese media covered the protest in Koza extensively and in support of the protesters in efforts to capture the political atmosphere in Okinawa and Japan. Still, by and large, the mainstream media's attitude toward the Japan-U.S. Security Treaty remained ambivalent as sampled in *Sunday Mainichi*'s special coverage of the Koza incident: "History has proven that bases can be effective only when their relationship with locals are amicable. It is also evident that bases cannot be maintained while violating the locals' human rights."[751] In sum, the Japanese public demanded, by and large, the full recovery of sovereignty over Okinawa and the United States' respect for Okinawans' local jurisdiction, but this did not indicate the removal of all bases from Okinawa.

Unlike in 1957, Japanese progressives responded to the Koza incident with a deeper commitment to solidarity activism and a greater sense of comradeship and Third-Worldism. They opposed the unequal distribution of U.S. military bases and called on the Satō administration to demand the complete removal of bases and nuclear weapons from Okinawa. Upon the Koza incident, opposition parties condemned the United States' high-handed extraterritorial rule in Okinawa and urged the Satō administration to hold the U.S. state elites accountable for protecting the lives and wellbeing of the locals without waiting until reversion. Their concrete demand was

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[750] *Mainichi shinbun*, December 21, 1970.

[751] "Tokushū 1971 nen: Koza jiken ga Nichibei kankei ni nagekaketa kage wa," January 10, 1971, *Sunday Mainichi*, 21; See also: "Okinawa Koza jiken: 25 nen no nintai no seppa tsumatta hōfuku," *Shūkan Asahi*, January 8, 1971,168-169.

the transfer of jurisdiction over off-duty cases to Okinawa.[752] The Socialist and Communist parties held an emergency meeting with Okinawan activists residing in Japan, attended by about three hundred people, at which they protested the United States' "lawlessness rule in Okinawa." One Okinawan activist stated at the gathering, "given the situation that Okinawan students are boycotting classes, self-identified progressives in Japan are still far behind. Don't just make sympathetic donations or appeals. If you can destroy the planned deployment of Self-Defense forces to Okinawa, for example, maybe we can defeat American imperialism and the LDP administration's policy."[753] In a broader picture, progressive political forces consisted not only of the existing leftist parties but also of a growing number of the New Left, not affiliated with these parties, and students with varied degrees of commitment to any of these groups. But progressives still could not mobilize anywhere near the same masses of people against the automatic renewal of the Japan-U.S. Security Treaty in June 1970 as had been the case during the Anpo Movement of 1960.

Unlike the previous decades, however, Okinawans' struggles for local jurisdiction and human rights gained supporters from an unprecedentedly large population of U.S. citizens and soldiers. On December 22, 1970 two white soldiers representing the U.S. soldiers' Okinawa Committee for the Protection of Freedom (*Jiyū o mamoru Okinawa iinkai*, with two-thousand membership) visited the Okinawa branch of *Gensuikyō*, the Japan Council against Atomic and Hydrogen Bombs. Their statement of solidarity referred to Afro-Americans' struggles against "four hundred years of racial discrimination" and related it to "the oppression of and racism against Okinawans." On December 24, USCAR's internal record commented on Afro-American soldiers'

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752 *Yomiuri shinbun*, December 21, 1970.
753 *Okinawa Times*, evening edition, December 24, 1970.

solidarity with the Koza demonstrators as follows:

> Yesterday, about 30 Afro-American soldiers stationed at the Kadena U.S. Air Force Base issued an "APPEAL FROM THE AFRO-AMERICANS AT THE BASE TO OKINAWAN PEOPLE," expressing support for the Koza people's anti-U.S. struggle. The appeal stressed: "Nothing but such an action can defeat the oppression by power." It declared that the Afro-American soldiers will further strengthen their support to the struggle of the Okinawan people and fight shoulder to shoulder with them.[754]

USCAR and U.S. Embassy in Tokyo responded with minor policy changes. On December 21, Ambassador Armin Henry Meyer stated that the U.S. government would press ahead with the removal of poisonous gas as announced earlier.[755] USCAR reinforced patrols and the system of collaboration between GRI police and the military immediately after the incident. In response to the GRI Legislature's call for local jurisdiction, High Commissioner Lampert asked the Department of the Army to "approve our proposed plan for appointing GRI official observers to our courts martial" and planned to announce it on January 5. In the draft of a letter addressed to the Department of Army in Washington, Lampert wrote, "I will not put an end to all demand for transfer of full jurisdiction over off-base offenses to local courts, but hope it will be helpful, particularly among the more responsible Ryukyuans." The announcement was made as stated. Yet, even while having a series of meetings with Okinawan leaders and within USCAR regarding the repercussions of the Koza incident, Lampert still described Okinawans' reactions as "emotional," not rational demands for the rule of law and equality before the law. Lampert's letter read: "Your assessment of the high emotional content of local attitudes is all too accurate. Unfortunately, an unsympathetic if not outright hostile press consistently attempts to thwart our efforts at rational

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[754] Document "022829, HICOM COPY," December 20, 1970, RG 260, Records of the United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 32, Folder 1605-02: Koza Disturbance (71), NARA.

[755] *Okinawa Times*, December 22, 1970.

exposition by distorting or misrepresenting our public statements."[756] His stance was that Okinawans were to be blamed for misunderstanding his earlier statement and the United States' handling of military justice.

Joining the Regime of the 1953 Japan-U.S. Confidential Agreement

On May 15, 1972, the United States returned administrative rights over Okinawa to Japan. Two televised public ceremonies were held in Naha and Tokyo to celebrate the reversion. But only a slim majority of Okinawans polled earlier that year actually favored reversion under the conditions proposed, 51 percent for versus 41 percent against.[757] Though the majority of Okinawans realized that reversion was a necessary step to enhance their legal status, this did not mean a reduction of bases to the level of "the "homeland," nor did it prohibit the United States' deployment of nuclear weapons. The reversion had materialized only after the state leaders of Japan and the United States concluded a series of confidential agreements, which authorized the United States to secure the "free use" of bases in Okinawa without complying with the 1960 Security Treaty.[758] Further, Okinawa's entry into the 1960 Japan-U.S. Status of Forces Agreement meant its entry into the regime of the 1953 Confidential Agreement.

Laying out the fundamental basis for the reversion in November 1969, Ambassador Meyer and High Commissioner Lampert wrote that "[t]he Prime Minister himself realizes that a genuine consensus between the United States and Japan on the role of post-reversion US bases in Okinawa

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[756] Draft of letter from LTG Lampert HICOM Okinawa to MR Ward, DUSA (IA), Washington DC, undated, RG 260, United States Occupation Headquarters, World War II, The U.S. Civil Administration of the Ryukyu Islands, Public Safety Department, The Operations Division, Administrative Files, 1951-72, Box 32, Folder 1605-02: Koza Disturbance (71).
[757] Sakurazawa, *Okinawa gendaishi*, 166.
[758] Yoshitsugu Kōsuke, *Nichibei Anpo taiseishi* (Tokyo: Iwanami shuppan, 2018), 63-75.

should play with respect to the security of Japan and the Far East is very much in the interest of the two countries. Yet, since his re-election to the party presidency, he has made one significant concession to the pressures, both from the public and from within his party, favoring homeland level." Yet, they analyzed that "only a confirmed gambler would venture to bet that Sato could get away with agreeing to much in the way of 'extra freedoms' on US bases on post-reversion Okinawa, at least on a permanent basis." [759]

With regard to the 1953 Confidential Agreement, a Tokyo Embassy's aerogram to Manila on February 28, 1970, confirmed that the Japanese authorities had been faithfully fulfilling the policy of wavering local jurisdiction over most off-duty cases throughout the 1960s. Once again, it was a response to an inquiry from Manila regarding the declassification of the 1953 Agreement. And once again, the Embassy declined:

> Past experience indicates that the Japanese would be unlikely to accede to a request for release of information concerning criminal jurisdiction because the arrangements are highly favorable to the U.S. and such release and consequent public attention might be interpreted in Japan as drawing attention to alleged laxity on the part of the Japanese Government in protecting Japanese national interests. Similar requests in the past to release information of this sort have been turned down.[760]

But it also noted: "Should Embassy Manila believe that circumstances require frank discussion with GOP of arrangements in Japan, we would appreciate being informed, to see whether it might be possible to provide the GOP on a close-hold confidential basis some paraphrase of the language relating to Joint Committee agreements and understandings.[761]

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[759] "OKINAWA: SEMIANNUAL AMBASSADOR/HICOMRY SIG-IRG SUBMISS10N ON REVERSNARY PRESSURES IN JAPAN AND OKINAWA," November 1, 1969. 11, RG 260, Records of United States Occupation Headquarters, World War II, the United States Civil Administration of the Ryukyu Islands, the Liaison Department (HICRI-LU), Box 2, NARA.

[760] Airgram 208 from American Embassy, Tokyo to American Embassy, "U.S. Japan SOFA: Criminal Jurisdiction" February 28, 1970, RG 59, General Records of the Department of State, Subject-Numeric Files, 1970-1973, Box 1754. Folder: Def 15-3, Japan-U.S., NARA.

[761] Airgram 208 from American Embassy, Tokyo to American Embassy, "U.S. Japan SOFA: Criminal Jurisdiction" February 28, 1970, NARA.

Unsurprisingly, it took less than half a year after formal reversion for the "Japanese" resistance to the postwar U.S. military legal regime of exception to reappear in the wake of a controversial GI crime in Okinawa, now a prefecture belonging to the regime of the 1953 Confidential Agreement. On September 20, A U.S. Marine Corporal James S. Benjamin shot a local houseboy named Enokawa Morio with a rifle on base at Camp Hansen when Enokawa was shining shoes. It was an off-duty incident. Unlike before reversion, when U.S. authorities made every effort to retain the custody of the accused GI to maximize U.S. jurisdiction, post-reversion public pressure forced the U.S. government to transfer Benjamin to the custody of the Japanese authorities upon indictment on October 3. Yara, as Governor of Okinawa Prefecture, and Lieut Gen. Gordon M. Graham, as commander of the United States forces in Japan, had in fact discussed the treatment of this matter via diplomatic channels. *The New York Times* introduced Yara's letter written on September 26, which expressed his indignation at the "inhumane brutal incident" and referred to "1,300 cases of murder, burglary, bodily injury assault, arson, rape, intimidation, narcotics, crimes and traffic accidents in the four months after the reversion of Okinawa to Japanese administration (Quoting the article)."[762]

Even though the Japanese authorities exercised primary jurisdiction over this case, Benjamin, a Vietnam War veteran, was acquitted for reasons of his abnormal mental condition at the time of the offense in 1974. He was sent to a navy hospital in California after the trial.[763] *Ryūkyū shinpo* editorialized provocatively on 22 September 1972:

> This shooting incident was an inevitable outcome of the Japanese and U.S. governments' policy of maintaining military bases in Okinawa. The real perpetrator who compelled this enlisted man to trigger the bullet of disdain was the basing policy. Unless we condemn this real perpetrator and oust it, innumerable Enokawas will have to keep bleeding.[764]

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[762] *The New York Times*, November 16, 1972.
[763] Fukuchi Hiroaki, *Beigun kichi hanzai: Imamo tuzuku Okinawa no kanashimi to ikari* (Tokyo: Rōdō kyōiku sentā, 1992), 71-74.
[764] *Ryukyu Shimpo*, September 22, 1972.

Likewise, the legal scholar at Okinawa University, Ishijima Hiroshi, argued, "The density of bases in Okinawa is about two hundred times higher than that of Japan. Does this translate into two hundred times more protection of human rights in Okinawa than in Japan? The Benjamin case implicitly symbolizes the real condition of Okinawa's reversion."[765]

On a more positive note, it was evident that what Okinawans achieved through their struggles under military occupation surpassed the Japanese commitment to human rights and constitutional democracy. Building on opinion polls, the constitutional legal scholar at Okayama University, Ueno Hirohisa, argued in June 1972 that pacifism is strong in both Japan and Okinawa. Yet, Japanese aspirations for peace did not match the level of their human rights consciousness, while Okinawans' pacifism places human rights at its core: It is not abstract like the Japanese counterpart.[766] The U.S. military legal regime of exception thereby continued to operate—and continued to be confronted by resistance—in post-1972 "Japan," as it had between 1952 and 1972.

Conclusion

This chapter opened with Eisenhower's declaration of Presidential Executive Order 10713, whose authorization of the governance of Okinawa made Ambassador MacArthur gravely concerned in 1958. "If I am not mistaken, Okinawa is just about the only free world territory which we or our allies occupied where military administration has been continued since the end of the war," he wrote to Dulles, ignoring Guam and the Northern Marianas. MacArthur and his colleagues in the

[765] Ishijima Hiroshi, "Benjamin jiken to Nichibei chii kyōtei—Okinawa kenmin no jinken," *Hōritsu jihō* 44.13 (November 1972), 149.
[766] Ueno Hirohisa, "Hondo yori takai Okinawa no kenpō ishiki," *Shin Okinawa bungaku* No. 22 (June 1972): 74-79.

State Department were well aware of the contradictions of the authoritarian U.S. military rule in Okinawa. The USCAR elites' racist and patronizing attitude toward Okinawan leaders, including Chief Executive Tōma, was the normalized landscape of the Cold War island. The military legal regime of exception existed as an intricate fabric of the postwar U.S. national security state setting the definitions of law and civilization and projecting power over people they thought of as "docile."

The post-1957 trajectory of Okinawa, however, turned Ambassador MacArthur's 1958 prediction—that the U.S. military rule would end up like French colonialism in Morocco, Tunisia, or Algeria—into a reality. In the aftermath of the 1959 U.S. jet crash on Miyamori Primary School, Okinawans distilled what they understood as the most essential element of the ACLU co-founder Baldwin's message upon his visit, and used it to establish their own human rights organization, the Okinawa Civil Liberties Union, in 1961. The reversion movement grew in direct connection with popular human rights activism. Despite the constant internal ideological rivalry, the islanders continued forming a united front in the face of what they saw as military injustice and disregard for the legally marginalized Okinawans' human rights. In the second-half of the 1960s, the U.S. military legal regime of exception was compelled to cope with the rise of assaults committed against the locals by U.S. soldiers temporarily deployed for their duties in Vietnam. Okinawans' distrust in military justice and dissatisfaction with compensation gradually reformed the system of joint control between GRI police and military police. Further, during this period Okinawans' resistance to U.S. extraterritoriality incorporated supporters from outside the island, who condemned state elites' militarism and appealed for anti-racism, Third-World solidarity, and peace. These activists became the target of state surveillance regardless of difference in race, nationality, class, and gender.

The 1970 Koza incident was an unprecedentedly explosive protest. It represented a

synthesis of violence—spontaneous but restrained—and the internalization of human rights consciousness, both of which had been accumulated during two decades of the U.S. occupation. In the wake of the event, the local and international resistance to postwar U.S. extraterritoriality advocated for Okinawa's greater autonomy from the United States and the expansion of local jurisdiction.

Okinawa's reversion to Japan materialized in 1972. Yet, the "Benjamin case" which occurred a few months after reversion symbolized another inception for post-reversion Okinawa, now under the regime of the 1953 Confidential Agreement.

Epilogue

The reemergence of U.S. extraterritoriality in mid-twentieth-century "Japan"—including the occupied Ryukyu islands—generated two outcomes: Japan's junior—that is, unequal—political partnership with the United States, and a popular struggle against that inequality and for universal human rights on the local and individual level. The trajectory of the postwar American military legal regime of exception in modern Japan revealed the tension between empire's law and the Westphalian system, the tenacity of the imperialized and contingent logic of civilization in legitimatizing extraterritorial power, and the limits of "territorial" sovereignty and "national" sovereignty as political demands in confronting racial, legal, and political inequality.

After occupied Okinawans regained Japanese citizenship in 1972, public support for the Japan-U.S. relationship generally stabilized. In the first years, the continuation of the immense U.S. military presence—invoked dismay and frustration for Okinawans and Japanese who called for the complete removal of bases on the islands. In the wider Japanese public sphere, though, there was a new confidence that the subordinate relationship with the United States could be overcome. For example, *Sunday Mainichi* urged Prime Minister Satō in a masculinized tone in December 1971, "if you are a man, give a kick to [cancel] the talk with Nixon!"[767] A few months after Okinawa joined the Japan-U.S. Security Treaty and the SOFA, the Tanaka administration (1972-1974) normalized Japan's diplomatic relationship with the People's Republic of China (PRC). In 1973, 34 percent of the Japanese population endorsed neutralist diplomacy, surpassing those who endorsed Japan's commitment to the capitalist Western bloc.[768]

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[767] "'Otoko nara' Nikuson kaidan kette mina," *Sunday Mainichi*, December 1971, 21-25.
[768] Yoshitsugu Kōsuke, *Nichibei Anpo taiseishi* (Tokyo: Iwanami shuppan, 2018), 95.

Notably, in light of the trans-imperial history of colonization and decolonization, the dismantling of the early Cold War structure in Asia brought by these diplomatic breakthroughs proceeded in parallel with postwar Japan's neglect of colonial and war responsibility. At the state level, the Japan-China Joint Communique of 1972 was adopted upon the PRC leadership's agreement to shelve remaining issues of Japan's former empire, similar to the normalization of relations with the Republic of Korea in 1965. At the popular level, the political clout of progressive ideas that had invigorated students activism and counter culture in the previous decade—Third-Worldism, anti-statism, anti-militarism, and anti-imperialist internationalism—also declined, especially after the Japanese United Red Army's hostage incident in 1972.[769] In this sense, Okinawa's decolonization merely meant the acquisition of material conditions equivalent to those of 1950s-Japan as it entered the regime of the 1953 Confidential Agreement, in effect blurring the demarcation between occupation and post-occupation conditions.

For the rest of the 1970s, Japanese and U.S. policy elites held neutralism at bay by elevating the Japan-U.S. security partnership to global significance—with Japan's support of U.S. military activities in the Middle East. Further, Japanese policy elites adopted the so-called "sympathy budget" in 1978 to support the American military's permanent presence as a way to negotiate between the postwar U.S. national security state's decades-long demand for Japan's "military" contribution and the enduring Japanese public reluctance to authorize the Self-Defense Forces' direct engagement in military affairs abroad.

In the 1980s, Japan continued negotiating its political position between "prosperity" and "peace,"[770] as Oguma Eiji put it, against the backdrop of its rise as the second largest economic

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[769] Ueno Chizuko, Komori Yōichi, Narita Ryūichi, "Gaido mappu 60, 70 nendai," *Sengo nihon sutadīzu 2* edited by Komori Yōichi, Narita Ryūichi (Tokyo: Kinokuniya shoten, 2009), 31.
[770] Oguma Eiji, *Heiseishi* (Tokyo: Kawade shobō, 2014), 502-503.

power and mounting "Japan bashing" in the United States. Sociologist Ezra Vogel's bestselling book, *Japan as Number One: Lessons for America* (1979),[771] which celebrated the uniqueness of Japanese culture and capitalism, epitomized that political environment. Following the Thatcher and Reagan administrations' economic models, Prime Minister Nakasone Yasuhiro (1982-1987) inaugurated neo-liberal governance of its own and accelerated the militarization of the relationship with the United States. By successfully removing defense budget limits set under one percent of the GDP, Nakasone transformed Japan's diplomacy from the previous "lesser military power" (*shōkoku shugi*) line to one seeking the status of a major military power.[772] In 1983, 57 percent of the Japanese public recognized Japan as a first-class-nation, with a steady increase from 41 percent in 1973.[773] The 1953 Confidential Agreement remained intact under the administration of Nakasone, who had staunchly opposed the specter of postwar U.S. extraterritoriality in the early 1950s.

The form of civic activism against the postwar American military legal regime of exception gradually transformed under the structure of the post-1972 Okinawa-Japan-U.S. relationship built upon the dual legal order (*futatsu no hōtaikei*)[774] of postwar Japan. Even though grassroots ties between Okinawans and Japanese deepened most visibly through the merger of political parties, it did not immediately give birth to a movement calling for revisions of the Japan-U.S. SOFA on the national level. In Japan, the American military personnel's crimes and incidents—notably the 1968 jet crash on Kyūshū University and the 1977 jet crash in Kanagawa prefecture—ignited public and communal outrage against the American military presence. Controversial U.S. military incidents

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771 Ezra Vogel, *Japan as Number One: Lessons for America* (Cambridge: Harvard University Press, 1979).
772 Watanabe Osamu, *Henbō suru kigyō shakai nihon* (Tokyo: Junpōsha, 2004), 37.
773 Kitada Akihiro, Komori Yōichi, Narita Ryūichi, "Gaido mappu 80, 90 nendai," *Sengo nihon sutadīzu 3* edited by Komori Yōichi, Narita Ryūichi (Tokyo: Kinokuniya shoten, 2008), 16-17.
774 For an overview of Hasegawa's theory, see: Sugihara Yasuo, Higuchi Yōichi, Mori Hideki ed., *Hasegawa Masayasu sensei tsuitō ronshū: Sengo hōgaku to kenpō* (Tokyo: Nihonhyōron sha, 2012).

committed in Okinawa also drew public sympathy. Each protest movement, however, did not generate the energy that could translate into nationalist demands for neutralist diplomacy that had existed in the 1950s.

In the meantime, lawyers and legal experts played a vital role in developing theoretical inquiries into the postwar American military legal regime of exception, assisting locals' lawsuits related to the SOFA, and underpinning the institutional framework of human rights advocacy and popular civic activism in post-1972 Japan. As a professional group most familiar with the 1952 Japan-U.S. Administrative Agreement (later the SOFA), Japanese lawyers began studying the legal architecture of the U.S. military governance, with keen attention to its judicial system, and elaborated their analyses especially after the relaxation of the travel ban. One of the most notable contributions was the Japan Civil Liberties Union (JCLU)'s 1961 report compiled based on its first on-site investigation and renewed input such as the 1960 UN "Declaration on the Granting of Independence to Colonial Countries and Peoples." Drawing on this report, the GRI Legislature unanimously adopted a statement in 1962 that condemned the U.S. violation of sovereignty equality over the "Japanese territory" of Okinawa.[775]

In the 1960s, Okinawan legal experts enriched Japanese lawyers' comparative analyses of the postwar American military legal regime of exception in Japan and Okinawa through their contribution of articles to local newspapers, Japanese legal journals, and the mass media's interviews. In 1970, the Japan Federation of Bar Associations published *Base Pollutions in Okinawa and Human Rights Problems* (*Okinawa no kichi kōgai to jinken mondai*) to prepare for Okinawa's entry into the Japan-U.S. SOFA.[776] In 1973, Hagino Yoshio, who co-authored the 1955

[775] *Jinkenshinbun*, March 1, 1962.
[776] Nanpō dōhō engokai, *Okinawa no kichi kōgai to jinken monda: Nihon bengoshi rengō kai hōkoku* (Tokyo: Nanpō dōhō engokai, 1970).

JCLU report "Human Rights Problems in Okinawa," published *The Oppression and Development of Human Rights in Okinawa*, a pioneering scholarly monograph on this subject.[777] Regardless of the fluctuation of political tides, legal professionals continued illuminating and publicizing legal problems and human rights abuses arising from the 1960 Japan-U.S. SOFA.[778]

On "base Okinawa," communal protests inevitably occurred more frequently than in Japan. By 1995, the number of cases committed by U.S. military personnel that resulted in the local police's indictment reached 4,790, including 12 murders, 355 robberies, and 31 (reported) rapes.[779] The controversial 1972 Benjamin case was soon followed by an incident that occurred on the island of Ie in 1974 and bore close similarities to the 1957 Girard case. Policy elites serving the Ford and Tanaka (later Ōhira) administrations struggled over jurisdictional authority again, but eventually settled on U.S. jurisdiction.[780] In 1985, the Okinawa Prefectural Assembly adopted a statement demanding the immediate transfer of custody of those who had committed off-duty offenses as well as revisions of the SOFA in the wake of a U.S. military service member's murder. In response, Foreign Minister Abe Shintarō dismissed the outcry in the Diet claiming that Japan and the United States had adopted the SOFA on an equal footing.[781] Tellingly, the Okinawa Prefectural Assembly's protests and demands for preventive measures only increased to a documented 125 by 1995.[782] The islanders' protest against the extraterritorial FCJ policy persisted under the conservative prefectural administration (1978-1990).

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[777] Hagino Yoshio, *Okinawa ni okeru jinken yokuatsu to hatten* (Tokyo: Seibundō, 1973).
[778] For major works, see: Tayama Teruaki, *Beigunkichi to shimin hō* (Tokyo: Ichiryūsha, 1983); Yokohama bengoshi kai, *Kichi to jinken* (Tokyo: Nihonhyōron sha, 1989); Urata Kenji, *Beigun kichi hō no genzai* (Tokyo: Ichiryūsha, 2000).
[779] Arasaki Moriteru, *Okinawa gendaishi* (Tokyo: Iwahami shoten, 2005), 154.
[780] Shinobu Takashi, *Beigunkichiken to nichibei mitsuyaku--Amami, Ogasawara, Okinawa wo toshite* (Tokyo: Iwanami shoten, 2019), 277-324.
[781] Yoshitsugu Kōsuke, *Nichibei Anpo taiseishi* (Tokyo: Iwanami shuppan, 2018), 130.
[782] Arasaki, *Okinawa genaishi,* 155.

Just as the Japanese protest movement had declined in response to U.S. treaty renegotiations in the 1950s and especially after 1960, the post-reversion Okinawan protest movement also declined in scale. Tokyo's massive financial aid to Okinawa prefecture and base hosting communities functioned as a new effective conciliatory measure to maintain conservative governance.[783] Further, progressive forces fragmented as each cultivated its own ties to political parties, civic organizations, and labor unions in Japan. Even the unifying force of the Okinawa Civil Liberties Union (the OCLU, or *Okinawa jinken kyōkai*) diminished as lawyer and secretary general of the OCLU Kinjō Chikashi warned in 1978. In the meantime, the OCLU continued encouraging locals to fully exercise liberties protected by the Japanese constitution by organizing lectures in collaboration with other civic organizations.[784] In 1981, Kinjō argued that even though civil-liberties-related problems had been resolved with the end of the U.S. military occupation, human rights abuses remained because of the continuing American military presence. In the last decade, he argued, Okinawans began paying greater attention to the Japan-U.S. Security Treaty, including Article 17 of the SOFA as well as human rights abuses rooted in Okinawan society.[785]

The politics of the postwar American military legal regime of exception entered a new phase following the end of the Cold War. One remarkable transformation began with the Self Defense Forces' deployment overseas in the 1990s, for it compelled Japan to inaugurate its own foreign criminal jurisdiction (FCJ) policy. This was highly controversial. To circumvent the tenacious domestic opposition to the Self Defense Forces' deployment and the constitutional constraints on the use of force in solving international affairs (Article 9), Japanese policy elites

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783 Sakurazawa Makoto, *Okinawa gendaishi* (Tokyo: Chūōkoronsha, 2015), 195-231.

784 Okinawa jinken kyōkai, *Jinken yōgo no ayumi 8, 9, 10 gappei gō* (Okinawa: Nansei insatsu, 1978), 18, 20.

785 Okinawa jinken kyōkai, *Jinken yōgo no ayumi 11: 20 shūnen kinen gō* (Okinawa: Shimada puresu centā, 1981), 18, 20.

employed the authority of the United Nations, now functioning under the post-Cold War structure, to authorize the Self Defense Forces' engagement in the Peace Keeping Operations (PKO) in Cambodia in 1992-1993.[786] Japan's FCJ policy adopted an exclusive jurisdiction formula complying with the UN SOFA that authorized each sending state to retain exclusive jurisdiction over all cases committed against locals. In each PKO and irreverent deployment since then, the Self Defense Forces adopted its own extraterritorial FCJ policy, built on the exclusive jurisdiction formula, in Zaire (1994), Kuwait (2003-2009), Iraq (2004-2006), and Djibouti (2009-) for U.S.-led multinational forces' operations.[787]

The second transformation was the reemergence of a *national* protest movement against the postwar American military legal regime of exception. Post-Cold War Okinawa has been the epicenter. In 1994, historian Ōta Masahide won his second term as governor backed by the rise of post-reversion Okinawa's "island-wide" struggle against the American military presence. Earlier in the year, the Social Democratic Party announced that it would relinquish its almost half-century long rejection of the Japan-U.S. Security Treaty and the SDF upon forming a coalition government with the LDP in June. This major political shift in Japan—a departure from the 1955 system in which the Socialist opposition had held steadfast against conservative would-be constitutional revisionists—was the background against which Chief of the Defense Facilities Administration Agency Hōshuyama Noboru dared to state, "I would like Okinawa to coexist with bases," eliciting a furor on Okinawa. The Okinawa Prefectural Assembly unanimously demanded the retraction of the statement.[788] The Pentagon's publication in the following year of the "United States Security Strategy for the East Asia-Pacific Region"—or the so-called the "Nye report" authored by political

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[786] Yoshitsugu, *Nichibei Anpo taiseishi*, 134-139.
[787] Iwamoto Seigo, "Chūryūgun no jieitai ni kansuru chiikyōtei oboegaki: Keiji saibanken kannkatsuken wo chūshin ni," *Sandaihōgaku* 43, no. 3 & 4 (February 2012): 115-140.
[788] Sakurazawa, *Okinawa gendaishi*, 238-239.

scientist Joseph Nye—further incensed Okinawans. It announced the U.S. military's plan to maintain the 100,000-strong military personnel in East Asia. The continued U.S. reliance on Okinawa for permanent basing with the additional deployment of Marine Expeditionary Force revealed sharp contrast to the post-Cold-War momentum that led to the reduction of American military personnel in Europe from 300,000 to 10,000 and the closure of major bases in the Philippines. [789]

In this political climate, the gang rape of a twelve-year-old Okinawan schoolgirl by three U.S. service members on 4 September 1995 ignited the largest island-wide protest ever against the uneven distribution of American bases. 85,000 people and three hundred organizations, conservatives and progressives alike, joined a mass demonstration on October 21, demanding a proper apology and compensation for the victim, revisions of the SOFA, and the reduction of bases deemed integral to the protection of the islanders' human rights.[790] The prefectural rally was an epochal event in that it incorporated gender as an analytical lens, according to feminist and Okinawa studies scholar Katsukata Inafuku Keiko. Okinawan feminists who had been engaged in transnational feminist activism through their participation in the 1985 World Conference on Women in Nairobi ensured that the 1995 prefectural rally acknowledge the structural link between military bases and gendered violence perpetuated by them. Notably, the rape coincided with Okinawan feminists' attendance at the 1995 World Conference on Women in Beijing. Upon their return, the activists called on civil society to recognize the gendered nature of the incident, pointing

[789] U.S. Department of Defense, "United States Security Strategy for the East Asia-Pacific Region," February 27, 1995; Chalmers Johnson, *Okinawa: Cold War Island* (New Mexico: Japan Policy Research Institute, 1999), 7-8; Sakurazawa, *Okinawa gendaishi*, 241-242, Yoshitsugu, *Nichibei anpo taiseishi*, 149-150.
[790] Sakurazawa, *Okinawa gendaishi*, 243-245.

to the military as an institution that compels soldiers to demonstrate their masculinity in ways that devalue women in daily training on base.[791]

This "first island-wide struggle in the last 40 years," according to the *Okinawa Times*,[792] had much in common with the 1950s rise of local support for anti-war landowners' refusal to lease lands to the military under the governorship of Ōta. In light of the resistance to the American military legal regime of exception, the more intimate and deeper historical implication was the tenacity of human rights advocacy embedded in Okinawans' struggle against the American military presence and their unequal status in the "free" world. The new dimensions of the prefectural resistance manifested in its conjuncture with local and transnational feminist movements and its *inevitable*—structurally bound—deeper engagement in advocacy for national and territorial sovereignty.

On the latter point, Linda Isako Angst argued:

> The female victim, a Kin schoolgirl, the original focus of concern, and the rape (*her* rape) were hidden from view as they were appropriated by all sides, including the prefectural government, various women's groups, landlords, and other activist groups throughout Japan. Her pain was transformed into a symbol of national subjugation with its own narrative: the concerns of Okinawans are routinely ignored, and Okinawa, as the feminized body politic, remains a site of contestation between contending political powers, local and international."[793]

In recognition of Angst's feminist critique of each political force's appropriation of rape for political ideologies prioritizing economic development or anti-militarism, I call attention to both the progress of decades-long human rights advocacy in Okinawa and post-reversion Okinawa's ambiguous relationship with post-occupation Japan's nationalism, which now asserts

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[791] Katsukata Inafuku Keiko, "'Okinawa jyoseigaku' no kōchiku: 'koroniaru modanitī' eno teikō," *Jendā kenkyū 21* 6 (2016): 24-33.
[792] Sakurazawa, Okinawa *gendaishi*, 237.
[793] Linda Isako Angst, "The Sacrifice of a School Girl: The 1995 Rape Case, Discourse of Power, and Women's Lives," *Critical Asian Studies* 33, no. 2 (2001): 243-266.

a first-class nation status. With regard to the former, the 1955 protest movement's link to Japanese lawyers' human rights activism carried out since the mid-1950s must be invoked to reject the temptation to draw an ahistorical binary between Okinawa and Japan. The Japan Federation of Lawyers Association adopted a statement in the wake of the rape encapsulating this history. It marked the reemergence of a popular movement against Article 17 of the SOFA in "postwar Japan." Together with Okinawa, the Japanese lawyers' protest movement shifted their human rights advocacy to a national level.

> The abduction and rape of a schoolgirl committed by U.S. service members in Okinawa prefecture on September 4 shocked not only Okinawans but also the whole population of the nation reminding [us] that the postwar has not ended yet. In particular, the American military's refusal to transfer the custody of the accused with its claim over (c) 5 Article 17[794] in response to [the Japanese] police authority's warrant-grounded demand for the custody revealed [Japan's] legal inequality under the SOFA. Those who committed a crime must be proceeded under our country's law regardless of his or her nationality. This serves the protection of huma rights and the materialization of social justice. We demand the [Japanese] government to conduct a review of the SOFA with the revision of the unequal article included.[795]

The 1995 "national" protest movement against the SOFA triggered a chain of reactions. The domestic and international media's extensive coverage of the Okinawan protest movement exerted enough pressure on state and military elites to hand the three service members over to the Japanese authorities on September 29 and eventually led to the establishment of the Special Action Committee on Okinawa (SACO) in November. Leaders of Japan and the United States announced a plan to propose specific measures within a year to reduce the heavy burden of U.S. bases

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[794] It stipulates: "The custody of an accused member of the United States armed forces or the civilian component over whom Japan is to exercise jurisdiction shall, if he is in the hands of the United States, remain with the United States until he is charged by Japan. The text is available at (https://www.mofa.go.jp/region/n-america/us/q&a/ref/2.html), last accessed January 15, 2021.

[795] Tsuchiya Kōken, president, Nihonbengoshi rengō kai, "Beihei ni yoru shōjyo bōkō jiken ni kansuru danwa," October 21, 1995.

concentrated on Okinawa.[796] The Japanese and U.S. elites' rejection of Okinawans' demand for the reduction of U.S. armed forces has, however, generated a stalemate over the U.S. announcement to close the Marine Corps Air Station Futenma under the condition to build a new base in Henoko Bay.

If "[o]ne of the enduring ironies of Japan's politics of memory lay in the government's refusal to take an explicit, representative, 'official' stance on the meaning of war," as Franziska Seraphim argued,[797] another irony is modern Japan's ambivalence toward extraterritoriality. In 2016, in the wake of the rape murder of an Okinawan woman by a former U.S. Marine, approximately eighty percent of the Japanese public polled considered the revision of the SOFA necessary.[798] In fact, most political parties in Japan, including those affiliated with the LDP, have advocated for revision. Despite the otherwise stark ideological conflict over the legitimacy and existing framework of the Japan-U.S. relationship, politicians from the populist and rightwing Japan Innovation Party to the Japanese Communist Party have problematized Japan's unequal legal status under the SOFA as infringement on national sovereignty. In the realm of civic activism, Okinawa prefecture, National Governors' Association, the Japan Federation of Lawyers Association, and grassroots organizations such as the Japan Peace Committee (*Nihon heiwa iinkai*) and New Diplomacy Initiative (*Shin gaikō inishiachibu*) have been at the forefront in this movement. The NATO SOFA level treatment, respect for national sovereignty, and the protection of human rights have served as the collective slogans in post-Cold-War Japan's national resistance to postwar U.S. extraterritoriality.

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[796] Sakurazawa, *Okinawa gendaishi*, 246.
[797] Franziska Seraphim, *War Memory and Social Politics in Japan, 1945-2005* (Cambridge: Harvard University Press, 2006), 226.
[798] For further details, see the Introduction.

The movement's ambiguity is undeniably linked to Japanese ruling elites' denial of their commitment to the 1953 Confidential Agreement. Upon the revision of Article 17 of the 1952 Japan-U.S. Administrative Agreement, Tsuda Minoru, who signed the 1953 Confidential Agreement, wrote in a legal journal: "Amended Article 17 follows the NATO SOFA template and gives sufficient consideration to smooth administrative handling. The Protocol and Official Minutes [on the revision] as a set is alleged to have established the unprecedentedly rational formula [to proceed U.S. military related individuals' criminal offenses committed in Japan]."[799] In a 1956 essay, the former Foreign Minister Okazaki Katsuo (1952-1954) reflected on his bitter memory of having coped with the controversy over Article 17 without mentioning his own obligation to the making of the 1953 Agreement.[800] In 2011, the Japanese government denied the 1953 Agreement as legally binding despite its publication of statistics that contradict the claim.[801] In 2019, the Foreign Ministry reluctantly corrected the claim posted on its homepage online that the American military's immunity from Japanese law complied with international law. The correction was made only after legislators and legal experts had contended that the American military's immunity from sovereign nations' territorial jurisdiction has not been authorized by international law.[802] I speculate that Japanese policy elites' earlier claim stemmed from their knowledge of the existence of other countries' confidential arrangements securing U.S. legal privileges. Another rationale and temptation would be the convenience of invoking the authority of "international"—often equated to the West in Japan—to propagate the perception that the

[799] Tsuda Minoru, "Nichibei gyōsei kyoutei no keijisaibanken jyōkō no kaisei ni tsuite," *Hōsōjihō* 5, no. 10 (October 1953): 532.

[800] Okazaki Katsuo, "Gyōseikyotei no butai ura," *Bungei shun jyū* (September 1956), 72.

[801] For further details, see the Introduction.

[802] *Mainichi shinbun*, February 7, 2019.

waivers of local jurisdiction and the authorization of illegal U.S. military training on Japanese soil are *normal* practices on the global scale.

The Japanese elites' decades-long acceptance of de facto extraterritoriality had a counterpart in civil society's lack of commitment to protecting the rights of others both at home and abroad. So far, the Self Defense Forces' FCJ policy built on the exclusive jurisdiction formula—with possible consequences on the locals of militarily weaker nations—has not drawn public attention. In terms of the rights of Okinawans, a 2017 poll found that 47 percent of the population either actively or passively accepted the Japanese government's authorization of the construction of a new U.S. military base in Okinawa against the islanders' popular will. At the same time, over half of the Japanese public acknowledged through the same polls that the concentration of the U.S. military presence builds on structural discrimination against Okinawa. In this political environment, Japanese and Okinawan residents' attitude toward the Japan-U.S. security partnership have grown apart especially in the past decade. In 2017, over 80 percent of the Japanese population endorsed Japan's commitment to the existing security treaty with the United States. In contrast, about 42 percent of Okinawans demanded the adoption of a new treaty for peace and amity with the United States while 19.2 percent endorsed the abrogation of the Security Treaty and 12 percent regarded the continued application of the Security Treaty preferable, according to the *Ryūkyū Shimpo*'s 2016 poll.[803]

As much as the postwar Japanese response to extraterritoriality exhibited the tenacity of Eurocentrism, nationalism, and indifference toward the rights of others, the postwar American military legal regime of exception also exhibited the tenacity of exceptionalism and imperialized civilizational ideology that continue underpinning its existence in the twenty-first century. In 2016,

[803] *Ryukyu Shimpo*, June 3, 2016.

journalist Jon Mitchell denounced U.S. Marine Corps' racist and patronizing attitude toward local residents and politicians based upon internal documents obtained under the Freedom of Information of Act. He argued that the Marine Corps' lectures, as part of the mandatory training of Marines and their dependents, failed to teach them about the deep historical roots of local protest movement against the U.S. military presence. Instead, the Marines' orientation highlighted special effect "gaijin (foreigner) power" could exert on each service member's behavior in Okinawa and intimated the statistics of U.S. military related crimes and incidents as exaggeration. Mitchell problematized the description of the 1995 rape as follows:

> the lecture notes attribute the subsequent protests to "the handling of (the crime) by the Japanese government." Not mentioned is the public anger sparked by Admiral Richard C. Macke, the commander of the U.S. Forces in the Pacific, who suggested hiring a prostitute would have been cheaper than renting the car the service members used to abduct the girl. Macke was forced to resign over the statement. [804]

Substantiating Mitchell's criticism of the Marine Corps' gendered and racialized historical overview of the Okinawa-U.S. relations provided in official orientation, cultural studies scholar Carl A. Gabrielson also maintained that "these materials depict Japanese people as friendly supporters of the military, as irrational and brainwashed puppets of anti-military political forces, or simply as decorative pieces of the cultural backdrop." Further, he contended that the Marines' mandatory training "promote[s] a sense of cultural superiority that fosters the very behaviors that cultural training materials are meant to prevent."[805] By now, readers must be familiar with the historical background behind it through the dissertation's empirical inquiry into the period between 1952 and 1972: that is, U.S. policy elites' characterization of local protests as "irrational" response

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[804] Jon Mitchell, "Okinawa: U.S. Marines Corps training lectures denigrate local residents, hide military crimes," *The Asia Pacific Journal 14*, no. 13 (Number 4, 2016): 2.
[805] Carl A. Gabrielson, "Welcome to Japan!: How U.S. Marine Corps Orientation Materials Erase, Coopt, and Dismiss Local Resistance," *Journal of American-East Asian Relations* 26 (2019): 397-425.

to the American military presence and inflicting blame on local elites for mishandling periodic and popular resistance.

In the absence of empirical studies linking the Marine Corps' training and the Pentagon's policy of maximizing U.S. jurisdiction in Japan, we are left with the question to what extent U.S. authorities are committed to protecting local victims' human rights as much as U.S. military related individuals.' The *Mainichi shinbun* reported that among 499 on-duty criminal cases committed by the American military related individuals in Japan between January 2014 and October 2019 and fell under U.S. jurisdiction based on the SOFA, none of them received a court-martial. Instead, 26 cases resulted in "no-legal punishment," 469 cases in "disciplinary measures," and 4 cases in "no punishment." According to the journalist Kawakami Tamami, among those cases was a U.S. service member's hit-run of a child in 2005 which resulted in the reduction of salary only.[806] Some victims, such as a rape victim with alias "Jane," have publicly criticized the American military's failure to hold the accused U.S. service members accountable through deliberate discharge or passive collaboration in criminal investigation.[807]

In conclusion, the dissertation proposes to historicize the ongoing controversy over the Japan-U.S. SOFA by paying attention to two aspects of the contemporary debate. First is the historicity of the question of how to protect each individual's human rights within the structure regulated by the Japan-U.S. Security Treaty. In the immediate aftermath of the Koza uprising in 1970, the *Okinawa Times* asked: "Under the existing system American citizens' human rights are protected, but who will protect Okinawans' human rights?... Whether we are under the U.S. military administration or not, our plea for human rights must not be denied."[808] Okinawan lawyer

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[806] *Mainichi shinbun*, January 12, 2021.
[807] David McNeill, "Justice for Some. Crime, Victims and the US-Japan SOFA," *The Asia Pacific Journal* 7, no. 11 (March 15, 2009): 1-5.
[808] *Okinawa Times*, December 25, 1970.

Arakaki Tsutomu, who has defended victims of U.S. military related incidents for many decades, represents this line of assertion. His stance is that victims' right to legal justice and proper compensation must not contradict with the protection of accused U.S. military related individuals' human rights, and that they are fundamentally compatible.[809] Arakaki stated, in my 2017 interview, that he would not necessarily oppose the American military's exercise of jurisdiction over its personnel if all involved parties' human rights are protected. Practically, he argued, this could be achieved by applying a *higher* level of legal protection provided by *either* country's law in every prosecutorial and judicial procedure. Toward this end, Arakaki argued that the revision of the SOFA is necessary.[810]

In other words, prioritizing the protection of human rights of all under the current framework of the Japan-U.S. security relationship must be the top priority to respond to the urgency of problems arising from the current SOFA. Lawyers have long criticized undemocratic practices permitted under Japanese legal system—such as its denial of the right of lawyers to attend interrogations—that U.S. authorities have pointed out as the reason for their refusal to revise the SOFA. Japanese authorities' passive attitude toward legal reform stemming from their concern that U.S. military personnel's special treatment might trigger popular calls for the same status has been a major obstacle to the revision of Article 17 of the SOFA.[811] Under such circumstances, state authorities have responded to the periodic Japanese outcry against the extraterritorial U.S. FCJ policy through improved administration, including U.S. legal authorities' right to attend interrogation.[812] Global civil society, and the Japanese public in particular, are urged to identify

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[809]Arakaki Tstutomu, "Nichibei chiikyōtei kaisei to beihei migara hikiwatashi mondai," *Sekai*, October 2003, 24-27.
[810] The author's interview with Arakaki Tsutomu in Naha City, Okinawa, Japan, June 1, 2017.
[811] Arakaki, "Nichibei chiikyōtei kaisei to beihei migara hikiwatashi mondai," 24-27.
[812] Jonathan T. Flynn, "No Need to Maximize: Reforming Foreign Criminal Jurisdiction Practice Under the U.S.-Japan Status of Forces Agreement," *Military Law Review* 12, no. (Summer 2012): 35-37.

organic links between them and historicize both external and internal obstacles that barred the revision of the SOFA. It will facilitate the process of attaining a holistic picture of the structure of the bare victimhood having been perpetuated by the existing U.S. FCJ policy and its structural connections to other human rights abuses rooted in society.

The second aspect of the debate about the SOFA is the historic question as to how to position ourselves in relation to nationalism, exceptionalism, and imperial sovereignty. Arakaki expressed due concern over the civil society's tendency to pay greater attention to the issue of legal justice than to the issue of neglected compensation. Some ask why U.S. military personnel's crimes are always and immediately politicized. The question seems to deny the very fact that the Japan-U.S. security relationship is a political system, and that legal relations defined by the SOFA are inevitably political. There is also the naked evidence of the contested status of Westphalian sovereignty (i.e., the principle recognizing territorial sovereignty as the foundation of sovereign statehood) in the twenty-first century. The dissertation demonstrates how one's exceptionalist assertion over legal privileges and/or ambivalence toward the rights of others drove the trajectory of the postwar American military legal regime of exception and came to shape the post-1972 Okinawa-Japan-U.S. relationship. Unfortunately, we are still caught with the political culture of this period and thereafter. The national movement against the SOFA has not yet found the common ideological ground and sufficient political energies to materialize the revision of the SOFA, given that the Japanese population is still divided over the question of how to achieve peace and improve welfare without having learned the transformative power of popular human rights struggle from occupied Okinawa.

Unless the historic and ongoing tension between human rights and imperial sovereignty is acknowledged and resolved, island-wide protests and Japan's ambiguous positioning toward the

SOFA will continue, especially in garrisoned Okinawa, under the American military legal regime of exception. Conversely, Japan and the United States may revise Article 17 of the SOFA upon Japan's demonstration of renewed "civility" and military power, which harks back to the nineteenth century. In this case, Japanese and U.S. legal exceptionalism might further spread imperial extraterritoriality in the twenty- first century, and there would be more Okinawas.

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