

**Women's Rights?**



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# **Women's Rights?**

## The Politics of Eugenic Abortion in Modern Japan

**Masae Kato**

AMSTERDAM UNIVERSITY PRESS



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*To my Sensei*

*To my Parents*

*To my Sisters*



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*December 2008, Leiden*

*Masae Kato*



## Introduction

These days we are witnessing a rapid advancement in reproductive technologies, not only in the post-industrial societies of Western Europe, North America, Australia, New Zealand, and Japan, but also in societies dealing with nation-building, such as China and India. This book focuses on the issue of selective abortion, meaning the abortion of a foetus with an anomaly<sup>1</sup> with the help of technologies that look for a disability and an anomaly in foetuses.

In Japan, amniocentesis was first introduced in 1968.<sup>2</sup> In 1983, in vitro fertilisation was practised for the first time. In the spring of 1996, maternal serum screening (MSS)<sup>3</sup> or the 'triple marker test' was made available on the medical market, enabling individual medical doctors to have the test at their disposal (Sakai 1999: chapter 2).<sup>4</sup>

Ethically, selective abortion can be a highly problematic issue, and in Japan there has been an active debate about the practice, starting in the 1970s, between the movements of disabled people and of women. Whenever there was an attempt to revise the law to limit women's access to abortion, the women's movement has used such phrases as 'women's right to abortion', 'women decide to give birth or not to', and 'women's right to self-determination'. Countering these phrases, the disabled people's movement claims: 'women should not argue from the concept of 'right' because people use the term 'right' to justify aborting foetuses with an anomaly'. This disagreement first came to the fore in 1972 between the Women's Liberation Movement (hereafter the WLM) in Japan and the *Aoi shiba no kai*, a group of people with cerebral palsy, when anti-abortion activists attempted to revise the law for legal abortion to limit access to abortion and to introduce a selective abortion clause. A similar disagreement surfaced again in 1982, when there was another attempt to limit women's access to abortion. During the 1990s and thus far in the 2000s there have been no attempts to limit women's access to abortion. The Eugenic Protection Law was repealed in 1996 (Appendix 2), and currently there is no law explicitly discriminating against disabled people. But the debate continues because reproductive technologies to discover anomalies are increasingly sophisticated and are becoming more and more accessible. The central question in-

herent in the debate is: Do 'women's rights to abortion' include the absolute right to abort a foetus with an anomaly?

The WLM of the 1970s and the women's movement group called *Soshiren* (which has been active since 1982) have indeed been hesitant to use the term 'right' in abortion debates when it concerns the abortion of foetuses with anomalies. The main reason for this hesitation is that the term 'right' cannot express factors inherent in the experiences of abortion, such as 'pain' felt by women. Instead, according to the women's movement arguments, the concept of 'rights' tends to rationalise the painful experiences of abortion and the ethical problems of aborting foetuses with anomalies, reducing the issue to legal access to abortion. 'Right' also tends to reduce the issue of abortion to the relationship between a pregnant woman and a foetus, since the term 'women's rights' triggers the concept of 'the foetus's right to life' as its counterpoint. Moreover, when it comes to 'a foetus with an anomaly', 'the right to abortion', practised mostly by disability-free women, appears to ignore the issue of discrimination against disabled people. And because the nature of the act of abortion is to 'terminate the development of a life', the rights argument eventually portrayed the pregnant women as 'selfish', 'aggressive', and 'egoistic'.

Given these problems, the WLM during the 1970s sometimes intentionally avoided the use of the term 'right', and instead tried to make up alternative phrases, so that problems surrounding the issue of abortion could be expressed. In the 1980s and into the 1990s, a new vocabulary appeared more frequently in the argument of the women's movements, in the form of 'women's right to self-determination' and 'reproductive rights'. However, the problem that inheres in the concept of 'having a right' in itself, that is, 'do women's rights include a right to selective abortion?' remained in the debates within the movements of both disabled people and women.

Despite the fact that the concept of 'rights' has the aforementioned problems, women in the movement never did away with the term 'right' entirely. There are too many justifiable reasons for women to use 'right' – oppression of women is visible in daily lives and is deeply rooted in history. The concept, a political instrument to criticise oppression, cannot be removed from the vocabulary of the women's movement, because saying 'women do not have rights' is almost equivalent to a public admission of defeat by the women's movement. Women in the movement have been aware of this point from the 1970s until today, and thus there has been a dilemma: whether or not to use it. And if it is to be used, how? This book aims to discuss the dilemma and its transformation through time, analysing the meaning of 'rights' in the Japanese women's movement.

### **Problems of rights: The issue of rights in an international context**

Not only in Japan are problems of the concept of 'rights' formulated and discussed, but attempts to enrich the concept of 'rights' are also being constructed by many contemporary thinkers. For example, the US philosopher Rebecca Cook looks at criticisms of 'rights' raised in many parts of the world (Cook 1994b). The main criticism discussed by Cook is that the concept of 'rights' was born in the West (at least the term 'right' itself), and does not fit well within indigenous cultures in non-Western regions. To introduce the critical argument, Adetoun Ilumoka, a legal practitioner from Lagos, Nigeria, says

The rights discourse in Africa is not meaningful, because the severity of socio-economic problems faced by women in countries undergoing structural adjustment may require a basic needs strategy rather than a rights strategy (Cook 1994b: 4-5).

Ilumoka's statement shows a distance between people and the term 'rights'. Because rights are not indigenous, rights discourse does not sound relevant for those who are living under severe conditions. Instead, the vocabulary of needs (needing something) sounds more concrete and appealing to those living in such a context.

Radhika Coomaraswamy, of the International Centre for Ethic Studies in Colombo, Sri Lanka, and the UN rapporteur on the trafficking of women, who has been working on the issue of rights for more than 20 years, argues:

In South Asia, the institution of law is generally viewed with deep suspicion and often hatred because it is seen as the central instrument employed by colonising powers to replace indigenous cultural, religious, and social traditions with the mechanisms of the modern Western nation state. When the law of women's human rights is associated with an impersonal and homogenising Western state, such rights are discredited (Cook 1994b: 7-8).

Thus, stating the problematic implications of rights, she continues to say that

In Asia, the rights discourse is weak, in part because it privileges free, independent women, whereas Asian women tend to be attracted to their communities, castes, or ethnic groups (Cook 1994b: 4-5).

In addition to rights being alien, she adds that the idea of individual 'practitioners' of rights within South Asia is different from the West.

In the international arena, the concept of human rights has been developed and extended in many treaties and conventions; In the UN Declaration of Human Rights in 1948, the concept of 'rights' was intended to be applied to everybody regardless of any differences in backgrounds, not only to so-called 'white, middle-class European men'. In the declaration, not only rights to freedom from interference of various kinds, but also to positive benefits such as education, a decent standard of living, and health care were brought into the scope. Under the concept of human rights, a person with rights has no reason to be grateful to benefactors; they are inherent in the person. Human rights have become canons by which social, economic, and political arrangements can be criticised and are politically significant as grounds of protest and justification for reforming policies. On the one hand, the concept of human rights is actually used by political activists in so-called non-Western areas, too, such as in Sri Lanka against army and police violence, for instance.

However, on the other hand, the concept of 'rights' is not always easily employed in every non-Western society, because the concept of 'rights' in itself does not automatically fit in every society; it can be an 'alien concept'. In Japan, for example, it can be observed that the notion of 'rights' does not always appeal to the most oppressed people, e.g. disabled people, whose social position should be most enhanced and protected by the concept of 'rights'. This is because the term 'right' is initially imported from 'the West', often through academic documents and books, originally in one of the European languages, to which mainly socially higher class people have access. Moreover, since the 'rights' vocabulary is often closely connected to the law and the policies of the state, rights are highly political, philosophical, abstract, and intellectual concepts, which cannot always express the agonies of those who are most oppressed.

A number of thinkers and people in social movement organisations, both in 'non-western areas' and in 'the West' are aware of these problems, and they have produced huge debates criticising the concept of 'universality of the concept of human rights', saying 'human rights are not absolutely universal'. Examples of this are the arguments of Ilumoka and Coomaraswamy as shown above.

These criticisms have to do with the implications of the Western philosophical tradition about the nature of the individual, who is held to be a strong, rational, autonomous, utilitarian, enlightened, liberated 'self', the practitioner of right. This concept of the individual, or 'self', is possible to observe in certain currents in the development of 'western' political philosophy. The problem is that, although the philosophy has de-



veloped locally in 'the West', reflecting local historical and social situations, the nature of the individual and meaning of the term 'rights' are often attached to the notion of universality, whether implicitly or explicitly. Moreover, criticism has also been directed at the 'self' as used in the context of the concept of the 'right to self-determination'. This criticism suggests that women who are engaging on issues of reproductive health should not use the term 'right to self-determination' because the concept of 'self' is western, i.e., enlightened, isolated and ignorant of relationality, characteristics which do not always fit with non-western societies.<sup>5</sup>

These observations do not mean that there have been no concepts like 'rights' in non-Western areas. Obviously, criticisms of women's rights discourse in Japan also have to do with the implications of the term 'rights', which seem to be in conflict with so-called indigenous ideas, including ideas equivalent to the Western concept of 'rights'. Even so, the penetration of Western culture has been so strong that 'rights', with its Western philosophical implications, has become an almost 'global' or common term. This situation is not ideal, in the sense that the term, which emerged from a specific social, historical, and geographical background, implies that it can represent all situations around the world. However, there is no way back; rather than doing away with the Western concept, there is a need to de-Westernise the notion of 'rights'.

In addition to the critique of the 'Western bias', there is also a critique that rights, as well as international treaties and laws, were developed mainly by men in a male-oriented world. Feminists both in 'non-Western areas' and in 'the West' have pointed out this problem (e.g. Cook 1994a, 1994b; Pateman 1988). Rights have not been interpreted in a gender-sensitive way that is responsive to women's experiences of injustice (Cook 1994b: 10; see also Pateman 1988).

In these respects, the notion of 'rights' needs to be even further developed. Given these facts, the major purpose of this book is to address these problems in the context of a specific debate in Japan. Firstly, the genealogy of rights needs to be examined. The Western concept of rights seems to imply ideas involving secularism, materialism, individualism, and indifference to other people or social communities. Yet the tendency is that the meaning of 'rights' is often unevaluated, because it is so widely used, not only in debates by philosophers and political thinkers, but also by the public in general. Despite any ongoing debates, 'rights' has become the kind of term that tends to be treated as absolute, beyond challenge.

In such a situation, in which every user of 'rights' might have his/her own idea of 'rights', an examination of the genealogy of rights can be valuable. When the theoretical meaning of the concept of 'rights' is

clarified by tracing its genealogy in the context where rights emerged, the significance of Enlightenment individualism may well come to the fore. There might be useful points in Western individualism, when its message is accurately grasped, to be employed in non-Western areas by adjusting the messages in accordance with local conditions, instead of doing away with rights and calling them an alien concept from the West.

Secondly, the concept might need de-Westernising in order to be more easily adopted in different cultures, so that it can work effectively to empower women. It cannot be denied that in many of the non-Western regions, what it means to be Western, including how an individual should be, is often uncritically proposed as the ideal model. Accordingly, the term 'right' is often understood in terms of Western ideas about how individuals should interact with each other. But under this condition it is no wonder that there is a tension between indigenous values and rights, and this makes users of rights vulnerable to attacks in non-Western areas. To de-Westernise the concept of 'rights' means to make 'rights' more gender-sensitive, too, because Western philosophical ideas related to the concept of 'rights', such as utilitarianism, liberalism, or the autonomous self, are highly masculine in origin (see chapter 3).

Thus, tracing the genealogy of 'rights' can help in de-Westernising 'rights', as well as in making the term more gender-sensitive. Clarifying its theoretical content can illuminate what is Western and masculine and is therefore problematic about 'rights'.

Coomaraswamy rightly also argues that

For human rights to be effective, they have to become a respected part of the culture and traditions of a given society. [...] Unless human rights values take root in civil society and unless civil institutions and non-governmental organisations (NGOs) take up the cause, then women's rights as human rights will have no resonance in the social institutions concerned. [...] Rights discourse will have more resonance, and therefore, more effectiveness, to the extent to which it can be plugged into many of the dynamic social movements taking place in South Asia' (1994: 39-57).

According to her, 'Asian women activists argue that legal strategies to emancipate women need to allow women to touch base with their traditional sources of empowerment' (ibid).

My use of the category 'the West' is not intended to polarise the world into two areas of 'the West' and 'non-West'. The term 'the West' is not used to refer to a specific country, nor to generalise about characteristics of societies which belong to the so-called 'West'. The term 'the

West' is used to indicate a certain 'canonical' pattern of the way in which the meaning of the concept of 'rights' is conceived, as in the form of 'the right to self-determination', for example. The actual practice of 'rights' differs in different areas of the world, of course, but the original meaning of 'rights' is attributed to certain patterns of way of thinking, which developed from the 16th century on, mainly in Western Europe and North America (see chapter 3). Although I do not agree with the oversimplified categories 'the West' versus 'non-West', the category 'the West' needs to be employed here, as a pool of knowledge and values that enjoys more power in representing political philosophy in the contemporary world. Accordingly, 'non-West' is a category, containing what is not 'the West' in this specific term of political philosophy and its representative power. I employ the category 'the West', *because power exists between what is called 'the West' and non-west, and because power is operative in making the distinction between what is called 'the West' and 'non-West', and the justifiability of this hierarchal power relation is then open for reconsideration.* Thus, the category 'the West' is used in order to challenge the power imbalance among 'the West' and the rest of the world. A necessity of having a category in relation to issues of power and representativeness, is discussed in chapter 7.

By saying 'non-West', this writer also does not intend to represent non-Western values in this book; needless to say, values within the 'non-West' are diverse. Nor is this a work to advocate the superiority of non-Western values; by looking at a specific debate in one non-Western society, Japan, this book intends to show that a non-Western value system and philosophy are not only not inferior, but also important to listen to. This book aims to enrich such universally used, but originally Western terms as 'rights', of which the intrinsic worth is unfortunately hardly challenged (Mahbubani 2002: 59).<sup>6</sup> The era is over in which only the West has a monopoly on wisdom or virtue on philosophical values. Having this ambition in mind, this book is aimed at providing one non-Western case study.

At the risk of becoming repetitive, it has to be emphasised that the aim of this book is not to produce 'absolute universalism' to be imposed on other areas of the world, or 'academic nationalism'<sup>7</sup> claiming uniqueness and superiority of what is discovered by one research study about Japan. The aim of this book is to offer one case study, i.e. analysis of arguments about the term 'rights' made by some social movement organisations (SMOs hereafter) in Japan, which might contribute to enriching the concept 'rights'. It also has to be noted that 'ways of thinking' detected in arguments of SMOs presented in this book, are not representative of Japan, either: Arguments put forth by SMOs are not necessarily widely shared by the general public in Japan; they have been chosen because of the weight of their political presence and their signif-

icance – so significant that it should not be overlooked – in constructing the philosophy of social position of women and disabled people. The selection of target groups including SMOs for this research will be discussed later in this chapter.

Proposing that 'de-Westernisation of the concept of rights means to de-masculinise the concept', it is not intended to imply that non-Western philosophy, including that of Japan, is gender-sensitive. Traditionally, Japanese political philosophy is also masculine, excluding women or people with disabilities. But in this book, Western philosophy will be questioned because it tends to represent 'political philosophy'. Thus, challenging two powers – of 'the West' and the 'masculine' – is possible by bringing non-Western case studies and the philosophy of political minorities such as women and disabled people into the scope of political philosophical analysis at the same time.

### **The aims of this book with regard to the concept of 'rights'**

This research will analyse the meaning of the notion of 'rights' as supported, used, understood, and felt in the Japanese women's movement. As should be clear so far, 'rights' needs to be de-Westernised and made gender-sensitive. I believe that the most effective strategy to achieve these aims is that women from various backgrounds make an effort to integrate their experiences into the theory of rights, as well as into the society's treaties and laws. The task of de-Westernising and localising the concept can best be done locally by women, including those from both academia and social movements, because local women are the main actors in the struggles against the social values in their own societies. Given this situation, it is both worth discussing and necessary to examine the way in which Japanese women in women's movements use the concept of 'rights'. The product of the discussion can contribute to the task of enriching the concept of 'rights', going beyond the conventional ideas of rights that are linked to the Western philosophical tradition.

The meaning of 'rights' in a women's movement in one geographical area might differ from the meaning in other areas. This should not be a problem, because 'rights' needs localising anyway, and for women in the world to unite together it is important to share experiences about the practice of rights in their activities. I believe that this is the only way to enrich and de-Westernise the concept of 'rights' on a theoretical level. To be informed about struggles and achievements regarding the practice of rights by women in other areas will serve to encourage women in another area of the world, who are also confronted by problems in the concept of rights. I also believe that it is important for Western

women to gain a broader insight into the concept of 'rights', which can be provided by women in non-Western areas.

There is no unanimous agreement about the meaning of the concept of 'rights' within one geographical area or a society. This also should not be a problem, because the meaning of 'rights' is never static; the process of seeking its meaning is more important, I believe, than NOT challenging the conventional and static meaning of the term 'right'.

It has to be noted that the concept of rights is sometimes critiqued by some conservative governments as a way to dismiss women's groups and activities, saying, 'women are misguided by "aping" Western concepts' (Cook 1994b: 18). It is not the intention of this book to discuss this type of criticism, which aims at discouraging women's empowerment. My aim is to enrich the theoretical meaning of rights, for the sake of women in both the Western and non-Western worlds, by discussing the way in which the concept of rights is used in non-Western areas (or more specifically, in Japan). If 'right' becomes a local term in various non-Western areas of the world, such criticisms as: 'women who are using rights, are being fooled by Western invaders', will lose their potency.

This book also aims to introduce the recent history of the Japanese abortion debate in the English language, which is hardly known in other countries, mainly because of the language barrier. In fact, tracing the history of the Japanese debate itself will provide a number of rich insights into how to conceptualise the issue of abortion, which, in some critical ways, differs from concepts held in the West. Abortion debates conducted around the term 'right' in Japan are analysed from the 1970s on, because in 1972 disagreements about the concept of 'rights' between women and disabled people surfaced for the first time. These abortion debates will demonstrate the stark contradictions around the term 'right' that Japanese women confront. This task includes consideration of how the usage of the concept of 'rights' has been transformed and the reasons for this, in the light of changes in the social, political, and international backgrounds where debates took place. Finally, the meaning of 'rights' as used by the Japanese women's movement is theorised. So this book is a theoretical discussion as well as a historical analysis.

In addition to these theoretical challenges, the research will also examine the relationship between the Japanese women's reproductive movement and the disabled people's movement. The term 'right' has been one of the critical points of the disagreement between the two movements. By examining the concept of 'rights' theoretically, and by considering the causes for the disagreement in the light of the characteristics of the concept of 'rights', I hope to contribute to fostering more mutual understanding between the movements of disabled people and

of women. Moreover, clarification of the theoretical concept of rights may well offer the Japanese women's movement insights as to how to use the term 'right' more effectively.

The Japanese history of the practice of abortion and eugenics is also examined, so that arguments put forth by today's women's and disabled people's movements can be properly understood in their context. The history is traced from 1868, because this year was the beginning of the period when Japan embarked on 'modernisation', building a nation-state with state policies and laws, including those on abortion and eugenics. The term 'right' was brought into Japan during this period, through *On Liberty* by John Stuart Mill in 1875 (*Jiyū-no-kotowari* in the Japanese title) and *Du Contrat Social* by Jean-Jacques Rousseau in 1882 (*Minyaku-yakkai*). However, the concept of 'rights', translated into the term *kenri*, did not seamlessly fit into the Japanese social context, because as its social condition differed from the context where the term 'right' was born. During this period, the notion of 'rights' went through a series of interpretative attempts by thinkers of the day so that it could fit in the Japanese context, interacting with the pre-existing concept, such as '*ri*', which is equivalent to what is called a 'right' (see chapter 3). Then, questions arise as to *why* the concept of 'rights' did not fit smoothly within the Japanese social context, *what* the concept of 'rights' is, and *how* the Japanese social context was.

To achieve these goals, the genealogy of the concept of 'rights' will be traced as it emerged in the specific local and historical context of Western Europe. At the same time, the Japanese indigenous political philosophy about what is called a 'right' in the West, as well as the way the concept of 'rights' was introduced from the West and was received in Japan, will be traced in order to understand why the term is contested.

## Related research

Several other scholars have also written about selective abortion in Japan. They deal with key concepts related to this issue, such as 'self-determination', 'the right to self-determination', and 'ethics in practices of reproductive technology'. Many of them have made considerable contributions to constructing debates around 'selective abortion' in Japan.

The Japanese sociologist Shinya Tateiwa has provided a highly refined analysis of the concept of self-determination (1997). He examines the genealogy of the concept of self-determination, and argues against the validity of principles attached to the notion of self-determination'. His work is accurate, challenging conventional values attached to the term self-determination, ambitiously trying to further develop a meaning of its concept. Unfortunately, his work has not been translated into Eng-

lish, but in Japan his work has influenced the way that self-determination has been conceived by those who are concerned about the term, including those in academia and social movements.

According to Tateiwa, the meaning of the term 'self-determination' has not been precisely examined and the term is often used vaguely as 'to decide about one's affairs on one's own'. As the expressions of 'one's affairs' and 'on one's own' show, self-determination is based on the principle of private property, that 'one can do whatever one likes to one's belongings'. Tateiwa shows that this idea can be traced back to liberalist ideas in Western philosophy, such as those of John Stuart Mill.

The logic developed by Mill is that 'one's will' generates 'one's labour to produce something'. Then, 'the thing produced by the person belongs to the person'. Finally, 'the person can dispose of the thing in a way the person wants, as long as the act does not harm others'. Tateiwa argues that the concept of self-determination based on the liberalist principle of private property is not actually grounded at the fundamental level (1997: 25-26). On the one hand, most of the natural resources are not produced by human beings, nor are our physical bodies, but human beings still insist on 'self-determination' in these matters. On the other hand, there are ideas that trading one's internal organs, or surrogate motherhood, to cite two examples, are in some ways problematic, even if these acts might be based on the informed consent of the parties involved, as in the 'liberalist free market' principle. Therefore, when thinking of the practice of self-determination, there is something more at stake than the principle of the free market or private property.

After developing various related arguments, Tateiwa concludes that 'there are some affairs in which we do not want to intervene, or make decisions about' (1997: 105-106). 'The affairs', in which we do not want to intervene, are often intimately related to the meaning of the subject. Defining 'other' to mean what is not to be controlled, he concludes that 'self-determination is a principle based on an acknowledgement of "otherness" in something (ibid)'. Based on this logical reasoning, he concludes that women have rights to abortion not because of their 'possessing' a foetus, but because of their bodily experiences and conditions in pregnancy. However, Tateiwa concludes that women do not have rights to decide on the quality of the would-be child (ibid; 1998b).

Because he challenges conventional vocabularies such as 'an individual's right to possess' attached to 'self-determination', and since he extends his arguments to how related individuals interact with each other in the practice of self-determination, his argument is remarkable and worthy of attention. His argument is philosophically highly refined, developed through his experiences in the disabled people's movement. 'Self-determination' is the supreme principle for some disabled people: for those who need other people's assistance for daily activities such as

eating and personal care, 'to decide on their own' is the ultimate aim to realising 'self-dependence'.

However, when women in the women's movement use 'self-determination', this raises political questions. In this book, the focus is on 'rights', and when women use the term 'self-determination' it is mostly in the form of the 'right to self-determination', while Tateiwa's consideration is often 'self-determination', without 'right'. Given that the concept of 'rights' is a political instrument to criticise oppression, the meanings of 'self-determination' as used by the women's movement and by the disabled people's movement do not always overlap. Tateiwa's consideration of self-determination is profound, but it cannot be applied totally to the principle of self-determination as used in the women's political movement. This book takes a perspective different from Tateiwa's analysis, as it focuses on the women's movement and its concept of the right to self-determination, which encompasses questions about power relations.

Another well-known sociologist, Shûichi Katô, also deals with the issue of 'women's right to self-determination' in Japanese abortion debates (1996a, 1996b, 1997, 1998). Developing an argument against the 'foetus's right to life', he vindicates women's rights to self-determination in abortion. As an argument to reconsider relations between a foetus and a pregnant woman, his argument is highly detailed and convincing. His final suggestion is that abortion debates need to transcend the issue of weighing the rights of a woman and a foetus, and to acknowledge that women's rights to self-determination are oriented towards patriarchy, a male-dominated social institution which oppresses women. Because he attempts to go beyond the conventional concepts of rights, which imply ideas of 'conflict' and 'possession (or control) of the one over the other', his work is noteworthy. As a work considering the relationship between a foetus and a pregnant woman, it can be said that his is one of the best in Japan for its accuracy and originality.

However, more questions arise as to why 'rights' imply conflicts, why the abortion debate tends to be reduced to weighing the ethical status between a foetus and a woman, and what power functions in the context of these phenomena. Although the right to self-determination is defined by Katô as oriented towards 'the state and men's oppression', the concept of 'rights' also appears in discussions of the ethical status of the relationship between a foetus with an anomaly and a pregnant woman. The discussion of 'rights' would not be adequate if it is reduced only to weighing the ethical status of the relationship between a foetus and a pregnant woman, nor is it adequate if a rights discourse is reduced to an issue of the-state-and-men's-oppression-versus-women. 'Rights' in abortion debates need to be considered comprehensively with relation to a foetus, a woman, and powerful oppression, because



this is what the women's movement is actually fighting in the real world.

Yumiko Ehara, one of the most prominent sociologists in women's studies in Japan, introduces and analyses debates in Japanese women's movements (1985, 1990). Her work is valuable as she examines the ideas put forth by the Japanese WLM in an academic way and is noteworthy, as the nature of movement arguments differs somewhat from academic debates. Operating in the political sphere often required quick-fire responses from the WLM, with little opportunity to formulate ideas in an analytical way. Ehara's work provides some re-dress, documenting the development of movement arguments and analysing the political significance of the arguments in the context of the political settings of the day. She also analyses the political significance of the linguistic style of the rhetoric of the WLM; women in the WLM were aware that masculine power attached to 'language' and they refused to use it (1985: 109-125; 166-170). Consequently, the WLM's arguments were often chaotic at first glance and sometimes hard to follow. The WLM was a common phenomenon in many of the capitalist societies from the late 1960s toward the 1970s, but not many movements went so far as to challenge masculinity attached to their own languages. France is another case, for example. Ehara is the first one who has analysed the issue of 'power and language' in the WLM's rhetoric used by women's movements in Japan in Japanese from a feminist perspective and her work is noteworthy in this regard.

However, her analyses of feminist issues, which appeared after the 1980s, are thematic. She looks at issues of surrogate motherhood, reproductive technology, labour, and law. She discusses these issues in an interdisciplinary way, combining political science, women's studies, sociology, and philosophy. Currently, her focus is not solely on abortion debates between the women's movement and other SMOs. Generally in Japanese academia it can be concluded that women's reproductive health movements' arguments after the 1980s have hardly been theoretically examined in women's studies in Japan, or in other fields of scholarship.

Another work, *Seimeigaku-ni-nanigadekiruka* (2001), by bio-ethicist Masahiro Morioka, analyses and introduces the three issues of euthanasia, feminism, and the disabled people's movement. Given the fact that the study of bioethics is often constructed on Anglo-American values, his attempt to introduce a 'Japanese view' about life is valuable. The issue of selective abortion is the central topic in his discussion of Japanese feminism and the disabled people's movement. He also discusses the way to 'view life' (or so-called bioethics) by looking at the history of Japanese abortion and euthanasia debates. His introduction of the political activities of Japanese feminism and of the disabled people's move-

ment provides detailed information, using original political materials as sources. This work is useful for those interested in the history of bioethics in Japan, as it pertains to the issue of selective abortion.

*Reportage: Shushshôzen-shindan* (1999), by journalist Ritsuko Sakai, is a report about the practice of prenatal screening and selective abortion. Based on interviews with individual doctors as well as women, both in Japan and the UK, she illustrates the problems inherent in the current practices of prenatal screening and selective abortion in both countries. In her work she also aims to expose the commercial aims behind the practices of pharmaceutical companies.

Thus there are a number of significant works from various perspectives about prenatal screening and selective abortion, as well as on the movements of women and disabled people. However, until now, there has been no theoretical analysis of women's movements of the 1980s, 1990s, and 2000s in Japan with a particular focus on abortion and the concept of 'rights'. Concerning the actual movements and abortion debates after the 1980s, the literature is written by people in social movements, and is more movement material than scholarly analysis.

Other research on abortion has often focused on technical matters, such as analysis of high abortion rates, the history of contraceptive methods, medical/ cultural analysis of the practice of reproductive technology, and legal analysis of the Eugenic Protection Law. Some of this research has been presented in English, but most of it has not been translated, and most of it has not been introduced abroad,<sup>8</sup> although it is deliberative, detailed, and well researched. There has been no theoretical analysis in Japan of the disagreement between the movements of disabled people and women, with a particular focus on the concept of 'rights'.

Research done about Japan in foreign languages, mostly by non-Japanese in English, has also mainly focused on technical issues, such as high abortion rates, comparative analysis with other countries, psychological research on women with experiences of abortion, or businesses created to comfort the soul of aborted fetuses (*mizuko-kuyô*).<sup>9</sup> The amount of research done by foreign scholars about Japan in this area is astonishingly small when compared to that about Western countries or even other parts of the world. The women's movements' arguments are sometimes touched upon in the context of the birth control movement, eugenics, abortion policies, and laws,<sup>10</sup> but nothing about disabled people's movements could be located. So far, no research has been found that is written by foreign scholars in English about the interaction between movements of women and disabled people, nor analysis of the term 'right' in Japanese abortion debates.<sup>11</sup> If 'right' and 'women's right to abortion' are related, the terms are often used uncritically, without examining their content or mentioning the Japanese women's struggle.<sup>12</sup>

On the debate about selective abortion between the disabled people's and the women's movements, no research has been done.

There is also no research to be found by foreign scholars about Japanese disabled women's movements. Even in Japan, academic research about the disabled women's movement was presented for the first time in the year 2000 by the Japanese women's studies scholar Noriko Seyama. The main obstacle for foreign researchers is the barrier of the Japanese language.

In addition to the limited quantity of research about Japan, it should be noted that there is a lack of interaction between Anglophone scholars and Japanese speaking scholars. I talk about Anglophone scholars because English is the most widely spoken and read language in the contemporary world. When an issue is analysed by internationally and culturally diverse scholars, consideration of the issue is certainly enriched. But at the same time, cultural and linguistic differences may well produce misunderstanding and bias about the issue. When scholars disagree with the analysis of others, they can react them. However, in Japan, unfortunately, reactions to arguments originally put forth in English may well be done in Japanese by a Japanese scholar, which many English speaking people would not be able to read, and vice versa. Therefore, when it comes to research on Japan, scholars are not engaging with each other across borders or cross-culturally as much as elsewhere.

One example of this lack of academic debate between Anglophone and Japanese scholars is on the issue of abortion. A major problematic assertion often made by foreign researchers is that 'abortion is the most important means of contraception for Japanese women', which implies that Japanese women choose abortion as the almost exclusive means of contraception.<sup>13</sup> Often, explanations are that 'abortion is a contraceptive method for Japanese women' because of certain ways of understanding lives under Buddhism or Shintô, which are, for Western scholars, the 'mysterious Other'. Religions are often excessively emphasised by non-Japanese researchers, seeing that in fact only a small number of women believe in, or practise, these religions.<sup>14</sup> The Japanese female anthropologist Mariko Sanekawa reports that Japanese women use *Mizuko-kuyô* (the business that offers a service to console the souls of aborted foetuses) as self-therapy to heal themselves after abortion experiences, rather than because women believe in Buddhism and Shintô teachings (see chapter 5).<sup>15</sup>

Research in English is more widely read in the international world than work done by Japanese scholars in Japanese. A problem with the dominance of the English language in today's world is that it tends to erase the diversity of non-Anglo-American cultures, which perhaps cannot be properly expressed in the English language because languages

reflect local cultural values, which differ from one another. So, ironically, in order to challenge the dominance of the English language as well as of Anglo-American values, messages need to be sent in English in order for non-Anglo-American voices to be heard. This book intends to do just that: it introduces arguments made both in Japanese and English, and can be a bridge to open a dialogue among Japanese-speaking and English-speaking scholars.

### **On target groups: Social movement organisations of women, disabled people, and anti-abortion activists**

Central to the analysis presented in this book is the women's movement group *Soshiren*, as it is the only group since the 1970s WLM that has consistently participated in and contributed to the Japanese debates on abortion rights.

The WLM was based at the *Lib Shinjuku Centre* in Tokyo. Practically, the WLM consisted of only a few active women's groups. But their arguments on abortion rights and selective abortion spread widely in the country, influencing other women's groups. At crucial moments, for example when there were attempts to limit women's access to abortion, women's groups from throughout the country came together to share political ideas and rally opposition. The WLM was national, but a loose social movement in which many individuals and different organisations participated. Towards the end of the 1970s, the WLM was dissolved, however when the government and anti-abortion activists again attempted to limit women's access to abortion in 1982, former participants in the WLM came together with younger women that year to establish *Soshiren*.

*Soshiren* is an abbreviation; its official name is '82 *Yuseihogohô-kaiaiku-soshi-renrakukai*, or '82 Eugenic Protection Act Revision Prevention Liaison Committee. From its communication centre in Tokyo, *Soshiren* played a role in liaising with women's groups all over the country to oppose the attempt of anti-abortion activists to outlaw abortion and to abolish the Eugenic Protection Law. As the WLM had done in the 1970s, in the 1980s *Soshiren* organised nation-wide activities to oppose attempts to limit women's access to abortion. The positions held by the WLM and *Soshiren* on abortion issues were not held by a small number of women, but were shared by many; they both were main players in organising demonstrations and lobbying to prevent the attempt by the government and anti-abortion activists to limit women's access to abortion and to introduce the selective abortion clause.<sup>16</sup>

In 1996, the Eugenic Protection Law was revised and as a result there was no longer a written law that allowed for reproductive practices

that discriminated against disabled people. However, up to the present, a danger remains that a selective abortion clause could be introduced. The introduction of the clause would be viewed as problematic from the perspectives of both the womens' movement and the disabled people's movement. In the view of the womens' movement such a clause would encourage women to have selective abortions in event of an anomaly in a foetus; in the view of the disabled peoples' movement, such a clause would constitute the denial of the existence of disabled people. In 1999, in the absence of the Eugenic Protection Law, *Soshiren* introduced its aims as follows:

It opposes that women's bodies be used as instruments for population policies and eugenic policies; it has strongly fought for repeal of the Eugenic Protection Law and deletion of the abortion articles from the Criminal Code, in order to establish women's right to self-determination. What we need is not to select children based on whether or not they have a disability, but to decide on one's own whether to become a parent or not. Thus, we strongly oppose the selective abortion clause. Until the discrimination against women without children or the assumption that a disability is unhappiness is gone, there will be no women's right to self-determination.<sup>17</sup>

Currently, members of *Soshiren* actively participate in debates on reproductive technologies and women's reproductive rights, in alliance with disabled people's groups and other women's organisations (chapter 6). As of August 2008, *Soshiren* has some 171 subscribers to its newsletter all over Japan and abroad (both individuals and organisations), who support the organisation's activities both financially and morally. There are eight permanent staff, who edit monthly newsletters. All are voluntary.

There was a group called *Chûpiren* during the 1970s, led by Misako Enoki, who majored in pharmacy at Kyoto University,<sup>18</sup> which separated from the WLM in order to pursue its own activities.<sup>19</sup> Because Enoki appeared on TV shows, and also because women in *Chûpiren* acted eccentrically, for example wearing hard face-covering pink helmets during demonstrations, their activities drew public attention. Therefore, the mass media portrayed *Chûpiren* as being representative of the entire Japanese WLM, and many Japanese people still regard *Chûpiren* as actually being the WLM. *Chûpiren* also wanted to use the term 'right' more actively in the abortion debate, and the group promoted the use of contraceptive pills without asking the questions which were raised by the rest of the women in the movement. Nevertheless, like most feminists or researchers in women's studies in Japan, I do not consider *Chûpiren* as credibly representing the entire WLM, as *Chûpiren* was only a tem-

porary phenomenon with comparatively little impact on most Japanese women, whose debates were not taken over by the women's movements after the 1980s. The group was dissolved at the end of the 1970s, and Enoki's whereabouts are since unknown. The questions and arguments of *Chûpiren* are introduced in chapter 2. Conversely, other questions raised by the WLM were taken over by women in a later period, and to this day are still being debated. For this reason, I have chosen to analyse the arguments made by the WLM and *Soshiren*.

It is possible to trace the line of argumentation held amongst Japanese women by analysing arguments put forth by both the WLM and *Soshiren*, including an analysis of how certain ways of thinking either changed or remained while social settings changed.

*Soshiren* was also chosen for analysis as it is the only women's reproductive movement group which holds the point of view that women's 'real' self-determination in reproduction, given reproductive technologies to discover anomalies, is possible only in collaboration with the disabled people's movement, in order to oppose discrimination against disabled people. This point was also forcefully made by the WLM during the 1970s, but only *Soshiren* carried this viewpoint into the 1980s. Other women's groups, such as *Nihon fujin kaigi* (Japan Women's Congress) and *Fujin minshu club* (Women's Democratic Club), do not disregard the importance of interaction between the two problems of women and disabled people, yet these women's groups are either saying 'simultaneously having these two problems is too demanding', or are silent on the issue.<sup>20</sup> As *Soshiren* did confront the issue of discrimination, it came into serious conflict with the disabled people's movement.

For the disabled people's movement, I chose to focus on *Aoi shiba no kai*, a group of people with cerebral palsy, because it was the strongest group to object to the women's movement's phrase of 'rights to abortion', and 'right to self-determination'. Literally, *Aoi shiba* stands for 'green grass', where an intention is expressed that 'people with CP should stay strong despite any difficulties, as green grass stays strong although it is stepped on by people wearing shoes'.<sup>21</sup> *Aoi shiba no kai* was the only disabled people's group that questioned the assumption that 'to be disabled is negative'. It asserted that 'there is nothing wrong with being disabled', and argued that 'disability-free people should examine themselves for discrimination against disabled people internalised within themselves'. Hiroshi Yokota, one of the leading activists in *Aoi shiba no kai*, explains that these attitudes developed because cerebral palsy is different from other kinds of disability. Those with CP can hardly work, while people with many other kinds of disabilities can work, earn their own money, and take care of themselves in daily activities with less assistance.<sup>22</sup>

*Aoi shiba no kai* pointed out the way ‘a life with a disability’ is regarded in general – the way of thinking, ‘it is unhappy to live with a disability’, or eugenic thinking. In the sense that *Aoi shiba no kai* pointed out eugenic thinking inherent in what we regard as ‘normal’, it was different from other disabled people’s groups (Ichinokawa & Tateiwa 1998: 265). Their argument was not easy to understand even among disabled people, and actually, even among those in *Aoi shiba no kai*. A strong argument about eugenics was raised first in 1972 by Yokota, where he asked ‘why the penalty for a murder of children by their mothers is mitigated when the children are disabled?’ His position came to be gradually shared by other activists. In terms of numbers, *Aoi shiba no kai* never became a huge organisation, failing to mobilise even 1 per cent of people with disabilities throughout Japan at its peak (ibid: 269). As Tateiwa and the Japanese sociologist Yōichi Ichinokawa argue, it is therefore wrong to conclude that the Japanese disabled people’s movement groups are all discussing eugenics. This fact also implies that Japan is not the only country in which disabled people’s movement groups discussed eugenics; Just as *Aoi shiba no kai* is not representative of all disabled people in Japan, in other countries, there are strict arguments against eugenics put forth by disabled people, as well (ibid).<sup>23</sup>

However, at the same time, the history of the Japanese disabled people’s movement cannot be properly understood without considering *Aoi shiba no kai*. The contribution which *Aoi shiba no kai* has made to the development of today’s ethical argument about selective abortion, is one of the most important of all the arguments put forth by disabled people’s groups. If one tries to learn the history of Japanese disabled people’s movement, he or she will find that the majority of the books on the topic discuss *Aoi shiba no kai*. The weight of its political presence in preventing a number of legal clauses and guidelines cannot be overlooked, either. Moreover, *Aoi shiba no kai* is the only disabled people’s group that straightforwardly confronted women’s rights vocabulary. For these reasons, I chose to focus on this group.

For the anti-abortion movement, the arguments of *Seichō no ie* (House of Growth), a right-wing religious group founded in 1929, are examined. During the Second World War, the group became aligned with the state religion, *Shintōism*, and also with militarism. Since the war, the teachings of this group have been a mixture of pieces from many different religions, including parts of Christianity and Buddhism. Since its foundation, *Seichō no ie* has consistently emphasised the importance of national power, on which they base their anti-abortion arguments. This group is the only anti-abortion group in Japan that went so far as to attempt to outlaw abortion in 1972, 1973, 1982, and 1983. It was active during the whole period to be examined.

Methodologically, this research is based on the analysis of materials from the selected groups about the abortion debates and on the analysis of policy or legal documents from the government. Studies about the above-mentioned movements and the Japanese abortion debates by scholars and researchers are also used to formulate the arguments in this book. Materials on theories about political terms, such as 'right' and 'self-determination', in both Japanese and English, have also been drawn upon.

As a member of *Soshiren* since 1998 I have also participated in the activities of such social alliances as *karada-to-sei-no-hôritsu-o-tsukuru-onna-no-kai* (Women for an alternative law for contraception and abortion), *Botaihogohô-kaitei-network* (The network to examine the revision of the law to protect mothers' bodies), and original materials from these alliances are referred to for the analysis of this research. These alliances consist of various women's groups organised around problems such as infertility, women with disabilities, as well as groups of parents with disabled children.

I also interviewed key individuals who are/were in the women's, disabled people's (both male and female), and anti-abortion movements in order to ask questions, to discuss, and to confirm my understanding of their arguments. These individuals have been cited extensively to construct the arguments I put forth in this book. In the same way, informal conversations with members of movement groups have also contributed to my understanding, although the conversations themselves are not always referred to in connection with the arguments I present in this research.

## On the structure

The time span of this analysis is from the beginning of the 1970s, the period when a number of social movements emerged in Japan, i.e. the Women's Liberation Movement, disabled people's movements, and also anti-abortion activities to limit women's access to abortion, up to the present. The beginning of the 1970s was a time when the disabled people's movement first clearly criticised women for using the term 'right' in connection with the issue of abortion.

This book's chapters are arranged according to the main abortion debates triggered by anti-abortion activists' attempts to revise the laws in order to limit women's access to abortion and/or to introduce the selective abortion clause as a condition for legal abortion.

Chapter 1 introduces the historical background, describing abortion and eugenic policies and the economic and political background, beginning in 1868, when Japan began to be modernised.



Chapters 2 and 3 focus on the debate around the anti-abortion activists' attempt to outlaw abortion in 1972, and chapters 4 and 5 focus on the attempt to outlaw abortion in 1982. The critiques of the phrase, 'women's right to abortion', both by anti-abortion activists and the *Aoi shiba no kai* group, as well as reactions from the Women's Liberation Movement, are introduced, in order to show the disagreements around the concept of 'rights' in the 1970s' abortion debates.

In chapter 3, the genealogy of 'rights' is traced, and following this, the reasons for the criticisms against 'women's rights to abortion' are considered.

In chapter 4, the abortion debates in the 1980s are introduced, focusing on the way the concept of rights was used in this period, and on the changes in the usage of 'right' since the 1970s. During the 1980s, the term 'right' was used more frequently than during the 1970s. Chapter 5 discusses the reasons for the frequent usage of 'rights'. Additionally characteristics of 'rights' will be discussed, taking account of the changes in the background of the abortion debates. Problems to be considered about 'rights', with the goal being its eventual de-Westernisation, are brought to the fore by tracing the theoretical genealogy of rights. Hence chapters 4 and 5 also discuss the strategies of the Japanese women's movement to enable the use of the concept of 'rights' in the Japanese political and social context.

Chapters 6 and 7 take a look at the abortion debates after 1996, focusing on the usage of 'rights' by medical associations, women's groups, and disabled people's movements in reproductive technology practices. In 1996, the Eugenic Protection Law was repealed. Because the Eugenic Protection Law stipulated 'legal procedures for the sterilisation of disabled people', the law's deletion means that there is no longer any written form of discrimination against disabled people at the state policy level. However, reproductive technologies are becoming increasingly accessible, it is becoming more and more possible to discover anomalies in foetuses, and this sometimes leads to abortion. Medical associations use 'women's reproductive rights' to mean that individual women should be entitled to have access to reproductive technology on demand. The movements of both women and disabled people argue that discrimination against disabled people is practised by individual women, and the meaning of 'women's right to self-determination' is distorted by the medical associations.

Then, questions arise: why do medical associations take the meaning of the term 'right' in the way they do? Where do their ideas come from? If women's reproductive groups do not agree with the way medical associations use the concept of 'rights', then what is it that the groups do want to express with the term 'right'? Chapter 7 considers these questions and meanings of 'rights', as understood and used by parties in-

volved in the debate. It is proposed that the idea of 'rights' used in the women's reproductive movement can enrich the concept of 'rights' by broadening its meaning.

# 1 Historical Background

## Laws on abortion between the Meiji period and the end of the Second World War

There are no known official regulations about abortion and infanticide that date back to before the Meiji period (1868-1912).<sup>1</sup> There was no strong opposition to abortion before 1868. Before the Meiji period there were records of recommendations of abortion by the local communities, in times of famine, to reduce birth rates and keep the population balanced with levels of agricultural production. Thus, before the Meiji period, abortion and infanticide were employed as means to survive poverty, according to the decisions made by households and communities.

In 1868, the Meiji government prohibited midwives from providing abortion services. However, abortion by a pregnant woman herself was not prohibited under this regulation. In 1880, the penal code was changed to criminalise abortion, and this went into effect in 1882. According to this law, medicinal or surgical abortion incurred a penalty of one to six months imprisonment. Whether the abortion was carried out by a pregnant woman herself or by a third person it carried the same criminal weight. The law differentiated the severity of penalties according to the means of abortion, for example, abortion by violence, such as battering, was to be punished more severely than abortion by medicine. If the batterer did not mean to abort the foetus, the batterer was punished with between two and five years imprisonment. Under this law, there were no grounds for legal abortion.<sup>2</sup>

In 1907, the law was revised with heavier penalties for abortion; this law went into effect in 1908. The main difference between this law and the 1882 law was that the newer law punished abortions carried out by a third person more severely than abortions carried out by the pregnant woman herself. Abortion without the woman's consent was also punished more severely than an abortion carried out with her consent. This law did not create different penalties according to the means of abortion, and, as a whole, the penalties were more severe than those found in the 1882 law. Hence, until conditions for legal abortion were introduced with the Eugenic Protection Law in 1948, abortion was prohibited in all circumstances under the Meiji Constitution.<sup>3</sup> Under the abor-

tion articles in the Criminal Code, 10,617 women were convicted and sentenced for violations between 1905 and 1942.<sup>4</sup> Men who impregnated the women were not charged.

The purpose of the regulation of abortion was to secure military manpower and labour. The policy was called *Fukoku-kyōhei*, or 'to maintain and increase productivity and military power for national prosperity.' Because of the law on abortion, a number of women's lives were ruined because of forced delivery and unhygienic illegal abortion.<sup>5</sup> Even rape was not acknowledged as a justifiable reason for women to have an abortion.<sup>6</sup> At the same time, women who had illegal abortions were labelled as disorderly or deviant.<sup>7</sup>

### The *Ie* household system and women's position during the Meiji period

The Meiji Civil Code of 1898 was based on the notion of the *Ie* household system. *Ie* stands for 'the stem-family household (Sugiyama-Lebra 1984: 336),' defined as a 'vertically composite form of nuclear families, one from each generation (ibid: 20).' Under this system, in principle, the first son should inherit all the family assets. The *Ie* is thus about the perpetuation of the family bloodline through first sons. On some occasions, younger sons and daughters inherited the family line. Typically, marriage required women to move into the groom's household, but when there was no son in the family, a groom was adopted as a son-in-law. The adopted son-in-law was called *muko-yōshi*.

This *Ie* household system has its origin around the 13th century as a custom of the warrior class. Until the end of the Edo period, this style of managing a household was practised only by the warrior class, which amounted to some 6 per cent of the population. But the Meiji government now applied this system to all of the population under the Civil Code, and this remained in effect until the end of 1945.

The Civil Code gave the household head the absolute right to manage the household, including decision-making power regarding: rights to inherit the surname; whether to settle or to leave the household's residence; whether to remove a family member from family registration; approval or cancellation of the marriage of a family member, including *muko-yōshi*; whether to hold family household meetings; and so on. The only duty given to the household head was to provide for the material well-being of the household members. Rights of household members included having the surname, to be nurtured by the household head, and to use the household's assets. A primary duty of all the household members was to follow the instructions of the household head (Takamune 1972 2: 125-126).

Under the Civil Code, women were defined to be ‘incompetent’ (ibid: 129). The Code articulated that a woman reached the age of majority at the age of 20, but once she married, her position was again minor under the new household where she took up residence. Women had to ask the head of the household for permission on all civil matters, such as to loan money or property, to take any actions related to the family’s real estate or personal property, to bring a lawsuit, to make contracts, to inherit or to refuse inheritance, and to make contracts that influence personal well-being (ibid: 128-129).<sup>8</sup> Women’s only rights were to be nurtured by the head of the household, following from the acknowledgement that women were incompetent and should be protected. In the public sphere, women were not entitled to any rights, for example to vote, to be elected, to be a lawyer, or to become a member of a political group (ibid: 131).

Under these circumstances, giving birth to children, especially male children, in order to perpetuate the family line was the only crucial role for women. Otherwise a woman was not acknowledged as a complete person. There was even a form of provisional marriage called *naien*. *Naien* is a test marriage to check if she is infertile or not, and if she did not give birth after a certain period, the household had the right to cancel the marriage. Infertile women were called *umazume*, which literally means a ‘stone woman.’ Girls were discriminated against from birth, because they could not perpetuate the family line, surname, or receive family burial privileges.<sup>9</sup>

Since women were expected to be obedient to their husbands, it was out of the question for a woman to have a sexual relationship out of wedlock. When a woman committed adultery, her husband had the right to divorce her, while the woman did not have the same right. Virginity was important because it was the sign of a woman devoting her life to one man. When a woman was not a virgin before marriage, she was called *kizumono*, literally, a flawed object.<sup>10</sup>

This household system was used to maintain the ‘family-state system,’ where the emperor was defined to be God as well as the father of the nation in the Meiji Constitution. In order to build the nation-state, the Meiji government felt it needed to control the order of society by purging social deviants.<sup>11</sup> The status of the emperor was enhanced and his political function was also strengthened in the Meiji period for this purpose. But because the government could not intervene and control every citizen’s life, the household was used as a tool for governing the nation. To this end, the Civil Code gave all authority to the household head or husband/father, who represented the emperor in administering his household. The head of a household was thus made a bridge between the government and the nation. The women and children of a household were to follow the household head absolutely. As some fem-

inist historians say, 'the Meiji period was the most oppressive time for women in Japanese history' (Takamune 1972a: 292-293).

### **Towards the growing militarism of the 1930s**

During the Meiji period the fertility rate grew each year until it reached a peak in 1925 with an increase of one million births over the previous year. Women and households had difficulties with the absence of birth control devices and abortion. During this period, a birth control movement started in the context of the socialist movement. In 1922 the US birth control activist Margaret Sanger came to Japan. A sexologist Senji Yamamoto (1889-1929) and Shizue Katô (1897-2001), eulogized today as the 'grande dame of birth control' (Frühstück, 2003: 13), were active in the promotion of contraception, insisting that contraceptives were for the purpose of mitigating the poverty of the have-nots. They argued that the government should not only be concerned with population quantity, but also its quality.<sup>12</sup> In 1927, a research group on population and food problems was established by the cabinet. The group investigated the issues of emigration and birth control, in order to tackle poverty and overpopulation. Overpopulation was an important aspect of the justification to acquire colonies for surplus population.

Following the financial panic of 1927 and the great economic depression of 1929, militarism started growing rapidly, its goal being to strengthen the nation-state. Accordingly, the government stopped promoting birth control, and instead started a strict pronatal policy in order to secure military manpower and labour. Yamamoto was assassinated by a right wing figure in 1929, and Katô was imprisoned in 1934 for her political activities.

In 1938 the Ministry of Health and Welfare was renewed. Its purpose was to enhance the physical condition of the nation. In 1941 the ministry formulated the national population policy, that set as its aim to 'increase the population of the nation rapidly and continuously, and to enhance its quality' (Ishii 1982: 124-125), and to reach 100 million people by the year 1965. The policy lowered the legal marriage age by three years, that is, for men from 17 to 14, and for women from 15 to 12. It prohibited any contraceptives or abortion, and sought to secure a target of five children from each couple on average.

In the lead up to the Second World War, the regulation of abortion became more severe. In this political climate, justification for the pronatal policy was explained by means of the absolute sacredness of the emperor. For instance, a woman critic/essayist Teruko Yoshitake recalls,

My mother had a kidney disease, but became pregnant. Her life was threatened, therefore she called on a number of doctors but her efforts were in vain. One doctor told her that it would be wonderful if she gave birth to a child of the emperor. I cannot forget the sight of my mother crying in the night, repeatedly asking herself what the meaning was of being a woman (cited by Taniai 1983b: 57-58).

Babies were called *Sekishi* or 'red-child.' This is partly because a baby's skin is red or pink, but also because red is a symbol of 'sincerity' in Chinese and Japanese traditions. Thus, having children was considered to be a sign of sincere commitment to the emperor state (Kanô 1991: 65). During the Japanese imperialist drive, the role of women to perpetuate the family emperor state by giving birth to the 'children of the emperor' was emphasised more and more. In this way, women were forced to give birth.

*The dream of racial improvement: Yûsei-gaku (eugenics)*<sup>13</sup>

*Jinshu-kanryô-ron* or 'theories on racial improvement' started being developed just after the beginning of the Meiji era, and gradually took on scientific forms, being called *Yûsei-gaku* or 'eugenics,' based on statistics, biology, and theories of social hygiene. This was also in the context of strengthening the nation, but the initiative for eugenics came from scientists. The development of *Jinshu-kairyô-ron* between the Meiji era and the end of the Second World War can be divided into three periods.

Between 1868 and the beginning of the 20th century, theories on racial improvement in this period were marked by the idea of the 'Western body as beautiful and strong.' In this period, the criterion of bodily health was in terms of its beauty and strength, rather than its genes. Theories were contributed by such thinkers as Yukichi Fukuzawa<sup>14</sup> and Yoshio Takahashi. Takahashi's views were oriented toward a Westernisation of physical bodies, or large-built bodily structures, in terms of appearance rather than health/sickness. This led him to suggest the promotion of 'mixed marriage.'<sup>15</sup> In this period, theorists did not use the term 'eugenics,' but instead referred to their ideas as those of 'racial improvement.'

Between the beginning of the 20th century and the early 1920s, eugenic theories from the UK and the US reached Japan<sup>16</sup> and racial improvement theories were developed in a number of scientific fields at Japanese universities and research institutes. The link was made between a superior body and mind, and scholars tried to utilise statistical information in search of genes for not only biological problems, but also social ones, such as committing crimes and juvenile delinquency.

Lectures on eugenics began to be held at universities in such departments as biology, psychology, and medicine.<sup>17</sup> This period is defined as the beginning of the academic systematisation of genetic studies.<sup>18</sup>

It also has to be noted that a sense of superiority among the Japanese nation emerged during this period, as Japan had won the war against China in 1885 and against Russia in 1905. Racial superiority was explained in terms of the God emperor and the nation's loyalty to the emperor. Eugenics is also discussed in terms of nationalism in this period in Japan.<sup>19</sup>

The period between the late 1920s and 1945 is marked by the systematisation of eugenic research and attempts to popularise eugenics. Scientists tried to establish genetic research centres and counselling centres for 'good marriage,'<sup>20</sup> to systematise the education system to raise strong children,<sup>21</sup> and to publish articles on eugenics in the mass media,<sup>22</sup> as well as trying to introduce eugenic laws at the national level.

Being influenced by the legislation on sterilisation in 1933 in Germany, medical doctor Hisomu Nagai made an effort to promote a eugenics law in Japan.<sup>23</sup> Emphasising the importance of improving the quality of the nation, he claimed that the state should introduce eugenic policies, namely the establishment of marriage counselling centres and the introduction of an education system that emphasised 'racial hygiene'. But his idea met with opposition, mainly from the socialist party. Drafts of the sterilisation law were proposed by Nagai and other scientists in 1934 and 1937, but neither was passed in the Diet, the Japanese Parliament.

However, with the persistent emphasis on the importance of 'racial hygiene' by scientists, as well as the pro-German atmosphere which emerged in Japan following the military pact with Germany and Italy in 1937, the Ministry of Health and Welfare and the Diet finally agreed to introduce the National Eugenic Law in 1940, and this took effect in 1941. The law formulated the legal procedure of *yūsei-shujutsu* (eugenic sterilisation surgery) for people with certain social problems that were believed to be hereditary. Eugenic surgery under this law was sterilisation that undoes reproductive capacity without removing the sexual gonad; it did not influence the sexual life of sterilised people, thus differing from castration. One characteristic of the 1940 law was to target those with purely genetic diseases, while the Eugenic Protection Law, which was introduced in 1948, also targeted non-genetic conditions such as mental disease and Hansen's disease (leprosy). The concern in 1940 was to raise the quality of the gene pool, while the concern in 1948 was to eradicate social evils during the re-construction of society following Japan's defeat in the Second World War. In the 1940 law, behaviours such as alcoholism, rape, narcotic use, and robbery were also



listed as grounds for sterilisation, because scientists of the day believed that such behaviours were hereditary.

Thus, the 1940 law was introduced as an initiative of scientists, not the state. The government, or the Ministry of Health and Welfare, was reluctant to introduce a law relating to the sterilisation of disabled people. In the Diet doubts were raised, such as whether the diseases listed in the law were truly genetic; where a line was to be drawn between genius and madness; whether the practice of sterilisation violated human ethics; and whether there were possibilities for abusing the law (Ôta 1967: 153).<sup>24</sup> In order to further the goal of militarism, the concern of the ministry and the Diet was more about serious malnutrition during the economic crisis of 1929 than scientific considerations.<sup>25</sup>

Scientists, however, were not in favour of wars initiated by the military government, because military acts mobilise the strongest bodies with the strongest minds, while relatively weaker men could not be used as soldiers but would remain and survive in society. The dream of genetic scientists was to improve the gene pool, and considering their racial improvement theories, it was contrary to their theory to lose the strongest bodies during wartime. Thus, although the scientists and the militarists shared a common interest, namely 'strengthening the nation,' its meaning differed for these two groups. The government's concern was military expansion with the emperor as the father of the state, while scientists' concern was to improve the quality of the gene pool with scientific methods.

The birth control movement in this period also argued for the quality of the nation, in order to promote family planning. However, scientists were not necessarily aligned with the birth control movement: they insisted that people with good genes should be encouraged to produce offspring, while people with inferior genes should be discouraged from doing so.<sup>26</sup>

Thus, 'strengthening the nation,' and 'enhancing the quality of the nation,' meant different things to the military government, scientists, and the birth control movement.

### *Implications of abortion and eugenics for women between the Meiji period and the end of the Second World War*

What were the implications of eugenics, motherhood, and abortion for women before and during the Second World War?

First of all, for the purpose of securing military and labour power, women were forced to give birth. The state's aim was an intervention in women's bodies. The abortion articles functioned in the context of the *Ie* household system, where womanhood was motherhood itself and marriage was parenthood itself. Thus, at the individual level, giving

birth was the proof that a woman was not defective; marriage was the only way of life for women. Women's infertility was even a justification for men to have mistresses. At the state level, for women the purpose of giving birth was to maintain the emperor state system and male family lines.

Second important reality for women of these policies during this period was, for the act of abortion, that only women were stigmatised. As motherhood was the supreme mission of women, abortion was the act of denying the meaning of the existence of women. At the state level, abortion was an act of betrayal of the military state.

During the attempts to achieve racial improvement before the Second World War, abortion could not be used as a means, as it was criminal. There was no technology to find defects in foetuses either.<sup>27</sup> The practice of eugenics during this period was by means of sterilisation of both men and women, as legalised by the state law.

However, eugenic theories and practices before the Second World War focused more on women's bodies. First, more women were targeted for eugenic surgery than men.<sup>28</sup> This was because it is women who give birth. Secondly, motherhood was also a crucial discourse for racial improvement. Eugenic scientists claimed that women, as mothers, were responsible for choosing good fathers for their children in good time, and also for taking good care of themselves during pregnancy in order to raise healthy children. The military government also expected women to be wise enough to choose a good man to be her husband while she was young, and to be a good mother for nurturing the next generation.

The combination of the National Eugenic Law and the abortion article in the Penal Code meant a double standard about women giving birth. In other words, healthy, strong women were forced to give birth to children, while disabled women, women with disabled partners, or women with a suspicion of defective genes, were all prohibited from giving birth. There was a women's movement during this period, in which women talked about abortion. I will come back to this later.

## **After the Second World War**

Japan surrendered unconditionally to the US and its allies on 15 August 1945. As a result of the defeat in the war, Japan was occupied by Allied – mainly US – forces. In January 1946, the emperor declared that he was a human being, denying imperial divinity.<sup>29</sup> On 3 November 1946, under the occupation, a new Constitution of Japan was promulgated, in which three principles are singled out as fundamental values – the sovereignty of the people, pacifism, and respect for human rights. Party

government was revived, and various social movements became increasingly active. In 1947 the Civil Code was revised and the *Ie* household system was abolished; men and women were entitled to equal rights. Abortion was legalised conditionally in 1948 under a new law called the Eugenic Protection Law. Legal conditions for eugenic surgery remained intact. Certain abortion articles in the Criminal Code also remained intact.

With the intensification of the Cold War and the outbreak of the Korean War (1950-1953), the US changed its occupation policy, adopting a policy of using Japan against the communist bloc. Japan regained its independence at the San Francisco Peace Conference in 1951, but the stationing of US military forces in Japan continued under the US-Japan Mutual Co-operation and Security Treaty (Ampo), and US forces remain in Japan to this day. Extra procurements during the Korean War brought about the recovery of the Japanese economy. Conservative governments pursued policies of cooperation with the US and an increase in Japan's military strength, but in 1960 a popular campaign on an unprecedented scale, called *Ampo-tôsô*, opposed revision of the Security Treaty.

From the 1960s onward, Japan achieved a high rate of economic growth.<sup>30</sup> Male employees were required to work hard full-time, while female employees were seen as reproductive workers in domestic areas and auxiliary breadwinners providing part-time cheap labour. Even so, despite the growth of the gross national product (GNP), the nation's living conditions did not improve. Meanwhile, questions such as pollution, urban overcrowding, and the depopulation of rural areas became increasingly urgent. With the oil shocks of the 1970s, Japan switched to 'stable' growth. Internationally, Japan remained in alliance with the US. The defence budget increased year by year.

Under such contradictory circumstances, the student movement, or *daigaku fûsô*, emerged during the late 1960s. Students formed a group called *Zenkyôtô*, in which a number of women also participated, and this provided a basis for the emergence of the Women's Liberation Movement in 1970. Around this time, some disabled people's organisations, such as *Aoi shiba no kai*, composed of people with cerebral palsy (CP), became prominent and politically active.

#### *The Eugenic Protection Law: What did the law mean to for women?*

After the war, Japan witnessed overpopulation and its first baby boom,<sup>31</sup> while food and material resources were in absolute short supply. Under these conditions, former activists in the birth control movement resumed their activities, fighting for the availability of birth control and legal abortion. The main actors were the aforementioned Katô, who be-

came a Diet member after the war, and Tenrei Ôta, a male obstetrician. At the same time, there was also pressure on the Ministry of Health and Welfare by medical doctors to legalise abortion, because of the difficulties in providing abortion.<sup>32</sup>

The Ministry was not enthusiastic about legalising abortion or the promotion of birth control, because the ministry feared the loss of 'high quality' people.<sup>33</sup> Immediately following the Second World War, the 'revival of the nation'<sup>34</sup> was the most urgent target of the post-war welfare administration.<sup>35</sup> In this situation, Katô and Ôta had to use eugenic reasons to persuade the Diet and the Ministry to legalise abortion, stating that the 'protection of mothers' health would enhance the health of children, because if the number of children is small, parents could better concentrate on raising them'.<sup>36</sup> Accordingly, the importance of eugenics was emphasised in their draft of the new law for legalising abortion.

The draft of the Eugenic Protection Law which was submitted by Katô and Ôta was voted on in the Diet in 1948.<sup>37</sup> With the occupying US forces pressurising the Ministry to adopt the law, the Ministry could not deny the necessity for birth control, and in 1948 the government agreed to legalise abortion and at the same time to enlarge the range of application of eugenic surgery sterilisation. In their view, this was the strategy to promote birth control and legalise abortion without losing relatively better quality people. Hence in the new law, non-genetic diseases, such as Hansen's disease and mental diseases, were also included as a target for applying 'eugenic surgery.' Doctors were obliged to report any people afflicted with these diseases to the authorities; the procedure for eugenic surgery was also simplified (Matsubara 1998a). The conditions for legal abortion stipulated in this law were 'pregnancy as a result of sexual assault and the physical/mental condition of the pregnant woman'.

Hence, abortion was legalised in the context of eugenics, or actually eugenic thought was the prerequisite for legalising abortion. Abortion was legalised in order to have smaller families and to have 'good children', under the new, stronger eugenics policies. Women's health and women's needs were not the main concerns. Medical doctors who put pressure on the health ministry to legalise abortion were also concerned about their medical practices, in terms of both legal and hygienic conditions of abortion.

A clause stipulating economic grounds for legal abortion was added to the Eugenic Protection Law in 1952, because of the shortage of resources as well as the poor living conditions faced by most women. This clause, introduced later than the other clauses, did meet most women's needs in terms of access to abortion. The government's top priority was reducing poverty; women's interests came second.

Points of critique raised by the later women's movement groups and feminist researchers after the 1970s lie here: The legalisation of abortion was part of the state's strategy to control population levels. Eugenic surgery was seen as a tool in population quality control.<sup>38</sup> Abortion was not legalised with the aim of meeting women's needs. Moreover, the abortion articles in the Criminal Code remained intact, which meant that abortion was basically prohibited by the state, and women were only permitted to have an abortion under the conditions stipulated by the state in the Eugenic Protection Law. Ideologically, the existence of the articles serves to justify the state's intervention in women's reproductive practices, and shows that conditions could be changed to limit women's access to abortion by revising the abortion articles in the Criminal Code according to the state's interests. Indeed, attempts to limit women's access to abortion did occur in later periods.

Given this background, women in the movement today still continue to argue that access to abortion does not mean that women have the right to self-determination (Matsubara 1998a: 116).

### *Revival of pronatal arguments*

In contrast to the 1950s, during the 1960s the total fertility rate dropped and so did the abortion rate. However, the rate of abortion was still relatively high compared to other economically developed countries: around 11 cases per 1,000 women per year during the 1960s.<sup>39</sup> Given the high rate, coupled with the reality that an abortion was almost always accessible if a woman wanted to have the procedure, Japan was nicknamed 'the abortion paradise.'

An incident contributing to anti-abortion arguments occurred in 1963. Parents of a Thalidomide baby, or an infant affected by prenatal exposure to the drug Thalidomide, conducted an experiment to investigate the effect of the medicine on the foetus. The father of the Thalidomide baby gave his wife a large quantity of Thalidomide during the next pregnancy, and his wife aborted the foetus at five months to see the effects of the medicine. It turned out that the foetus did not seem to be defective. The experiment was reported on in a magazine. Not surprisingly, public opinion turned against the medical doctor as well as the parents, and a revision of the Eugenic Protection Law to limit women's access to abortion was demanded (Ôta 1967: 275). In this atmosphere, anti-abortion arguments were made mainly for humanistic reasons, criticising easy access to abortion. Eventually, Kobayashi, the minister of health and welfare, announced a desire to wipe out the disgrace of 'the abortion paradise' in 1964.

At the same time, a new anti-abortion argument emerged. In 1967, a right wing religious group called *Seichô no ie*, or 'House of Growth,' es-

established the *Yūseihogohō-kaihai-kisei-dōmei* (League for the Abolition of the Eugenic Protection Law). Two years later, in 1969, the League changed its name to *Seichō no ie seiji-rengō-kokkai-gi'in-renmei* (The political union of the House of Growth and Diet members; *Seiseiren* hereafter, which is the abbreviation used in Japan). Some of the Diet members in *Seiseiren* followed religious teachings, and others shared the anti-abortion activists' purpose to delete the economic reasons clause from the conditions for legal abortion. Since 99 percent of abortion cases were (and still are) allowable under the economic reasons clause, to delete it actually meant outlawing abortion. *Seichō no ie* and *Seiseiren* played a major role in attempts to limit women's access to abortion until the mid-1980s. Between the mid-1980s and the 1990s, a Diet member from the Liberal Democratic Party (LDP), Masakuni Murakami, was active in attempting to restrict abortion. But since he was arrested for bribery on 1 March 2001, and also since the LDP's one party dominance of Japanese politics ended in 1993, the LDP has not been the central player in limiting women's access to abortion.<sup>40</sup> I will return to the transformation of the anti-abortion arguments later.

*Seichō no ie, 'the House of Growth'*<sup>41</sup>

*Seichō no ie* was founded in 1929 by Masaharu Taniguchi with the religious motto, 'Know the Truth of Life'. He insisted that 'truth' was universal and transcended the differences between sects, and his teachings are indeed a mixture of ideas from many different religions, including Christianity and Buddhism. During the Second World War, the group became aligned with the state religion, Shintō, and also with militarism. It accrued remarkable power and influence at that time by propagating the notion of the emperor's divine ancestry. After the war, with the emergence of the LDP's political power base, *Seichō no ie* was well placed to serve as a mouthpiece for the right.<sup>42</sup> The doctrine of the teachings was fundamentally quite nationalist, and *Seichō no ie* set as its goal the purification not only of Japan but of the whole universe, starting with Japan. The group's political activities after the war included introducing a 'legitimate constitution' by removing the post-war constitution installed by the US, and deleting the economic condition clause from the Eugenic Protection Law, in order to increase the Japanese population which they believed would lead to national prosperity. In 1972, 1973, 1982, and 1983 attempts were made to delete the clause from the Eugenic Protection Law's lists of conditions for legal abortion, and all these attempts were initiated by this religious group. No attempts were successful.

The *Seichō no ie* teaching explains that all matter, including individuals' bodies, is a shadow of life. Accordingly, pain and pleasure, including sickness in physical bodies, are illusions. Taking an absolute

spiritualist position, Taniguchi taught that all the problems of life would be solved by correcting living conditions, to be achieved by reading his books. According to the belief that the body is subordinate to the spirit, it is understandable that Taniguchi's anti-abortion rhetoric uses such logic as the view that sexual pleasure is a disorder, especially in women, and abortion is the result of an irresponsible act of sexual pleasure as well as ignorance of life. Street petition campaigns to outlaw abortion and anti-abortion exhibitions at school festivals, both at universities and high schools, were held during the 1970s and 1980s mainly by young members of *Seichô no ie*. The anti-abortion argument in the abortion debate will be covered in the following chapters.

### *The state welfare policies for disabled people and policies for eugenics*

Before the Second World War, there were no specific governmental policies for disabled people. In 1949, a law for the welfare of physically disabled people was enacted. However, it was aimed only at rehabilitating former soldiers who were wounded in the war so that they could work again. In 1959, a law for national pensions for disabled people was enacted for the first time. However, the target group was limited to people with severe disabilities, and the pension was very small, namely 1,500 yen (about 12 euro) per month during the first year of the subsidy, which was, insufficient to cover a person's basic needs.<sup>43</sup> There were institutes for disabled people, but these were meant to rehabilitate people and only those who were likely to return to work were admitted for short-term stays until deemed recovered and ready to resume working. There were no other care facilities for those disabled and unlikely to work again. They had to rely on their families' care and support. There were insufficient residential facilities for disabled people but disabled people also received little or no financial support from the government during this period (Tateiwa 1995: 168).

In the 1960s, the necessity for institutes for disabled people who could not work began to be discussed. This was due to the claims of parents who were taking care of their disabled children at home and their worries about what would happen after their death. Thus, in 1965, a committee was established at the Ministry of Health and Welfare for the purpose of promoting institutes for mentally disabled people. In 1972, a law for the welfare of disabled people was introduced, and residential institutes were established where disabled people could receive ongoing long-term care.

The aim of the 1972 welfare policy for disabled people was self-dependence, which was, more concretely speaking, economic independence, or economic integration into society. And those who could not be integrated into the economic system were integrated by political

means, that is, through pension supplements and institutionalisation, or they were simply left with their parents or other family members (ibid: 179).

During the 1960s, after the first case of the birth of a Thalidomide baby in 1963 and births of children with defects because of environmental problems such as Minamata disease,<sup>44</sup> government became increasingly concerned about the birth of disabled children. Moreover, prenatal screening became possible during this period when amniocentesis was introduced for the first time in Japan in 1968.

Triggered by those events, the Ministry of Health and Welfare conducted research into the practice of eugenic surgery as allowed under the Eugenic Protection Law. Attempts to prevent anomalies caused during pregnancy and delivery were made by some local governments. These were called *Fukô-na-kodomo-o-umanai-undô*, or 'movements to prevent unhappy births.' The best known project was initiated in the region of Hyôgo prefecture, and was launched in 1966.<sup>45</sup>

According to the guidelines of the movement to promote measures to prevent 'unhappiness' in the birth of a child issued on 13 June 1966, the main activities of the movement were to establish children's hospitals, where lectures were given to provide guidance to expectant parents on how to prevent 'unhappiness' in the birth of a child. In 1972, the prefecture decided to pay 25,000 Japanese yen (some 170 euro) per pregnant woman in order to have their amniotic fluid checked. Family planning was actively promoted by giving information and instruction about contraceptive methods and the distribution of contraceptive instruments to households with lower incomes. Checking for sexually transmitted diseases was promoted because syphilis, for example, could be the cause of a foetus with an anomaly. Lectures were held at the health council, providing instruction on the proper usage of medicines, the prevention of infection, nourishment, and guidance for delivery. In addition to lectures, television, radio, newsletters, and newspapers were used for the actual dissemination of information and for instruction. Thus on the one hand the Hyôgo prefecture project was aimed at preventing the causes of anomalies, both in the process of pregnancy and during deliveries, and on the other hand also aimed to promote prenatal screening and selective abortion.

*Aoi shiba no kai*, in Osaka, protested against the project on the grounds that it uncritically defined a disability as being synonymous with unhappiness, based on the assumption that a sound mind and body are conditions for happiness. The group began its protests against the project in 1974.<sup>46</sup> By lobbying the department of hygiene, *Aoi shiba no kai* succeeded in having the content and the name of the prefecture's movement changed.



After the Second World War and until the emergence of the disabled peoples' movement in the early 1970s, the main demands made by disabled people's advocates were that disabled people should be treated according to the standard of disability-free people, such as that pertaining to job opportunities, and that the government should establish more residential care facilities for disabled people. Activities to push for these demands during the 1960s were mainly carried out by those participating in the parents' movement, a movement in which the actual opinions of disabled people themselves were not extensively considered. The goal of these demands was the adjustment of disabled people to the norms of non-disabled people. During this period the idea was taken for granted by policymakers and disabled people, that 'the more disabled people are adjusted to conform to the norms of non-disabled people, the more successful the policy is'. Concerns of parents were the same. It could be said that the disabled people's movement before the 1970s was more liberal than radical.

Towards the end of the 1960s and the beginning of the 1970s problematic aspects of these policies started to be criticised by disabled people. Living conditions inside the institutes, the way disabilities were defined, and even the management of the welfare policies were all criticised. Criticism of the management of institutes was advanced by the *Fuchû-ryôiku-centre-iten-tôsô* (The issue of the Fuchû disabled people's institute), while the movement to challenge the values that were used to construct the definition of 'disability' was advanced by *Aoi shiba no kai*. Through the efforts to critique the management of disabled people's institutes arose the position that it was not necessary to categorise people, put them in special places, and give treatment; instead disabled people should have a place to live outside the institutes, in a local community or in society in general. The movement of *Fuchû-ryôiku-centre-iten-tôsô* led to the Independent Living Movement in the 1970s and 1980s.

Since the arguments put forth by *Aoi shiba no kai* to challenge the values used to construct the term 'disability (*shôgai*)' interacted with the post-1970s women's movement's position on abortion, the focus here is on introducing *Aoi shiba no kai*.<sup>47</sup>

#### *Aoi shiba no kai*

*Aoi shiba no kai*, a group composed exclusively of people with cerebral palsy (CP), was established in 1957. It was originally formed as an alumni association of a school for disabled children in Tokyo, named *Kômei-yôgo-gakkô*, and it functioned as an informal social group. *Aoi shiba no kai* published a literary magazine called *Shinonome*, in which a number of the members had their poems and essays published. From the beginning there was a strong tendency for the magazine to raise social and political questions and to express opinions. Thus, the group's

activities were not limited to the 'development of mutual friendship (*kô-sei, shinboku*: cited in Tateiwa, 1998c: 220)', but instead grew to include social and political activities. In 1962, a department of social activity was established within the group, and from then on, the department began negotiations with the Ministry of Health and Welfare. This was unprecedented for a group composed exclusively of people with disabilities. *Aoi shiba no kai*'s demands to the Ministry in the 1960s were to raise pensions for disabled people, to secure housing for the disabled, as well as the promotion of early medical screening and treatment of birth defects, and the establishment of long-term residential care. Because their demands were for better opportunities for disabled people within the existing system, *Aoi shiba no kai*'s position in the 1960s was more liberal than radical.

#### *Turning points of the activities*

On 29 May 1970, there was an incident in Yokohama in which a mother murdered her two-year old daughter who had CP. Following the murder there was a public campaign to ask for a mitigated penalty for the woman out of sympathy. This campaign was led by local people as well as by groups of parents with disabled children. *Aoi shiba no kai* started to criticise the campaign, asking, 'why should the penalty be lighter when a disabled child is killed?' Their argument pointed out that the campaign was based on the idea that a disabled child was of less value, and they fundamentally criticised the taken-for-granted notion about disability equalling unhappiness. Their criticism was also geared to the attitudes of local people, who had cast contemptuous looks at the mother and the child when the child was alive, but when the child died, they became sympathetic to the mother.

In the Diet, in May 1972, when there was an attempt to revise the Eugenic Protection Law by adding the condition of the selective abortion clause, *Aoi shiba no kai* asserted that the attempt assumed that disabled people were not supposed to be in society, and that they were a target for eradication. After these events, *Aoi shiba no kai* became a politically radical group questioning the system itself, and the organisation grew and became nationally recognised.

#### *The core beliefs of the Aoi shiba no kai movement*

In October 1973, the group held its first national general meeting. The participants agreed upon the following points:

- (1) We are aware of the fact that we have CP. We acknowledge that we are forced into the position that we are not supposed to be in society. We base the point of all the activities of the movement on this acknowledgement.

(2) We assert ourselves strongly. When we become aware that we have CP, a self-preservation instinct emerges to protect ourselves. We believe that asserting ourselves is the only way to protect ourselves, and we take actions consistent with this belief.

(3) We deny love and justice. We acutely reject (*hitei suru*) egoism in love and justice, and we believe that the mutual understanding that emerges from gazing straightforwardly at human beings, that follows denying the egoism of love and justice, is true welfare. We believe this and we act upon this belief.

(4) We do not choose to solve problems. We have experienced how dangerous it is to look for easy solutions. The search for a solution is the beginning of compromise. We believe that the only possible way of proceeding in the movement is to expose one problem after another (*Aoi shiba no kai* 1973: 6-7).

In some other documents, a fifth point is added to these four points, namely,

(5) We reject disability-free people's civilisation (*Suda* 1998: 125).

Explanations of those principles were added by *Aoi shiba no kai*:

(With regard to point 1) Those with CP have tried to be integrated into the social system. However, the illusion of entering the social system would end up isolating ourselves from the system further and further. First, we need to acknowledge the fact that we have CP. Unless we establish ourselves based on this acknowledgement, we cannot achieve a change of consciousness inside ourselves, and the movement would be ambiguous.

(With regard to point 2) We assert ourselves strongly. In our attempt to establish our own selves, we have to clarify our attitude against the enemies that try to eliminate, isolate, and erase us from existence. In these opportunities, we sometimes have to take actions which might be referred to as the 'egoism of CP'. However, we believe that we can take the path of liberation only via the clash between the egoism of disability-free people and those with CP.

(With regard to point 3) Our subjectivity has been robbed in the name of love. Many of our parents have oppressed our subjectivity in the name of love, justice, and power. In the society of authority, only those who possess power have 'justice' and those who have dropped out have 'injustice.' For us, healthy bodies, or people without a disability, are power. Thus, we deny 'justice,' which is the 'power' of social authority. We also deny 'love' that

is a product of the 'egoism of disability-free people,' and we believe that this denial itself is the path toward the establishment of a society of mutual understanding.

(With regard to point 4) We do not choose to solve problems because we have experienced that this is the dangerous beginning of compromise. To expose problems with the society of disability-free people is a movement that we can develop (Aoi shiba no kai 1973: 7).

Thus, *Aoi shiba no kai* holds that, in the name of 'love', disabled people are confined to limited realms such as home and institutes, with parents or working staff who 'take care of' them by deciding what is good for disabled people. In this way, *Aoi shiba no kai* believes that the subjectivity of disabled people is taken away, even their ability to decide the smallest, most trivial affairs of daily life. This, they believed, was the reality of welfare in the 1970s. On even basic matters of life, disabled people have been made to compromise, and not to make demands. Therefore, the group then claims that they do not search for solutions which, in the end they believe, would lead to a loss of subjectivity. Proposing a solution to a problem would involve a compromise because disabled people are not able to put forth their true ideas because they are in a dependent position. Because of the dependent position of disabled people, *Aoi shiba no kai* believe that disabled people have been prevented from expressing their emotions. Even their most basic emotions have been taken away. Instead, the disabled people participating in *Aoi shiba no kai* declared that if they are called egoists they will affirmatively raise one problem after another concerning the disability-free people's society. Thus, *Aoi shiba no kai* proposed that people without disabilities should be aware that they support discrimination against people with disabilities, either consciously or unconsciously.

It is important to note that people within *Aoi shiba no kai* looked inside themselves (*jiko hihan*) for the internalised idea that 'disability is negative' through strict self-reflection. The fact is that they also had been denying themselves because of their disability. Now they tried to deconstruct the 'discrimination of disability' internalised within themselves, and eventually formulated the argument 'what is wrong with being disabled?' by positively redefining their disability.

The self-affirmation of being disabled is different from the idea of 'even though one is disabled, he or she can do much' or 'despite the disability, he or she is capable'. Their claim was, the bodies of disabled people are different, and therefore, the space they occupy and the time they spend are different – to affirm a disability means to acknowledge this difference as it is, being equal to those of disability-free people. Here, the important point was to see through the mechanisms that ar-

ticulate their existence and by doing so, and by protesting against it, they sought to establish a 'self'.

*Aoi shiba no kai* also took the view that the value that defined 'a disability' as 'a disability' is 'the ethics of productivity'; society is dominated by the norm of disability-free people, and the concept of health is determined by the civilisation of disability-free people. The life-style of disabled people was also determined according to this norm; one should be rehabilitated in the first place, because productivity is a crucial criterion of 'independence'. Otherwise, one is isolated at home with parents, and disabled people's institutions are provided to take over the function of the family's home. The insight of *Aoi shiba no kai's* argument revealed that the function of home and institutions was to isolate disabled people from society, so that they would not disturb activities in other areas of society.

On the point of how to regard productivity and how disabled people locate themselves in society, the Japanese disabled people's movement in the 1970s shows a crucial difference when compared to that in the United States, for example. In the 1970s' movement in the United States, independence was considered to be 'vocational independence' and 'paying taxes'. The argument is that because an individual pays taxes, he or she has the right to be a full member of the society. So the target of the US independent living movement was to diminish dependency by becoming as much as possible like disability-free people. Conversely, the Japanese disabled people's independent living movement fundamentally criticised pre-existing social, political, and economic systems, regarding them as disability-free people's values that disregarded the values of disabled people (Tateiwa 1998c: 225-226; 1999).<sup>48</sup> This criticism was aimed at the belief that placed value on the payment of taxes as a sign of independence. Such a belief would call into question the worth of those who cannot work or pay taxes due to their disabilities. The case of the US is raised here, because Tateiwa reports that there is a misunderstanding that the concept of independent living was imported into Japan from the US after 1981, the UN International Year of Disabled People (Tateiwa 1999: 85-91). Tateiwa holds that this misunderstanding is because professionals at rehabilitation centres and academics at universities in Japan, who have a greater voice in society than disabled people (for example due to their ability to publish their views), were not a part of the movement of disabled people in Japan in the 1960s and 1970s, either unintentionally or intentionally. Professionals and academics sometimes intentionally took distance from disabled people's movement, because the movement was highly political and radical, sometimes tied to the new left student movement. People in the disabled people's movement were sceptical about professionals and academics, too, because they represented authority. In other instances, pro-

fessionals and academics were simply not aware of the disabled people's movement.

*Aoi shiba no kai*'s criticism of selective abortion and 'women's right to abortion' is also based on this idea about a disability. They claimed that women should confront discrimination of disabilities internalised within themselves.

People in *Aoi shiba no kai*, furthermore, rejected beliefs regarding dependence and independence. They posed the question 'what is wrong with dependence?' which eventually led them to declare: 'by letting others take care of our shit, we let them participate in social activities' (Yokotsuka 1975: 74). Here, they define 'society' to be composed of both disabled and non-disabled people, both being equal and necessary to each other's existence, instead of regarding disabled people as secondary and less visible citizens. In this way, *Aoi shiba no kai* gave positive value to what is called 'dependency', including a life that requires the assistance of others, declaring dependency to be an 'essential part of the whole society', and a form of 'independent living'.

In addition to activities opposing the introduction of the selective abortion clause, *Aoi shiba no kai* was active in raising public awareness of a number of issues that involved discrimination against disabled people, for example by hijacking a bus that refused passengers with wheelchairs, and also by developing a campaign of co-education for children with and without disabilities in 1979. Since the 1980s, its activities have focused more on the independent living movement. The group has become less radical, because the group realised that independent living required getting along with disability-free people, instead of only accusing disability-free people of internalised discrimination. Today, independent living has become more of a reality for disabled people, although there are still outstanding issues, such as insufficient levels of governmental financial support.

#### *The 1960s student movement (daigaku funsō): Zenkyōtō*

The student movement in the 1960s was provoked by the international political and economic context in Japan, and by questions amongst the students about the meaning of education and why universities exist. The movement started in the early 1960s, initially at Tokyo and Waseda universities. The spirit of the movement spread to other universities around the country with *Tōdai-tōsō*, or the Tokyo university riot against the university administration in 1968, marking the movement's peak. By 1969, the student movement was established in 86 of the 109 national universities, and 79 of the 270 private universities.

Students' criticism was focused on Japan's position and role in the international community: its alliance with the US as well as Japan's ben-

eficiary position in Asia, which was the movement deemed to be ‘neo-imperialism’ (Onna tachi no ima o tou kai 1996). To analyse Japan itself, the students drew upon Marxist analysis of the relations of production, dividing society into workers and the bourgeoisie. Amongst the students, there was also a fear that they would, in the end, become just another cog in the mechanism of society, that is, ‘alienation of the character of labourers’, according to Marxism. At the same time, a common belief within the student movement was that university students were actually beneficiaries of the current political and economic system, and therefore they should ‘question themselves’ about being at universities. This questioning eventually led to *jiko-hitei*, or ‘self-denial’, which would become a key concept in the movements.<sup>49</sup>

The principle of *jiko-hitei* was a tool in drawing student’s attention to issues of discrimination against certain social groups, such as disabled people and Chinese and Korean people living in Japan. This principle required students to become aware of the discriminatory tendencies that they had internalised and to deconstruct them. This principle was because of the dialectical idea that social elites, such as university students, can only exist through the existence of the socially powerless: those in the student movement were convinced that social reforms could not be realised without self-reflection and ‘internal revolution’, that is, within the person. A number of people participating in the 1960s student movement reported that the movement provided them with opportunities to clearly realise that what they had been vaguely questioning was indeed problematic.<sup>50</sup> However, there was also a critical shortcoming in the movement – the role of women.

### *Women in Zenkyōtō*

Women in the student movement were generally objects of sexual discrimination, expected to cook and clean for male students, or to protect the luggage of male students while men participated in street activities.<sup>51</sup> It was also taken for granted that men should take initiatives, such as constructing theories and arguments. A number of women also reported that during discussions generally men would state their opinions, while women remained silent. The women participants tried to challenge this, but they were sometimes prevented from speaking or taking leadership roles. Women were thus subordinated and prevented from taking leadership in the student movement.<sup>52</sup> This reflected the conventional norm at the time that women should be behind men, supporting men, but not arguing against men. For women to be acknowledged as capable, they must be ‘like men’, such as being able to make free use of jargon from Marxist theories.

Women in the student movement soon realised shortcomings of the student movement. Setsuko Mori, a participant in the student movement, experienced this firsthand: During the student movement she wrote handbills and took the initiative to organise actions. One day she was told by a male leader of the movement that she did not have to wash dishes because she was doing 'as well as men'. She says

I was categorised as 'an exceptional woman' by a man. For a woman to be 'an exceptional woman' would require 'non-exceptional women'. I now realise the paradox that I, as a woman, need to insult other women (to be acknowledged to be as capable as men). [...] I have to move forward to my 'being a woman,' without denying myself as a woman, but affirming that I am a woman (Ôta 1996: 78-79).

The theory of 'self-denial' – a theoretical tool to question the self who is enjoying the privilege and to fight for dismantling the system that produces privilege – could not be applied to women as it was to men in the student movement; womens' free expression of their intellectual, productive or creative abilities were frowned upon by mainstream society. Some women in the student movement argued that the theory of 'self-denial' was in the end that of the privileged, who still had something to be denied (Tanaka 1972b: 28-29). Instead, women needed to *affirm themselves by denying values internalised within themselves which denied women*. This process of self-affirmation through 'double-denial' is, by the way, also found in the arguments of Aoi shiba no kai, namely, *internal revolution to overturn internalised oppression within themselves*. Self-questioning was a characteristic of social movements in this period.

Physical insults and abuse by male students were also practised in the movement. Open sex including sex in public and open relationships, was one trend. Some men and women in the student movement had sexual intercourse when they were not each other's partners. However, the consequences were often that women became pregnant and the men would not take any responsibility but merely cry or quote the movement's theories on social revolution. There were some rapes in the name of the movement's theories to make excuses, but women would remain silent because of their sense of responsibility to protect 'comrades', or from a sense of shame about the experience.<sup>53</sup>

Thus, the student movement did not acknowledge women's liberation as a necessary or worthwhile goal, although the attitude of 'questioning the self' was an important springboard for women to transform their internalised oppression to affirm themselves. The fact that the student movement did not liberate women meant that the student movement did not take discrimination against women seriously, while simul-



taneously tackling other kinds of discrimination with sensitivity. When women criticised this point, male students would say, 'first comes the revolution, and women will be liberated after that'. Women became fed up with this claim, and they formulated their own ideas, trying to sense, feel, and express themselves on their own, without borrowing from the male vocabulary.

### *The emergence of the Women's Liberation Movement*

Toward the end of the 1960s, new women's organisations began to be established. In meetings, women exchanged views on their frustration about their position in the workplace, the sexual division of labour, relationships with husbands, in addition to sexuality and bodily problems.<sup>54</sup> Their difference from previous women's movements was that they talked openly about sexuality, even making it the core of women's liberation.

On 21 October 1971, the International Anti-War Day, *Group Tatakau Onna*, or 'Group of Fighting Women,'<sup>55</sup> demonstrated against war, representing themselves as 'the Women's Liberation Movement'. This group was initiated by only three women, but 50 women joined the demonstration, holding flags with the name *Group Tatakau Onna*. The *Asahi Shimbun*, one of the biggest newspapers in Japan, reported on this demonstration, and after that, 'the Women's Liberation Movement' became a familiar term in public. After this demonstration, women in the women's movement started calling themselves 'lib' or 'woman lib' as an abbreviation.<sup>56</sup> An accumulation of frustration in society drove a wide range of women, for example, female students, housewives, and factory workers to participate in the WLM. In practice, the WLM consisted of only a few active women's groups. But their arguments spread widely throughout the country, influencing other women's groups. At crucial moments, for example when there were attempts to limit women's access to abortion, women's groups through the country collaborated together sharing political ideas and rallying opposition. The WLM was national, but a loose social movement in which many individuals and different organisations participated.

In May, 1972, in the 68th Diet, a draft to revise the Eugenic Protection Law was proposed by the Diet members from *Seiseiren*. The content of the draft was to remove the economic reasons clause from the Eugenic Protection Law, to add a selective abortion clause, and to set up a guidance system for women about the proper age to have their first child.

Women said, 'women's access to abortion will be limited and women will be controlled in marriage!' The draft thus triggered women and women's groups around the country to set up activities together with the

WLM. The *Lib Shinjuku Centre* was opened by *Group Tatakau Onna*, in collaboration with other women's organisations.<sup>57</sup> The opening of the centre intended to provide a common meeting space for women's groups, in order to facilitate further collaboration in the WLM. Members from *Group Tatakau Onna*, and *Shisô-shûdan S. E. X.*, or 'thought group S. E. X.', took the initiative and even lived communally in the centre. Groups such as *Tokyo komu-unu*, *Hi-monji*, and *Tatoku-josei-dômei* were located within the centre as well, but did not live there.<sup>58</sup> The centre represented an experiment to establish a women's commune, including sharing the task of child rearing, because there was a shortage of day nurseries for mothers who worked to earn. In the 1970s, theories of the Japanese WLM were actively developed within this centre. At the same time, a number of women's organisations were established, and the centre played the role of communication centre.

Opposing the attempt to limit women's access to abortion was the most crucial goal of the movement in the 1970s. 'Women decide to give birth or not to' – this is 'canonical' rhetoric of the women's movement, but women could not easily keep using this rhetoric, because they were being confronted by the question from disabled people about women's right to abortion – whether a woman is entitled to abort a disabled foetus. The next chapter recounts the abortion debate in the 1970s.

## 2 Abortion Debates in the 1970s

### The attempt to revise the Eugenic Protection Law: The draft proposal and those behind it

On 25 May 1972, in the 68th Diet, a revised Eugenic Protection Law was proposed by the Ministry of Health and Welfare.<sup>1</sup> The proposal consisted of three points: to remove the economic reasons clause, to introduce a selective abortion clause, and to set up a eugenic guidance system for women regarding the proper age to have a first child. This attempt to revise the law was not successful.

The first point, to delete the economic reasons clause, was aimed at regulating access to abortion. The main people promoting this point in the draft belonged to a right-wing religious group, *Seichō no ie* (for more background on this group, see chapter 1). In 1960 and 1961 the group submitted letters to the Ministry of Health and Welfare and to the Diet, emphasising that ‘abortion is an act of murdering children and human beings,’ and the duty of the government was ‘to let everyone in the nation be aware that abortion is bad, fearful and shameful’ (Ōta 1967: 270-273; Taniai 1983b: 86). *Seichō no ie* united Diet members from the Liberal Democratic Party, and formed a league in 1969, called *Seiseiren*, with the goal of limiting legal access to abortion.

In promoting the deletion of the economic reasons clause, *Seiseiren* emphasised the fact that Japan was known internationally as an ‘abortion paradise’, which, according to *Seiseiren*, implied that Japan was ignoring human rights, or that Japan was an uncivilised country (Yūseihogohō kaihai kisei dōmei 1969: 37, YKKD hereafter). This ‘abortion paradise’ nickname reflects the fact that abortion was almost totally accessible to women who wanted to undergo the procedure, due to the vagueness of the economic reasons clause, as well as the fact that few other countries at that time legally permitted abortion and that foreigners even travelled to Japan to have abortions. (Later, in 1967 abortion was legalised in England, in 1973 in the US, and in 1974 in France.) Hence, the abortion rate was relatively high in Japan in comparison with other industrialised countries. Being pressured by *Seiseiren* on this point, the Ministry decided to regulate abortion by deleting the economic reasons clause. Kuniyoshi Saitō, the Minister of Welfare and Health,

explained that the reason for proposing the change was that 'there is no need for an economic reasons clause, because Japan is so well-off, compared to the period of devastation after the war,' as well as that 'the loophole in the law which murders fetuses should be removed' (from the minutes of the budget committee in the House of Councillors on 4 April 1972, cited in Morioka 2001: 443-446).

The second point, the introduction of a selective abortion clause, was a reaction to the birth of deformed babies in the 1960s, due to Thalidomide and Minamata disease, and also related to the possibility of screening fetuses for deformities by checking the amniotic fluid (such checks being introduced in Japan in 1968). With regard to this point, Minister Saitô explained that, 'because deformity and disability would be the cause for "unhappiness for the entire life" of the children, and because there is a recently emerged possibility to discover disabilities, there must be a legal procedure for aborting disabled children, also called selective abortion' (ibid). The 1948 law did not make explicit mention of a foetus with anomalies, and so, formally speaking, abortion because of an anomaly was performed under the economic reasons clause, as the clause was, and still is, a loophole of the law. Under this condition of the law, abortion of a foetus with anomalies under the economic reasons clause is, precisely speaking, illegal. Yet, under the revised law, the procedure would be legalised because the technology to detect an anomaly in the foetus is available. An explanation from the Ministry said that the attempt to introduce the selective abortion clause was actually designed to broaden the range of choice for women to include prenatal screening and selective abortion. In this way the Ministry held that the introduction of the selective abortion clause was for the sake of women (Aoi shiba no kai 1973: 39; the House of Councillors, cited in Morioka ibid).

The introduction of the selective abortion clause was actually justified as a replacement for the economic reasons clause, in order to adapt the law to the current economic and social context in Japan. The economy was now sufficiently strong and therefore the economic reasons clause was no longer necessary. But because of technological developments, the selective abortion clause was necessary (The House of Councillors, cited in Morioka ibid).

This second point reflected the interests of the Ministry. As Saitô's statement shows, a disability was believed to be a cause of unhappiness, and preventing unhappy births was believed to be a good welfare policy. The ministry also regarded the introduction of the selective abortion clause as part of the reactive policies to tackle the Thalidomide and Minamata issues. *Seichô no ie* meanwhile was non-committal on this second point. Its most pressing concern was to delete the economic reasons clause; from an anti-abortion point of view, the selective abortion

clause was not so welcome. But in order to maintain their alliance with Saitô, the promoter of the revised law, there was no sign that *Seichô no ie* opposed the idea.<sup>2</sup>

The third point, to establish a counselling system to advise women on the proper age for marriage and having a first child, was a reaction to the trend that marriage was no longer women's only interest, and that an increasing number of women were seeking careers.<sup>3</sup> The average ages when women married and when they gave birth to their first child were increasing. 'For women to raise their children well, the first child should be born while the mother is still healthy and strong,' said Saitô, explaining this part of the proposal. 'Women should be advised to establish an ideal family without having an abortion' (Morioka 2001: 147-148).

This third part of the proposal matched *Seichô no ie*'s anti-abortion argument. In its arguments it focused mainly on women's behaviour, that is, the absence of motherhood, excessive materialism causing a loss of self-control and spirituality, having sex without responsibility, and eventually having abortions without proper consideration.

Each of the three parts of the proposal to revise the Eugenic Protection Law was supported by diverse parties with different interests, and these parties did not always agree with each other. The attitude of the medical associations was a good indication of this. *Nihon-boseihogo-kyôkai* (Japan Association for Maternal Welfare: *Nichibo*, currently Japan Association of Obstetricians and Gynaecologists or *Nihon sanfujinka ikai*),<sup>4</sup> for example, was not consistent in its opinions about the draft. The association was against the deletion of the economic reasons clause because it would make their medical practice illegal. Doctors did not want to lose their exclusive authority, determined by their medical skill, to decide whether or not to perform abortions on women.<sup>5</sup> With regard to the introduction of the selective abortion clause, medical associations did not even share a consensus among themselves. On the one hand, introducing the clause meant broadening the range of their medical practice, enabling doctors to legally use new technology, on demand, but on the other hand some thought that ethically the introduction of the selective abortion clause was highly problematic.

Among the Ministry, the Diet, and *Seichô no ie* there were different points of view about the three parts of the proposal. All parties agreed on the first and the third points, but *Seichô no ie* was not enthusiastic about the second part.

All in all, we can conclude that the content of the proposal best reflected the Ministry's interests, but it was *Seichô no ie* that first pushed the Diet and the Ministry to take action, using their anti-abortion argument about the problems of women's behaviour and abortion.

*The image of women in the anti-abortion argument*

According to *Seichô no ie* and the promoters of the proposal to delete the economic reasons clause, 'a foetus is a person after the moment of conception, therefore abortion is an act of murder' (YKKD 1970: 18-20; *Seichô no ie* 1974: 2-3). They argued that the clause in effect had legalised murder, and that these legal murders were being committed because of women's degraded morality following the Second World War.

Firstly, they noted, women were having sexual intercourse out of wedlock, influenced by the 'free love' trend, to have sex without any sense of responsibility, taking for granted that they could easily have an abortion if they became pregnant (Seigakuren-chûô-ironkyoku and Seigakuren-joshi-gakusei-taisaku-kyoku [SCR & SJGTK hereafter] 1970: 21; YKKD 1970: 2, 7). Secondly, women were forgetting the 'supreme mission' of their lives: motherhood.<sup>6</sup> The *Ie* household system, under the Meiji Constitution, was, in their view, the most beautiful virtue of Japan; a system in which women could be fully engaged in motherhood and maintaining the household (*Seichô no ie* 1974: 42-43; see also the explanation of *Ie*, chapter 1). However, the post-war Constitution abolished the *Ie* household system in order to give men and women equal civil rights, and therefore women left their great mission behind in search of careers and social opportunities similar to those pursued by men (SCR & SJGTK 1970: 22). Thirdly, they argued, a woman's morality had become so degraded that she dares to kill her own child for economic reasons, even though giving birth to the child would probably not destroy the woman's life. *Seichô no ie*'s arguments suggested that it was the ultimate selfishness and egoism of women that pitted the life of a child against having the economic means to buy 'another electric product' (*ibid*: 32).

Thus, women's behaviour and spiritual degradation were put forth as the causes of legal murder. Men appeared in their argument only in the context that 'men do not take responsibility because abortion is legal and women are too quick to have sexual intercourse' (YKKD 1970: 23). In this light, the claim for 'the right to abortion' by the women's movement was not only linked to a decline in morality, but also to 'a barrier for other women to be truly liberated', because if abortion was outlawed, men would be more serious about practising contraception (*ibid*).

The anti-abortion argument was based on nationalism and nostalgia for pre-war Japan. First of all, those opposed to abortion were concerned that the lower fertility rate would invite invasion from other countries, making the Japanese race a minority in their own country.<sup>7</sup> Also, although Japan was now the second largest per capita economy in the world, they argued that Japan's growth would stop in the future because

of a lack of productive workers.<sup>8</sup> Secondly, the post-war Democratic Constitution was seen as the cause of women's reluctance to become mothers, because Article 24 of the Constitution stipulated equality between men and women.<sup>9</sup> According to the anti-abortion argument, this aspect of the Constitution was an attempt by the US to weaken the power of the Japanese nation, as was the legalisation on abortion in 1948. Therefore another strategy of groups opposing abortion was to introduce a new Japanese Constitution based on the Meiji Constitution, abolishing the post-war Democratic Constitution (SCR & SJGTK 1970: 22).<sup>10</sup> They argued that the rhetoric of 'women's rights' by the women's movement was a negative influence from the US, saying that 'women were thoughtlessly following the trend of rights brought by women in the US'.

It is noteworthy that *Seichô no ie*'s anti-abortion arguments were based on nostalgia for the pre-war household system, where women were treated as minors and as incompetents. It shows their view that women ought to be controlled and guided by the household head. Their reasoning about the relationship between abortion and the degradation of women's morality can be explained in this light. Since women do not have the capacity to think logically about the consequences of their acts, and because they are easily tempted by temporary pleasures without due consideration, women need to be controlled and guided by the law, just as a minor would be.

In constructing their anti-abortion argument, *Seichô no ie* and Diet members from *Seiseiren* used terminology such as *rei*, which stands for dead people's souls or spirits. Contrary to usual parliamentary customs, in the political arena, such as the Diet, some religious doctrines were promoted to support the anti-abortion argument, in addition to the 'wiping out the disgrace of the abortion paradise' and the 'free love' arguments. For example, it was argued that the student movement in the 1960s was a collective explosion of anger by all of the fetuses murdered because of post-war materialism and moral decay (SCR & SJGTK 1970: 2-3). *Seichô no ie* also argued that bed-wetting by a child is a manifestation of an aborted fetus's tears, as well as amniotic fluid, because the fetus still thinks it is inside its mother, without being able to get out (*Seichô no ie* 1974: 39). They argued that children's cancer was a result of the Constitution introduced by the US and the abolition of the *Ie* household system (*ibid*: 42-43). Leukaemia, in their view, was a result of ignorance about the importance of perpetuating the family bloodline (*ibid*: 44). They further argued that suicide by adults is an expression of the desire to meet an aborted child (UKKD 1969: 42-43).

Such social problems as juvenile delinquency, robbery, and murder were also explained as the consequences of legal abortion (SCR & SJGTK 1970: 22; *Seichô no ie* 1974: 3, 42-43). *Seichô no ie* argued that

in view of the current overriding materialism as well as the lack of respect for life, the birth of a human being was degraded to being merely the consequence of the pleasure of parents, based on an artificial choice made by parents, rather than being born out of mystic nature. In this reality, human beings are degraded to being trivial and meaningless. Therefore a number of young people lose their life's purpose, not knowing why they have been born at all. Abortion is thus the cause of all bad phenomena in society, as well as in nature, because it is an act against the principle of nature. This argument continued until the 1990s.

Although the anti-abortion argument is biased toward a specific religious doctrine, and not all of it was accepted by the general public, the concepts of *rei* and the anger of the soul of the aborted foetus were not so far removed from people's minds. There is a belief about the existence of a soul, or spirit, after death, which was, and still is, widely accepted in Japan, and it is plausible that this belief, when combined with the strong experience of pain and guilt after abortion, would touch the emotions of people, especially women. *Seichô no ie*, as well as others supporting the proposal, understood the resonance of these beliefs and consciously applied this reasoning to their arguments to place limitations on women's access to abortion. The boom of *Mizuko-kuyô* in temples, or the business of watering the souls of aborted foetus by women in the 1980s, is an expression of this psychological mechanism, linking problems in life with the experiences of abortion, in action. Consequently, by 2 June 1969, *Seichô no ie* was able to collect 330,000 signatures against abortion in support of the proposed legal changes outlined above, and by 1974 their women's division had collected 2.5 million signatures against abortion. Their campaign was called 'a foetus is a human being' (YKKD 1969: prologue; *Seichô no ie* 1974: 39), and submission of these signatures led the Diet and the Ministry to consider the limitation of abortion.

*Seichô no ie* also opposed contraception, as in its view conception is due to the desire of the soul to appear in the human world, in order to develop itself. And therefore contraception placed unnatural restrictions on the soul. In this light, *Seichô no ie* was also against the practice of family planning, because in their view all the *rei* should be given the chance to develop themselves. However, the group chose not to bring the agenda of prohibiting contraceptives to the fore in the public arena because, being generally unpopular, it would have made their argument appear too extreme.



## Reaction of women to the proposed revisions to the Eugenic Protection Law

When the proposal to delete the economic reasons clause was about to be introduced in the Diet in 1972, women from all over Japan started activities in their local communities to prevent the revisions from being made. With *Lib Shinjuku Centre* as a communication centre, women carried out activities such as teach-in meetings to raise consciousness amongst women, sit-in strikes, and other demonstrations to provide opportunities for women to express and exchange thoughts on the issue of abortion and other issues related to the life of women, including sexuality and marriage.

When the revisions were officially proposed, the WLM analysed the three points as follows (Group tatakau onna, Himonji, Tatakau josei dômei, S. E. X. 1973). To remove the economic reasons clause from the Eugenic Protection Law would not only limit women's access to abortion, but would also criminalise abortion, as more than 99 percent of abortions were being performed under the economic reasons clause. The combination of deleting the economic reasons clause and introducing the selective abortion clause, in the WLM's view, showed the intention of the promoters: to control the quality and the quantity of the population with legal intervention into women's reproductive capacities. Setting up a guidance system for women regarding the proper age to give birth was seen as an attempt to force women to give birth while they were still young, when the chances of having children with a disability were lower. The movement saw this an imposition of a particular lifestyle on women, a norm that women must be married by a certain age, and a norm for the kind of children they may give birth to. It was also seen as an attempt to use women as cheap productive labour: if women have children at a young age, they can be freed from full time child-rearing at a still relatively young age and be able to return to the paid labour market. But with children to care for, she cannot be engaged in full-time work. A woman thus becomes a cheap part-time worker.

The first point, criminalising abortion, received most of the movement's attention. Women in the movement named the proposed legal revision *Chûkin-hô*, or 'the law to criminalise abortion'. In their protests against the proposal they linked the issue of criminalisation of abortion to such topics as the discourse of motherhood, the sexual/gender division of labour, the meaning of the monogamous marriage system, and the problems inherent in the ways in which the economy is managed. This attitude reflected the radical climate of the *Zenkyôtô* movement, because many of the women in the WLM were *Zenkyôtô* members.

According to the women's movement, the monogamous marriage system was used as the central tool to sustain economic productivity and secure male productive labour for the duties of economic management, while women supported households by doing reproductive work. The *Ie* household was the basic unit of governance for the rulers, in which women were absolutely subordinate to men. Women in the movement analysed that in the monogamous *Ie* married life, women are divided into two types: 'gentle mother' and 'toilet', as a place for men's excretion (sperm), where the prerequisite is that a wife sleeps only with her husband, while he might not necessarily be sleeping only with his wife (ibid: 4-5; Tanaka 1972a; Tanaka 1972b). In this context, outlawing abortion was necessary, not only for securing labour power, but also for strengthening women's loyalties to their husbands and to the household, because if a woman committed adultery, and became pregnant by another man, she could not have an abortion. Therefore she would not sleep with another man (Group-tatakau-onna, Himonji, Tatakau-josei-domei, S. E. X.; Tanaka 1972a; Tanaka 1972b; Aki Shobô Henshûbu 1971: 134-137, 160-168).

Given this argument, women maintained that the liberation of sexuality was itself the liberation of women, because the oppressive view of sexuality was the barrier to dissolving the marriage system and the sexual division of labour. And since the marriage system was based on the gendered division of labour, it was also an obstacle to women's economic independence.<sup>11</sup>

For women in the movement, the crucial point was that the content of the proposal constituted state intervention in the workings of a woman's body, using and controlling it for the sake of the national interest. Both men and women would be part of the same problematic system, but men would enjoy more privileges. Women were to become slaves in the system, while men would be 'the head slaves' (Tanaka 1972a; Tanaka 1972b). Women did not want their way of life to be dictated by state interests or dominant conservative values, so they declared, 'abortion is women's basic right'.<sup>12</sup>

### **The encounter between the movements of women and disabled people**

When the proposal to revise the Eugenic Protection Law was made in 1972, women in the movement tried to collaborate with the disabled people's movement in opposing the revision. There was scope for this collaboration because both the disabled people's movement and the women's movement shared a similar self-image, based on the view that pregnant women, women with children, and disabled people were 'devi-

ants' from society's dominant norm, which was based on being male, productive, and disability-free. Public infrastructure was also constructed with able-bodied adult men as the standard, and this standard did not reckon with pregnant women, women with children, or disabled people. The main active disabled people's group to oppose the proposed changes was *Aoi shiba no kai*. In the 1970s groups of people with other disabilities did not engage in noteworthy activities in relation to the attempt to revise the Eugenic Protection Law. This is partially because the proposed revision to the law was for the purpose of increasing economic productivity, according to the way people in *Aoi shiba no kai* analysed it. CP is a disability with which one can hardly work, while people with other kinds of disabilities could work. For this reason, *Aoi shiba no kai* reacted sensitively to the ethics of productivity, which determine the value of a person according to his/her economic productivity (for more on the ethics of productivity, see chapter 1). They were also the only disabled people's groups that raised the radical question of 'what is wrong with having a disability?' Instead, those outside *Aoi shiba no kai* felt that life with a disability was unhappier.<sup>13</sup>

*Aoi shiba no kai* did not unite with the women's movement easily. It criticised the 'women's rights' rhetoric, saying that decision-making about an abortion should not be totally entrusted to women, because eugenic thoughts, or the idea that disabilities are negative, are internalised in women in general, as well as in women in the WLM. *Aoi shiba no kai* claimed, instead, that women's access to abortion should be limited to some extent because women would choose to abort a foetus with anomalies. As the guidelines of *Aoi shiba no kai* show, the group also expressed strong scepticism about disability-free people (see chapter 1).

On 29 March 1973, when the *Lib Shinjuku Centre* held its first general meeting, the disabled people's movement officially criticised the women's movement's rhetoric that spoke of 'women's right to abortion'. So, the disabled people's movement assumed that it would be in the woman's best interest not to have a child with a disability. So, the group criticised 'women's rights' as being an expression of women's egoism: In the name of women's rights, women would abort foetuses with an anomaly (Mizoguchi, Saeki & Miki 1992: 168, 171, 174). Up to this time, women had been using the term 'right' in connection with access to abortion, but after the attempt to collaborate with the disabled people's movement in 1972, serious consideration began about the nature of the act of 'abortion' and the rhetoric of 'rights'. During this first general meeting women made an official appeal to the government requesting free abortion, free medical care at the time of delivery, as well as subsidies for contraceptives. However, the disabled people's movement criticised these ideas, saying that 'the women's movement's view was narrow, because the proposal made in the draft to revise the Eugenic Pro-

tection Law was not only about criminalising abortion, but also about introducing the selective abortion clause' (ibid). From then on, women named their political struggle '*Yûseihogohô-kaiaku-hantai*' (opposition to the revision of the Eugenic Protection Law), instead of '*Chûkinhô-hantai*' (opposition to the draft to criminalise abortion), giving the same weight to the opposition to selective abortion as to the criminalisation of abortion.

### Disabled people's arguments against the proposal

#### *On the attempt to introduce the selective abortion clause*

*Aoi shiba no kai* argued that the attempt to introduce the selective abortion clause was an attempt to eliminate disabled people, based on the beliefs that 'a disability is more negative than positive', 'a life with a disability is unhappy', and 'a society without disabled people would be happier'.<sup>14</sup> These ideas are based on the ethics of productivity. In other words, disabled people, especially those with CP, were made out to be a social nuisance because they could not be productive.

*Aoi shiba no kai* also pointed out that Thalidomide babies were a responsibility of the Ministry because it had failed to investigate the safety of Thalidomide pills, just as the management of the company was responsible for the Minamata disease because it let mercury flow into the sea. By eradicating foetuses with an anomaly before birth, the Ministry was evading its responsibilities – this was how *Aoi shiba no kai* constructed their argument against the introduction of the selective abortion clause (*Aoi shiba no kai* 1973).<sup>15</sup>

#### *On women's arguments*

As mentioned previously, *Aoi shiba no kai* opposed the 'women's right' argument in connection with abortion, pointing to the bias against disabilities internalised in women. People from *Aoi shiba no kai* asked individual women in the movement whether they would want to give birth if they learned that the foetus was deformed, and this sometimes overwhelmed women in the movement. Often women could not answer either 'yes' or 'no'; indeed, there were deep-rooted feelings that it would be more convenient to have a disability-free child. Women also felt that internalised discrimination should be wiped out. It is possible to observe that the debate between the two movements was a delicate balance, and 'the right to abortion' case rested upon a fragile base. Some women even went so far as to say that they would 'choose to give birth if the foetus was deformed, but would have an abortion if the foetus was not disabled' (Yonezu 1998: 235). To fully understand these strug-

gles, the dynamics of the power relations at work within the disabled people's movement, which was mainly male, and in relation to the WLM, which consisted mainly of disability free women, must be considered. We need to look at the interaction of the concepts of 'disability-free women in the WLM', who are 'potential mothers', as well as the concepts of 'male disabled people' and 'sons of mothers'. Male dominance within the disabled people's movement in those days will be recounted in chapter 3 and 5 and the myth of motherhood in Japanese culture is recounted later in this chapter and chapter 3.

Women in the movement tried to emphasise that women with deformed fetuses felt compelled to have an abortion because of the poor social settings in which they had to raise children. Using this argument, the women tried to find a bridge for collaboration between the two movements, and to stand together against the 'common enemy'. For example, with regard to the disabled child murder case in Yokohama in 1972 (see chapter 1), women in the liberation movement argued that the incident was a result of the ideology of motherhood, which regards mothering as women's natural job and eventually isolates a mother and her children from society, even when her male partner does cooperate in raising children. The murder of a child with a disability was thus the last resort for the mother, who was totally isolated and without support from others. Hence, any woman in a similar situation is a potential child-murderer (Lib Shinjuku Centre, *Kogoroshi wa anatada!* [*It is you who have murdered the child!*] 1973: 68; Tanaka 1973).

*Aoi shiba no kai* did not totally agree with this argument. Although it acknowledged that social support was indeed insufficient for raising disabled children, it was still a woman, or a mother, who actually killed the disabled child. *Aoi shiba no kai* declared that, 'disabled people have been killed by women's egoism'.<sup>16</sup>

This contrast between the two movements' arguments regarding the matter of a disabled child also showed the structure of their disagreement on the issue of abortion. Women from the WLM often emphasised the problems in the context of women's lives which drive them to abort deformed fetuses, since they have few other options. On this point, the women's movement tried to collaborate with the disabled people. However, *Aoi shiba no kai* pushed individual women to reflect upon their attitudes, questioning internalised discrimination.

Although both groups opposed the proposed revisions to the law, the two movements could not agree with each other completely. Instead, there was a fundamental contradiction as to whether it was up to women to decide whether to abort deformed fetuses or not. Women in the movement now had to consider their rhetoric, that is, 'the right to have an abortion', including whether they should stop using the word 'right' or not.

### In search of movement rhetoric

Within the WLM a tendency emerged not to use the term 'right'. The criticism they had received about the term raised doubts among the women involved in the movement. Even before encountering criticism from the disabled people's movement, there had already been a feeling that 'right' could not fully explain a woman's relationship to abortion. The term 'right' described entitlement to access to abortion, but it could not explain why the situations that created women's need for abortion, either the causes of unplanned or unwanted pregnancies, or the pain experienced by women who undergo abortions. As the WLM questioned the basis of society by refusing conventional values, such as motherhood and the sexual division of labour, it shared with the disabled people's movement a sense that 'right' was not the proper term to use in making arguments for changes that would affect society.<sup>17</sup> Moreover, the term 'right', when linked to the issue of abortion, had the connotation that 'abortion is positively chosen by women'. Because 'a right' is something that is to be 'enjoyed'; in view of women within the WLM who were having doubts about the term, 'the right to abortion' implied that women were having abortions without qualms, and this also suggested that women were selfish and egotistical. Women in the movement believed that if using a rights-based rhetoric to argue for access to abortion conjured up these kinds of images for women, it was not a good strategy to use such rhetoric.

In this context, when a debate on abortion took place between representatives of women's groups and disabled people's groups, the WLM speakers would be jeered at with such words as 'nonsense!' when the term 'right' was used. This term became more and more difficult and sensitive for both movements.<sup>18</sup> As a result, the women's movement tried to construct arguments that went beyond the conventional associations that the term 'right' conveys. This attempt by women to construct an argument by removing or redefining 'right' was in order to refute the anti-abortion argument as well as to find a meeting point with the disabled people's movement in order to do movement activities together to question the implications of abortion in the social context of the day. As a result of their engagement with the disabled people's movement women within the liberation movement became more reflexive on issues such as the meaning of abortion, as well as the relationship between a woman, foetus, abortion, and giving birth.

*'Abortion is murder, and a woman is a murderer'*

The concept of an individual political 'right' connotes a person's entitlement to commit a certain action, or to legitimately claim something. Ac-

cording to the anti-abortion argument, women are not entitled to kill a foetus, because they define a foetus as a person. Women in the WLM did not undertake to define a foetus as a person; however, they could not deny that there was an intuitive feeling that a foetus was a living being. This feeling was certainly one that was shared by women in the WLM in general:

There is something in the experience of abortion which cannot be wiped out by reasoning that 'a foetus is not a human being,' or 'I abort a foetus because of the difficult social condition.' [...] Nobody knows if it is a human being or a person, but it is something with life. [...] The sense that there is an unsolved problem comes from the fact that a foetus is a living being.

This is a citation from an argument titled, '*Aete-teikisuru = Chūzesu-wa-kitoku-no-kenri-ka?*' (I dare to propose, 'is abortion a vested right?'; appendix 5).<sup>19</sup> This argument was made by Mitsu Tanaka on three sheets of paper, and was distributed in May 1973 at the general meeting of the WLM. Probably this was the first public attempt by the WLM to challenge 'women's right to abortion'. Acknowledging that a foetus is a being with life, Tanaka stated that 'by aborting, women kill foetuses', and 'women are murderers' (Tanaka 1973).

This feeling was not held only by Tanaka, but was held generally by women in the WLM at that time. Setsuko Murakami, for example, another woman in the WLM at that time, said that 'when looking into one's self, you will find the reality that the self survived by killing children at one time, but at other times you gave birth. To live a "life" means to keep looking into such a self.'<sup>20</sup> Thus, women in the movement did not pretend or try to justify abortion by giving an artificial ethical definition to a foetus and weighing that ethical status against that of a woman. To define a foetus to be a person, a human being, a life, or 'nothing' – all are given artificially according to the values of the society of the day. As values change, the definition of a foetus changes. Nobody can actually define what a foetus is. Women in the WLM did not try to justify abortion by saying that 'abortion is not morally problematic because a foetus is not a human'. Instead, they argued that women need to 'confront the fact that abortion is an act of killing' (Tanaka 1973). Thus, the Japanese WLM constructed their abortion debate based on the notion that an abortion is 'an act of killing a life'.

To define abortion as murder is a perilous act for a women's movement, but behind this argument was an honest and sincere desire to tackle the issue of the act of having an abortion. This definition of abortion also did not mean that the women's movement had to retract their proclamation, that 'it is women who determine whether to have an

abortion'. How did they develop a plausible argument in favour of abortion to deal with the implications of abortion being murder? The statement 'to give birth is egoism, not to give birth is egoism' was one clue to the construction of their argument.

*'Umu-mo-ego, umanu-mo-ego'* (To give birth is egoism, not to give birth is egoism): 'We all are in an egoistic society' <sup>21</sup>

Abortion is an egoistic act of killing according to general values in society in Japan. But on second thought, giving birth, according to the WLM argument, is also an expression of egoism. Some women, they noted, gave birth just because others chose to do so, or because otherwise they might be seen as deviant from the normal course of life. Hence, on many occasions, women used 'giving birth' in order to be acknowledged as 'complete' women, or in order to prove their womanhood and justify their existence. With regard to child-rearing, too, there were cases in which children were used by mothers as a means of self-realisation, as when some mothers, for example, drove their children to study very hard with an expectation that the children would become highly prestigious members of society. However, despite these acts of egoism the acts of giving birth and having children had hardly ever been called 'egoism'; in the Japan of the 1970s these acts unconditionally won admiration. Giving birth was simply taken for granted, in the course of life, for 'normal', 'healthy', heterosexual women, while not giving birth was questioned and considered to be abnormal. At the same time, a tendency was that women's reproductive health campaigns at the time in general in Japan focused almost exclusively on the issue of abortion. Therefore there is a gap in what had come under scrutiny by the women's liberation movement at that time. In this situation, the message of the rhetoric that the WLM began to put forth was, 'abortion is spoken of in only negative terms, but let's not take giving birth for granted. Instead let's have a closer look at the meaning of giving birth, too. There might be problems in that action' – this was the message of the rhetoric that the WLM began to put forth.

'Not to give birth is egoism' – this rhetoric declared that women in the Women's Liberation Movement thought that abortion was an egoistic act of eradicating a life. The movement developed the argument even further:

In history, abortion was either prohibited or legalised, according to the particular state's interest. Under militarism, healthy women were forced to give birth. Abortion was legalised after the war as part of the state's policy of poverty mitigation. In 1973, the draft to revise the Eugenic Protection Law was an attempt to



control the population in both quality and quantity, using women's bodies. Medical associations opposed the attempt, but this was with a view that abortion should be performed only under the judgement of a medical professional, and also because abortion was a huge source of income for them. Hence, both actions, giving birth and not giving birth, were based on the interests of others, not of women. In this situation, if a woman gives birth, it is as if she is contributing another worker to the state, and if a woman has an abortion, it is as if she is helping a medical doctor earn money by practising medicine (*ibid*).

Thus, women in the movement claimed that 'women have been made to give birth, and have been made to abort', and that 'actually women have never enjoyed the right to abortion' (Tanaka 1973). Even the current accessibility to abortion was provided by the state under the Eugenic Protection Law, in which to a great extent the state's interest was reflected. Hence, although the critiques put forth both by anti-abortion movement and the disabled people's movement argued that women's rights to abortion are egoistic claims, the WLM argued that the present accessibility to abortion is actually not relevant to, or based on women's rights. Instead, it is based on the state's interests as abortion was initially legalised after the Second World War for the purpose of poverty mitigation and enhancing the quality of the nation (see chapter 1).<sup>22</sup>

Even before modern times, the WLM claimed, abortion historically was a means to balance households and communities in terms of resources and labour power. Thus, social stability was brought about, and history has been constructed, on 'foetuses cut into pieces', or 'cutting off helpless beings' (Tanaka 1972a; Tanaka 1972b). Women often had to choose abortion because it was necessary for the well-being of the whole society, the community, or their household – abortion and infanticide were used as a means to strike a balance between cost and benefit. In this light, unwanted or unplanned pregnancy was unavoidable not only for women, but for the whole social system.

In an interview reflecting upon the 1970s movement, Tanaka noted:

We all are living with these facts. Anti-abortionists are blaming women having abortions, but anti-abortionists are also benefiting from the fact that social prosperity is established at the cost of weaker, more helpless beings. Thus, when it is necessary, society will endeavour to eliminate another helpless social group (Tanaka 1983: 188-195).

Concerning the function of abortion within society as a whole, she continues:

So, in the end, such a society would not let women, whom you are blaming right now, even live (and it is all of you, you are all involved in this system). This principle is true for the case of rapid economic growth in post-war Japan, because the Eugenic Protection Law contained the idea of sterilising 'inferior offspring'. We women question this system fundamentally (ibid).

Thus, women in the WLM consistently emphasised the social settings and norms where abortion has been practised, and claimed that women have been 'made to abort a foetus'. Here, pain experienced by women from abortion is also emphasised to refute charges of 'women's egoism':

Behind the murder, women have been bleeding, and men have certainly been involved, by benefiting from abortion. [...] Actually, no woman wants to have an abortion, lying on a cold bed, opening her legs, exposing her vagina, and with a knife penetrating her Omanko, or "cunt" (Tanaka 1973).

I interpret Tanaka's statement as being a challenge from the WLM's aimed at those who blame women for having an abortion. 'Yes,' they are saying 'abortion is an egoistic act, but it is also painful. You – think about why women have abortions despite all the pain. Think about how you are involved in their actions!'

**Another movement phrase: 'Umeru-shakai-o, umitai-shakai-o' (We demand a society where we can give birth, where we want to give birth), and establishment of women's subjectivity**

In another leaflet, women in the liberation movement continued to argue,

I dream of a society where we women can give birth to as many children as we like. ... But the fact is, even though women want to give birth, there is a difficult social reality which does not allow women to do so – the cost of living is high, men do not cooperate in the childrearing, and there is a shortage of childcare centres.<sup>23</sup>

This leaflet was an example of the emerging rhetoric of *Umeru-shakai-o, umitai-shakai-o*, or 'We demand a society where we can give birth; we want to give birth.'<sup>24</sup> This rhetoric proclaims that the improvement of social conditions is necessary to make it possible for women to give

birth, and women want to give birth. Men are inside the egoistic system, so they also have to make an effort to improve the conditions of the system.

At the same time, however, although the Women's Liberation Movement claimed that women were made to abort because of poor social surroundings, they also argued that women should not rationalise the experiences of abortion simply by pointing to an unsatisfactory social situation, because in doing so they are attempting to blunt the pain of abortion experiences, which would mean eventually accepting the social *status quo*. To cite Tanaka:

Of course women have to keep fighting such a social system, and striving for ever improving conditions. Yet, if women say 'because it is difficult, we will just have an abortion', aren't we women having a pointless, unreflective attitude toward what we are doing? [...] If we affirmatively accept the society, which exists at the cost of women's wombs, we would not lose the ability to accuse society. [...] Without confronting the fact that abortion is an act of killing, we would not be able to fight against even the fake humanism component of the pro-life argument proposed by *Seichô no ie*.<sup>25</sup>

By arguing that women should not forget the pain of the abortion experience, the women's movement spreads a message towards women in general, saying 'think about yourself, think about the meaning of what you are doing, instead of taking it for granted!' (Onnatachi no ima o tou kai 1996: 48). It was a call to women to live life as a subject; to consider the self.

By choosing to have an abortion on my own, in a situation where women are 'made to' have an abortion, I affirmatively call myself 'a murderer'. Indeed, the child (a foetus) dies (by an abortion). I also dare to call women who had an abortion 'murderers'. Declaring that I am a murderer, and staring at a foetus cut to pieces, now I demand an answer from a society that makes women have an abortion, with no way of escape. A society that makes women commit a murder does not let women live either. Only those aware of the fact that they might be killed at the next moment, and those who live with despair and anger about this fact, can argue forcibly against their surroundings with hateful determination and preparedness (Tanaka 1973).

Thus, the women's movement argued that only when women ask themselves about the meaning of life and the meaning of killing a life will

they be able to confront the essence of the anti-abortion debate. This attitude was also based on the awareness of the need to establish subjectivity, or truly independent self (*shutaisei*), which had been taken away as a result of a number of oppressive norms and which spells out what is 'natural' for women's lives.

Based on the conviction that we are confronting the meaning of one life and enduring the sense of fear and severity flowing from the need to make a choice with regard to our own lives, now let's cry, 'We demand a society where we can give birth! Where we want to give birth!' (Yūseihogohô kaiakusoshi jikkô iinkai 1973, in Mizoguchi, Saeiki & Miki 1992).

The Women's Liberation Movement thus argued that women now needed to ask themselves, 'why am I, a woman, deciding to have an abortion?' and at the same time demand that 'social surroundings must change to support women's giving birth to, and rearing, children'. The WLM argued the necessity of having social reform and a personal internal revolution at the same time. When women confront the self with the question of why they need to end a life, women develop a subjectivity, or truly independent self (*shutaisei*), to earn and use rights. Then abortion becomes an issue of 'rights' in a true sense, because:

Given women's subjectivities, whether a woman is choosing to have an abortion is the question that she has to ask herself, and it is not the business of the law, or of others, to impose such a choice. Actually, to dare to define an abortion as murder is also based on women's critical feelings toward the artificial aspect of the man-made law on abortion: 'why is it a crime when an infant is killed, but not when an unborn foetus is killed? Then what is a foetus?'<sup>26</sup>

Here, the argument goes:

The law is articulated by men, who arrogantly pretend to understand the matter. The law is made for the convenience of those who are entitled to make it. But actually men with slimy faces are not entitled to define that a foetus is a human being, or a person or whatever. Nor do they have any right to decide what is women's natural job, nor the natural function of the womb, without knowing even a bit of the pain of the womb. Abortion is a matter for women to decide (Jôkyô, Feb: 29, cited in Morioka, op. cit: 161).

Instead of leaving the task of defining the ethical status of women and the foetus to men, women in the WLM said they were now taking the initiative to discuss the issue, calling abortion 'murder' and 'egoism' on their own. This was for the purpose of opposing men and authority, urging them to realise how ignorantly they think and speak about abortion. Moreover, statements such as 'a foetus is a being with life', and 'women are egoistic murderers', could destroy the discourse of motherhood, which was one of the WLM's goals. 'Women are egoists' expresses the idea that the ego of a foetus and the ego of a woman are separate beings, instead of one. 'Oneness of a mother and child' and 'women should always be protective toward their child' are the powerful discourse that is often alluded to in order to accuse women who have had an abortion and have ended childrearing by killing their children. Hence the phrase '*Umu-mo-ego, umanu-mo-ego*' declared that a woman is not always protective of her foetus/child, and that women have their own strong subjectivities to assist in making choices, instead of sacrificing themselves to 'the mother's instinct to care, protect, and give away' (Ehara 1985: 131).

By bringing women's ego to the fore, the WLM believed that they revealed the fragile basis of the anti-abortion argument. This claim was also oriented towards the charge by the disabled people's movement that 'it is women's egoism to murder a disabled child', although it was more difficult to refute this argument with disabled people than it was with others more generally opposed to abortion. This is because another power relation (the attributes of 'disability' and 'non-disability') was involved, instead of only the 'mother-child' relationship.

### **Philosophical contribution of the Women's Liberation Movement**

Philosophically speaking, the fact that the Japanese WLM intentionally avoided weighing the ethical status of a woman and a foetus, without defining the ethical status of a foetus, suggests two important points. First, the act of avoidance of naming something, not giving it a static definition, suggests a mitigation of the conflicted relationship between foetus and pregnant woman. Nobody can deny that the attempt to define the ethical status of a foetus, in order to weigh it against 'a women's right' is a constructed and artificial exercise, as the definition of a foetus changes according to the development of science and reproductive technologies, and science is not an independent source of authority. The borders of construction are also informed by social and personal norms. Science in itself cannot offer any universal boundary in the process of pregnancy. The status of a foetus is, in the end, a political problem. The acts of naming and defining the nature of something that is

actually unknown to anyone are sometimes excessively rational, artificial, and even arrogant acts, because the act of 'representing the other' – and the unknown can be considered an 'other' – is often performed by the powerful side, hardly giving the weaker side power to discuss the issue. It can be said that the temptation to weigh the ethical status of women and the foetus, in order to justify women's right to abortion, is a trap set by the powerful who are not aware of the complex dilemmas of abortion. This is firstly because the issue of abortion is reduced to the relationship between women and the foetus, where discrimination against women in society is made invisible. Secondly, given the fact that the definition of a foetus changes according to technology, to try to look for a definition for something that has an ambiguous nature, like life, makes it dependent on science. I do not think that science, which is never value-neutral, has sufficient legitimacy to define 'life', or to give it a 'universal name'.

Women in the WLM were aware of these arguments as well, and their standpoint on abortion intentionally avoided defining in order to accept and explore ambiguous dynamism; the sentence, 'let's not rationalise life, let's not rationalise pain' was often repeated within the movement in the 1970s.

Secondly, by choosing not to view abortion as a question of conflict between woman and foetus, the movement also deconstructed a number of dualisms contained within the abortion debate, such as: a foetus – a woman, act of giving birth – abortion. What was suggested here was the idea that one was trying to include the other, instead of one in conflict with and trying to dominate the other. As will be discussed in the following section, some within the women's movement believed that the term 'right' should be used more freely, without questioning the act of abortion, the issue of discrimination against disability internalised within women, or the complicated matter of selectively aborting a foetus with an anomaly. However, the decision not to rationalise the pain of abortion, and to question the meaning of 'rights' is consistently present in the arguments made in later periods, forming a current in the development of Japanese women's reproductive health movements as well as in the disabled people's movement. It can thus be said that this philosophy represents the core of the philosophy of the Japanese women's reproductive health movement up till today.

### **Debate inside the Women's Liberation Movement about the concept of an individual political 'right'**

Because the concept of a 'right' in a conventional sense does not imply these inclusive, relational ideas, the WLM expressed these ideas by giv-

ing rather redundant explanations and arguments, which were not necessarily practical or strategic within the movement debate. Given the ambivalent nature of abortion (women should have access to abortion, despite the fact that they don't like the experience), those in the WLM refused to rationalise experiences of abortion, and instead mapped out the co-existence of two apparent contradictions. Although the rhetoric produced important insights about abortion, the rhetoric itself was too fragile to attract wide support. For example, 'think about why women decide to have an abortion' contains two messages. One is oriented to women critically: 'know that you are killing a life'; the other is to society: 'women are made to abort. Know that you are involved.' The former critical message to women was difficult for women in general to share, in a social climate where experiences of abortion were seldom shared, because of abortion's highly personal nature and the negative values attached to abortion, such as promiscuity, irresponsibility, and the loss of motherhood. The message from women in the movement, such as 'enduring the sense of fear and severity flowing from the need to make a choice with regard to our own lives', and also their self-critical attitude, were too complicated and indirect to be easily communicated to and accepted by women in general.

The other demand, that 'social surroundings must change to support women's giving birth to and rearing, children', could sound as if women were merely complaining about social conditions. The coexistence of these two apparently contradictory propositions also made it even more difficult for the message to be widely accepted by women in general.

Thus, because of the complexity of the structure of the argumentation, there were also women in the movement who thought that 'right' should be used in the abortion debate, in spite of other people's criticisms of the term. What were some of the main arguments in support of the usage of 'right' in the abortion debate?

1. 'I think that abortion is a woman's right, given the situation that there are no perfect contraceptives'

We demand a society where 'we can give birth, where we want to give birth,' is too abstract for me. 'Abortion is a woman's right' is much more concrete. When there is an attempt by the government to limit women's access to abortion, it is clearer and more concrete to say, 'abortion is a woman's right'. In society, both when we do not want to give birth and when we do want to give birth, unwanted pregnancies happen, and therefore, abortion can become necessary. To claim abortion as a right does not mean to affirm or accept the situation where we cannot give birth. There are only two alternatives, namely, either to give birth or not to

give birth, and when we cannot give birth, the only alternative is abortion.

Abortion is the last resort for many women. Women do not really want to be on the operating table to have an abortion. Sexuality is not only for reproduction, and therefore a woman does not necessarily have to give birth because she has become pregnant. This is not an issue in which another woman, or the state, should intervene. [...] Women have mixed feelings about abortion, and abortion is a decision as a result of all of those feelings (Anonymous, in the column of readers' opinion, in *Onna-tachi-kara-onna-tachi-e* (From women to women), June/July 1973: 13-14).

This statement points out the complexity and ambiguity of the argument, 'we demand a society where we can give birth; we want to give birth.' It also tries to clarify the claim that requests for access to abortion are oriented towards the powerful.

## 2. 'On the confusion about the right to abortion'

If some inside the movement say, 'you say that you oppose the revision of the Eugenic Protection Law, but do you know that the act of abortion is a crime?', then we absolutely have to fight against these people. It seems that people who display an allergic attitude towards the term 'right' do not understand the origins of the term 'right.' [...] There is no fixed definition of 'right', but 'right' is used according to each unique situation. Now, we labourers use 'right' in protesting against the state authority and bourgeoisie. [...] What is most important, facing us now, is the fact that there is an attempt to revise the Eugenic Protection Law. Are we to be for or against this fact? If we are against, then what do we think about it? Problems should be defined absolutely clearly. To mix up personal questions and the fight against state authority confuses the essence of the problem. We do not let the state intervene in our lives by telling us to give birth or not to give birth. This means a 'right to abortion'. To start the argument by asking if abortion is ethically right or wrong is itself confusing. Therefore, we absolutely require the abolition of the abortion articles in the Criminal Code.

We should not develop our argument in the framework of the issue of whether abortion is ethically problematic or not. The point is that we are against the state regulating or punishing women who want to have, or who cannot avoid having, an abortion. This is a very simple fact taken for granted by women of the working class. If there is still an argument, we'll add one more comment:



The life of those who are already alive is more important than that of a foetus (Fujin tsûshin henshû iinkai, reprinted in Mizoguchi, Saeki & Miki op cit 1992: 377-378).

This argument was made by women with a background in the labour union movement. Hence the idea is to liberate working class women, in particular, from exploitation by the state, by stating that the concept of a 'right' is oriented against the state laws that regulate women's decision-making. In other words, this statement is a call not to argue the issue of abortion in a broad sense, but instead to focus on the relationship between the state and women.

3. "Abortion is a woman's right" is not discrimination against disabled people!

There are arguments from disabled people. [...] However, what does it mean to women, in the current social situation, to say, 'I will give birth even if the foetus is deformed'? It is another death sentence for women. It is evident that nurturing children is imposed on women (although not only in the case of giving birth to a disabled child), and women are being killed by this fact. Therefore, the choice between giving or not giving birth to a disabled child is the question between death or living for a woman. [...]

To urge women to give birth to a disabled child, in the current social situation, is due to the egoism of people with disabilities. At the same time, for a woman to say that she will not give birth because the foetus is deformed is also the woman's egoism, which she cannot compromise for her own survival. So this issue is a conflict between the two egos at the ultimate level. It is just an obstacle for the movement to argue that abortion is not women's right. Whether the foetus be disabled or not, it is up to women to decide whether to give birth or not to give birth. We clearly state this point. The problems for disabled people, or the problems of a society where we cannot raise disabled children, are issues of social welfare and social reform. Therefore, the women's movement requesting women's right to abortion must not conflict with the disabled people's movement (Chûpiren, Neo lib, No. 28, August 1973, reprinted in Mizoguchi, Saeki & Miki, *ibid* 1992: 247-248).

This was proposed by Chûzetsukinshihô-ni-hantaishi-pill-kaikin-o-yôkyû-suru-josei-kaihô-rengô, or 'the Women's Liberation League to oppose the law to prohibit abortion and to demand lifting the ban on the contraceptive pill' (Chûpiren is the abbreviation used in Japan). This argument clearly defines a disability as an issue of welfare, and abortion

as an issue of women. In other words, Chûpiren argues that, if a woman aborts a deformed foetus because of the disability, it is for the welfare of the woman, and she is not to be blamed for her ethical decision. This argument partially underlies the statement, 'we demand a society where we can give birth, and we want to give birth.' But the crucial difference is that it does not raise questions about the meaning of abortion or women's subjectivity.

Some women were attracted to this argument by *Chûpiren*. The main reason is the clarity of the argument. As mentioned, the co-existence of self-criticism and protesting against the state was not easy for an individual woman to maintain. Further, the act of self-criticism, to confront internalised discrimination, is also a difficult process for a woman and for any person. Rather, for an individual woman, it is more clear-cut to declare that abortion is a woman's right, separating the issue of discrimination from the innate value of an individual. Eventually *Chûpiren* split from the other groups of the Women's Liberation Movement, and formed *Neo-lib*. A difference of opinion about the right to abortion was one of the reasons, but the immediate reason for its separation lay in other ethical matters. Misako Enoki, the leader of *Chûpiren*, distributed a brochure with her own opinion about the contraceptive pill in the name of the WLM without consulting the other members.<sup>27</sup> Soon after the split, women who had joined *Chûpiren* left the group, disagreeing with the way Enoki had managed the group. This group eventually disbanded.

In the Women's Liberation Movement, except for the separation of *Chûpiren*, no further splits or polarisations occurred that destroyed the women's unity. One woman in the movement, Yôko Akiyama, recalls that there was enough trust among members to allow for disagreement and discussions.<sup>28</sup> Akiyama also states that it is more accurate to say that struggles around the pros and cons of using a rights-based argument in the abortion debate were inherent to each individual woman and to the movement as a whole, rather than there being a polarisation which created conflicts between the different opinions about the concept of 'rights' within the women's movement (Akiyama 1993: 123-124). On a personal level, everyone within the women's movement was, to some extent, experiencing a dilemma about whether to use the term 'right' or not. Differences in opinions were based on how to express this in a public, political debate.

All in all, the argument that justified abortion by separating it from the issue of disability and internalised discrimination did not find favour with a majority of women in the movement. A reluctance to use the concept of rights was shared by most of the women in the movement. As Tanaka's 'let's not rationalise the pain of abortion by making it an issue of "right"' statement shows, the use of the term 'right' in

abortion debates reduced the experience of abortion to a legal entitlement. Instead, women wanted to highlight issues critically relevant to the experience of abortion, such as a foetus, the social system, gender power relationships, the meaning of the act of giving birth, and the implications of the selective abortion of a foetus with an anomaly. The rhetoric of 'a woman's right to abortion' did not create space for these questions because it is focused on 'women' as the practitioners of rights, 'legal opportunity' as accessibility to abortion, and 'abortion' as the act of not giving birth. Hence the refusal to use the term 'right' came from the sincere desire to highlight the dilemmas connected to abortion, to face up to them, and to reconcile these concerns with those of the disabled people's movement.

Because of obstinate opposition from groups of women and disabled people as well as from medical associations, the Ministry could not help but withdraw the proposition to revise the Eugenic Protection Law. The movements' activities were successful in this respect, but some crucial questions about the abortion debate remained. The arguments made in this period continued to be discussed by the women's movements of later periods.

Women's right to abortion was criticised by both disabled people and the anti-abortion camp in terms of women's egoism – this implied that women lacked consideration for others, pursuing their interests at the cost of others or the life of a foetus. What theoretical characteristics of the concept of an individual political 'right' invited such an image in abortion debates? And what characteristics can be deduced from these debates about the term? The next chapter considers the genealogy of these problems surrounding the notion of a 'right' in order to analyse the 1970s Japanese abortion debate.



### 3 On women's selfishness and the right to abortion

Women's claim that they had a right to abortion was called 'women's selfishness' by opponents of the Women's Liberation Movement (the WLM) in Japan in the 1970s. According to these opponents, this is because the term 'right' eliminates the social context in which the decision-making to have an abortion takes place, such as women's partners, foetuses, and disabled people. The idea of 'elimination' sometimes also carries the connotation of 'breaking harmony in human relationships' and 'aggression,' which was also part of the vocabulary used by opponents of the WLM.

This chapter considers *why* the concept of 'rights' implies these ideas, and *what* is problematic about the implied ideas. In order to show the characteristics of the concept of 'rights' the genealogy of rights in Western political history will be traced, because a 'right' as the term is used in the contemporary world, has its origin in the Western political tradition. Also considered is how the term 'right' was introduced into Japan in the 19th century, and how it was used in Japanese political debates after it was introduced. The link with indigenous Japanese political/philosophical thought will also be considered.

After these theoretical considerations, this chapter will examine why women's right to abortion was deemed to be 'women's selfishness' in the context of the Japanese abortion debates, and where the common reluctance to use the concept of rights within the WLM originated.

#### Genealogy of the concept of rights

Put most simply, we generally associate the concept of rights with the concept of 'entitlement to take a certain action'. Actually, the first appearance of the concept of rights was in the Magna Carta in England on 15 June 1215.<sup>1</sup> The Religious Reformation in 16th century Europe was also one of the origins of the concept of 'individual rights', in that the Reformation was based on the trust in an individual's conscience, which ought not to be forced by any religious authority.<sup>2</sup>

Here the genealogy of 'rights' is dealt with as a political question of 'who authorises whom to do what' – a question of power in society.

Since the most common style of institution authorised to entitle rights in many societies is the 'state', it is proper to start there, tracing the genealogy of rights, and considering the relationship between the state and its citizens.

Defining rights in this way, today's meaning of rights can be traced back to the theories of innate individual rights set out by Thomas Hobbes (1588-1679) and John Locke (1632-1704) in England. In earlier medieval society, before Hobbes's time, a man was bound by ties associated with his status, and by duties prescribed for him by the church. Tradition was the main form of social control. But with the rise of social mobility that accompanied the rise of individualism and capitalism, men shook off the ties of their guilds and local communities. England was then poised precariously on the brink of anarchy and civil disorder. Being sceptical about the powerful, including the church, Hobbes viewed the life of individuals as a restless competition destined to lead to *bellum omnium contra omnes*, or the war of all against all. Given these conditions, in his work Hobbes tried to order the relationship between the state and individuals as well as among individuals themselves.

To protect *natural* men from continual fear and danger of death in the state of nature, he argued that every man has an innate natural right not to be violated in his life, and this he defined as the 'right to life'. Then, in order to avoid war, natural law must be practised as the principle of peace, which can be enacted only by the use of the reason of each individual.

Yet Hobbes considered that even natural law was not sufficient to protect one's right to life. For the law to function properly, there ought to be a public authority to punish those who violate others' natural rights. A state is thus established according to a covenant of the people. The covenant includes nomination of the sovereign, authorised by the covenant, and the state is represented by the sovereign. According to Hobbes, the sovereign is entitled to absolute authority without citizens' right to resist, so that the state can function to prevent the state of nature.

Locke argued natural rights somewhat differently. His state of nature is more peaceful than that of Hobbes, because if each man uses reason, everybody can come to acknowledge natural law, namely the principle not to violate other people's right to live. But because there will always be some people who cannot use reason to refrain from violating others, there is always a chance of reverting to the natural state of the war of all against all. In order to avoid war, a contract is to be enacted by individuals to establish a government, which is then based on trust from the individuals. The government is thus entitled to political authority. Its authority is for the purpose of protecting the natural rights of individuals, that is, 'life, freedom, and property'. According to Locke, but unlike Hobbes, people are entitled to revolt (Uchida et al. 1993: 36-37).

For both Hobbes and Locke, the only way to prevent the limitless war of all against all is the use of reason by each individual. What was not considered to be part of reason, such as men's conscience and traditional ties, was subordinated to reason. The wisdom to avoid war is the product of reason, which alone acknowledges '*general, eternal, and immutable truths*' (Edwards 1967, 3, 4: 33). This optimistic universal idea stems from the absolute belief in natural science; both Hobbes and Locke believed that civil society could be reconstructed on naturalistic principles.<sup>3</sup> The nature or essence of men was identified *tout court* (totally) with the possession of reason, and natural law was held to be whatever is found acceptable by *recta ratio* or *sana ratio*. At this stage, the logical and epistemological aspects of the theory come together totally – natural law was what reason discovers, and natural law was discovered by reason.<sup>4</sup>

Thus, in the 17th and 18th centuries, the older tradition of natural law based on Christianity gave way to notions of 'an Englishman's birthright' or, even more personal and universal, 'natural rights'. Man's nature, as well as Christian natural law, was distrusted by political thinkers, but reason came to the fore as the concept to realise social order, as is symbolised by Hugo Grotius's saying, 'ratio is given by God, but ratio is possible to access without God' (Hamabayashi 1999: 18).

Coupled with the Protestant Reformation and the emergence of the concept of individual religious freedom, the idea of innate natural rights was an instrument to liberate individuals from conservative authorities. The ideas of Hobbes and Locke developed in this context. After them, arguments about critical, conscious individual citizens and an ideal democratic form of governance were developed further by other prominent thinkers in the West. However, it should be noted that in Hobbesian and Lockean political theory, individuals, who are holders of natural innate rights, are assumed to be competitive and conflicting individuals. One should be mindful to limit one's pursuit of interests, otherwise the interests will violate another's right to pursue his interests; individual holders of rights are destined to conflict with each other if a right is practiced excessively.

Hobbes discussed the importance of 'harmony,' but he based this on the idea of 'interest and harm', in other words, one should not practise rights excessively, in order to protect the self. He regarded 'interest and harm' as the essential factors in linking individuals (Hobbes 1946: 12, 146).

Locke had a more optimistic view of human nature. In the second volume of his *Second Treatise of Government* he recommended that 'men should support others, and men can do so by order of reason' (Locke, 1995: 12-13). However, this idea was also based upon the fear that a man's natural right would be infringed upon by others.

This way of conceiving relations among individuals is due to the social situation of the time – chaos and fear – and worry about the scarcity of natural resources in northwestern Europe.<sup>5</sup> Classical liberalist thought, which is traced back to Hobbes and Locke, was also concerned about a lack of natural resources, and how to secure these without lagging behind others in the competition. Thus, the function of the political order was to satisfy particular claims by protecting each man from his peers (Wolin 1960: 274). Coupled with the emergence of natural science in this period, nature became the object ‘to be conquered by men for their survival’.<sup>6</sup>

### *Civil revolutions and the declaration of men's rights*

Natural rights, natural law, and social contract theories were inherited by thinkers in France, such as Jean-Jacques Rousseau (1712-1778), and by Thomas Paine (1737-1809) in England and the United States, where civil revolutions were to occur. Rights was the key term and concept in the United States' Declaration of Independence and in the French Declaration of the Rights of Man.<sup>7</sup>

While the United States' Declaration of Independence was considerably influenced by Locke's thought, the French Declaration of the Rights of Man owes much to the philosophy of Rousseau.

Rousseau argues that ‘a particularly serious feature of modern society is the prevalence of an unnatural inequality, based on power and wealth’ (Edwards 1967, 7, 8: 219). According to him, in ‘nature’, the stage before society, men were happy because a man

knew how to live in accordance with his own innate needs; living in limited interactions and leading an isolated existence in the forests, the savage could satisfy his basic appetite for food and sex without difficulty, untouched by modern man's anxiety (ibid).

The nature of the ‘natural man’ in the state of nature was also good, according to Rousseau. However, when men started interacting on a larger scale than ‘family’ or ‘kinship’, and when ‘men started working together and asking others for help’, property was introduced, and eventually, ‘social disorder and inequality emerged’.<sup>8</sup> Now, at that stage of society, men's nature was also wicked. As Rousseau criticised ‘civilisation’, in his early works he regarded the ‘state’ as a vicious mechanism to make social inequality permanent through the institution of laws and political organisations (Edwards op. cit.: 220; see also the *Discours sur l'origine de l'inégalité*). The ‘state’, according to him, was ‘the large monarchies of Europe, which had travelled furthest on the road to perdition’ (Edwards ibid.).



However, in Rousseau's later works, realising that a man, having once left the primitive state, could never return to it, he discusses the way to use the 'state' mechanism primarily to protect men's rights to life, freedom, and property. In his social contract theory, he uses the concept of 'general will' as 'a real force, superior to the action of any particular will' (ibid: 222). In Rousseau's social contract theory, a right to revolt is not admitted, because 'the general will is always directed toward the general good' (ibid). True freedom, according to him, is to obey a law that a man has prescribed for himself. Education is important for developing a citizen who can prioritise the general will or national interest above one individual's interest; the importance of socialisation for him is different from that of social co-existence.

Rousseau's political theory is sometimes described as the forerunner of totalitarianism. Following the French Revolution, recalling the reign of terror by Robespierre (1758-1794) who self-identified as a 'disciple' of Rousseau, Rousseau's theory might have had an influence to drive politics to what is now called totalitarianism. However, rather than arguing whether Rousseau's theory is either democratic or totalitarian, it would be more important to acknowledge the fact that this contradiction in Rousseau's theory is exactly what we are confronted with today in the concept and practice of 'democracy'. Questions such as 'does the majority vote always bring about the best decision for all the members of the community' or 'where does the legitimacy come from to force members to follow the decision' are still being posed and considered to this day. In this sense, Rousseau's theory anticipated the fundamental problems that 'democracy' would confront in the future.

In terms of 'rights', Rousseau in his earlier works used the concept as an individual's shield against the intervention of the state. But in his social contract theories (actually, *Du Contrat Social* is subtitled *Principes du droit politique*), a 'right' is used rather to secure freedom from those who disturb the sovereignty of the state, because 'the general will' of the state must represent 'the general interest' of each citizen. Law, as the act of the general will and the expression of sovereignty in his theory, is of vital importance, as the establishment of sound laws can determine the whole destiny of the state.

Thus, a 'right,' according to Rousseau, emerges from state law, and its practice is primarily for the purpose of protecting an individual from those who break the state's order by not abiding by 'the general will'. This idea of his is also well expressed in the 1789 French Declaration of the Rights of Man, that 'socially different treatment is possible only when it is based on the common interest' (Hamabayashi, op. cit.).

*Civil revolutions and characteristics of the issue of rights*

The Declaration of Independence in the United States and the French Declaration of the Rights of Man are noteworthy in Western political history because of their clear expression of the equality and liberty of citizens to the monarchy. Until then, authority belonged to a handful of the privileged in a hereditary, social class system.<sup>9</sup> Demands for social fairness are based on the concept of men's natural rights, inherent in all men, and these were not to be violated by any authority.

As well as being a shield to protect oneself from others' attack, rights were seen by Western thinkers in the 18<sup>th</sup> century as instruments to protest and request the improvement of living conditions of a person; revolutions occur when there is dissatisfaction with living conditions because of an 'unfair' system. Hence, rights are the concept and tools to be used by those who are, or are expected to be, confronted by a violation, exploitation, or infringement of what they inherently hold. The concept under which the oppressor can legitimately take certain actions towards the oppressed is by 'authority', not due to rights. Thus, rights emerge from a person, and are used to demand fair treatment.

Therefore I believe that it can be said that the grounds to justify the claim for fair treatment in terms of rights are explained with the concepts of 'liberty', 'equality', and 'fraternity' (*liberté, égalité, and fraternité*). These are sub-concepts of rights. When there is a statement that 'somebody has a right to make a claim' the right is assumed to be based upon 'equality' between those who already enjoy the privilege and those who are not. Hence, the practice of rights also has to do with how society values people with different backgrounds. For instance, a huge number of Africans were traded into North America for agricultural labour in the 18<sup>th</sup> century as commodities, but the immorality of this activity was hardly discussed in terms of rights.<sup>10</sup> This shows that African people were not entitled to the same rights because they were devalued in relation to white people. Africans and whites were not viewed as equal; they were not *brothers*. Hence, if the societal norm about who is equal changes, the range of entitlement to rights also changes. So, 'liberty' comes to the fore, being justified by equality among brothers, the view that somebody ought to be free instead of being oppressed by the oppressor, because entitlement to rights requires, as a prerequisite, being innately equal to others who enjoy the rights. The feminist implication of 'brothers' or 'fraternity' in conventional political theories will be discussed later in this chapter.

It also has to be noted that because the hereditary social class system and the monarchy were abolished under the civil revolutions in the West, constitutionalism has come to the fore as the main principle of

state governance and of rules amongst citizens. Rights have become a highly legal concept, as rights are elaborated by laws.

### *English utilitarianism*

In England, after the Glorious Revolution of 1688,<sup>11</sup> enthusiasm for contractual arguments became unpopular amongst intellectuals, and therefore utilitarian arguments replaced them, developed mainly by Jeremy Bentham (1748-1832) and John Stuart Mill (1806-1873). Utilitarianism can generally be described as the doctrine that views the rightness or wrongness of actions as determined by the goodness or wrongness of their consequences. This general definition can be refined in different ways, leading to various types of utilitarianism.<sup>12</sup> Utilitarianism reacted to the fictitious and hypothetical nature of the social contract. Instead, in utilitarianism the criterion of good governance is thought to be the sum of goodness in society. While Bentham argued the 'good society' in terms of the sum of hedonistic pleasure of social citizens, Mill argued in terms of spiritual satisfaction. Bentham argued that nature gave men two masters, 'pain' and 'pleasure', and that an individual should act in pursuit of 'pleasure'. 'The best society,' according to him, has 'the greatest happiness', which is the sum of all individual citizens' pleasure calculated by a strict scientific method. Bentham considered 'reason' and 'law' to be essential for individuals to maximise their pleasure in society. Mill discussed 'pleasure' in terms of social and political satisfaction, defining these as a number of social freedoms, such as freedom of speech, thought, and publication, and as the necessary conditions for enhancing the sum of the satisfaction of members of society (Uchida et al. 1993: 40-41; Edwards 1967, 1: 280-285; 5: 314-323).

The emergence of utilitarian thoughts was also strengthened by fears regarding the scarcity of natural resources in Northwest Europe, which saw its peak during the 18th and 19th centuries, fuelled in part by the increasing population.<sup>13</sup> Bentham stated that the desire to acquire natural resources is equal to the desire to maintain life. 'Pleasure' for him was to be able to be economically and politically active without intervention from others, because competition for resources was, according to him, the biggest source of 'pain'. Hence, nobody should intervene in another's decision-making, because 'an individual self best knows what he wants' and 'the smaller the state is, the better it is for the political, economic activities of individuals' (Wolin 1960: 331; Wolin, 1975, 4: 104). A 'strong, autonomous, and rational individual self' and 'rights' were more clearly pronounced in the 18<sup>th</sup> and 19<sup>th</sup> centuries than they had been in the previous period.

Fear of limited resources was also expressed by Mill. On nature, he wrote:

... Her powers are often towards man in the position of enemies, from whom he must wrest, by force and ingenuity, what little he can for his own use... Nature impales men, breaks them as if on the wheel, casts them to be devoured by wild beasts, burns them to death... and has hundreds of other hideous deaths in reserve, such as the ingenious cruelty of a Nabis or a Domitian never surpassed (Wolin 1960: 317)<sup>14</sup>

This statement is an expression of anxiety created by the conflict between 'the belief that moral and intellectual progress depended upon unceasing material advance' (Wolin 1960: 321) and the fact that natural resources are limited. Small wonder that by the middle of the 19th century Mill counselled Englishmen and Americans 'to moderate the ardour of their devotion to the pursuit of wealth' (ibid: 325). This recommendation came about because he believed that with a scarcity of natural resources, too many people in society would fail to attain 'pleasure' both intellectually and morally, resulting in endless competition among people.

Today's ideas about the 'right to self-determination' and 'informed consent,' usually understood in terms of the principle of 'non-intervention', contain this philosophy of utilitarianism to a considerable degree.

### *Position of women in rights theories*

Views on the state of nature and the stories of the social contract in the 18<sup>th</sup> and 19<sup>th</sup> century all suggest that politics are a stage created by a contract entered into by rational decision, designed to ensure protection and safety for men from the state of nature. However, neither in rights theories, nor in utilitarianism, were women mentioned in connection to the entitlement to rights.

In Hobbes's state of nature, both sexes are pictured as naturally free and equal 'individuals' that have rights. This is partly because his view of the state of nature was extremely individualistic and was one in which any ascriptive conditions, for example, male or female, did not matter. However, women are given only 'mother's rights', that is, the right to have dominion over her child. Also mentioned is that the child ought to obey her, but not the father. About Hobbes's 'mother's right' in the state of nature, political theorist Pateman argues:

Hobbes insists that all examples of political right are conventional and that, in the state of nature, political right is maternal not paternal. An infant, necessarily, has two parents ('as to the generation, God hath ordained to man a helper'), but both parents cannot have dominion over the child because no one can

obey two masters. In the natural condition the mother, not the father, has political right over child; 'every woman that bears children, becomes both a mother and a lord.' At birth, the infant is in the mother's power. She makes the decision whether to expose or to nourish the child. If she decides to 'breed him,' the condition on which she does so is that 'being grown to full age he becomes not her enemy'; that is to say, the infant must contract to obey her (Pateman 1988: 44).<sup>15</sup>

Another reason for both sexes being free and equal, is that in Hobbes's state of nature individuals are not considered to be rational beings, so that men as well as women are devoid of reason. In Locke's and Rousseau's theories, women are totally excluded from the concept of 'individual', even in the state of nature. As mentioned, according to any of these thinkers, the social contract is a device to impose order on the state of nature, and to create a society.

Pateman argues, in her book entitled *The Sexual Contract*, that contract theories contain two elements: the social contract and the sexual (or marriage) contract. She argues that the original contract is a patriarchal social order, and in entering the social contract, men simultaneously ensure access to women, and promise not to violate another man's right to access to his woman (Pateman 1988). This is because a woman is *nature*, just like other natural resources, and therefore is an object for men to subdue. The sexual contract was necessary for men to maintain social order, because women were lacking in self-control. This is why families were usually managed by men, as was the state. To cite Pateman,

Hobbes assumes that, in civil society, the subjection of women to men is secured through a contract; not an enforced 'contract' this time, but a marriage contract. Men have no need forcibly to overpower women when the civil law upholds their patriarchal political right through the marriage contract. Hobbes states that in civil society the husband has dominion 'because for the most part commonwealths have been erected by the fathers, not by the mothers of the families' (1988: 48).<sup>16</sup>

Not only Hobbes, but also political thinkers following him, basically share the same view of women as having less self-control than men. Locke argued that

Subjection [wives] should ordinarily be in to their Husbands, because generally the Laws of mankind and customs of Nations have ordered it so; and there is, I grant, a Foundation in Nature

for it. The foundation in nature meant by him is that the husband is 'the abler and the stronger' (cited in Pateman 1988: 52-53).

Rousseau also argues that civil order depends on the right of husbands over their wives, which, he argues, arises from nature, from the very different natural attributes of the sexes (Pateman: 53-54). Rousseau has much more to say than the other classic social contract theorists about what it is in women's natures that necessitates that they must be excluded from civil life (ibid). He elaborates at some length on the reasons why women 'never cease to be subjected either to a man or to the judgments of men, and why a husband must be a 'master for the whole life'.<sup>17</sup>

In Hobbes, the product of reason, the state, is likened to 'a man's body' called *Leviathan*:

By art is created that great *Leviathan* called a *commonwealth*, or *state*, in Latin *civitas*, which is but an artificial man; though of greater stature and strength than the natural, for whose protection and defence it was intended; and in which the *sovereignty* is an artificial *soul*, as giving life and motion to the whole body; the *magistrates*, and other *officers* of judicature and execution, artificial *joints*; *reward* and *punishment*, by which fastened to the seat of the sovereignty every joint and member is moved to perform his duty, are the *nerves* that do the same in the body natural; and *wealth* and *riches* of all the particular members are the *strength*; *salus populi*, the people's safety, its *business*; counsellors, by whom all things needful for it to know are suggested unto it, are the *memory*; *equity* and *laws*, an artificial *reason* and *will*; *concord*, *health*; *sedition*, *sickness*; and civil war, death. Lastly the *pacts* and *covenants*, by which the parts of this body politic were at first made, set together, and united, resemble that *fiat*, or *let us make man*, pronounced by God in the creation (1968: 81-82).

Hobbes claimed that the motivation behind the creation of the artificial man was to protect and defend natural men from continual fear and danger of violent death in the state of nature. Natural men become civilised men by the use of reason, and natural condition becomes society. Yet, in the absence of a female Leviathan, natural women are not only unprotected or undefended, but in fact women themselves remain *nature*. Women are necessary to the functioning of cultural life, and they are the very grounded, which makes cultural life possible; because of women's nature, men need to use reason to maintain the order of society.

I would conclude therefore, that in the civil revolutions of the 18<sup>th</sup> century, women were also excluded from the principle of liberty, equality, and fraternity. While mothers and daughters were born to be subjects to fathers, father and son became subject to the same higher authority (liberty and equality), and hence they become 'brothers' (fraternity).<sup>18</sup>

Attempts by women in the US and in Western Europe to take advantage of the considerable social unrest in the 18<sup>th</sup> century were often quashed. For example, one of the main petitions put before the revolutionary government in Paris between 1792 and 1794 demanded that women be given 'a voice' in the newly formed politics. This was rejected:

If we take account of the fact that the political education of men is still at its very beginnings, that all the principles are not yet developed, and that we still stammer over the word 'liberty', then how much less enlightened are women, whose moral education has been practically non-existent. Their presence in the *société populaire*, then, would give an active part in government to persons exposed to error and seduction even more than are men. And let us add that women, by their constitution, are open to exaltation which could be ominous in public life. The interests of the state would soon be sacrificed to all the kinds of disruption and disorder that hysteria can produce (cited in Gatens 1996: 54).

Women were the object of regulation, but not part of political management. This division between nature and culture, between the reproduction of mere biological life as compared to the production and regulation of social life, is reflected in the distinction between the private and the public spheres, and between the family and the state.

The way to conceive women's ontology explains the conditions for a practitioner of rights. Someone who practises rights must be a rational, independent self, knowing what the best is for the self, being able to weigh cost and benefit: the self must be *enlightened*. Women, being irrational and hysterical, remain in the state of nature, and are not entitled to practise rights. 'Rights' in their origins, were a masculine invention for masculine politics. Also, a practitioner of civil rights, the 'individual', was defined to be a masculine being, excluding women.

The first women's rights movement in northwestern Europe emerged in the latter part of the 19<sup>th</sup> century. Today, the range of applications of 'rights' has been broadened, for example to include ethnic minority groups, various religious groups, and others. What is to be deduced here is that the history of 'rights' is thus about incessant attempts to broaden the range of involvement to more varieties of 'self' as the practitioners of 'rights'. A 'right' is a concept about which there has always been the question 'who is entitled to practice it?' According to this,

there is a dichotomous idea about 'right and duty', that 'only those who perform certain duties are entitled to enjoy rights'. Rights are thus actually not unconditionally practised, and there are always those who feel excluded from their application.

### *Characteristics of the concept of 'rights' as deduced from its genealogy*

So far, a characteristic of the concept of 'rights' deduced from its genealogy is that 'rights' are an instrument to liberate human beings from any authoritative power. This, on the one hand, helps to establish a critical and conscious citizen, which is important for building a democratic society. 'Rights' is also a concept used by those who are, or are expected to be, in an oppressed situation, and is a tool for requesting better treatment because of a belief that he/she deserves it, because of innate natural rights.

However, on the other hand, *practising* and *applying*, or implementation of rights in the real world still runs into many problems in different areas of the world. For example, under the concept of natural rights, individuals tend to be regarded as being in competition with each other. This way of conceiving human relations is not always shared by all cultures around the world. The idea of the 'strong and autonomous individual self' was developed during the 18th and 19th centuries under English utilitarianism.

Another characteristic of 'rights' is that they are not unconditionally applied to all, as is seen from the fact that the history of the concept of 'rights' has been the struggle to broaden the concept of 'who is entitled to practise rights' (or, again, the question of who are the 'brothers'). Historically, those in non-Western areas were absent from rights discourse. There are still certain groups of people who enjoy fewer rights. The concept, thus, implies the exclusion of certain groups of people from its practice, according to their particular qualities.

The idea of 'human rights' after the Second World War improved the situation, in that 'rights' broadened the scope of applicability to more groups of people in more areas of the world, because 'human rights' expresses the notion that human beings, as humans, and regardless of any particular condition, are assumed to be entitled to a particular benefit.<sup>19</sup>

### **Political philosophy in Japan before the concept of 'rights' was introduced**

During the Meiji Restoration (1866-1869),<sup>20</sup> many Western political philosophical theories were translated into Japanese and read by intellectuals.<sup>21</sup> The Western concept of rights was understood through read-



ing those writings, and the concept was translated into a Japanese term, *kenri*, composed of two Chinese characters, *ken* and *ri*.

Looking up the meaning of the term *kenri* in a dictionary, it is explained as an 'entitlement to do or not to do something. An authority to claim or enjoy a certain interest guaranteed by the law' (Nishio et al. 1995: 350). Looking up each Chinese character, *ken* stands for 'authority to rule over others, entitlement to make a claim to others, and force'. *Ri* stands for 'usefulness, effect, convenience, interest, and benefit' (ibid: 361, 1220-1221). Accordingly, rights can be translated into 'entitled authority to make a claim from others for one's benefit guaranteed by the law'. These meanings indeed represent the characteristics of rights observed in its genealogy in the West.

However, defining rights as a concept to articulate the political and legal relationship between the ruler and the ruled as well as amongst society's members, there actually was also a concept similar to 'rights' in Japanese political philosophy prior to the Meiji period that came from China. For this reason, 'rights', after being introduced in Japan from the West, was not conceptualised or practised as it is/was in the West, but merged with indigenous political philosophical ideas. In order to understand the image of the practice of rights in Japan, political philosophy prior to the Meiji period will be reviewed here.

#### *Political philosophy in Japan prior to the Meiji period*

During the Edo period (1600-1868), an instrument for 'stable' politics was a rigid rank system. All people in Japan were divided into four social ranks: the warrior, the farmer, the craftsman, and the merchant. These ranks were hereditary. Farmers were the majority and they had to pay a land tax, in the form of rice, to the warriors. During the 300-year Edo period, there were a number of riots by farmers, but the *bakufu*, or government, suppressed them. One of the policies was not to give education to farmers or to women so that they could not know, think, or criticise.

Given this social system as backdrop, a number of intellectuals thought about the dignity of individuals and the ideal human relationship, which are possible to observe in the theory of the relationship between the rulers and the ruled. In general, the theories were developed around *Ju-gaku* (Confucianism),<sup>22</sup> and also *Shushi-gaku* (the Zhu Xi or Chu Hsi school),<sup>23</sup> either using or criticising the ideas of *Ju-gaku*.

Characteristic of ideas on this issue from major thinkers of the Edo period was that thoughts about relationships between the ruler and the ruled were based on ethical and moral principles of how to treat other human beings.<sup>24</sup> Such emotional factors as sympathy, love, trust, and appreciation were at the centre of these ideas (*Jô, Ai, Kô, Shin* and *On*).<sup>25</sup> Chinese and Japanese political philosophy talked about both the

ruled and the ruler, focusing on morality as human beings and how to satisfy the conditions of life of both the ruled and the ruler.

With the ideas of ethics and morality as a prerequisite, the equality of all human beings (mainly men) was argued, and eventually most of the thinkers in the Edo period criticised the rank system inherent to the feudal and emperor systems. The equality of human beings and anti-monarchism were discussed. Rulers owe their well-being to the farmers, and therefore there is no reason for one to overpower the other, as they are interdependent. Theories of equality were not based on the concept of individuals as a natural antagonist or egoist. Political ethics were focused on how to enhance the morally good aspects of all human beings, both rulers and ruled.

What was the position of women in Japanese indigenous political philosophy? In political thought during the Edo period, *ningen* or *hito* are used consistently, without specifically referring to men. Unlike some Western European languages such as French, Italian, Spanish, and English, in the Japanese language, 'men' does not represent universal human kind, but the words *ningen* and *hito* mean both a man and a woman. Therefore, at a glance, the question of gender is not easily manifest in reading the texts of Japanese political philosophy. However, from some historical facts, it is certain that women were not considered to be entitled to the same socio-economic opportunities as men. According to some educational writings for (upper-class) women during the Edo period, for example, women were supposed to be obedient to men, and this was a pre-condition for peace within a family.

Probably it should be put in this way: gender issues in the history of conventional Japanese political philosophy have actually not yet been sufficiently explored. Moreover, power relations between men and women in Japanese history have never been monolithic; it differs according to historical periods as well as social classes. The Japanese anthropologist Itsue Takamune argues that women's subordination was strengthened after the Muromachi period, when the warrior system and household marriage system emerged in the 14th century. From the Muromachi to the Edo and the Meiji periods, women were increasingly subordinated. According to social classes, subordination of women was more severe among higher social classes from the 8th century onwards, while among farmers until the end of the Edo period, sexual and gender division of labour was not strongly articulated. During the Edo period both male and female farmers, who made up 90 per cent of the entire population, shared productive duties as well as domestic chores, including care of children and the elderly. Neither male nor female farmers had formal education. In the households of warriors, women experienced more discrimination, both in terms of labour and education (Takamune 1972a: chapters 3, 4 and 5). Given the fact that thinkers

in the Edo period were from higher social classes, it is very likely that their ideas included only men.

These 'indigenous' political philosophies were marginalised after the Meiji period. One reason is that theories from the West were actively imported into Japan, and what was from the West was valued excessively as progressive. Another reason, which is more ideological, is that in order to maintain its unity, the Meiji state based itself on the emperor system. Most of the political philosophers prior to the Meiji period, however, had criticised the emperor system and/or the social rank system. There was no room for these philosophies to survive under the strengthened emperor system. Rather, theories from the West that assume the existence of a central government fitted better with the Japan's new political situation.

#### *Introduction of Kenri, or 'rights' into Japan*

During the Meiji period, Japanese thinkers of the day tried to develop egalitarian thought based on individualism. The political thinkers' goal was to establish a 'civilised'<sup>26</sup> country with mature social citizens, and therefore they all attacked the feudal system.

Yukichi Fukuzawa (1834-1901),<sup>27</sup> Japan's most prominent educator and philosopher of the Enlightenment (Frühstück 2003: 18), was one of the most influential thinkers in Japan who worked on 'civilising' the country through his scholarly works on individualism. His arguments range from Japan's international position to women's issues. Individualism and egalitarianism were discussed in order to develop people's consciousness, which was bound to the social rank system during the Edo period, limiting people in using their talents fully for social mobility. The importance of self-respect, self-effort, and self-confidence for an individual, regardless of social class or background, was emphasised. Fukuzawa thought that each individual's self-dependence was the only way to develop a civilisation in Japan. His major work, *Gakumon-no-susume* (Encouragement of Learning; 1872) clearly displays this standpoint: everyone has equal talents, which can be developed only by self-effort, making it possible for individuals to achieve social ascendancy, breaking the ceiling imposed by social conditions. Learning and spiritual independence were to be encouraged, because 'having capacities to think and criticise eventually leads to the establishment of a subjective self within an individual' (Fukuzawa 1872). 'Innate right' was a convenient notion upon which to construct this logic, because it assures the value and capability of each individual. 'Right' was translated by Fukuzawa into *kenri*, the combination of the aforementioned two Chinese characters.

Enhancement of women's position in society was also discussed by Fukuzawa in the context of self-respect and self-dependence. As his goal

was to civilise Japan, his theory on women's well-being was for the purpose of enhancing the quality of children as future citizens, since women are the bearers and mothers of these citizens.

Thus, self-dependence, self-confidence, and self-ascendance were the crucial concepts in Japanese modernisation, and the modernisation process in the late 19<sup>th</sup> century is called the 'enlightenmentalism' of Japan. In promoting spiritual independence, thinkers such as Fukuzawa attacked the feudalist tradition that had flourished during the Edo period.<sup>28</sup> The philosophers' abandonment of earlier indigenous political theory, and overt attachment to Western philosophy, are due to their rejection of any thoughts linked to feudalism, such as Confucianism. However, because of differences in backgrounds between the West and Japan, it was not so that the concept of 'rights' was taken up in philosophical thought in Japan in the same way as it had been in the West. It was also understood in the light of indigenous philosophies from the previous era (Nakamura 1999: 242).<sup>29</sup>

#### *The practice of Kenri in the Popular Rights Movement*

Successive reforms during the Meiji period changed people's living conditions drastically. Amongst those hardest hit by the Restoration were the former *samurai*, or the warriors, now called the *shizoku*. Their stipends as *samurai* were replaced by family stipends, they lost their former privileged social status, and many of them became unemployed.

In 1874, finding themselves outside the corridors of power, the former *samurai* began a campaign of criticism of the government. Taisuke Itagaki (1837-1919) and Shōjirō Gotō (1838-1897), with the aid of intellectuals from England, established the *Aikoku-kōtō* (Public Party of Patriots), which presented a petition to the Diet that stressed the evils resulting from unchecked government power and the importance of the establishment of a popularly elected assembly. The petition was published in the press and had a great effect upon public opinion, touching off what was to become *jiyū-minken-undō* or the Popular Rights Movement. This was the first political movement using the rhetoric of 'rights', or *kenri*, in Japan.

Although the aim of the movement was limited to regaining the privileges of the *samurai*, it can be observed that the rhetoric of the movement was consistent with their definition of rights, that is, 'rights appear when there is an injustice' and that 'a right is an instrument to make a claim, by the oppressed towards the oppressor, demanding better treatment'.

With the Popular Rights Movement, women also started to become politically active. These activities were the first women's movement in the modern history of Japan. Kita Kusunose (1836-1920), Eiko Fukuda

(1865-1927), and Toshiko Kishida (1864-1901) were the most active in this period, arguing for the equality of men and women, and criticising women's subordination in the light of the biological, physical, and psychological differences between men and women (Kanô 1990: 61-62). They went so far as to establish a women's political party, called *Joshi-jiyû-tô*, or the Women's Freedom Party. In September 1880, a women's political group was established in Kanda, Tokyo, where there were lectures on equality between women and men. Everyday local women attended the meetings. In 1882, Kishida gave lectures in Okayama prefecture and Kagoshima prefecture. It was reported that the meetings were well-attended by women. In 1883, the three women established the Women's Freedom Party in Sendai. In 1884, they established Aikô Women's Association in Kanagawa. Thus, their activity was not limited to the capital city of Tokyo, but was widespread throughout the country.<sup>30</sup>

After the introduction of the Meiji Constitution in 1889, the Popular Rights and women's rights movements faded away. Under the *Ie* system, women had been prohibited from engaging in any political activities and were confined to the household.

In the 1920s, the Taishô era saw a short period of democracy called *Taishô-democracy*. Civil movements, requesting political participation, revived. As a result, universal male suffrage was achieved in 1925.<sup>31</sup>

There was also again a women's movement that emerged in this period. Apart from the birth control movement, there was the famous 'motherhood debate' in 1918. The debate was between Akiko Yosano (1878-1942), who promoted women's consciousness throughout her work, and Raichô Hiratsuka (1887-1971), who was the first woman in the history of Japan to publicly champion women's rights and highlight the oppressive nature of the feudal social system for Japanese women. (Takamune 1972b: 268). In the debate, Yosano criticised the demand for the state's financial support for pregnancy and delivery for women, calling it 'dependency', while Hiratsuka requested the state's support for women, based on the recognition that motherhood is one of the core functions of women. She referred to motherhood as a 'taken-for-granted right'. Hiratsuka's view was based on a criticism of modernism that

liberation of women is not only to free women from external oppression, giving them education, job opportunities, voting rights, and independence from husbands; ... Instead, the purpose of women's liberation is to establish a woman as a self, doing away with a mere equality between men and women. The real liberation of women is not to become like a man, but liberation as a person being a woman (Kanô op. cit.: 63).

What is noteworthy about this debate is that, in Hiratsuka's criticism of modernism, rights are being used for the first time, in a sense going beyond political participation in a given social system, as a tool to attack the modern masculine social values. This notion of equality between men and women in the criticism of modernism was inherited by the 1970s Women's Liberation Movement, which refused to aim only to secure the same social opportunities for women that men enjoyed in the current male-centred society.<sup>32</sup> However, the term 'right' itself remained strongly connected to liberalism.

After the short *Taishō-democracy*, Japan entered the *Shōwa* emperor's military rule. Since the state police were given stronger powers to limit any kind of freedom, the rights debate became silent and inactive. After the Second World War, the new democratic constitution was adopted, where sovereignty was vested with the people. Japan signed the Universal Declaration of Human Rights in 1948.

*The concept of 'rights' in Japan: Unsuccessful integration of the term 'right'*

Many Japanese people, since the term 'right' reached Japan up to the present, both the general public and political scientists in particular, feel that the tradition of Western political philosophy, including how rights are practised, is aggressive and conflicted. This perception also includes the belief that Western political philosophy is based on the assumption of isolated individuals. This is felt not only in Japan, but in many other non-Western regions as well (see introduction).

So far, the genealogy of the concept of 'rights' in Western political philosophy shows that the aggressive connotations connected to the concept of 'rights' come from the assumption that individuals are competing against one another, primarily for natural resources. 'Rights' are seen as a shield to protect the individual in this competition, because others are potential attackers of another's well-being. This competitive image is well described in Thomas Hobbes and John Locke, and was taken up by thinkers during Western Europe's civil revolutions and utilitarianism in the 18<sup>th</sup> century.

Two important comments are in order here on the genealogy of rights and the implications of the concept of rights. One is that ignoring the context in which a theory was made sometimes gives rise to misunderstandings, not only in non-Western areas, but also in the West, in reading Western political philosophy (Wolin 1975, 3: 151; 171). For example, Hobbes is often described as a promoter of total individualism and distrust in others. However, to understand the message of his theories correctly, it is necessary to take into account the social and historical context in which he lived, the life-threatening situation of the civil war (Saxonhouse 1993; Wolin *ibid*). His advocacy of individualism

is intended to defend against unreasonable authority overriding an individual's life.

The same goes for Locke: his advocacy of individualism is based on his belief that an individual's conscience should be maintained by the individual's consciousness, instead of being imposed by any authority (Wolin *ibid*: 118-119). The important and original message of the concept of 'rights' in the Western political philosophical tradition has been to establish a conscious and critical individual self, as a precondition to liberating human beings from any coercion, be it political or religious. This point is what Japan learned from Western philosophy in her period of modernisation. Messages from thinkers cannot be accurately understood without the context in which theories are made. Without taking account of the context in which political theories are developed, the message is not correctly conveyed to the public.

The other comment is to note that there are certain patterns in constructing the canon of Western political philosophy and explaining political vocabularies. In many of the textbooks on political science, there is a 'mainstream' pattern in talking about rights, following Hobbes, Locke, Rousseau, Mill, and Bentham. This way of establishing the concept of rights creates the image of total individualism, misogyny, elimination, and utilitarian enlightenmentism. They are indeed major thinkers in the tradition of Western political philosophy, but there were also other philosophers, whose thoughts are not necessarily aggressive or individualistic, but were even critical of these characteristics in Western philosophy.<sup>33</sup> So the idea of Western philosophy as individualistic and aggressive is, in one respect, also a product of construction.

However, despite these explanations for the problems connected to Western political philosophy, it still holds that for many non-Westerners, including Japanese, Western philosophies seem to be excessively individualistic, not doing justice to the interrelationship between individuals. This is not a coincidence. In the West there is a basis on which such an aggressive implication can be understood. Therefore, I have traced the 'mainstream' pattern in which political canons have been constructed. Tracing the 'mainstream' pattern also includes the task of tracing the background of Western philosophy.

René Descartes (1596-1650), for example, is also one of the most studied Western philosophers in Japan. The message of *Cogito*<sup>34</sup> by Descartes also fosters a critical, conscious, and outspoken self, in order to establish space not dominated by theology, the Church, and the authorities. *Je pense, donc je suis* – this can be read as his declaration to certify the absoluteness of the existence of 'self' as what cannot be destroyed by any unreasonable authority. However, in the process of removing what is unreasonable, 'other beings related to *Cogito*' were also eliminated; for oneself, the existence of 'others' is an object of doubt, be-

cause 'others' fail to be absolute for Cogito. The other side of 'I think, therefore I am' is 'I do not know what, or whether others are thinking', therefore, the existence of others is not absolute. On its introduction to Japan, Descartes's way of thinking could not avoid inviting the criticism that the philosophy is based on distrust of one individual toward others, eliminating the surroundings, something that can hardly be fitted into the Japanese philosophical context.

The Japanese philosopher Yamamoto maintains that

the era of European modernity is an era in which the idea of co-existence was killed by excessive desire to pursue interests. There was a distrust in all 'others' – including other individuals and nature. Modern rationalism is based on a trust in reason, but it has at the same time distrust in how human beings are (Yamamoto 1992: 211).

Examining how a canonical pattern is constructed in Western philosophy and what it signifies, one may well conclude that a strong message of modern European philosophy is as described above by Yamamoto.

A human being is not just reason, but a being who also contains irrational and immoral aspects. Therefore, subordination of irrational aspects, coupled with the emphatic argument for 'reason', appears to be a denial of how human beings actually are. Critics may argue that Rousseau shows trust in the nature of a man. However, he admits that his concept of 'nature' and 'natural man' before 'society' is 'a purely hypothetical and imaginative reconstruction that deliberately ignores facts' (Edwards 1967: 220). Actually, the 'natural' man, whom he admired and trusted, does not exist in the real world. Conversely, in his theory, the 'real man' in 'real society' in front of him is regarded with eyes almost of despair.

On this point, Yamamoto also explains that the Western absolute universalism that emphasises only the 'good part' of human beings, and the act of denying a human being because it has immoral aspects, is partially due to Christianity (Yamamoto *op. cit.*: 176). To put it another way, Yamamoto wants to argue that as the self of one human being cannot be constructed without interaction with other human beings, a human being cannot be a human being without his/her irrational and sometimes immoral aspects. A human being comprehends both good and evil parts.

Then, where does the juncture come from, and why does Western philosophy, when compared to Japanese philosophy, appear to some to be aggressive? There are several explanations for this. To begin with, there were and are fundamental differences in social, economic, and natural conditions between Japan and Hobbes's notion of the state of



nature, which was his theorisation of the English social disorder of his day. The leading post-war Japanese political scientist<sup>35</sup> Masao Maruyama (1914-1996) argues that

Hobbes saw the drastic change of society and values, while in Japan during the Meiji period, pre-existing society did not see so drastic a change as in Hobbes's day, and people still could live within the pre-existing community [...] Therefore, it is difficult to imagine an individual's absolute isolation in Japan, unlike in England of the day (Maruyama 1998-2000, 7: 30; 71-72).

Quite a few contemporary Japanese social scientists observe that human beings' relations with nature in Japan are also very different from that of people in the West. In any of the major traditional as well as contemporary philosophies in Japan, the notion of human beings fighting against nature is marginal. Tracing the tradition of the development of rights in Western political philosophy, it is possible to observe that the inherent message is to theorise how to allocate limited natural resources amongst individuals. Nature has become horror, an object to be conquered and to be mastered, and other individuals appear as potential attackers of the self. Conversely, in Japan, human beings' relationship with nature is described as 'interdependent', 'gentle', and 'stable', where 'individuals competing with each other for natural resources', as found in Western philosophy, was not a dominant line of thought.<sup>36</sup> Moreover, traditionally most parts of Japan were based on agricultural management, which led to a community-based lifestyle. As Japanese anthropologist Takamune explains, an 'individual' develops in 'commerce', as was observed in Europe. Asia was 'agriculture', where it was not possible for individuals to survive without being dependent upon each other (Takamune 1972b: 500).

Given different conditions in nature and ways of living, nature is viewed as an object to be mastered in the West, while in Japanese indigenous political philosophy nature is considered to be in harmony with humans. Accordingly, in Western political philosophy, other individuals are targets of distrust, because individuals must fight each other for the allocation of natural resources (Maruyama op. cit.; Hasegawa op. cit).

The situation in Japan has now changed, in the sense that the social climate has also become more individualistic as Japan became industrialised and embraced capitalism. Especially after the Meiji period in the lead up to the Second World War, the 'socially unfit', such as disabled people, was treated harshly, and care of disabled people were not a concern of a community any more. But generally, in comparison to many contemporary Western societies, interdependence among individuals is stronger in Japan than in the West both positively and nega-

tively. Given such differences, there is little prospect of the concept of 'rights', which developed under certain social and historical circumstances, being easily accepted in Japan and used as it has been in the West.<sup>37</sup>

It also has to be added that in the non-Western world rights sometimes cannot represent the socially weak, who actually are most in need of rights. This is because the term 'right' is not an indigenous term in the non-Western world, but was introduced from the West, mainly through academic books. Rights thus spread from top to bottom in these societies. For this reason, the term 'right' does not appeal to the powerless, but appears to be a term belonging to intellectuals. In addition to this fact, as was reviewed in the genealogy of the concept of rights, the concept initially applies to those who are equal *brothers* of each other, who are privileged. This is a serious paradox, in light of the original political aim of the concept of rights, namely to enhance the living conditions of the socially oppressed.

What is important here is to acknowledge that political philosophies in the West, as well as the concept of 'rights', are 'local' in northwestern Europe, but are not 'universal' in their origins. Therefore, it can be no surprise that the concept of 'rights' conflicts with indigenous philosophies in other parts of the world.

### **A rights analysis of the Japanese abortion debate during the 1970s**

In the selective abortion debate, which arose during the 1970s between disabled people and women in the Women's Liberation Movement (the WLM), the roots of the conflict can be found in the conceptualisation of the concept of 'mother'. Mothers represent both disability-free people and care-takers. Women in the WLM were composed primarily of disability-free women, mothers and potential mothers. The reasons that disabled people attacked 'women's egoism', with as focal point the concept of 'mother', will now be considered.

#### *Mother as an enemy*

*Aoi shiba no kai*, a group of people with cerebral palsy (see introduction and chapter 1), argued that

parents are the closest representatives of people without disabilities. They practise the egoism and selfishness of disability-free people, and hence parents are the nearest oppressor (Tanaka 1973: 1).

This statement points to the way parents act paternalistically towards their disabled children because of their children's disability, sometimes making decisions on their behalf. Of the parents, mothers are even closer than fathers, because when disabled people stay at home, not able to go to school or work, in the Japanese context mothers are the primary caregivers. It is understandable that mothers act protectively toward their disabled children, including making decisions for them, or limiting their independence, even as they grow older.<sup>38</sup> Taking this into account, *Aoi shiba no kai* pronounced that 'women are like enemies'.<sup>39</sup> This phrase was used by *Aoi shiba no kai*, although there were women with cerebral palsy in the movement. This was possible for two reasons: first because the movement was represented by male disabled people, and second because within this movement, male disabled people put forth the movement's arguments from their own position as sons of mothers, or disability-free women.

Mothers taking care of their disabled children were usually not disabled. Disabled people viewed the relationship between mother and disabled child in terms of power, not only according to the hierarchy of the parent/child relationship, for example, but also of the disability/disability-free relationship. Given this analysis, disabled people could not accept women's demand for rights, because to them a right was something to be demanded by those without power, that is, the oppressed against the oppressor. Being disability-free was seen as being socially more powerful than being disabled, in terms of access to social resources. From the disabled people's perspective, a demand for rights from a more powerful social group (disability-free women) sounded egoistic.

### *Mother as a caregiver*

At the same time, although mothers are the closest oppressors of disabled people, it is also a fact that disabled people could not survive without the care of mothers. In child murder or selective abortion cases, the phrase '*haha-yo! Korosuna*' (Mothers! Don't kill) emerged, but fathers were not questioned.<sup>40</sup> The role of fathers, whether in abortion or the murder of children, was not considered by the disabled people's movement. This implies that disabled people think of women as 'natural' mothers, giving unconditional care. There was also a myth of motherhood internalised in disabled people; for women to give up the job of mothering is a deviation from their expectations and norms. Women's claim that they had a right to access to abortion was seen as egoistic, because an abortion contradicted disabled people's image of women. Hence, in criticising women's rights, disabled people were ambivalent: 'we are worse off than women (without disability)', as well as 'women should be unconditional caregivers'.

### *Mother as a woman*

In addition to the issue of power between disability/disability-free people and the myth of motherhood, there were also issues of male dominance and discrimination within the disabled people's movement. The disabled people's movement was represented by men, and sex discrimination can be noted in their arguments. For example, there is a movie called *Sayonara CP*, or 'Farewell to CP', produced by people in *Aoi shiba no kai* who have CP. This movie describes the life of people with CP, and aims to challenge the biases that the general public had about CP. In this movie, there is one segment in which men with CP are talking about their first sexual experiences. This segment is for the purpose of showing that disabled people are not asexual. During this segment, one man confesses that his first sexual experience was raping a woman from his neighbourhood. Whether it is true or a lie, this statement is striking. First of all, he is not ashamed of saying that he raped a woman. If it is true, it is a crime. Moreover, there is no consideration of how a raped woman would feel about the experience. Secondly, the atmosphere is that he is even proud of saying that he raped a woman, because he apparently believes that it shows how powerful and competent he is. He does not express any regrets. In this man's view, when a man is physically strong enough to dominate a woman, he is a brave and real man.

Another example of sex discrimination in the disabled people's movement was that the wife of one disabled man, named Yokota, is consistently referred to as *Yokota-san-no-okusan*, or 'Mr. Yokota's wife', in the movie. She remains anonymous, never being called by her own name. She is a mere appendage to her husband. This problem is not only about anonymity. The term *oku* originally means, 'a room in which married women were locked so that they could not see any men but their husbands' (Takamune 1972a: 284-285).<sup>41</sup> The term *okusan* has come to mean wife, and it is widely used in today's Japan, without implying an insult, because most people do not know the original source of the term. However, it takes only a little imagination to notice that the term is problematic, even without knowing its original meaning, as it connotes somebody inside the house, or 'indoors' (Pateman op. cit: 130). It implies ideas about conventional social roles of men and women, including the sexual division of labour. The term *shujin* is coupled with *okusan* meaning husband or household head. Literally, *shujin* itself means 'master', a meaning that every Japanese person knows. For example, the term is used in a manner such as, 'the dog's *shujin* is Ms. Tanaka'. Feminists would never use the terms *okusan* or *shujin* to refer to husband and wife. Feelings about this movie among women in the WLM are well expressed in the following statement:

It is very difficult for discriminated groups to encounter each other in the structure where various discriminations are crossing over one another in complicated ways. As is clear from the movie *Sayonara CP*, those with CP also have sex discrimination internalised within themselves. I want to say, loudly, that this movie itself is absolutely masculinist, no matter what. Yokota-san's *okusan* (wife) is nothing but '*okusan*'. Toshiko Yokota is not treated as a woman with CP at all. Men with CP in the movie, to begin with *Yokota-san*, are trying to 'lock women' inside the house, and they obviously share a belief that men stand above women.<sup>42</sup>

The WLM was represented by disability-free women as potential mothers, and the disabled people's movement was represented by men. Disabled women were not prominent. Noriko Seyama, a scholar in women's studies, states that the concerns of disabled women could not be shared by the WLM, because their concern was mainly 'to live like others in the local area, and to deliver and rear children like others' (Seyama 2000: 36). In this period, disabled women were not potential mothers, and a right to abortion was not the primary concern of disabled women. The claim to a right to abortion sounded like a luxury, and this was also felt by disabled men, for whom it was difficult to enjoy love and marriage in the same way as others did in society. This was also a reason for their criticism of women's rights, calling these 'women's egoism'.

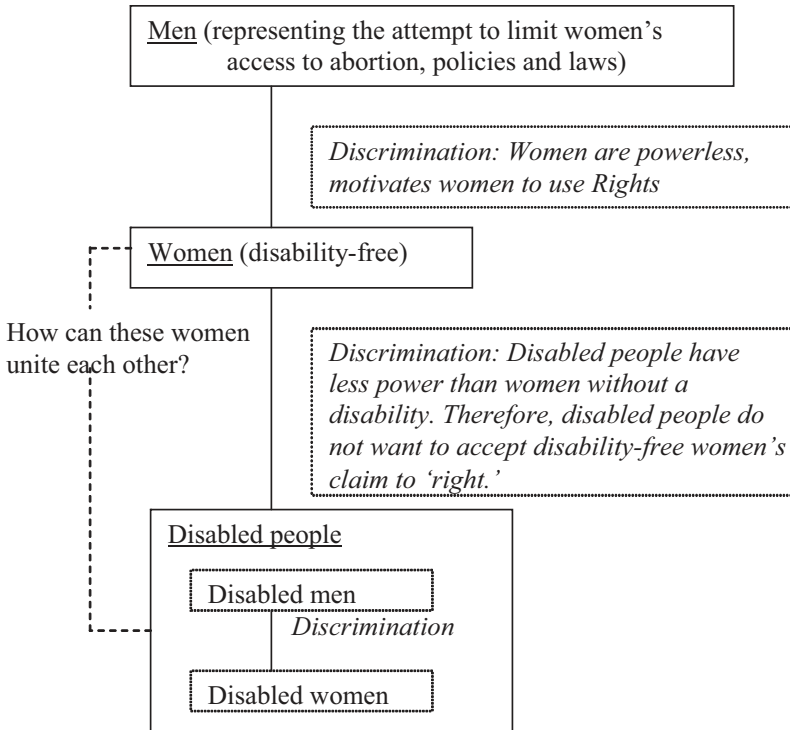
Thus, there were a number of social relations at play in the relationship between the disabled people and the women's movement, including mother/child, disability-free/disability, and men/women. Dominance and subordination cut across the two groups, where their assumptions about men's lives and women's lives played a role.

As becomes clear from the discussion of the genealogy of rights, demands for rights emerge when there is oppression, and a claim based on rights can be used by the oppressed to empower themselves.

According to anti-abortion organisations which were opposed to abortion in the 1970s, between a foetus and a woman, it is the foetus that is powerless and dependent on the woman. If an unwanted pregnancy can be called 'an invasion by a foetus within a woman's body' at all, the woman is the decision-makers, while a foetus is completely at her mercy. For a woman, it is her physical well-being, standard of living, or her economic condition that is to be sacrificed for of the birth of a child, while for a foetus, it is its life which is to be ended by of the abortion. Therefore, it would appear that in most cases a foetus is exposed to a more serious danger than a woman is.

Moreover, the introduction of the foetus into her own body, i.e. pregnancy, is the result of her own act. In the view of anti-abortion argu-

**Diagram 1** *Pyramid of power relations amongst women and disabled people*



*Rights, women, and selfishness in the thinking of the anti-abortion movement and the disabled people's movement*

ments, entitlement to access to abortion means to accept that women receive benefits at the cost of another's life. What is smaller and is to be protected is the life of a foetus, rather than that of a woman. In this situation, i.e. when a woman is pregnant, it might not be correct to assume that there is oppression of women, and therefore, according to those who criticise the 'women's right' argument in favour of access to abortion, it would not appear to be proper to grant these rights to women. Because, in their view, the foetus does not oppress a woman, isn't women's demand for rights just a request for the entitlement to dominate fetuses, and therefore isn't their demand 'egoism'? Life is indeed precious. Nobody is able to deny the dignity of life. And it is cruel that the life of a foetus must be taken away so that a woman can avoid sacrificing her plans or standard of life.

But taking a closer look at the issue raises a question: why is the issue of abortion so often reduced to a foetus-woman only relationship? Why does the issue of abortion only focus on women's act of killing? Where are the social, economic, and political contexts of women's unwanted pregnancies? Men's responsibilities for the consequences of sexual acts are not questioned, while women's are. Questions about the context surrounding women and fetuses are absent, although they all are intimately related to the issue of abortion. So, in my view, the real problem is that the abortion debate was reduced to a foetus-woman relationship. The absence of a debate about the broader context in which abortion takes place, meant that discrimination against women, was not questioned.

Opponents to abortion in Japan stated that, 'although women's bodies have been injured during back-alley abortions after abortion became outlawed, if the lives of thousands of fetuses are saved, it is better' (Yūseihogohō kaihaikisei dōmei 1969: 24). Disabled men say women are selfish when they have an abortion, scarcely questioning the conditions in which women have to raise children. This means that women are expected to give birth and let the foetus live under any circumstances. Here, the discrimination against women, that is, the social and political reasons why a woman sometimes becomes pregnant when she does not want to, and the sacrifices women make, are accepted without being questioned. Men's dominance is 'natural' and the state is a 'natural' intervener in women's bodies. The oppressed are entitled to rights when there is oppression. Women's claim that they have rights is considered to be egoistic because there is no acknowledgement of the oppression of women.

In addition to failing to acknowledge discrimination against woman, there was also the problem of the practitioner of rights. In the Western tradition of rights, women were initially excluded from rights theory, because they were considered 'natural', 'emotional', and 'irrational', and thus unfit for the world of politics. Therefore women should be ruled by men. Natural rights applied only to male individuals, not to females. Rights were, in their origin, a masculine construction for masculine politics. Women were thus disqualified as bearers of rights and unable to use them to make a claim for better treatment. According to this masculine bias in conventional philosophy, women were unfit to exercise a claim to rights because of a lack of so-called male qualities. When a woman used the term 'right' she was called selfish.

This lack of acknowledgement of the oppression of women, by viewing women as 'the natural self-sacrificers' also holds for the disabled people's movement, which in the 1970s was led by men. The disabled people's movement's view of the relationship between a foetus with an anomaly and a woman did not include taking into consideration wo-

men's social conditions. While women's responsibility for 'murdering the child' when aborting a foetus is taken into account, men's responsibility is not; if a woman refused to become a mother, she was called selfish.

*Women's dilemma in using 'rights': What 'rights' could not express*

The acts of pregnancy and abortion involve a number of complex relations. Some women in the WLM, who consciously chose to make use of the concept of rights, argued that 'rights to abortion' addressed the oppression of women by men and the state, not of foetuses or disabled people. This position held that rights clearly applied to the oppressive relationship; expressing rights was not oriented toward the foetus. Yet there were also women in the movement who were reluctant to assert that their concern in the abortion debate was oriented solely toward men's and the state's oppression of women. For them, reducing the abortion debate to a state/men-women relation could not fully express why women need to have an abortion, or a woman's feelings towards a foetus. Without women confronting the issue of how they view foetuses when having an abortion, it would not be possible to counteract the charge that 'a woman dominates a foetus'. Without expressing the negative feelings they experience when having an abortion, it would not be possible for women to counter the argument that they are irresponsible and egoistic for having an abortion. Removing the foetus-woman relationship from the debate would provide openings for those opposed to abortion to criticise women for having abortions.

With regard to the disabled people's movement, a foetus-women relationship is not the only issue to consider, as there is also a power relation between the disabled and the disability-free. Women in the WLM did not want to ignore this power relation, nor the bias against disabilities internalised within women. Removing the foetus-women relationship from the abortion debate would also remove the opportunity for women to consider what it is like to conceive and raise a disabled child.

Now women were in a dilemma. Using the concept of rights to justify access to abortion, the WLM's arguments in support of access to abortion sounded as if women did not care about foetuses when having abortions. This is partially because the concept of 'rights' tends to be reduced to a question of access to something. Also, the 'right to abortion' sounded as if women were ignorant of discrimination against people with disabilities. At the same time, a 'right' implied that women's concerns are more about access to social resources in a given society. The concept did not convey their intention to question the social system, which is constructed by the norms of able-bodied males. Women wanted to avoid these implications; when talking about abor-



tion, they did not mean only 'access' to having an abortion. When speaking of abortion the WLM also wanted to problematise the values internalised in society, namely values based upon males and people without disabilities. Despite the shortcomings of relying on the concept of rights, it was also perilous to withdraw 'rights' from the debate because it was a key concept for the political movement to build its arguments upon.

The fundamental problem lies in the fact that rights unnecessarily generate dualisms, such as a woman versus a foetus, or giving birth versus abortion. For example, there was a debate inside the women's movement about whether to use rights, targeting the criticism toward the state, or to replace rights with another concept. Actually both positions shared the refusal to apply rights to a foetus-woman relationship. Both arguments originated in the refusal to position woman as 'rulers' over a foetus. Hence, the problem is that rights are not able to express a symbiosis of two apparently contradictory matters. Instead the usage of rights appears to bring them into conflict with each other.

#### *Strategies for the women's movement to deal with the concept of rights*

There were three strategies concerning rights open to the WLM. First one could stop using the concept of rights in connection with the demand for access to abortion, replacing it with other concepts when making the demand for access to abortion. Such phrases as 'we demand a society where we can give birth, where we want to give birth' are one example of replacing the rights-based demand with the samely focused demand. By ceasing to use the concept of 'rights to abortion', conventional implications and biases about 'rights' would not haunt the claims made by the women's movement when demanding access to abortion. One could use a term that does not imply that women are egoistic or aggressive, without reducing the abortion debate to the foetus-women relationship. Yet the crucial disadvantage of ceasing to use the concept of 'rights' is that it is so familiar and so powerful a tool in political struggles, that to declare that women do not have rights when it comes to abortion would actually mean surrender.

The second way out of the dilemma was to declare that women's right to abortion is not connected to the women-foetus relationship, but only to state laws and policies. This strategy was raised because of ethical questions around the practice of selective abortion of deformed foetuses. Actually, this strategy was intended to leave it as a matter of state welfare. *Chûpiren* took this standpoint, and so did women in the labour union movement (see chapter 2). If women assert their rights only in specific situations, excluding issues of selective abortion, then the purpose of the WLM in the abortion debate would become clear, namely

that the women's movement should oppose the state's attempt to limit women's access to abortion. There were, however, also disadvantages to this approach. Women would always have to provide a point of reference to which their assertion of rights is oriented. Since political debate often requires swift action, it is not strategic for women to have to explain the meaning of rights every time they use the term. Another disadvantage is that limiting the target of the rhetoric of rights would eventually reduce the scope of the debate about abortion.

The third solution was to develop the meaning of rights itself in a more comprehensive way – even broadening it to include the idea of reforming male-centred society – and then continuing to use the term rights. This attempt was not made in the 1970s. Since the term right itself was thought to have a number of problematic implications – it is a masculine invention, it connotes aggression and egoism, and so on – in the long run, it is valuable to develop the meaning of rights into a more relational concept corresponding to contradictory realities. However, political debate and struggle do not wait for theoretical insight. The movement could not wait for the concept of rights to change. It would take time and effort to develop richer ideas of rights and to have them accepted by society at large.

### **Towards the 1980s: The 1975 UN Women's Conference and the solidarity of Japanese women**

After the attempt to eliminate the economic reasons clause was successfully blocked by the WLM in 1973, the movement became involved in various other issues. The *Lib Shinjuku Centre* was closed down in 1977. In addition to the activities of the WLM, a women's liaison group was formed in 1974 by two female Diet members to bring women together to participate at the UN Women's Conference in Mexico City in 1975. The group was called '*kokusai-fujin-nen-o-kikkake-to-shite-kôdô-o-okosu-onnatachi-no-kai*' (An active women's liaison group for the International Women's Year). This group, now known as *Kôdô-suru-onnatachi-no-kai*, or Women in Action, still remains active.<sup>43</sup> The majority of women in this organisation were in their thirties and forties, and they had permanent and often professional jobs, in contrast to most of the women in the 1970s WLM, which consisted mainly of women in their early twenties. A number of women from the WLM also joined in the activities of Women in Action. Because Women in Action was composed mostly of older women, they nicknamed themselves *Chûnen-lib*, or the Middle-Aged Women's Liberation Movement. Women in Action played an important role in pushing the government to sign the Convention on the

Elimination of All Forms of Discrimination against Women (CEDAW) in 1979, since the government was quite reluctant to do so.

Later on, in 1982, when an attempt was again made by anti-abortionists to eliminate the economic reasons clause, Women in Action was one of the organisations that helped to form *Soshiren*, which consisted of many women from the WLM of the 1970s, as well as new younger people, including students. The movement in the 1980s was therefore composed of a more diverse group of women in comparison to the movement of the 1970s. The United Nations Women's Conference, and the International Women's Year of 1975, contributed toward the emergence of these new organisations.

Although the Japanese government signed CEDAW, the political and economic situation did not improve much for women. In the neo-liberal climate, the government tended to restrict its welfare budget, expecting women to be engaged in the domestic domain, taking over the state's responsibility for welfare. The labour law was revised so that women and men could be 'equal'. 'Equality' in this case meant, for example, the abolition of menstruation leave from paid work or of limitations on women working after midnight in the name of protection of women. Therefore, 'equal' working conditions between men and women meant limiting job opportunities for women, because under the gendered division of labour, women were not able to have work under the same conditions as men. A fear about the ageing of society also started to be discussed, coupled with the lower fertility rate. This brought about political debates about how to encourage women to give birth. Anti-abortion Diet members, with the help of *Seichô no ie*, initiated debates, and in 1982 a new proposal to limit access to abortion by eliminating the economic reasons clause was made.

Given all these transformations, both internationally and domestically, how did the abortion debate and the debate around 'women's rights' evolve in the 1980s? This is taken up in chapter 4.



## 4 Abortion Debates in the 1980s

Although Women in Action was successful in making the Japanese government sign the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), daily life for women did not improve. In 1978, the Ôhira administration, which was led by the Liberal Democratic Party (LDP), proposed to revise the Basic Labour Law, in order to delete the special articles that it included for women. In the name of 'equality' between men and women, working conditions for women were 'equalised' with those of men, and this eventually made it more difficult for women, especially those who were wives and mothers, to have paid jobs.<sup>1</sup> The next year, the cabinet proposed a policy called *Katei-kiban-jûjitsu-seisaku* (policy to consolidate the 'home base') to transfer the state's responsibility for the household to women. Women involved in political movement activities opposed these measures.

In November 1982, a new cabinet, under Prime Minister Yasuhiro Nakasone, was inaugurated. In his inauguration speech he announced that his administration would promote policies of 'welfare centred on the home', 'self-dependence and self-help of the nation', and a 'high quality defence force.' Thus the 1980s saw a tendency towards 'small government', similar to that experienced in other capitalist countries in Europe and North America.

The administration's legislative proposals took the form of a series of drafts which represented an attempt to consolidate the traditional household system. The purpose was to restrict the budget for welfare, and to improve the birth rate, since it had started to decrease during the 1980s.<sup>2</sup> In this political atmosphere, there was another attempt in 1982 to eliminate the economic reasons clause for an abortion.

### **The 1982 attempt to repeal the economic reasons clause and the anti-abortion argument**

Masakuni Murakami,<sup>3</sup> who became an LDP Diet member in 1980 supported by *Seichô no ie*, started his statement to the ministers by reciting this poem in the house of councillors of the Diet on 15 March 1982:

'The 212 article in the Criminal Code'<sup>4</sup>

Mama! Mama! I am a child that failed to be born / With pupils able to see / With ears able to hear / Dropped into the dark world / I am a child not able to become a human-being

Mama! Mama! Do you hear my voice? My body being weak / My figure ugly / I was detached from Mama / I am a child that failed to be born

Mama! Mama! / I am a child that failed to be born / Not knowing tasty milk / Not knowing a warm breast / I was thrown away alone / I am a child not able to become a human being

Mama! Mama! Is my voice reaching you? / Here it is very cold / I am scared to be alone/ I want to be close to Mama / I am a child that failed to be born

Showing pictures of aborted five-month fetuses, Murakami stated,

Five-month fetuses are sometimes aborted despite being alive. Do you know how medical doctors kill them? [...] After the foetus is outside the women's body, doctors either inject a deadly poison, leave them for a long time, drown them in water, or suffocate them with cotton gauze. All are such cruel ways. Isn't it murder? Such acts are legalised in our country. This is what 'abortion paradise' means.<sup>5</sup>

He finished his statement, successfully securing the Prime Minister's and the Minister of Health and Welfare's promise to delete the economic reasons clause from the Eugenic Protection Law in order to limit women's access to abortion. This time, the introduction of a selective abortion clause was not part of the proposal. Twelve days after the Diet meeting, the Ministry of Health and Welfare started to examine the issue of the eliminating the economic reasons clause. In addition, *Chuō-yūseihogo-shinsa-kai* (The central examination committee for eugenic protection) was also formed in the Diet to conduct research into abortion practices. It should be noted that in March 1982 the proposal was not officially submitted to the Diet. If a proposal is to be officially submitted in the Diet, it must be done within one year after it was proposed in an official Diet committee. Therefore, the idea proposed by Murakami, to eliminate the economic reasons clause, had to officially be received by the Diet by 15 March 1983. The struggle of the women's movement was to prevent the official proposal of the draft from being introduced in the Diet.

The leaders and members of anti-abortion movement had not changed significantly since the 1970s, when *Seiseiren* led the initiative with the help of the religious group *Seichō no ie*, in alliance with Diet mem-

bers from the LDP. The most active Diet member, as in the 1970s, was Murakami. But in the 1980s more members joined, such as Yasuhiro Nakasone, Toshio Yamaguchi, and Susumu Nikaidô. Nakasone became the Prime Minister of Japan in 1982.

As in the 1970s, the anti-abortion position was focused on changing the law that legalised abortion and on changing women's behaviour. However, the strategy of the anti-abortion side changed, reflecting the failure of their attempt in the 1970s. This time they tried to gain public support for their proposals. Young people from the *Seichô no ie* religious group organised a signature campaign in the streets throughout the country and collected approximately one million signatures (*Soshiren Kinkyû news* 1983 (6): 3). They also organised anti-abortion exhibitions and lectures at universities and high schools. Their activities were oriented to the grass-roots level; 130 local governments in the whole of Japan concluded that they would support the idea of limiting women's access to abortion by deleting the economic reasons clause (*Soshiren* 1983: 3).

### *The position of the anti-abortion forces*

#### *Consciousness raising*

Because in the 1980s personal experiences of abortion were still hardly ever discussed openly in daily conversations, those opposed to abortion appealed to people by sharing their depiction of what abortion was like. During signature-gathering campaigns in the streets, exhibitions at school festivals, and at discussions in the Diet, pictures of fetuses with the umbilical cord attached, and/or pictures of aborted fetuses soaked in formalin in a transparent glass jar, always accompanied their presentation of the issue. One of the pictures often used was of a full-size 21-week-old foetus, where it was possible to see that the foetus had eyes, ears, downy hair and one could even see that the foetus was a girl (Murakami 1982: 7). These pictures were accompanied with the explanation that:

A foetus of two-months has small eyes, a mouth, legs and is desperately trying to live. Termination of pregnancy is a cruel act, dragging out the foetus with force and killing it. We have to listen to the crying voices of the fetuses – they are killed without being able to resist or say one word at all, but are extracted forcibly, then smashed with cold metallic tools and thrown away with the garbage. [...] They are killed by being injected with deadly poison, frozen, drowned, or suffocated. [...] They cannot resist the decision of adults with even one word, but silently they are killed

and thrown away. We need to listen to their voiceless cry (Murakami 1982: 6; 18-19).

Thus, by explaining the development of the sensory capacity of a foetus, as well as ways of killing it, the powerlessness of the 'victim' is constructed, functioning to draw sympathy from their audience.

It is cruel to cut a foetus into pieces. Anyone would feel this way. Then those opposed to abortion would follow up this visual presentation by posing questions about the fundamental cause for such cruel actions. They would lead their audience to the conclusion that it was the law that made these acts legal. However, because the majority of people did not know the content of the law, or even its name (the Eugenic Protection Law), the anti-abortion activists would always explain the law, stressing:

The economic condition is the criterion to kill or not to kill a foetus and that is how people choose to have an abortion. Japan is famous for its relatively high rate of abortion amongst economically developed countries. You, I, and all of us are living in a society where a number of foetuses are killed every day. [...] Let's change the law, let's stand up! (Murakami 1982: 31-33)

*Women's selfishness, moral degradation, and loss of motherhood*

After describing the powerlessness of the 'victim' of abortion, anti-abortion activists would emphasise the selfishness of women who had abortions or supported access to abortions. This way of constructing their argument had the effect that those receiving the message tended to orient their anger toward women and women's right to abortion.

Anti-abortion activists argued that 'women should be able to protect and cherish their own children when it comes to their own children's lives. However, post-war Japanese women have lost motherhood, the supreme mission of their lives' (Murakami 1982: prologue).

For example, Ayako Sono, a female anti-abortion activist, explained 'real motherhood' in order to criticise Japanese women as follows:

I visited a midwife's clinic on the island of Madagascar, in Africa, the other day. They have nothing, no soap to wash babies, no equipment to sterilise spoons, no milk, no medicine, no nothing. Mothers come there to the clinic to deliver babies. They give birth, truly using everything they can give. One of them said it was her 15th child and she was 42 years old. In Madagascar, it is a custom to give sugar water to a mother after delivery. A Sister told a three-year-old child to give sugar water



to her mother, but she said there was no sugar. They are that poor. We might well wonder, then, why they give birth to another baby in such poverty, but on the contrary, both the mother and the child were really pleased with the arrival of the new baby. The small child was saying, 'Sister, I thank you very much for the baby.' I could not help but realise that this is motherhood. [...] Compared to this, Japanese women are spoiled. [...] Japanese women are not exposed to life-threatening poverty. If women give birth to more children, hardly any of them will die. And suppose they leave the child in the street; the child would not die either. This country is so rich that somebody would save the baby. [...] Japanese women should learn the spirit of motherhood from women in Madagascar, instead of pretending they are the protagonists in a tragedy. Real motherhood is a desire to have children so unconditionally that there is no room for economic reasons to have an abortion. No motherhood is found in the act of weighing economic conditions against life (quoted in Seiseiren 1983: 22).<sup>6</sup>

'Abortion is women's egoism' and 'women's right to abortion is a claim for the right to commit murder' are repeated in a number of places in the arguments put forth by anti-abortion activists in Japan in the 1980s.<sup>7</sup> Displeasure with the law is oriented towards the women who use the law. When rights emerge from a law, the hostility of the audience is turned against the rhetoric of 'women's rights to abortion'.

The anti-abortion side's criticism of Japanese women was also extended to women's sexual behaviour, in particular sexual intercourse before marriage. They argued that teenagers' having sexual intercourse was a cause of high abortion rates, although statistics at the time showed that women in their 30s were the biggest group of people having abortions.<sup>8</sup> The anti-abortion activists argued that teenagers tended to have abortions because they were not married.<sup>9</sup> Therefore, their logic was that if a pregnant woman was not in a position where she could give birth, that is, she was unmarried, then she should not have sexual intercourse (statement by Seichō no ie, cited in Miyako 1983: 135).

Meanwhile, anti-abortion activists believed that men's desire for sexual activity was natural and always in need of fulfilment. Murakami stated that 'girls must be virgins before marriage. [...] So, visiting prostitutes is a necessary resort for teenage boys' (statement by Murakami, cited in Miyako: 136). This statement means that, because men are naturally more sexually active, they cannot help but act on sexual impulse. Anti-abortion activists promoted a view that

Ideal women would be able to refuse men's impulses, but under legal abortion, women are also so weak that they are swayed by men. This fact makes men's sexual impulse even stronger. [...] Hence, if abortion is outlawed, women will be responsible again, and so will men.<sup>10</sup>

Outlawing abortion would therefore regulate women's sexual behaviour, which would lead to responsible sexual behaviour in men and to a lower abortion rate.

#### *Women's abortion experiences*

Anti-abortion activists used stories that they said were women's actual abortion experiences to strengthen their arguments. These stories emphasized two points. One was that abortion experiences were followed by negative feelings in women, and therefore abortion should be prohibited. The other point was that having an abortion caused misfortune for women and their families.

With regard to the first point, a number of women do suffer from physical and/or mental problems after having an abortion (Murakami 1982: 20). 'I felt I did a bad thing', 'I felt sorry for my child', 'I thought I might not be able to have children any more' – these are the feelings that anti-abortion activists in the 1980s said that a majority of Japanese women had after having an abortion (Murakami 1982: 20).<sup>11</sup> Anti-abortion activists said that women realise the seriousness of abortion only after they have had an abortion. Anti-abortion activists in the 1980s insisted that their mission was to have women meet other women who have suffered the experience of abortion. Exhibitions and lectures at school festivals were focused on the theme: 'because abortion is a negative experience, let's give birth'.

To show the regret of women who have had an abortion, Murakami cites a story in his work, entitled '*I am sorry, my baby*' written by an anonymous female university student, aged 21:

I believed that abortion was the only solution. Yet, when I was finished with the operation, I started to feel strongly that I should have given birth. After leaving the hospital, I had a fever, and I kept crying. I would get up right in the middle of the night, rushing outside, screaming, 'I want to see my baby! I will apologise to the baby!' My boyfriend, who happened to be beside me, stopped me desperately: 'Where are you going?' 'To my baby! My baby is calling me!' 'Where is the baby?' 'In the hospital!' 'The baby is not there any more.' 'Why?' I broke down crying on his chest. I hate myself for being alive after killing my own child. The baby was killed without being able to say it was hurting or

suffering. There is no grave or name. When I recover, we will together hold a memorial service for the baby. I am really sorry (Murakami 1982: 20-21).

Murakami then argues:

Abortion takes away the life of a foetus for 100 percent, and at the same time, leaves a huge scar on women's bodies and hearts, and sometimes even takes away the life of a woman. Immediately after fertilisation, the mother's body mobilises all organs to make an effort to develop her foetus. Abortion is an act which stops all the movement suddenly. It is just like a traffic accident, when a car running at full speed crashes into a huge obstacle. However advanced medical technologies are for abortion, there will always be scars left on women. Therefore, to prohibit an abortion is to support women (Murakami 1982: 7-8).

This story of the 21-year-old student was introduced by anti-abortion activists with the intention of 'raising consciousness' amongst women who were on the verge of making a decision about whether to have an abortion, and amongst women who have never had an abortion. Note that those opposing abortion did not advocate birth control as a way to avoid the need for abortion. The anti-abortion rhetoric was, at best, to recommend that women avoid having sexual intercourse.

The second point that the anti-abortion activists tried to stress in their awareness raising was that abortion causes misfortune in the lives of women and their families. To advance this point, in his brochure, Murakami cited a statement attributed to a judge specialising in juvenile delinquency:

'I am an unnecessary person born by mistake. The babies before and after me, for whom I was yearning, were both killed inside Mama's body! I happened to listen to the story through the wall while Mama and Dad were talking with laughter!' – This girl, who was arrested as a juvenile delinquent, shouted at her mother in court. Her face was dreadful, as if she was accusing her mother of being haunted by the souls of the killed fetuses. This girl has a pure and kind heart, and originally was obedient to her parents. However, she started going wrong upon learning about her parents' killing her sisters and brothers. The phrase used by her mother, 'Why don't you understand me?', is actually the same phrase that this girl wanted to shout back at her mother.<sup>12</sup>

This quote was followed by a statement from Murakami that, 'in any case, the influence of abortion is too deep and dark for us even to imagine'. The message is that abortion caused the girl to become a juvenile delinquent. This judge is introduced as a person experienced with juvenile delinquents, which a number of parents may have experienced. Since such an experienced professional judge believes in the link between abortion and family problems in daily life, this might be convincing to people who are having problems with their children. Murakami adds a sentence that 'teenage girls' prostitution for money also stems from legal abortion' (Katsuta, in Senseiren 1983: 17; Murakami 1982: 21-22).

Not only problems with pubescent children, but also friction between husbands and wives, and sickness of family members, were all presented as problems caused by abortion. Anti-abortion activists explained that this came about due to the friction that emerged when a woman had an abortion despite her husband's desire to have another child, or despite the desire of her children to have another sister or brother.

The anti-abortion argument also often included presenting a causal link between abortion and socially tragic incidents. Murders, domestic violence, drug addiction – all these acts in their view were caused by the devaluation of life, having roots in legal abortion (Murakami 1982: 8-9; statements by Murakami, in the House of Councillors *ibid* 1982: 5). One example they gave was the murder of children. Obviously, most people would find these incidents to be cruel and tragic. Everywhere, the anti-abortion activists said, since time immemorial, there have been cases of mothers murdering newly born babies or small children. Murakami argued that, because abortion was legal, women were also careless about their 'born' babies. To show the loss of respect for life, Murakami cited a statement made in court by a woman who had left her baby in a coin-locker: 'what is the difference between killing a child before or after its birth?' (Katsuta, in Seiseiren 1983: 17; Murakami 1982: 8-9).

Since the anti-abortion argument was often constructed in such a way that an audience would focus its attention on the degradation of women's morality, women who had experienced abortion may well wonder if they are immoral, or whether their acts contributed to miserable incidents in society.

This way of reasoning appealed to the 'guilt' of women who had experienced abortion. Actually, *Seichô no ie* opened a business, known as *Mizuko-kuyô*, to 'console the souls of aborted fetuses'. Out of guilt, a number of women resorted to these services. More details of *Mizuko-kuyô* will be given in chapter 5.

*Strategies to limit women's access to abortion**Secular, sympathetic terminology*

During the 1980s, the anti-abortion argument used more general, or 'secular' vocabulary and concepts, whereas during the 1970s they had made use of more concepts and terminology that drew upon their religious and spiritual beliefs, such as *rei*. Their strategy in the 1980s was to appeal to the sympathy and anger of the general public. In doing so, 'biological facts' were often used to describe a foetus' senses using pictures, displaying downy hair, and the umbilical cord. Biological descriptions were used in order to argue that a foetus is a being independent from a woman.

In describing abortion, a foetus is often called *Aka-chan*, 'little baby' in English. Although they are still unborn, they referred to them as if they were already born. Abortion is given dismal names, such as 'cleaning up a mess after random sex' (Seiseiren 1983: 62), 'traffic accidents' (Murakami 1982: 7), and 'Nazi genocide' (Seiseiren 1983: 9; Murakami 1982: 8), and it was chosen by women with 'an excessive sense of rights' (Murakami 1982: prologue), who regard a foetus to be an 'appendix, infection, or a mass of meat' (Murakami 1982: 8). The poem recited by Murakami in the Diet is typical: putting forth a humanist air to draw sympathy from the listeners, while blaming women for abortion, he states that women are ignorant and thoughtless.

In order to convince their audience and to consolidate their position, anti-abortion activists in the 1980s used statements from people who in general were held in high regard, such as university professors, lawyers, novelists, ministers, and actors.<sup>13</sup> Also, women were often cited to back up their argument, such as the aforementioned Sono. Mother Teresa was invited to Tokyo by Seiseiren. She had a breakfast meeting with Diet members at the Hilton Hotel in Tokyo on 23 April 1982, arranged by Murakami. 230 Diet members, from across party lines, attended the breakfast meeting. A picture of Mother Teresa and Murakami, smiling at each other and shaking hands, is on the first page of Murakami's book.<sup>14</sup>

Appealing to people's sense of justice and using gentle phrases like 'a small life must be protected', and 'the life of a human being is more important than the earth',<sup>15</sup> anti-abortion activists were successful in attracting a broader range of support than during the 1970s. The new emphasis was on the vulnerability of a small life, in stark contrast to women's movement expressions, such as 'women decide whether to have an abortion or not' and 'it is women's freedom to decide whether to give birth or not'. Members of the women's movement in the 1980s commented that, 'it is difficult to gather signatures to oppose the dele-

tion of the economic reasons clause. While the proponents can gather signatures without any explanation save for the phrase 'respect for life', it takes us around half an hour to explain why we oppose the attempt' (Taniai 1983c: 205). Anti-abortion rhetoric was much more acceptable, appealing more to the sympathy of the general public than women's rights issues.

### *Target groups*

#### (a) Housewives

The biggest group that anti-abortion activists targeted with their rhetoric was women in their 30s and 40s, many of whom have ever considered abortion. Most of the women were housewives, their pregnancy was usually unplanned, and they usually already had one or more children. Many housewives who had already had an abortion felt what could be called a sense of guilt, or 'apology to the foetus' (Taniai, 1983b). These women usually felt that abortion should be avoided. Moreover, their children were often in their adolescence and some of their parents were having difficulties. In this situation, the anti-abortion propaganda linking abortion to family problems resonated with the guilt the women were feeling (ibid).

It should be noted that those who signed their names to the anti-abortion petitions were not always subscribing to anti-abortion ideas. Anti-abortion activists were able to appeal to people's belief that they should 'protect small lives'. Suppose one is asked to answer if he/she supports killing. Almost everyone would answer that they are 'against killing'. Although women's demand to secure access to abortion is not a recommendation for abortion itself, a majority of people seem to be confused on this point. For example, the idea that abortion should be avoided as much as possible and the anti-abortion idea of outlawing abortion, are often lumped together. Thus, in attracting a mass audience, anti-abortion activists did not require people to think deeply about the issue of pregnancy and abortion. They also avoided contact with people who were actively engaged in the issue of women's reproductive rights. Female writer and former Diet member, Noriko Taniai, who was also active in the women's reproductive health movement, tells of her experience in this respect:

I approached *Seichô no ie* to interview them, but I was refused because they did not have time. I said I just wanted to listen to their position. Then they accepted my request, and a young woman agreed to speak to me. [...] I was told that I might neither take notes nor cite any of the discussion in my writing at all. My face and name were known to their Tokyo headquarters, so later

I phoned the Saitama headquarters, on the outskirts of Tokyo. When I said that I was interested in ‘repeal of the economic reasons clause,’ they thought that I shared their opinions, and they kindly sent me a lot of printed materials. [...] This was the only way I could obtain materials from them, because if I approached them straightforwardly, I would be refused right away. Citing their argument from the printed materials, I wrote an article in a journal.

More than three months later, the *Seichō no ie* Saitama headquarters telephoned me three times to accuse me – ‘You are unfair. You cheated us. You are not a housewife!’ I had not introduced myself as a housewife, nor did I say I was not a housewife. I was doing household chores at home as well as working outside the home. – They can talk to housewives, but not to a writer; they can send materials to housewives, but not to a writer – What does it mean? I said to them, ‘If you have a claim, please criticise the content of my article. If this is not satisfactory, why don’t you write an article yourself, to the same journal, debating my position?’ I hung up the phone.

More than two weeks have passed now, but I have heard nothing since then. I do not know if they are now concocting a strategy for revenge, or if they are writing an article, but anyway, it is clear to me whom they are targeting (Taniai 1983a: 173-174).

## (b) Teenagers

Not only in the arguments posed by anti-abortion activists, but also generally in Japan in the 1980s, the idea that sexual intercourse should occur only within marriage was shared as an ethical principle, especially among those who believed that everyone would eventually be married someday, marriage being a normal rite of passage. In reality, however, it was taken for granted that couples were having sexual intercourse before marriage, people simply did not talk about it very loudly. Appearing to stick to ethical principles implied that one behaved responsibly.

This position against pre-marital sex was applied even more strongly in the case of teenagers. Since teenagers’ duty was seen to be studying at school, having sexual intercourse would be interpreted as a sign that the teen no longer fit the ideal image of a Japanese teenager. *Seichō no ie* mobilised high school students more than volunteers of other ages to organise signature campaigns, lectures, and festivals. Taniai says, ‘young high school students with a full sense of justice, seemed to mix up their own criterion of self-control and others’ ways of living. Accordingly, the students strongly insisted that the Eugenic Protection Law should be revised to limit women’s access to abortion.’<sup>16</sup> Students were

the major force in collecting signatures for the anti-abortion movement in the 1980s. In 1982, more than ten high schools in Saitama prefecture had 'respect for life' exhibitions and lectures (Taniai 1983c: 199-202). These were set up with the support of *Seichô no ie*. Both female and male students were active; for boys, taking an attitude against abortion was comparable to being responsible for their partners. The teenage activists' attitude of innocent seriousness appealed to a mass audience as well as to their own classmates. The anti-abortion movement in the 1970s had not mobilised teens as volunteers to this extent, so mobilisation of high school students during the 1980s was their strategy after the evaluation of the 1970 activities

### *The response from the women's reproductive health movement*

#### *Establishment of the movement liaison committee 'Soshiren'*

Immediately after the proposal to eliminate the economic reasons clause was made by Murakami in 1982, women all over Japan got together, taking action to prevent the proposal from being submitted to the Diet. In April 1983, women from Women in Action formed *Yûsei-hogohô-kaiaku-to-tatakau-onna-no-kai* (A women's group organisation to fight against the attempt to revise the Eugenic Protection Law); women not affiliated with Women in Action also joined in. They organised activities, including study meetings, to analyse the situation and to deepen their understanding of the issues, as not all the women had participated in earlier activities during the 1970s. Through the study meetings, it was agreed that Murakami's proposal represented the state's interests, using women's bodies in order to increase the birth rate, to make women take on the welfare role at home, and to also provide cheap labour (*Kôdôsuru kai kirokushi henshû iinkai* 1999: 178). To fight against the revision of the Eugenic Protection Law, a special committee called *Yûsei-hogohô-kaiaku-to-tatakau-onna-no-kai* (women's alliance to fight against the revision of the Eugenic Protection Law) was established by Women in Action.

In July the women's alliance held a meeting under the slogan '*Hitler-no-kamen-o-kabutta-Mother-Teresa*' (Hitler masquerading as 'Mother Teresa'). In August an audience of various women's organisations, '*82 Yû-seihogohô-kaiaku-soshi-renrakukai*' (82 Eugenic Protection Act Revision Prevention Liaison Committee; *Soshiren*) was established as a national movement, so that women in remote areas could also raise their voices against the proposal. Before this period, most movement activities tended to be in Tokyo.

In its initial declaration, *Soshiren* summarised its views about the proposal to eliminate the economic reasons clause under two points.<sup>17</sup> The



first point was that, although there was no proposal to introduce the selective abortion clause, they believed that deleting the economic reasons clause would eventually lead to a selective abortion clause, because once access to abortion was limited, other criteria would be necessary to allow for abortion. The introduction of a selective abortion clause would quietly pressure women into giving birth to disability-free children. Both women and disabled people agreed on this point.

The other point raised by *Soshiren* was that without the economic reasons clause pressure on women to stick to traditional norms and gender roles would be increased. *Soshiren* argued that the entire anti-abortion argument was based on two images of women (1) mothers and wives, who have sexual intercourse only with their husbands and only for reproduction (as 'a child-producing machine') (*Yûseihogohôkaiaku* = *kenpô-kaiaku-to-tatakau-onna-no-kai* 1982: 25-29), or (2) prostitutes who tend to men's sexual needs.<sup>18</sup> The group also argued that underlying the attempt to repeal the clause was the assumption that women needed to be guided by men, who would serve as women's guardians.<sup>19</sup>

No one can refute the 'respect for life' argument, as was indicated in the anti-abortion side's position. However, another argument was:

How to perceive life, and how to respect life, is up to the judgment of an individual woman and her way of living. The state, or a specific religious group, cannot impose ideas about life on individual women. It is fascism. [...] So, 'respect for life' by a pro-life group is a 'Hitler masquerading as Mother Teresa'.<sup>20</sup>

Therefore, during the 1980s, the focal points of the women's reproductive health movement were to 'say NO to oppressive norms for women inherent in the proposed revision of the law' and to demand that 'women decide about reproduction'. Hence, the central rhetoric was '*umu-umanai-wa-onna-ga-kimeru*' (women decide to give birth or not), '*onna-no-jikokettei-ken*' (women's right to self-determination), and '*umu-umanai-no-sentaku-no-jiyû-wa-onna-no-kihontekijinken*' (the freedom to give birth or not is women's fundamental human right).<sup>21</sup>

On 5 January 1983, students' organisations were also established within *Soshiren* to bring the issue to the universities. They were called '*Yûseihogohô-kaiaku-o-soshi-suru-gakusei-no-kai*' (Student group to prevent the revision of the Eugenic Protection Law) and there were groups at ten universities.<sup>22</sup> Like many of the women within Women in Action, women from various backgrounds, mostly in their thirties or forties, participated in *Soshiren* activities. A considerable number of women who had been in the Women's Liberation Movement in the 1970s also participated in this struggle, and many of them were, by this time, in

their thirties. The variety in background and age was greater than had been the case during the 1970s.

In early 1983, when the tension about whether or not the proposal to eliminate the economic reasons clause would be officially proposed to the Diet came to a peak, other groups also expressed their opposition to the revision of the law. These included the Family Planning Federation of Japan, the Japan Association for Lawyers, the Japan Association for Nurses, and the Japan Medical Association. Female Diet members, some of whom were from the Liberal Democratic Party, also formed their own cross-party alliance to oppose the change. The motivation for opposing the revision of the law differed from one group to another, but their combined actions helped to stop the change.

In the end, the anti-abortion attempt to repeal the clause was prevented. Women collected 1,499,652 signatures from people opposing the proposal, while anti-abortion activists were able to collect only one million signatures. 264 local governments said 'no' to the idea of deleting the economic reasons clause, while only 130 supported the proposal.<sup>23</sup> Although the anti-abortion rhetoric was viewed as sympathetic, and easy to accept, if women's movement organisations took the time to appeal to other women as well as men on the basis of the arguments outlined above, people agreed that it would be a problem if abortion were to be outlawed.<sup>24</sup>

*The vocabulary of the women's reproductive health movement in the 1980s: reproductive rights, a right to self-determination, and human rights*

The new term *jiko-kettei*, or self-determination, helped the 1980s women's reproductive health movement to attract a wider range of women than during the 1970s, because of the phrase's directness and clarity. The term points to the fact that so far women's lives had been determined by others, and that women were being oppressed. In using the term, the movement could also declare that their argument regarding rights was oriented towards the oppressor, or towards the state and men, and not towards the foetus. Moreover, by speaking of a 'right to self-determination', the demand from the women's movement was clarified: women do not want others to intervene in the issues pertaining to their bodies; they want to decide these issues for themselves.

'Freedom to choose to give birth or not is a women's fundamental human right' was another central argument (*Yūsei hogohō kaiaku = kenpō kaiaku-to-tatakau-onna-no-kai* 1982). This rhetoric also made it easier for women's movement activists to use the term 'right', claiming that women are 'human beings' with full personhood and character, not a mere *koumi-kikai* or 'a machine to produce children'. The rhetoric of 'abortion is a women's basic human right' also implies that access to

abortion should be a basic resource, not a luxury, to which all women should be entitled. Linking abortion to human rights also meant that an abortion became an event that could happen in any female human life, not necessarily only when a woman was promiscuous or 'abnormal'.

Thus, by combining 'self-determination' and 'human rights' those supporting access to abortion could claim that the absence of legal abortion was a violation of women's basic well-being, and that there were two situations in which women sometimes have to give birth although they do not want to, and where women sometimes have an abortion although they do not want to. The directness and clarity of this message attracted support from women more easily than had been the case during the 1970s, and as a result, more disabled women were involved in *Soshiren's* activities during the 1980s (*Kôdô-suru-onnatachi-no-kai-kirokushû-henshû-iinkai* 1999: 182).

People within the women's reproductive health movement could use 'rights' more confidently than they did during the 1970s, also because by the 1980s 'women's right to self-determination' and 'reproductive rights' were supported at the international level. There was the UN Women's Conference in 1975, CEDAW (1979), and the International Women and Health Conference in 1984, where women from all over the world clearly declared 'no' to state population (quantity) control, bringing the issues of the 'right to self-determination' and 'reproductive rights' to the fore.<sup>25</sup> These events provided support to Japanese women using these phrases, providing them with a sense of solidarity with women in other regions.<sup>26</sup> At the same time, the international acknowledgement of 'women's reproductive rights' made it difficult for anti-abortion activists to attack the rhetoric straightforwardly. The issue of the legitimate power of international treaties and the usage of 'rights' in Japan will be analysed in chapter 5.

### **The reaction of the disabled people's movement**

Since there was no overt attempt to introduce the selective abortion clause, and disabled people were more involved in the independent living movement during the 1980s, the debate was not as heated as it had been during the 1970s.

#### *The independent living movement*

The aim of the independent living movement was that disabled people live in local communities with assistance, instead of spending their lives being taken care of in institutes or parents' homes, having their affairs decided by others. Hence, the disabled people's movement was

now occupied in securing assistance and negotiating with the government about the social security system.<sup>27</sup> Disabled people were motivated to become active in the movement, since 1981 was the International Year of Disabled People.<sup>28</sup> After 1981, the Japanese government started improving the living conditions of disabled people. Since the central aim of the independent living movement was that disabled people should have the opportunity to decide themselves about how they live, and then be able implement that decision with assistance, 'self-determination' also became a key element to the rhetoric in this movement.<sup>29</sup>

However, some disabled people did oppose the attempt to revise the Eugenic Protection Law, and they debated this issue with the women's reproductive health movement.

*The disabled people's movements' position on the attempt by anti-abortion activists to delete the economic reasons clause*

People within the disabled people's movement suspected that the reason that there was no attempt to introduce a selective abortion clause was due to a coordinated effort designed to undermine the solidarity of the disabled people's movement and the women's reproductive health movement in their combined opposition to the Eugenic Protection Law (Araki 1983: 36-37; Hori 1983: 83). They also argued that the draft proposal was an attempt to create a humanist image appealing to the public by saying all lives were equal, in order to gain popularity from a mass audience (Hori 1983: 83). Moreover, the disabled people's organizations believed that anti-abortion activists wanted to project a positive image for the upcoming general election in the autumn of 1983. People within the disabled people's movement therefore suspected that the anti-abortion strategy would be to first try to limit women's access to abortion and then introduce a selective abortion clause (Araki 1983: 36). The women's movement also suspected this.

In refuting the anti-abortion arguments, the disabled people's movement focused on the anti-abortion activists' emphasis on the decline of the Japanese nation in terms of productivity. Toshikazu Hori, a representative of a group of people with visual disabilities, stated: 'When the vitality of a nation is mentioned by anti-abortionists in terms of a decrease in the birth rate, this statement is often associated with the economic power of the country' (Hori 1983: 86). 'The ethics of productivity' – the very criterion for defining 'disability', according to the analysis by the disabled people's movement, had consistently been a target of criticism within their movement since the 1970s. Hori continues;

Murakami talks about the dignity of the life of a foetus, showing pictures of its eyes, mouth, and ears. But if there are deformities in those parts, would he talk about 'respect for life' in the same manner? Murakami talks about the voiceless cry of an aborted foetus, but does he hear our voice, the voice of disabled people struggling to survive in society? (1983: 86-87)

Thus, disabled people concluded that the 'life' portion of 'pro-life' was exclusively that of disability-free people, and that disabled people were to be eliminated. The disabled people's groups argued that the attempt to delete the economic reasons clause would not stop at limiting women's access to abortion, but that it would lead to quality control of the nation, and the introduction of a selective abortion clause (Hori 1983: 87-88). The disabled people's movement also defined the attempt as a politically right-wing move; on this point both women's reproductive health movement and disabled people's movement activists agreed.<sup>30</sup>

The response of the disabled people's movement also included criticism of a number of policies that aimed at strengthening the sexual division of labour. As mentioned earlier, toward the end of the 1970s the LDP issued drafts of policies to 'consolidate the home base'. This trend continued, and when Nakasone became Prime Minister in 1982, he emphasised the 'self-effort of individuals in the field of welfare' and 'welfare policies based on the home' during his inauguration speech. People within the disabled people's movement suspected that this was in effect a preparation for re-armament by cutting the welfare budget. Therefore, these policies would serve primarily to hinder the promotion of independent living, because maintaining financial support was essential for independent living. So, 'welfare policies based on the home' would mean going back to their parents' home, with parents providing care.

Women in the reproductive health movement analysed the effect of the policy on women in the same way, because obviously the state was expecting that with a reduction in the welfare budget women would take on the responsibilities for welfare, taking care of children, the elderly, and sick people. So women did not welcome this trend either. Therefore, on this point, the disabled people's movement and the women's reproductive health movement shared a common interest. In refuting the proposal, the disabled people's groups also attacked the retrogressive trend in the gendered division of labour. Disabled people demanded the creation of an environment where mothers could take care of disabled children more easily. On the point of the idealised image of womanhood, the disabled people's movement also changed their argument, moving a step closer to the position held by the women's reproductive health movement.

In this way, the disabled people's movement viewed the attempt to revise the Eugenic Protection Law as the beginning of population control, both in terms of quality and quantity, undoubtedly leading to a selective abortion clause. During the 1970s, their position on the attempt to limit women's access to abortion was not as strongly positive or negative as it had been strongly negative against the attempt to introduce a selective abortion clause. It is therefore remarkable that the movement's argument shifted in the 1980s to include criticism of the attempt to limit women's access to abortion. The hesitation in attacking the attempt to limit women's access to abortion in the 1970s had been due to doubts held by the disabled people about women's internalised discrimination against people with disabilities. But now, disabled people were also trying to cooperate with the women's reproductive health movement. However, this proved not to be easy at all.

*The disabled people's movement's criticism of the women's reproductive health movement*

Compared to the 1970s, there was now more understanding and collaboration between the two movements. This was partly due to the fact that during the 1970s people in the women's liberation movement sincerely debated issues about 'discrimination against disability' and 'rights'. As a result, out of this 1970s debate grew the basis of respect and understanding and therefore more scope for collaboration in the 1980s. The WLM's activists' earnest attitude in confronting the abortion debate led to a degree of trust from disabled people which became evident in the 1980s. People in the disabled people's movement could not help but accept such terms as 'reproductive rights' and 'women decide about abortion' because of the new international recognition of these concepts and terms.

Moreover, during the ten-year period since the original challenge to the Eugenic Protection Law, disabled men had experienced their female partners giving birth, and sometimes their partners having an abortion. Statements were made by disabled men that 'during the 1970s, we only accused women, without paying attention to the situation in which mothers experience hardship in rearing disabled children' (Araki 1983: 43) or '(after witnessing what happened to my partner, I now realise that) women are not having abortions because they like it'.<sup>31</sup> By the 1980s many of them realised the pain of abortion, and understood that women do not choose abortion for trivial reasons.

The other critical factor was that disabled women finally came to the fore in the disabled people's movement, as more and more of these women had started living independently, sometimes giving birth to children themselves. In 1985, disabled women in Japan established a group

called Disabled People International (DPI) Network of Women with Disabilities. Its aim was to create space for disabled women's voices to be heard within the disabled people's movement, which was still represented mainly by disabled men. Toward the end of the 1980s there was a critical change in the consciousness of disabled women. Yûho Asaka, one of the most active disabled women, went to the US to learn co-counselling. Through this counselling, disabled women activists started affirming themselves, loving and linking themselves to others, instead of attacking or hating others, which was a trend before, coming from frustration in life due to their discriminated position in society. Yonezu reports that 'during this period, disabled women started expressing themselves gently and openly with a huge confidence. Because of this change, disabled women came to the fore, instead of being subordinated by male disabled people in the disabled people's movement' (1998: 237-238).

Consequently, there were more wheelchairs to be found in demonstrations initiated by *Soshiren* against the proposal to delete the economic reasons clause during the 1980s. As a result, this period saw a change in the meaning of 'women' within the women's reproductive health movement, originally from being exclusively disability-free women to include more disabled women.

With regard to reproduction, during the 1970s, it was unlikely that disabled women had thought of *Datai-no-kenri*, or 'women's right to abortion', as their most urgent issue, because for these women it was more plausible to dream of having a lover, getting married, becoming pregnant, giving birth, and raising a child, to try to conform to dominant norms of being a wife and mother. Now during the 1980s, pregnancy, delivery, and even abortion was within the reach of disabled women. The new rhetoric in the women's reproductive health movement, 'women decide to give birth or not to' and 'women's right to self-determination', left both options open: birth or abortion.

But there were still crucial disagreements between the two movements. The first was about rights. For example, Chizuko Kawakami, a disabled woman, stated that, 'giving birth or not giving birth is not an issue of rights or duty, and it is not proper to use rights for the issue of reproduction' (*Fukushirôdô* 1983: 28-29). Yoshiaki Araki, who had CP and was the father of two children, wrote, "'A right to give birth or not to' is confining reproductive issues to women, eliminating fetuses and male partners from the discussion, while dialogue between the couple is crucial' (Araki 1983: 41). The statement from Kawakami stems from the difference in the meaning of giving birth for women with and without disabilities based on the fact that women without disabilities have been expected or sometimes even forced to give birth, while disabled women have been expected not to give birth. Therefore, giving birth is,

instead of a right, rather a blessing or good luck in the lives of disabled women, as are choices about reproduction. Araki's statement stems from the fact that, according to the prevailing social norms at that time, disabled men were also expected not to father children. Moreover, a belief was still shared amongst disabled men that, 'being disabled is a more urgent problem than being a woman'. Therefore, as a man with a disability, he could not accept women monopolising the issue of reproduction, by labelling it a 'woman's right' which sounds as if women are eliminating men from the decision-making process surrounding reproduction.

Moreover, the argument by disabled people held that difficult conditions should not provide an excuse for mothers to kill or abort disabled children. 'Disabled women give birth to children even in highly difficult conditions. It is too easy for disability-free women to say that they cannot give birth because the conditions are difficult' – this was a statement made by a man in a wheelchair during a debate between disability-free women and disabled people (Soshiren 1983: 5). Here the difficulties between women with and without disabilities are being weighed, and it is assumed that the difficulties of disabled women are heavier. Therefore, disabled activists believe the term 'right' should not be used by women arguing for access to abortion. Further, there were comments from disabled women about the rhetoric of 'right to self-determination' being espoused by disability-free women, in which they noted 'you can decide, but I cannot' (Yonezu 1998: 236). So the term 'self-determination' was just the beginning of the possibility of collaboration between disability-free and disabled women.

Disabled people's reluctance to consider the rights of women was not only based on the 'hierarchy of oppression' – that is, the idea that disabled people were more oppressed than women (see the diagram 'Pyramid of power relations amongst women and disabled people' in chapter 3) – but also on a general lack of familiarity with the concept of rights amongst disabled people. Rights do indeed have strongly intellectual and abstract aspects. Moreover, there was a feeling among disabled people that 'rights', which are founded in the law, are applicable to citizens protected by the law. At that time, however, disabled people viewed themselves as falling outside the protection of the law.<sup>32</sup> For example, during the 1970s and 1980s, even apparently trivial matters such as the time to go to the toilet or how long one's hair should be, were regulated in disabled people's residential care in order to lessen the workload of staff who worked there. Disabled people simply had no say, even in such personal matters. This contrasts sharply with the decision-making rights and powers of disability-free people.

From my interactions with women (both with and without disabilities), and taking into account the abovementioned arguments made by



disabled women, it's clear that disability free women within the women's rights movement were confronting questions such as: Do (women's) rights apply to disabled people – people in residential care homes whose daily lives have been totally controlled by others? Do disabled people have a right to express their emotions regarding their experiences of being oppressed? At that time, many disabled people did not have access to the same educational opportunities as disability-free people. Questions were also raised about whether a political concept such as 'rights' was effective terminology in the context of disability, given that 'rights' was a term used, on the whole, by citizens who did not experience discrimination. A disabled woman activist, Mitsui, says that when she moved from a disabled people's residential institute into society at large, the first emotion she had to confront was 'anger'. But this was not due to her understanding of the concept of 'rights', simply that she realised how oppressed she had been inside the institute.

The suitability of the term 'rights' is worthy of elaboration: On the face of it, one might think that disabled women's objection to the terminology was rooted in anger about and awareness of discrimination and oppression in comparison to their non-disabled peers. However, the debates which took place between non-disabled and disabled women suggest otherwise. The objection to the term 'rights' was based on legal notions. Stories such Mitsui's, highlight the fact that the concept of human rights did not appear to apply to disabled women in Japan. They were outside of the framework of the law's application. The point should be made, however, that it wasn't just a struggle for recognition within the framework of the law and human rights. Disabled women also wanted recognition that their needs were sometimes different from those of non-disabled women. It wasn't simply a question of becoming equal and 'the same'.

Questions of rights were extended to the question 'who are women in "women's rights"?', too. Do rights represent women with disabilities at all? Does the concept of rights appeal to disabled women? This question of who is included in the term 'women' is not confined to disabled women; does 'women' represent women in general, also those who do not question the politics of reproduction? (The question about who is represented by 'women' in the phrase 'women's rights' and who feels that 'rights' is their 'own' concept and term, will be discussed in chapter 7.)

Another criticism from the disabled people's movement was that women in the reproductive health movement in the 1980s were focusing excessively on the acts of 'giving birth and not giving birth'. The disabled people's movement maintained that the fundamental problem was the Eugenic Protection Law itself, and that its abolition should eventually be the aim. But both movements argued:

Confining the argument to whether to revise or maintain the law about the conditions for legal abortion, and letting the articles on eugenic surgery stand, just as happened during the 1970s, will not solve disagreements between the movements of women and disabled people. [...] The law should be repealed in order to abolish discrimination against disabled people, and to secure self-determination in women's reproduction, because under the Eugenic Protection Law disabled people were made the target of sterilisation legally, and women's sexuality and reproduction were controlled in accordance with the national interests (Kawakami 1983: 34-35).

The situation was that the women's reproductive movement concentrated completely on preventing the revision of the Eugenic Protection Law, and this meant maintaining the law in order to keep the economic reasons clause. Realistically, the best that women in the movement could do was to prevent the deletion of the economic reasons clause. However, the discovery of this point was crucial for the future of the disabled peoples' movement and the women's movement, and towards the 1990s the women's reproductive health movement started becoming more and more concerned about the 'total abolishment of the law' and 'making a new law'.

Although disabled people and women in women's reproductive health movement moved a step closer to each other, there was still criticism from the disabled people's movement, that women without disabilities did not really understand the reality of the discrimination faced by disabled people. Disabled people remained sceptical about the seriousness of women inside the reproductive health movement, not to mention women outside the movement.

## **Rights in the 1980s**

In the 1980s, because of the use of the concepts 'women's right to self-determination' and 'reproductive rights', the movement's message became clearer than it had been during the 1970s, when it focused on 'opposition to state intervention in women's bodies'. As a result, women with more varied backgrounds joined in the movement's activities. The emergence of the use of these phrases was partly due to international public opinion. By the early 1980s, 'reproductive rights' and 'self-determination' became a common vocabulary not only inside women's movements, but also among the Japanese general public when discussing reproductive issues. Given this situation, Japanese women could use international treaties and arguments to oppose the state's attempt

to outlaw abortion. Anti-abortion activists could not call women's rights 'women's selfishness' any more.

In the 1980s, more disabled women participated in women's reproductive health movement activities, not only because of the increased inclusiveness of the movement's message, but also because they became more prominent within the disabled people's movement. Their participation helped to broaden the meaning of 'women' but at the same time led to a new question of 'who are "women" in the rhetoric of "women's rights"?' To some women, such as some disabled women, the term 'right' remained inappropriate in their efforts to enhance their social positions.

Moreover, the 1980s saw a rapid advancement and increasing availability of reproductive technologies to detect deformities in foetuses. Because abortion includes selective abortion, disabled women did not feel totally comfortable with the 'women's rights' rhetoric. Therefore the tension between the movements of women and disabled people did not decrease, but the debate continued about whether women's right to self-determination included the abortion of deformed foetuses. The question about who 'women' and 'self' in 'women's right to self-determination' were, in the practice of reproductive technology, is introduced in chapters 6 and 7.



## 5 Analysis of the Discourse on the Concept of Individual, Political Rights in the 1980s

The notion of rights was more freely and frequently used during the 1980s than it was during the 1970s because of the way the term 'right' was used in the phrases 'women's right to self-determination' and 'reproductive rights'. So it can be concluded that the way the term 'right' is used in political struggles matters. However, where does the legitimacy for these phrases come from? In addition to the way 'rights' was used, there were more factors that provided women with the confidence to use this term.

One factor was that these phrases were used and were legitimised in international conferences between the 1970s and 1980s, such as the UN Women's Conference in 1975, and in the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), adopted by the UN General Security Assembly in 1979. Indeed, Japanese women in the 1980s quoted from CEDAW in order to strengthen their political arguments, and this worked well. So why and how did international conferences and treaties play a role in helping to strengthen arguments in support of women's rights in Japan? How did an international debate back up political movements' use of 'rights'? This question can be put in another form: 'where do rights come from, and how is their use justified?' This chapter primarily seeks to answer this question, in order to discuss the characteristics of rights and the source of legitimacy for the usage of rights.

Another major factor for the more frequent use of 'rights' in the 1980s was the participation of younger people in the women's movement, who had not been a part of the 1970s student movement or WLM. The participation of new people influenced the way in which the 1980s women's movement developed its aims, strategies, political lobbying, and public campaigning. How and why these differences affected the construction of the abortion debate in the 1980s, including the way in which 'rights' was used and how discrimination was viewed, is taken up in this chapter.

In the second part of this chapter, a debate amongst women in reproductive movements about the possibility and effectiveness of rights in 1980s Japan is analysed. Partly because of the success of the business of consoling the souls of aborted fetuses, or *mizuko-kuyô*, initiated by

anti-abortion activists, there was a public debate among Japanese women in the reproductive health movement about whether or not 'rights' should be used in public Japanese abortion debates. The *mizuko-kuyô* businesses peaked during the 1980s, when there was an attempt to outlaw abortion. The discussion in the debate on *mizuko-kuyô* among women in the reproductive health movement contends that the phenomenon of *mizuko-kuyô* means that the political rhetoric of 'reproductive rights' or 'women's right to self-determination' did not alleviate women's ambivalent feelings about having had an abortion. Hence, in the context of this debate, the use of the concept of 'rights' is questioned, as 'rights' did not appear to fully empower women who had experienced abortions.

### **On the frequent use of the term 'right' in the 1980s**

*The first factor for the usage of rights: The power of international conferences and treaties*

*From where do rights emerge?*

When we use the term 'right' on what do we base the claim and how do we justify it? To begin with, we assume that there is a more comprehensive and legitimate set of values that covers the parties involved, as a tool of justification for making a certain claim, such as a legal rule, a political system, a rule for economic management, or ethical values, and they may be either formal or informal. For example, employees are covered by company rules. If one employee acts against another employee by breaking a rule, the wronged employee can raise a demand, which is justified by the existence of the rule. The employee can say, 'I have a right to make the claim because the rule justifies it.' Likewise, when a citizen in a nation state makes a claim, assuming that the claim is in accordance with state law, the claim is considered valid and justified by the state law.

According to legal theories, a set of rules ought to be created in accordance with the values shared by the members of the community, being acknowledged as shared common sense or, 'existing customs' (Vinogradoff 1972: 50).<sup>1</sup> The actual legitimacy of the rule emerges from agreement among the involved parties. When members of the community abide by a rule they are therefore not simply following arbitrary decisions made by others, but are following conditions they have agreed upon. The legitimacy of the rule lies in the fact that those who are party to the rule are obliged to follow the rule, because it is shared by members of the community as a basis for reconciliation within the community.

Some sets of values remain as norms or customs and are unwritten, while others become a law, usually in a written form. All of these values are supposed to cover the members within the community with certain legitimacy; the members of the community are expected to abide by these values. The purpose of the rule is to balance the interests of the members of the community, articulating what is right and what is wrong. Thus it can be said that a law is a collective form of rights, declaring what it is right to do. Here the intimacy between a law and a right is revealed. Rights are activated and justified by a law, or a set of rules. This is why, in many European languages, the law and a right are often expressed using the same vocabulary, for example, *jus*, *le droit*, *het recht*, *diritto*, *derecho*, *pravo*. The English language has two words – a law and rights, and so do French, *le loi* and *le droit*, and Dutch, *de wet* and *het recht*. However, the principle is true for the relationship between a law and rights as well – by contrasting right and wrong, the ethical aspect of ‘a right’ or ‘what is right’, is emphasised in a law. For example, not to pay a salary due to an employee would in many societies most probably be considered to be unfair. Thus, it is not right in view of the law, and consequently the employee has a right to make a claim (ibid: 24-25). Thus, in the genealogy of rights, the principle of law is traditionally examined in ethics about what is right, and a right is analysed with regard to the principle of justice. This is true for Aristotle’s, Socrates’s, or Plato’s theories on the functions of law and the state (ibid: 24).

In this way, the justification of a claim is established using the concept of ‘rights’ and ‘what is right’, which emerges from rules or laws, and which covers the involved parties with an authenticity based on the principle of assumed agreement.

#### *International human rights law, treaties, and the domestic law of a nation state*

In terms of legitimacy there are often hierarchies among sets of values. This is to say that one set of values is covered by a more comprehensive set of values, which is entitled to more authenticity. For example, a company’s set of rules must be in accordance with the law in the state where the company is located. If the company’s rule breaks the state law, then an employee’s claim to change the company’s rule, for the improvement of the employee’s working conditions, for example, is justified by the state’s law. The claim is justifiable in the name of rights, and this emerges from the state’s law.

The fact that a nation state signs an international treaty means that the state agrees to abide by the treaty’s rules. Today, according to Cook,

International law of state responsibility requires governments to respect, ensure, and protect women's international human rights; when they fail to do so, sanctions can be enforced. International law doctrine now goes beyond the classical state duty not to interfere with individual human rights, to hold states accountable for not acting positively to ensure rights. Moreover, [...] international law now obligates states to use due diligence to prevent, investigate, and punish systemic and egregious human rights violations between private parties (Cook 1994: 6-7).

Also, she continues, because 'the international law of state responsibility makes a state legally accountable for breaches of international obligations that are attributable or imputable to the state' (ibid), the use of international human rights law and treaties functions positively for women's – and other – movement goals. This principle holds true for such cases as Japan, where the women's and the disabled people's movements targeted the state law and policies. These effects are due to the fact that, in principle, the international laws/treaties are more legitimate than the state's domestic laws, according to the norm in today's international society. An individual is entitled to make a claim against the state on the grounds of a 'right' which is guaranteed by an international treaty. In this way, a right emerges from a set of values, which was created as a result of agreement between the involved parties, whether the disagreement be directly or indirectly represented by the parties.<sup>2</sup>

By now, some of the characteristics of 'rights' have been revealed. One of the characteristics is that the concept of a right has a close intimacy with 'law,' or a set of rules and norms, and these hold legitimacy over the involved parties to compel them to follow the values. A 'right' is activated by what is articulated in the law as valid; without the justification of a law, a right often cannot be activated.

Another characteristic of a 'right' is that it is raised when a claim is supported by an authentic set of values; the claim could be more justifiably made using 'rights' or right as in the opposite of wrong, more frequently; the claims are right, not wrong, because the basic set of values assures the claim. The concept of rights has a sacred image; once a claim is linked with the concept of right in the sense of being correct, the claim is not to be questioned.

Two facts can be deduced from this. One fact is, because a claim is assured by the set of values that covers the parties involved, it is crucial to strive for the improvement and reform of the set of values involving the parties. Whether a claim is ethically right or wrong depends upon the set of values upon which the claim bases its justification. Therefore, women in the reproductive health movement diligently prevented the



revision of the national law that would have limited access to abortion. The revision would have legally nullified women's rights and justified the foetus's rights. Because law is a sacred voice to judge what is right and wrong, it is crucial for the women's movement to monitor the content of the law and criticise and lobby for changes to unjust laws.

Another fact deduced from the characteristics of 'right' is that, in today's international world, there is an acknowledgement that an international treaty has greater legitimacy than the domestic laws of a particular nation state, as long as the state has ratified the treaty. Therefore, a social movement can make a claim for a certain resource, using 'rights' as a justification, even if the national law where they are operating does not recognise the claim. Hence it is a crucial political aim for a given social movement to lobby their government to sign an international treaty in order to promote the movement's goals, and to make the best use of the international treaty, in order to persuade those in power to reform the national law and to abide by the international principles contained in the treaty. In contrast to the 1970s, the Japanese women's movement during the 1980s could draw legitimacy from international conventions, and this strengthened the justification of their claims. Thus the movement could insist, against the state, that a claim was 'right', i.e., justifiable, in light of a convention, not 'wrong'. One of the reasons for the hesitation to use 'rights' during the 1970s was the lack of an international conceptual argument, which would have had greater legitimacy than the arguments that were then available within the domestic arena. During the 1980s, the Japanese women's movement could use CEDAW and other international arguments to oppose the revision of national law. Hence they could use the concept of 'rights' because their claim was justified by international treaties and arguments.

#### *Source of power in international treaties*

Why are international treaties entitled to such an influential function? This question is answered by taking into account the Japanese social climate.

To begin with, the definition of the characteristics of a nation state is raised. One real aspect of international relations shows that nation states always have the potential to clash with other nation states because of their pursuit of national interests. History has seen a series of tragic acts and wars among nation states. As a consequence of people's desire for peace, the idea of making international leagues emerged, which provide rules for nation states, in order to maintain order and harmony. The League of Nations, the United Nations, and a number of treaties all embody attempts to restrict excessive acts by individual nation states.

In post-war Japan, to act against international agreements is likely to invite severe public criticism, along the lines that 'Japan is behind inter-

national trends, Japan is old-fashioned.' The Japanese government's attitude often changes according to arguments made in the international realm, including in the field of disabled people, women, children, and other important social fields.

Because an international treaty is international, it implies the idea that its content goes beyond cultural or regional differences, being constructed by the consensus of the most up-to-date, professional thinkers. This image implies that the content is 'fundamental' and 'universal' and must be applied to all human beings. As a matter of course, this is not often the case. That is to say, there are often criticisms that the values in the treaties are primarily developed by 'the West' and that in fact the standard of 'international' and 'global' is often the same as that of the West. This is problematic, but social movements can make use of this nature of an international treaty strategically. No matter how 'Western' an international treaty may be, the moment that a state signs a treaty, the state is regarded as having agreed to be under the umbrella of the values the treaty embodies, as if these were their own values. If the content of a treaty is useful for the progress of a movement in achieving the movement's targets in reforming states' politics, why not make the best use of it? Since the distance in positions between the state and people within social groups differs from country to country, international treaties and laws need improving and/or further interpretation to be applicable to as many diverse cultures as possible. The effort to improve international treaties is more important than criticism of, or a refusal to abide by, the treaties. Moreover, in the cases of such countries as Japan, which has a deeply rooted idea that what is from the West is more 'advanced' or 'civilised', the treaties function effectively to persuade the government to accept certain points of view. It can even be said that because 'international' is quite synonymous with 'the West' for many in Japan, international arguments and treaties can be significant catalysts for change within the Japanese government.

This is the ideological explanation for the sources of the power of international treaties and laws in Japan. Greater legitimacy is given to international treaties and law than to a nation state because of a state's typical obligation to make a report about its domestic situation to international bodies. In principle, all major human rights treaties provide for a system of reporting. Representatives of the states are required to make regular reports to the responsible supervisory bodies about the steps they have taken to implement their obligations, and the difficulties they have experienced in doing so. Reports are examined by the relevant treaty bodies in the presence of representatives from the states concerned. All committees receive information from NGOs informally, and the committees use this in their arguments. The examination process can provide an opportunity to exert pressure on states (Byrnes, cited in

Cook 1994: 23). The UN Commission on the Status of Women also has the authority to review communications received from individuals and organisations in order to identify follow up on information that appears to reveal 'a consistent pattern of reliably attested injustice and discriminatory practices against women' (Cook 1994).

For the women's movement, the series of international conferences and treaties represented not only the justification for the movement's claims of 'women's reproductive rights', but they also provided a sense of 'solidarity' with other women in the world. The trend of the 1980s amongst women in the international arena was to say "no" to population control' and "yes" to individual women's reproductive rights and women's right to self-determination'. Aware of this trend, Japanese women could use those terms in their political struggles. The trend also confirmed that what they were feeling, hoping, and claiming was 'right' and that this was shared by other women.

*The second factor for the usage of rights: Participation of younger and older people in the Women's Reproductive Health Movement*

*The shift from 'accusing an individual's values' to 'standing up together'*

Another major change in the context of the abortion debate in Japan in the 1980s was the participation of younger people within the women's movement. Part of the movement was now organised by people who had not been in the earlier student movement or WLM. These younger people brought different perspectives to the movement. As explained earlier, in the 1960s student movement there was a strong atmosphere of self-questioning, trying to examine and deconstruct senses of privilege and discrimination internalised within oneself. It was believed amongst the participants in the movement at that time that the real revolution would start from within the individual. This belief was also taken up by people in the social movements of the 1970s, including the women's and the disabled people's movements. In that context individual women had questioned themselves about whether or not they would consider giving birth to a child with a disability. Tomoko Yonezu, currently a *Soshiren* member, who was in the student movement and the WLM, describes the atmosphere at that time:

In the 1970s, everyone seriously believed that there could be no real liberation without also destroying the internalised senses of eugenics, imperialism, and petit-bourgeoisie. In order to affirm the self, one had first to question and deny the self which was constructed by conventional values. This is a mixture of self-denial and self-affirmation. In this context, we did not feel that it

was unfair to be questioned about whether we wanted to give birth to a disabled child or not. There was indeed a strong atmosphere whereby each of us felt that we had to say 'yes, we would give birth to disabled children'. However, as a movement, we could not have the standpoint of affirming that women would, or should, give birth to disabled children. At the same time, we could not affirm that women should not give birth if a child had a disability. Therefore, we claimed 'let's stand up to the common enemy, state power, together!' (Yonezu 1998: 236)

Yonezu explains, the 1970s movement was 'ethical': one individual was required to confront herself and examine her constructed self in order to re-construct the self. This attitude was inherited from the student movement. In the 1980s, women focused upon the fact that there were social mechanisms, whereby women made certain choices in relation to reproduction. Women in the movement were even clearer in arguing that they wanted to stand together with disabled people, in order to oppose specific social mechanisms, including laws or norms, than they had been during the 1970s.

The fact that there was no official attempt made to introduce a selective abortion clause in 1982 should also have made a difference in the atmosphere of the debate between the women's movement and the disabled people's movement during the 1980s. However, during the 1980s there was a feeling that it was pointless to accuse every single woman of a failure to criticise herself. To begin with, it is not proper to ask a woman, who is not pregnant at that moment, whether she would or would not give birth.

*Discrimination against women among other types of discrimination: The hierarchy of oppression*

During the 1970s, when the New Left student movement was still active in Japan, there was a trend among social movements to regard discrimination against women as less serious than that against disabled people. As was mentioned earlier, women in the 1970s movement tried to examine their own privilege in comparison to that of other people suffering discrimination, such as disabled people. Indeed, there was awareness that the actual situation of some disabled people, 'who might starve if there were no helpers the next day, or who had no freedom because they were living in a disabled people's institute' (Yonezu 1998: 235) was severely underprivileged.

However, at the same time, women were fed up with being told that their discrimination was less important or less severe. Women in the Women's Liberation Movement had to struggle to justify working on the issue of discrimination against women, and they desperately tried

to strike a balance between other discriminations and discrimination against women. In this 1970s atmosphere, women in the Women's Liberation Movement tried to appeal to disabled people to join forces against the state authority in abortion matters, but this did not happen easily.<sup>3</sup>

As mentioned in chapter 3, the idea that the discrimination suffered by disabled people was more severe than that of (disability-free) women, was one of the causes for the reluctance to use 'rights', both among disability-free women and disabled people. Yet at the same time women in the movement never gave up attacking 'the hierarchy of oppression' that position discrimination against women as less important. Due to these efforts, by the 1980s there was growing recognition of the seriousness of discrimination against women among Social Movement Organisations (SMOs, hereafter) in Japan. Yonezu describes how women are often told, 'your problem can be solved later. There are people in more critical situations' (1998: 240). According to Yonezu, this itself is discrimination against women, because 'this is exactly the imposition of the ideal image of womanhood, that women should withdraw their claim, to give in for the sake of others; women could not simply accept this claim from the disabled people's movement' (Yonezu 2002: 235). She continues:

A hierarchical order of importance must not be given to discriminations. Discriminations are related to one another in complex ways, and therefore, even if discrimination against women is put into the background, other issues of discrimination cannot be solved any sooner. The problem lies in the way of thinking that discrimination against women is less serious, and that discrimination against disabled people is more serious. And in this struggle, 'men' [the discriminators] are absent [in the debate about the hierarchy of oppression] (Yonezu, 1998: 240).

### *Motherhood*

Another key concept for women in dissolving the hierarchy of oppression was 'motherhood'. Motherhood was held to be a crucial reason that women in the movement were reluctant to use 'rights' during the 1970s, and was also a reason that disabled people were reluctant to hear women using the concept of 'rights'. For disabled people, 'mother' is sometimes the primary caregiver, and other times the primary oppressor. On reflection, this is based on a conventional value of women's social roles as internalised in disabled men, that mothers should not give up the job of mothering. If they stop mothering, it means that they are discriminating against disabled children, according to people in the disabled people's movement, and are 'egoistic'.

But the WLM did not simply attack the disabled people as conventional, or try to completely do away with the term motherhood. During

the 1960s to 1970s, there were a number of environmental and medical problems, such as Minamata disease and births of Thalidomide babies. Given these problems, women in the WLM refused to be, in their view, like men and assert their 'modernity', as it was called. As the basis of their critique, women in the movement said they appreciated having bodies that menstruated, bodies with wombs that had the function of giving birth. Women in the WLM also shared a critical vision of the dominant values inherent in modernity that take advantage of, and make use of, more helpless beings for one's own benefit. Women in the 1970s tried to approach relationships with a sense of care, attention, concern, and inclusiveness, and this shows, for example in their argument about the relationship between a pregnant woman who terminates a pregnancy and the foetus which is 'cut into pieces'. It was not that women in the 1970's movement believed that providing care was one of women's essential roles. On the contrary, they criticised the social role imposed on women, but women in the WLM tried to affirm values attached to women in society where values attached to men were more dominant. By acknowledging the importance of providing care and by refusing to support the easy elimination of helpless beings for the sake of efficiency (as they believed men would), women in the WLM believed that they were drawing attention to the shortcomings of the existing male-dominated society. Their view was that they did not want women to have a leadership role in a society (the existing society) that participated in the exclusion of powerless beings. Again, women in the WLM did not easily do away with motherhood because they wanted to criticise societal values in a fundamental way, not because they believed motherhood was women's nature. So women in the WLM assigned values attached to motherhood to the whole society, including both men and women.

Women's hesitation in criticising disabled people was because women wanted to consider sincerely why an individual woman would commit the murder of a disabled child. They also hesitate to criticism the position of the disabled people's movement because they believed that a disabled child should indeed be protected. The same consideration was given to the act of selective abortion of a foetus with an anomaly. All these events were happening according to efficiency and cost-benefit calculations. This consideration of the WLM was valuable, because it intended to let women in the movement and in society question what they take for granted in life, and to let them think of the meaning of every act in life, including marriage and giving birth. But at the same time it also complicated the arguments.

In the 1980s women in the WLM chose to analyse and deconstruct the oppressive aspect of motherhood, in order to counter the dominant female norm in Japan at the time that was imposed on women. The

myths themselves were hindering women's right to self-determination, that is, disability-free women were expected to give birth, while disabled women were not supposed to give birth because they were perceived as deviant from the image of womanhood. Moreover, the concept of motherhood denied diverse ways of living, for example, remaining single for one's whole life, single motherhood, heterosexual cohabitation without having children, or lesbian ways of living. According to those who believed motherhood was the only essential role of women, women's right to self-determination, as egoism, was placed in opposition to motherhood.

However, it has to be noted that although women in the movement during the 1980s clarified that motherhood served to prevent women from exercising choice in the selecting from a diversity of lifestyles, they did not create a dichotomy between 'motherhood and rights'. Given the fact that concept of motherhood can be a political instrument to impose certain values on women, women in the movement in the 1980s felt it necessary to clarify the oppressive aspect of motherhood.

In the change of attitudes towards motherhood, women in the 1980s also spoke out to disabled people, especially against disabled men, asking why only mothers were the targets of their criticisms but not fathers. Women declared that disabled men's criticisms of women's use of phrases such as 'right to self-determination' were due to the men's own fears of being abandoned by their mothers. Yonezu says

I want men – not only conservative men, but also intellectuals, who are arguing against women's self-determination – to ask themselves if they are afraid of being left alone by their mothers; if they are actually dependent on motherhood; if they are trying to bind women to the roles of mother and wife. I also want men with a disability to ask themselves those same questions (1998: 238).

Thus, by defining motherhood as oppression of women, women could not only declare that women were oppressed, but they could now also uncover the fundamental sources of the criticism that disabled people and anti-abortion activists had of the use of 'women's rights'. The criticism was based on the 'motherhood' expectation that these two camps had for women.

Yonezu also notes that women's greater outspokenness about disabled men had the effect of bringing the two movements closer during the 1980s, rather than enlarging the gulf between them (2002: 235). In the 1970s, women in the WLM were encouraged to repress their feeling that women were oppressed because they were disability-free. Now relocating the two forms of discrimination – against women and against

disabled people – both movements started making an even greater effort to understand each other. On this point, Yonezu comments:

The disabled people's movement posed very important questions to us women in the women's movement. And we have been considering the propositions by confronting our own negative ideas about disability seriously, as well as our ideas about the life of a foetus. Women have always thought about the whole issue, without separating discrimination of women from that of disabled people. Now we want disabled male people to consider the issue of discrimination of women as well, because it is not possible to dissolve the entire situation of discriminations by underestimating the seriousness of one discrimination versus another (2002: 235).

*Rights and a 'hierarchy of oppression'*

The fact that women brought their own discrimination to the fore as being just as important as other kinds of discrimination made women in the reproductive health movement more assertive in constructing their positions in the abortion debate and in attacking oppressive authority. This change also affected the use of the term 'right', since one major reason for the hesitation to use 'right' was the women's movement's relationship to the disabled people's movement. Now by claiming that women's discrimination was just as important as that of disabled people, women could more confidently use the concept of 'rights' in their arguments. 'Self-questioning about internalised eugenics on the individual level' was no longer at the centre of the women's movement during the 1980s.

This transformation in positioning their own discrimination also opened up an opportunity to transform the relationships between women with and without disability in the movements that opposed the anti-abortion movement, and in making one step forward: unity on the common point of being 'women'. According to disabled women, the problem of being women was less seriously considered within the disabled people's movement or sometimes not considered at all, because 'disability is a more serious problem'. However, towards the 1980s, women in the disabled people's movement started bringing their identity as 'being women' to the fore as well. Sanae Nakamura, a woman from *Soshiren*, recalls a dialogue with a disabled woman:

We women went to a *Zenshōren* meeting in 1982 to have a debate with disabled people about abortion. There in the meeting, we were exposed to the conventional structure again [that women's discrimination is subordinated to that of disabled people, by civil



servants in ministries and disabled people, who were mostly represented by males]. On the way back, Tsutsumi Aiko, a woman with a disability, said to me, 'women should have made more claims. We should have also quarrelled more amongst women [with disability and without disability]. Without having straightforward arguments, nothing begins' (*Soshiren news* (150) 1997).

This statement by Tsutsumi shows that disabled women had also been subordinated as women within the disabled people's movement. Now she is declaring that she will face women's discrimination as an important issue. This is a change in the meaning of 'women' when used to speak of discrimination against women, to include women with and without disabilities.

Consequently, in 1985, the DPI (Disabled People International) network for disabled women was organised. Its purpose and demands were for disabled women to raise their voices, rather than being represented by disabled men. As more and more disabled women started independent living outside institutes or parents' houses they also began to demand the choice of giving birth or not. This was a critical turning point in the relationship between women with disabilities and those without.

Even so, though the two groups became closer this did not mean that the gap between them had closed up entirely. It remained disabled women's preferred desire to give birth rather than not to give birth. In chapter 7, the issue of the meaning of the category of 'women,' with regard to 'right,' will be considered.

#### *Distance between the women's movement and civil society*

In the 1970s movements, the values of self-questioning and self-denial were also accompanied by a thorough rejection of conventional society. This total rejection also meant that the movements appeared to be extreme, radical, and excessive to many people. One of the reasons is that the participants in the movement during the 1970s were relatively young. Since many of the women did not have their own families or fixed jobs, they could sometimes take more risks in their activities. However, during the 1980s, the women's movement developed their arguments and activities in a less antagonistic way. In the 1980s, the movement attracted relatively older women, often with settled positions.

In the 1970s, although the WLM attracted a number of women from all over the country, providing opportunities for women to get together, the general public's perception of the movement was that it was deviant. The WLM radically rejected the norms that society imposed on women. In criticising society the movement sometimes used what the public deemed 'excessive' expressions, such as *omanko* (cunts). The

WLM embraced these expressions because they believed sexual liberation was a critical issue that required strong language. Sometimes, during demonstrations, physical confrontations between male bureaucrats at ministries and the women in the WLM took place. The mass media also described the activities of the movement as bizarre and frequently made fun of them. However, these women opened a crucially important door for the subsequent women's movements, providing women with enormous inspiration and solidarity. They looked 'bizarre' because it was the first revolutionary action taken by women since the Second World War, and such behaviour was very surprising in the eyes of conventional people. Furthermore, women had to deconstruct internalised male language while constructing their own arguments. The language used by the WLM therefore sometimes sounded chaotic. Consequently, women in general felt a distance from this 1970s movement, but the distance decreased substantially during the 1980s.

Beginning during the 1980s, the women's movement proceeded in a more conciliatory way, but it was because an awareness of women's issues within other SMOs had increased, not because women compromised their positions on issues. The fact that demands posed by the women's movement were in line with international-level treaties gave legitimacy to the women's movement in Japan. The emergence of research in the field of women's studies also elevated the status of the movement. Around this time, the term 'feminism' started appearing in public – started being used in public, in the media and at public events. Thus the women's movement, women's studies, and feminism all started gaining acknowledgement from the public in general.<sup>4</sup> At the same time, it became 'easier' for women than it had been during the 1970s to claim for better conditions, due to international treaties which supported women activists' fighting spirit in Japan. According to Yukako Ôhashi, a woman from *Soshiren*, 'this is due to the efforts made by women in the movement to bring the issues surrounding discrimination against women to the foreground.'<sup>5</sup>

One of the reasons for the women's movement's hesitation to use the concept of rights in the 1970s had been their own radical rejection of the given social system. To use rights seemed as if they were asking for more opportunities within the existing system. Now *Soshiren* used the framework of the given social system to achieve their goals. International treaties, as a part of this framework, increased the opportunities for women to use rights.<sup>6</sup>

### On a debate about the *Mizuko* business and the usage of the term 'right' in Japan

As mentioned earlier, there were businesses run by some Buddhist temples, some being in a business relationship with right-wing politicians, to console the souls of aborted fetuses.

The term *Mizuko* literally means 'water children', which stands for children who could not come into existence and *kuyō* means 'rites to comfort the soul of the dead'. Virtually all known usage of the term *Mizuko* includes the spirit of newborn infants and young children. *Mizuko-kuyō* is a distinctively contemporary phenomenon, arising in the 1970s, which flourished in the 1980s and continued in the mid-1990s though have been declining in numbers up to today in many areas of Japan. While the businesses are a contemporary invention the services they offer include rites that have the appearance of being traditional and rooted in Buddhist customs.<sup>7</sup> The phenomena arose not as an unmediated expression of popular sentiment about abortion, but as the product of an intense advertising campaign by entrepreneurial religious activists. Although the term *Mizuko-kuyō* is used in a variety of religions today in Japan, it has no textual basis in any of them. According to Helen Hardacre, the US feminist scholar of Japanese religion and society, 'the absence of any textual "anchor" makes it possible for individual religionists to use the term as narrowly or as widely as they choose and as their clientele will accept' (1997: 2), eventually making it highly commercial. The advertisements for *Mizuko-kuyō* emphasise that the spirits of aborted fetuses attack those women who 'should have' carried them to term and become mothers. According to the advertisers, problems in women's lives, such as their children's juvenile delinquency and bad relationships with their husbands, are caused by the spirits of angry fetuses, and therefore, *Mizuko-kuyō* are advanced as the 'answer' and 'remedy' to problems (see chapter 4).

Women resort to *Mizuko-kuyō* believing that there is some supernatural religious power in the rites to heal the soul of aborted fetuses and to heal their pain from having had an abortion, although service is indeed given by spiritualists. The *kuyō* appear to be religiously relevant and this is indeed partly the case, yet, as a number of feminists have pointed out, one cannot deny that *Mizuko-kuyō* are often a form of fetocentrism and misogyny, being a product of the pronatal political current (see Hardacre, 1997). In the rhetoric of those promoting the use of *Mizuko-kuyō*, women are often described as foolish, selfish, and sexually promiscuous while men are almost never assigned any guilt for abortion (Hardacre 1997: chapter 4). Feminists also criticise these businesses as nothing more than being money-makers (Miya, in Buckley 1997: 175), or 'deceits of spiritualism' (Ochiai cited in *ibid*: 176). These

businesses charge an extraordinarily large amount of money for one posthumous Buddhist name for the soul of an aborted foetus and for its well-being, which comes in the form of a stone statute shaped like a small child and is intended to function as a guardian deity for the aborted foetus. One small statue in the 1980s sometimes cost even more than one million yen, or some 13,500 euro.

Women who, experiencing an emotional feeling for their aborted foetus, resorted to these businesses, were ignorant of the fact that these were spouting anti-abortion propaganda, as well as money-making ventures, under the guise of sympathetic humanism. For example, Yoshiko Miya, a freelance writer and critic, commented in 1997 that, 'the memorialisation boom of the *mizuko* temples is an extension of the impoverishment of the modern condition. It is only about money' (ibid: 179). Women in the movement during the 1980s and 1990s criticised the fallacy of the business, and expressed their hope that women could 'see through the sham of this black market in women's guilt' (ibid: 175).

As a consequence of the emergence of *Mizuko-kuyō*, women in the movement were critical of the use of the term 'right' in the abortion debate, saying that rights did not appeal to women in Japan. They suggested that because women who have had abortions seek the services of *Mizuko-kuyō* businesses to reduce their feelings of guilt the rights-based arguments in support of abortion were not enough to make women feel confident in their choice to have an abortion. Citing Ochiai, a Buddhist nun, she continues,

Interestingly, Ochiai criticises the use of the concept of 'mother's rights' as a counterstrategy to the 'sanctity of life' platform. She argues that the concept of 'rights' is itself the product of an impoverished modernism, and therefore it cannot function as a source of power for the cause of women. Women perhaps still have a lot to learn when it comes to moving beyond the strategies of 'the enemy' (ibid).

Closer to the point, she argues that, if the concept of rights could appeal to the feelings experienced by women who had had abortions, then so many women would not be cheated by the *Mizuko* businesses. In reality, women are in agony – that means the concept of rights does not empower women to deal with the experience of abortion. Rights are a product of modernity, of which one characteristic is 'rationalisation' in other words, 'one should not regret one's decision if it is logically accountable'. But reality shows that the actual experience of abortion cannot be simply rationalised by women.

This debate on *Mizuko-kuyō* is analysed according to the genealogy of the notion of 'rights' established so far. The term 'right' does not ab-

solve women's guilt. This means that a 'right' is not powerful enough for women in this situation to positively affirm their decisions. Even so, should we expect 'rights' to remove guilt? Since abortion is an act to end a potential life and since it is never a joyful experience, it does not seem that there are any concepts that could completely wipe out a women's pain and sorrow due to undergoing such a procedure. The critique implies that a right does not correctly describe the actual process of abortion. The problem is that 'right' tends to invite a clash of mothers' rights and foetal rights, although women are grieving as a result of their abortion experiences and are apologising to their aborted foetus. However, in chapter 3 I argued that it is a fallacy to apply a discourse about the term 'right' to the foetus-woman relationship, although this is often done. Rights are not used to analyse the foetus-women relationship, but instead 'rights' are focused on the demand to end the oppression exercised by the powerful to intervene in women's reproduction.

Moreover, contrary to some women's feelings that 'rights' should not be used because of the guilt experienced by women after having an abortion, the guilt actually appears to strengthen the argument for using the term. Anti-abortion activists argue that the rhetoric of women's rights is egoistic, and women choose to have abortions too easily. However, the fact that women go to *Mizuko* temples means that women's reproductive decision-making is not as easy as portrayed by anti-abortion activists.

Anti-abortion activists show pictures of women kneeling down inside a *Mizuko* temples apologising to their aborted fetuses in order to show how painful abortion is, and to send a message that because women suffer in this way, women should not have abortions. But this is a contradictory argument. Anti-abortion activists say that women who have abortions lack respect for life, regarding fetuses as pieces of fat. If this is the case, then why do women go to temples to apologise to fetuses, paying a huge amount of money to do so? Clearly, from the perspective of women, abortion is not an act of intentional attack upon a foetus.

In my view, the *Mizuko* temples are not really a proper place for women to visit because these businesses take advantage of women by charging them excessive fees. However, women's acts of apologising to an aborted foetus should not be criticised ethically. Coping with such a significant event as an abortion in a woman's life can require therapy, and the act of consoling an aborted foetus can be part of that process. To cite one report by Mariko Sanekawa, the Japanese anthropologist: what most women do in visiting the *Mizuko* temple is to talk to the stone statue of a child as if talking to the aborted foetus. And often they say to the 'foetus' 'my decision was good for you, wasn't it?' and 'It was for your sake, wasn't it?' Sanekawa analyses that this is an assertion that women did not seek to harm, or that women did not want to commit

such a harmful act as abortion, to their would-be-children. It is, in a sense, self-counselling (Sanekawa: 19-22).<sup>8</sup>

In using 'rights' it is crucial for the women's reproductive health movement to clarify the argument with which 'rights' is associated. These criticisms on 'rights' among women in the movement are examples that illustrate the fact that both the theoretical concept and the genealogy of 'rights' have not yet been explored regarding what the concept exactly means politically, but 'rights' is used by social movements including those of women and disabled people based upon a vague understanding of the concept, because of the term's self-evident nature. Initially, 'rights' are not expected to wipe out women's pain and sorrow, but 'rights' are focused on the demand to end the oppression exercised by the powerful to intervene in women's reproduction. The problem of *Mizuko-kuyô* lies in the fact that there are people who use women's feelings for their own purposes and that women do not realise that they are being cheated (ibid: 7-9).<sup>9</sup> Rather than doing away with the term 'right' it should be used in women's political struggles because this concept is a fundamental tool to justify demands made to the state.

### The 1980s in comparison with the 1970s

So far, I have shown that the change in the way the term 'right' has been used is due to a number of factors.

Firstly, from the beginning of the political struggle in opposing the attempt to delete the economic reasons clause, women in the movement explained that they were controlled by the state laws and policies for the state's interest. Because of their opposition to this, they could use 'rights' more clearly. In making claims, they used international treaties, which are supposed to be even more legitimate than state laws and policies. This worked well, because of a characteristic of 'rights': rights emerge from a set of values covering the parties involved, who are regarded as having agreed to be subject to those values. The Japanese women's movement used international occasions, such as conferences, to raise their voices, and they attacked the government using international treaties and laws.

Secondly, ways of thinking in the movement changed from the 1970s to the 1980s. With regard to motherhood, women tried to coin an alternative expression for the relation between a woman and her offspring, 'affection for life' (*inochi eno aichaku*) or 'appreciation of life' instead of 'motherhood', saying that the tasks that were currently included in the meaning of motherhood should not only be open to women but also to men – so that a concept of parenthood was created. From the end of the 1980s and into the 1990s, dissolving the myth of motherhood be-

came one of the main activities in the Japanese women's movement, through publications and study meetings.

There were new problems emerging during this period within the movement. Although the term 'right' was more frequently used, it did not mean that hesitations and questions about the concept of rights had disappeared or been settled during the 1980s. There was confusion among women activists in the women's reproductive health movement about the effectiveness of using rights-based arguments, given that a number of women resort to the business of consoling the souls of aborted fetuses. However, it was apparent that women had mixed feelings about having abortions, and this fact could be used to strengthen women's reproductive movement's arguments in favour of access to abortion.

Another problem was the meaning of the term 'women' – in particular the use of the term within the women's movement – given the participation of women from more diverse backgrounds in the movement in the 1980s than in the 1970s. The rapid advancement of reproductive technologies in particular compounded the complicated nature of the meaning of the category 'women'. This is because women with different problems conceptualise and sometimes use technologies for different reasons: while in the WLM during the 1970s, to secure access to abortion was one of the main goals of the movement activities, during the 1980s, 'giving birth', 'infertility treatment' and other issues regarding reproduction came to the fore. 'Women' or 'needs of women' are not monolithic any more. In abortion debates from the 1980s into the 1990s, the issue of reproductive technology became the centre in Japan between the women's movement and disabled people's movement, especially after the Eugenic Protection Law was repealed in 1996.

## From the 1980s into the 1990s

### *New phase: The change of the Eugenic Protection Law into the Law to Protect the Mother's Body*

In May 1996, members of *Soshiren* heard a rumour that the government had started working on a revision of the Eugenic Protection Law. Indeed, on 29 May, the Liberal Democratic Party (LDP) proposed a draft revision of the Eugenic Protection Law. They proposed that the eugenic part of the Eugenic Protection Law (the first part of the law) be deleted, and that certain conditions permitting legal abortion (the second part of the law) would remain intact (see appendices 2 and 3). This time, attempts to introduce the selective abortion clause, and/or to delete the economic reasons clause, were not suggested. The name of the new proposed law was *Bosei hogo hô* (the Law to Protect Motherhood).

On learning of this proposal, *Soshiren*, together with other women's organisations, immediately began to put cautious pressure on Diet members:<sup>10</sup> They opposed the LDP's proposal for two reasons. First, because they wanted the content of the existing law to be fundamentally changed. The proposed law would only outline conditions for legal abortion, however the women insisted that any new law should also cover a larger range of reproductive and sexual issues. Secondly, they also wanted the abolition of the abortion articles in the Criminal Code, because they symbolised an impediment to women's right to self-determination.

The third reason they opposed the proposal was because of the name of the proposed law. Women in *Soshiren* considered that issues of reproduction, including abortion, were matters related not only to women who become mothers, but to all women. Therefore, the term 'motherhood' in the law was problematic, because it seemed to imply that all women ought to be mothers, suggesting a denial of diverse ways of being a woman, and eventually splitting women into those who are mothers and those who are not.<sup>11</sup> By criticising the name, *Soshiren* also claimed that reproduction was not solely about motherhood, but also about contraceptives, sterilisation, pregnancy, and abortion – the whole of reproductive life.<sup>12</sup> Eventually, the women's movement groups proposed that the name of the law be changed to *hinin-shujutsu-oyobi-jinkô-ninshin-chûzetsu-ni-kansuru-hôritsu* (the Law on Contraceptives, Sterilisation, Surgery, and Abortion), and they also proposed to reform the law's content.

Women in the movement started visiting Diet members to request these changes. As a result, a women's cross-party agreement was established among female Diet members in order to prevent the LDP's proposal from being passed.<sup>13</sup> Because of the lobbying efforts of women's movement activists, a number of Diet members were convinced that the term 'motherhood' indeed symbolised a lack of understanding of women's reproductive and sexual rights and health.<sup>14</sup>

Abolishing the Eugenic Protection Law had been an aim of the disabled people's movement for many long years, and they did not want to miss this opportunity to repeal the law. Therefore the disabled people's movement, especially men, did not agree with the demands raised by the women's movement groups, saying, 'to focus on the problems of the name of the law might nullify this great chance'.<sup>15</sup> For disabled people, it was more important to eliminate the eugenic part from the law than to radically change the content of the law to support demands for women's full reproductive rights.

Similar pressure was put on women's groups by the Ministry of Health and Welfare and conservative Diet members, who said that 'if women are fighting so vociferously for a drastic change of the law, then



in the end we cannot even produce any small improvements. First, we have to do what we can, and improvements for women will follow'.<sup>16</sup> Hence in the course of negotiations with the Diet and the Ministry, women's groups were faced with several dilemmas. Eventually they had to accept that the new law would not be drastically changed so as to include issues of women's reproductive/sexuality, otherwise they would risk the chance to delete the eugenic part of the Eugenic Protection Law. Women's groups chose to aim for a short-term success by posing less of a fundamental challenge. They reluctantly agreed that the name of the new law should be 'the law to protect the mother's body', so that at least the term 'motherhood' disappeared. The new law, the Law to Protect the Mother's Body, which is still in existence today, is a revision of the Eugenic Protection Law, from which legal procedures for eugenic surgery were deleted, and in which conditions allowing for legal abortion remained intact.

On 17 June, however, women were able to persuade the House of Councillors to add a supplementary decision to 'continue an effort to improve the law to enhance women's right to self-determination in consideration of women's reproduction and sexuality issues'. With this, the people within women's movement groups expressed the view that they regarded the new law as provisional, and that they would continue activities to improve the law to support women's fuller reproductive rights. The supplementary decision is an agreement from the Diet to collaborate with women on this point. On 18 June, at the plenary session of the House of the Representatives, the draft of 'the Law to Protect the Mother's Body' was voted on, in the name of the chairperson of the House of Councillors Committee for Health and Welfare. The new law was then officially adopted by the Diet and the law took effect in September 1996.

#### *The motivation for the LDP's and the Ministry's proposal*

There were only three weeks between when women's groups learned of the proposed change to the law and the new law's official adoption on 18 June. The process of revision was embarked on unilaterally by the government, without any consultation or open discussions with SMOs. The motivation for the abolition of the Eugenic Protection Law was neither to decrease discrimination against those with disabilities, nor was it to improve women's reproductive rights, but instead it was a response to criticism from abroad. The international criticism was triggered by the activities of Japanese women at the UN Conference on Population and Development in Cairo (1994) and at the UN Women's Conference in Beijing (1995).

In January 1994, prior to the Cairo conference, some hundreds of women in Japan formed a non-governmental organisation named Japan's Network for Women and Health (JNWH), with a view to coordinating the activities at the conference and building unity among Japanese women's health activists. Their standpoint was

The population problem should be redefined from the perspective of sexual and reproductive health, placing emphasis on women's self-determination of their fertility, and women's physical, social, and mental well-being throughout their life cycle (Ashino 1994: 2).

One crucial achievement was that JNWH translated reproductive rights/health into the Japanese language, so that it could comprehensively cover sexual and reproductive issues, instead of confining the concept merely to pregnancy and delivery. Prior to 1994, both the Japanese Ministry of Foreign Affairs and the Ministry of Health and Welfare had translated the English term 'sexual and reproductive health and rights' into *ninshin-shussan-ni-kansuru-kenkô-no-kenri*, or 'health and rights of pregnancy and delivery'. 'Reproduction' is indeed not an easy term to translate into other languages. For the Cairo conference, this translation was about to be officially adopted by both ministries. But women's groups did their utmost to prevent this through lobbying and eventually were successful in having the term 'reproductive health/rights' officially translated as *sei-to-seishoku-ni-kansuru-kenri/kenkô*. This term includes not only the processes of pregnancy and delivery, but issues relating to sexual and reproductive health and rights throughout a woman's entire life cycle, such as menstruation and menopause (Hara 1995: 216-218).

During these international conferences women gave presentations that introduced the content and the practice of the Eugenic Protection Law, as a serious case of discrimination against women by the state. For instance, a leaflet entitled, 'What is the Eugenic Protection Law? Sexual abuse of women with disabilities' was distributed during the conference in order to attract participants to a session organised by JNWH.<sup>17</sup> The leaflet stated:

The Eugenic Protection Law is to prevent the increase of inferior descendants. In this case, 'inferior descendants' means people with disabilities. If we have diseases or disabilities which affect our children, a doctor is allowed to give us involuntary eugenic surgery. In Japan, there have been some cases in which doctors exercised eugenic surgery on women with disabilities (they removed the wombs of women with intellectual disabilities).

This happened because women with disabilities are not supposed to have their own children in our society. Staffs in institutions also say that it is too much trouble for them to take care of women with intellectual disabilities when they are having their menstrual period.

Taiwan, Korea and China followed Japan and they all now have similar laws. We are afraid this eugenic ideology is spreading around Asia, due to Japanese leadership.

Every life is equally valuable. Everyone has the right to enjoy her life. We are hoping to have a good discussion on this issue.

The session was held mainly by women from *Soshiiren*, the DPI network for disabled women, and the Japanese branch of Finrrage, a group of women with infertility problems.<sup>18</sup> The content of their session struck a nerve with participants at the conference, and was reported on in a local newspaper in Egypt as well as in newspapers in participants' home countries.<sup>19</sup> This eventually led people in foreign countries to contact the Japan Ministry of Health and Welfare to verify the leaflet's content. The Ministry of Health and Welfare and the Ministry of Foreign Affairs felt pressure to repeal the law, as the statement by LDP Diet member Etô illustrates: 'It would be awful if our Eugenic Protection Law were to be criticised in the United Nations Human Rights Committee or elsewhere' (*Asahi Shimbun* (The Asahi newspaper) 14 February 1996).

Once more, when the revision of the law was proposed, women's movement activists in Japan were confronted with the familiar structure of the 'hierarchy of oppression'. The Ministry explained that 'first, the disabled people's issue is to be solved, and then women's issues will follow later.'<sup>20</sup> As mentioned, some disabled men also argued that women should not neglect the chance to abolish the Eugenic Protection Law, by complicating the argument. Discrimination against woman was thus again taken less seriously than other forms of discrimination.

The disagreements between the disabled people's and women's movements were not only about the name of the would-be law. Five days before the law was officially accepted, male members of *Aoi shiba no kai* sent a letter to Diet members, saying:

We ask you to revise the law no matter what, without getting stuck on the problem of the name of the law, about 'the Mother's Body', partly because, in reality, women in general do not yet have a consciousness sufficient to be able to make decisions themselves. Considering the general situation, it is too early to introduce the principle of 'women's right to self-determination'.

Also, by adding a supplementary rule to the new law, promising to improve the law in order to eliminate discrimination against women, there is a danger that the selective abortion clause could be added in the future. So please never promise women to improve the law for their right to self-determination.<sup>21</sup>

The letter shows distrust of women's decision-making capacity, saying that women are not yet entitled to the right to self-determination. More concretely, it shows their belief that if a woman can make a decision completely at the individual level, she would choose to abort a foetus with an anomaly. So, 'women cannot make decisions on their own' means that women are influenced by prevalent ideas about disabilities. Moreover, the fundamental and well-known scepticism regarding the meaning of 'women's right to self-determination' is expressed here, namely that 'women would abort a foetus with an anomaly in the name of women's right to self-determination, and therefore, women should not be entitled to the right.'

Later on it turned out that the content of the letter did not represent the thoughts of *Aoi shiba no kai*, but had been sent by one member of the group acting alone out of a sense of haste and fear. Yokota, a senior leading member of the group recalls that the letter was not sent with his consent, saying that, 'Upon learning about the letter, I said that women's right to self-determination is not an issue disabled men should interfere with' (Yokota & Yonezu 2004: 70-71; 91). At the same time, however, he also admitted that he had a fear of missing the chance to repeal the Eugenic Protection Law (ibid). It is observable that repeal of the Eugenic Protection Law was an issue of life and death, to be achieved no matter what, for their movement. They felt so strongly about this issue also because reproductive technologies were becoming increasingly advanced and available during this period, which made it more possible to find anomalies in foetuses.<sup>22</sup>

In this political struggle, disabled women were caught between two standpoints. They of course wanted to repeal the Eugenic Protection Law, but since they shared the view about 'women's right to self-determination', they were not completely satisfied with the way the law was revised. To this day activist women with and without disabilities fight together for the abolition of the abortion articles in the Criminal Code, and for a new law on abortion based on women's full reproductive health and rights, which is not discriminatory against foetuses with anomalies.

The Eugenic Protection Law no longer exists. There is no selective abortion clause. Even so, the practices of reproductive technology are becoming more and more widespread among the population and as a result decisions to have an abortion based on the existence of a foetal

anomaly have increased. Furthermore, such terms as reproductive rights and women's right to self-determination, came into use in international debates in a way that Japanese women's and disabled people's movement groups did not agree with. In today's context in Japan – where there are no state laws or policies to impede the well-being of women or disabled people, but there still is discrimination against women and disabled people – SMOs, including women's movements groups, are struggling with the question of how and where they can politically orient their arguments in Japan. As a result the debate surrounding the use of the concept of 'rights' has now entered a new phase in Japan. What is the struggle, what are the points of contention in this current debate in this new phase? This will be discussed in the chapters that follow.



## **6 The Debate on the Notion of Individual, Political Rights after the Repeal of the Eugenic Protection Law**

In 1996, the Eugenic Protection Law was repealed. Although this discriminatory law against disabled people disappeared, it did not mean that discrimination against people with disabilities disappeared or that women's reproductive rights were established. Women's movement groups needed to continue their activities, seeking the abolition of the abortion articles from the Criminal Code and confronting new issues, such as those stemming from the rapid advancements in reproductive technology.

This chapter presents a discussion of the transformations of the debate concerning abortion and rights following the abolition of the Eugenic Protection Law.

### **The main problem after the Eugenic Protection Law: Reproductive technologies**

After the abolition of the Eugenic Protection Law, the aims of women's reproductive movement groups were to revise the Law to Protect the Mother's Body and to delete the abortion articles from the Criminal Code. The women's movement group's now sought the establishment of a law that finally covered the full spectrum of reproductive issues. This struggle took place in the context of the debate on reproductive technologies since the experimentation, development and practise of reproductive genetic technologies involved the use of women's bodies. Reproductive technologies include Maternal Serum Screening (MSS: see introduction for definition), amniocentesis (see introduction for definition), ultrasound and Chorionic Villus Sampling (CVS).<sup>1</sup> Reproductive genetic technologies include Preimplantation Genetic Diagnosis (PGD).<sup>2</sup> This book discusses mainly amniocentesis.

*Players in the debate on reproductive technologies and women's reproductive rights*

*Medical associations, ministries, and the Diet*

Medical associations, such as *Nichibo* (currently Japan Association of Obstetricians and Gynaecologists or *Nihon sanfujinka ikai*, see chapter 2) and *Nihon-sanfujinka-gakkai* (Japan Society of Obstetricians and Gynaecologists, JSOG),<sup>3</sup> are important medical associations. Both groups are composed of gynaecologists and obstetricians. Although they are neither governmental nor part of the Ministry of Health and Welfare, as professional groups they have considerable influence in the medical field, as well as in the decision-making process of the ministries. For instance, *Nichibo* has the authority to certify doctors to perform abortions. Without being certified by this association, a doctor cannot legally provide abortion services.

Research teams in university medical schools also play a major role in advancing reproductive technologies. For example, in 1996, a research team at Kagoshima University was successful in discovering the genes responsible for muscular dystrophy through research conducted on embryos. Following this event, ethical and legal pros and cons for embryo biopsy came to the fore in the medical debate.<sup>4</sup>

The Ministry of Health and Welfare and the Ministry of Scientific Technologies each play major roles in issuing guidelines and regulations on the practice of reproductive technology. In the Ministry of Health and Welfare, there is the *Kōsei-kagaku-shingikai-sentan-iryōgijutuhyōka-bu-kai* (the evaluation committee of high medical technologies in health, welfare, and science) and under this committee are the *Seisho-ku-hojo-iryō-ni-kansuru-senmon-iinkai* (the special committee on reproductive medical treatment) and the *Shusseizen-shindan-ni-kansuru-senmon-iinkai* (the special committee on prenatal screening). Legal scholars and medical doctors sit on these committees. As part of the ministry, the two committees are entitled to formulate and issue guidelines and laws for the use of reproductive technologies. They sometimes also investigate ethical problems in the practice of reproductive technologies. The doctors on the committees act on behalf of the medical associations, and have a critical say in the decision-making process within the committees. The medical associations can inform the ministries about day-to-day practices that are experienced by their doctors, in order to develop optimal legal conditions for their members' practice. Groups of women in reproductive health movements and other social movement organisations (SMOs) currently engage in lobbying to block certain proposals made by the medical associations, research teams in universities, as well as ministries.



Because a law can be modified, introduced, and repealed by a majority vote of Diet members, women's movement groups lobby Diet members. Women's movement groups together with other SMOs sometimes hold study meetings on reproductive issues inside the Diet building, so that Diet members can join in.

#### *Women's reproductive rights/health movement groups*

*Soshiren* currently continues its activities to push for the elimination of the abortion articles from the Criminal Code, as well as monitoring and reacting to attempts to change the legal conditions for abortion, either by medical associations, the state, or anti-abortion groups. Women's groups, including *Finrrage*, also join in these activities, not only because of their concern about technologies for infertility treatment, but also because they learned that fertilised human eggs were being used for experimentation in such technologies as human cloning, something which they oppose.<sup>5</sup> Groups of disabled women, such as the DPI network for disabled women, are also allied with the women's reproductive health groups and cooperate in some of their activities.

Women's movement groups generally share a common aim to monitor the political climate with regard to laws, policies, and guidelines related to reproductive issues. Individual women such as lawyers, Diet members, and doctors are also active, both in political activities and in the ongoing debates surrounding abortion. Movement groups' links with female Diet members are often very important, because female Diet members are in a position to lobby ministries and Diet members. Each of these women's groups organises on its own, but they also form alliances and meet together regularly.

#### *Groups with regard to disabilities*

As genetic research has facilitated the identification of more and more diseases in a foetus, associations of parents with disabled children, such as *Nihon-Down-shō-kyōkai* (the Japanese Association for Down's Syndrome),<sup>6</sup> and other groups of people with genetic diseases (which were discovered through the use of new technologies) are becoming active in monitoring reproductive technologies. They mainly monitor the guidelines issued by medical associations and ministries, to ensure that guidelines do not promote the use of technologies as a way to facilitate selective abortion.

*Aoi shiba no kai* seems to be less visible in this field of debate than it was in the 1970s and 1980s, especially after the repeal of the Eugenic Protection Law. This is also because the main concern of people within *Aoi shiba no kai* is now the establishment of independent living opportunities for disabled people at the community level.

*The opponents of reproductive technologies— collaboration of SMOs across 'women' and 'disability'*

Alliances of groups of women and disabled people are united to monitor medical associations and the ministries especially on drafts of guidelines regarding the use of new technologies. They try not only to work together for the same purpose, but also to strengthen solidarity, in order to find common interests and to understand differences in points of view. Nowadays letters to mention their opinions about the way technologies are practised at hospitals are signed by a list of names of both groups and individuals.

In July 1996, just after the conversion of the Eugenic Protection Law into the Law to Protect the Mother's Body, a group called *karada-to-sei-no-hôritsu-o-tsukuru-onna-no-kai* (Women for an Alternative Law for Contraception and Abortion) was established. *Soshiren* and the DPI network for disabled women were also active in this alliance. The alliance meets monthly. As the group's name suggests, the alliance is aimed at making a new law, based on women's right to self-determination, to replace the Law to Protect the Mother's Body.

In November 1999, just after *Nichibo* presented a proposal to revise the law on abortion, a new network of different groups, called *botaihogo-hô-kaitei-o-kangaeru-network* (a network to examine the revision of the law to Protect the Mother's Body) was established.<sup>7</sup> The aim of this network, which is still in existence, is to discuss the content of the new law for women's fuller reproductive rights on the civil level and to lobby the government and ministries by providing criticism and opinions on the current laws regarding reproduction. This network was initiated mainly by three groups, *Soshiren* as a women's reproductive movement group, *Nihon-Down-shô-kyôkai* as a group of parents with children with Down's syndrome, and *Finrrage* as a group of women with fertility problems.

These alliances are established because questions of reproduction and technologies involve not only women, but also women and men with various other concerns, such as family members of disabled people and groups of people with genetic diseases that are not necessarily disabilities.

While sometimes reluctant to agree that women have a 'right to self-determination', disabled people's movement groups have demonstrated that they are willing to try to understand the opposition these groups have to the abortion articles in the Criminal Code, as well as to learn about the history of oppression and control of women's reproductive capacity.<sup>8</sup> Therefore, these alliances and networks of SMOs who I refer to hereafter as 'the opponents' to prenatal screening, in contrast to medical associations, tried to find commonalities among the arguments put

forth by the different groups that came together in opposition. SMOs are here defined to be those organisations that came together to challenge medical associations with regard to the use of reproductive technologies. 'The opponents' refers to SMOs that believe that patients should not feel pressured to use reproductive technologies and that such technologies should not be used in a way that increases discrimination against disabilities.

### *Anti-abortion groups*

On 1 February 2000, Masakuni Murakami raised a question in the Diet about the deletion of the economic reasons clause, saying 'the clause is the fundamental cause of the lack of respect for life'.<sup>9</sup> For the first time since 1982, Murakami was again prepared to take actions to limit women's access to abortion by revising laws. However, because the director of the religious group *Seichô no ie* had died in 1985, with whom Murakami had a close tie, and Murakami was arrested for bribery in March 2001 and had to leave the Diet, the face of anti-abortion groups at the national level changed. Currently, anti-abortion groups seem to be more based on citizens such as nurses, schoolteachers and housewives, rather than specific religious groups or politicians. The main anti-abortion group is *Seimei Sonchô Centre* (Pro-life Centre), which publishes a newsletter called *Seimei Sonchô News*, develops fundraising campaigns and holds annual meetings called *Seimei sonchô no hi no tsudoï* (a meeting for the day of respect for life). Their position on 'respect for life' is based more on 'the dignity and mystery of nature' (Murakami Kazuo 1998: 2) and 'humanism'<sup>10</sup> than on national economic power, as was the basis for much of the anti-abortion rhetoric in the debates of the 1970s and 1980s. Although anti-abortion groups' activities are now smaller scale than they were during the 1970s and 1980s, women's reproductive health movement groups are cautious about these groups because there is a chance that, given the low total fertility rate and the greying of society in Japan, the members of the anti-abortion groups might ally themselves with the Ministry of Health and Welfare, which aims at encouraging women to have more children in the situation that Japan's total fertility rate is unprecedentedly low.<sup>11</sup>

During the process of the conversion of the Eugenic Protection Law into the Law to Protect the Mother's Body, *Seimei Sonchô Centre* presented demands to the Ministry of Health and Welfare and to the Diet, saying that it was desirable to delete the eugenic part of the law, but not to increase women's access to abortion, nor to abolish the abortion articles in the Criminal Code. *Seimei Sonchô Centre* and other anti-abortion groups also demanded that an article should be added to the new law, saying, 'the life of a foetus is as valuable as the protection of motherhood' (Seimei sonchô centre *Seimei sonchô news* 137(13), 1 June 1996:

10-11). In the end, this article was not added, and since then anti-abortion groups refer to the Law to Protect the Mother's Body, as 'the law to discriminate against the foetus's life' (ibid).

*The position of medical associations and ministries on reproductive technologies*

As genetic research and reproductive technology advance, medical associations as well as university medical school teams are issuing guidelines and suggestions about the reforms of the Law to Protect the Mother's Body. Characteristics of their positions follow, focusing in particular on how they construct arguments about 'women's right to self-determination'.

*Medical practice of technology initiated by an individual client's request*

Since the introduction of the Eugenic Protection Law in 1952 up till today, abortion of a foetus because an anomaly has been detected has been done under the economic reasons clause, or a 'loophole'. Selective abortion under the economic reasons clause is, technically speaking, illegal.<sup>12</sup> Because doctors do not want to risk breaking the law, debate from the medical side has concentrated on reforms of the Eugenic Protection Law and has been directed on issuing guidelines about the range of medical applications including the use of reproductive genetic technologies and selective abortion. In the doctors' claim for a legal guarantee for their medical practice, their basic reasoning is that 'there are demands from clients for the practice of reproductive genetic technologies' as the citation shows below:

Prenatal screening is practised only when couples, or would-be-parents, expressed a need for its application. They visit us in medical institutes for counselling, and technology is applied when they ask for it. There are a number of types of diagnostic procedures, but the choice of diagnostics follows from the discussion between a couple and the medical doctors.<sup>13</sup>

This approach to carrying out prenatal screening is based on the idea that doctors should be able to fulfil clients' demands, because a doctor is supposed to offer service if possible. Another citation from the doctors states:<sup>14</sup>

There are infertile women who really want to have a child. At the same time, to hope for a healthy child is not necessarily ethically problematic. When a woman visits us for treatment, we, as medical doctors, cannot tell them that they do not have to give birth,

as long as there are technologies that might enable them to give birth. We are dealing with an individual woman as a patient who visits us, not women in general. [...] With regard to prenatal screening, this is practised in accordance with a couple's self-determination. [...] Thus by honouring the requests of clients, we are trying to contribute to the 'right of women to give birth'.

Thus, medical doctors do not want to say 'no' to clients' requests for prenatal screening when there is an opportunity to satisfy the requests of their clients.<sup>15</sup>

*'World trend' to justify the practice of technology*

Another reason why it is difficult for doctors to say 'no' to clients' who request prenatal screening or fertility treatment, is that for doctors, being able to treat patients using the most up-to-date technologies is a criterion for demonstrating how capable they are as medical professionals. In Japan, some doctors run private clinics, and a good reputation, which would include demonstrable knowledge of the latest technologies is important in order to attract clients and remain financially viable. Indeed, it is plausible for clients to think that the more advanced technologies a doctor can use, the more professional the doctor is, and that doctors with the most recent information are more energetic, enthusiastic, intelligent and therefore, more reliable. In the medical associations documents it appears that doctors do not want to lag behind their peers in other countries in terms of use of the most advanced technologies.

In order to justify the introduction of the practice of new reproductive technologies, medical associations often refer to the World Health Organisation (WHO) guidelines and the criteria of other technologically developed countries. For example, when the Japan Academic Society of Gynaecologists and Obstetricians announced in 1998 that they were going to broaden the indicative range of embryo biopsy in use, they simply said:

Nowadays clients ask for an embryo biopsy. [...] According to trends in the world, technologies for artificial fertilisation and embryo biopsy are more and more accepted. [...] Therefore, we intend to practice this technology by enlarging its indicative range.<sup>16</sup>

Thus it is observed that the justification for the use of technology by medical associations is based on client demand, and in order to further justify the use of these technologies, world trends are cited. The reference to 'world trends' also has to do with justification in terms of safety,

according to the reasoning that because the technology has already been used in such-and-such a country, it is safe.

This way of reasoning, citing respected international organisations, is often found in a number of fields in Japan. The positions of such organisations as the WHO and the UN on issues are sometimes held sacred by medical associations in Japan. This situation can serve a positive function for social movements; for example, terms such as 'women's right to self-determination' and 'reproductive rights', which were legitimized by their use by international organisations, are now widely used in Japan. Today, nobody, either at Japanese medical associations or within government, would reject these terms.

However this tendency to be influenced by the position of international organisations can also have a negative impact on the lobbying efforts of local organisations who might have different positions on the issues. As will be shown, there are critical differences in the interpretation of women's reproductive rights and rights to self-determination between Japanese medical associations and women's reproductive movement groups.

#### *On women's right to self-determination and reproductive rights*

For medical associations the concepts 'women's right to self-determination' and 'reproductive rights' are synonymous with the fulfilling the requests of their clients in a situation where sufficient information has been provided. Doctors see one aspect of their role in facilitating the implementation of women's right to self-determination as giving guidance to clients from a neutral position. Hence medical associations use the term 'right to self-determination' as if it is another expression for 'informed consent' and 'right to privacy'.<sup>17</sup> Based on this understanding, medical associations argue that legal adjustments are necessary for the practice of new reproductive technologies, in order to enhance women's rights to both self-determination and reproductive rights. Here the immediate or future impact of a technology on society is not doctors' main concern.

Actually, in the name of 'enhancing women's rights to self-determination' *Nichibo* presented an idea for a proposed new law in March 1999. They recommended that 'a selective abortion clause for individual women should be introduced. At the same time, abortion during the first 12 weeks of pregnancy should be legal on the demand of women, without specific conditions. This is for women to enjoy the "right to self-determination".'<sup>18</sup>

This proposal was opposed by both women's movement groups as well as disabled people's groups, and was not introduced to the Diet. In August 1999, *Nichibo* made another proposal, saying: 'abortion within

the first 12 weeks of pregnancy is based on women's rights, hence women can have an abortion given the consent of the pregnant woman. After 12 weeks, the condition is: In the case of a possibility that continuation of pregnancy and delivery might damage the mother's health due to physical, mental, or social reasons.<sup>19</sup>

The content of the proposed law was actually 'silent' about specific indications in which 'selective abortion of a foetus with an anomaly' would be legal. This proposal was again rejected by both women and disabled people's movement groups, and as a result was not introduced in the Diet. The proposals show that within medical associations the understanding of the concept of 'rights' is based primarily on the principle of right to privacy.

### **Individual doctors and their perspectives on women's right to self-determination**

So far I have described how the concept of women's right to self-determination was interpreted by medical associations. These associations want a law that legalises abortion on the grounds of 'women's right to seek happiness', which would include having a child without an anomaly. Therefore, they want a law that legalises selective abortion without specifically referring to a foetal anomaly as legal grounds for abortion. However, during field research in Japan in 2006 and 2007, I found that some individual obstetricians have opinions that differ from those of medical associations, on issues such as the practice of selective abortion, having a child with an anomaly, or what the law for abortion should be. I would like to share what I learned regarding how obstetricians deal with the application of reproductive technologies, selective abortion, and the concept of self-determination during interviews I conducted with 11 individual obstetricians in 2006 and 2007 in Japan.<sup>20</sup> I think this is useful in illustrating that debates on the issue of selective abortion are never monolithic, nor are the issues relating to selective abortion, such as the implication of self-determination, or the issue of who the women are when we refer to 'women's rights'.

The doctors I interviewed during field research reported that they did not actively talk about prenatal screening options (including amniocentesis and maternal serum screening) with their patients because (1) they are aware of the eugenic past of Japan and are afraid of being labelled as eugenic practitioners, (2) they do not think that having a child with an anomaly is always so bad, (3) if doctors refer to prenatal screening, patients tend to interpret this as a recommendation that they undergo screening tests and doctors want to avoid this because it would feel like doctors are preventing patients from practicing self-determination, (4)

selective abortion is, technically speaking, illegal in Japan, and (5) they generally do not like to perform abortions (Kato 2007).

Unlike medical associations, individual medical doctors did not appear to consider that having a disabled child is an obstacle to women's happiness. This attitude towards having a disabled child stems from two facts: Firstly, individual medical doctors have more opportunities to see children with anomalies and they consider having an anomaly not necessarily such a tragic event, as is widely viewed in society. Some doctors mentioned that Down's syndrome, for example, which is one of the main disorders that prenatal screening is used to detect, is not such a severe abnormality that the foetus should be aborted. Doctors also said in their experience that although young parents are shocked in the beginning, no couples remain unhappy forever: They start loving their children with anomalies. Secondly, doctors know that referring to prenatal screening, as a form of information provision, can be easily understood by patients to be a recommendation to have prenatal screening. Therefore, they do not want to mention prenatal screening because they do not want to 'guide' patients but they want to stay 'neutral'. Otherwise they risk being accused of recommending that their patients have prenatal testing. In this situation, for individual doctors, not mentioning prenatal screening could be perceived as exercising respect for a patient's right to self-determination. At the same time, a doctor is exercising his right to self-preservation – i.e. not risk being accused of inciting people to break the law.

In this way, medical doctors and medical associations have different positions on selective abortion. The way in which self-determination is understood and practised by individual doctors might differ from that of medical associations, too: as mentioned, self-determination as understood by medical associations is equated with 'access to prenatal screening, selective abortion, and a right to seek happiness', while self-determination by individual doctors tends to be understood to be 'decision-making where there is no intervention by medical doctors'.

Similar is the diversity within one category 'women'. There is a term 'womens' rights', but a question arises here whether women's movement groups represent women's needs in general: Discussions by women's movement groups on reproductive technologies and those by individual women may differ. The question of the category 'women' is addressed later in this chapter and chapter 7. In this way, the same terms such as 'self-determination' or 'women' have different meanings and imply different issues from group to group, such as doctors and women. There are different meaning and issues regarding concepts of rights and self-determination due to different levels of involvement, experiences and expectations according to the background of different actors. Empirical research can demonstrate the diversity of conceptual



meanings and terminology, and their implications, among different actors. In this book I focus on the analysis of public debate.

### *Arguments from the opponents*

The following excerpt presents the interpretation of the concept of women's right to self-determination by *Soshiren*:

Firstly, women's sexuality and bodies are to be respected socially. Secondly, we should oppose population control and eugenics, which use women's bodies. Thirdly, women themselves decide whether to give birth or not. But this does not include selection according to whether the foetus has a disability or not. Fourthly, to oppose pressure or coercion towards any of the following: giving birth or not giving birth, contraceptives, sterilisation, or sexual preferences. Lastly, women's right to self-determination is based on a society where no women and no children are discriminated against, whether a woman gives birth or not, a woman has a disability or not, a child is male or female, and has a disability or not (cited by Yonezu, in *Soshiren news* (157) 28 July 1998: 4-5).

These points made by *Soshiren* are given in order to refute the medical associations' argument about women's right to self-determination; based on the original aims of *Soshiren's* establishment, as well as the group's activities over a period of more than 20 years.

### *Denial of the attribute 'disability' inherent in reproductive technologies*

Medical associations state that prenatal screening technologies do not target all diseases but actually are only used to detect serious diseases, for which there are no medical remedies, and when it is clear that the disease would lead to the death of the child. However, opponents to the use of these screening technologies state that screening only strengthens the negative ideas about the diseases, and violates the human rights of people who are already living with these diseases. Opponents to screening criticise the value attached to the eradication of disability; they feel that screening implies that the eradication of disability is ethically justified; however opponents to screening disagree.

The fundamental criticism of prenatal screening by those who oppose it is based on their fear that screening promotes the, in their view, incorrect idea that to be ill or disabled causes unhappiness to a person, family, and society. In their view there are a number of people who assert that they are happy living with disabilities and/or with disabled children. The opponents to prenatal screening problematic the implicit jud-

gement about disabilities made by medical associations when they support such screening processes, since the position of these associations play a powerful role in influencing public opinion.

Opponents to prenatal screening also believe that such technology, which position disabilities as a cause of unhappiness, will NOT encourage society to mitigate discrimination against and improve the position of disabled people. Disabled people feel that their existence is denied because selective abortion is an act of 'eradicating' beings because of a certain attribute.<sup>21</sup> The introduction of the selective abortion clause, which identifies 'a disability' as a reasonable motive for abortion, would 'signify that the law indicates who should be born and who should not be born'<sup>22</sup> by raising 'norms about who is socially fit and who is not'.<sup>23</sup> In their view, this would eventually lead to the conclusion that disabled people are actually not supposed to be members of society.

Moreover, according to opponents to prenatal screening, to stigmatise the birth of people who have diseases that can be detected by reproductive technologies would decrease interest in developing the medical skills needed to 'cure' these same diseases. For example, Mariko Tamai, who is a clinical psychological counsellor, as well as the mother of a child with Down's syndrome, argues as follows:

In 100 years, people with Down's syndrome might be very rare in society. But there is always a chance that children with Down's syndrome might be born. What if a woman gives birth to a Down's syndrome child in such a situation? And people with Down's syndrome would be marginalised, having more and more difficulty living in society, being talked about behind their backs: why are they born while it is possible to avoid having them born? (Tamai 1998: 114).

Of course there will never be a situation where there is no disability, no matter how advanced technology is. So one might argue that the development and practice of prenatal screening technologies would not marginalise disabled people. However, this argument must be rejected for two reasons. Firstly, note that within the category 'disability' there is also a certain hierarchy. It is reported that those with acquired disabilities tend to feel superior to those with innate disabilities or hereditary disabilities, and those with curable disabilities look down upon those with incurable disabilities. Technologies might be able to detect an increasing number of disabilities prenatally, which might make it possible to medically treat these disabilities in fetuses and newly born babies. This can be considered a positive function of such technologies. Yet, it has to be kept in mind that a hierarchy of oppression within the category 'disability' remains as long as disabilities never completely disap-

pear. For the time being, what technologies can do is to shift the borders of such a hierarchy (regarding who is superior to whom) within the category of disability. The shifting of such borders could for example serve to marginalise even more those whose disabilities cannot be treated medically, in contrast to those whose disabilities are treatable. Even within a group of people with the same disability, those with a mild disability tend to look down on those with severer levels of disability.

Secondly, Yokota and Yonezu argue that even if certain disabilities are totally eliminated through the implementation of prenatal screening technologies, other physical and/or mental phenomena, which are not currently categorised as a 'disability', will be categorised as disabilities at a later stage. Finally, even those who walk more slowly or more quickly than others, very tall or short people, those who eat much more or much less, and so on, endlessly, might be categorised as disabled people. Everybody, in the end, 'gets old', which actually means to become 'less able'. Then elimination of a predisposition toward all these conditions would be endless, and there would be nobody in society in the end. Yonezu concludes, 'As no single person is perfect, and as nobody's life is without obstacles, humankind does not have to be uniform or "perfect". Accordingly, the idea of trying to eliminate all the "unusual" phenomena in itself is even pathological (which is the fundamental value inherent in the practice of selective abortion and in some reproductive technologies).'<sup>24</sup>

It should also be clarified that while disabled people fight against the ideas that deny their disabilities, and wholeheartedly believe that their disabilities and disabled bodies are viable in society too, this does not necessarily mean that they refuse to receive medical treatment to improve their physical condition. Rather, it is perhaps necessary to transcend the dualism of 'health', as positive, versus 'illness', as negative.<sup>25</sup> For example, Susan Wendell, a feminist philosopher, who has Myalgic Encephalomyelitis/Chronic Fatigue and Immune Dysfunction Syndrome (ME/CFIDS), states:

I find that my own resistance to the attitude that I need to be 'cured' in order to be a whole or fully acceptable person infuses my desire for a 'cure' with ambivalence. I want to have more energy and less pain, and to have a more predictable body; about that there is no ambivalence. Moreover, I feel heartache when I hear about someone being diagnosed with ME; how could I not want a cure for everyone else who suffers from it? Yet I cannot wish that I had never contracted ME, because it has made me a different person, a person I am glad to be, would not want to have missed being, and could not imagine relinquishing, even if

I were 'cured'. For example, I cannot imagine that I would ever stop identifying myself as a person with a disability, and when I think about the probability that others would stop identifying me as one if I were 'cured', it is hard to imagine how I would deal with the dissonance. Perhaps the best summary of my attitude toward 'cure' is this: I would joyfully accept a cure, but I do not need one. If this attitude toward 'cures' were taken for granted in my society, then the search for them would not be accompanied by insulting implications, as it often is now (Wendell 1996: 83-84).

Yonezu, who was infected by poliovirus in childhood, and is active in women's reproductive health movement, shows a similar way of thinking about 'cure' and 'benefit from living with disabilities':

Medicine is developed for the convenience of state interests [cost-benefit and efficiency in economic and productive activities]. Therefore, for medical associations, 'disability' is merely a case study, but not what is to be treated for the enlargement of human potential. We cannot ally with such a medical system. But at the same time, I feel anger about the fact that the possibility of treatment has been prevented because we cannot ally with medical associations, on account of their being how they are. As long as medicine is allied with the state's interests, we cannot take the opportunity, being bound by disabilities for our whole lives.

I request that medical associations make an effort to mitigate disabilities for our human potential. Achieving this means nothing other than drawing medical doctors toward disabled people's side from the state's interests. Disabled people are wonderful just being how they are. But to affirm disabilities and to desire for mitigation of disabilities will never contradict each other. We have not been able to say easily that we want our own disabilities to be cured. Now we demand a medical system in which we can honestly say that we want our disabilities to be cured! (Yonezu 1975)

Pointing out the link between the state and the medical system in terms of interests in social and economic efficiency, Yonezu also emphasises that the advancement of reproductive technologies to eradicate the existence of people with disabilities will eventually prevent the development of medical treatment to mitigate or cure disabilities.

To have a disability may well often be inconvenient. Most of us would find it better to be without disabilities, in order to move and think freely. Therefore, one might argue that preventing the birth of disabled children is a benefit for the future of humankind.

The opponents of prenatal screening technologies who are active in SMOs argue, however, that there is always a possibility of giving birth to disabled children. The practice of selecting and eradicating deformed foetuses, they say, would lead to pressure on pregnant women to give birth exclusively to disability-free children.

These opponents to prenatal screening are not criticising individual women who might have selective abortions of foetuses identified as having deformities. They are aware that selective abortion of such foetuses might sometimes be necessary for women on some occasions, just as abortion is sometimes necessary for women. Prenatal screening technologies are also sometimes used to prevent the death of foetuses with anomalies. Some people are also of the opinion that information about an anomaly of a prospective child provided through screening technologies makes it possible for prospective parents to prepare mentally and to make physical/logistical preparations for the arrival of such a child, for example by raising their awareness of the disorder. One paediatrician, Kazusô Inuma, for example, reports that he has been trying to promote maternal serum screening with the intention of enhancing understanding of pregnancy among pregnant women so that they can understand what prenatal screening is and decide whether to have it done. In the event that an anomaly is discovered through such screening, he says, the prospective parents can prepare themselves for the birth of the child with proper knowledge of the anomaly, instead of being shocked by the sudden news when the child is born (website of the clinic of Dr Inuma: <http://www.ig-clinic.com/>). A genetic nurse, Naoko Arimori, also points out the necessity of patients becoming more knowledgeable about pregnancy and risks of pregnancy ('wise patient') (Arimori 2005: 117-122). Each pregnancy is different. During field research, I came across a number of couples and women who are grateful for the role that prenatal screening technologies played in saving the lives of their disabled children.

The main concern of those who oppose the use of prenatal screening technologies is that the development of technology, which is based on the devaluation of disabilities, would probably not lead society to a future in which conditions are improved for the lives of disabled people. On the contrary, according to them, the technology will further stigmatise people who are born with a disability. So, if these technologies are used, then there should be a simultaneous effort by society to eliminate discrimination against people with disabilities. In this way, the opponents point out the link between the fundamental value of the technolo-

gies and the future of society guided and constructed by certain values. They conclude that some reproductive technologies, specifically prenatal screening technologies, will lead to more difficulties for both women and disabled people.

*Positive steps end discrimination against and negative perceptions of people with disabilities: A responsibility of the medical professional*

Most opponents to prenatal screening technologies do NOT propose that the practice of selective abortion of a foetus with an anomaly should be prohibited, nor do they blame individual women for choosing to have a selective abortion of such a foetus. The problem, in their view, is the context in which selective abortion is practised, and the assumption that 'to be disabled causes unhappiness'. Of course they believe abortion should be accessible to women upon demand, but in the current context, if a disease is discovered in a foetus, it is likely that many women will choose to have an abortion, because society in general, including doctors and many women, would not challenge the assumption that a disability is a cause of unhappiness.

Those who oppose prenatal screening believe that if abortion of a deformed foetus is legal, giving birth to the child and in a welcoming environment should also be an available option. In this regard, the opponents argue that there must be positive policies or activities to end discrimination against people with disabilities and/or the negative perceptions that currently exist about people with disabilities. Getting rid of these cannot be done only by one individual, by women's reproductive movement groups, or only by other SMOs, but requires a collaboration of all kinds of social groups, including the powerful. In this regard, the opponents criticise the attitude of medical associations. The opponents' criticism is that, 'By claiming that women initiate prenatal screening it sounds as if doctors are avoiding taking responsibility for any ethical problems connected to the use of such screening technology'. They believe that doctors would escape from their responsibility for the practice of prenatal screening when the practice of reproductive technology is questioned whether it is eugenics or not, by saying, 'my clients decide to undergo prenatal screening, not I. I did not mention anything about prenatal screening'.<sup>26</sup> Since the practice of prenatal screening and selective abortion of foetuses with anomalies carries ethical problems, and because social cooperation is necessary to change conditions so that the birth of a disabled child would be welcomed, the opponents assert that medical associations and governmental ministries have the responsibility to eradicate discrimination against people with disabilities. The DPI network of disabled women, for example, argue that doctors themselves should get rid of their eugenic thoughts,<sup>27</sup> and

positive policies should be enforced to get rid of biased ideas about having disabled children.<sup>28</sup>

A question remains concerning whether we want to give this responsibility to doctors, in the light of self-determination. I would answer this question in the following way, echoing the position taken up by those who oppose prenatal screening: it is doctors who develop and practice screening technologies. They also have the power to issue guidelines and laws that profoundly influence the lives of citizens. Lay people, on the contrary, are 'powerless' to improve the ways in which technologies are practised, because of the skill and knowledge that doctors have acquired and the fact that doctors deliver these services. Although governmental ministries and other related organisations frequently ask lay people for opinions about guidelines, lay people require considerable time and effort to understand medical jargon and concepts, let alone to raise critiques. In the meantime, the technologies become even more advanced. Decisions to practice a new technology are also made in the closed circle of the medical field, although the technology intimately permeates our daily lives.

Therefore even if we do not want to grant them power, the fact is that doctors already have power, because of the medical skills and knowledge they have. Both lay people and doctors have to start by acknowledging this fact. Since this power is not shared by lay people, doctors do have an ethical responsibility to develop and use the skills they have. This does not mean that lay people have no responsibilities. They may not have medical skills, but they have a responsibility to develop their opinions and share these with doctors and the government. This is actually what the opponent to prenatal screening is doing. For doctors to be ethically responsible, they need to listen and act upon the concerns of the opponents to current and future technologies, as they have important insight into and unique perspectives on the sometimes negative impact of medical practices.

Moreover, because of the power of doctors, they cannot be neutral in relation to their clients' decision-making processes. Doctors need to be aware of their influential position and need to understand the fictitious nature of 'neutrality'. While doctors argue that the practice of screening technologies is based upon an individual woman's request, in the process of decision-making a woman takes into account the opinions of her doctors in one way or another, although to what extent differs in each case. Because technology is never value-neutral, those who develop the technology, those who have an influence in making guidelines and laws, and those who have the knowledge to use it, cannot avoid their responsibilities. Those who are privileged and powerful ought to exercise these advantages responsibly, especially because they hold the power to influence the lives of those who do not have the skill and knowledge to

use the technologies. So, acknowledging the given power relation means that doctors should stop claiming that they are neutral; doctors cannot be neutral, and doctors cannot avoid having an influence on clients' decision-making. Therefore it could be said that doctors have a considerable influence and responsibility to take steps to correct problematic values that exist in relation to these issues. In order to define what is problematic, to discuss how problems need to be corrected, and to develop ethical guidelines regarding the practice of reproductive technology doctors need to more actively seek the input of more SMOs.

### *Critiques of 'world trend'*

The opponents to prenatal screening are reluctant to employ 'world trends' as criteria for judging the ethics inherent in reproductive technology, including prenatal screening, since guidelines that are issued at an international level are often based on the assumption that having a disability is negative and that aborting a foetus with a disability is justified.

Kôdô Satô, a gynaecologist/obstetrician who opposes the introduction of a selective abortion clause in Japan, has concluded that the standards and guidelines proposed by the WHO are not free from negative ideas about disabilities. He believes that it is problematic simply to refer to European and North American situations as examples of prenatal screening and as criteria for selective abortion. Citing Modell, Kuliv, and Wagner (1991), who were entrusted by the WHO with analysing the practice of prenatal screening in Europe, Satô suggests that the development of the ethical logic about prenatal screening in Europe is as follows:

The number of people with hereditary diseases might increase because foetuses with sickness do not die as easily as before.  
 → Policies are necessary to deal with foetuses with diseases.  
 → Therefore, genetic advisors should not just give advice to people who visit a genetic counselling clinic, but in order to decrease the number of births of sick foetuses, such as babies with Down's syndrome, mass screening should be more positively recommended by the genetic advisor (Satô 1999: 60-61).

He criticises the fact that this rationale for prenatal screening does not question whether selective abortion leads to discrimination against people with disabilities. On the contrary, the logic assumes, as axiomatic, that deformed foetuses should be aborted.<sup>29</sup> Like the opponents' perspective described above, Satô's view is also based on worries about future society being guided and constructed by reproductive technologies' values about disabilities that might lead the society to severer discrimi-



nation against people with disabilities. Once the development of technology is started based on the view that a disability is a cause of unhappiness, the future lives of disabled people will be no easier: they will be stigmatised, or pitied at best. This is contrary to the aim of eliminating discrimination.

Describing processes of counselling taking place in European countries, he goes on to say:

The WHO guideline for Europe is based on 'informed consent without intervention' and 'the decision should be made on an individual level'; however, as there is thus definitely an idea that deformed fetuses should be decreased, the counselling itself is hardly neutral, but is in reality instructive. The counselling taking place in Europe and North America in reality functions to convince clients that abortion because of a disability of the foetus is ethically not problematic.

The WHO has been promoting mass screening, using the principle of self-determination according to the way the principle is used in Europe (Satô, 1999: 115-116).<sup>30</sup>

Finally, Satô concludes that, 'Although Japanese medical associations argue that prenatal screening is widely practised in European countries because these countries have thorough counselling systems, the reality is that children with Down's syndrome are thus thoroughly discovered and aborted' (Satô 1999: 54-58).

Ritsuko Sakai, a journalist, after researching the counselling system in England, also observes that each act of counselling is aimed toward a decision to abort a deformed foetus in the end, although counsellors never say what the decisions should be (Sakai 1999: prologue; chapter 1). Certainly the opponents in Japan would not accept this practice as ideal.

*Are 'struggle' and 'no regret' signs of 'responsible' decision-making?*

Often the selective abortion of a foetus with an anomaly is justified on the grounds that the decision was good because the pregnant woman 'struggled' to make her decision, or that she had 'no regrets' after the decision (Tamai 1998).<sup>31</sup>

The Japanese clinical psychological counsellor Tamai points out a trap in this logic. She argues that in many cases, the conclusion is already there, in other words, the decision has already been made to have an abortion, and the struggle is actually a process to convince oneself ethically that having the abortion is justified. In this way, 'struggle' is becoming a justification to abort a foetus with an anomaly (ibid). Tamai also points out that in the some context medical associations' use of

'self-determination' is not correct, because in practice the choice to give birth to a deformed foetus does not have the same meaning as the choice to abort a deformed foetus. Yonezu and Yokota also point out that the term "self-determination" used by medical associations, is "self-determination" when there are no other choices than selective abortion. Furthermore, if a woman, knowing the foetus is disabled, chooses to give birth to a disabled baby, the principle of "self-responsibility" will possibly be imposed on women. This situation is only putting more pressure on women' (Yokota & Yonezu op. cit: 84-86).

Tamai's criticism is NOT aimed at individual women who choose to abort a foetus that has an anomaly. The problem is that decision-making is not acknowledged in the context of problematic values in the social context in which decisions are made. Nor is decision-making recognised to be taking place in the context of future social reform with the intent to reduce women's struggles in reproductive decision-making about a foetus with disabilities.

Tamai's point is that debates in society need to go beyond 'if a woman struggled, the decision is ethically not problematic'. Behind this logic is actually the belief that 'it is reasonable to abort a foetus because it has a disability'. She stresses that the attitude not to question this belief will not create a society in which there is less discrimination against people with disabilities. Her criticism is geared to medical associations and the ministries in particular.

As mentioned earlier in chapter 2 and 3, many women considering abortion of a foetus with an anomaly have expressed feelings that 'I wish I could give birth, but in the given social conditions, it is not yet possible to do so,' 'I myself do not discriminate against disabilities, but I am not strong enough to fight against the bias around me,' and 'I feel sorry because the child would be made fun of by others for his/her whole life.' Questions in the decision-making process when deciding whether to terminate a pregnancy if the foetus has been found to have an anomaly might be even more concrete: 'What special and extra things must I do after the birth of this child? Where is an appropriate school or a job for this child?'<sup>32</sup> In the decision-making process, women would weigh the expected extra tasks of having a disabled child and the level of social support. Thus, social conditions are highly relevant in the decision-making process, and therefore the decision and its meaning should be viewed in relation to social values.

Indeed, discrimination is too powerful for one individual to fight against. The opponents to prenatal screening are in favour of providing solidarity to fight against discrimination against disabled people, and to improve the social situation of disabled people, so that a disabled individual could live in better conditions. To this end, people in disabled people's movement need the cooperation of governmental ministries and

doctors to end discrimination against people with disabilities, instead of merely accepting the status quo. To justify selective abortion of foetuses with anomalies in the name of 'struggle' or 'no regret' is not sufficient to bring about a reform of the problematic status quo currently faced by disabled people in Japan.

### **Reproductive technologies use women's bodies**

Most reproductive technologies practiced on women are invasive. In order to fertilise an egg in a test tube for fertility treatment or to perform an embryo biopsy an egg has to be removed from a woman's body via a medical procedure. This procedure is considerably more complicated than obtaining sperm from men.

Not only physically but also psychologically, women carry more of the burdens of reproductive technology. For example, as Yokota states, there is the perception within Japanese society that having disabled children is the women's (or mothers') fault (Yokota & Yonezu op. cit.: 75). Choosing not to have prenatal screening, despite access to such technology, requires an enormous determination from a woman.<sup>33</sup>

For these reasons, the opponents, especially women's groups, argue against the use of some reproductive technologies.

#### *Contrasts between the opponents and medical associations in the meanings of 'women's right to self-determination' and 'reproductive rights'*

According to Japanese medical associations, women's right to self-determination means that individual women can have access to the procedures they want, namely, prenatal screening and abortion of a foetus with an anomaly, without interference. The decision to make use of available reproductive technologies ought also to be based on sufficient information, according to the medical associations. Rights here are about 'accessibility', 'voluntary decision-making', and 'privacy', which are almost synonymous with informed consent by an individual.

These are plausible characteristics of 'rights', given the nature of medical practice. Interaction between a client and a doctor ought to happen confidentially, in a closed circle, on the individual level. Hence, in principle, one client's request should ethically have nothing to do with another's; the social meaning of one individual's decision is not supposed to be questioned, as long as the decision does not directly harm others. Because optimal medical practice is the primary concern of doctors, to broaden the *legal* options of the medical practice is likely to be the doctors' major concern.

Some doctors argue that 'to abort a severely deformed foetus is a mother's right to seek happiness'. This logic implies two things. One is that raising a severely disabled child is difficult in the current situation. Therefore, if there is a request from a woman to check for, and to abort, a severely deformed foetus, because having a disabled child is negative and difficult, this is 'a mother's right to seek happiness.' The other meaning implied in this statement is that, technically, the abortion of a deformed foetus specifically because it is deformed is not legal under the current law because there is no selective abortion clause that allows this. In Japan, abortion is legalised under economic reasons clause and sexual assaults. More than 99 per cent of abortion is carried out under the economic reasons clause. Because women ought to have the right to be able to choose this alternative legally, medical associations are fighting for the introduction of a selective abortion clause in the name of 'women's right'. According to medical associations, it is merely the offer of a possibility, and it is not intended to say that all women must choose to abort their deformed foetuses. Decisions are made on a private, individual level, and therefore neither a selective abortion clause nor decisions to abort deformed foetuses symbolise discrimination.

However, the opponents to prenatal screening are sceptical about these arguments. There is a crucial problem in the given assertion that 'to abort a heavily deformed foetus is a mother's right to seek happiness'. It is indeed implied that abortion of a foetus with an anomaly is decided by individual decisions, leaving room for the possibility to abort or to give birth to a disabled child. But the problem lies in the fact that the existence of a disability matters, in that there is a social condition where disability is defined as a cause of unhappiness and a hindrance to women's right to seek happiness. This logic is ethically hardly questioned. The opponents' point is the fact that it is more difficult to rear disabled children in the current social context and that in itself constitutes discrimination against those with disabilities as compared to those without disabilities. People from the disabled people's movement declare that lives with disabilities are not always unhappy, or even 'we are happy because of our disability', so it is judgemental to define the future of a disabled child as unhappy.

Moreover, the opponents to prenatal screening argue that doctors already let women practise eugenics through self-determination, but women in the reproductive health movement refer to this as 'a twisted concept of women's right to self-determination' (Yonezu 2002: 234). For instance, during the 10th meeting of the evaluation committee of high medical technology under the Ministry of Health and Welfare on 22 June 1998, the discussion focused on how to make it possible for doctors to fulfil an individual's request to have a selective abortion, without introducing the selective abortion clause into the law. Doctor

Ichiro Matsuda suggested that the criteria to allow a woman to have an abortion should be: 'women's psychological and physical burden from pregnancy and delivery'. Linking 'women's right to self-determination' and 'selective abortion' should logically be as follows:

As the WHO declares, women have a right to decide to give birth or not to is the most important. → The decision-making is related to the level of the disability of the foetus. → The judgement of the severity of the disability should be left to the pregnant women with sufficient provision of information. → Thus, if 'pregnant women's psychological stress' is postulated as an indication for legal abortion, there is no need for introducing a selective abortion clause. With this indication, in practice, medical doctors can legally provide a selective abortion, and women can have a selective abortion (*Soshiren news* (157) 28 July 1998: 4-6).

Yonezu, of *Soshiren*, responds to this logic as follows: (1) According to this logic, women's right to self-determination is synonymous with the elimination of disabled people by means of individual women's bodies. In other words, Doctor Matsuda assumes that all women would choose to have an abortion. (2) This argument fails to consider social reforms which aim to create a situation where there is no social difference between the choices about whether to give birth to a child with or without disability.<sup>34</sup>

A worry about 'privacy' is also expressed by the women's movement. Abortion is an individual matter in which the state should not intervene. However, making abortion issues 'individual privacy' is problematic as well. In the name of 'privacy' the state might fail to make an effort to provide safe abortion. It might also fail to eliminate dominance in the private sphere, such as men's dominance over women, as well as discrimination against those with disabilities. In the name of 'privacy' the state might fail to provide conditions and contexts where private rights can be exercised by its citizens. In this way, the opponents to prenatal screening argue that the fact that the state does not have any discriminatory laws is not sufficient to guarantee women's right to self-determination or to eliminate discrimination against those with disabilities. On the contrary, by being 'silent' the state might be an accomplice to impeding the exercise of women's and disabled people's right to self-determination.<sup>35</sup>

It should be noted that the meaning of eugenics has changed in the period following the Eugenic Protection Law, because of the rapid advancement of reproductive technology. Under the Eugenic Protection Law (1948-1996), eugenics meant state intervention to control the quality of the nation's population. Indeed, the concept of eugenics tends to

be linked to statutory policies and laws, or the institutionalised form of discrimination of disability. But now, when social movement groups in Japan refer to eugenics, this usually means the informal but widely accepted idea that 'it is better to have a disability-free child than to have a disabled one'. In the view of Japanese SMOs, technology aims to discover and eliminate disabled beings, and thus, medically, eugenics is practised at the level of the individual. People within the women's movement call it 'modernised eugenics' or 'eugenic practice by means of an individual women's body'. In this view, when people in social movement groups use the terms 'coercion' or 'force' these terms mean 'silent pressure' exercised by dominant values and norms relating to reproduction and disability, rather than institutionalised pressure (Yonezu, in *Soshiren news* (173): 5-6).

*Debate about women's right to self-determination amongst the opponents*

The opponents to prenatal screening agree in principle that the state should not intervene in women's reproductive decision-making. Therefore they agree that the abortion articles which place limitations on women's access to abortion should be deleted from the Criminal Code. They also maintain that reproductive technology, such as prenatal screening, impedes the implementation of women's right to self-determination, through 'silent pressure'.

Groups representing disabled people, as well as parents' associations of disabled children are reluctant to use the phrase 'women's right to self-determination' in their arguments against prenatal screening (Yonezu op. cit.: 235). They suspect that women in general would choose selective abortion if self-determination gave them the right to do so. In this situation, a question raised by SMOs who focus on disability issues is: Is it in line with their position on the issue of prenatal screening to use 'women's right to self-determination'?

The issue of the selective abortion of a foetus with a disability, involves both a woman and a deformed foetus. So who does 'self' refer to here? Only the pregnant woman, or does this include the foetus? Is the foetus part of the pregnant woman? In either case, what is the reasoning? On the theoretical level 'self' is as much of a hot topic as 'rights' in the contemporary debate among the Japanese alliance of opponent to prenatal screening, as well as within the academic field of reproductive health studies and disabled studies. A number of scholars have written on the topic of 'the right to self-determination' in the context of both the Japanese women's movement and disabled people's movement, outlining both pros and cons of using this term as a justification for women to have access to selective abortion.

For example, Yoshihiko Komatsu, a professor in the history of medical science who deliberates on the ethical issue of euthanasia and human relationships, rejects 'women's right to self-determination' (1998; 2000). He argues that the rhetoric made sense in the presence of state intervention into women's reproduction under the Eugenic Protection Law, as well as in the presence of male oppression (Komatsu February; March 2000). He calls this oppression a 'vertical oppressive relationship' because of male and state oppression of women. But with the practice of reproductive technology, the focus is, according to him, on the relationship between a pregnant woman and a deformed foetus, which he calls a 'horizontal relationship'. Here not only a woman, but also the foetus is included in the concept of 'self', and unlike the state or male patriarchy, in his view a foetus is not oppressing a woman. So Komatsu concludes that pregnant women should not use 'right to self-determination' in speaking about any context that relates to their foetus. What is common to rejecting 'women's right to self-determination' both among these academic works and selected social movements, is the fear that this concept might provide a justification to eliminate fetuses with anomalies, due to women's discrimination against people with disabilities.

To secure access to abortion – this is the basic aim of the women's reproductive health movement in Japan. But the movement does not believe that the introduction of a selective abortion clause to legally allow for the abortion of fetuses with anomalies would enhance women's ability to exercise their right to self-determination. Until now, the best way to reconcile these two contradictions has been to distinguish between 'I abort this foetus because it is disabled, although I want to have a baby' and 'I abort this foetus because I cannot manage to raise a disabled child, although I want to give birth to the foetus.' However, on the practical level, it is very difficult to distinguish between the two situations. When a pregnant woman learns that the foetus she is carrying has an anomaly and has to decide whether to have an abortion or not, she is likely wondering whether *she* can manage rearing it because *the foetus* is disabled. This question has to do with who the 'self' is in 'women's right to self-determination'. When a pregnant woman makes a decision about abortion, she is making a decision about her own life, but the foetus is also involved. As reviewed so far, the fundamental position of the women's reproductive movement in Japan has been that a pregnant woman has the decisive say in this situation, because it is she who goes through the entire physical and psychological processes of reproduction. However, in the practice of selective abortion, a question arises as to how the disabilities of the foetus or the life conditions of the future child are taken into account in the process of deciding to have an abortion. One major justification for selective abortion is '(un)happiness of the future child' and not necessarily the happiness or un-

happiness of the woman. Now, is it the pregnant woman herself who is 'the self', and is the foetus also included as part of the woman's self or is the foetus seen as a separate self?

Women's groups argue that when it comes to the issue of the selective abortion of a foetus with an anomaly, even women ought not to decide whether the future child would be happy or not after its birth, and therefore, in the sense of disability, the foetus is 'the other' and not part of the 'self' of a pregnant women. The logic here is that 'although women have the right to decide whether or not to give birth, women do not have the right to decide about the quality of the child'. Women in the reproductive health movement in Japan are trying to find a way to maintain this logic without retreating from the issue of women's right to self-determination. Yet, for the movement, this ambivalence is not strategic. To declare that 'the foetus is "the other" being from the woman's self' or 'women do not have the right to decide the quality of a foetus' is perilous, and provides an advantage for the arguments of anti-abortion activists (Ashino, in *Soshiren News* (177) 2000: 5). On the issue of the self, there is a gap between academic reflection and movement practice. The only way to establish women's right to self-determination without discrimination against those with disabilities is to mitigate the difference between the meanings of selective abortion of a foetus with an anomaly and of abortion in general. This is the final aim of those in the women's reproductive health movement.

The opponents to prenatal screening are aware that this aim is an ideal. However, they are also aware that no matter how idealistic their final aim is, it is the task of social movements' to gear society to a future where people with different backgrounds are able to live with dignity without discrimination, although it might take a very long time to achieve this. Therefore, people in the social movements of disabled people and women argue that social support and effort are necessary to create a society where disabled children are as welcome as non-disabled children.

### **What can be learned from these debates?**

According to Japanese medical associations and governmental ministries, the term 'women's right to self-determination' means individual women's practice of decision-making, where the content of the decision is not questioned. Because the content is related to the context of the decision-making, the context is not questioned either. The context is, in this case, biased against people with disabilities. Moreover, because the perception of disabilities is so fundamentally negative, the meaning of 'women's right to self-determination' is sometimes consid-



ered widely in society to be synonymous with the decision to abort a foetus with an anomaly. At the same time, activists in some SMOs related to disabilities, as well as some scholars, are critical of 'women's right to self-determination' because they fear that women would choose to have a selective abortion in the name of exercising their right to self-determination.

There are commonalities in those arguments. In both arguments, the content of decisions made on the basis of a right is considered as being alienated from the context in which the decisions are made. On the one hand, medical associations consider rights to be an individual-level practice. This view suggests that the 'self' is trying as much as possible not to be influenced by the surroundings, especially by the powerful. Therefore the argument of the 'neutrality' of medical doctors comes into play here. These ideas of medical associations relate to the concept of the practitioner of rights, that is, the 'self'. Just like the concept of 'rights' the 'self' implies alienated nature: in the medical associations' argument, 'self' is expected to be distancing itself from the surroundings as much as possible, except for sufficient information for decision-making. The 'self' should be independent and mature enough not to be influenced by its surroundings, especially the powerful. These images of the 'self' are often the model of ideal decision-making for medical associations. The women's movement and other SMOs reject this view as unreal. A 'self' that distances itself as much as possible from its surroundings stems from the liberalist argument of individual citizens.

On the other hand, critiques of 'women's right to self-determination' among the opponents to prenatal screening do not favour this rhetoric, because they believe that the 'self' will not challenge the problems inherent in the context in which decisions are made. Their critiques are based on a fear that 'women' in 'women's right to self-determination' would be the self who acts to maximise its interest. Whether the act is discriminatory or not, or where the act leads society, are not main concerns of the 'self'. This again implies the idea of liberalism.

It seems that one crucial cause of the disagreements in the contemporary debates about rights is inherent in the liberalist implication of 'women's right to self-determination'. The terms 'right' and 'self' were introduced from the West, therefore it is no surprise that liberalist meanings developed in Western political philosophy are attached to these terms even when used in non-Western societies (although these non-Western societies might have indigenous concepts equivalent to 'right' and 'self'). As reviewed in chapter 3, the liberalist way of thinking developed in Western political philosophy in order to prevent authority's unreasonable rule over the individual. In the sense that liberalism is about liberation of individuals from authority, the concept was/is a great achievement in the West. But because it is such a crucial concept, it

seems that sometimes only its idealistic aspects are emphasised as criteria for ethics, and this makes it alien to reality. In other words, we often take the liberalist idea of decision-making as the absolute principle: not to intervene in another's decision-making is ethically good, regardless of its content or the context in which the decision is made. In discussing the ethics of decision-making, concepts of 'neutrality' and 'non-intervention' are often brought out, although we all know these are a fiction. What is more, despite the fictitious nature, actual guidelines are constructed on this fiction. This can result in socially indifferent attitudes about problems that might stem from the social conditions where decisions are made.

Conceptually, self-determination is often defined in terms of liberalism, but in practice there seems to be something more than liberalism here. It also seems that in considering the concept of self-determination, liberalism is taken as absolute because it is not possible, or at least very difficult, to go beyond the liberalism concept. This makes it worth considering and theorising a meaning of 'self-determination' that goes beyond liberalism. 'Right' and 'self' need to transcend the image of isolated individualism, so that they can be understood as related to the context and imply a 'challenge to the system'. Arguments by the Japanese women's movement are worth examining in this regard. The next chapter will consider 'women's right to self-determination' in terms of liberalism, trying to discuss what women's movements are suggesting about the right to self-determination.

## 7 Liberated Individuals?

### **The meaning of the 'self' with 'women's right to self-determination'**

Entering the 1990s, in Japanese abortion debates the term 'right' is used more and more frequently, in the form of 'right to self-determination.'<sup>1</sup> The phrase opened a route toward possible collaboration between women with and without disabilities, since both the acts of having an abortion and of giving birth were considered to fall within the scope of 'women's right to self-determination'. Thus, when women in the Japanese women's reproductive health movement referred to 'women's right to self-determination', they meant more than women's right to give birth or not. Women's right to self-determination had become an instrument to resist oppression and values that, even without visible coercion, pushed women into making certain choices.

However, chapter 6 showed that there was a difference between how medical associations and social movement groups conceptualised 'women's right to self-determination'. Medical associations tended to understand women's right to self-determination as referring to a situation in which an individual woman can make a decision, given sufficient information, and can do this without outside intervention. Applied to the abortion context, the view of medical associations was that in order to exercise this right to self-determination women's requests for prenatal screening and selective abortion should be answered. And as long as the decision to have prenatal screening or to select to abort a foetus with an anomaly did not directly harm others, the content of a woman's decision was not questioned ethically; because the decision was made by the individual concerned, in the view of medical associations the decision could not be discriminatory. They also did not question the ethical context of women's decision-making.

Medical associations also propose that the law should be reformed according to 'women's right to self-determination', so that a woman can have a selective abortion upon demand. Requests for medical services and medical practices are based on individuals: the requests are made and the practices are carried out by individual patients and individual medical practitioners. According to this argument, a selective abortion

clause would not be ethically problematic because it would just provide women with the option of having a selective abortion, and no woman would be obliged to act upon it. Since doctors in medical associations were aware that the introduction of a selective abortion clause would lead to protest from some social movement groups, their idea was not to introduce a selective abortion clause as such, but to reform an abortion law, so that it would specify no specific conditions under which abortion would be allowed other than a situation in which pregnancy would cause 'women's physical and mental stress.'

However, the women's movement thought differently about the content of 'women's right to self-determination'. The current use of reproductive technology actually indicated certain values with regard to women's reproductive decision-making. Reproductive technologies such as prenatal screening were developed to discover foetal anomalies, and their use aimed at eliminating disability, hence this practice is definitely based on the belief that 'disabled children should not be born.' Such a belief puts pressure on women to give birth to disability-free children, so they are actually 'forced' into making a certain decision in the name of self-determination, instead of actually enjoying the right to self-determination in a true sense. Women's right to self-determination, according to the women's reproductive health movement meanwhile, means that a woman can choose to give birth to disabled children under conditions where there is no obstacle to bear or rear them.

The proposal for an abortion law based on utilitarian liberalist ideas would be acceptable to women's reproductive health movement groups, because the reasons for abortion differ from woman to woman. 'A law based on utilitarian liberalist ideas' means a law that legalises abortion without stipulating specific conditions in which abortion would be allowed. Under such a law, a woman's request for abortion is granted up to a certain number of weeks of pregnancy, according to her own (and often her doctors') judgement. In the sense that the law does not provide specific conditions, or the law is 'silent', it is called 'liberalist.'

Indeed, I believe that the state should not guide women by proposing indications for abortion. Reproductive decision-making should be, in principle, entrusted to individual women's decision-making capacity without the state formulating conditions. However, the women's movement argues that merely introducing 'the liberalist law model' would allow current dominant values to override women's decision-making processes, leaving the real problem – the problem of certain forces exercising undue influence on women considering abortion – invisible and faceless. Therefore people in the women's movement argue that a 'silent law' should be coupled with governmental efforts to eradicate the idea of disability as negative.

Although some social movement groups, such as the association for parents with disabled children, basically agree with women's right to self-determination as a piece of political movement rhetoric, these groups are also sceptical about the term 'women's right'. This is because of a concern that women might abort a foetus with an anomaly.

In addition to the connotations of the term 'right', 'self' implies a selfish image for the practitioner of rights. The image of 'self' here is 'not related to' or at least not 'challenging' the problematic context in which decisions are made. Since both 'self' and 'rights' have roots in liberalism and enlightenmentism, the image of a 'self' as a practitioner of 'rights' shares a commonality of meaning between those in medical associations and some social movement groups, in that the self is viewed as unrelated, or as failing to challenge the broader context in which it exists. On the one hand, according to the medical associations, the practice of the right to self-determination, isolated from any context, is considered to be 'ideal' because decision-making should be exercised by an individual. The medical associations argue that 'because the right to self-determination is practised on the individual level, the practice does not collectively become discriminatory'. On the other hand, some social movement groups, such as the parents' association, express the criticism that women's right to self-determination is likely to be practised and understood as if it were an individual practice, even while there are problems (a bias against disability) in the conditions under which an individual makes a decision. Therefore, both medical associations and social groups regard the context where decisions are made as a given condition that is not challenged by the self.

On reflection, a liberalist view of 'self' and 'rights' is indeed an orthodox and dominant way of conceptualising the 'right to self-determination', where it is often assumed that a decision-making process without outside intervention is optimal, given sufficient information, and that any decision made by the individual concerned ought to be respected, regardless of its content, as long as it is not harmful to others. In many medical guidelines, it is observed that this way of exercising self-determination is often considered to be the 'sacred principle'. Although this idea manifests itself in diverse ways in different societies, in many societies there is a shared value that it is ethically correct not to intervene in the affairs of others. But at the same time, it seems that this principle is accepted only because it is too difficult to develop it further than a non-intervention position, although everyone knows and feels that such a belief is not sufficient for understanding self-determination, especially when we look at how the principle is practised in the actual medical world. First, decisions are made according to the values at sway in a particular context. Second, an individual hardly makes a decision without considering the opinions of those within her surroundings, and

it is not necessarily absolutely sacred that one makes a decision totally without the intervention of another. Then, what is the principle of the 'right to self-determination' that goes beyond non-intervention principles? Isn't it worth trying to go beyond it, by embodying thoughts about the right to self-determination, apart from liberalism? In order to do so, first the liberalist genealogy of the Western political philosophical tradition will be traced. To refer to liberalism here is logical and defensible, because the Japanese medical associations refer to the way that reproductive technologies are practised in Western Europe or North America, when describing the idea of 'isolated self'.

## Liberalism

### *Liberalism's genealogy*

Liberalism has its genealogy in England around the beginning of the 17th century, which saw the start of 'the era of reason', as was discussed in chapter 3. As Thomas Hobbes's memorable phrase goes, 'The liberties of subjects depend on the silence of the law'; the fundamental idea of liberalism has rested upon a concept of freedom from the constraints of the state (Edwards 1967, 3, 4: 458).

Given Hobbes' view about relationships among human beings in their natural condition, or *bellum omnium contra omnes*, it can be deduced that liberalism originated in the idea that an individual is a potential attacker of another's interest, as well as the idea that the powerful are potentially the evil oppressors of individuals. The view that human beings are naturally egoistic and hostile to others is the fundamental tenet of liberalist belief, in other words; 'others ought not to intervene in one's decision-making'.

However, at the same time English liberals have also been careful not to press the notion to anarchist extremes. As Locke summarised, 'life, liberty, and property' are to be protected by state law. A state was also considered to be a necessary institution, ensuring order and law at home, defence against foreign powers, and the security of individuals. Thus, according to liberalism, a state's power ought to abstain from involvement in an individual's life, but at the same time a state is entitled to function only to the extent that it 'extends the liberties of subjects insofar as the law is made to curb and limit the activities of the executive government' (ibid).

Later in England, discussion over liberalism merged with utilitarian thought. Here the point was that an individual's liberty is a necessary condition for the happiness of the whole of humankind, because an individual member of society can calculate cost-benefit using ratio, so that the individual can maximise utility or satisfaction. Thus, liberalism as-

sumes that an enlightened individual is able to judge using a ratio of what is good for the self, in order to satisfy the self (ibid: 458; Uchida et al. 1993: 40-41). The principles of non-intervention and of an individual's liberty are both enforced by the power of human ratio. Following this line of thought, a state ought to have a minimum function, given an absolute trust in ratio, as possessed and practised by an individual.

Liberalist ideas were exported to other European countries, such as France and Germany, as well as to North America, and thinkers in each country followed different ways of developing these ideas. All in all, schools of liberalism may be classified as the Lockean and the *étatiste*. Locke contends that 'the liberalism of the minimal state, individualism and laissez-faire, [...] sees freedom as something which belongs to the individual, to be defended against the encroachments of the state' (Edwards 1967, 3, 4: 459-460); *Étatistes* argued that 'as long as the state belongs to the people, the enlargement of the power of the state is equally an enlargement of the people, and therefore the freedom of its citizens can be made to enlarge and improve, [...] seeing it as something which belongs to society with the state as the central instrument of social betterment' (ibid, 459-461).

A debate between the two is about the state's role in an individual's freedom, whether a state must be minimal so as not to intervene with an individual, or be entitled to a certain degree of power in order to facilitate the expansion of an individual's freedom. However, in both schools of liberalist thought, the consistent points and the purposes of liberalist discussion are how to enlarge and protect an individual's freedom. Both schools believe that the self (the individual) is able to exercise sound judgement by using ratio with the aim of maximising its interest and satisfaction.

The fundamental view of human beings to be deduced from liberalism is as follows. Firstly, liberalism assumes that individuals act for their own advantage. Secondly, therefore, liberalism seems to believe that individuals project their own egoism to intervene in the decision-making of other. Thirdly, because the individual, or an actor, is viewed as mature and knowing what is good for herself self, individual should not intervene in the decisions of others. This can be an expression of trust in someone's decision-making capacity. An individual is mature and knows what to do, and others, including the state, are natural oppressors of the individual. Therefore, individuals and the state should not intervene in the decision-making of individuals – this is the fundamental premise of liberalism based on the utilitarian, enlightened self.

*Liberalism in reproductive issues*

With regard to such issues as reproduction, and especially abortion, it is likely that women's reproductive health movement's struggle to secure access to abortion is settled by a liberalist state law, or that the law does not enforce a certain morality on the whole nation, but instead the law 'silently' provides a framework that maximises all citizens' opportunities to pursue their varying conceptions about their own life, the life of a foetus, and life plan of those who decide whether to continue with pregnancy.<sup>2</sup> Since reasons for abortion vary among individual women, in one respect a liberalist style of law functions positively for the exercise of women's right to self-determination. A liberalist form of law also curbs state control of women's reproductive decision-making. When responsibilities for reproductive issues are underwritten by a society or a state as a whole, rather than being left to individual women, it seems that the state is justified in creating stronger incentives to encourage women either to terminate or to retain their pregnancies. In order to prevent the state from using a woman's body for its collective interest, it is in one sense crucial that a state withdraw from women's reproductive issues, and only provide access to abortion for individuals, without commenting on the issue of reproductive decision-making.

Thus because a state tends to intervene in women's reproductive issues for population control, the liberalist idea can function as a powerful weapon in political struggles. The liberalist idea of the self, in 'women's reproductive right to self-determination', plays a critical role when one's decision is determined or even imposed by others because of a power imbalance, and when the right to self-determination is invoked by women against the powerful, to demand that they not intervene in her decision-making process.

However, according to the Japanese women's movement, the liberalist condition is not sufficient to exercise women's right to self-determination. Women's groups not only do not believe that individual decision-making takes place in isolation from any context, but they also suggest that it is perilous to view decision-making only from an individualist perspective. On this point, these women's organisations are rejecting liberalism. As was mentioned earlier, the liberalist practice of the right to self-determination is indeed one effective aspect of the political struggle in securing legal access to abortion. But liberalism is not sufficient to fully describe the practice of the right to self-determination.



## On the meaning of 'women's right to self-determination' as used by the women's movement

To understand the concept of women's right to self-determination as it was used by the women's movement in the 1990s in Japan, this section probes the fundamental mechanisms at work in this concept. First, what was the motivation behind women's claim to a right to self-determination? The fact that women used the rhetoric of 'women's self-determination to give birth or not to give birth' implies that women are not able to decide whether or not to give birth on their own; that 'whether or not to give birth' is decided by others. In the 1980s in Japan it was clearly defined that the fight for self-determination was aimed against state laws and policies. The articles on legal sterilisation of disabled people in the Eugenic Protection Law clearly set the norm regarding disabled people's reproductive practices. The attempts to delete the economic reasons clause were obviously a case of state intervention to limit women's access to abortion. The abortion articles in the Criminal Code meant that women were basically prohibited from having an abortion, and this signifies the penetration of state power into women's bodies.

Yet after the repeal of the Eugenic Protection Law, medical associations and the ministries claimed that decision-making should be entrusted to individual women, so that each woman could have her reproductive request fulfilled. *Nichibo*, one of the powerful medical associations, even contended that, up to a certain number of weeks of pregnancy, no specific reasons should be required for women to have an abortion, but a woman can have an abortion just because she decides to do so. A woman can decide on her own, and her word is absolute. And this, according to *Nichibo*, is women's right to self-determination. Then why do women in the movement reject this proposal for a 'real' women's right to self-determination? And in the view of the women's movement, who (or what) makes reproductive decisions on behalf of women?

One answer is 'unwritten values' that are dominant in society about what is socially acceptable. The existence, practice, and development of reproductive technologies are based on certain societal values, that 'disability is negative' and 'can be eliminated'. This reasoning would hold that women's reproductive decision-making is shaped by a bias against disability' and that therefore women should only give birth to non-disabled children. Indeed, if there was no bias against disability and if the 'meaning' of giving birth to children with or without disability was not different, then women's reproductive decision-making about giving birth to foetuses with or without anomalies would not matter. Reproductive technologies, such as prenatal screening, would also be practised differently. Instead of being used to discover disabilities they

would be used to provide proper treatments in case of an anomaly of a foetus. Thus, one conclusion appears here: in order to enhance women's right to self-determination, an effort is required to remove the bias against disabilities. In the liberalist perspective, how is the bias against disability expressed in the context of the issues of selective abortion and prenatal screening?

### *Reproductive technology and the bias against disability*

Are prenatal screening and selective abortion of foetuses with anomalies a form of discrimination against disabled people? Indeed, disabled people have often stated that prenatal screening and selective abortion are practices that 'deny' the existence of disabled people who are already alive, as they carry the connotation that disabled people should not have been born (Aoi shiba 1973; Yokota 2004).

But prenatal screening and selective abortion target unborn foetuses, and these practices are not a direct attack upon people already living with disabilities. There can be policies on the state administrative level that allow for a foetus with a disability to be aborted and that call for the respect and protection of people with disabilities (Sakai 1999).

Moreover, an unborn foetus with a disability and disabled people have a different ethical status. A foetus can be legally terminated under the law, but this does not mean that human rights principles should not be applied to disabled people who are already alive.

Thus, the logical link between deformed foetuses and disabled people, implying that prenatal screening and selective abortion deny the existence of disabled people, does not hold up. But why do so many disabled people feel violated by the practices of prenatal screening and selective abortion?<sup>3</sup> Where does this link come from? And when prenatal screening and selective abortion are practised by individuals without any public policies, should this be labelled 'bias against disability'? If women's claim to the right of self-determination stems from 'bias against disability' inherent in the practice of some reproductive technologies, then it is crucial to reflect on the link between the bias against disability and reproductive technologies. How does 'bias against disability' affect people in society, including disabled people, as well as women?

### *Bias against an attribute, being disabled*

If a selective abortion does not constitute direct discrimination against disabled people who are already alive, then the attribute 'being disabled' comes to the fore in unearthing the mechanism of the link between 'the practice of prenatal screening to discover disabilities in foetuses'

and 'denial of the existence of disabled people who are already born', because this attribute is the only commonality between the aborted foetus and disabled people. In other words, it seems to be logical to say that the fact that a foetus is aborted 'because of a certain attribute' makes disabled people who have that same attribute feel that they are being attacked.

Several observations can be noted about this attribute in relation to the practice of selective abortion are as follows. First, the attribute is looked at with a negative bias. It is considered to be negative. It is considered to be more difficult to live with this attribute than without it. Second, selective abortion is an act of eradicating the existence of those with this attribute, because, after being born with the attribute, it is typically not removable through medical treatment. If the technology was aimed at removing or curing disabilities, instead of the entire beings who have the disability, then disabled people would not have reacted as critically as they did to the technology. Thirdly, for those living with this attribute, being disabled, the fact that they have the attribute is important to them. If it were not important, then they would not be upset by the attribute being looked at with a negative bias.

There are a number of other kinds of attributes, such as 'being the sixth child in a family'. Yet it is not likely that people who are the sixth child, and born before the more widespread use of contraceptives, would feel offended by the current practice of family planning, and would formulate a group for 'the sixth children' to oppose the use of contraceptives because contraceptive methods caused a decrease in the existence of 'sixth children'. Maybe anti-abortion activists would oppose abortion for any reasons; however, even they would not argue that an abortion is problematic specifically because it is aborting 'the sixth' child. So, it is not likely that abortion of the sixth would-be-child, in the context of family planning, would be questioned ethically. This means that there is a difference between the meaning of the attributes 'the sixth child,' for example, and 'being disabled'. Because selective abortion is due to the attribute 'disability', it is ethically questioned by people with the same disability.

Then why does the attribute 'being disabled' seem so significant? Why do disabled people react more sensitively than people with other kinds of attributes? Consider the following three points as interrelated with one another: Firstly, 'a disability is an important attribute' because 'it is considered to be negative (oppressed, undervalued)' and 'it is not easier to live with it than without it', but 'it is not removable' and therefore 'people with the attribute have to find a way to live with, and get along with, the attribute'. So the attribute is highly integral to a person, so integral that it is a crucial part of the construction of their 'self'. The

attribute is deeply related to the person's self-identity and way of life. Thus, integrity of the attribute is one point.<sup>4</sup>

Secondly, it is quite imaginable that a person with a disability struggles to cope with the attribute. There are a number of comments made by disabled people that they lead a happy life 'because of the disability'.<sup>5</sup> It is at least clearly said that there are possibilities for happiness in life that cannot be uniformly attributed to the fact of being either disabled or not. So, 'disability' could provide a positive function in people's lives.

Thirdly, the value inherent in some reproductive technologies, however, inevitably implies that having a disability is negative, and a being with a disability can be justifiably eradicated. Indeed, one of the plausible reasons to justify selective abortion is 'happiness/unhappiness of a would-be-child'. Yet contrary to this reasoning disabled people repeatedly claim that 'we are not unhappy; do not judge us, our life, or our happiness'. This means that the positive effect that an attribute can bring about may be misjudged, misunderstood, and underestimated. It is likely that when something is misunderstood or underestimated those concerned will raise objections to correct the judgement, saying that it is an incorrect understanding. Thus, a misjudgement, and a demand to correct the misunderstanding, is the third point that helps to explain the sensitivity shared by disabled people about the use of prenatal screening and selective abortion of foetuses with anomalies.

One conclusion that I can draw is that disabled people's claim that reproductive technology is discriminatory is based on their motivation to correct the misjudgement, misunderstanding, and/or undervaluation that they believe surrounds the role of the attribute 'being disabled' in their lives. In other words, their refutation of the way of thinking inherent in reproductive technology is an expression of their desire for a validation of the value they place on this attribute. The attribute is important to them because of its integral role in their lives and because of the way it is oppressed. Thus the importance of an attribute is a political question of how an attribute is judged and treated by dominant values, including any oppression of the attribute. And, the more important the attribute is to one's existence, and the more misunderstood the attribute is, the stronger the rejection of the misunderstanding is by those living with the attribute.

Critics may argue that there are disabled people who truly suffer from having this attribute, who have no feelings of happiness in life at all, and who therefore wish they had been aborted. The experience of life is up to the individual, and the decision about the use of prenatal screening and selective abortion is also left to the individual. I agree that the reproductive decision-making ought to be entrusted to individuals, so those who truly believe that having a disability is a negative thing will be entitled to choose to have a selective abortion. However I

recognise there is a certain dominant belief within the context in which individuals make these decisions which holds that a disability is negative, and makes it more difficult for women to give birth to disabled children than to disability-free children. To use liberalist notions to justify the use of reproductive technologies such as prenatal screening and selective abortion in today's social environment means guiding society in a certain direction in the future – toward a scenario where more and more fetuses with anomalies are aborted, where it becomes exceptional for a pregnant woman to refuse prenatal screening, and where if that woman gives birth to a disabled child, she will be blamed.

Moreover, when disabilities, which are targeted by reproductive technology, become a rare phenomenon, doctors may not be encouraged to develop skills to mitigate the burdens that result from these disabilities. This would tend to marginalise people who have disabilities that can be detected by prenatal screening even more, driving them deeper into the isolated corners of society. Is this what we want in the future, with regard to disabilities and women's reproduction? Since social movements are driven by people's visions of what they want society to be like in the future, it is no wonder that people in the disabled people's movement link concerns in the current practice of reproductive technology to future visions of society, carefully monitoring the direction that society is heading in. Bonded by the same attribute, disabled people do not only relate themselves to aborted fetuses, but they are creating solidarity with future 'comrades' for the well-being of those with the same attributes. This is the reasoning that links the practice of eradication of a foetus with an anomaly and the associated sense of discrimination felt by disabled people.

Liberalist ideas have some important points: when it comes to resistance to state oppression and a claim for freedom from oppression, liberalist ideas function as an effective instrument to demand a fair treatment. But an individual's behaviour is not limited to interacting with the given social context; it also affects the future of society where all members of society are related. If reproductive technology does not directly attack disabled people, the problems inherent in the use of this technology are connected to the issue of how to evaluate disabled people's existence, and moreover, to the question of what the future society will be like.

Social movements often deal with an attribute that becomes a bond of solidarity, for example, 'being a woman' in the case of women's movements. Social movements are also often concerned about the future direction of change in society. In this light, it can be said that social movements' concern is not only with the current life condition of their members, but is also often with the well-being of those who will have the same attribute in the future, in a given society. Even if discrimina-

tion is not a direct attack on certain people, nevertheless selective abortion and prenatal screening are likely to lead to the marginalisation of certain people who have the same attribute – this is how I read the argument by the disabled people's movement group with regard to selective abortion and bias against disability.

Indeed, in trying to predict what society will be like in the future, it seems likely that the liberalist way of using reproductive technology would bring about more difficulties in disabled people's lives. Selective abortion and prenatal screening are biased against disabilities, and both have an impact on the way members of society will lead their lives in the future. The medical association's argument that individual decision-making does not lead to discrimination is thus refuted. Then how does the bias against disabilities affect women's reproduction?

*'Bias against disability' and 'women's self'*

The act of giving birth is one of the most important events in women's lives. It is not only because of the unique involvement of a woman's entire being (both physically and psychologically) in pregnancy and delivery, but because the child she gives birth to will affect her entire life, her whole life plan, her existence, and her self-identity.

The value attached to different kinds of children is socially constructed. In a context where a disability is considered to be negative, and where giving birth is considered to be the supreme mission of women, giving birth to a disabled child will badly stigmatise a woman's existence and identity.<sup>6</sup>

Decisions of whether or not to give birth to a disabled child are a fundamentally different choice from, for example, decisions of whether to help a disabled person in the street or to hire a disabled person for a job.

The Japanese sociologist Yumiko Ehara points out that the decision to give birth to a disabled child or not poses quite difficult questions for women about themselves.<sup>7</sup> One question, for example, is, 'if I abort my foetus because of a disability, doesn't it mean that I am not ready to be a mother, because mothers should accept and love their child whatever they might be like?' Thus the decision-making process for a woman in this situation actually includes asking herself questions about herself, such as 'what do I think is a good mother?' and furthermore, 'what do I think is a good thing and a bad thing to do as a human being?'

The issue of what kind of children to give birth to is thus intimately related to a would-be mother's self. Would-be mothers who most actively try to co-exist with disabled people in society, by supporting them through concrete actions in their daily life, might struggle when it comes to decisions concerning whether to give birth to a disabled child.

This is because a child is so intimate to one's self and identity. Thus, a socially constructed value about the kind of children a woman has affects women's reproductive decision-making process, with reproductive issues as an intimate part of 'self'.

### *The liberalist self*

The liberalist definition of 'self-determination' leads to a form of decision-making based on the decision-maker's will being supreme. Intervention from the surroundings ought to be avoided as much as possible. This is based on the assumption that surroundings might project interests on the decision-maker. In light of the genealogy of liberalism, this assumption stems from a view that each individual is supposed to act in order to maximise her/his utility and happiness, and this fundamentally conflicts with the interests of others.

Especially when there is a power imbalance between those concerned in making a decision, it is important to stick to this liberalist principle, in order not to be exploited by others. In this regard, liberalism is a conceptual instrument to claim freedom from the oppression of the state and from any kind of power. However, it has been suggested that the liberalist content of the 'right to self-determination' is not sufficient. Firstly, even if there is an ethical problem in the values within the surroundings where decisions are made, a liberalist way of reading and exercising self-determination would merely hide the mechanism of the problem. Secondly, it is impossible to totally separate an individual from his/her surroundings. Moreover, the relationship between the decision-maker and the surroundings is not always hostile. 'War of all against all' does not always happen. An individual might need support from her surroundings, and those surroundings might tend to help her to make her decision, such as in the doctor-patient relationship, for example. Here, the liberalist way of defining self-determination – which is based on 'self-defence' against others' projection of their interests – is not very applicable.

Self-determination in terms of self-defence is also not always the absolute principle in our daily lives. For example, assisting with another's suicide is prohibited in many countries, although the act of assisting the suicide, in this case, would be supporting the other's self-determination. This example shows that the principle of self-determination, based on liberal individualism, does not always represent the absolute good. Moreover, there are even situations where we do not care if others decide about certain matters for us, for example, what to eat for dinner. From these cases, it can be said that our practice of self-determination is based on the sense that 'in certain matters, self-determination is important, but not in others'. In the present debate about the practice of

reproductive technology and women's right to self-determination, central matters are an attribute such as 'disability' or 'the act of giving birth', as was discussed above, and the importance of these matters is socially constructed.

There is an intuitive feeling that liberalism is not perfect. Then, if liberalism is not perfect, what is the meaning of 'right to self-determination' as expressed by the women's movement in Japan in the 1990s regarding the reproductive technology debate? The following are several quotes from people within the women's movement at that time regarding the concept of women's right to self-determination.

*Women's right to self-determination as claimed by women within the women's movement*

- (1) '... One of the points in the recent sociological argumentation on self-determination is, "not to decide for others, and not to be decided by others." ... Not to decide about others is important, but put into actual practice, would be rather difficult. Indeed, if the self is not decided by others and the other is not decided by the self, but both can make individual decisions and choices, and if there is a relationship and environment where both can co-exist together, then this would be a wonderful society' (Yonezu, in *Soshiren news* (176): 4).
- (2) 'The assertion by women that women want to decide about their own bodies themselves is never selfish, but instead, is one of the principles of "deciding on one's own". One knows one's own pain of the self, and this fact could even be extended to my imagination about another's pain; I want to protect myself on my own just as others want to do – I want to continue struggling for the improvement of the law, as well as the social system, so that people can practice this principle' (*Soshiren news*, (133) July 1996: 3-4).
- (3) 'We seek social conditions where all the decisions are supported and welcomed, even choices to give birth to a foetus with an anomaly' (*Soshiren news* (164) March 1999: 3).

'The self is not decided by others and the other is not decided by the self' from the first quote shows that self-determination is a claim that such an important issue as giving birth should not be controlled by others, not to mention whether or not to give birth, when, how many, and what kind of children to have. With regard to selective abortion and prenatal screening, the point that should not be controlled by others is a decision regarding 'an attribute', in other words being disabled. So, by 'not decided by others' means that a certain attribute is not to be un-



fairly judged and its value should not be ignored. In this light, 'intervention' or 'deciding about others' means 'to judge the decision by giving the decision an unfair evaluation because of a certain attribute'. If a woman finds that her foetus has a certain attribute, she has to wonder if it is a good decision to give birth, or not. If she wants to give birth to a disabled child, it would not be as easy as giving birth to a non-disabled child. So her decision is controlled by the value attached to the attribute.

The women's movement's desire in the 1990s and now is to set up conditions where women can give birth to a disabled child and the child is welcomed. And a woman should not be misjudged negatively, if she chooses either to not have prenatal screening, or indeed if she chooses to give birth to a disabled child, as the third quote says.

For disabled women the issue is more comprehensive than these. The claim by disabled women is that they should not be disapproved of their potential and desire to have children because of their 'dependence,' or because of their deviation from the ideal image of womanhood. On the contrary, they should be able to fulfil their desire with the support of society, and even if their child is disabled, these women should be supported in their decision to give birth to disabled children, because independence is not doing everything alone without the help of others.

The second quote is about imagining another's pain. This is an appeal for others to imagine 'if I had the same attribute, and if I was confronted with the same situation, would I want to be judged and evaluated?' What can be said from the reading of these three citations about women's right to self-determination?

When a 'right to self-determination' is considered, an individual's right to decision-making is limited. This impediment to decision-making is due to a certain attribute involved in the decision, specifically, when 'something' is misjudged, disapproved of, or underestimated. So although 'self-determination' is not always the 'sacred' principle, it appears to be an important rationale when certain important attributes are involved. Self-determination is used when those advocating self-determination deem 'something' to be crucial for their existence and for their way of life, and when that something is integral to their construction of their 'self', such as a disability is for disabled people or reproductive decision-making is for women. Moreover, the attribute also becomes important and sensitive, depending on how society and dominant values judge the attribute. The attribute becomes important when it is misunderstood, misjudged, and underestimated unfairly. Self-determination, in this light, is to be defined as a claim for others 'not to look down on my decision because of the attribute'. Actually the reasoning so far does not really reveal a big difference from the liberalist view, be-

cause this reasoning can sound like: 'Others should leave me alone, no matter what decisions I make, without making any judgement about my decisions'.

Self-determination as viewed by the women's movement goes beyond such a principle of non-intervention. Actually their view of 'self-determination' (and that of other social movement groups in Japan) was influenced by the meaning assigned to the concept of self-determination by the disabled people's movement's independent living movement.

There is no official definition of the concept of 'independent living'. Reviewing the movements' positions, a fair definition would be 'living in the manner in which one chooses, outside an institution or family home, with any necessary assistance for daily activities' (for more information about this concept, see chapters 1 and 4). This demand for independent living was a refusal to allow others to decide about an individual's living conditions, and specifically was a refusal to live isolated from the local community or society in general; it was a refusal to live life without having the opportunity to exercise basic human activities in contemporary society, such as shopping, using public transportation, falling in love, and so forth. This movement was an effort to redefine disabled people as members of society who deserve to have the choice to lead a life as other human beings do. The freedom to make mistakes, take risks, and experience difficulties and quarrels in human relationships was also included.<sup>8</sup>

On the fundamental level, this independent living movement's concept of self-determination attempts to overturn a number of concepts that had been taken for granted. It required a total redefinition of the concept of 'dependence' and 'independence'. It also requires people without disabilities to reflect upon themselves and recognise their biases. Due to this self-reflection, people with and without disabilities would be able to become friends on equal footing, instead of the fixed hierarchy of 'the supporter' and 'the supported', which creates unilateral dependency. According to Mushitarô Ogura, a disabled person active in the 1980s and 1990s independent living movement:

Disabled people or those who provided care to disabled people were required to embrace the strictly radical ideas of the 1970s movement to 'criticise themselves' in order to question the internalised negative bias against disabilities. During the 1980s, it became clearer that becoming aware of internalised 'discrimination against disabilities' does not mean having a guilty consciousness on the part of people without disabilities toward the disabled people, or of people with fewer disabilities toward those with more disabilities. *This sort of consciousness is, in the end, that of selected, superior people.*

Suppose there is a person who cannot drink water while I can do it freely. How would you feel about this? Would you be all right leaving the situation as it is? You never know when you might become like that person. Sharing ideas is a feeling of this kind, a matter of sympathy (Osano 1998: 80).

My fingers move; then, why don't I share my fingers and do something with those whose fingers don't move smoothly? Using my fingers, the person can do what s/he wants. Moreover, the ability of my fingers becomes a part of the abilities of the other person. Achieving what that person wants using this shared ability is an expression of that person's independence – this is how I understand the principle of self-determination in relationships between those with and without disabilities. From here, it can be deduced that independence is not only doing something on one's own. It is necessary to acknowledge that many factors support an individual in successfully doing something. Then it is necessary to establish an environment that supports an individual's wanting to do something and ability to do that.

In line with this, the second quote above expresses a hope for the co-existence of the consequences of all the decisions. Consider the meaning of 'co-existence' with 'imagination' and 'right' as key words. When someone claims something to be 'right', as in correct, this expresses the person's feeling of oppression and the belief that the oppression should be removed, in order to be fair. To improve the oppressive situation, 'imagination' (of the person's pain by others) is required. This is a request for people not to do things to others that they would not like to have done to themselves (non-intervention), but also to imagine what an individual would like to have done by others if the individual were in their position. This is, in other words, a hope that the individual's decision will not be misjudged and looked down upon, and in fact, will be supported by others. In this reasoning, self-determination is defined as being exercised only when there are others around the individual, and only when others approve of the value of the individual's decision. Indeed, discrimination and oppressive situations are about the interaction of social groups who have different degrees of power, so policies to improve the situation cannot exist without the collaboration of the powerful. The request for imagination is actually a transformation of values, a way of thinking about a certain attribute and a certain related decision, because of the principle 'not to decide for others, not to be decided by others'. To this end, not to give a negative response to the decision is insufficient. So 'co-exist' goes beyond meaning different actors exist at the same time without engaging in oppressive relationships, but instead it means that the different actors affirmatively support each others existence, with an acknowledgement that one cannot exist without the other.

Liberalist and Enlightenmentist thoughts assume that being right is something that is inherent in every human being. This is a powerful instrument to challenge the intervention of authority during political struggles. Because women's reproductive capacities tend to be used for states' collective interests, the liberalist meaning of 'right' is significant, too. Yet the view that every human being is entitled to rights does not guarantee that all human beings actually practise and enjoy rights. For rights to be practised and to go beyond a mere theoretical concept, the surroundings are required to *acknowledge* rights as inherent in a being and to *support* an individual's ability to exercise them. In this context, it was argued earlier that 'imagination of the other's pain' is required. But this does not mean that all individuals have to experience and choose the same 'painful' situation. The focus is on the way of thinking, or paradigm, inherent in the context in which decisions are made.

*How does a paradigm shift happen?*

It should be clarified that women's reproductive health movement and disabled people's movement are careful not to criticise individuals who make 'problematic' decisions, such as aborting a foetus with an anomaly. In the 1970s there was a tendency in the debate between the movements of women and disabled people for disabled people to question an individual woman about whether she would give birth if her foetus had an anomaly, and a woman in the movement would take the question seriously, asking herself if she would do it or not. However, by the 1980s, both groups gradually changed their attitudes to focus more on questioning social structures, feeling that it was inappropriate to confront an individual, who is, in reality, not pregnant, with such a question. The movements also focused more on the context in which decisions were made by individuals, and they aimed to build an argument that set up conditions for individuals' decision-making, and eventually aimed to develop a clear outline of the conditions necessary to facilitate decision-making by an individual, whether a woman or a disabled person. This was the target of both movements. Therefore, a criticism of the technologies by the movements is notably different from an argument that selective abortion or prenatal screening should be prohibited. The target of the criticism by SMOs is the societal value behind the practice of prenatal screening and selective abortion: the belief that disabled children should not be born. The problem is the hierarchical relationship between values attached to the birth of a disabled child and a non-disabled child, as well as between the choice of a woman to give birth to a disabled child and to a non-disabled child. To shift the paradigm shared by society, collaboration from influential parties is necessary, such as doctors and governmental ministries, particularly because

they have the knowledge and skill necessary to put reproductive technologies into practice, and the authority to issue guidelines and laws.

The question is again 'are we really happy to have such a society, where disability is eliminated more and more?' However advanced technologies become in the future, there is always the possibility of giving birth to disabled children. Then, do we really want a social situation where women are more fearful because of the possibility of giving birth to disabled children with more screening techniques in use?

Critics may argue that imagination also differs from individual to individual. How to imagine the pain of living with a disability as well as the joy it can bring differs from person to person. The point is, it does not matter if detailed ideas differ between individuals. In whatever form, more serious consideration about a life with a disability, and its possible joys, will lead society to develop into a context in which disabled people can live more easily, and be more accepted than they are now, as well a place where it will become easier for women to choose to give birth to disabled children.

#### *On the right to self-determination*

Self-determination is possible only when there is understanding, a supportive environment, and when the right to self-determination includes transforming ideas about others. Since rights are an instrument to improve an oppressive situation, the right to self-determination actually requires a value change in others, and this also implies a challenge to surrounding structures.

#### **Diagram 2: Self-determination – 'self' and 'other'**



Self-determination is oriented towards the other to protect the self from the other's intervention. So self-determination tends to be conceptualised as isolated individualised decision-making as the absolute principle.

Self-determination is practised given another's support to make the decision possible. So, the right to self-determination is a claim for the other's value transformation. At the same time, the self exercises the liberalist right to protect the self from others.

To summarise the concept of women's right to self-determination held by the women's movement: this is the right that an individual is entitled to exercise when they are prevented from deciding something on their own. If the issue on which the individual is making a choice is not generally viewed to be very important, even though women are prevented from freely choosing, they might not attempt to assert the right to self-determination. When there is an attempt to assert the right to self-determination, the decision on the matter is important to one's life. The issue to be decided upon is considered by the women's movement to be important if it is integral to the life of the decision-maker. When an individual's ability to make a 'choice with regard to this important issue is interfered with and if the individual's value is challenged, there is an attempt to assert the right to self-determination. In the issue of prenatal screening and selective abortion of a foetus with an anomaly, the issue to decide upon that is at the centre of the rights discussion is 'an attribute' (the attribute of being disabled) or it is a reproductive choice. These attributes are what is important and integral to the individual, but are also open to misjudgement and infringement. An attempt to assert 'self-determination' appears when the matter is important, so important that one hopes that the decision related to the attribute will not be interfered with. But it is not only the principle of 'non-intervention' that matters here. The right to self-determination is even an attempt to assert the right to require support of the decision related to the attribute, and to support the means to correct misjudgements about the attribute, or a transformation of the value shared in society. Thus self-determination is not merely a concept of not intervening in each others' lives, as liberalism contends, but it requires both the other's transformation of ways of thinking (others' internal revolution) and also their support. This is because a decision is realised only when it is supported by others, especially in the situation where there tends to be disapproval of the decision. Mutual support when making decisions that society does not approve of – this is the meaning of 'co-existence'. So the attitude of others who surround an individual (the self) affects whether or not the practice of self-determination can be realised. 'Right' is attached to self-determination because of society's disapproval of the potential decision one might choose to make. The right to self-determination is thus a site for a political struggle, and is a claim for the transformation of the value held by the surrounding context (society), in which decisions are made.

Thus, the 'self' is viewed as a challenger, to mitigate the discrimination and power imbalance in the social context, and is a politically highly active being. Along with the image of 'self' one can consider 'rights' as an instrument to make a possible challenge to the discriminatory structure surrounding the self. And when using 'rights' it is clar-

ified that the self is oppressed, and use of the right to self-determination means that self-determination is not being practised because of the oppressive condition. This suggests that there is a power imbalance and discrimination, and clarifies that the rhetoric is a claim for improving the situation.

### **'Who is the self' in women's right to self-determination**

#### *Problems of representation and the category 'women'*

Disabled women, along with people within the women's reproductive movements, argued with disability-free women, saying, 'you can decide, you have alternative choices, but we cannot,' and 'you say you choose, but a woman is not actually self-determining [unless bias against disability is ended, because under the current norm that views disability as negative, women are 'made to' choose to abort a deformed foetus]'.<sup>9</sup>

An example of problems of representation regarding the category 'women' is a conversation that I had with a woman with CP.<sup>10</sup> She was once living in a residential institution, but later on she left the institution to live on her own, with the help of assistants. She had been active in the disabled people's movement against institutionalisation. She recalled that what came to her mind immediately after she came out of the institution was not 'rights', but rather 'anger' against what had been taken away from her— freedom, respect as a human being, and all of the other things that are normal for disability-free people. She said:

'Rights' are a concept for those who have access to resources in the existing system. But rights do not appeal to those who are regarded as deviants in the given system. [...] Besides, in achieving independent living, what disabled people have to do is to 'ask' others for help. And in asking, is it proper to stick to 'rights' in building a relationship with others?

Some important points can be observed from this comment. She says that rights are not proper to assert because she has to ask for help. From this statement, it can be deduced that rights are a tool to stake a claim, and therefore it is not always proper to assert a right, especially when it is more important for the oppressed to establish a harmonious relationship with others. Rights have both an individualist and an aggressive image, as described in the previous chapters. For some oppressed people, rights are not necessarily the only concept or the primary concept that they think of, as a tool to improve their situation. Also, for those who have spent all their lives separated from mainstream society, either in an institution or at their parents' homes, some-

times without even a basic education, rights might not function as a word or concept that has any bearing on the frustration they experience in their daily life. Since rights are closely connected to the law and the policies of the state, rights are highly political, philosophical, abstract, and intellectual concepts, which cannot always express the agonies of those who are most oppressed.

When considering a woman's right to self-determination a problem is the practitioner of rights, or the category 'women'; the claim by disabled women that 'rights are not for us' means, in other words, 'don't you include us when you say 'women' because we women are different from you women. The problems we face are different from what you face'. Within the category 'women', there is a diversity, power relationship and different conditions, such as disabled women and non-disabled women. It is not possible to generalise what 'women' are, or what the problems faced by 'women' are.

On a different level, there is a question raised by disabled people about whether 'women's right to self-determination' includes all women – i.e., does the scope of this category go beyond the women in the women's reproductive rights movement who have asserted that they have such a right? Disabled people would say that they acknowledge that, unlike women in general outside the movement, women who participate in the women's movement were conscious enough to realise the seriousness of the issue of discrimination against disabled people. Therefore, they have sometimes suggested that women in the reproductive health movement may use the term 'women's rights' but the terms should not be extended to mean women outside the women's movement.

### *Hierarchy, different consciousness, and the role of the category 'women'*

There are two difficulties with the category 'women' – the power hierarchy among women and different consciousness.

Indeed, 'women's rights' implies that there is 'the woman' – a generalisation of 'women'. Generalisations are often made by the powerful. Generalising is a process to do away with or to ignore diversity. Those who make generalisations do not feel diversity is necessary or important. They are satisfied with the generalised categorisation because their interest is being represented; it is likely that they are in a majority position, either in terms of quantity or power. Those who are not in the majority need to draw attention to the way in which they differ from the majority because this difference matters to them. Why does it matter? Because the difference influences their well-being in a crucial way for them, mostly in an oppressive way. In comparison to disabled women, disability-free women are likely to be more powerful and privileged.



There are feelings among disabled women that disability-free women will not understand or represent the interests of disabled women. This is the same process of generalisation as the heterosexual forgetting about the existence of the homosexual by universalising heterosexuality, or men universalising human beings while forgetting women.<sup>11</sup>

At the same time, women who believe that conventional women's roles are truly women's because of their being women might not feel represented by the feminist rhetoric of 'women's right to reproductive self-determination'. For women who live happily with conventional values, conflict with men and authority, in the name of 'women', only causes unnecessary problems. Women in the reproductive health movement also have worries about the reproductive decision-making practised by many women in general. For instance, some women might be ignorant of their bodily systems, they might have an abortion without any serious consideration, or they might fail to ethically reflect upon their anti-disability biases.

But then, is it wiser to stop saying 'women'? In the practice of political struggle, identity is necessary, especially when the category itself is oppressed by the more powerful, in this case 'men'. If one woman's interests are not totally represented by such terms as 'women' and 'rights', on certain politicised occasions, such as during a courtroom trial, it is still important to use the category 'women', even if it is incomplete. This is because the category 'women' is widely acknowledged for its value and significance as a category of the oppressed, and chances are that the acknowledgement entitles a person to rights to justify a demand. A 'right' or the category 'women' is incomplete, but these categorisations cannot be abolished as long as they are a tool to support a demand to stop unfair treatment. Then the point is not whether women should stop saying 'women's rights' or not, but that the application of the term should be broadened to include women with as many diverse backgrounds as possible. If rights do not appeal to relatively more powerless women, then the only way to solve this problem is to enrich the concept so that it becomes attractive. If women in general are less aware of the ethical problems of selective abortion, or of discrimination against disabled people, then the only way to make them more aware is to raise their consciousness. Consciousness-raising is the target of movement activities in a sense; perhaps movements in collaboration with academics, are the only way to raise consciousness among women in general.

*Who are 'women' in 'women's right to self-determination' as used by the women's movement?*

The practice of 'rights' as has been proposed here is an active approach to the values of other people, so that the way of thinking about people, about the 'oppressed attribute', changes. The concept of 'rights', in this light, is a political instrument for social movement groups to actively engage with socially constructed values, in order to challenge them. Meanings of 'a challenge to change socially constructed values in society' can be interpreted in two ways. One is that the political struggle that makes use of women's right to self-determination is oriented toward the creation of conscious women in the social context in which the struggle is taking place, whether it be about women's issues or disabled people's issues. So the use of 'women's right to self-determination' is in order to mitigate bias against disability. And if 'women's right to self-determination' is an expression that challenges discrimination, it can be said that the use of this rhetoric is aimed at trying to include as many different women as possible, who may feel that they have been excluded from the category 'women' because of discrimination. Thus 'rights' or 'women's self' are not tools to entitle privileged women, as disabled people worry, but are tools to promote a continuous effort to expand what is encompassed by rights, incessantly challenging the discrimination inherent in society. This effort to raise consciousness among women and other citizens is taken with the hope that it will result in broader solidarity amongst women in the future.

Earlier it was suggested that when disabled people express their worry about the use of reproductive technologies, they are acting in solidarity with future disabled 'comrades'. Accordingly, women's movement groups propound a view of individual women who are conscious of what decisions they are making in what social conditions, who are ready to face choices, and who have good judgement of how their decisions are connected to the contemporary and future society. Women's movement groups are considering the 'mature' women in the future, when they assert 'women's right to self-determination'. For women in general to be mature, movements must keep issuing challenges to improve society. Social movements, struggling for the well-being of women and disabled people, as I have observed in my analysis, are about hopes for the future direction of a society. Without an optimistic view for the future, how can a social movement sustain itself? Hope and trust are the principles and motivations for social movements, and this includes the women's movement.

## Conclusion

### Summary of the Analysis and the Future of the Concept of ‘Rights’

#### **1970s: ‘Women’s right to abortion’ is women’s egoism**

In 1972, when the Ministry of Health and Welfare, together with the religious group *Seichô no ie*, attempted to revise the law in order to limit women’s access to abortion, women all over Japan united to prevent this revision. In doing so, women used the slogan ‘women’s right to abortion’, but the phrase soon invited criticism from disabled people. The argument of disabled people was that women should not use the phrase of ‘a right to abortion’ because it would include the right to abort foetuses with disabilities. According to them, if women abort a foetus with an anomaly because of the anomaly, this would be a form of discrimination against people with disabilities. The disabled people’s movement also contended that women should examine the discrimination against the disabled that they had internalised within themselves. In this context, the disabled people’s movement concluded that a ‘women’s right to abortion’ was an expression of women’s egoism.

Anti-abortion activists also focused on the concept of ‘rights’ in their arguments against abortion, saying that by demanding a ‘right to abortion’ women were requesting the right to commit murder. Consequently, they also believed that ‘women’s right to abortion’ was women’s egoism.

Women in the WLM during the 1970s found the term ‘right’ to be too limited. They wanted to question the meaning of abortion within Japan’s historical context and within the society’s contemporary context, but the phrase ‘right to abortion’ did not facilitate such debates, nor did it go beyond the issue of ‘legal access to abortion’. They started discussing the limitations of the concept of ‘rights’ and tried to find phrases that would more accurately portray their movement’s thoughts on abortion.

*Why should the issue of ‘women’s rights’ be egoism? Consideration of the concept of ‘rights’ according to its genealogy*

Following from the genealogy of the concept of ‘rights’ the term is an instrument used by the oppressed to call for better conditions. Therefore, the prerequisite for the use of the concept is that it can be used

when there is (the possibility of) injustice, and it can be used by the oppressed to improve the situation.

To analyse the relationship between disabled people and non-disabled women in terms of the hierarchy of oppression, the former regarded the latter as their oppressors. To begin with, disabled people felt that women represented 'mothers'. From their perspective mothers are physically and psychologically the closest people they have contact with who are disability-free people. As their parents, disabled people believed that these 'mothers' tend to act too protectively or paternalistically. The WLM was composed mainly of disability-free women; so, to disabled people, when women used the term 'right' it looked as if their oppressors were portraying themselves as victims. Hence, disabled people could not accept that 'their oppressors' were using the concept of 'rights'.

Analysing the debates between the two movements in the 1970s reveals that discrimination against women existed within the disabled people's movement. This is mainly because the disabled people's movement at that time was represented by disabled men. These men labelled women 'the closest oppressors' on the one hand, but on the other hand they expected women to be unconditional caregivers. Therefore, they could not accept women's demand for the right to abortion – perceiving abortion as women's abandoning of their children. Yonezu points out that 'in retrospect, probably there was a fear of being abandoned by their mothers among disabled men (as well as anti-abortion men)' (Yonezu 1998: 238) To expect women to be unconditional caregivers imposes a conventional role upon women, implying discrimination against women internalised within the mind of disabled men. Disabled men criticised women who used the term 'rights': according to disabled men, women should quietly embrace any children instead of asserting their own rights. In this way disabled men discriminated against women, although they did not acknowledge this.

Indeed, disabled people at that time argued that discrimination against the disabled was more serious than discrimination against women, and that being disabled was more difficult than being a woman. For instance a disabled person might require assistance to eat and excrete and such help might be difficult to get. However, the seriousness of discrimination in each case is not what should be weighed. The argument that 'women's discrimination is less serious' in itself is discriminatory against women, underestimating or even ignoring seriousness of the issue of discrimination against women. Whether it be as 'nearest oppressors' or 'unconditional caregivers', women were reduced to the role of mothers, and this process of conflating women to mothers is based on gender bias. In this way, discrimination against women was

underestimated and invisible for, and carried out by people in the disabled people's movement.

Women using the concept of 'rights' intended to criticise oppression of women by the state and by men. However, because discrimination against women was ignored and because of the gender bias internalised in disabled men, abortion debates at that time were focused only on the foetus – woman relationship. When this focused, there was no consideration of the causes that lead women to have an abortion – although actually, to a considerable degree, if not always, gender discrimination is often the cause of women considering an abortion. Ignorance of discrimination against women was one reason that women's rights was considered egoistic. Consequently the act of abortion was understood to be an attack by a woman against a foetus.

Anti-abortion activists did not specifically focus on the issue of the selective abortion of a foetus with an anomaly, but they generally criticised women as being egoistic for having abortions. In principle, this labelling of women as egoistic and selfish was due to failure to acknowledge discrimination against women. Women's demand to end oppression against women may well sound like a selfish demand, as anti-abortion activists regarded women as naturally as they are, making the demand for change or improvement itself superfluous.

In this regard, when the usage of the term 'right' is criticised, there is a possibility that those critics assume that the oppression against which the right is being asserted is something natural and not oppression at all; they expect that the oppressed remain obedient, and that the oppression be maintained. Or simply, they believe that the status quo should be maintained. Therefore in order to further the social and political agenda of the oppressed group it is critical that they raise awareness and acknowledgement of the oppression that they experience, otherwise society will reject any claim they make to entitlement to rights.

#### *Problems with the concept of 'rights' in the genealogy*

In addition to the fact that discrimination against women was clearly disregarded in the process of social movement activities during the 1970s, the concept of 'rights' asserted by women were not only misunderstood but it also sometimes implied the idea of dominance and conflict. In chapter 3, the genealogy of the notion of 'rights' revealed that one aspect of 'rights' implies that the individual makes choices in order to maximise his/her interests. An individual is defined as a benefit-seeker without any limits who is destined to have conflicts with other individuals. The rights of one person are a potential threat to another's rights. In this way, the definition of 'rights' is based on the idea that one person exercising their rights and another individual exercising

their rights are mutually exclusive. Thus the concept presumes that exercising rights always contains the possibility of violating another's well-being.

Since the concept of 'rights' originated in the Anglo-American tradition, the combative implication of the usage of rights can be attributed to Western political philosophical thought regarding the characteristics of an individual and relationships between individuals. Of course, a great number of philosophers have discussed the concept of rights in different ways in many parts of the world. But in talking about rights in textbooks on political philosophy, there are certain canonical ways of constructing debates, starting with those debates led by Hobbes, Locke, Bentham, and others (see chapter 3). These thinkers' arguments differ in their detail, but they are based on rather pessimistic views of human beings – seeing them as selfish and combative beings. The implication of the concept of rights is constructed accordingly. Of course, a political citizen needs to be critical, outspoken, and sometimes combative toward unfair authority, but it is also important to trust other human beings. However, the combative aspect of rights is often emphasised when conceptualising the term.

The WLM in Japan in the 1970s also fell into the trap of the conflictual implication of the concept of rights; when women in the WLM used the slogan 'women's right to abortion' the idea of a right of a foetus arose as a counterforce, whereby a right of a foetus is considered to be 'violated' by a woman's right.

Thus, criticism of women's rights often requires the consideration of 'a foetus's right' in order to weigh the rights between a woman and a foetus. In order to do so, the ethical status of the foetus must be defined. A conflictual picture between a foetus and a woman is thus constructed. Giving rise to a conflict between parties while there might actually be no conflict, is one limitation inherent in the concept of 'rights' and was one reason for women to hesitate in using it.

*The hesitation within the WLM to use the term 'right' in abortion debates*

To begin with, the hesitation of women in the WLM to use the term 'right' as a movement slogan was because 'the right to abortion' implied that women were only concerned with requesting legal access to abortion, and were not interested in extending their debates to question the implications of abortion: the role of abortion in the social context of that time. Abortion was not what women wanted to have, but was the last resort of contraceptive method as a result of poor provision of information on reproduction and insufficient communication between men and women. Being viewed as a part of the state's political and economic policies, abortion had been a tool of population control. The state's pol-

icy of the sterilisation of disabled people was also based on the same interests. The Eugenic Protection Law set out legal conditions for both abortion and the sterilisation of disabled people, but given the state's position on these two matters, it was logical that they were stipulated in one law.

The concept of selective abortion is based on the same logic that the state wants to secure better quality nation and the fact is that women tend to act on this logic, not wanting to have a disabled child. Many women, especially outside the movement, would indeed regard the fact that a foetus has an anomaly as a justifiable reason for having an abortion. This might be ethically problematic, yet the 'right to abortion', in the view of the WLM, could not explicitly communicate ethical problems about the selective abortion of deformed foetuses. Receiving criticism from the disabled people's movement – for example, 'what is wrong with being disabled?' – women in the WLM, being mostly disability-free, confronted the 'discrimination' internalised within themselves. 'Right to abortion' was not sufficient to problematise all the concerns connected to abortion.

Another reason for women's hesitation in using the concept of rights was that they did not agree with the competitive relationship between a foetus and a woman that it created, in which the rights between the two parties had to be weighed. As mentioned, a rights framework tends to generate such a picture with polarised opponents. Therefore this adversarial picture is, in a sense, a logical basis for building a justification for killing a foetus.

However, women in the WLM during the 1970s did not take up this position, which would pit women's needs against the life of a foetus. Instead, women in the WLM tried to face the fact that abortion itself is indeed an act of killing. They tried to do this by positioning themselves alongside the foetus, instead of assuming the competitive relationship between a foetus and a woman. By doing so, women expressed the pain experienced both during and following an abortion, and drew attention to the reasons why a woman might have to have an abortion, despite this pain. The idea that 'abortion is an act of killing' was directed toward women themselves, encouraging them to think about themselves seriously, including why women choose whether or not to give birth. This idea was also aimed at those who criticised women's rights rhetoric for being egoistic and unfeeling about the act of having an abortion. The WLM further contended, from time immemorial, abortion has been a means of striking a balance between resources and labour in society, so those who criticise abortion are also indirectly benefiting from 'acts of killing'. The WLM constructed argument in favour of securing access to abortion and held that current social conditions necessitated access to abortion for women, and also maintained that women do not

choose to have abortions because they like having them. This is an interesting point, but to critics, this argument was too confrontational because this argument required listeners to stop and think deeper the meaning of abortion in the Japanese social context. An attempt to limit women's access to abortion failed anyway, because of the persistent activities of the WLM. This argument, which tries to highlight the pain - both psychically and physically- of abortion, was taken up by the successors of the women's reproductive health movement during the 1980s and thereafter was at the core of the abortion access argument of the women's reproductive health movement in Japan.

Another reason for women's hesitation in using the concept of 'rights' was because they felt that doing so would mean relinquishing their claim to the concept of motherhood, which was something they did not want to do. As mentioned, abortion had been a means of balancing society, and safeguarding it at the cost of what are considered to be 'social nuisances' in some occasions (Tanaka 1973; Appendix 5: 1), namely foetuses. Modern society is constructed by cutting out inefficiency and choosing efficiency, and women and disabled people named this the 'ethics of productivity'. Criticising these ethics, women affirmed their own 'deviant' and 'contradictory' bodies with menstruation and reproductive capacities. They rejected the attitude of cutting away 'social waste' for the sake of prosperity, and instead tried to construct an argument for the co-existence of what was deemed to be weaker with that which was deemed to be stronger. This was also why women in the WLM did not simply ignore disabled people's question, 'would you give birth to the child if it is disabled?' Women also wanted to reflect on the fact that Japanese society had constructed an identity for disabled people which deemed them to be 'social waste' because of their unproductivity; women in the WLM did not want to perpetuate this value. 'Motherhood', which women in the WLM tried not to leave out, was not the ideal image of womanhood. The intention of women in the WLM was to restore the value of 'nurturing life' to society and they wanted to appreciate processes and beings which are not always effective or rational, contrary to the basic principle that economic growth and the process of modernisation require. To appreciate what is not effective or rational means to challenge the fundamental values inherent in society. This should not be the women's role exclusively, but should also be required of men.

Since the phrase 'right to abortion' tends to rationalise these problematic ethics connected to the act abortion and does not stimulate debates on these issues, women in the 1970s WLM felt reluctance to use the concept of a rights. The 'right to abortion' could not express the socially and historically problematic meaning of abortion, and the expression implied that the target of the women's movement was solely 'se-



curing access to abortion'. The pain caused by an abortion was rationalised and blunted when the debate focused on access to abortion.

However, women in the movement did not back down from their belief that women should have the final say in deciding whether or not to have an abortion. Instead, they stuck to the principle that 'neither the state nor men will control women in reproductive decision-making'. Thus, they needed to use the concept of 'rights' in order to criticise women's oppression by the state and by men, however they were in a dilemma about using it.

The dilemma of whether or not to use the concept of 'rights' existed within the WLM itself, but not as a question that led to a polarisation within the movement. Rather, it was a question that each individual woman within the movement asked herself. There were women who separated from the WLM, forming their own group, *Neo-lib Chûpiren*, because of opinions that differed from others within the WLM and because their idea of organising the movement was different (*Chûpiren Neo-lib* (22) 1973: 4). *Chûpiren* attracted women who thought that the term 'right' should be used to clarify their demands regarding abortion. *Chûpiren's* position was to separate the issues of abortion and discrimination against disabled people, defining the latter as a problem for welfare policies. This group was not active for very long. This was mainly because of the domineering attitude of its leader (Lib Shinjuku Center *Konomichi hitosuji* (15) 1975: 4-5), but also because its position on the concepts of 'rights', 'abortion', and 'disability' did not take into consideration the issue of selective abortion or the 'meaning' of abortion in Japan's historical or contemporary context. Japanese abortion debates in later periods 'inherited' the tendency to consider discrimination against women and against disabled people when taking up the issue of abortion, as the WLM had done.

*Comments about the concept of rights from the analysis of the 1970s abortion debate*

*How to use 'rights' in the phrases of political movements*

In the introductory chapter I assumed that the disagreement between the disabled people's and the women's movements was due to the concept of 'rights'. Because 'rights' is based on the assumption that individuals are combative and egoistic, 'women's rights' was similarly criticised. The genealogy of the concept in chapter 3 argues that this was indeed the case. Those ideas stem from the Western philosophical tradition, more specifically the tradition of utilitarianism, liberalism, and enlightenmentism.

As the core of the debate was analysed, however, it also emerged that in addition to the original characteristics of the concept such variables as 'how the environment acknowledges discrimination', as well as the way the term 'right' is used, determine the nature of the debate on the application of the notion of rights. 'The right to abortion' could not avoid emphasising the act of abortion without questioning the act of giving birth. Further, given the fact that 'rights' are a highly legal concept, 'the right to abortion' tends to reduce abortion debates to the matter of legal access to abortion.

Apart from the problems of the term 'right' in itself, when society fails to acknowledge discrimination experienced by certain groups of people, a claim to an entitlement to a 'right' by the oppressed people experiencing that discrimination sounds aggressive and selfish, because others see the discrimination is 'natural' and not a form of oppression. In abortion debates, the problem is reduced to a foetus – woman relationship because of the absence of a proper acknowledgement of discrimination against women; women are viewed solely as 'the attacker' of a foetus, instead of people who are oppressed. This denial of discrimination is a serious form of discrimination in itself.

In order to be understood properly, women in the WLM mainly replaced the concept of 'rights' with two phrases: 'to give birth is egoism, not to give birth is egoism' and 'we demand a society where we can give birth – we want to give birth'. With these phrases, women in the movement tried to broaden the scope of the debate from 'a foetus – woman relationship' to 'the whole of society, which is involved in the issue of abortion'. Women also tried to express the pain of having an abortion in this context. Unfortunately, the 'right to abortion' could not convey the idea that the WLM aimed to change the meaning of abortion in relation to the act of giving birth and aimed to criticise the use of abortion in population control. The concept of 'rights' could not extend the abortion debate to a demand for improvement in social conditions where individual women make decisions. But if women want to continue to use the term 'right' in their political struggle, it needs to be enriched and broadened. In what follows, I discuss what needs to be expressed by the concept of rights according to the 1970s Japanese WLM's argument.

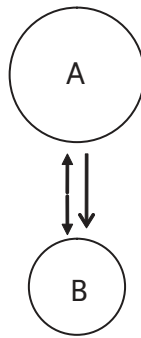
### *Philosophical contribution by the Women's Liberation Movement's abortion debate*

#### *On dualism*

Conventionally, anti-abortion activists tended to weigh women's right to abortion against the right of a foetus. Disabled people did not deploy the argument of this 'clash of absolutes' (Triber1992) in criticising 'wo-

men's right to abortion', but both anti-abortion and disabled people's activists held that a woman decides about the future of a foetus based on egoistic criteria. This is a dualist way of viewing the act of abortion, stemming from the term 'right'.<sup>1</sup> Also the focus on abortion, without considering the meaning of giving birth, is based on a dualism between the acts of giving birth and not giving birth. To draw the concept of dualism in a diagram:

**Diagram 3: Dual power interaction**

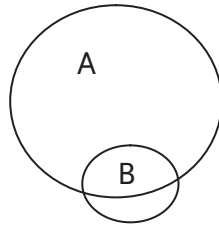


In this diagram, the bi-directional arrow  $\updownarrow$  indicates that A and B are separate, conflicting beings. At the same time, it is clear that A is dominant over B, which is shown by the down arrow  $\downarrow$ . In the context of the issue of abortion, the act of giving birth, A, is mostly positively valued, while B, or the act of not giving birth, is valued negatively. Women who give birth are admired unconditionally (A), while women who have an abortion are called 'egoistic' and 'aggressive' (B). The link between the two acts is barely questioned, but each act is attached to opposite ideologies in society. This is how those who criticise 'women's right to abortion' view the relationship between the acts of giving birth and not giving birth. Another analogy is made between 'a foetus and a woman'. Critics of 'women's right to abortion' argue that women dominate the foetus, as the down arrow  $\downarrow$  shows, and that women easily decide to have abortions, with hardly any sympathy for a foetus in terms of respect for life, as the bi-directional arrow  $\updownarrow$  shows.

However, women in the WLM faced the fact that abortion is an act of killing a life, bringing 'pain' to the fore. At the same time they tried to broaden the focus of the concept of 'rights' from focusing solely on abortion to include the act of giving birth.

Philosophically speaking, I observe that the Japanese WLM's arguments suggests a critical new paradigm replacing the 'dualism' in which abortion debates are so easily trapped. The following diagram explains this view:

**Diagram 4**



In this diagram A encompasses B, rather than being in conflict with B. There is no competition between A and B, but there is recognition that A 'hosts' B. In the context of the issue of abortion, for example, A is becoming pregnant, or the act of giving birth. Abortion is sometimes unavoidable, but higher or lower values are not attached to either A or B. Both events happen, and if an abortion is considered 'egoism', then the act of becoming pregnant and giving birth can also be considered 'egoism'. A can also be compared to a woman, whereas B can be compared to a foetus. A is not necessarily willing to attack B, but when A has to do so, A feels pain, even sometimes wishing to maintain B. In the above diagram, the pain of B is not giving joy to A, but on the contrary, B being hurt also hurts A. Abortion is an act of killing a life, and this is not positive for the foetus, but it is not positive for the woman either. Also, B's existence is not independent from A, but is the result of A's act – A is hosting B. When a woman feels attacked by a pregnancy, her anger might be a response to 'additional' issues, such as mistakes in using contraceptive methods, an uncooperative attitude on the part of her partner about contraception, her life plan, complex legal procedures, or pressure on her from her surroundings to give birth – all involve discrimination against women. Her anger and hostility are not directed solely toward the foetus. I assume that for many women a foetus's existence does not mean that the foetus intends to threaten the would-be mother. Finally, a woman has the say over whether or not to abort the foetus, which is also expressed in diagram 4 where A *includes* B.

#### *The act of defining*

In addition to suggesting this paradigm shift away from the terms of dualism, problems in the act of 'defining' are also pointed out here. As mentioned, the phrase 'a woman's right to abortion' tended to bring

the concept of 'the right of a foetus' into the abortion debate. This attempt to weigh the rights of the woman and the rights of the foetus mean also defining the ethical status of a foetus, otherwise the task of weighing these two vis-à-vis each other would be impossible. However, women within the Japanese WLM consciously avoided mapping out a conflictual and competitive picture of the relationship between a foetus and a woman. Therefore they also avoided defining the ethical status of a foetus, that is, deciding whether it is a human being. They confined themselves to saying, 'we do not define whether a foetus is a human being, but it is a being with life.' What can be deduced from this attitude, in the light of problems inherent in the act of defining?

To begin with, it seems that 'a conflict' and 'the act of definition' are different sides of the same coin. On the one hand, the act of defining the ethical status of a foetus happens when there is a motivation to criticise women's rights, that is, to weigh a woman's right against that of a foetus. So a prerequisite to the act of defining a foetus is conflict, and therefore the tendency of anti-abortion activists would be to adjust empirical facts within the definition in order to win the debate. This is not only true for abortion debates. For example, when disabled people blamed women in the WLM for their assertion to secure access to abortion, the disabled people weighed the seriousness of discrimination against the disabled against discrimination against women, in order to argue that their discrimination is more serious. Women in the WLM held that the degree of discrimination for either women or the disabled cannot be defined quantitatively. This holds true in any ideological political debate, such as liberalism versus communism, or materialism versus idealism. Thus, definitions are made for the purpose of excluding the other, i.e., the opposing side of the debate.

On the other hand, the act of giving a fixed definition necessarily means eliminating what cannot fit into the definition, and tends to narrow the nature of the concept being defined. The act of definition could eliminate things that opponents in debate might have in common. Thus creating an obstacle for the debating parties if they are seeking a possible meeting point, and unnecessarily extend a conflict. For example, in abortion debates, not only in Japan, but also in many other countries, anti-abortion activists sometimes 'define' women in the WLM as women who 'regard a foetus as a lump of fat'. However, according to available sources, I never found that such a statement was made by women in the women's reproductive movements. While the women's movement's position might include a 'respect for life' perspective when women bring 'pain' to the fore, the women's movement is perhaps regarded with hostility by anti-abortion activists because of the definitions attributed to the women's movement by anti-abortion activists.

Furthermore, to polarise a debate reduces the issue to weighing the ethical values of two parties. In abortion debates, weighing the ethical values of women and the foetus by defining their moral status makes a number of critical matters invisible: discrimination against women, women's relationships with their partners and/or the father of the child, as well as norms and values surrounding both the woman and the foetus. Moreover, the act of giving a static definition is followed by the act of imposing 'the definition' on a general audience, although the manner of regarding such matters as pregnancy and the status of a foetus is based on partial and concrete experiences.

I do not suggest taking a relativist attitude, but I do question the act of giving a narrow, inflexible definition, which is uncertain in its nature, and I question the imposition of such a definition on others. The meaning of what we experience might change in the future, and many matters we experience are relative, not absolute, so why not avoid giving an arbitrary, artificial definition to what is uncertain? I think that this is a modest reasonable attitude, because it eventually might give rise to the possibility of reaching a better understanding between seemingly conflicting positions on an uncertain matter.

Defining the status of an embryo or a foetus is becoming more and more focused, especially because of the advancement of reproductive technology. However, the entitlement to personhood or patienthood of a foetus or an embryo would degrade a woman's body to a mere environment for the pregnancy, and this tends to strengthen the relationship between doctors and scientists and the foetus. Besides, a pregnancy is also objectified as a target of observation. The women's movement has been fighting for subjectivity, or true independence (*shutaisei*) to enable women to live their lives as full people, but by allowing technologies to intervene, regarding foetuses above pregnant women, these newly emerging phenomena seem to be destroying what women have achieved so far.<sup>2</sup>

To divide and reduce an issue when discussing the nature of that issue, giving a fixed definition to each polar in dualism, often simultaneously drawing a combative picture between the polars and creating a hierarchy, is traditionally a major characteristic of Western philosophy. Dualism, reduction, and the act of defining are linked with one another, manifesting themselves in constructing the meaning of political concepts. This way of thinking is also reflected in how the concept of 'rights' is conceptualised. In this way, the genealogy of the concept of 'rights' partially shows where egoistic, aggressive, and conflictual implications of the term come from.

It is important to add that my argument using diagrams 3 and 4 does not imply that the concept shown by diagram 4 is superior to the concept in diagram 3. To consider that there are only these two ways of con-

ceiving matters, and that one is superior to the other, would be another dualism. A conflict is sometimes necessary in order to say NO to oppression, for example of women to oppression by men or oppression by the state. The conventional meaning of 'rights' is still necessary in this respect. However, conventional 'rights' do not imply the concept shown in diagram 4. This discussion is an attempt to enrich the meaning of the concept by pointing out what has been missed.

### **The 1980s: International arguments, new rhetoric, and a new phase in movements' activities**

During the 1980s, the women's movement was able to use the concept of 'rights' slightly more easily and more frequently than during the 1970s. This was because new phrases emerged that made use of 'rights', such as 'women's right to self-determination' and 'reproductive rights', instead of 'right to abortion'. These two newer phrases had broader scope, encompassing both the acts of 'giving birth' and 'not giving birth'. Therefore, unlike in the 1970s, the women's movement rhetoric was not focused solely on the issue of abortion itself, but it focused on whether women were able to make reproductive decisions on their own, instead of others deciding for them. These new phrases also broadened the range of meaning of the term 'women'. When abortion was mentioned in movement phrases during the 1970s, women who were not expected to give birth, such as disabled women, were excluded from the category of 'women'. However, with the new 1980s rhetoric, women who were not expected to give birth, yet who wanted to give birth, were now included within the scope of the discussion.

The participation of disabled women in both women's and disabled people's movements also increased as more and more disabled women left disabled people's institutions to live independently. In the movement for independent living, more disabled women experienced reproductive sex, motivating them to participate in the women's reproductive movement and to oppose attempts by anti-abortion activists to outlaw abortion.

In addition to the participation of more disabled women in movements of women and disabled people, disabled men, who had opposed the phrase 'women's right to abortion', also witnessed their partners' abortions. These men came to know that abortion was not a joyful experience and that choice is necessary.

There was also a change on the part of women; women who had not been in the 1970s movements were now participants in women's movement activities. Those who were unaware of the whole sensitive debates of the WLM about the term rights during the 1970s, used the term

'right' as a political instrument to say no to state intervention in women's reproductive decision-making.

These changes in the 1980s also altered the relationship between discrimination against disabled people and discrimination against women. In the 1970s, disabled people did not want to hear women using the concept of 'rights' because of their belief that discrimination against people with disabilities was more serious than discrimination against women. Yet in the 1980s there emerged a sharper consciousness that these two types of discrimination should not be weighed in such a manner. Discrimination against women is as serious as that against people with disabilities – this position became more accepted by disabled people during the 1980s, making it easier for the women's movement to adopt the language of rights.

The use of positions taken up at the international level is often an effective strategy to convince Japanese authorities that such a position would be valid in the Japanese context as well. As the phrases 'women's right to self-determination' and 'reproductive rights' came into use at international conferences and these rights were accepted as women's basic human rights, very few in Japan would reject the phrases.

Because of these changes, women's movement activists could use the concept of 'rights' in the 1980s more than in the 1970s. However, the problems inherent in the concept – the liberalist, enlightenmentist connotations of 'rights' – were not solved. This period witnessed a rapid development of reproductive technologies, including technologies to find disabilities in fetuses. While with the emergence of the term 'self' in the phrase 'right to self-determination' abortion debates began to take up new questions, such as 'who the self is'.

### *The 1990s into 2000s: Liberated individuals?*

In 1996, the Eugenic Protection Law was revised to become the Law to Protect Mothers' Bodies. In the new law, all the articles on legal procedures for eugenic surgery were deleted from the Eugenic Protection Law, and the conditions for legal abortion from the law remained in effect. In other words, only the legal conditions for abortion in the Eugenic Protection Law remained and that part now consists of the Law to Protect Mother's Bodies. The new law is therefore mainly about the legal conditions for abortion. The new law does not contain a selective abortion clause. Deletion of the eugenic part from the law was positive, but neither disabled people nor women were totally satisfied with the new situation. They now felt threatened by reproductive technology; disabled people were worried that some reproductive technologies would stigmatise disabilities, and women were worried that technologies



would pressurise women with regard to what kind of children they would have to produce.

Indeed, the doctors' associations started arguing strongly for the necessity of a selective abortion clause so that doctors could legally practise prenatal screening and selective abortion. Currently, abortion for any reason is performed under the economic reasons clause, may it be unplanned pregnancy, teenage pregnancy or in the case of a foetal anomaly and a selective abortion. Among these reasons for abortion, only an anomaly in a foetus is often ethically questioned in public debates because of the sensitivity of the issue, given the Japan's eugenic history. Doctors are afraid that their practice of selective abortion might be disclosed by the mass media, because selective abortion under the economic reasons clause is, strictly speaking, illegal and its practice might also be viewed as ethically problematic. Therefore, medical associations would like the law to be changed so that medical doctors do not have to be afraid when they perform selective abortions.

The attempt to introduce the selective abortion clause by medical associations were opposed by women's and disabled people's movement groups, because these groups argued that the introduction of the selective abortion clause would increase discrimination against people with disabilities and would impede women's right to self-determination. In 1999, doctors proposed revising the conditions for legal abortion so that women could have unconditional access to abortion up to 12 weeks of pregnancy. Before 12 weeks of pregnancy, abortion would be possible under the 1999 proposal in any social, economic, or physical situation which affects the pregnant woman's health. According to the medical associations, women's right to self-determination and reproductive rights are both understood to be 'an individual decision, without intervention by the surroundings, where sufficient information is given'.

Ideas about the right to self-determination as understood by medical associations can be attributed to the enlightenmentist, liberal, and utilitarian ideas of 'self' and 'rights', in the tradition of Western political philosophy. There the 'self' is considered to be a strong and conscious individual who knows how to act. In the practice of the 'right to self-determination' the values in the decision-making conditions are not questioned, as long as the self is able to exercise its autonomy with sufficient information. The influence of each self's decisions on the social environment, or the future of society, is not questioned either.

The 1999 proposal was not passed because of the opposition of SMOs. Although SMOs united in opposing the proposal, it is possible to observe that women's reproductive health movement groups and the other SMOs argued differently. Although the law does not have a selective abortion clause, the practice of some reproductive technologies would eventually lead to increasing discrimination of disabilities, be-

cause the technologies are based on the belief that 'disabilities cause unhappiness'. The groups also argued that the practice of prenatal screening and selective abortion, without an effort to remove bias against disabilities, therefore is a eugenic practice in the name of 'an individual woman's self-determination'. They argue that the powerful, such as medical associations and governmental ministries, are responsible for making an effort to stop discrimination against disabled people. According to the opponents to prenatal screening, women's right to self-determination is a decision that should be made in a context where giving birth to a disabled child is supported and welcomed as much as having a child without a disability. For them prenatal screening and selective abortion that takes place in the situation where there is no discrimination against disabilities, is the real 'women's right to self-determination' and 'reproductive rights'.

The medical associations' way of understanding the concept of 'rights' is based on conventional political and philosophical ideas about 'self' and 'rights', that the individual self seeks to further his/her own interests. Therefore, not to intervene in another's decisions is a condition for maintaining the well-being of an individual self, as the self is in the best position to know its own interests. The characteristic of the individual self, according to medical associations, is that the self is isolated from its social environment; values in the decision-making conditions are not questioned, nor are the influence and meaning of the content of the decision to society and its future. Hence, medical associations tend to argue that as long as the decision is made at the individual level, if it is a decision to abort a foetus with an anomaly, the decision per se is not a form of discrimination against people with disabilities. Moreover, doctors argue that they are meeting an individual client's request and that they are not increasing the level of discrimination against those with disabilities within Japanese society. According to these arguments, the 'self' is viewed as something that does not challenge problems that exist in the decision-making process that the self engages in.

In retrospect, this isolated 'self' and the practice of rights have been crucial problems for those engaged in public debates on abortion in Japan since the 1970s to the extent that these terms became the core of disagreement with and misunderstanding about each other. The 'right to abortion' could not express the problematic meaning of abortion in Japanese society and history, and since the phrase 'women's rights' was insufficient to challenge the problems of discrimination against those with disabilities, women hesitated to use rights in their argument.

Now women's and other SMOs argue that 'women's real right to self-determination is possible only when there is an effort to remove discrimination against those with disabilities'. The self conceptualised within

this idea goes beyond 'the isolated self' and is something more actively related to its environment. Exploring the concept of 'rights' can provide another idea of 'rights' which will, hopefully, enrich the concept overall. The following section considers what has been observed from Japanese women's movement's arguments concerning women's right to self-determination.

### **The possibility of enriching the concept of 'rights'**

What is called the 'modern self' (or 'modern ego') presumes an isolated self, that is, a self separated from the other, especially an 'ineffective', 'unproductive' other, in order to increase the utility (or happiness) of the self as much as possible. In this view, utility is gained by winning the competition for productivity and efficiency. Every one of us more or less has a desire not to be a loser in this competition, but wants to be superior to others. Having a disabled child, or being disabled, means dropping out from this competition and represents a deviation from society. In this light, the fear of having a disabled child stems, in one way, from a fear of losing in the competition, being looked down upon by others, and becoming a social deviant. Apart from the issue of 'disabilities', this way of viewing the self is so frequently witnessed in today's world in general, as is clear from jealousy toward random people's success on a daily level to nationalist competition at the international level. In every corner of society and the world, the ideas that 'I want to be superior to others' and 'another's well-being violates my well-being', based on an assumption that 'the utility (happiness) of others decreases the utility (happiness) of myself', are prevalent.

In this value system, the existence of others can be either a potential threat to the self or a potential target for elimination. Inefficient and unproductive beings are inferior deviants, while efficient and productive beings are rivals. Conventionally, the concept of 'rights' is also based on this notion of the relationship between the 'self' and the 'other'. Unproductive and ineffective beings were/are not entitled to rights, or otherwise the exercise of rights assumed a potential attack from others, as is clear from its implication that 'one's usage of rights would lead to violation of others' rights'.

I sincerely question these fundamental values, namely the 'ethics of productivity and efficiency'. Is it so important to be more efficient and more productive than others, and is what I look like to others so important, or how stylish my life is? Is it the absolute aim to win in a competition? Maybe there is something more important than winning or losing in a competition. 'What is more important' might be something which stems from unexpected events in life, such as having and living

with a disabled child, for example a certain sense of fulfilment and discovery of life, which cannot be found only through having children without disabilities.

By saying this, I do not intend to say that I, you, or others **MUST** give birth to disabled children, or that having disabled children always means a better or more fulfilling life. I want to say that nobody, no authority or no norms ought to cancel out this possibility, the possibility to feel a certain sense of fulfilment, or to experience 'another' way of living a life by having a child with a disability. I do not want my opportunity for these possibilities to be taken away if I get the chance, nor for others, who might want the opportunity to have disabled children. Society must not name those who (choose to) have a disabled child 'stupid' – 'stupid because there is access to technology to discover and eliminate fetuses with anomalies'. I also hope that nobody suffers from such stigmatisation. If anybody is suffering, this is not the good society I wish for. The practice of some reproductive technologies would not create a comfortable situation for some women or disabled people in society, because values inherent in society assume that a disability causes unhappiness both to a child and its parents.

To have disabled children must remain an option in society. To exercise this right without being stigmatised, I believe that I would need true support and understanding, but not pity. For this support, society's consciousness needs to change, from pity for those who have disabled children to a richer recognition that anyone might have, could have, or could have had disabled children. Whether a person in society does not plan to give birth, whether a person has finished giving birth, or if they have children who are not disabled, should not matter. What matters is that it could happen to anybody. Therefore, support for those who have disabled children is not geared only to individuals who actually have disabled children, but to our entire society. One individual's enjoyment of the right to be able to decide whether to give birth to a child with an anomaly and support for this right benefits others who are not even directly involved in the issue.

Can we now shift to a paradigm where the happiness of others is not contradictory to one's own happiness, but where one's own happiness is based on a truly strong self with willpower and the power of imagination, who enjoys another's happiness, by acting on the belief that another's happiness increases one's own happiness? Instead of the 'zero-sum' view of happiness between the self and the other, can't we believe that the other's happiness can enrich our own life? Between the self and the other in this relationship, the self does not disappear because of the other, but 'I maintain myself while letting others live inside myself'. According to the aforementioned two diagrams, this idea about the relatedness between the self and other is also explained in diagram

4. In the context of this argument, instead of letting the issue of conceiving and delivering a disabled child be the other's issue isolated from me, let's consider it by using the power of imagination, let's relate it to myself, facing the fact that 'it can happen to anyone'.

It has to be noted that this argument is geared not only to Western political philosophy any more, but also to the exclusionist way of aspiring for superiority. This is partially because attempts to shift into this paradigm are made to a certain extent in 'the West' as well, e.g., in humanist circles, and also because the exclusionist way of thinking is present in all cultures and individuals. Yet, because the originally Western term 'right' is discussed here, Western philosophy has been the focus in this book.

At the same time, the way of conceiving utility can be transformed. Winning in a competition means that one has obtained more benefit compared to others. This is relative happiness. However, there must be an intrinsic value in every being, in every way of living, which looks like a 'loser' in the competition, like 'being disabled'. Probably the value of a being lies in the simplest fact that 'the being exists'. If one finds absolute value in oneself regardless of how others are, or without comparing oneself to others, the life of the person becomes worthwhile. It is the absolute happiness of the being.

This is a question fundamental to society: the competition which exists among people, as well as the idea that winning the competition is the source of utility (happiness) of individuals. But isn't it all right if one is not number one? Not being number one, the person still has a value. So, find the value, and stick to it tenaciously, no matter what others do.

I want to consider what I have said so far in the light of the concept of 'rights'. Rights inherent in an individual. However, no matter how hard the individual makes a demand based upon rights, unless the society understands and/or supports the justifiable value of the request, 'rights' do not materialise. When an individual makes a request, the chances are that the individual is already in an oppressed situation because of a certain attribute. Moreover, as mentioned, the discrimination against the attribute is taken for granted, and the oppression of the individual who has the attribute is assumed to be natural. So when the individual makes a demand, the purpose of the individual's action is not only reaching the target of the demand itself, but also to change the values inherent in the society on how to view the discrimination of the attribute.

As a response from society, 'tolerance' or 'indifference' is not sufficient, but 'imagination of the pain' is also required. 'Indifference' or 'tolerance' is insufficient because they do not contribute to improving society by removing discrimination. So, strictly speaking, an indifferent

attitude is virtually the same as contributing to socially problematic attitudes. Confining 'rights' to an isolated individual's actions, as medical associations argue, might be increasing the practice of implicit discrimination, which may not be visible at first glance.

The practice of rights therefore requires support and understanding from an individual's surroundings (society), and so the meaning of 'rights' is understood to include a challenge to social conditions. I conclude that this was and is one of the critical messages that the Japanese women's reproductive movement wants to convey. A request for imagination is different from requesting others to experience the same pain and suffering, but, rather, is on the level of considering 'Are you satisfied with yourself when you see someone in front of you who cannot drink water on his/her own, while you can drink water yourself?' (Osano 1998: 80). 'You might have been in that position, even if you have never been, or will never be, in the same situation. Then can you disregard the situation of discrimination against a certain attribute?' (ibid)

I believe that however advanced technology is, the issue of the birth of a deformed child will never completely disappear. If 'disability' does not disappear from this world, should we accept the situation where disabilities are increasingly stigmatised, or should we try to remove or mitigate the stigma as much as possible? Moreover, as a woman who may give birth in the future, a more fundamental question for me is: do I feel comfortable in permitting a situation where giving birth to a disabled child is becoming more stigmatised, while there is always a possibility that I might give birth to disabled children? Even if some women do not plan to give birth in the future, is it all right to leave the situation as it is for the future of other women? My answer is no. I do not want to be forced to give birth to a certain kind of child, but want to be free in my reproductive activities, and I know that if I give birth to a disabled child, I will want the child and myself to be accepted and supported. I relate this concern to other women in the contemporary period and in the future. Until there is a situation where no disabilities exist, and as long as women continue to reproduce, there is always a chance of giving birth to disabled children. To make an effort to eliminate any discrimination of disabilities or women, and to affirm these attributes means to support myself in the unknown future, because I might become disabled, I might have a disabled child, or someone in my family might become disabled, and so on, endlessly.

Demands based on the concept of entitlement to 'rights' constitutes an attempt to transform values inherent in the context in which the rights are used, as well as an attempt to transform the consciousness of those who make up society. Thus, rights are not a mere instrument for requesting something to benefit an individual, but are a tool to build solidarity with others who live in the contemporary period, or in the fu-

ture. Conceived in this way, they can be a bridge between the self and others, as well as between the present and the future. When 'rights' are understood to be an instrument for building solidarity with others to alleviate their suffering, isn't it so that the aggressive image of rights can shift into an image of thoughtfulness and consideration? The concept of 'rights' being an instrument, 'movement' then is the practice of solidarity in itself, using 'right.' A social movement is a place where people can share similar painful experiences, a sense of anger, tears, dreams for the future, and can stand up together for social transformation. A social movement is an endeavour to raise private issues to the public and political level. The concept of 'rights' is an instrument to activate this function of a movement.

The Japanese women's movement was able to reach these insights because of its long years of debate with the disabled people's movement, and because women in the movement seriously deliberated upon the issue of discrimination against people with disabilities when they were considering the issue of abortion. They also seriously questioned and hesitated using the concept of rights. It was and still is a long and winding road, but the effort has brought about many philosophical insights. To confront the act of killing a life is actually to confront one's self. To confront the issue of selective abortion and discrimination against those with disabilities meant confronting the future of society. Neither an individual nor a movement can mature without facing themselves, instead of merely blaming the social surroundings or merely securing access to abortion without inquiring about its social/historical meanings.

To conclude, I vindicate rights because they are a device that a social movement cannot give up. A 'right' can be a tool to break through the isolation of individuals with problems. To withdraw the term 'right' is equal to a public concession of defeat, and I refuse to be defeated. But the right I vindicate includes the meaning that actively asks for changes of consciousness in the 'self' and 'others', as well as in the surroundings, or society.

The Western traditional concept of 'rights' is crucial, that is, 'rights' inherent in a strong individual to be able to say no to unreasonable authority. This concept of 'rights' is necessary to make a citizen politically conscious. But to eliminate discrimination, this notion is not sufficient. Unfortunately, as demonstrated in chapter 6, international organisations such as the WHO and medical associations tend to conceive of 'rights' in the individualist way, that is, as 'a right inheres in an individual, and that's all.' It seems that the more authority individuals and organisations have, the more individualistic the view they tend to have about the concept. Perhaps this is because they have less motivation to demand social reform than do more oppressed people, who really need

rights and social reform. Moreover, ironically, those with more power have more influence in defining what 'rights' are in official documents and so on. Furthermore, the notion of 'rights' used by the powerful is often based on Western conventional political philosophy. This book about the Japanese women's and disabled people's positions on the concept of 'rights' was written in the hope of breaking through shortcomings of how rights are perceived, by contributing an analysis from one non-Western area.

There is no magic short cut to construct a concept of 'rights' that is more comprehensive, widely acknowledged, and practised on a daily basis. It will be a long process. But considering that the concept of human rights, which is well known to the contemporary world, for example, was not known a hundred years ago, probably this small effort to broaden the concept of rights can make a difference to the future world in a hundred years. Those who do not give up win in the end. This book was written with such a conviction.



## Appendix 1

### Crimes of abortion (Chapter 29 of the Japanese Penal Code)

**Article 212** [Abortion] When a pregnant woman who procures an abortion for herself by the use of drugs or otherwise, she shall be punished with penal servitude for not more than one year.

**Article 213** [Abortion with consent and same resulting in death or injury] A person who at the request of a woman or with her consent causes her abortion shall be punished with penal servitude for not more than two years. A person who thereby causes death or injury to a woman shall be punished with penal servitude for not less than three months nor more than five years.

**Article 214** [Abortion through professional conduct and same resulting in death or injury] A doctor, midwife, pharmacist, or druggist who, at the request of a woman or with her consent, causes her abortion shall be punished with penal servitude for not less than three months nor more than five years. Those who thereby cause death or injury to a woman shall be punished with penal servitude for not less than six months nor more than seven years.

**Article 215** [Abortion without consent] (1) A person who causes the abortion of a woman without her request or consent shall be punished with penal servitude for not less than six months nor more than seven years. (2) Attempts of the crime mentioned in the preceding paragraph shall be punished.

**Article 216** [Abortion without consent resulting in death or injury] A person who commits the crime mentioned in the preceding article and thereby causes death or injure to a woman shall be punished with a grave penalty as composed with the penalty for the crime of inflicting injury.

(Source: *A Compendium of Laws: Japan*, 1994: 2591, translated by the author.)



## Appendix 2

### **The Eugenic Protection Law**

#### Amendments:

- (1) Law No. 154, May 31 1949
- (2) Law No. 216, Jun. 24, 1949
- (3) Law No. 174, Jun. 1, 1951
- (4) Law No. 141, May 17, 1952
- (5) Law No. 213, Aug. 15, 1953
- (6) Law No. 127, Aug. 5, 1955
- (7) Law No. 55, Apr. 21, 1960
- (8) Law No. 145, Aug. 10, 1960
- (9) Law No. 140, May 16, 1962
- (10) Law No. 128, Jun. 11, 1965
- (11) Law No. 120, Aug. 1, 1967
- (12) Law No. 64, May 18, 1970
- (13) Law No. 44, Jun. 25, 1975
- (14) Law No. 83, Nov. 6, 1980
- (15) Law No. 51, May 25, 1981
- (16) Law No. 80, Aug. 17, 1982
- (17) Law No. 72, Jun. 25, 1985
- (18) Law No. 98, Sep. 26, 1987
- (19) Law No. 56, Jun. 29, 1990

### **Eugenic Protection Law (Law No. 156, June 13, 1948)**

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## Chapter 1 General provisions

(Object of this law)

**Article 1.** The objects of this Law are to prevent birth of inferior descendants from the eugenic point of view, and to the protect life and health of mother, as well.

(Definitions)

**Article 2.** The 'eugenic operation' used in this Law shall mean the surgical operation which incapacitates a person to reproduce without removal of the reproduction glands, as prescribed by Order.

2. The 'artificial interruption of pregnancy' used in this Law shall mean the artificial discharge of a fetus and its appendages from the body of mother at the period when a fetus is unable to keep its life outside the body of mother.

## Chapter 2 Eugenic Operation

(Eugenic operation by discretion of physician) (2) (4)

**Article 3.** A physician may exercise the eugenic operation at his discretion, on a person falling under any of the following respective items, in obtaining the consent of the person in question and the spouse thereof (including a person under actually matrimonial relation, though not being legally married; hereinafter the same) if any: provided that this shall not apply to minors, mental patients, and feeble-minded persons:

- (1) The person in question or the spouse thereof has hereditary psychopathia, hereditary bodily disease or the spouse thereof has mental disease of feeble-mindedness;
- (2) A relative in blood within fourth degree of kinship of the person in question or the spouse thereof, who has hereditary mental disease, hereditary feeble-mindedness, hereditary psychopathia, hereditary bodily disease or hereditary malformation;
- (3) The person in question or, the spouse thereof who is suffering from leprosy, which is liable to carry infection to the descendants;
- (4) The mother whose life is endangered by conception or by delivery;
- (5) The mother actually having several children whose health condition is feared to be seriously affected by each occasion of delivery.

2. In the cases mentioned in item (4) and item (5) of the preceding paragraph, the eugenic operation under said paragraph may also be executed on the spouse thereof.

3. With respect to the consent under paragraph 1, the sole consent of the person in question shall suffice, if the spouse thereof is unknown or can not express his or her intention.

(Application for eugenic operation for which examination is required)  
(1) (2) (4)

**Article 4.** A physician must, if, in the case where he has confirmed that the result of this examination evidently shows that a person is suffering from the disease mentioned in The Annexed List, he has found that the eugenic operation is necessary for the public interests in order to prevent hereditary transmission of the disease, apply to the To, Do, Fu or Prefectural Eugenic Protection Commission for examination as to the propriety of performing the eugenic operation.

(Examination for eugenic operation) (1)

**Article 5.** The Metropolitan, Hokkaido or Prefectural Eugenic Protection Commission shall, on receiving the application under the provision of the preceding Article, notify the person who shall undergo the eugenic operation to that effect, and further shall, on examining whether or not the case meets the requirements provided for in said Article, decide the propriety for performing the eugenic operation, and notify the applicant and the person who shall undergo the eugenic operation of the result.

2. If the Metropolitan, Hokkaido or Prefectural Eugenic Protection Commission has decided that the performance of the eugenic operation is appropriate, said Commission shall, on hearing the opinions of the applicant and the concerned persons, designate the physician who shall perform the operation, and notify the applicant, person who shall undergo the eugenic operation, and said physician thereof.

(Application for reviewal) (1) (5) (16)

**Article 6.** If the person who has been decided to undergo the eugenic operation in accordance with the provision of paragraph 1 of the preceding Article may, if he has objection to such decision, apply for the reviewal thereof to the Public Health Council within two weeks from the day on which he received the notification under said paragraph of said Article.

2. The spouse, person having parental power, guardian, or the curator of the person for whom the decision was made to undergo the eugenic operation of the preceding paragraph may also apply for reviewal thereof.

3. The application for reviewal under the provisions of the preceding two paragraphs must be made through the Metropolitan, Hokkaido or Prefectural Eugenic Protection Commission which has made the decision that the eugenic operation is to be performed. In this case, the Metropolitan, Hokkaido, or Prefectural Eugenic Protection Commission, and the physician who is to perform the operation of the result thereof. (Reviewal of eugenic operation) (1) (16)

**Article 7.** The Public Health Council shall, if it has received the application for reviewal under the provision of the preceding Article, notify the physician who is to perform the operation to that effect, and further shall judge anew upon examination the propriety of performance of eugenic operation, and notify the applicant for reviewal, the person who is to undergo the eugenic operation, the Metropolitan, Hokkaido, or Prefectural Eugenic Protection Commission, and the physician who is to perform the operation of the result thereof.

(Presentation of opinion in connection with examination) (1) (16)

**Article 8.** The applicant under the provision of Article 4, the person to undergo eugenic operation, and the spouse, the person in parental power, the guardian or the mentor thereof may, by means of written or verbal statement, present the facts or the opinions to the Prefectural Eugenic Protection Commission or the Public Health Council in connection with the examination under Article 5 paragraph 1 or the reviewal under the preceding Article.

(Institution of lawsuit) (1) (9) (16)

**Article 9.** A person who was aggrieved by the decision of the Public Health Council may institute a lawsuit for rescission thereof.

(Formalities of litigation) (9)

2. A person who was aggrieved by the decision to the effect of being subject to the eugenic operation under the provision of Article 5 paragraph 1 may dispute only in accordance with the provisions of Article 6 and the preceding Article.

(Performance of eugenic operation)

**Article 10.** If there is no objection to the decision to the effect that the performance of eugenic operation is appropriate, or if the decision or the judgment relating thereto has become conclusive, the physician of Article 5 paragraph 2 shall perform the eugenic operation.

(Burden of expenses) (7)

**Article 11.** The expenses relating to the eugenic operation performed in accordance with the provision of the preceding Article shall be borne by the relevant Metropolis, Hokkaido, or Prefecture, as prescribed by Cabinet Order.

2. The expenses of the preceding paragraph shall be borne by the National Treasury.

(Eugenic Operation to mental patients, etc.) (4) (18)

**Article 12.** A physician may, if, in the case where, with respect to a person suffering from psychosis or mental deficiency other than the hereditary ones mentioned in item 1 or item 2 of the Annexed List, the consent of the protection obligatory person under the provision of Article 20 (the case where the guardian, spouse, person exercising parental power or the person under obligation to sustain becomes the protection obligatory person) of the Mental Health Law (Law No. 123 of 1950) or Article 21 (the case where the mayor of city or the headman of town of village becomes the protection obligatory person) of said Law has been obtained, apply for investigation concerning reasonableness of performing eugenic operation to the Metropolitan, Hokkaido, or Prefectural Eugenic Protection Commission.

(Ditto) (4)

**Article 13.** The Metropolitan, Hokkaido, Prefectural Eugenic Protection Commission shall, if the application under the provision of the preceding Article has been made, investigate whether or not said person is suffering from the psychosis or mental deficiency under said Articles and whether or not the performance of eugenic operation is necessary for protecting said person, and thus decide the reasonableness of performing the eugenic operation, and inform the applicant and the consenter under the preceding Article of the decision.

2. The Physician shall, if there has been made the decision to the effect that the performance of the eugenic operation is reasonable in accordance with the provision of the preceding paragraph, be authorized to perform the eugenic operation.

### Chapter 3 Protection of Mother's Life and Health

(Artificial interruption of pregnancy at physician's discretion) (4) (18)

**Article 14.** A physician designated by the Medical Association being a *shadan-hojin* (incorporated association) incorporated in the Metropolitan, Hokkaido, Fu or Prefectural district as a unit (hereinafter referred to as a 'designated physician') shall be authorised to perform artificial interruption of pregnancy to a person falling under any of the following respective items, in obtaining the consents of a person in question and the spouse thereof:

- (1) A person in question or the spouse thereof having psychosis, mental deficiency, psychopathies, hereditary bodily disease, or hereditary malformation;
- (2) A relative in blood within the 4<sup>th</sup> degree of consanguinity of a person in question or the spouse thereof having hereditary psychopathies, hereditary bodily disease, or hereditary malformation;
- (3) A person in question or the spouse thereof suffering from leprosy;

- (4) A mother whose health may be affected seriously by continuation of pregnancy or by delivery due to physical or economical viewpoint;
- (5) A person in question having been conceived due to being fornicated by violence or threat or while incapacitated to resist or refuse.

2. With reference to the consents under the preceding paragraph, the sole consent of the person in question shall suffice if the spouse is unascertainable, or if the spouse fails to declare the intention, or if no spouse remains after conception.

3. If the person in question who undergoes the operation for artificial interruption of pregnancy is insane or feeble-minded, the consent under obligation to protect another under the provisions of Article 20 of the Mental Health Law (the cases where the guardian, spouse, person having parental power, or the person under obligation to sustain another becomes the person under obligation to protect another) or of Article 21 of said Law (the cases where the mayor of city, town, or village becomes the person under obligation to protect another) may be deemed to provide the consent of the person in question.

(Practical guidance in contraception) (4) (5)

**Article 15.** Practical guidance in contraception by means of contraceptive instruments designated by the Minister of Health and Welfare for the use of women shall not be given as vocation by a person other than a physician, unless he is designated by the Metropolitan, Hokkaido, Fu or Prefectural Governor. Provided that, the act of inserting a contraceptive instrument in the cavity of the uterus shall not be performed by any person other than a physician.

2. A person who may obtain the designation of the Metropolitan, Hokkaido, Fu, or Prefectural Governor under the preceding paragraph shall be a midwife, public health nurse, or a nurse, who has completed the course sanctioned by the Metropolitan, Hokkaido, Fu, or Prefectural Governor in accordance with the standards prescribed by the Minister of Health and Welfare.

3. In addition to those provided for in the preceding two paragraphs, necessary matters in connection with the designation or the sanction by the Metropolitan, Hokkaido, Fu, or Prefectural Governor shall be prescribed by Cabinet Order.

#### **Chapter 4 Metropolitan, Hokkaido, or Prefectural Eugenic Protection Commission (16)**

(Metropolitan, Hokkaido or Prefectural Eugenic Protection Commission) (1) (4) (16)



**Article 16.** The Metropolitan, Hokkaido, or Prefectural Eugenic Protection Commission belonging to control of the Metropolitan, Hokkaido or Prefectural Governor (hereinafter referred to as “The Commission”) shall be established in order to investigate reasonableness concerning eugenic operation.

**Article 17.** Deleted (16)  
(Composition) (1) (3) (4) (16)

**Article 18.** The Commission shall be composed of not more than ten members.

2. The Commission may have extraordinary members in case of special necessity.

3. The members and the extraordinary members shall be appointed among physicians, welfare commissioners, judges, public procurators, officials of relevant governmental and municipal offices, or persons of knowledge and experience by mutual votes of the members.

4. The Commission shall have a chairman selected by mutual votes of the members.

5. The provision of Article 203 (Remuneration and reimbursement of expenses) of the Local Autonomy Law (Law No. 67 of 1947) shall apply *mutatis mutandis* to the remuneration and reimbursement of expenses of the members of the Commission.

(Delegated matters) (1) (16)

**Article 19.** Except those as provided for this Law, the term of office of the Commission members, functions of the chairman, and other necessary matters concerning the management of the Commission shall be prescribed by Order and Ordinance.

## Chapter 5 Eugenic Protection Consultation Office

(Eugenic Protection Consultation Office) (2)

**Article 20.** The Eugenic Protection Consultation Commission shall be established in order to popularise and coach the adequate method concerning contraception, together with giving advice in response to consultation on marriage affairs from the viewpoint of eugenic protection, and ensuring dissemination and improvement of the essential knowledge on hereditary and other aspects of eugenic protection.

(Establishment) (4) (11)

**Article 21.** The Metropolis, Hokkaido, Fu, and Prefecture, as well as a city setting up a Health Center shall respectively establish a Eugenic Protection Consultation Office.

2. The Eugenic Protection Consultation Office under the preceding paragraph may be attached to the Health Center.

3. The State may, as prescribed by Cabinet Order, grant subsidies for a part of the expenditures, with respect to the expenses needed for establishment and operation of the Eugenic Protection Consultation Office under Paragraph 1.

(Approval of establishment) (3) (4)

**Article 22.** A person other than the State, Metropolis, Hokkaido, Fu, or Prefecture, as well as a city establishing a Health Center must obtain the approval of the Minister of Health and Welfare, if it intends to establish a Eugenic Protection Consultation Office.

2. The Eugenic Protection Consultation Office under the preceding paragraph must have a physician in accordance with the standards prescribed by the Minister of Health and Welfare, and have the equipments necessary for examination and other matters.

3. The Minister of Health and Welfare may cancel the approval, if the Eugenic Protection Consultation Office under paragraph 1 has become not to conform with the standards under the preceding paragraph. In such case, the Minister of Health and Welfare must for affording the establisher of the Eugenic Protection Consultation Office an opportunity for explaining the case, cause his competent official to make inquiry and hearing in respect of said establisher.

(Exclusive use of name) (4)

**Article 23.** No one other than the office under this Law shall use in its name any letters representing Eugenic Protection Consultation Office or letters similar to thereto.

(Delegated matters) (4)

**Article 24.** Excepting those provided for by this Law, necessary matters concerning the Eugenic Protection Consultation Office shall be prescribed by Order or Ordinance.

## Chapter 6 Notification, prohibition, and others

(Notification) (4)

**Article 25.** A physician or a designated physician shall, if he has carried out the eugenic operation or artificial interruption of pregnancy in accordance with the provisions of Article 3 paragraph 1, Article 10, Article 13 paragraph 2, or Article 14 paragraph 1, notify the Metropolitan, Hokkaido, Fu or Prefectural Governor of the duly arranged records of such operations for the month stating the reasons therefore by the 10<sup>th</sup> of the next month.

(notice)

**Article 26.** A person who has undergone the eugenic operation must, if intending to get married, notify the other party to the effect of having undergone the eugenic operation.

(Keeping secrets) (1) (4) (16)

**Article 27.** Any person who engaged in examination of a eugenic operation or its business, or any person who actually engaged in a eugenic operation of effective business of artificial interruption of pregnancy, and any personnel of the Eugenic Protection Consultation Office shall not divulge another's secrets having been known in the performance of duties thereof. The same shall also apply in the case after retirement from office.

(Prohibition) (2)

**Article 28.** The operation or the Röntgen ray radiation in order to incapacitate a person for reproduction shall not be conducted without appropriate reason, except in the cases falling under the provisions of this Law.

## Chapter 7 Penal Provisions

(Contravention of Article 15 paragraph 1) (4) (16)

**Article 29.** A person who has contravened the provision of Article 15 paragraph 1 shall be punished with a fine of not more than five hundred thousand yen (¥ 500,000).

(Contravention of Article 22) (4) (16)

**Article 30.** A person who has, in contravention of the provision of Article 22, established a Eugenic Protection Consultation Office without the approval of the Minister of Health and Welfare shall be punished with a fine of not more than three hundred thousand yen (¥ 300,000).

(Contravention of Article 23) (4) (16)

**Article 31.** A person who has, in contravention of the provision of Article 23, used the letters presenting the Eugenic Protection Consultation Office or similar letters as the appellation shall be punished with a non-penal fine of not more than one hundred thousand yen (¥ 100,000).

(Contravention of Article 25) (4) (16)

**Article 32.** A person who has, in contravention of the provision of Article 25, failed to make the notification, or has made a false notification shall be punished with a fine of not more than one hundred thousand yen (¥ 100,000).

(Contravention of Article 27) (4) (16)

**Article 33.** A person who has, in contravention of the provision of Article 27, divulged another's secrets without appropriate reasons shall be punished with penal servitude for not more than six months or a fine of not more than three hundred thousand yen (¥ 300,000).

(Contravention of Article 28) (4) (16)

**Article 34.** A person who has contravened the provision of Article 28 shall be punished with penal servitude of Article 28 shall be punished with penal servitude for not more than one year or a fine of not more than five hundred thousand yen (¥ 500,000). If the person has thereby caused death to another, such person shall be punished with penal servitude for not more than three years.

### Supplementary provisions

(Enforcement date) (4)

**Article 35.** This law shall come into force as from the day elapsing sixty days counting from the day of its promulgation.

(Abrogation of relevant laws) (4)

**Article 36.** the National Eugenic Law (Law No. 107 of 1940) shall hereby be abrogated.

(Continuation of effectiveness of penal provisions) (4)

**Article 37.** With respect to application of penal provisions to the violative acts done before the enforcement of this Law, the Law under the preceding Article shall still be effective even after the enforcement of this Law.

(Exception to notification) (4)

**Article 38.** The provision of Article 25 shall not, in the case where the notification under the provision of the Ministry of Health and Welfare Ordinance No. 42 of 1946 (Regulation concerning notification of still-birth) was made, apply in the scope thereof.

(Medicines necessary for giving guidance in contraception) (6) (8) (12) (13) (14) (17) (19)

**Article 39.** A person having obtained the designation of the Metropolitan, Hokkaido, Fu, or Prefectural Governor in accordance with the provision of Article 15 paragraph 1 may, limited until July 31, 1995, sell, regardless of the provision of Article 24 paragraph 1 of the Pharmaceutical Affairs Law (Law No. 145 of 1960), solely such medicines necessary for contraception as designated by the Minister of Health and Welfare to a person who shall undergo practical guidance thereof.

2. The Metropolitan, Hokkaido, Fu, or Prefectural Governor in accordance with the provision of Article 15 paragraph 1 has come under any one of the following respective items, cancel the designation under said paragraph of said Article:

(1) If, in the case where the provision of Article 43 of the Pharmaceutical Affairs Law shall apply with respect to the medicines as designated by the Minister of Health and Welfare in accordance with the provision of the preceding paragraph, said medicines having failed to pass a test under said Article are sold;

- (2) If medicines other than the medicines as designated by the Minister of Health and Welfare in accordance with the provision of the preceding paragraph are sold as business;
- (3) In addition to those under the preceding respective items, if medicines have been sold as business to a person other than those undergoing practical guidance in contraception.

3. The Metropolitan, Hokkaido, Fu, or Prefectural governor shall, if he intends to make the disposition under the provision of the preceding paragraph, notice the person subject to such disposition of the grounds of such disposition as well as the date and place of the hearing at least one week in advance of the date, and further shall make hearing in requesting the presence of the person or the agent thereof. Provided that, the Metropolitan, Hokkaido, Fu, or Prefectural governor may, if the person subject to the disposition or the agent thereof has failed to attend the hearing without justifiable reasons, make the disposition under the preceding paragraph without holding the hearing.

SUPPLEMENTARY PROVISIONS (Law No. 154, May 31, 1949): (1) This Law shall come into force as from June 1, 1949.

SUPPLEMENTARY PROVISIONS (Law No. 216, Jun. 24, 1949): (2) This Law shall come into force as from the day of its promulgation.

SUPPLEMENTARY PROVISIONS (Law No. 174, Jun. 1, 1951): (3)  
 1. This Law shall come into force as from the day of its promulgation.

SUPPLEMENTARY PROVISIONS (Law No. 141, May 17, 1952): (4)  
 1. This Law shall come into force as from the day elapsing ten days counting from the day of its promulgation.

SUPPLEMENTARY PROVISIONS (Law No. 213, Aug. 15, 1953): (5)  
 1. This Law shall be come into force as from September 1, 1953.

SUPPLEMENTARY PROVISIONS (Law No. 127, Aug. 8, 1955): (6)  
 This Law shall come into force as from the day of its promulgation.

SUPPLEMENTARY PROVISIONS (Law No. 55, Apr. 21, 1960): (7)  
 This Law shall come into force as from the day of its promulgation.

SUPPLEMENTARY PROVISIONS (Law No. 145, Aug. 10, 1960): (8)  
 (Enforcement date)

Article 1. This Law shall come into force as from the day prescribed by Cabinet Order within the scope not exceeding six months counting

from the day of promulgation (enforced as from February 1, 1961 by Cabinet Order No. 10 of 1961).

SUPPLEMENTARY PROVISIONS (Law No. 140, May 16, 1962): (9)

I. This Law shall come into force as from October 1, 1962.

SUPPLEMENTARY PROVISIONS (Law No. 128, June 11, 1965): (10)

This Law shall come into force as from the day of its promulgation.

SUPPLEMENTARY PROVISIONS (Law No. 120, Aug 1, 1967): (11)

(Enforcement date)

I. This Law shall come into force as from the day of its promulgation.

SUPPLEMENTARY PROVISIONS (Law No. 64, May 18, 1970): (12)

This Law shall come into force as from the day of its promulgation.

SUPPLEMENTARY PROVISIONS (Law No. 44, June 25, 1975): (13)

This Law shall come into force as from the day of its promulgation.

SUPPLEMENTARY PROVISIONS (Law No. 83, Nov. 6, 1980): (14)

This Law shall come into force as from the day of its promulgation.

SUPPLEMENTARY PROVISIONS (Law No. 51, May 25, 1981): (15)

This Law shall come into force as from the day of its promulgation.

SUPPLEMENTARY PROVISIONS (Law No. 80, Aug. 17, 1982): (16)

(Enforcement date)

Article 1. This Law shall come into force as from the day prescribed by Cabinet Order within the scope not exceeding one year and six months counting from the day of its promulgation. Provided that... (enforced as from Aug. 30, 1982 by Cabinet Order No. 226 of 1982).

(Transitional measure as to partially amendment of Eugenic Protection Law)

Article 39. With respect to application of the penal provisions for the act made before the enforcement of Eugenic Protection Law, the former examples shall still be followed.

SUPPLEMENTARY PROVISIONS (Law No. 72, June 25, 1985): (17)

This Law shall come into force as from the day of its promulgation.

SUPPLEMENTARY PROVISIONS (Law No. 98, Sept. 26, 1987): (18)

(Enforcement date)

Article 1 This Law shall come into force as from the day prescribed by Cabinet Order within the scope not exceeding one year counting from the day of its promulgation.

SUPPLEMENTARY PROVISIONS (Law No. 56, June 29, 1990): (19)

This Law shall come into force as from the day of its promulgation.

Annexed List (Related to Article 4 and Article 12) (2) (15)

1. Hereditary psychosis
  - Schizophrenia
  - Manic Depressive psychosis
  - Epilepsy
2. Hereditary mental deficiency
3. Remarkable mental psychopathia
  - Remarkable abnormal sexual desire
  - Remarkable criminal inclination
4. Remarkable bodily illness
  - Huntington's chorea progressive
  - Hereditary spinal staxia
  - Hereditary cerebellar staxia
  - Progressive muscular atrophy
  - Dystrophia musculorum progressive
  - Myotonia
  - Congenital musculorum astitonia
  - Congenital cartilaginous malgrowth
  - Leukosis
  - Ichthyosis
  - Multiple soft neurofibroma
  - Sclerosis nodosum
  - Epidermolysis bullosa hereditaria
  - Congenital porphyrin urin
  - Keratoma palmara et plantare hereditarium
  - Atrophia nervi optici hereditarium
  - Pigmentdegenetation of retine
  - Achromatopsia
  - Congenital nystagmus
  - Blue sclera
  - Hereditary dysacousia or deaf
  - Hemophilia
5. Intense hereditary malformation
  - Rupture of hand, rupture of foot
  - Congenital defect of bone

(The Roppô Zensho, the Diet Library)





## Appendix 3

### The Law to Protect the Mother's Body

(Enforced on 13 July 1948, revised on 26 June 1996)

#### Chapter 1

General Provisions  
(Object of this Law)

**Article 1.** The objects of this Law are to articulate provisions concerning sterilization operation and artificial interruption of pregnancy to protect mother's life and health.

(Definitions)

1. The 'sterilization operation' used in this Law shall mean the surgical operation which incapacitates a person to reproduce without removing reproduction glands, as prescribed by Order.

2. The 'artificial interruption of pregnancy' used in this Law shall mean the artificial discharge of a fetus and its appendages from the body of mother at the period when a fetus is unable to keep its life outside the body of mother.

#### Chapter 2

Sterilization Operation  
(Sterilization operation by discretion of physician)

**Article 3.** A physician may exercise the sterilization operation at his discretion, on a person falling under any of the following respective items, in obtaining the consent of the person in question and the spouse thereof (including a person under actually matrimonial relation, though not being legally married; hereinafter the same) if any; provided that this shall not apply to minors:

(1) The mother whose life is endangered by conception or by delivery;

(2) The mother actually having several children whose health condition is feared to be seriously affected by each occasion of delivery.

2. In the cases mentioned in the items of the previous paragraph, the sterilization operation under said paragraph may also be executed on the spouse thereof.

3. With respect to the consent under paragraph 1, the sole consent of the person in question shall suffice, if the spouse thereof is unknown or cannot express his or her intention.

(Article 4 to Article 13 were eliminated in the newly enacted law enforced on 16 June 1996)

### Chapter 3

Protection of mother's life and health

(Artificial interruption of pregnancy or physician's discretion)

**Article 14.** A physician designated by the Medical Association being a *shadan-hojin* (incorporated or Prefectural district as a unit, hereafter referred to as a 'designated physician') shall be authorized to perform artificial interruption of pregnancy to a person falling under any of the following respective items, in obtaining the consents of a person in question and the spouse thereof:

- (1) A mother whose health may be affected seriously by continuation of pregnancy or by delivery due to physical or economical viewpoint;
- (2) A person in question having been conceived due to being fornicated by violence or threat or while incapacitated to resist or refuse.

2. With reference to the consents under the preceding paragraph, the sole consent of the person in question shall suffice if the spouse is unascertainable, or if the spouse fails to declare the intention, or if no spouse remains after conception.

**Article 15.** Practical guidance in contraception by means of contraceptive instruments designated by the Minister of Health and Welfare for the use of women shall not be given as vocation by a person other than a physician, unless he is designated by the Metropolitan, Hokkaido, Fu, or Prefectural Governor. Provided that, the act of inserting a contraceptive instrument in the cavity of uterus shall not be performed by any person other than a physician.

2. A person who may obtain the designation of the Metropolitan, Hokkaido, Fu or Prefectural Governor under the preceding paragraph

shall be a midwife, public health nurse or a nurse, who has completed the course sanctioned by the Metropolitan, Hokkaido, Fu or Prefectural Governor in accordance with the standards prescribed by the Minister of Health and Welfare.

3. In addition to those provided for in the preceding two paragraphs, necessary matters in connection with the designation or the sanction by the Metropolitan, Hokkaido, Fu or Prefectural Governor shall be prescribed by Cabinet Order.

(Chapters 5 and 6 were eliminated in the newly enacted law.)

[Author's own translation]



## Appendix 4

### **A demand letter from Osaka Aoi shiba no kai to the Hyôgo Prefecture**

The first part is composed of the list of facts.

#### *1. Facts*

The policy affected us as people with a handicap. This policy is evidently based on the current Eugenic Protection Law.

A. We have requested participation in the prefectural meeting to prevent unhappiness in birth, but were refused. What do you plan to do for us?

B. The prefectural administration is trying to systematise the measures to prevent unhappiness in birth, to abandon the effort to eliminate the cause that marginalization of people with handicaps into the term 'unhappiness'.

C. The prefecture made a campaign film, in a prefectural institute, with children with handicaps and shamelessly aired it on television despite opposition to doing so.

D. Amniotic fluid checks are being carried out in prefectural institutes as a matter of fact.

#### *2. Our basic point of view*

Currently Japan is a capitalist society. What is required is a highly productive labour force, and it can be said that the administration is organising this. Japan introduced the Eugenic Protection Law, based on German Nazism, and, with it completed today's modern rationalism. Namely, the society is organised into the position of being useless to the people with handicaps, who cannot do productive labour. The Eugenic Protection Law expresses it in terms of nation-state, and the law... This is a systematisation of the easy judgement that life with a handicap is unhappy. People with a handicap are not unhappy, but are made to be unhappy.

Welfare is referred to often, and it seems as if people with a handicap have been saved, but it is in fact the elimination of handicapped people, covered with a veil named 'love' and 'justice' by non-handicapped people. We have to remove the veil of falsehood to make our lives 'unhappy'.

### 3. *Our determination*

The prefecture must not regard this letter as merely a piece of paper. This paper contains the feelings of our brothers (members). We hereby express that we are prepared to take action, if there is no sincere reply to our questions.

### 4. *Questions*

1. On what basis and ideas is the movement implemented to prevent unhappiness in birth?
2. Why were we denied participation in the prefectural meeting last year?
3. On what grounds are we regarded as unhappy?
4. How do you explain the Eugenic Protection Law?
5. How do you explain the attempt to revise the Eugenic Protection Law, to introduce the selective abortion clause?
6. Do you have any intention to abolish the department which is aimed at preventing unhappiness in births?

We demand a responsible reply from the prefecture. This letter is made to be public. We intend to make this letter public. Please give us a written answer by 10 March.

(Source: Osaka "Shogaisha" Kyoiku-kenkyu-kai, in *Daishoken*, no. 1, pp. 25-27, February 1974, cited by Matsunaga, pp. 118-119, translated by the author)

Matsunaga (2001: 118-119) summarized the issues problematised by Osaka Aoi shiba no kai about the Hyogo Prefectural policy as expressed in the letter above as follows:

1. The movement to prevent unhappiness in birth is an attempt to systematise the eugenic law at the administrative level.
2. The movement defined ideas that 'it is a pity, and (we feel) sorry for handicapped people', '(I) want my child to be born without a handicap, (I) want to give birth to a healthy child' are expressions of discrimination, and are hereby refuted from the standpoint of handicapped people.
3. The movement asserted that the movement to prevent the unhappiness in birth was a movement to eliminate people with disabilities and is an attempt to deny handicapped people, who are already living, by labeling them as beings who are not supposed to live.
4. Amniotic fluid checks that lead to the elimination of a handicapped foetus is a challenge to handicapped people, and they thoroughly oppose it.

## Appendix 5

**A leaflet written and distributed by TANAKA Mitsu, on behalf of the Women's Liberation Movement (Tokyo, 1973)**

**I dare to propose, is abortion a vested right?**

*Holding a dead body for four days... A single mother killed her child with cement*

On the 5th of October, a single mother (27) was arrested for murdering her one-month child with cement.<sup>1</sup> She gave birth to the child alone in an urban city, without being able to have an abortion. But her lover stopped sending her money. She had not yet paid 80,000 yen, the bill for delivery, but, with a baby, she could not work to earn money – she finally committed the crime.

Ah! A voiceless voice. How cruel... I turned my eyes away from the newspaper I was holding. Turning eyes away, a question came to my mind, 'why didn't she have an abortion?', with anger towards the stupidity of this woman. But the very next moment, another new question came to my mind; aborting a child from the belly is not a crime, while killing a child after the birth is. If this woman had had an abortion three months ago, she would be innocent.

There is an expression, 'to give birth or not to give birth is women's right'. Does this mean that the child in the belly does not have a right to live, when women use 'right' to have an abortion?! However, if a child in the belly is a human-being, it should have the right to live. Then, WHAT DOES A WOMAN HAVE when she is pregnant?

The other day, there was a 'child-murder committed by an old father, aged 76, of his child with heavy cerebral palsy, who was bedridden for 37 years. *Aoi-shiba-no-kai*, a group of people with cerebral palsy, states, in their handbill titled 'Is it taken for granted that handicapped people are killed!! We oppose the revision of the Eugenic Protection Law':

What we have witnessed after a searching investigation of murder cases of handicapped children is “parents” who define the birth of handicapped child as “negative”. Under the current difficult situation (a society where the value of a human-being is decided according to their labour ability, where the search for profit and rapid economic growth are to be the supreme principle), we ourselves know how hard it is to protect and raise handicapped children. However, the egoism of handicap-free people is killing our existence, because this egoism is negative, and handicap-free people even dare to say that happiness for handicapped people would be to not exist. This egoism is represented by “parents”, enhancing the conspiracy of the state authority and great capitalism.

The logic of discarding nuisances and refusing to be dragged down – it is easy for me to discuss how this logic is an authority’s way of thinking. The problem is how to find a meeting point between this saying and practical ways of living.

A society of competition for survival exists under the logic of productivity. Automobiles have priority over pedestrian walkways, while elderly people, children, sick people, and handicapped people are ignored.

The logic, that degrades the dignity of the lives of people according to how useful the ‘workers’ are to capitalism company management, indeed penetrates into my life and my consciousness.

The draft bill to revise the Eugenic Protection Law (the law to prohibit abortion) is intended to strengthen the principle and the value of productivity in order to even deeper root it in women’s consciousnesses. The bill represents the state’s conspiracy to let women choose to give birth to a handicapped foetus or not through prenatal screening. In a reality where there are no satisfactory institutes for handicapped people, women are forced to make decisions! In societies where only women cannot be humanist, how can women and handicapped people meet with each other?

No one wants to have an abortion. Do men imagine the fear and insult of having a knife penetrating inside, between opened legs? Women in the US sometimes say ‘let’s cut men into pieces’, but I can understand the feeling behind the saying. How would we choose to experience such bad feelings, if we do not have to have an abortion, and the thing grows up itself automatically (after the birth). When women have to decide whether or not to give birth, the reality has always faced women, where women cannot give birth even when she wants to. This fact is not confined only to the issue of handicapped children. The annual number of abortion cases in Japan is between 2 and 3 million, and the overwhelming majority of cases are by a group called housewives.



Rising prices, salaries insufficient to live off of without both members of a couple working, small apartments with thin walls (moreover, most of the apartments do not even allow children), environmental problems contaminating mother's milk, expensive education, etc. 'How can we give birth in such a society!' – We can never raise our voice too loud.

As a matter of fact, we have to keep criticising social problems as such. However, is it at all acceptable to have a so-what attitude toward having an abortion, just because of society's conditions? Doesn't such a so-what attitude eventually lead to affirming positively the status quo of the society? In rationalising ourselves by stating 'of course I abort because of society', isn't it that women have been desensitised to the life of the child and their own lives? Prenatal screening is a bad conspiracy, making use of such unsharpened women's senses, by letting women decide whether or not to give birth. Such questions are coming to my mind one after another.

The law to prohibit abortion – it is the attempt to strengthen the guilty feeling about abortion. This is what I have been saying to others and to myself about the idea to revise the law. However, has a woman, as one person, ever questioned 'abortion' at all, by facing the fact that the foetus has a new life? Has a woman ever felt any guilt towards the fact that she lends her hands to eradicate a new life? Isn't it just that women have been hanging onto the sense of being a victim with regard to their abortion experiences? Women have been giving birth to children in order for men and society to acknowledge her existence. There will be a number of women with the value of 'to be a wife and a mother is the proof of womanhood', 'marriage is the happiness of women', 'children are the purpose of life', as long as society exists upon the principle of protecting and inheriting private property, where women are to give birth while being locked inside of a household, and where sexuality and reproduction are divided from each other.

For women who have been proving their womanhood through giving birth and nurturing children, abortion is nothing but a proof of her 'non-existence'. The sense of loss of existence by having an abortion sinks itself inside of the consciousness of women as a victim, and is linked with a taboo about sexuality. The idea that sexual activity that is not meant for reproduction is dirty, is indeed strongly deep rooted. Yet, this taboo escapes men in Japan. For women, the idea is that 'good women do not have two men', whereas for men: 'having a mistress is a virtue of a man of ability'. For women, the taboo of sexuality and the sense of guilt have existed in combination with the sense of being a victim.

[...]

Let me repeat, in order to avoid misunderstanding. Social problems must be criticised no matter what. However, there is something inside of ourselves that cannot just affirm abortion with the logic of 'society is bad', or 'a foetus is not a human -being'. If we avoid approaching the very core of this 'something', we cannot destroy the argument that regards a foetus as something holy. This is a question about the meaning of having life, which has nothing to do with ethics or fake humanism. When the principle of productivity is to degrade the dignity of the lives of human beings, we cannot confine ourselves merely to securing access to abortion, as an argument against social problems, unless we also approach the core of consciousness inherent in the act of abortion. It should not be possible to press society, which exists on the sacrifice of women's wombs, while paradoxically affirming the society with the attitude of 'it is as a matter of course to abort because of how society is'.

The logic of *Seicho-no-ie* and Catholic medical groups, that accuses only women's subjectivity, without questioning the problematic of society is nothing but nonsense (they claim that if abortion was illegal, the practice of contraception would become more widespread and the abortion rate would be decreased), but to call the entire debate 'fake humanism that tries to let the lives of the child and ourselves confront to each other,' is an absurd statement which contains a dangerous argument.

When I choose to have an abortion with my own subjectivity, in the objective situation where I 'am made' to have an abortion, I want myself to become aware that I am a murderer. The child dies in reality, and if somebody calls the woman a murderer, then, I dare to declare that a woman who had an abortion is a murderer, and while doing so, I would still choose to have an abortion. Declaring that I am a murderer and staring at a foetus cut into pieces, now, I want to argue against a society that makes women do so, giving society no way to avoid the argument.

A society that makes women murder her children does not let women live, either. Only those who have despair and anger against the idea that they might be murdered at any moment, can orient their urge to kill towards the outside.

Let's never confine ourselves to self-defence by taking contraceptive pills. Let's never neutralise our anger towards the problems of society by making abortion a 'right'. Is the Eugenic Protection Law a woman's right at all?!?

In 1948, the Eugenic Protection Law was introduced in the chaotic situation after the war. The law's purpose was to prevent the birth of 'inferior offspring', as well as to protect the life and health of the mother. But the real hidden reason was to prevent such problems as births of mixed blood children by prostitutes who had no other choice but to sell

sex to survive economic chaos, scarcity of food, and to earn precious US dollars. The next year, in order to assist ordinary people who either barely managed to eat, or could not eat at all, the economic reasons clause was added to the conditions for legal abortion. However, this treatment was nothing but an attempt to revive XXX,<sup>2</sup> which was about to be destroyed.

Precisely (?) speaking, (the introduction of the economic clause) was for the purpose of sustaining common people's life standard as it was, and of securing cheap female labour, while the nation was in the process of accumulation of capital after the war.

Women have been contributing their bloody wombs for the cause of 'the second largest GNP'; this is 'women's post-war history'. Japan merely changes its guise from 'god state' to 'economic animal', where the spirit of 'I do not hope for anything until we have a victory'<sup>3</sup> is inherited in the post war period into 'the apology by the whole nation of one million.'<sup>4</sup> Behind the prosperity of post-war Japan, women's wombs have been shedding blood and its foetuses have been cut into pieces.

We have to make sure! The fact is that we have never taken either the right or freedom to have an abortion in our hands!

And moreover, we have to keep repeating the question concerning whether or not abortion is an issue of a right. If it is a right, then in the very process of this struggle against the law to prohibit abortion, we can take one step forward to make abortion a rights issue in a true sense. A right is not what is given, but something that is to be obtained.

Let's formulate even stronger grounds for struggle inside of ourselves through the task of deconstructing and constructing a logic, instead of crystallising a logic. I would be grateful if this yet-to-be-completed proposal is of any help to that sort of task. (The editor responsible for this article: TANAKA Mitsu)

We will publish a brochure with materials about abortion. We want to create a unique kind of leaflet in order to catch the solid interest of readers. We appreciate your anticipation!

(★ *Chupiren, S.E.X., Group-tatakau-onna, Meigaku-kyoryoku-sakusen*)

(This author's own translation)



# Notes

## Introduction

- 1 When discussing unusual medical conditions of a foetus, three terms are often used: *ijô*, *shôgai*, and *shikkan* or anomaly, disability, and disorder. In this book, I mainly use the terms disability or *shôgai* and anomaly or *ijô*. The term *shôgai* is often used to generally mention any unusual medical condition of people who are already born. In the case of a foetus, mainly *ijô* and *shôgai* are used in selective abortion debates in Japan. In this book, the term disability is used when discussing those who are born, and both anomaly and disability are used in discussions of fetuses. For a discussion on the term *shôgai* and its English translation, see Nagase 1999.
- 2 Amniocentesis (also referred to as amniotic fluid test or AFT), is a medical procedure used in prenatal diagnosis of genetic abnormalities and fetal infections, in which a small amount of amniotic fluid, which contains fetal tissues, is extracted from the amnion or amniotic sac surrounding a developing fetus, and the fetal DNA is examined for genetic abnormalities (<http://en.wikipedia.org/wiki/Amniocentesis>, downloaded on 20 August 2008).
- 3 The maternal serum screening test (MSS) is a blood test, available to pregnant women, that helps to determine the risk of certain abnormalities that may affect their unborn child. The term 'serum' means the watery part of the blood. Maternal serum screening can be done in the first trimester of pregnancy, when it is combined with ultrasound. This is called a combined first trimester screening test. It can also be done in the second trimester of pregnancy and is called the second trimester maternal serum screening test.
- 4 It is reported that in 1999 in Japan, 10,516 amniocentesis were carried out, while there were 1,177,669 births and 337,288 abortions (not necessarily selective abortions). In 2000, there were 1,190,547 births, 10,627 amniocentesis carried out, and there were 341,146 abortions (not necessarily selective abortions). Because there are not always accurate numbers available from other countries for amniocentesis (some countries do not compile data on this procedure), it is not certain if these figures for Japan are relatively high or not (information and comments from an interview with Satoko Nagaoki, a biologist and a member of *Soshiren*, on 11 May 2004).
- 5 See also Mies 1993; and Komatsu 1998 and 2000.
- 6 Kishore Mahbubani is a Singaporean diplomat. Criticising the fact that the intrinsic worth of such originally Western concepts as 'democracy' and 'human rights' are hardly challenged but 'are just aggressively promoted in non-Western areas by the West, especially after the end of the Cold War (ibid)'. Mahbubani argues that he 'discovered that these values have become just virtual 'sacred cows' (ibid)'. This volume is indeed aimed at challenging the sacredness of 'rights' and reviving it as an everyday concept that can be applied to non-Western social contexts. To this end, the genealogy of its sacredness is examined, and the validity of this sacredness is questioned.

- 7 The term 'academic nationalism' is borrowed from the title of the book by the Dutch anthropologist (Asian studies) Margaret Sleeboom (2001). With the original aim to consider 'how is scientific discourse used in the production of nationalist ideologies that emphasise difference from the West and the "uniqueness" of Japan and China?' (ibid: 7), Sleeboom argues for 'an increase in awareness of the influence exerted by "academic nationalism" in academic discourse by elucidating the role of the nation as a framework and unit of research in academic policy and research in, potentially, all nation-states' (ibid: 1). The statement of Takeshi Umehara, the first director of *Kokusai Nihon Bunka Kenkyū Centre* (International Research Institute of Japanese Studies: Kyoto) shows what he called 'academic nationalism', for example. His statement goes; '(the aim of the centre's research programme is) to identify the uniqueness of Japanese culture and pass this on to the rest of humanity'. (Dale, Peter N., 'Nichibunken and Japan's international cultural policy', in *Die Internationalisierung Japans im Spannungsfeld zwischen Ökonomischer und sozialer Dynamik*, Wener Pacha, Wolfgang Seifert, Meinfried Striegnitz (Hrsg.): 115-132 (124) cited in Sleeboom ibid: 19). This Ph. D. research of Sleeboom is very refined and her observation is noteworthy, because 'academic nationalism', including nationalist 'categorisation', is a tendency which so-called non-western researchers tend to fall in, when challenging 'western academic dominance'. However, my research is not intended to show any uniqueness of Japan that could be applied to the rest of humanity as such, nor is this intended to disprove Western political philosophy.
- 8 English versions of articles about abortion law and women's reproductive rights in Japan include: Nakatsu (1955), Suzumura & Kikuchi (1966), Muramatsu (1969), Hiroi & Suzuki (1973), Kondō (1983), Shiota & Nishimura (1984), Muramatsu (1988), Maruyama (1995), and Ogino (1996). An article by Japanese scholars in German about abortion in Japan is also available in Yamamoto, K., Y. Yamamoto & Hayase (1993).
- 9 For a medical analysis by non-Japanese writers of the practice of abortion in Japan see Norgren (2001). For a psychological and religious analysis by non-Japanese about women's experiences in having an abortion, see: Oaks (1994), Rittner, Falke-White, Hattori (1994), and Lafleur (1992). For a political analysis of Japanese abortion policies and law, see: Gelb (1996).
- 10 Frühstück (2003) argues the Japanese history of hygenics, birth control, eugenics, and state health policies. Robertson's work discusses the concept of beautiful body and eugenics in modern Japan (Robertson 2001).
- 11 I asked researchers in Japan, including those cited in the text, about the research by foreign scholars, but all said that they did not know of any research that analyses the term 'right' in connection with movements of women and disabled people in Japan. It also turned out that no libraries of disabled people's research institutes in Japan, in the UK and the Netherlands, including *De Chronisch zieken en Gehandicaptten Raad Nederland* (The Council of Chronic Diseases and Handicaps, the Netherlands) in Utrecht, have any articles about Japanese disabled people's movement or its interaction with women's movement.
- 12 Vera Mackie's *Feminism in Modern Japan* (2003) introduces comprehensively the recent history of the Japanese women's movements. As an overview of the Japanese women's movement from the first wave to the second wave, this book is informative, and based on original materials written in Japanese. However, her review of the women's movement goes only up to the mid-1980s. Also, this book is not specifically about abortion. Even in Japanese, there is more research on the period before the mid-1980s than after the mid-1980s. It seems that the history of the feminist movement after the mid-1980s has not yet been written.
- 13 For example, Oaks (1994).

- 14 For an analysis of Western (feminist) scholars' attitudes of observing non-Western women, see the work of Chandra Mohanty. In her article 'Under Western Eyes: Feminist Scholarship and Colonial Discourses (1988)', she analyses the production of the 'Third World Woman' as a singular monolithic subject in (Western) feminist texts, with a special focus on the Zed Press 'Women in the Third World' series. Mohanty states that 'religious, domesticated, family-oriented, victimised, ignorant, poor, uneducated, tradition bounded' are often observed images of 'the average third-world woman (Mohanty: 65)'. I recognise similar inaccurate generalisations in some foreign scholars' analyses of Japanese women.
- 15 Another example of scholarship that displays a bias is Gelb's analysis of abortion and contraceptive practices in Japan (1996). Pointing out the relatively high abortion rate in Japan, along with Japanese women's reluctance to use contraceptive pills, she concludes that 'women as a group and individually have been unenthusiastic about supporting alternative means of contraception' (Gelb 1996: 134). She also notes that 'The Family Planning Association of Japan is a strong supporter of abortion as woman's right' and 'abortion as a means of contraception' (ibid: 134-135). Her conclusions are not based on sufficient observation and understanding of debates surrounding the use of contraceptive pills or relating to abortion in Japan made in Japan. Japanese women in academia and social movements argue that the fundamental cause of unplanned pregnancy is gender inequality and a lack of knowledge about their own bodies. Therefore, some Japanese feminists argue that uncritical use of contraceptive pills does not solve fundamental problems in the relationships between women and men, that is, that men do not play a role in using contraceptives. Some Japanese feminists also argue that women take pills partly because women's sexuality is more repressed than that of men, in other words, it is more difficult for women to talk about sex and contraceptive practices and taking the pill is a form of contraception they can use without discussing. In addition, women have argued that the use of oral contraceptive pills is accompanied by negative side effects, and they question why only women need to face such problems. For example, the Japanese feminist critic and anthropologist Yayoi Aoki says, 'since modern contraceptive pills have fewer side effects than before, women in reproductive movements show more supportive attitudes toward the usage of contraceptive pills, but many Japanese women continue to believe that the use of contraceptive pills should not play a role in reducing the awareness of men toward the practice of contraceptives' (Aoki 1997: 16). These questions should be taken more seriously, instead of simply concluding that 'women have been unenthusiastic about supporting means of contraception'.
- 16 Secondly, Gelb says that the Japanese women's reproductive health movement groups are more interested in securing access to abortion than in seeking to increase the forms of contraception available to Japanese women to include the contraceptive pill (129; 131). However, an accurate analysis would reveal that Japanese women in the reproductive health movement chose to focus on securing access to abortion because of the political context, particularly in 1973 and 1982. Moreover, as mentioned, women's reproductive health movement groups are tackling the fundamental causes of unplanned pregnancy, such as the lack of sex education, and that the pill does not come to the foreground in their discussions does not mean that women are not interested in increasing their options. Promotion of contraceptive pills is one of their activities, but this promotion presents the pill as one of multiple alternative methods of contraception.
- 17 In her study, Gelb expresses the criticism that Japanese women, unlike women in the US, do not use contraceptive pills, but in this way she is using the US situation as 'the standard'. One cannot conclude, however, that contraceptive pills are the best

contraceptive method because the pill is the most popular in the US. Moreover, she does not explain why she needs to compare Japan with the US.

18 <sup>1</sup> *Kôdôsurukai kiroku shû henshûinkai* 1999: 176-183.

19 <sup>1</sup> *Soshiren news* (1999) November 172: 4-5.

20 In fact, nobody knows what her real name was or who she was exactly. When she appeared in the WLM meeting for the first time, she introduced herself as Ms. Katayama, a specialist in pharmacy (Akiyama 1993: 121-138). But in an interview article for a women's magazine, where she introduces herself as 'Enoki Misako', she explains that her real name was Ms. Kiuchi Kimiko and her maiden name was Katayama. ('Enoki Misako, Kanojo o danseikokuhatsu ni karitataka genten wa nanika [Enoki Misako: What is the motive behind her accusation of men?]', in *Josei-jishin*, 12 June 1974). However, nobody knows to what extent she was telling the truth in the interview, nor if she was a student or if she had a job at that time. In the late 1970s, she suddenly disappeared from the public scene. There is a rumour that she had a connection with a pharmaceutical company that wanted to sell contraceptive pills, and she was hired by them. Another rumour is that her activity was an attempt carried out in cooperation with her husband, Kiuchi Natsuo, a medical doctor, to promote contraceptive pills. But nothing has been proven.

21 This was the only group that split off from the WLM. As will be recounted in chapter 2, the main reason for this split was not due to a difference in opinion on the term 'right', but was rather because Enoki used other women in the WLM to pursue her own political interests. As a participant in the WLM, Akiyama recalls, 'there was basically trust and an atmosphere of being able to discuss anything within the WLM, although there were disagreements' (Akiyama 1993: 135-136).

22 From an interview with the Japanese psychological counsellor Katsumi Yamamoto, who has been involved in the movement for more than a generation. Interview 7 March 2003, Malta.

23 <sup>1</sup> *Aoi shiba no kai, Ayumi*, no. 1, 1965, cited by Tateiwa 2000: 96.

24 Interview with Yokota, held on 19 July 2001, Kanagawa.

25 They argue that there are disabled people in the US who argue strongly against eugenics, for example, although, just like *Aoi shiba*, they are not a majority and are not representative of the disabled people's movement.

## Chapter 1

1 It is actually not certain how far back the practice of abortion can be traced in Japan, but poems dating back to the 8th century about abortion have been found. Before the Meiji era, only records of recommendations by the local communities are present, in times of famine, to reduce fertility and balance population with agricultural production. Thus, abortion and infanticide were means to survive poverty, decided by households and the community. Because the household family system during the Edo period was based on an extended, not a nuclear, family all adults in a given household were involved in the issues of pregnancy and abortion, and decisions had to be made in the context of a delicate balance of labour and production in the family household aimed at surviving poverty. Since in some poems expressions of sorrow and regret about abortion and infanticide were found, the Japanese journalist Taniai concludes that the moral aspects and responsibilities of abortion were shared by the women and those in their surroundings (Taniai 1983b: 20). Taniai reports that in the eastern part of Japan, such as in Ouu or Kantô, infanticide was practised more than abortion, while in the western part of Japan, such as in Chûgoku, Shikoku, and Kyûshû, abortion was practised more than infanticide (Taniai 1983b: 23). Common



means of abortion during the Edo period were use of an internal medicine that caused mercury poisoning of the woman's entire body and abortion through the use of plants (Ishii 1982: 118).

- 2 Information about the history of abortion law is from Ishii 1982: 119.
- 3 However, it has to be noted that because abortion, when performed by a qualified doctor for urgent reasons, was accepted, there were hardly any arrests until the 1930s. As economic conditions grew worse, and especially after the worldwide economic depression of 1929, access to abortion became extremely limited in order to secure labour and military manpower, as Japan started walking the path of militarism under Hirohito, the emperor of the *Shōwa* period (1925-1989) (Ishii 1982: 119).
- 4 Kanazumi 1983: 213. The figures between the years 1943 and 1948 are not recorded.
- 5 There are no estimates on how wide scale the practice of abortion was.
- 6 For example, in 1932, there was a sensational debate in reaction to a question raised by a woman who became pregnant as a result of rape in a column for women's counselling in the *Asahi Shimbun*, one of the highest circulation newspapers in Japan (*The Asahi Shimbun* July 30 1932).
- 7 The story goes: A burglar broke into Miss. T's room at night when she was taking a nap after coming back from taking care of her father in a hospital for three whole days. The burglar not only stole her watch and jewellery, but he also raped her. She told her mother and her lover about the break in and rape. The lover was understanding and their tie became even stronger. However, it turned out that she had become pregnant as a result of the rape. She found it too hard to tell her lover because he would be hurt all the more because he was so understanding. At the same time, although she did not feel any affection towards the child, since there was nobody who loved the child and the child was not responsible for the manner in which it was conceived, she questioned whether she should take responsibility for the child and keep the child. She did not know what to do, and anonymously asked for advice in a newspaper.
- 8 This incident drew public attention, which led to an active debate in newspapers and also in lawyers' academic journals because of its delicate nature. In the *Asahi Shimbun*, an answer was given by Waka Yamada, who had been in the women's movement since the beginning of the 1900s. She said, 'so far, male seeds were considered to be the stem of the line of the offspring, while women were a mere provider of the womb. However, now believe that you, a woman, are the stem for the line of the offspring. If you think your child is an extension of your body, you would be able to accept the child. [...] If you confess everything to your lover, I believe he will understand the situation and he will be the greatest collaborator in raising the child.' The answer might be surprising in that Yamada is encouraging her to give birth to a child even the pregnancy was as a result of rape, considering the fact that Yamada is a woman in the women's movement. However, Naoyoshi Tsukazaki, a lawyer, said that whoever answered this question, this answer would have been the best that a woman could provide under the military government. Another opinion put forth at that time came from Hiroshi Kikuchi, that 'she should have an abortion. In this case, it is an error in the law to punish her for abortion. Abortion in this case is neither ethical injustice nor dishonour.' According to Yonemine Takashima, 'in general, as long as women intend to resist violence seriously, they should be able to manage to do so no matter what, but this case is considered to be unfortunate. There is no sin on the side of the child, therefore she should raise it without telling the fact to the child even when it grows up.' Chika Hozumi insisted, 'abortion is not allowed in the light of the law. In this case, the judge would take the circumstances into consideration, although the act of abortion itself is not good, no matter what. Moreover, if the law is revised because of this exceptional case, the law would be misused.' Kainan Shimomura said,

'she should have an abortion and should be judged of her sin after turning herself in to the police. Probably the sentence will be suspended. And if the law is revised because of this case, she would be consoled even if she is punished once.' Kinuko Yokunaga, the chairwoman of the board in an orphanage, said, 'at the very moment she sees the newly born child, affection replaces all the hatred. If the relationship with the lover ends up in a worse situation, think of other examples of breaking up because of accidents and so on. There will be a day when she can centre her child in her life. Then she will realise that the relationship with her lover is much weaker than with her child' (*Asahi Shimbun*, 1932).

- 9 I deduce implications of abortion from the whole debate. First, in this case, the woman was scarcely blamed by any commentators for considering an abortion because an abortion of the pregnancy resulted from rape. As one comment states, 'if a woman intends to resist the violence she should be able to manage no matter what,' hence this commentator considers rape to be the woman's fault. Yet, this case is understood as misfortune and unavoidable because the woman was tired from taking care of her father, and she hadn't slept. In my reckoning, public sympathy for the woman is because the woman's behaviour is aligned with the idea of motherhood and care, that is, having a nap after taking care of her father for three days without sleeping. A gender bias in the comments to the woman's letter is expressed in the different interpretations of the woman's responsibility for sexual violence and other socially expected roles of women at that time.
- 10 It is also noticeable that, although the commentators feel sympathy toward the woman, they do not mention the cruelty of the abortion articles in the Criminal Code, which force women to give birth in such a situation. It is inferred that state power was absolute and it was difficult to criticise the abortion law, which articulates that abortion is an act against the nation-state's interest. Only one justification for legal abortion is made for eugenic reasons: the rapist and his children are unfit for society.
- 11 Another story symbolising women's reproductive life under the abortion articles in the Criminal Code features a popular actress of the day, Akiko Shiga, who was arrested for aborting a seven-month-old foetus, as was the midwife who performed the abortion. A newspaper article of 19 July 1935 reports: Akiko Shiga, age 25, and a midwife, Kikue Jingūji, age 35, are under close investigation at Ikebukuro police station. It is suspected that Shiga was pregnant from a relationship with a director, Yutaka Abe. Shiga has had relationships with several men during the past few years. She could not manage to improve her conduct, and it turned out that she also aborted a two-month-old foetus two years ago, as a result of a relationship with a foreigner, her patron of the day. Jingūji confessed that, when Shiga visited her, Shiga had already taken an abortion pill, and therefore she could not help but abort. The foetus was delivered, and it cried, but it was not in a viable condition. Since both Shiga and Jingūji admit that the foetus cried, the case will be treated as murder (*Tokyo Hibi Shimbun*, cited by Taniai 1983b: 42-44).
- 12 To this article the background of her life is added by Taniai. She lost her parents at a young age, and therefore could not follow her dream of becoming a pianist. She started running a bar in Tokyo, where she met Mr. K, a client of the bar, who gave her financial support in running the bar. Shiga became pregnant by Mr. K. She could not stand the idea of having a baby out of wedlock, and she had an abortion. Afterwards, she met Mr. Abe, the director of a movie company, and she was scouted as an actress. Soon she became pregnant again. She tried to tell Mr. Abe about the pregnancy, but his attitude became very cool. Moreover, she learned that he had many lovers. She had to struggle alone about what to do, and after much consideration, she decided to have an abortion. Her note continues: 'However, I, in fact, love children. When I came to Tokyo, I even thought of working for an orphanage to live a

life with children around me. I fainted and remained unconscious for four hours when I had an abortion at Jingûji's, but came back to consciousness because of the cry of the baby. I held it and pressed my cheek against the baby's. Now that I have confessed all my sins, I am only praying to God. To contribute to cinema art, I will come back to the cinema field, cutting off all relationships with dirty men' (Taniai 1983b: 2-44).

- 13 The newspaper article reports that 'although she was not acquitted of the abortion, she was at least acquitted of infanticide because Shiga was awakened by motherhood when she saw the baby, and the police investigators were touched by it'. The article continues, 'she gained consciousness, hearing the cry of the baby, and held it immediately, and she even begged Jingûji, a midwife, to make warm water in which to bathe the baby. The tearful confession touched police investigators and she was allowed to go home for the time being'.
- 14 Thus, in Shiga's case too, motherhood played an important role in the public debate. At the same time, an image of promiscuity is attached to a woman who has an abortion. Another notable fact is that the full name of Mr. K's, the man with whom Shiga became pregnant, was kept anonymous in a newspaper report to protect his privacy. Five days after Shiga was arrested, Mr. Abe was called for questioning at a police station, and he stated that he had gotten Shiga pregnant, but he did not know about the abortion. Then he was considered to be unrelated to the abortion case by the police, and was released on the same day after 13 hours of interrogation. Men related to Shiga were not considered to be free from responsibility in this case (Taniai 1983b: 40-49).
- 15 In the article, physical influence is emphasised in particular. So, contracts which affect her health conditions, requiring sexual contacts, are included here.
- 16 Here is one actual story from this period:
- 17 The house of Suzuki has had no sons and has adopted sons [including muko-yôshi] for four generations. When I gave birth to the first son, since this was the first male child born into this house, Grandpa and Grandma [father-in-law and mother-in-law] rejoiced and wondered if he came from heaven or earth, and they took good care of him. Joyously and jokingly, Grandpa said to me: 'if you don't want to stay in this house, you may leave, since we have our heir now' (Sugiyama-Lebra 1984: 159).
- 18 More examples of women's experiences in the *Ie* household systemhousehold system",<sup>4</sup> are provided in Sugiyama-Lebra 1984.
- 19 About women's sexuality during the Meiji period, see Takamune (1972b).
- 20 Kanô argues that the emperor under Japanese militarism actually had the role of both mother and father, in the process of nation-building. As a mother, he loves the Japanese nation with an unconditional love while the nation expects to be protected, and as a strict father, he punishes the rebellious, such as Communists. The doctrine of colonialist expansion was formulated in terms of the strict love of the father and unconditional love of the mother. The father's strict love is in order to elevate undeveloped China forcefully, and the mother's love is brought in, when freeing them from the European invasion, and to welcome them under the umbrella of the imperial family (Kanô 1991: 66).
- 21 For the details of the birth control movement, see Ôta 1967: 241-244.
- 22 The term eugenics means eu-genes or 'born in superiority' in Greek, that is translated as *yû-sei* in Japanese. *Yû* means superiority, and *sei* means birth.
- 23 Fukuzawa states in his book, *Jiji-kogoto* (1881), that there is a limitation to human beings' capacity according to innate genes, which is determined by the bloodline of ancestors. This was eight years before Francis Galton, a pioneer of eugenic studies in England, advocated the importance of eugenics. In his previous writing, *Gakumon-no-susume* (*Encouragement of learning*: 1872), he discusses the egalitarian idea that no-

body is either above or below anybody else in his/her innate ability, but through self-effort, anyone can attain a certain capacity, regardless of any rank or birth background. Fukuzawa changed his opinion because he realised that although the rank system of warrior, farmer, craftsman, and merchant was abolished in the Meiji Restoration, and although Fukuzawa expected to build up a more egalitarian and competent society, he later believed that reform in social systems could not be the crucial solution to fundamental social reform. Instead, he stated that it was more necessary to have a 'reform' inside individuals, given the fact that some people did not even try to develop themselves but did not live to their full potential (Suzuki 1983: 508-509, summarised by the author).

- 24 Takahashi wrote *Nihon jinshu kairyô ron* (*Theory of Japanese racial improvement*) in 1884. In this book, he argues for mixed marriages between European and Japanese people (Saitô 1993). The concept of 'superior' was closely connected to the concept of 'evolution' and 'civilisation', which was the image he had of Western Europe. But his theory on mixed marriage also invited debates. In 1886, Hiroyuki Katô, a scholar of German law, wrote *Jinshu kairyô no ben* (*Speech on racial improvement*), criticising Takahashi's theory on mixed marriage. His criticism was as follows: Firstly, apart from the improvement of the genes, there is still room for improvement in the environment. Secondly, more information is necessary about which if combination of mixed marriage is preferable for the improvement of the genes. Third, it takes too long to improve race through mixed marriage. And lastly, mixed marriage is not an improvement but a transformation of the race. This will eventually invite domination of Japan by the West. Therefore for the improvement of the race, the purity of the Japanese race preferably should be maintained (Suzuki 1983). Katô's argument became more important after the beginning of the 20th century in the context of emerging Japanese nationalism and militarism, brought about by the victories in the first international wars against China and Russia.
- 25 Theories from the UK and the US are based on social Darwinism. Social Darwinism is 'a theory which places the struggle for survival as the supreme and universal principle in human society to eventually eliminate socially "unfit" people' (Sekine 1994: 30-31). In Japan, Kôtoku Kaino wrote *Nihonjin-jinshukaizôron* (*Theory on the improvement of the Japanese race*) to argue that social Darwinism is no longer applicable because welfare policies protect relatively 'incompetent' people. Therefore, a society would be composed of inferior people and human-beings would tend to head in the direction of retrogression. In this situation, he claimed the necessity of having public policies to enforce positive and/or negative eugenics, instead of having a welfare policy.
- 26 His theory had the guise of nationalism. He argued that there were three levels of virtue about the quality of race, i.e. physical, mental, and social. He says that Japanese people are inferior to Westerners in terms of the former two levels, but superior in the last term as is apparent in the rapid social and economic achievements Japan made in a short period, in addition to the fact that Japan won two international wars only a quarter century after participating in colonialist competition. This apparent social superiority is caused by the combination of the spirit of 'respect towards the royal family as the descendants of God' and 'respect towards the ancestors'. Based on these 'precious spirits' Kaino argued that the Japanese race can be improved in terms of the former two virtues (Suzuki 1983: 59).
- 27 Biologists active in eugenic research were Jirô Asaoka, Seijirô Ikeno, Shigeo Yamauchi, and Seitarô Gotô. Yûjirô Motoyoshi was a psychologist, and Kenji Osawa and Hisomu Nagai were medical professionals. All are men.
- 28 For example, it was because of the influence of Gregor Mendel's research, on the patterns of inheritance of green beans, that the department of biology was established

in Tokyo University in 1877. Lectures on eugenics were introduced in the curriculum in 1917. Experiments were conducted actively in universities, too, such as the biologist Sotoyama Kametarō's experiment at Tokyo University, with Mendel's discovery in patterns of inheritance using silkworms (see Sotoyama, *Jinrui no konponteki kaizō* [*The fundamental reform of humankind*]).

- 29 For example, the physicist Shigeo Yamauchi mentions that 'racial improvement, and maintenance of the superior race, are the major ethical responsibility for each nation. The limitation of freedom, and responsibility for an individual, are necessary for the sake of society. [...] An individual's freedom must be for racial prosperity. Evolution of human beings is the biggest social project because an individual dies while society remains for a much longer time' (Yamauchi, *Jinrui-no-iden* [*Heredity of humankind*: 1917], cited by Suzuki 1983: 88-90).
- 30 For instance, Gotō Ryūkichi tried to establish the Japan Eugenic Science Association, but this was not achieved for financial reasons. In 1930, *Kokuristu idengaku kenkyūjo* (the National Genetic Research Centre) was established. This is because of the insistence of Tanaka Yoshimaro, a genetic scientist, that Japan should have a national research centre on genetic research, just as the US and the UK did. The establishment of this centre was the first national-level project involving eugenics.
- 31 In 1926 Ringi Ikeda established the Japan Eugenic Movement Association. He had lived in Germany for four years after the First World War, working as a journalist where his ideas on eugenics were influenced by his time in Germany. He propagated eugenic thought with the idea of improving the mentality and physique of the Japanese race, in order to make the Japanese one of the 'first-class races' of the world. His primary concern was to build a nation-state totally synonymous with the imperial family, and to maintain the purity of the divine nation. His activities were different from the earlier attempts of others to promote eugenic concepts in that he tried to popularise eugenics by putting it into practice amongst common people, and in his emphasis on the unity of the emperor and the nation. Another new point in his activity was his stress on the importance of the social environment, in addition to good genes, for the purposes of racial improvement. This approach, which pays attention not only to genes but also to the environment, is called *Ōyō-yūseigaku*, or 'applied eugenics'. Accordingly, he invented the term *yū-kyō*, to stand for 'superior environment'. The idea and practice of *yū-kyō* was also a trend in some Western countries. A eugenic scholar in the US, Paul Popenoe, used the term 'applied eugenics' in 1918, influenced by the German racial hygienic movement in 1914. Following the *Wandervogel* movement in Germany and *Sokol* in Czechoslovakia as part of mental and physical training, Ikeda also established *Ashi-no-kai* or 'group of feet' (Suzuki 1983: 117).
- 32 For example, a magazine named *Eugenics* was published by Ryūkichi Gotō.
- 33 A medical doctor, Nagai was active in writing as well. His major works are: *Beautiful Body* (1907), *A theory on the academic discipline of racial improvement* (1915), *Racial improvement studies* (1913), and *Heredity and genes of human beings* (1915).
- 34 The debate in the Diet and the Ministry about the pros and cons of the 1940 law is described in detail in Saitō 1983 and in Matsubara 1997: 1998b.
- 35 The number of operations between 1941 and 1945 was 454. Considering that the number was 360,000 in Germany during this period, the Japanese military government's reluctance to practice the law is apparent (Matsubara 1998b: 103).
- 36 For example, the aforementioned Ikeda states about Malthus and neo-Malthus: 'Internationally, we often hear the concept of "coexistence of races". However, to target mere "coexistence" is not enough. A race has to exist in a superior way. If a population is simply controlled in relation to the amount of resources, then mathematically even a superior race could be destroyed.' His statement is based on the fact that in Europe the fertility rate decreased during the period after the First World War, and

this was thought to be disadvantageous for international competition. Regarding neo-Malthusianism, Ikeda states that a fertility control campaign is neither positive nor negative, but it might be necessary in order to control the quality of the population, if it is used properly (Suzuki 1983: 127-129).

- 37 Another medical eugenicist, Yoshio Furuya, expresses anxiety about neo-Malthusianism, which attempts to save poor people 'randomly'. He states that fertility control was already being practised amongst people of relatively higher class, but not in the poor, uneducated class, who are the real cause of exploding populations. He also states that it is not problematic if higher class people produce more children (Suzuki 1983: 129-131).
- 38 In Nazi Germany, 'selective abortion' was legal. However, it was not practised by discovering diseases in the foetus as it is today, instead selective abortions could take place when either the mother-to-be or her spouse had genetic diseases on the list included in the sterilisation law. Therefore, the practice of selective abortion was based mainly on the physical condition of the parents. Abortion, as a result of rape, was also legal in Nazi Germany, but it was for the reason of 'the rapist gene' more than for protecting women's well-being (Ichinokawa 1996: 188-189).
- 39 47 women and 47 men were sterilised in 1941, 106 and 83 in 1942, 90 and 62 in 1943, and no men and 18 women in 1944 (*Isei-donenshi* [80 years' history of medicine]: 828, cited by Tsuge, Ichinokawa, and Katô, in Ehara 1996: 379).
- 40 The General Headquarters of the Allied Powers (GHQ) considered abolishing the emperor system at the beginning of its occupation in Japan. However, GHQ eventually decided to perpetuate the system to keep order in Japan.
- 41 The economic growth was initiated by the Prime Minister at the time, Hayato Ikeda. The target he presented was called *shotoku-baizô-keikaku* or 'double income policy,' under which all the policies in agriculture, labour, and education were aimed at the enlargement of gross national income.
- 42 According to Ôta, an obstetrician, the main reasons for overpopulation are: demobilisation and repatriation of male soldiers to their home island in Japan, and insufficiency of contraceptive methods, both in terms of quantity and quality, as well as the ineffective work of the family planning association (Ôta 1967: 245-265). At the time of the defeat, the number of Japanese troops overseas was approximately 3,500,000, of whom 1,900,000 were in China, some 780,000 in 'Manchuria' and 1,600,000 in the South Pacific area. In addition to these, there were 3,500,000 civilian residents living overseas. All of these approximately 7 million Japanese were to be returned home, and successive waves of former residents who had lost all their property, and also former military personnel, were all to be repatriated to Japan's home island. The plight of civilians in the area of former Manchuria was particularly horrific, and many of them died of starvation or disease. More than 500,000 military and civilian people who surrendered to the Soviet Union were transferred to camps in Siberia, where they performed forced labour for years in the bitter cold, with the loss of more than 50,000 lives. Repatriation from the Soviet Union was a particularly slow process. The final military survivors at home, some 2,500,000 men, were demobilised in a short time directly after the defeat, while those who were overseas were disarmed on the spot, so that the Japanese army and navy completely ceased to exist (International Society for Education and Information (ed.) 1995: 247).
- 43 Just prior to the beginning of the war and just after the war ended, the demand from doctors to legalise abortion reached its peak. A number of women, coming back to Japan from ex-colonies, had been raped by Soviet soldiers, and became pregnant. Some pregnant women jumped into the sea from the repatriation ship out of despair, others died from an unhygienic abortion, and others killed their newly born babies. Some doctors tried to help those women by performing abortions, but it was extre-

- mely dangerous under the illegal conditions, because there was no equipment and no medicine. This motivated doctors' urgent demand for the legalisation of abortion (Taniai 1983b: 59-64).
- 44 According to the GHQ's judgement, the Ministry of Health and Welfare was entrusted with the task of population control. In 1946, the population committee was installed, and eugenic scientists from the pre-war period, such as the Nagai, Diet members, and medical doctors, were appointed to participate. The committee consisted of 56 members. Because, according to the committee, the intellectual class had already been practising birth control properly, while the working class had not, the committee showed more concern about degradation of the nation as compared to the period before the war. GHQ was also in favour of promoting birth control and legalised abortion (Matsubara 1998a: 118-122).
  - 45 In January 1947, Ashida, the Minister of Health and Welfare, stated, 'now we have to construct a cultural and healthy nation-state, based on correct scientific knowledge, to achieve the ideal of the revival of the nation.' Ashida was also reluctant to accept the promotion of birth control (cited in Matsubara 1998a: 118-119).
  - 46 Ichinokawa and Tateiwa argue that eugenics appears more strongly when building up a devastated state than it does in wartime. Indeed, eugenic research and policies in European countries experienced their peak between the two world wars. Germany was the most obvious case. In Japan, the number of eugenic operations experienced its peak in 1952, because the government had been sceptical about putting the National Eugenic Law into practice during the pre-war period (Ichinokawa & Tateiwa 1998: 258-285).
  - 47 Katô and Ôta submitted a draft of the Eugenic Protection Law, with exceptions for legal abortion, to the Diet in August 1947. The reasoning was, 'by introducing a new law, motherhood should be able to prevent children from growing into inferior beings in poor surroundings, and to prevent the inheritance of bad genes' (Matsubara 1998a: 119).
  - 48 The Socialist Party, which opposed the idea of the National Eugenic Law in the 1930s, did not even raise questions about the draft of the law in 1948. Those with a Catholic background opposed the law, but these people consisted of only a handful of Diet members (Matsubara 1998a: 119-120). This fact also shows how urgent it was to reconstruct the country after the war, and how much eugenics was accepted.
  - 49 The meaning of the law is consistently understood in this way in the WLM in the 1970s and *Soshiren* since 1982. For research about the genealogy of the Eugenic Protection Law see: Ishii (1982), Saitô (1983), Ogino (1991), Marumoto & Yamamoto (1997), and Matsubara (1998).
  - 50 Ogino reports that the condom was the method most often used, combined with the rhythm method. On women's fertile days men use condoms, with less use on the infertile days. Other contraceptive methods, such as IUDs or sterilisation, are were seldom used. With regard to the high rate of abortion, Ogino gives the following explanations: abortion was and still is more or less considered to be the last resort of 'contraceptives'. However, because it is women who become pregnant and go through the process of abortion, and it is hardly likely that women simply regard abortion as contraception, it has to be noted that the fundamental cause of the high rate of abortion is the 'asymmetrical relationship between men and women with regard to exercise of sexuality and contraceptives' and 'women's ignorance about their bodies' (Ogino 1991: 127-128). She continues: 'condom or withdrawal are contraceptive methods initiated by men, but if they do not use them correctly or not at all, it is women who have to pay for the outcome. Men tend to be reluctant to use condoms for reasons of losing sexual sensitivity or breaking the mood, or they tend to force women to have sexual intercourse because men never become pregnant. And it is sometimes diffi-

cult for women to refuse the demand of men when women are dependent on men economically, or because of the idea that to gently accept men's demands is to be feminine'. She concludes, therefore, that it is dangerous for women to rely upon men for the contraceptives, and it is necessary for women to take the initiative when it comes to contraceptives. Some women find it dirty, shameful, or non-feminine to discuss knowledge about sexual problems. Thus, abortion is sometimes an outcome of women's lack of knowledge in issues surrounding contraceptives and sexuality, as well as the idea of being feminine (Ogino 1991: 128).

- 51 The Liberal Democratic Party was established in 1955, with ideas of 'revising the Constitution' (especially the ninth article so that Japan could be rearmed again) and 'promotion of liberal capitalist economic development'. Its main supporters are the Japan Agricultural Cooperative Association (*Nôkyô*), the Japan Medical Association (*Nihon Ishikai*), and financiers (*zaikai nin*). Between 1955 and 1993, the LDP always secured more than half the seats in the Diet, enjoying overwhelming dominance in Japanese party politics. The second strongest political party, the Japan Socialist Party (*Nihon Shakai tō*), had never been able to even secure one-third the number of seats that the LDP held. There were other political parties such as the Japan Communist Party (*Kyōsantō*) and Kōmei Party (*Kōmeitō*), but before 1993 they never succeeded in taking the ruling position. Therefore, during the 1970s and 1980s, the opinions and actions of the LDP were more influential than any other party, and social movement organisations also had to keep an eye on the LDP.
- 52 However, in 1993, the LDP's dominance ended with some LDP members' separation from the party and the formation of new parties. This was mainly because of corruption and inflexibility within the party. Since then up until today, the LDP has only been able to have a ruling position in coalition with other parties.
- 53 Information about *Seichō no ie*, from Yoshiko Miya, in Buckley 1997: 177-178, and Taniguchi 1981.
- 54 The aim of Diet members is often to become a minister. In order to be acknowledged by bureaucrats in the ministries and to be recommended to become a minister, they often try to become specialised in specific political matters, bringing forward unique viewpoints. Murakami and some others' alliance with anti-abortion groups and their activities to limit women's access to abortion were also aimed at bringing a political speciality to the fore, and of course to secure votes from members of anti-abortion groups.
- 55 A cup of coffee at a coffee shop in Tokyo cost 50 yen in 1955 and 60 yen in 1960 (<http://homepage2.nifty.com/NG/sento/sentoo2.htm>).
- 56 A disease similar to acute anterior poliomyelitis appeared between 1953 and 1960, with a peak of 31 cases in 1956. Since cases centred in the city of Minamata, Kumamoto Prefecture, Kyūshū, the illness was named Minamata disease. Symptoms of Minamata disease include numbness of the extremities, perioral numbness, centripetal constriction of the visual field, loss of hearing, clumsiness of minute movements, articulation disorders, tremor, and ataxia; mental disorders are observed in serious cases, and mentally retarded children are especially common in cases of congenital Minamata disease. The pathology of this disease is characterised by the degeneration of nerve cells in the cerebellum, visual field centre, and parietal lobe of the cerebrum and by the degeneration of the medullary sheath and axons of the peripheral nerves. By February 1971, there had been 121 confirmed cases, including 47 dead. The disease struck both men and women, and 22 cases of congenital Minamata disease were observed in newborn infants. With progress in diagnostic methods later cases of Minamata disease were uncovered, and by December 1979 the number of officially designated patients had totalled 1,293, with another 305 dead. In addition, 6,009 patients filed applications for recognition as Minamata disease patients. The pollutant path-



- way was identified as water pollution from the effluent waters of the acetaldehyde synthesising plant of the Chisso Corporation (then Nippon Chisso Hiryo) in the city of Minamata (Kôdansha 1983 6: 218).
- 57 In 1965, the Hyôgo Prefectural mayor Kanai (1966-1975), visited *Biwako-gakuen*, or a school for children with mental and physical disabilities, in Shiga prefecture. He was struck to see the children 'who have forgotten how to laugh, play around, or feel joy' (Matsunaga 2001: 110). The rector of the school told him that more care from the parents or proper treatment by the doctor could have saved most of those children from being disabled. Kanai considered how those children could be cured, and how the birth of those children could be prevented. He launched 'the movement to prevent unhappy births' in April 1966, with the base of activity in the Department of Hygiene of the prefecture.
- 58 On 25 February 1974, the Ôsaka *Aoi shiba no kai* submitted a letter to the 'department to provide guidelines to prevent unhappiness of births'. As a result, a lecture meeting involving the chairperson of the department was cancelled, and in April *Aoi shiba no kai* and the chairperson had a meeting to negotiate discuss the nature of the movement. On 26 April, a demand was handed in by Ôsaka *Aoi shiba no kai* to the mayor of Kôbe city, the chairperson of the department of hygiene, and the 'department to provide guidelines to prevent unhappiness of births' (Matsunaga 2001: 118-119).
- 59 The petition submitted by *Aoi shiba no kai* about this project to the prefecture is available in appendix 4. But the central problem in this project, according to Matsunaga, is the existence of doctors who behave as if they were neutral. Matsunaga argues, 'although the technology is implemented according to the demands of women, its implementation carries a certain value already, that shows acknowledgement by the medical doctors. However, only pregnant women are left with the decisions and their responsibilities resulting from these decisions. This is due to the background that there are myths and illusions that regard medical doctors as being infallible' (Matsunaga 2001: 122).
- 60 As a result of *Aoi shiba no kai*'s activities, the name of the department was changed to *Boshi-hoken-ka*, or the Department of Health of Mothers and Children. The name of the movement was also changed to *Yoiko o umi sukoyaka ni sodateru undô*, or the 'movement for giving birth to and nurturing good children'.
- 61 In April 1964, an institute called *Fuchû ryôiku centre* was established in the Tokyo metro area, with a reputation of 'the best in the East' because of its modern equipment. Its establishment was part of the governmental guideline on providing institutes for disabled people. However, despite the centre's good reputation, criticism and complaints were made by the people living at the institute. For instance, men and women were divided into two big rooms respectively, and in between the two rooms was only a simple sort of screen. They had to wake up at 6 a.m. and they had to go to bed at 9 p.m. Even the toilet schedule was fixed. In order to save labour and time, a bed pan was distributed to each person in the morning. They could have visitors only once a month. They had to have permission to leave the institute. Residents were not allowed to have long hair because it was more troublesome for the workers to wash. Women were bathed by male workers because men had greater physical strength. Moreover, a prerequisite of being admitted to the institute was agreeing to undergo an autopsy at death (Mitsui 1978: 2-10).
- 62 To protest against these living conditions, some residents went on a hunger strike in November 1970. This eventually ended without any visible results. However, another protest arose in relation to the issue of transferring some residents to a different, private institute. The protest came about in response to three things: first, because this plan was made regardless of the wishes of the residents who might be transferred,

and secondly, because the transfer would be coupled with the more strict categorisation and isolation of people with certain types and levels of disabilities. The target groups were adults and children with severe physical disabilities as well as with severe mental disabilities. Thirdly, the private institute was inconveniently located far away from the centre of the city, and it was expected that treatment would increase the isolation of residents from the city centre (Suda 1998: 125; Tateiwa 1995: 180-181).

- 63 The negotiations with the institute did not proceed, and starting in September, 1972, a sit-in strike started in front of the Tokyo Metropolitan building. After one year, serious negotiation finally started between the protesters and the mayor, and this led to an agreement in April, 1974. However, problems still remained at the institutes, and a number of protests were carried out by residents after the agreement was reached. One example is a campaign by Kinuko Mitsui to refuse bathing, because male staff bathed women (Mitsui, op. cit.: 19-61). A story about Mitsui's campaign was also picked up by a newspaper (*The Mainichi Shimbun*, 14 July 1974). Public opinion was varied, and included criticism of the campaign, saying that disabled people should appreciate the fact that somebody was at least bathing them, or that Mitsui should see bathing by male workers as normal (Mitsui op. cit. 53-57).
- 64 Non-disabled people as well as people from other groups, such as *Aoi shiba no kai*, joined these strikes, and the idea of life outside the institute, or independent living, came to be a more broadly shared goal.
- 65 In addition to the different views on dependence and independence, another crucial difference is the attitude towards 'self-determination'. In Japan, there has been hesitation toward the concept because it might eliminate those who 'cannot self-determine', while in the US this concept was generally accepted. There are indeed reports that the concept of independent living marginalised people with greater disabilities within the movement in the US. Although there are also commonalities between the two movements, such as seeking to live outside parents' home or care institutions, but live on their own with the help of assistance, if needed, there were thus crucial differences in their view of some key concepts in the disabled people's movement (Tateiwa 1999: 90-91).
- 66 One woman who was a female student at the time recalls that 'privilege, that helps people live in this world more easily, is, in fact, oppressing many other people. I cannot endure the situation. Therefore, first of all, let's deny myself from enjoying the privilege, and through fighting for decomposing the system that produces the privilege, let's look into the self, how it is constructed' (Ôta 1996: 78). Another woman recalls, 'the problem that I propose about my life is exactly the problem that the Tokyo University struggle is proposing – a question, "what is academia?" Another question is, "what is university?" We, as graduates of Tokyo University, are provided with a place in the social elite. And then, we are guaranteed a little bit more "cultural" life than the average person, however, we are made to work to support the existing system for our whole lives, being made to keep a distance from the consciousness of labourers. We must not go to university, that produces such human beings' (ibid: 77). These statements show that the student movement arose because of the sense of guilt regarding social privilege, and the sense of reluctance to contribute to the reconstruction of the existing society. The concept of 'self-questioning' appealed to quite a few students at the time. Another recalls, 'I was so influenced by the term "*Jiko-hitei*" [self-denial] which elite men made up, that I even thought it was criminal to have a certain position in society due to my academic background. And therefore, I could not attend the lectures in the university any more' (Horie 1996: 119).

- 67 One woman who was a student at the time recalls that ‘I never doubted that the most meaningful way of living is to devote myself to revolutionary activities, denying my way of living as an intellectual’ (Ôta op. cit.: 78).
- 68 Protecting luggage was called *piké* from the English word ‘picket’ and street activities were called *gewalt* from German, which means ‘violence.’
- 69 Women were certainly seen as inferior in intellectual work. For example, one phrase of the movement was, ‘This university has been degraded so much that even actresses and women can enter.’ This is a quote from a billboard of the student movement in Waseda University (Tokuyama 1996: 87-88). Female students participating in the student movement at the university certainly felt something was wrong with the idea of the movement with regard to the relations between men and women.
- 70 Another citation clearly demonstrates the sexual division of labour as practised in the movement, as well as how male students evaluated women. ‘What is questioned in *Tôdai-tôsô* is not simply about political standpoints or political thought, but about the way of being a human being as a whole. Then, why do I feel that something does not match here? Something is not apparent from inside of myself – probably the clue to answer this question is the fact that I am a woman. [...] I think that we have to construct a movement group to overcome the fundamental split among women, with a clear perspective and energetic activity. And this should be instead of the total of “prominent women like men,” or a crowd of women demanding interests within the existing system, or more rights that men are already enjoying. [...] Washing dishes is an example of boring work... and it is the end of the story if I am trapped by the small joy that even washing dishes can provide. Nowadays, women are cooking food for the male movement students, but why do women do it? [...] Is that a characteristic of women? I say NO! [...] Consciously or unconsciously, women are trying to show womanliness by doing so. Oh! How disgusting it is to flatter men! And I am about to be trapped by it!’ (Ôta op. cit. 78-79).
- 71 A specific example:
- 72 ‘I felt clearly the penetration of the penis. I felt that it was against my will, then a feeling of insult followed it, and I was hit by the shock that a comrade betrayed me. Then, I also felt a sense of responsibility that “now that he committed such a big injustice, he cannot be active in the movement any more.” In reality, there was no atmosphere to make accusations of sex discrimination in the movement... In general, the male position was always thought to be important, and when a problem happened, women always blamed themselves. Then, women’s self-evaluation was made to be very low, and there was huge pressure on women to live with pride or to get angry. Afterwards, I came to know this structure in the Women’s Liberation Movement. However, at that moment, I thought that I should not betray my comrade to let him be in the hands of the authorities, but I should protect the organisation. Additionally, I was so afraid of insults against and stigma of being a raped woman, that I could not bring the issue to the police station’ (Watanabe 1996: 131-133).
- 73 There are more stories of this kind, e.g. that men took pictures of body parts of women after intercourse without their knowledge or consent, and women’s accusations about these acts was simply ignored by those they had sex with. (Machino 1996: 125).
- 74 For example, there was a seven-hour meeting on 14 November 1970, entitled ‘*Kaihô no tameno tôron*’ (A discussion for liberation). The meeting brought together young women and women from the earlier women’s movement. All the discussions were recorded in a book *Seisabetsu-eno-kokuhatsu* (Aki Shobô Henshûbu, 1971).
- 75 This group was established on the initiative of Mitsui Tanaka, Mari Asakawa, and Karido. Tanaka, with her prominent leadership and skill in debate, played a central role in constructing arguments in the 1970s women’s movement.

- 76 The first appearance of the term, 'the Women's Liberation Movement' in media, was probably in an article in *Asahi Shimbun* on 4 October 1970, with the headline, 'The Women's Liberation Movement arrived at men's paradise'. Indeed, since around the spring of 1970, women's activities in the US had appeared in the Japanese media, and therefore the use of the word 'arrived' in the headline. The article was also about women's demonstrations, but around this time the Japanese women themselves did not use 'the Women's Liberation Movement' because it was an English phrase. Instead, they used '*josei-kaihō*', which means 'women's liberation' in Japanese. After 21 October, they started using the term 'lib' (Akiyama 1993: 35-36).
- 77 After the general meeting of the WLM in May 1972, the idea of having the centre was proposed, with calls for financial donations. When some one million yen in donations was collected, the women rented a flat, which was ten minutes walk from the Shinjuku train station, and the centre was opened. The centre was named *Lib Shijuku Centre*, instead of *Lib Tokyo Centre* because of the wish that there would be more *Lib Centres* around the country, so that Tokyo would not be the central spotlight for the Women's Liberation Movement's activities. At the time it was opened, the centre was composed of five groups: *Group tatakau onna*, *S. E. X*, *Tokyo komu-unu*, *Himonji*, and *Tatakau josei dômei*. Seven women from *Group tatakau onna* and *S. E. X.*, started living there together as full-time activists along with four cats. More than 20 women commuted to the office from their residences. The average age of the activists was 25. Some women had full-time jobs, including beauty advising and working in a company office, and others without full-time jobs had part-time jobs, including as models and truck drivers. The centre required 300,000 yen per month to operate, and this was raised through contributions from each of the woman's salaries, as well as monthly donations from other women. Some women connected to the centre chose to work in the sex industry part time, but there were disagreements amongst the women in the movement about some of the women engaging in sex work (Mizoguchi, Saeki & Miki (eds.) 1992 1: 209).
- 78 '*S. E. X.*' was 'a thought group' composed of four women. They distributed leaflets and publications. *Akai Rokugatsu* or 'Red June' was a group composed of relatively older women with secure jobs. *Tokyo komu-unu* was a women's group that tried to run a collective which was staffed by women with children. The group criticised the socially accepted belief that if a woman has a child, she is somehow positively affirmed and admired, saying having a child is not a supreme mission in life of a woman. They also criticised the attitude of people who tried to protect their own children. They believed that such an attitude was based on blood relationships, which is one of the fundamental factors in maintaining sex discrimination, as it is considered women's mission to transmit their husband's blood to a son to maintain the family line. Therefore, within the community, they tried to raise and take care of children communally and not based on blood ties. *Tokyo komu-unu* also acknowledged that the environment in which boys are raised is crucial for the future. The name, *Komu-unu*: 'ko' in Japanese means a child, and 'umu' is a verb that stands for 'give birth.' So, *Komu-unu* means the action of giving birth to a child. It also sounds similar to the word 'commune.' Therefore, '*komu-unu*' was a conjunction of two words. There were also women's movement organisations, which did not come from the Women's Liberation Movement, but which collaborated together with the original groups involved in the WLM, sharing certain political ideas, such as opposing the attempt to limit women's access to abortion (Mizoguchi, Saeki & Miki 1992: 169-187; 1994: 26-46).

## Chapter 2

- 1 A bill to revise, abolish, or introduce a law can be submitted both by a minister and a Diet member. When a bill is submitted by a minister, its draft is made at the related ministry. Then the bill is submitted to the Cabinet Legislation Bureau (*Naikaku hōsei kyoku*) to be examined to determine: (1) whether the bill is consistent and valid in relation to pre-existing laws, (2) whether the purpose of the bill is clear, and (3) whether there are no mistakes in spelling and vocabulary. Then, the bill is submitted to a Cabinet meeting (*Kakugi*) to be examined in the form of a question and answer session among ministers. Once its validity is acknowledged by voting at the Cabinet meeting, the bill is brought into the related committee (*linkai*) in the Diet. With the accord of the related committee regarding the validity of the bill, it is brought into a plenary session (*Honkaigi*) in the Diet, and after being discussed in the Diet plenary session the bill finally comes to a vote.  
In order for a bill to be submitted by a Diet member, the bill has to have the support of at least more than 20 members in the House of Representatives (480 in total) and more than 10 in the House of Councillors (242 in total). With sufficient support, the bill is submitted to the related committee within the Diet, and the rest of the procedure is the same with the bill submitted by a minister. In 1972, the draft was submitted by a minister, and in 1982, the draft was submitted by a Diet member, Masakuni Murakami, as will be discussed in chapter 4.
- 2 A positive argument for the introduction of the selective abortion clause is not found in their documents in the 1960s or 1970s, but they even argued that ‘disabled people should be admired because their soul is of a higher quality’ (*Seichō no ie* 1974: 13). Even so, in arguments at the political level during the 1970s *Seichō no ie* agreed to the introduction of the selective abortion clause in order to maintain their alliance with the Ministry and in order to be successful in their attempt to have the economic reasons clause deleted (YKKD 1970: 5). In the 1980s, the group actively opposed the introduction of the selective abortion clause.
- 3 In the 1970s, the number of women with paid jobs, including part-time jobs, exceeded that of housewives without jobs. Amongst female paid workers, married women accounted for more than 50% of women with paid jobs (Akiyama 1993: 191).
- 4 This association, called *Nichibo*, was established in 1949, with doctors licensed under the Eugenic Protection Law. It currently has a 37-member board of directors with 13,000 obstetricians and gynaecologists as members, and 47 prefecture branches. In May 1994, the organisation’s name was changed from Japan Association for Maternal Welfare to Japan Association of Obstetricians and Gynaecologists (JAOG). For more information, see <http://www.jaog.or.jp/>.
- 5 In YKKD, op. cit. 1969. *Nichibo* and *Seiseiren* engaged in a debate about the pros and cons of the deletion of the economic reasons clause. *Seiseiren* wanted to get rid of the economic reasons clause, *Nichibo* did not. In this debate, it became clear that the aim of *Nichibo* was to maintain medical authority to judge whether a woman needed an abortion or not. The Ministry agreed that doctors should maintain control. *Seichō no ie* was against this, as they believed that doctors would never consider a particular client’s economic conditions. The contrast amongst the parties’ points of view is described in *Josei-kaihō*’ *henshūbu* 1972.
- 6 To describe the loss of motherhood, the expressions ‘low self-awareness in nurturing children’ and ‘mental disorder’ are used (YKKD 1970: 2, 7).
- 7 For instance, ‘if the total fertility rate keeps decreasing in this way, the Japanese nation will become a small minority just like the Ainu tribe, and immigrants from other Asian countries will flow into Japan to dominate us’ (SCR & SJGTK 1970: 35).

- 8 For example, 'the level of consumption is crucial for the national economy, but smaller populations would discourage the country's competitiveness' (SCR & SJGTK 1970: 35), 'we will have a serious shortage of labourers in the future, [...] and therefore, we need to regulate abortion' (YKKD 1970: 40).
- 9 In this article, it is postulated that marriage should be based on the free will of a man and a woman.
- 10 *Seichō no ie* criticised the post-war Democratic Constitution emphasizing that marriage based on 'free choice' of two individuals is equal to 'free love'. According to its religious doctrine, marriage is not the mere consent of two people, but a matching of their spiritual waves. In this teaching, virginity of (only) women is considered to be a pillar of the marital relationship.
- 11 The emperor system was also criticised as a symbol of nationalism. For more details, see: Group tatakau onna, Himonji, Tatakau josei dōmei, S. E. X. (eds), 1973, leaflet. Women in the 1970s critiqued the former women's movement argument in the end of the 19<sup>th</sup> century and the beginning of the 20<sup>th</sup> century, because the early movement had not raised the issue of sexuality. As a result, the sexuality debate in the 1970s women's movement is based on their criticism of the former feminist movement. To confront the issue of sexuality was quite revolutionary even in the 1970s.
- 12 For example, in '*kaihō no tameno tōronkai*' (a meeting for liberation), held on 14 November 1970, women at the meeting defined abortion as 'women's basic minimum right', Aki-Shobō-Henshū (ed), 1971: 112-114).
- 13 From an interview with Yokota, a male member from *Aoi shiba no kai*, 19 July 2001.
- 14 The argument from the Ministry of Health and Welfare is described in *Aoi shiba no kai*, 1973.
- 15 These points are shared by the Women's Liberation Movement as well.
- 16 *Fuchū-ryōiku-centre-iten-soshi-tōsō-shien-iinkai*, *Fuchū-ryōiku-centre-zaishosei-yūshi-shien-group 'Shien-iinkai-no-bila-ni-danko-kougisuru!'* [A committee to stop transferring the Fuchū-ryōiku-centre and a voluntary group of residents in Fuchū-ryōiku-centre, *We stubbornly reject the leaflet distributed by the committee*]. This handbill is a counterargument against a leaflet distributed on 30 June 1973.
- 17 A woman in the movement recalled that criticism of the given social system even extended to the reluctance to cast a vote in elections, which is not so unusual among anarchists in the West, either.
- 18 For example, a description of tension in one meeting of women and disabled people is in *Onna kara onna tachi e*, June, July 1973: 5-6.
- 19 Tanaka 1973. The original leaflet consists of three sheets of B4 size paper. The argument is handwritten. Reprinted in Mizoguchi, Saeki & Miki 1992: 61-64. For English translation of the whole text, see appendix 5.
- 20 Murakami, 'How to Chūzetsu' [How to abort], 1972, cited in Akiyama 1993: 253-259.
- 21 *Yūseihogohō kaiaku soshi jikkō iinkai*, 1973, reprinted in Mizoguchi, Saeki & Miki 1992: 176-178.
- 22 In the context of this argument, the meaning of the political struggle 'to oppose the revision of the Eugenic Protection Law' was also questioned. Opposing the proposal to eliminate the economic reasons clause was intended to maintain the law as it was. The total abolition of the law was proposed in order to make abortion a 'women's rights' issue too. However, as it was too radical to put on the agenda, women in the liberation movement at that time agreed that their political target, for the time being, was to oppose the revision. The proposition is recounted in Tanaka 1973.
- 23 Murakami, op cit. *Yūseihogohō kaiaku soshi jikkō iinkai*, 1973, reprinted in Mizoguchi, Saeki & Miki 1992: 176-178.
- 24 This phrase is also included in a leaflet distributed in 1973, and is often referred to as representing the abortion debate in the Women's Liberation Movement, explaining

what women eventually wanted to express by using the term 'right'. In other words, because at that time it was not easy for women to openly use the term 'right' in the women's liberation movement, they invented this phrase as a substitute for 'right'. The argument developed in this leaflet includes the above-mentioned argument as well. Hence, it requires taking a close look, as this reveals the position of the women's movement in the 1970s. The original was written by Yūsei hogohō kaiaku soshi jikko iinkai in 1973. The entire argument is available in Mizoguchi, Saeki & Miki 1992: 176-179.

25 Ibid.

26 This is the first question raised by Tanaka to construct her argument, in Tanaka 1973.

27 Chūpiren clearly mentioned that contraceptive pills are the easiest method, that side effects are unavoidable in almost every method, and that the side effects of contraceptive pills are less than the pain of having an abortion, while the women in the WLM were reluctant to weigh the side effects of contraceptive pills against the pain of having an abortion. In the WLM, the contraceptive pill was not very welcome. Firstly, this was because of its side effects and the position that it was unfair that only women had to deal with the risk of side effects. Some of the women in the movement experimented with taking contraceptive pills for a while, and reported on the effects. Secondly, they did not think that contraceptive pills solved the problem between men and women. Women might take contraceptive pills in order to prevent pregnancy, but it did not solve the problem of men taking less responsibility for birth control. Thus, the WLM took the position that, 'the pill is one method, but it is not the best'. In this situation, Enoki distributed a brochure about the promotion of the pill in the name of the Women's Liberation Movement, but without any prior discussion.

28 In describing the incident involving Enoki's distribution of brochures, Akiyama recalls that 'although women in the WLM sometimes took extreme actions which surprised the mass media, the women were responsible and honest within the group. Women in the WLM could not accept the attitude of Enoki because she broke the sincere bond amongst women, not really because of the political standpoint of the view itself' (Akiyama 1993: 135-136). Another anonymous woman interviewed, who was also in the 1970s movement, recalls that 'there was a trust amongst the women in the WLM to discuss disagreement or doubts, so the difference of opinion could not be a reason for splitting the unity.'

Enoki's actions collided with the ideal of a leaderless movement, which was an important element of the organisational ideology of the new feminism of the late 1960s and 1970s. This ideology was found not only in Japan, but also in the WLM of many other countries. For instance, 'no stars!' was the slogan of the women's movement at that time in the Netherlands.

## Chapter 3

- 1 The Magna Carta was submitted to Parliament in order to stop King John's abuse of power, as well as to impose a more ordered form of political management, in order to protect the rights of aristocrats. The Magna Carta is important as it was the first written document with a list of rights as the basis of constitutionalism.
- 2 But rights indicated in the Magna Carta were limited to a handful of citizens according to their social class, and the Magna Carta was not a systematised theorisation of rights in itself. The nature/rights of men in this period were discussed within the realm of theology (Hamabayashi 1999: 32-33).

- 3 In Europe before the 17th century, it was the Christian church which articulated and defined the essence of men. The Catholic Church subordinated men's natural law under God, and Christian natural law was developed, different from Ancient natural law discussed by Cicero or Seneca during the Roman period. According to this system of thought, there was a law of God as the supreme principle that rules the entire universe; what relates to men was called natural law. In fact, the concept of rights before the 17th century was formulated in a Christian context, i.e., freedom to practice one's belief in the area of another Christian school. The Dutch war against Spain, in 1568, led by Willem of Orange, was one example of struggles for individual religious freedom. The war ended with a Dutch victory (Hamabayashi 1999: 32-33).
- 4 Since this period also saw a number of discoveries in the field of natural sciences, by Kepler (1571-1630), Galileo (1564-1642), and Newton (1642-1727), the new natural philosophy was beginning to render the naturalistic foundations of the former world view untenable. Hobbes, who had personal contact with Galileo, applied a mechanistic way of viewing phenomena to analyse politics. Hobbes's thoughts on the nature of men and the social contract, for example, were based on natural science, in which he applied methods of analysis from geometry. He also applied theories of the motion of bodies to establish a general principle of psychology, which he called the ethics of men (Edwards: 40-41).
- 5 Yet it also has to be mentioned that difficulties remained (as they did in the general philosophy of the age) over how to interpret 'reason'; an explicit definition was not found. Reason was sometimes equated with intuition, sometimes with the cool observation of nature, and sometimes with the decisions of the law of non-contradiction (Edwards 1967 vol. 5, 6: 452).
- 6 For a detailed discussion of conditions in nature and the competition of individuals, see Wolin, vol. 4, chapter 9, 1975.
- 7 From Locke's *Second Treatise*. For a detailed analysis of Locke's notion of the relation between nature and men, see W. von Leyden (1954) (ed) *Essays on the law of nature*, Clarendon Press, Oxford; Lord King, *Essays on the law of nature*, vol. 1: 162; and J. W. Lenz, *Philosophy and phenomenological research* (1955-1956) vol. 16: 105-114.
- 8 For example, in the Declaration of Independence (1776):
- 9 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.' And in the Declaration of the Rights of Man (1789):
- 10 '1. Men are born and remain free and equal in rights; social distinctions may be based only upon general usefulness.
- 11 2. The aim of every political association is the preservation of the natural and inalienable rights of man; these rights are liberty, property, security and resistance to oppression.'
- 12 To say interdependence necessarily presupposes dependence and inequality, Rousseau says: 'From the moment one man began to stand in need of the help of another... equality disappeared, property was introduced, work became indispensable, and vast forests became smiling fields, in which man had to water with the sweat of his brow, and where slavery and misery were soon to germinate and grow up with the crops' (quoted in Wolin 1960: 370, 496).
- 13 Some historians argue that the US war of independence should not be categorised as a civil revolution because the resistance against Great Britain was intended to protect colonialists' privileges in the new land (Kinoshita, Kimura and Yoshida 2000: 321). But because the declaration proclaims the concepts of natural rights against the monarchy and class system, I refer to this war of independence as a civil revolution. The works of Thomas Paine, for example, such as *Common Sense*, and *Men's Right*, were



- used as theories for the US independence movement and are based on natural rights.
- 14 In 1619, 20 African slaves were transferred to Virginia to work in the cultivation of tobacco. Three hundred more were taken during the next 40 years, but by the 18th century, more than 60,000 slaves were taken to the northern part of the US every 10 years. Some Americans opposed the slave trade, but they were often suppressed by those who benefited from the trade (Kinoshita, Kimura and Yoshida 2000: 317).
  - 15 In the Glorious Revolution, King James II (ruling between 1685-88) was sent back to France by the unanimous agreement of Parliament because of his abuse of power, and Mary II and William III from the Netherlands were welcomed as sovereigns. The new king accepted 'A Bill of Rights' proposed by Parliament, and a form of constitutionalism, based on the concept of a contract, was achieved.
  - 16 According to the 'Bill of Rights,' the king cannot remove or introduce laws, cannot expend the budget, use the military, or prevent Parliament members from being elected, without the permission of the Parliament.
  - 17 For more details about utilitarianism, see Edwards, vol. 7, 8, 1967: 206-212.
  - 18 Arguments by Smith and Malthus also show this characteristic (Wolin 1960: 317).
  - 19 Arnold's lines are also appropriate here: 'Nature is cruel, man is sick of blood... Nature and man can never be fast friends' (quoted in Wolin 1960: 486).
  - 20 For more details about natural rights of men and women in Hobbes's state of nature, see Pateman 1988: 44-45.
  - 21 Hobbes, *Leviathan*, in *The English Works of Thomas Hobbes of Malmesbury*, Scientia Verlag Aalen, 1966, ch. 15: 87.
  - 22 Rousseau, *Emile*, tr. A Bloom, New York, Basic Books 1979: 370, 404, cited by Pateman 1988: 54.
  - 23 McWilliams, *Idea of fraternity*: 12-13, cited by Pateman 1988: 80. Pateman continues; 'fraternity and politics are intimately connected. Political life, exemplified in the ancient polis, presupposes 'an idea of justice', or a law common to all, which transcends blood ties and applies alike to men of different kinship groups' (ibid).
  - 24 Pateman also relates that in the *polis*, only Athens-born males could be citizens of Athens (ibid). This means that the question of 'who becomes equal and liberal to each other' depended on who qualified to be *brothers*. As will be argued, practices and theories of 'rights' have been about how to define who is entitled to exercise rights, where there are always those who are excluded from the scope of rights.
  - 25 With the UN Declaration of Human Rights in 1948 the meaning of 'rights' was further developed. The declaration was motivated by a determination not to repeat the tragedy of genocide and war, which are often based on national, ethnic, cultural, and racial difference. Here, the concept of 'rights' was intended to be applied to everybody, and included not only freedom from interference of various kinds but also positive benefits such as education, a decent standard of living, and health care. There were a number of groups that were not mentioned in 1948, such as homosexuals and disabled people. Gradually, a number of these social groups came to be included within the concept of 'human rights', following lobbying from social political movements, such as the patients' rights movement in the 1960s. With the concept of human rights, a person with rights has no reason to be grateful to benefactors; they are inherent in the person. Human rights are canons by which social, economic, and political arrangements can be criticised and are politically significant as grounds of protest and justification for reforming policies (Edwards, 1967: vol. 7, 8, 198-199).
  - 26 The Meiji Restoration, also known as the Meiji Ishin, Meiji Revolution, or Renewal, describes a chain of events that led to a change in Japan's political and social structure; it occurred from 1866-1869, a period that transverse both the late Edo (often called late Tokugawa shogunate) and beginning of the Meiji Era.

- 27 <sup>1</sup> *On liberty* by Mill was published with the title of *Jiyū-no-kotowari* in 1875, and *Du contrat social* by Rousseau was published with the title of *Minyaku-yakkai* in 1882, translated by Chōmin Nakae. There were other translations such as Smile's *Self-help*, published as *Jijo-ron*, in 1871. Hobbes and Locke were not published in Japanese during this period, but were translated in later periods.
- 28 A tradition of Chinese origin said to have been known in Japan since the 5th century A.D. Confucianism has religious aspects, but is mainly a philosophical, ethical, and political teaching. Confucianism owes its basic orientation largely to Kong Qiu (K'ung Ch'iu), a teacher and philosopher of the Zhou (Chou) dynasty (1027-256 B. C.). In Japan Confucianism has exercised a formative influence in the areas of education and ethical and political thought and conduct especially. It assumed particular importance during the 6th to 9th centuries and during the Edo (1600-1868), Meiji (1868-1912), Taishō (1912-26), and early Shōwa (1926-ca1945) periods (Kōdansha1983,1: 352).
- 29 A general name in Japan for the so-called Neo-Confucianism that developed in Song (Sung) dynasty (960-1279) China. This, the most fully developed philosophical system of premodern China, was established by Zhu Xi (1130-1200), also known by the honorific appellation Zhuzi or Chu-tzu (Shushi in Japanese, hence Shushi-gaku). Whereas the already established exegetical studies of the Han (202 B.C.–A.D. 220) and Tang (T'ang; 618-907) dynasties were concerned with practical ethics (i.e., proper forms of conduct, especially in terms of social and familial relationships) and based this concern on the ethically oriented 'Five Classics' of Confucianism, the Zhu Xi School was, in addition, concerned with abstract metaphysical principles. It developed an interpretation of nature and society based on the more philosophically oriented 'Four Books' of the Confucian tradition and, influenced by Buddhist and Taoist ideas, formed a philosophy integrating the metaphysical and the physical. It influenced not only China but also Japan, Korea, and Annam (now Vietnam) from the 12th to the 19th centuries (Kōdansha, Encyclopaedia of Japan 1983, 7: 190).
- 30 This overview is based on Hamabayashi 1999: 139-173. The ideas of the following philosophers are mainstream in the sense that they appear in Japanese history books authorised by the Ministry of Education, Culture, Sports, Science and Technology, to be used at high schools. Sokō Yamaga (1622-85) a military statistician, criticised the feudal system where a ruler enjoys excessive power over his subjects. Based on the teachings of Confucius and Mōshi, he argued that at the very beginning of human history there was no inequality or class system, but in the course of time those who had talents to govern the land were entitled to rule the land, and the ruled performed activities according to the division of labour. This is the fundamental function of a state (ibid: 146). The relationship between the ruler and the ruled ought to be based on *yakusoku*, or a promise and appreciation, because 'the ruled can earn, so that he can nurture his family, parents, and give support even to his friends' (ibid 145). And 'the ruler also ought to appreciate his subjects, because it is due to them that the ruler can exist.' *Yakusoku* can be likened to Western social contract theory, but *Yakusoku* is based more on faithfulness, sincerity, and trustworthiness than on the mechanical idea of a contract. Appreciation is also an invisible form of emotional feeling. Thus, unlike Western ideas about rights and the power of the state, it draws attention to the effect that political philosophy, before rights, was based on trust in the innate ethics and morality of human beings.
- 31 Jinsai Itō (1627-1705) and Sorai Ogyū (1666-1728), both political philosophers, based the core of the relationship between the ruler and the ruled on *jin* or thoughtfulness to others, one of the ethical concepts in ancient Chinese political thought. Itō argued that *jin* is, in the end, *ai*, or love. He argued that the five basic political ethics of *jin*, *gi*, *rei*, *chi*, and *shin* (thoughtfulness, rightness, respect, wisdom, and trust) become

- genuine when they are based on *Ai*. *Ai* consists of four categories: the spirits of sympathy, self-reflection, giving to others, and good judgement (ibid: 148-150).
- 32 Ogyū argues that *Ai* is one aspect of *Jin*, and a more comprehensive concept of *jin* is explained as 'the principle of the morality of the ruler to make an effort to let the people in the land live in peace and ease.' Morality is required not only from the ruler, but from all the people, in the form of taking care: of parents, giving them ease (*Kō*), of brothers and sisters (*Tei*), of the ruler (*chū*), and of friends (*shin*). These principles, according to him, have their roots 'in the path which the saints paved' (Ibid: 151-152). Amongst historians, it is understood that his philosophies considered morality and ethics in history, based on his statement that 'rulers need to train themselves, [...] and there is no use in doing so if the ruler does not know how to rule the land so that people can live in ease and peace. [...] No matter what, the ruler ought to stick to agricultural principles in ease and peace' (ibid: 152-153).
- 33 In the 18th century, criticism of the feudal system became strong. Shōeki Ando even went so far as to say that a country owes its existence to the farmers' hard work, and the farmers are the centre of a country. It is understood that he intended to say that the hardest working people should get the most appreciation, and the ruling system where a handful of people exploit others, should get the rest. His view has, according to Hamabayashi, some commonality with communist thought, as he insists that the land property system should be abolished. He also argued that the rulers are not necessary if each individual in society eliminates evil morality. According to him, criminal acts are often a result of the class system and of inequality in social opportunities, hence, he idealised the state of nature before the emergence of the state. On this point, today's thinkers liken his ideas to those of Rousseau.
- 34 Kōkan Shiba (1747-1818) argues that, 'all the people, from Shōgun, craft makers, farmers, merchants, and beggars, are equal and are human-beings.' People should be equal in that 'everybody ought to suffer equally for their living, instead of one having an easier life at the cost of others.' Based on this egalitarian thought, he criticises the rank system in both the feudal system and the emperor system. The social rank system was criticised, because, 'with this system, if one is born with a certain talent in a non-warrior family, the person cannot make use of the talent for the good governance of the land.'
- 35 For example, instead of contractual theory, *yakusoku*, or 'promise,' was emphasised in order to maintain good governance. The concept of civil law in the West is also based on trust, but *yakusoku* is based more on invisible emotional factors, such as honesty and expectation that the other will not betray, than upon a visible and more mechanical contract. Nakane, a social anthropologist who majored in Eastern history at Tokyo University, concludes that Japanese society is more based on emotional ties, such as faithfulness and sincerity, than the Western style of contracts (Nakane 1967: 37, 54). According to her, this emotional principle is observable amongst members of groups, and between group leaders and regular members. The leaders are supposed to provide protection to the members and the members are supposed to be faithful to the leaders (ibid: 139). Her work is also available in English and French: Nakane Chie, *Kinship and economic organisation in rural Japan*, London, Athlone Press, 1967; *Japanese society*, Penguin Books, London, 1973; *La société Japonaise*, Paris, Armand Colin, 1974 (translated by L. Ratier).
- 36 The term 'civilisation' came into general use in Europe toward the end of the 18th century, being preceded by 'civility', and it expressed 'a particular stage of European history, sometimes the final or ultimate stage.' The idea of civilisation 'celebrated the associated sense of modernity: an achieved condition of refinement and order.' In short, 'civilisation' refers to a historically and culturally specific form of social life, and the concept is closely bound up with the emergence of the idea of 'civil society',

- the society created through the original contract in Western political theory (Pateman op. cit.: 25).
- 37 He was born into an academic family and was absorbed in studies from childhood. In his early days, he studied Chinese philosophers and political theories, but with the opening up of Japan in the late 1850s, he switched to *Rangaku* or European studies, which were mainly texts from the Netherlands in the Dutch language because of the trade relationship between Japan and the Netherlands at the time. He studied the Dutch language but later found that Dutch was not an international language any more and so he oriented himself to Anglo-American studies, learning the English language. In his early days, he worked for the government, and from 1867 on he devoted himself to scholarly work and education. *Keiōgijuku*, which he established in 1858, is now *Keiō University*. True to his background, his analysis and theories were often from the point of view of those in power. But, for his time, his theories were progressive, and his method of analysis is worth paying attention to because of its comprehensiveness.
  - 38 A group composed of 10 intellectuals called *meirokeisha*, established in 1874, is an example of a group that raised public awareness of modernising the nation state of the day. Fukuzawa was a member of the group.
  - 39 For example, in Fukuzawa's political philosophy, the quality and morality of the rulers were also emphasised, i.e., *Toku* (the ability of a person with character to follow justice) like Confucius, and knowledge discovered by a strict method, like that of Newton.
  - 40 However, current women's research in Japan categorises their movement as 'being confined to the liberalist political struggle' because their demand was for more political participation, equal to what men had, within the given male-centred system (Kanō 1990: 62-64).
  - 41 Under the 1925 law, all men over 25 had the right to vote, and all men over 30 had the right to be elected.
  - 42 See, for example, '*Josei-undō-shi – Meiji-kara-women-lib-made*' (The history of women's movement: From the Meiji to the WLM) written by Metropalichen, one group of women in the WLM. Also reprinted in Mizoguchi, Saeki and Miki (1992, 1: 152-154).
  - 43 See for example, Thomas Paine. His ideas are marked by the concept of 'voluntary interdependence' (*The Rights of Man*, Chapter 1).
  - 44 *Cogito, ergo sum*" (Latin: "I think, therefore I am"), sometimes misquoted as *Dubito, ergo cogito, ergo sum* (Latin: "I doubt, therefore I think, therefore I am"), is a philosophical statement used by René Descartes, which became a foundational element of Western philosophy. The simple meaning of the phrase is that if someone is wondering whether or not he exists, that is in and of itself proof that he does exist. Descartes's original statement was "Je pense donc je suis," from his *Discourse on Method* (1637). He uses the Latin "Cogito ergo sum" in the later *Principles of Philosophy* (1644), Part 1, article 7: "Ac proinde hæc cognitio, ego cogito, ergo sum, est omnium prima & certissima, quæ cuilibet ordine philosophanti occurrat.", by which time it had become popularly known as 'the "Cogito Ergo Sum" argument' ([http://en.wikipedia.org/wiki/Cogito\\_ergo\\_sum](http://en.wikipedia.org/wiki/Cogito_ergo_sum), downloaded on 26 August 2008).
  - 45 Hasegawa, 2001: cover.
  - 46 For more explanations about differences in political philosophy in the West and in Japan in terms of the relationship between nature and people, see Aida 1966; Hasegawa 2001: 171-17; Nishio 1977; Maruyama 1996; 1998.
  - 47 To provide better insight, the way in which the practitioner of rights and social citizens are conceptualised philosophically, is explained here. The Japanese and Chinese character which corresponds to 'an individual' is *ningen* or *hito*, which means the individual practitioner of a political instrument. Linguistically, *ningen* consists of two

Chinese characters, *nin/hito* and *gen*. *Nin* and *hito* are the same Chinese character. According to one dictionary, this character means, 'an animal with high intellect with a command of language', 'human beings, or each individual human being', and *gen* means 'among, together with' (Nishio et al. 1995: 3; 228; 350; 892; 985). Therefore, in the Japanese language, *ningen* means 'a being coexisting with others' and 'a person is significant only when in relationships with others'. So, *ningen* implies that a person does not exist when he/she is alone. The shape of the Chinese character of *nin/hito* consists of two strokes, showing a picture that one is supported and is supporting the other. Hence, it shows that the concept of human beings is understood to be mutual support and coexistence with the other, and cannot be seen apart from each other.

- 48 For example, a man in his 40s, with a physical disability, discusses the issue of privacy, family, and residential institutes as follows: 'In my 30s and 40s, I was terribly afraid and lonely, thinking that I would not be able to experience sex in my life. [...] However, since I became acquainted with a person who brings me to a soap land (sex brothel), I came to be able to experience what it is like. For people with disabilities, being cared for by parents or workers in the institutes, there is no freedom to see pornography or to masturbate. If one falls in love with somebody, first of all, it is very difficult to be alone with the person because there are always other people, such as family members or working staff, who are close by. If one can be alone with the person with whom one is in love, because of a heavy inferiority complex, it is almost impossible to express the feeling sexually. [...] For me, the experience in soap land is just like medical nursing. I noticed that people with a disability are living close to "sex," through everyday nursing or rehabilitation, however, due to a thick wall of social norms, we are prevented from thinking about, or of actually experiencing, sex. If a person with a disability writes a beautiful poem or draws beautiful pictures, they are admired. However, society in general does not even think that people with disabilities also have sexual desires. This is especially so in the case of women with disabilities. If women with disabilities are struggling to survive in a society, they are admired as a "clean, innocent, and beautiful example." We, people with disabilities, have to fight against these constructed ideas' (Asai 1997: 226-228). His story points to not only the problematic life led by people with disabilities, either in residential institutes or at home with family, but also ideas about sexuality, and ideal images that are imposed on disabled people, as well as gender issues.
- 49 Kurenai-kan, 'Aoi-shiba-no-renchû-ga-kurenai-kan-ni-yattekita (Guys from Aoi-shiba visited us in Kurenai-kan),' in *Majo (Witches)*, no. 4, December 1973. Reprinted in Mizoguchi, Saeki and Miki 1992: 129. Kurenai-kan is a women's group located in Kyûshû, which fought against the attempt to outlaw abortion, as part of the WLM in the beginning of the 1970s.
- 50 Yokotsuka, a man with CP in *Aoi shiba no kai*, published a book with this title (Yokotsuka, 1975).
- 51 The term *oku* generally means 'innermost space'. In the 14th century, the household system emerged in Japan, replacing the clan system, where a man became a boss of the household family, and women's rights to inheritance were taken away. Prior to that time, a husband and wife did not live together, but only visited each other at night. The 14th century, with the emerging patriarchal household system, was the beginning of women's subordination in Japan. During this period, among the socially higher class, there emerged a habit of locking women inside a room so that they could not see men other than their husbands; this space was called *oku*, because it was located deep inside the house. This was so that husbands could monopolise 'women's sexual organs,' according to Takamune. The term *oku-san* for 'wife' originated in this usage. In China, the space was called *kei*, in India, *pardah*. *Oku* is hence the

same concept as hiding the figure of women, using obscuring clothing, or hiding a women's face with a veil. The habit of calling male household heads *shujin* (master) also emerged around the 14th century, when the household system took over from the clan system (ibid).

- 52 Shūdān kunoichi 'CP sha tonō deai' (Group kunoichi, 'An encounter with people with CP'), June 1972. Reprinted in Mizoguchi, Saeki and Miki 1992: 149-150. Shūdān kunoichi was a students' group at the University of Chiba, and was part of the WLM.
- 53 Its activities range widely, from supporting women going through divorces to challenging the mass media for sexually discriminatory language in TV commercials. For a detailed introduction to their activities, see Kōdō suru kai kirokushū henshūinkai: 1999.

## Chapter 4

- 1 The 1978 proposal intended to leave out 'the article to protect motherhood' that decrees 'women are not to work at midnight' and 'women can have menstruation leave.' This was in the name of 'achieving equality between men and women' by giving men and women the same working conditions. Yet women in the women's liberation movement analysed it as an attempt to confine women to the realm of the household, because it was not advantageous for women to lose the article about menstruation leave, and it would not be possible for women to work after midnight given the fact that women were responsible for household affairs. The draft went so far as to even propose cutting off social security for single mothers. The reason given by the cabinet was that single fathers did not receive special social security benefits. For details, see Kōdō suru kai kirokushū henshū inkai 1999: 184-187. On these attempts by policymakers, there were debates about 'equality and difference' amongst women in the movement. According to the policymakers, the draft policy was necessary to consolidate the 'home base'. Policymakers argued, as the home is the most basic unit of society and one of the fundamental institutions that compose the state, it is necessary to clarify the division of roles of the state and local governments, and of the workplace and home, respectively. It was then underlined by the administration that the home should take up more responsibilities, such as caring for elderly people and nurturing children (ibid: 220-221). The content of the main policies proposed was as follows: (1) Culture, education: Consolidate the educational curriculum on home education in primary, junior high, and high schools. Support research on family issues. Set up a national holiday named 'a day for the family'. (2) Family environment: promote ownership of homes instead of renting. Build up more parks for play. (3) Welfare: Improve pension systems for widows, and set up special pensions for people nursing elderly people. Establish the Japanese management of welfare, taking advantage of Japan's characteristics, such as high rate of saving, high rate of cohabitation with elderly parents, high rate of health insurance coverage, etc. (4) Improve the maternity leave system and improve nursery schools (ibid).
- 2 After the Second World War, the fertility rate has been decreasing, but the rate of decrease in the 1980s was markedly faster than in other decades. This is mainly because an increasing number of women started postponing marriage in order to continue their careers. Already in 1974, women were 40 percent of all paid workers, including part-time jobs. At the same time, in the mid-1970s, the number of women with paid jobs exceeded that of women without paid jobs for the first time.

- 3 During the 1970s, Masakuni Murakami was a secretary to Kazuo Tamaki, an anti-abortion Diet member from the LDP, who was supported by *Seichō no ie*. In the 1980s, Tamaki resigned as a Diet member, and Murakami took over his role to voice *Seichō no ie's* anti-abortion point of view.
- 4 Text by Masami Ogura, cited in Murakami: 4-6. The title of this text, 'The 212 Article in the Criminal Code', is the name of the article outlawing abortion. Author's translation.
- 5 Statements by Murakami, in the House of Councillors, *The minutes from the budget committee in the House of Councillors, 15 March 1982*, 1982: 4.
- 6 This statement was made during a televised debate on abortion.
- 7 In addition to Sono, Katsuta, for example, a professor at Kyōto University, was active in constructing the anti-abortion argument. He stated, 'Oh, how is it possible? Women's right to abortion is exactly equivalent to saying "to kill or not to kill a foetus is women's right."' What an abnormal era, that women's right to murder is pronounced so loudly. Women are killing foetuses as if they are pimples' (Katsuta, in *Seiseiren* 1983: 16). A statement by Kinko Satō, a female lawyer, also made this point, saying, 'Women in the women's rights movement appeal for the right to abortion, pretending as if women have no other choices than an abortion to deal with an unwanted pregnancy. By doing so, women are shifting their responsibility to others by blaming their surroundings. Women are trapped by short-sighted interests without considering what is more important than themselves, that is, the foetus. The characteristics of the opposition to the revision of the law (protecting foetus' lives) are "egoism" and "shifting responsibility"' (*Seiseiren* 1983: 18-20).
- 8 According to statistics, the abortion rate is the highest among women aged 30 to 34, the second highest among women aged 25 to 29, and the third is among women aged 35 and 39 (Taniai 1983a: 155).
- 9 However, *Seichō no ie* takes the standpoint that 'if a woman became pregnant by sexual intercourse before marriage, which itself is always referred to as a mistake, then she ought to give birth rather than aborting it. Because, for example, giving birth to a baby might push for the woman and the father of the child to get married' (Taniguchi, in *Seigakuren-chūō-riron-kyoku and Seigakuren-joshi-gakusei-taisaku-kyoku* 1970: 60-65).
- 10 For example, Katsuta states, 'given the fact that men make women pregnant, men should also seriously think about contraceptive methods. ...Yet because abortion is legal, men do not take the issue seriously' (quoted in *Seiseiren* 1983: 18). Sato, a female lawyer states, 'because of easy access to abortion, men avoid careful use of contraceptives. [...] I have to conclude that the enemies of women are women in the movement' (Satō, in *Seiseiren* 1983: 19-20).
- 11 He cites a statistic that more than 90 percent feel 'negative' about the experience of abortion, either feeling that abortion is not a good thing to do, or feeling sorry for the foetus, and therefore abortion should be prohibited.
- 12 *Seiseiren news*, a statement from Sōichi Moriyama, a male judge in a family court, also cited in Murakami 1982: 21-22.
- 13 An anti-abortion activist published a book entitled *Taiji-wa-ningen-dewa-nanoka—yū-seihogohō-no-gimonten* [Is a foetus not a human being? Questions about the Eugenic Protection Law], Nihon-kyōbunsha (ed.) 1983, Tokyo. The book consists of experiences related by popular actors and actresses as well as well-known intellectuals. Many of the stories are about how wonderful it is to have children as a result of family planning. Mother Teresa also contributed an article to this book.
- 14 On the back of the front page are her words. She says, 'a termination of pregnancy is destroying world peace. It is the greatest enemy to peace. If a mother dares to kill her own child, how can we stop people killing each other? Japan is a rich country,

and there is nobody begging for a piece of bread for survival. But if termination of pregnancy is permitted, I must say that Japan is poor in heart, starving for love' (Mother Teresa, in Murakami 1982: 2; Mother Teresa 1983: 92-93).

- 15 The former Prime Minister Fukuda, cited by Murakami op. cit: 2.
- 16 Taniai introduces some stories from her visits to school festivals. When she asked one female student if she, being a single mother, would give birth, the student answered her, saying, 'I would never do such a promiscuous act!' 'Promiscuous act' here means having sexual intercourse. It shows high school students' view that to be a good student means not to have sexual intercourse. Taniai also notes that all the high school students at the anti-abortion exhibition argued the same position; women struggle in reproductive decision-making. However, if abortion is outlawed, they do not have to suffer because they have to give birth. Therefore, outlawing abortion is for the benefit of women. For high school students' anti-abortion activities, see Taniai 1983c: 199-202.
- 17 Here is the view and purpose of Soshiren's establishment, in it's the group's own words:  
 'From the standpoint of women, the conditions for legal abortion in the current Eugenic Protection Law are not a guarantee for women's right to self-determination. Since abortion was criminalised at the beginning of the Meiji era, pregnancy and giving birth have been controlled by the state, beyond our will. The conditions for legal abortion were in order to settle the chaos after the war, leaving the abortion articles in the Criminal Code intact – under these two laws, at one time women were made to give birth, while at other times they were made to have an abortion. Moreover, the Eugenic Protection Law is based on the National Eugenic Law, modelled on the Sterilisation Law under Nazism, and its purpose is 'to eradicate inferior genes', and to produce people who are needed by the state. Here, to delete one of the conditions from the Eugenic Protection Law means, (1) to deny the existence of 'people with disability' in order to strengthen eugenic thought, (2) to make it more difficult for women to choose the timing to give birth, (3) to restrict women's right to self-determination by the state.  
 The attempt to revise the Eugenic Protection Law is in the context of the attempt to revise the constitution, in order to support rearmament. Therefore, the state's controlling pregnancy and giving birth is nothing but the process of strengthening the new family system to support militarism. Thus the following points have been confirmed as being shared in common in our liaison committee. 1. To prevent the attempt to revise the Eugenic Protection Law, and 2. To delete the abortion articles from the Criminal Code and to repeal the Eugenic Protection Law' (Kôdô suru onnatachi no kai kirokushû henshû iinkai 1999: 178-179).
- 18 Women pointed out that the anti-abortionists' argument is based on bias about sexuality. Anti-abortionists' ideas about sexuality of both male and female are closely connected to their ways of conceptualising marriage, household, and the image of the ideal life of both men and women. As the attempt to introduce a number of policies and laws during the late 1970s shows, anti-abortionists had the idea of maintaining economic growth by consolidating the household system. Outlawing abortion, according to them, would tie women to the traditional sexual division of labour (Yûseihogohôkaiaku = kenpô-kaiaku-to-tatakau-onna-no-kai 1982: 16-21; Miyako op. cit.: 126-154).
- 19 For example, a woman writer, Seiko Tanabe, notes,  
 'Men's promotion of limiting women's access to abortion is just as easy as grown-ups' attitudes toward children. They regard women as children. But we, women, are actually grown-ups, and we cannot take this seriously. Moreover, our sexuality is not to be



- controlled by men' (Seiko Tanabe, *The Asahi Shimbun*, 11, July, 1982, cited in Yūseiho-gohōkaiaku = kenpō-kaiaku-to-tatakau-onna-no-kai op. cit.: 5).
- 20 In asserting this point, women in the reproductive health movement often cited statements by Murakami expressing worry about society's greying and the decline of national economic power, saying that 'anti-abortionists' concern is not actually about one's life, but a life used with a holistic view for the purpose of the state's interest.' Women were consistent in their reading of the meaning of the attempt, that it aimed at controlling women in order to achieve the dreams of nationalists, and seeing 'respect for life' as a rhetoric intended to cause a sense of guilt amongst women who have had the experience of abortion (Yūseiho-gohōkaiaku = kenpō-kaiaku-to-tatakau-onna-no-kai 1982: 11).
- There were/are also anti-abortion activists in Japan who base their arguments on Catholic teachings, for example, who are 'pro-life' without being nationalists. But they were/are not politically strong. The strongest anti-abortion movement after the Second World War was the alliance of *Seichō no ie* and the LDP, who employed nationalist rhetoric in their arguments. Movements of women and disabled people campaigned against this alliance.
- 21 Yūseiho-gohōkaiaku = kenpō-kaiaku-to-tatakau-onna-no-kai, *Yuseihogohō-t-otatakau-tameni* 1982. 'A human woman, being treated in this way, would not be silent. I want to push away this hand operating me from behind, and become a live woman' – This phrase appears on the front page of a booklet entitled *Yuseihogohō kaiaku to tatakau tameni* [In order to fight against the revision of the Eugenic Protection Law], published by Soshiren. This 48-page booklet contains an explanation and analysis of the situation, a historical background, as well as guidelines about how to organise a protest that could even be done by one person without any experience. More than 20,000 copies of the booklet were sold, and this helped the organisation to campaign around the country. This phrase is cited because it clearly shows the claim made by women in the movement. The hand operating the puppet girl is men's, or the state's.
- 22 Soshiren *Kinkyū news* (1) 1983: 5. When they held a symposium on 23 January, some 110 students gathered.
- 23 Both figures are from Soshiren *Kinkyū news* 1983 (6): 3.
- 24 Taniai explains that if she talked with a housewife for more than 30 minutes, they would start talking about their experience of abortion, and about how difficult it was. She explains that, by building up a dialogue with housewives these women also agreed with the position of the women's reproductive health movement (Taniai 1983a: 172-173).
- 25 For example, an article about the attempt to outlaw abortion that appeared in *The Asahi Shimbun*, one of Japan's major daily newspapers, was headlined 'violation of human rights' (29 January 1983).
- It should also be noted that when the term 'reproductive rights' appeared in the English language, women in the Women's Liberation Movement in Japan did not employ it immediately. Rather, they used 'self-determination', for which there was already a Japanese term. The task of translating 'reproductive rights' into Japanese, both linguistically and conceptually, was to be done in a later period, between 1984 and 1995. See *Soshiren News* No. 1 and No. 4 1984, for the minutes of discussions about translating and conceptualising 'reproductive rights'.
- 26 It should be noted, however, that Japanese women in these conferences were also attacked by women from the 'Third World' about the Japanese government's developmental aid policies. For many of the women in the Third World, the problem is that they are not able to decide for themselves about reproduction. The situation in some other countries might be far away from claiming for rights to decide, and Japanese Official Development Aid (ODA) might be sometimes even hindrance for women in

the 'Third World', as ODA policies initially focused on population quantity control rather than women's reproductive health rights. Although it was, and still is, difficult for non-disabled Japanese women to build real trust with disabled women in Japan and with women in the Third World, Japanese women in reproductive movements believe that 'self-determination' is a crucial term that provides an opportunity to unite women from various backgrounds. For reports from women who participated in the conferences, see *Soshiren news*, from No. 2 to 9, 1984.

- 27 For the history of disabled people's independent living movement and their struggle to secure benefits through the social security system, see Tateiwa 1995.
- 28 The International Year of Disabled People (1981) changed the attitude of the government towards support for disabled people's independent living: as the theme of the year was 'complete participation and equality', the government started providing more subsidies with disabled people. Until the International Year of Disabled People, the policies of Japanese government on disabled people were separation, but in January 1980, the term 'normalisation' was mentioned for the first time in the Diet. Normalisation principle means making available to all people with disabilities patterns of life and conditions of everyday living which are as close as possible to the regular circumstances and ways of life or society (from Wikipedia, downloaded on 15 July 15, 2008, [http://en.wikipedia.org/wiki/Normalisation\\_%28people\\_with\\_disabilities%29](http://en.wikipedia.org/wiki/Normalisation_%28people_with_disabilities%29)) In March 1980, 'the Head Office to Promote the Year of Disabled People' was installed in the Prime Minister's Office, for the purpose of 'securing communication amongst the related administrative offices' and of 'comprehensively and effectively promoting the policies concerning the International Year'. However, because there was nobody 'personally concerned' and no one person in the office who was disabled, 'a special committee for the International Year of Disabled People' was organised as well, in which representatives from disabled people's groups participated. In 1982, this committee handed in a report entitled 'On the management of affairs of the International Year of Disabled People,' which was addressed to the Prime Minister. After receiving this report, 'the Head Office to Promote Measures for Disabled People' was established in the Prime Minister's Office, taking over the former head office, and 'a long term plan concerning the measures for disabled people' was proposed. This series of developments was based on the declarations by the United Nations, where the term 'independent living' was used: the management of institutes was evaluated, and the necessity to support the lives of disabled people outside residential institutes was addressed. It was also agreed that even when a disabled person required 24-hour assistance, his/her life in local communities, not in an institute, should be supported and guaranteed (Tateiwa 1995: 205-211).
- 29 The very term self-determination, or *jiko-kettei* in Japanese, was not often used in the 1960s or 1970s in the disabled people's movement for independent living, although this concept was central to their arguments (Tateiwa 1998: 226; 231). Referring to this concept, such terms as *jiristu* or *dokuristu* were and still are used. The Chinese character of *ji* of *ji-ritsu* or *jiko* stands for 'self' and 'on one's own', and *ritsu* of *ji-ritsu* and *doku-ritsu* stands for 'stand' and 'have a clear position'. 'Independent living' in Japanese is *jiritsu seikatsu*. The term self-determination, or *jiko-ketteri*, started being used during the 1980s in both the women's reproductive health movements and that of disabled people. In the 1990s, it was frequently used as the core of the rhetoric of both groups.
- 30 Hori explains that *Seichō no ie* is a right-wing religious group whose target is to re-establish an emperor system in Japan. Hori relates this fact to Murakami's statements saying:  
Murakami says, 'I am here in this world because my mother and father met each other with mystic purpose, and so did my grandparents. ...If even one

of them had not been alive, I would not be here either. Abortion is to cut off such a mystic relationship of people. [...] Legal abortion will destroy such basic unity of blood relationship. [...] Every individual would be isolated from each other, and the Japanese nation would be destroyed.' (Hori 1983: 87-88)

As is clear from his statement, the anti-abortionists' attempt is nothing but a 'right-wing trend' of politics under the guise of respect for life.

As I analyse the link among 'blood', 'eugenics', and 'the emperor' made by Hori: 'Unity of blood' connotes 'there is a selected or superior blood to be protected', which is a category of eugenic thought. In effect, Japanese militarism during the Second World War was based on the idea that the rule of the emperor's family should spread because of its 'superior blood'. At the same time, the existence of the emperor (monarchy) connotes 'there are people who are superior or inferior from birth'. For this logic, Hori argues that the discussion by Murakami using 'blood' and 'country' connotes the revival of the emperor state, composed of citizens with superior blood, which eventually implies that disabled people are inferior.

- 31 This is a statement from Hasegawa, a member of *Aoi shiba no kai*. It shows the transformation of one disabled man's consciousness, so it is cited despite its length. The title of the paragraph is '*Chūzetsu-ga-josei-ni-motarasumono-to-jibun-no-sonzai*' [What abortion does to women and my existence].

It is my own experience, but it happened twice, that my ex-girlfriends became pregnant. The first girlfriend had a miscarriage during the fifth month of pregnancy. In those days, there were not so many helpers, so she had to take care of me. She was carried by an ambulance, but she had a miscarriage in a toilet at the hospital. Moreover, we were told by a doctor that it seemed the foetus's heart had not been working any more, and the foetus probably had been dead already for a few months. I felt strange to hear that. When I was watching her sleeping, after her womb was washed, I could finally confront my feelings. After she left the hospital, we consoled the soul of the aborted foetus.

When the second girlfriend became pregnant, the doctor diagnosed that the foetus was outside the womb. We could not believe what the doctor said, and for a few days we waited without proceeding with any available treatment. But then her condition became so much worse that she almost lost her life. When I saw an aborted foetus of finger-nail-size, rather than feeling shocked, I thought 'this is what human action produces.' My girlfriend was still asleep so she did not see the aborted foetus.

Those were my experiences, to be able to know that women experience pains by miscarriage and abortion. However, I also understand more about my tendency to more easily sympathise with disabled women: to give birth to a child, exposing their life to the possibility of death, then I understand the abortion experiences of disability-free women, because I am also disabled.

Anyway, what I want to say is that abortion, under whatever circumstances, brings pain to women, and women never joyfully choose to have an abortion (Hasegawa 1996: 18-20).

- 32 From the interview with Kinuko Mitsui, Kunitachi, Tokyo, June 2001.

## Chapter 5

- 1 He adds that 'however, legal studies also emphasise the importance of seeing through the nature of the source of the authenticity of the law, whether the law is created out of ratio or not' (It is understood that the meaning of reason is the condition of non-biased or objective treatment for any parties involved under the law.)
- 2 There are some success stories of women all over the world in obtaining their rights by using international treaties. See, for instance, Plata 1994: 526-527.
- 3 See, for example, speech by Yonezu, in *Aoi shiba no kai* (19) 1973: 27-29.
- 4 In Japan, the term 'feminist' or 'feminism' is found more in academic writings than in either movement publications or in movement discussions. Today, the terms 'feminism' and 'feminist' are to be found in movement newsletters, but not very frequently. Articles written by women with some professional-level academic background would contain the word 'feminism'. Women in the women's movement, especially those from the Women's Liberation Movement in the 1970s, call themselves 'onna' or women. During my informal conversations with some women active since the 1970s within women's movements they used the term 'feminist' to connote being either focused on strategies for reform, or focused on how women use the pre-existing society to create better conditions for women, rather than questioning the fundament of the society or values internalised within people, including women (I spoke with women ranging in from late 40s to early 50s; each had participated in the student movement in the 1970s and all were still active today in improving social conditions in such areas as reproductive health rights, environmental issues, labour conditions). The interests of the women I spoke to who have been active in women's movements since the 1970s are personal change, liberation of their consciousness from oppression, or the awakening of 'ego,' by deconstructing conventional values. Women I spoke with prefer the term *onna* (women) to feminist as they are women, instead of a term ending with 'ism,' which seems to confine their political position. Calling themselves *onna* they could project that the movements they were a part of had a wider appeal: the movement is for all women, and it is not necessary to be a feminist to join. Additionally, there seems to be a reluctance to import foreign words, such as 'feminist' or 'feminism' too readily.
- 5 Ôhashi's statement during the interview with Yonezu, in Yonezu 1998: 240.
- 6 Yonezu recalls her surprise, in 1983, when she saw other women discussing how to use CEDAW to oppose anti-abortion arguments. She recalls the moment, saying, 'my first reaction was, "do we use treaties concluded by the authority?" Other women were surprised by my statements to the contrary, saying, "of course, why don't we take advantage of CEDAW for our movement's sake, even though the treaties were concluded by the authority?". I thought afterwards that if the treaty could play a positive role, we should indeed take advantage of it. Maybe the times have changed' (Yonezu 1998: 236).
- 7 Hardacre emphasises that 'Western writers frequently create the impression that *Mizuko-kuyô* dates from time immemorial, that it exists only in a Buddhist forum, that *Mizuko* simply means the spirits of aborted fetuses, and that there is widespread social approbation of the ritual – that it is not the object of sophisticated critical discourse' (Hardacre 1997: 7). I would add that even many Japanese perceive the *Mizuio* rites as such. Defining *Mizuko-kuyô* as a contemporary phenomenon, however, her book elaborates an account of the historical, political, economic, and social background of its emergence, and shows gendered power relations around the issue. In her chapter 1, she also discusses that the majority of religious institutions surveyed reject *Mizuko-kuyô* and explains the reasons why.

- 8 The report is based on her analysis of 712 interviews with women in one area of Japan. Most women in the sample completed high school, then went to work, and after a few years, got married. The area is rather conservative, so the samples are not representative for the whole of Japan. The women interviewed ranged in age from teenagers to women in their 80s.
- 9 It is important to note that in the reproductive decision-making process, too many women tend to argue their decisions in terms of 'for the sake of others'. In the attitude of 'the abortion was for you, my child' there is no mention of the woman herself. Sanekawa also comments that most of her interviewees talked about their partners, parents, and foetus, but not about themselves. Anti-abortion activists take advantage of this point for their business of consoling the souls of aborted fetuses. In my reckoning, it is very important that this problem – that women think of their abortion experiences in terms of others – should not be mixed with the incompleteness of rights. Rights are oriented to the powerful, not the foetus, so a woman's grievance about abortion cannot be dealt with in terms of a rights-based discourse. And even if women become more assertive, no political term would erase the woman's pain from having had an abortion. For a Japanese woman, the target has been to have a stronger self and subjectivity, knowing why she is living in the way she lives, instead of being swayed by the dominant surroundings. 'Awakening of ego' was always a topic of the Japanese women's movement, including the WLM. To this end, 'rights' should not be done away with.
- 10 Finrrage, groups of women with infertility problems, the DPI network of disabled women, and the Japan Family Planning Federation undertook joint actions.
- 11 See, for example, the fax sent by *Soshiren* to the ministries and Diet members, in *Soshiren news* (132): 9.
- 12 On 4 June, women's reproductive movement groups got together and proposed their objections to the LDP draft as follows: (1) the name must be 'the law on contraceptives, sterilisation surgery and abortion' instead of 'the law to protect motherhood'; (2) deletion of the consent of the spouse from the conditions for sterilisation and abortion, and; (3) a supplementary rule to be attached to the law in order for the Diet members to continue making an effort to establish the reproductive rights of women (*Soshiren news* (132) 2 July 1996: 7).
- 13 Female Diet members from the Social Democratic and the New Sakigake parties played the central role in creating unity amongst female members. They submitted opinions on the revision of the law, on 11 June, criticising the name of the new law and its content, just as women in the social movements had done.
- 14 On 10 June, for example, the Social Democratic Party opened a committee to examine the revision of the Eugenic Protection Law. They concluded that they would not agree to the name of the law 'to Protect Motherhood'. The ruling parties opened a session about policies for health and welfare. The Social Democratic Party and the New Sakigake proposed a correction to the draft by the LDP, i.e., the name of the law should be either 'the Law on the Health of Women Relating to Pregnancy' or 'the Law on Conditions for Sterilisation and Abortion' (*Ninshin-ni-kansuru-josei-no-kenkô-ni-kansuru-hôritsu* or *Funin-shujutsu, jinkô-ninshin-chûzetsu-no-tekiseika-tô-ni-kansuru-hôritsu*). However, there was no agreement, but a new draft was made during the discussion in the committee. The points in the draft was (1) this time, only deleting the eugenic part from the Eugenic Protection Law is to be proposed; (2) however, urgent and comprehensive examination on further improvement of the law for women's reproductive rights is to be made in the new law. This is because there are many issues to be discussed on the health of women, protection of life, and so on; (3) deletion of the consent of the male spouse is to be discussed; (4) abolish eugenic counselling clinics; (5) the name should be either 'the law to protect mothers' or 'the law on the

- protection of life and health of motherhood'; and (6) examination and overview should be made urgently after the revision. On this day, women in the movement visited more than 30 Diet members (*Soshiren news* (132) 2 July 1996: 9).
- 15 Yokota, a member of *Aoi shiba no kai*, cited in *Soshiren news* (132) 2 July 1996: 10, in an oral presentation during the meeting of *nakusou-kaeyou-no-kai* (a group to abolish and change the law), held on 10 June 1996.
- 16 This is a statement by the Ministry of Health and Welfare, cited in *Soshiren kinkyū news* (3) 1996: 8.
- 17 This was distributed during the 4th Women's Conference in Beijing. The session was held on 1 September. It was reported that sometimes the whole womb was removed. I have corrected the English in the original text of the leaflet. The original text is as follows.
- What is the Eugenic Protection Law?: Sexual abuse to women with disabilities.  
 Eugenic Protection Law is to prevent the increase of the inferior descendants. In this case, the inferior descendants mean people with disabilities. If we have diseases or disabilities which affect our children, a doctor is allowed to give us eugenic operation without permission (of women). In Japan, there have been some cases which doctors exercised eugenic operations to women with disabilities. (They removed wombs of women with intellectual disabilities)  
 This happened because women with disabilities are not supposed to have their own children in our society. Staff in institutions also say that it is too much trouble for them to take care of women with intellectual disability when they have period.  
 Taiwan, Korea and China followed Japan and they now have similar laws. We are afraid this eugenic ideology is spreading around Asia with the Japanese leadership. Every life is equally valuable. Everybody has the right to enjoy her life. We are hoping to have a good discussion on this issue.
- 18 *Finrrage-no-kai*, the Friends of Finrrage, Network for Infertile Women in Japan, is a non-profit support group for infertile women that was established in 1991. Since its foundation, more than 6,000 women have participated in the group. During the 1995 UN Beijing Conference, the group had some 1,500 members, but as of August 2008, they have around 250 members. Most members are women (at the time of publication there was just one male member). Members include people who are undergoing infertility treatment, some who have had treatment but have stopped, some who have decided not to have children, and many other people with diverse backgrounds. They consider multiple pregnancy and selective reduction as one of the big problems in the context of fertility treatment. For more information, see <http://www5c.biglobe.ne.jp/~finrrage/>.
- 19 A disabled woman from the DPI network of disabled women recalls 'we introduced this fact in the conference so actively that it was picked up by the local newspapers in Egypt, and this eventually had an effect on the Japanese government,' from 'After Beijing,' in *Soshiren news* (131) 1996: 24.
- 20 The statement by the Minister of Health and Welfare, cited in *Soshiren news* (132) July 1996: 10, *Soshiren kinkyū news* (3) June 1996: 9.
- 21 A letter to Diet members, 13 June 1996, on behalf of Yoshito Nakayama from *Aoi shiba no kai*.
- 22 Additionally, on the photocopy of the aforementioned letter from *Aoi shiba no kai* to the Diet, there is the following note by a woman from *Soshiren*. It seems that the woman from *Soshiren* and a disabled man from *Aoi shiba no kai* had a talk on the telephone about the letter and their statement about 'women's right to self-determination'. The handwritten memo states:  
 '[Male] disabled people say they were aware that this letter would invite strong criticism from women's movement groups, but the deletion of the eu-

genic part from the law was the disabled people's long years' target of struggle and they could not compromise, no matter what. They [disabled men] say that they want to establish more collaboration with the women's movement in the future.'

Thus disabled men were aware of the importance and sensitivity of 'women's right to self-determination' for the women's movement. Two points can be raised here. First, to be sure, as has long been the case, 'women's right to self-determination' is the central core of the recent disagreement between the movements of women and disabled people. Secondly, by 'women', disabled people do not mean women in the reproductive health movement, surmising from the note above. By 'women's consciousness is not ripe' they mean women in general, beyond the women's movement. These observations lead to a question: 'which women are represented by the phrase "women's right to self-determination"?' In the most recent debates on this question, this question is linked to the ethical questions connected to the use of reproductive technology in the medical field: 'doctors are dealing with individual women, not all women.' This question continues to be a prominent question both within the women's movement and among the public today.

## Chapter 6

- 1 Chorionic villus sampling (CVS) is a form of prenatal diagnosis to determine chromosomal or genetic disorders in the fetus. It entails getting a sample of the chorionic villus (placental tissue) and testing it. The advantage of CVS is that it can be carried out 10-13 weeks after the last period, earlier than amniocentesis, which is carried out at 15-18 weeks ([http://en.wikipedia.org/wiki/Chorionic\\_villus\\_sampling](http://en.wikipedia.org/wiki/Chorionic_villus_sampling), downloaded on 20 August 2008).
- 2 In medicine and (clinical) genetics preimplantation genetic diagnosis (PGD) (or also known as Embryo Screening) refers to procedures that are performed on embryos prior to implantation, sometimes even on oocytes prior to fertilization. PGD is considered an alternative to prenatal diagnosis. Its main advantage is that it avoids selective pregnancy termination as the method makes it highly likely that the baby will be free of the disease under consideration. PGD thus is an adjunct to assisted reproductive technology, and requires in vitro fertilization (IVF) to obtain oocytes or embryos for evaluation. The term preimplantation genetic screening (PGS) is used to denote procedures that do not look for a specific disease but use PGD techniques to identify embryos at risk. PGD is a poorly chosen phrase because, in medicine, to 'diagnose' means to identify an illness or determine its cause. An oocyte or early-stage embryo has no symptoms of disease. They are not ill. Rather, they may have a genetic condition that could lead to disease. To 'screen' means to test for anatomical, physiological, or genetic conditions in the absence of symptoms of disease. So, both PGD and PGS should, be referred to as types of embryo screening ([http://en.wikipedia.org/wiki/Preimplantation\\_genetic\\_diagnosis](http://en.wikipedia.org/wiki/Preimplantation_genetic_diagnosis), downloaded on 20 August 2008).
- 3 This society was established in 1949. It currently has 15,900 members, all of whom are not doctors. There are branch offices in all the prefectures of Japan. For more information, see <http://www.jsog.or.jp/>.
- 4 See *Soshiren news* (163) February 1999; *ibid* (164) March 1999.
- 5 Major worries around the issue of human cloning are that the practice of the technology requires intervention in women's bodies, i.e., ovum extraction. There is also a suspicion that the surplus of fertilised eggs for infertility treatment might be used for cloning experiments. See 'Letter of Protest' by *Soshiren* in *Soshiren news* Oct. 1998: 3.

- 6 A group of people with chromosome abnormalities, such as Down's syndrome, and their families. The group was established in June 1995, out of two groups, *kohato-kai* and *koyagi-no-kai*, which were composed of parents of Down's syndrome children; the group has been active for more than 30 years. There are 44 chapters in the country, with 5,500 members, as of August 2008. Especially since 1997, when triple marker test started to be done more widely, the group has been active in petitioning the Ministry of Health and to Welfare and academic societies to reject attempts to promote prenatal screening and selection abortion legislations. Together with other disabled people's groups, they are trying to prevent the introduction of the selective abortion clause (Cited in *Soshiren news* (172) 9 November 1999: 4; Sakai 1999: 103).
- 7 The idea from *Nichibo* was mainly to adjust the law to be able to legally cope with the situation caused by new technologies, i.e., for women to be able to have the abortion of a multiple pregnancy as a result of infertility treatment, etc. Multiple pregnancy is often caused by infertility treatment, and in the event that a woman develops more than one foetus, there is no legal possibility for her to have an abortion of the multiple pregnancy, because neither the economic reasons clause nor the mother's physical mental conditions can be applied. For the opponents to prenatal screening, the draft was far from satisfactory, and therefore the alliance was formed.
- 8 Yonezu reports that she could discover a number of crucial points by holding meetings of alliances of SMOs whose work focused on different problems. For example, she discovered that it is important to keep in mind what certain key vocabulary implies to people from different groups. On hearing the term 'abortion,' women from women's reproductive movement organisations think of 'a choice to give up pregnancy.' When women refer to 'selective abortion' they would specifically state 'selective abortion', distinguishing it from abortion in general, while disabled people associate the term 'abortion' immediately with 'selective abortion of deformed fetuses'. With the term 'the operation of multiple pregnancy' women with infertility problems would think of 'a consequence of infertility treatment', while disabled people would think of 'one of the means to select fetuses'. By 'reproductive technology' women with infertility problems would think of 'technology for infertility treatment', while disabled people would think of 'technology to select fetuses'. She goes on to say that it is very dangerous to proceed with a discussion without knowing these different views. It could happen that while women say 'a right to abortion', not referring to a 'right to selective abortion', disabled people would understand it as 'a right to selective abortion.'
- Because SMOs in alliances have different experiences of oppression, it is possible that one movement person could react angrily to certain statements, due to pain experienced in the past, those this meaning might not have been the intention of the person who made the statement.
- Yonezu concludes that this misunderstanding, confusion, and division arise because of the pain and anxiety these people experience in society. And the anxiety is caused by oppression. Acknowledging the fact that SMOs ironically have been divided by discrimination, she emphasises the importance of listening to each other carefully and continuing dialogue in order not to perpetuate these divisions (*Soshiren news* (179) July 2000: 2-3).
- 9 The full statement by Murakami was: 'A fundamental problem exists of "dignity of life" in combination with the low total fertility rate. Under the Eugenic Protection Law, around 50 million lives were ended. Here lies the very cause for the lack of respect for life in society. Now, on the eve of the 21st century, we have to delete the economic reasons clause in order to become a truly international, human nation-state.' Prime Minister Obuchi answered, 'Of course dignity of life is a fundamental issue and it is important to raise consciousness about the issue. But as for the deletion of



- the economic reasons clause, there are various points of view in the nation.' Women in the reproductive health movement at the time suspected that the anti-abortion movement and the Ministry of Health and Welfare might collaborate on the issue of Japan's low fertility rate, so women agreed to monitor this issue. *Soshiren* sent a letter to the Ministry of Health and Welfare saying that they opposed the idea of deleting the economic reasons clause. Cited in *Soshiren kinkyū news (Soshiren urgent news)*, 2 February 2000, and in *Soshiren news* (175) 07 March 2000: 2-3.
- 10 Seimei Sonchō Centre, *Seimei sonchō news*, 14 (154) November 1997. This special edition honoured Mother Teresa.
  - 11 Since the late 1980s, the low fertility rate has been a hot topic of discussion amongst the Diet and the ministries. In 2006, the rate was 1.4 and in 2008 it is 1.22 (from *Index Mundi*: [http://indexmundi.com/japan/total\\_fertility\\_rate.html](http://indexmundi.com/japan/total_fertility_rate.html), downloaded on 20 August 2008). To note some points, the ministries and some of the Diet members are trying to stabilise the birth rate, so work is progressing on providing measures to motivate women to have more children. The content of the measures seem, at first glance, agreeable, because the measures touch upon the problems of the sexual division of labour, male participation in child-rearing, the lack of nursing homes for the elderly, and so on. But as long as the motivation is based on the aim to increase the number of children, women in the movement sceptically call it 'population control using women's bodies', arguing that it contradicts women's right to self-determination, as well as their sexual and reproductive health and rights. Moreover, the measures might possibly lead to limiting access to abortion.
  - 12 One might argue that selective abortion is justifiable under the economic reasons clause because raising a disabled child costs more money than a non-disabled child. Yet, the clause was initially intended to legitimatise abortion for those whose ability to cover their basic life needs, such as food and shelter, would be threatened if another child would be born. This clause was introduced in 1952 when Japanese society was devastated after the end of the Second World War. Currently in Japan subsidies, though insufficient, are provided to assist disabled people, and the result is that having one disabled child is not likely to cause a mother to have an economic crisis, as was the implication under the clause when it was initially introduced.
  - 13 On the practice of embryo biopsy, a statement by the Japan Academic Society of Gynaecologists and Obstetricians on 30 September 1998, cited in *Soshiren news* 160: 16. Comments have to be made about the term 'couple'. In Japan, criticisms are often made that women's bodies are often a target of commodification under the practice of reproductive technology, where 'men' are absent. Therefore, using the term 'couple' in reproductive issues can be considered as progress, whereas in Europe, some women argue that the term 'couple' hides the different positions of men and women in reproductive issues. The trend to use the term 'couple' is sometimes derided as 'couplism'. For the position of men and women in reproductive issues, see Ehara 2002: 48.
  - 14 This statement is made by the Japan Academic Society of Gynaecologists and Obstetricians on 30 September 1998, as a reply to the comment by the women's movement that women have to bear the burden of reproductive technology, both physically and psychologically. Cited in *Soshiren news* (160): 18.
  - 15 For the analysis of women's desire to have children, medical doctors' motivation to fulfill women's desire, and feminist discourse, see Tsuge 1997; 1999.
  - 16 'On Embryo Biopsy' by the Japan Academic Society of Gynaecologists and Obstetricians, presented on 30 September 1998. Artificial fertilisation had been limited to infertile couples until then, but on 27 June 1998 the academic society enlarged its practice to encompass fertile couples as well, so that doctors could check for abnormal-

ities in an embryo before implanting it inside a woman's body. Cited in *Soshiren news* (160): 17.

- 17 See, for example, the quote of the statement by *Nichibo* in *Soshiren news*, No. 169.
- 18 This proposal from *Nichibo* was reported in major newspapers on 29 March 1999, and this is how movement groups of women and disabled people came to know about it. Movement groups analysed this draft as follows: the first part, needless to say, is assuming the case that the foetus has a fatal disease or disability, and the latter part is the operation of multiple pregnancy, in the case of multiple pregnancy as a result of infertility treatment. In newspapers reactions from movement groups of women and disabled people were also covered. For example, Keiko Yano, a representative of *Yuseishisō-o-tou-network* (a network to question eugenic thoughts) said, 'An introduction of the selective abortion clause implies that the nation-state acknowledges that children with disabilities should not be born. This matter cannot be judged only among medical doctors. Why do we have to go backwards, after the repeal of the Eugenic Protection Law? Both women and disabled people's groups have been opposing the attempt to introduce the selective abortion clause, although they carry subtly different meanings in their argumentation' (*The Mainichi Shimbun* 29 March 1999). Some doctors even opposed the proposal, saying 'there are unavoidable aspects in the practice of prenatal screening, but the law should not be revised for the convenience of medical doctors' (*The Yomiuri Shimbun* 29 March 1999).
- 19 *Soshiren news*, No. 169, August 1999. It should be noted that the explanation for *Nichibo's* proposal was: (1) Women's self-determination with regard to reproduction is guaranteed in the 16<sup>th</sup> article in CEDAW, which was adopted in 1979. (2) In order to guarantee the health of women, a motion was adopted in the 1994 Cairo conference, and an action guideline in Beijing in 1995. Since Japan agreed with them, there is an urgency to organise the domestic system quickly to implement these guidelines. (3) To give birth or not is one of women's basic human rights, or women's right to privacy. In many foreign countries, abortion within the first 12 weeks is considered to be an issue of a mother's right to self-determination, and specific indications for abortion are not applied. In Japan, stillbirth is reported after 12 weeks of pregnancy, and taking into account the safety and technical problems, 12 weeks seems to be a proper place to draw a line (*Soshiren news* (169): 4). The full copy of the letters of protest from social movement groups, such as the DPI network of women with disabilities, *Aoi shiba no kai*, the women's group seeking a law on bodily integrity and sexuality, and the network to question eugenic thoughts are also mentioned in *Soshiren news* (169).
- 20 This field work was conducted in 2006 and 2007, in Japan, as a sub-research of the Socio-genetic Marginalization in Asia Programme (SMAP) at the International Institute for Asian Studies, Leiden. For the details of SMAP, see Sleeboom-Faulkner, 2004.
- 21 To cite portions of some letters from groups of the opponents to prenatal screening, 'the practice of reproductive technology implies being against the attributes of people with disabilities' and 'the practice of the technology of embryo biopsy might strengthen the false idea that to be ill or to be disabled is unhappy for the person, the family, and for society' (From 'a letter from *Soshiren* to the Kagoshima University medical team, on the clinical experiment of embryo biopsy' sent on 14 January 1999, in *Soshiren news* (163) February 1999: 3). For example, when a medical association explained that D type muscular dystrophy was a target, the DPI network of women with disabilities stated that, 'D type muscular dystrophy was listed as a disease to be discovered by genetic diagnosis of a foetus. [...] We are a nationwide group of women with disabilities. The purpose of the network is to empower women with disabilities to have a say about our position in the

local communities, in order to enrich our independence. We are disappointed to hear that D type muscular dystrophy was listed as a disease to be scanned for. The fact is that we, people with disabilities, are trying to accept and love our bodies as they are, in order to live our lives as we are. None of us think that we are unhappy because we have been born with a disability. Each one of us lives our own lives, cherishing our lives. And to encounter friends with the disease of D type muscular dystrophy is as important as encountering any other people. They are not beings who should not have been born, and it is not an issue whereby a third person should judge who is happy and unhappy' (From 'A protest letter from DPI network for disabled women,' to the Kagoshima University medical group ethics committee' sent on 3 February 1999, cited in *Soshiren news* (164) March 1999).

(Upon learning about your perspectives on the introduction of the selective abortion clause), we sensed danger as if it was a revival of the ghost of eugenics. [...] We have been appealing to your point repeatedly, that our life is happy and wonderful because of our disability. Your group's ignorance of our voice, an attitude devoid of democracy, and arrogance to judge that life with a disability is unhappy – all those increase our disappointment' (From 'Letter of Protest and request from DPI network of disabled women regarding Nichibo's draft of the proposal to revise the Law to Protect the Mother's Body,' cited in *Soshiren news* (165) 6 April 1999: 4-5).

The Network to Question Eugenic Thoughts argues, 'according to the newspaper report, the reason for the necessity to introduce the selective abortion clause is to guarantee a mother's right to seek happiness. But indeed there are a number of mothers who live happily with heavily disabled children. Somebody's happiness cannot be judged by a third person. [...] If a pregnant woman is having trouble with continuing her pregnancy, it is because only women are expected to bring up children. Hence, it is important to get rid of as much difficulty as possible, for disabled people to live in society, as well as to lessen the sexual division of labour' ('A letter of protest and request to Nichibo', sent on 23 March 1999, cited in *Soshiren news* (165) 6 April 1999: 9-11).

*Aoi shiba no kai* argues, 'Whatever explanations are given by Nichibo, they represent an attempt to deny the existence of us, people with a disability. Hence, we strongly request that you withdraw your draft to introduce the selective abortion clause' ('A letter of protest and perspective to Nichibo's draft to proposal to revise the Law to Protect the Mother's Body', cited in *Soshiren news* (165) 6 April 1999: 12-13).

- 22 *Karada-to-sei-no-hôritsu-o-tsuku-onnanao-kai* (Women for an Alternative Law for Contraception and Abortion), 'a letter of opinion to oppose the perspective given about the introduction of the selective abortion clause', cited in *Soshiren news* (165) 6 April 1999: 7-8.
- 23 *Yûseishisô-o-tou-network* (The Network to Question Eugenic Thoughts), 'a letter of protest and request to Nichibo', sent on 23 March 1999, in order to protest Nichibo's idea to introduce the selective abortion clause, cited in *Soshiren news* (165) 6 April 1999: 9-11.
- 24 Yokota and Yonezu 2004: 89. This is called 'the slippery slope argument' in Western debates.
- 25 Attitudes toward technology are diverse among disabled people, too (Ishikawa 1999: 64). The debate is continuing. For example, Yokota and Yonezu argue that although they would not agree with the idea assuming that a disability is a cause of unhappiness, they do think wars or environmental problems should be prevented, and this creates more disabled people. Those who do not have to become disabled, do not have to be disabled. However, at the same time, they would not agree totally with arguments that 'wars or environmental problems must be prevented *because* they create

more disabled people.' This argument is based on the assumption that disability is negative. There is a subtle difference between these two logics – 'one does not have to become disabled' and 'however, disabilities should not be regarded as something that is negative.' Yokota believes that this is an ongoing question to be discussed (Yokota & Yonezu op. cit.: 69).

- 26 Yonezu states, 'the academic society emphasises that medical doctors should give sufficient explanation while practising the technology, while also saying that doctors should not recommend the technology to the pregnant women or her spouse. However, this reasoning implies that doctors' concern is to avoid accusation (by behaving passively), because currently a number of women are aware that there is the possibility of reproductive technology, and many women ask for the technology themselves' (*Soshiren news* (162) 5 January 1999: 2-5, brackets are added by the present author).
- 27 DPI network of disabled women, 'an opinion and request to Nichibo', cited in *Soshiren news* (165) 6 April 1999: 4-5. In the letter, medical doctors in Nichibo are invited to try 'peer counselling', through which the disabled women in the network turned the negative ideas they had of themselves because of their disabilities into positive acceptance.
- 28 Some SMOs themselves are active in eliminating discrimination against those with disabilities. For example, some women from women's movements are also involved in activities to promote co-education of children with and without disabilities, as the educational system in Japan with generally segregates disabled and non-disabled students. For parents, the primary concern will be that the child can get an education and a job.
- 29 To show this logic, he cites Modell:

Generally, genetic diseases are neither avoidable nor curable. And when they are, treatment is usually troublesome and costly. Medical science can never solve all of the problems of genetic diseases. Therefore, there is a huge possibility that prenatal screening and selective abortion will be practised for a long time. Firstly, [in order to spread the practice of prenatal screening and selective abortion] it is necessary to stress that, unlike under Nazism, prenatal screening is not promoted nationally [but is based on individual decision-making]. Children should learn at school that everyone has a genetic risk [so society should accept the practice of prenatal screening and selective abortion]. Secondly, to refute the argument that prenatal screening leads to the discrimination of disabled people, we can stress that the practices of prenatal screening and selective abortion are actually signs of increasing medical and social interest in the welfare of disabled people.

In this way, Modell justifies the practices of prenatal screening and selective abortion, and this is the basis for the guidelines proposed by the WHO to be applied to the European situation (Modell 1990, cited by Satō 1999: 58f, brackets by Satō for clarification).

- 30 To summarise some of the other countries' arguments: in the UK, abortion was legalised in 1967. A selective abortion clause exists in the law. There are 23 counselling centres in the UK, engaging in activities such as publishing brochures about prenatal screening. In 1976, the Congenital Disability Act was introduced, which enabled parents of a disabled child to bring a doctor into a lawsuit when a child is disabled because of inaction by the doctor. Consequently, in the UK, blood tests, amniotic fluid checks, and hair checks are routine in the course of pregnancy, and more than half of all pregnancies that have a possibility of Down's syndrome are terminated. Other European countries, such as France, Norway, and Luxembourg, permit abortion for reasons of disabilities (Satō 1999: 116).

- 31 This reasoning is not found only in Japan. See, for example, Geerinck-Vercammen 2001; Visser 2006, for the Dutch debate.
- 32 A woman from *Soshiren*, reflecting upon her experience in talking with women in the process of decision-making, reports that, even though a woman might not actually discriminate against disabled people, most women's concerns are more practical and concrete, such as 'do I have to have an extra medical treatment for the baby if I give birth in case this baby has an anomaly? For how long does it need an extra treatment? Who teaches me how to cope with this? Where should I go?' In this way the woman demonstrated that sufficient social support was a factor in the decision-making process.
- 33 During field research conducted for Socio-genetic Marginalisation in Asia Programme (2006, 2007), 7 out of 12 mothers with children with Downs syndrome expressed that they had ever had an experience of being told by others, 'why didn't you check your child when you were pregnant?'
- 34 Yonezu, in *Soshiren news* (157) 28 July 1998: 4-6. During the aforementioned meeting of the evaluation committee, Kiyoko Kinjô, a lawyer, stated that the social system should be constructed in such a way that women bear less of the psychological burden in the process of decision-making, for example, the counselling system should be constructed to alleviate the psychological burden that women are disproportionately saddled with. On this point, Yonezu believes that organising a counselling system is not enough, instead reconsideration of the social system at the fundamental level is needed. This is probably based on the worry that a solid counselling system would become a process for locating and persuading women who have a deformed foetus to have an abortion (*Soshiren News* (157) 28 July 1998: 4-6).
- 35 See Jaggard 1998, for a discussion about the state's responsibility and abortion rights. The danger of limiting the concept of self-determination, or autonomy, in medical health to merely the principle of informed consent is also pointed out by Dodds (2000: 214). To cite one sentence, 'the identification of respect for autonomy with informed consent presupposes that in the absence of pathology or extreme youth, all patients can be assumed to be fully autonomous agents; thus, those patients found not to be autonomous are presumed to be pathological or infantile and are treated appropriately in a paternalistic manner. Furthermore, identifying respect for autonomy with informed consent presupposes that ethical concern should be directed to the actions of the physician in obtaining consent and not to the decision-making of the patient' (ibid).

## Chapter 7

- 1 'Reproductive rights' has also been in frequent usage since the 1980s. Since 'reproductive rights' stands for 'rights on the issues of reproduction' the two phrases 'reproductive rights' and 'women's right to self-determination' can even be combined and formulated into a form of 'women's right to self-determination on the issues of reproduction.' Out of the two phrases, the focus here is on 'right to self-determination' because this implies more of the philosophical and political content of rights, in order to address the question of this chapter, i.e., why do rights tend to be linked with liberalist ideas?
- 2 The decision made in the case of *Roe v. Wade* in the US in 1973 was one example, where a judgement about the ethical status of a foetus in the first trimester was entrusted to an individual women's moral standard and belief. Here, abortion was made

into an issue of 'women's right to privacy'. With regard to the legal reform, abortion rights, social justice, and individual women's moral authority, see Jaggard, 1998.

- 3 For arguments on this point from Japanese SMOs see chapter 6. Note that there were a number of statements to be found, not only in Japan, but also in other countries, so this link is not specific to Japan. See, for example, Ann Finger. She is a novelist, and she is also disabled. Another example is, during the 4th International Women's Health Meeting held in Amsterdam, a woman in a wheelchair from the Netherlands who made a speech in this regard, expressing the fear that, 'I would have been eradicated by the technology' (Women's Global Network on Reproductive Rights 1986: 57-58).
- 4 A dialogue between Yokota and Yonezu shows this point. Both are disabled: Yokota: 'As a poet, I am often told by senior people that my poetry should go beyond my not being able to walk, wheelchairs, or being disabled. They tell me that a poem is something to describe a being, who has overcome all the hardship. I do not intend to confine myself to "disability", but probably I am indeed confining myself to the fact of my being disabled. Maybe my world is small...  
Yonezu: I do not think that it means that your world is small. This body is the world itself, isn't it? Both for me, and for you.  
Yokota: Yes, yes, I agree.  
Yonezu: Yes. We might be able to escape from prison, we might run away from a country if we do not like the country any more. We could even abandon our parents or children, although it would not be easy. But this body we can never abandon. We can never escape from our bodies' (Yokota & Yonezu 2004: 103-104).
- 5 Keiko Higuchi a woman in the DPI network of women with disabilities, for example, argues that disability is not a cause of unhappiness, but on the contrary, many disabled people live their lives fully, cherishing their disabilities as their uniqueness (In 'Letter of Protest to the Practice of Embryo Biopsy,' in *Soshiren news* (164) March 1999: 4). Quite a few other disabled people make similar comments, that disability is not a cause of unhappiness, but it gives them something positive in their life that one would not have without a disability. See, for example, Ototake 1998, Matsunaga 2001. Moreover, these comments are not found only in Japan. See, for example, Wendell 1996: 82-84.
- 6 Ehara argues that the increasing possibility of discovering disabilities in a foetus might lead to a situation where the birth of disabled children is seen as 'mothers' failure to discharge her responsibility' (2002: 21). The psychology of women who gave birth to disabled children, despite advancement of reproductive technology, is also reported. They often have a guilty conscience and express self-denial, saying that 'I am not a complete woman because I could not give birth to a healthy child'.
- 7 Ibid: 20-21.
- 8 To cite a statement from the independent living movement: 'Technical assistance is often referred to, but more than this, what is lacking among us is relationships with human beings, opportunities for trial and error in human relationships. If we try to do something when we are with parents or family members, they would tell us not to do it because it is dangerous to do so, and tell us to be quiet. Those opportunities have been taken away from us.  
In institutions, the staff tells us not to take risks because if something happens, they would be held responsible. We do a number of things during the rehabilitation program, but if we try to make use in the outside world of what we have learned through the program, we are under the restriction of a number of rules. This is how our lives have been. This problem should be solved before rehabilitation programs are provided' (A statement from Jun'ichi TERADA, in *Aoi shiba no kai, Ayumi*, March 1976, cited in Tateiwa 1999: 87).

- 9 Both sentences are from Yonezu 1998: 236-237. Brackets are mine.
- 10 This interview took place in July 2001. This woman has CP, requires daily assistance, and she has been active in the disabled people's movement to oppose the institutionalisation of disabled people since the 1970s. She has had almost no involvement in the women's movement, such as the Women's Liberation Movement, or *Soshiren*. She is now lives outside an institution and has a daughter.
- 11 My personal experiences of generalisations include dealing with the two rough binary opposites of 'East' and 'West', for example. The reality is that, being Japanese, I often do not know how to fit into this category myself. I am not Western, but when the topic is about international politics, or economic management, my background is more closely identified with 'West'. However, racially and philosophically, I am 'East'. Obviously, my background is more complex than the simple categorisation of 'East' or 'West'. Within 'East' there is a huge diversity, while I hear from a lot of 'Western' people such comments as 'I do not know if they are from Pakistan or India because they are from the East' and vice-versa; but being from the 'East' I do not know the answer either. It is a problem that sometimes it is assumed that those from the so-called East and West cannot identify with each other and that those within the category 'East' will know all about the East. I find that this is too rough a way of dealing with diversity. Moreover, there are always people who cannot fit in either of the two categories. Why is this category used? One reason is that the powerful – in this case, more often, the so-called 'West' – desire that it should be as it is. Why should it be as it is? Because of the comfort in satisfying the desire to be dominant, they do not have to question it. The oppressed are often more sensitive about diversity, because of their difference. On the other hand, when those who are so-called 'Easter' use this category of East/West generalisations, I often observe that it is based on the belief – in my view, a false belief because it creates another Orientalism – that 'the East' is superior to the West and the rest of the world. Of course there are some occasions when such terms as 'West' and 'East' need to be used, such as the use of alphabets associated with the linguistic commonality of Western Europe, for example. And it also happens that sometimes those who are 'Western' will refer to themselves as 'Westerners', for example in order to declare that they are on the side of a history of colonialism. But then, it would be more honest to use the distinction 'West and the rest of the world,' as Edward Said sometimes did, to show the mechanisms of power imbalance, and indeed some other people use this distinction, too.
- Another example is also a categorisation, 'men/women'. This also eliminates diversity by making invisible trans-gender or hermaphrodite people. These categories are not questioned because the majorities are satisfied and comfortable with them, and being in the majority means to be privileged. I think generalisation is sometimes a violent act in order to eradicate the existence of those with relatively oppressed backgrounds.

## Conclusion

- 1 Dualism results from a certain kind of denied dependency on a subordinated other. This relationship of denied dependency determines a certain kind of logical structure, in which the denial and the relation of domination/subordination shape the identity of both the relata. Dualism can also be seen as an alienated form of differentiation, in which power construes and constructs difference in terms of an inferior and alien realm. In systematised forms of power, power is normally institutionalised and 'naturalised' by latching onto existing forms of difference. Dualisms are not just free floating systems of ideas; they are closely associated with domination and accumulation (Plumwood 1993: 41-42). A dualism is an intense, established, and devel-

oped cultural expression of such a hierarchic relationship, constructing control on different cultural concepts and identities so as to make equality and mutuality literally unthinkable. Dualism is a relation of separation and domination inscribed and naturalised in culture and characterised by radical exclusion, distancing and [sic] opposition between orders constructed as systematically higher and lower, as inferior and superior, as ruler and ruled, which treats the division as part of the natures of beings constructed not merely as different but as belonging to radically different orders or kinds, and hence as not open to change. Some familiar examples of dualisms are, culture/nature, reason/nature, universal/particular, subject/object, self/other, reason/emotion (ibid: 47-48).

- 2 For a discussion about the status of an embryo, a foetus, medical science, and women's subjectivity, see Sevenhuijsen 1997.

## Appendices

- 1 In the original material, of which I have a photocopy, the woman's name was deleted. Therefore, it seems that the real name of the woman was stated in the very original, but later on it was deleted in order to protect her privacy.
- 2 'XXX' indicates a word or words that were deleted in the original leaflet.
- 3 '*Hoshigarimasen Katsumadewa*' in Japanese. This was a saying amongst common people during the war.
- 4 After the Second World War, the government announced that the whole nation of one million people must apologise for the war, '*Ichoku-so-zange*' in Japanese. In my opinion, although the nation was forced to endure the war, and indeed suffered from it under the leadership of the military government, the attitude of the government is to unfairly avoid their own responsibilities.



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- Finrrage no kai: <http://www5c.biglobe.ne.jp/~finrrage>
- Aiji clinic: <http://www.ig-clinic.com/>
- Japan medical association: <http://www.med.or.jp/>
- Japan ministry of health, labour and welfare: <http://www.mhlw.go.jp/>
- Japanese obstetrical and gynaecological society: <http://www.jaog.or.jp/>
- Josei saisaku watch: <http://www.jca.apc.org/~fsaito/indexhtml>
- Karada to sei no hōritsu o tsukuru kai: <http://tsukurukai.tripod.co.jp/>
- Seimei Sonchō Centre (pro-life centre): <http://4.justnet.ne.jp/~inochi/seimeinews>
- Soshiren news: <http://www.soshiren.org/>
- The Asahi Shimbun: <http://www.asahi.com/>
- The Yomiuri Shimbun: <http://www.yomiuri.co.jp/>





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