

Translation and Transformation: Statelessness in the Japanese Context

HONG HAO NGUYEN THI

Production Headquarters, NHK ENTERPRISES

This paper addresses the issue of statelessness in Japan with reference to the work of Naoki Sakai. The issue of statelessness arises from a contradiction inherent in nation-states between systems that facilitate assimilation into national communities and those that promote separation from such communities.

INTRODUCTION: THE ISSUE OF STATELESSNESS

This paper addresses statelessness in Japan, an issue that arises from a contradiction inherent in the system of nation-states. Drawing on the work of Naoki Sakai, I will discuss the contradiction between systems that facilitate assimilation into, and those that promote exclusion from, national communities.

Following Sakai, it may be said that homosociality is the principle underlying the modern nation-state, which views immigrants who cross borders between countries as an anti-homogeneous force because they breach the two-category system of 'outside' and 'inside'. Accordingly, a nationality law separates immigrants from Japanese citizens to maintain the homogeneity of the Japanese nation-state under the principle of *jus sanguinis*.

At the same time, a number of stateless peoples who are not recognised as citizens or nationals of any country reside in Japan. The status of these individuals ensues from unfortunate structural elements in international and Japanese systems. However, the issue of statelessness undermines the efficacy and legitimacy of the very systems that create this condition. In practical terms, stateless people are asking for a translation to reform the social conditions of the Japanese nation-state.

THE CASES OF STATELESSNESS IN JAPAN

Although the United Nations High Commissioner for Refugees (UNHCR) estimates that about 12 million people in the world are currently stateless (Cels, 2010, p. 5), this number remains just a 'guesstimate' for several reasons. First, the concept of statelessness is a subject of dispute among countries. Second, governments are often reluctant to disclose information about statelessness (Inter-Parliamentary Union, 2005, p. 3). Third, stateless persons have no legal connection with states, and it is therefore difficult to assign responsibility for the collection of relevant data in a specific country.

The Residence Status in Alien Registration According to Nationality listed 1,234 persons as stateless in Japan 2010.¹ However, this number is just the tip of the iceberg, and it is difficult to fully understand the extent of statelessness in Japan. Statelessness may result from a variety of causes, and the UNHCR has identified eight situations that engender statelessness: conflicts in laws, transfers of territory, marriage laws, administrative practices, discrimination, lack of birth registration,

denationalisation, and renunciation (Inter-Parliamentary Union, 2005, p. 3). Drawing on Kohki Abe's paper, 'Overview of Statelessness: International and Japanese Contexts' (2010), I will present examples of statelessness in Japan to clarify the mechanisms underlying this phenomenon.

Amerasians in Okinawa

According to Abe, until the 1984 amendment, the *jus sanguinis* principle of the Japanese Nationality Act considered nationality to be passed on through patrilineal descent.²

In Okinawa, children born to a father stationed on an American military base and a Japanese mother often became stateless as a result of the conflicting nationality laws of the two countries. The 1984 revision of the Nationality Act solved this problem by adopting *jus sanguinis* of bilineal descent (Abe, 2010, p. 34).

This case illustrates the plight of children who become stateless because of conflicts in national laws.

The Baby Andrew case

Andrew was born in 1991 at a hospital in Nagano Prefecture, and his mother disappeared 5 days after his birth. The Legal Affairs Bureau issued an alien registration card to Andrew labelling him as a Philippine national. However, because this was based on ambiguous remarks made by those involved in the case, the Philippine Embassy rejected this decision, and he was re-registered as stateless.

The case was taken to court, and his Japanese nationality was confirmed under Article 2 (3) of the Nationality Act, which states: 'A child shall...be a Japanese national when both parents are unknown or have no nationality in a case where the child is born in Japan'. Abe states that Article 2 (3) of the Nationality Act serves as an important means to prevent statelessness; regrettably, it is usually ineffectual in practice.

Vietnamese Refugees

Excluding those enrolled in the Orderly Departure Program (ODP), Japan accepted 5,982 Vietnamese refugees between 1975 and the end of 2005.³ Many of these refugees are reportedly not treated as nationals by their country of origin; however, they are also not Japanese nationals. Thus, lacking protection from their home country, Vietnamese refugees are also ineligible for the protections that citizens would normally enjoy and may be categorised as *de facto*⁴ stateless persons.

Due to the Japanese *jus sanguinis* nationality law, children of Vietnamese refugees remain stateless. It should be recalled that a child born in Japan to stateless parents should be granted Japanese nationality at birth by virtue of Article 2 (3) of the Nationality Act. However, the Immigration Bureau of the Ministry of Justice treats Vietnamese refugees as Vietnamese nationals due to the belief that the Japanese government is not able to determine if they are stateless (Catholic Commission of Japan for Settlement of Refugees, 2001, pp. 118-119).

Indeed, their nationality is listed on their alien registration cards as Vietnamese.⁵ Thus, accurate assessment of the status of an individual's nationality by his/her country of origin is important in efforts to prevent statelessness.

MECHANISMS OF STATELESSNESS

In the context of the foregoing discussion, it would seem that issues related to statelessness in Japan

are produced and reproduced on the basis of the *jus sanguinis* nationality law. The manner in which a state determines its criteria for nationality is inextricably connected with the fundamental beliefs of that state. The Japanese *jus sanguinis* Nationality Act rests on the general belief that Japan has always been a mono-ethnic country with a single language, culture, and history. This is related to the country's identity (Abe, 2010, p. 34).

Sakai refers to such a national situation as *homosociality*. Such a society views immigration as a disturbance because immigrants obscure and deconstruct differences between national cultures and blur the dichotomy between inside and outside or friend and foe (Sakai, 1996, pp. 76-77). The term 'immigration' also includes refugees, non-Japanese labourers, and stateless persons. These individuals have the potential to deconstruct the homosociality of a nation.

However, the Japanese *jus sanguinis* nationality law not only eliminates differences among Japanese citizens it also maintains differences between Japanese and non-Japanese individuals and retains the two-category system that distinguishes between those from 'outside' and those from 'inside' the country. As a result, the *jus sanguinis* nationality law has functioned to reproduce homosociality.

How is the issue of statelessness understood from the perspective of homosociality? Currently, Japan applies the Alien Registration Act and the Immigration-Control and Refugee-Recognition Act to non-Japanese people. Because the two laws are based on the dichotomy between Japanese and non-Japanese, stateless people are treated almost identically to immigrants with a foreign nationality.

Therefore, the Prevention of Statelessness Act (Article 2(3)) and efforts to facilitate the naturalisation of stateless persons (Articles 5(5), 8(4))⁶ are ineffective in Japan due to the absence of a mechanism to determine statelessness. Additionally, determinations of statelessness are especially difficult because the problem of statelessness is international in scope. As noted above, the issue of statelessness is thus reproduced and persists.

CONCLUSION: STATELESSNESS AND TRANSLATION

The existence of stateless persons, who live outside the framework of the nation-state, carries the possibility of disrupting established structures and changing extant borders. What would resolving the problem of statelessness in Japan actually mean? Does it mean that stateless persons would adopt Japanese customs? In other words, does it mean that they would be assimilated into Japan and be naturalised by meeting the requirements for this status? Alternatively, does it mean the creation of a society in which stateless individuals would be protected and granted rights even if they remained stateless? This question is too sensitive to answer quickly. Indeed, goals that do not involve assimilation as a prerequisite for social participation (pp. 82-83) raise fundamental and challenging questions about the nature of nationality and naturalisation and about the requirements for membership in a nation-state.

It is important to focus directly on the issue of statelessness and to determine its essential causes. First, problems related to statelessness derive from problems in nationality laws, which preserve nation-states. Indeed, these problems indicate that the system of nationality has not successfully moved into an era that is characterised by separation and transmigration. The existence of statelessness does not challenge the nation-state or the nationality system in a cavalier way; rather, it underscores the failures of these institutions under particular conditions. Most of the issues related to statelessness are not created by stateless persons; they are created by the social structure.

The choice between reproducing the problems of statelessness versus responding appropriately to this issue goes to the core of the nation-state itself. Sakai emphasises the importance of the “creation of a social issue” because this approach enables social participation by people in disadvantaged positions, in the absence of their assimilation (ibid.). Under such circumstances, members of minority groups would have the opportunity to create a society that is neither reciprocal with nor similar to the dominant society through the raising of social issues (p. 84). Because the Japanese legal and governmental systems obscure issues related to statelessness, these issues are easy to ignore. Yet, it is important to consider how we can respond to stateless persons, who live under ambiguous circumstances, without reducing their options to assimilation or exclusion.

In recognising the context of statelessness and its incorporation into a particular system, the concept of translation in this regard can trigger transformations within nations and concepts of nationality. It can also redefine the boundary between majority and minority and lead to the modification of systems and societies. Moreover, because statelessness is an international problem, the function of the implemented concept of translation includes illuminating the existence of statelessness to promote international cooperation in addressing this issue. Because the question of nationality defines membership in a nation, a serious approach to resolving the problem of statelessness would entail redrawing borders and rendering them ambiguous. Thus, this application of the concept of translation to the issue of statelessness entails questioning the existence of the nation-state system and the definition of a national community as well as asking the international community to reform social conditions.

NOTES

1. ‘2010 Residence Status in Alien Registration According to Nationality’
<http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001074828> (retrieved 11/12/10).
2. Two principles, *jus soli* and *jus sanguinis*, stipulate the criteria for nationality. The former grants nationality based on place of birth, and the latter grants nationality based on family heritage or descent. Moreover, in countries employing *jus sanguinis*, nationality is passed on through patrilineal or bilinear descent. The criteria by which states grant nationality fall within their domestic jurisdictions. However, problems may arise when nationality legislation in one state conflicts with that in another state, leaving children without the nationality of either state (Abe, 2010, p. 11; Inter-Parliamentary Union, 2005, p. 27). Under such circumstances, ‘sometimes an individual may be required to renounce an assumed citizenship elsewhere before he/she can apply for citizenship where he/she resides, thus rendering the individual stateless until the new citizenship is granted’ (Inter-Parliamentary Union, 2005, p. 28), and very occasionally he/she remains stateless when that application is rejected (Abe, 2010, p. 47).
3. <http://www.rhq.gr.jp/japanese/know/ukeire.htm> (retrieved 11/12/9).
4. ‘Individuals who have not received nationality automatically or through an individual decision under the operation of any State’s laws are known as *de jure* stateless persons: persons who are stateless with reference to applicable law. Sometimes the States with which an individual might have a genuine link cannot agree as to which of them is the State that has granted citizenship to that person. The individual is thus unable to demonstrate that he/she is *de jure* stateless, yet he/she has no effective nationality and does not enjoy national protection. He/She is considered to be *de facto* stateless’ (Inter-Parliamentary Union, 2005, p. 11). Although Vietnamese refugees are to receive treatment equivalent to that of Convention refugees, they may in fact have no certificates of refugee status, which makes it very difficult for them to continue with the naturalisation procedure (Abe, 2010, p. 52).
5. ‘Acknowledgment of nationality (or statelessness) by the local authorities and regional Legal Affairs Bureau does not always reflect actual nationality or lack of nationality. The nationality stated in the alien registration

may not always indicate actual nationality or statelessness' (Abe, 2010, p. 44).

6. 'Article 8 (4) of the Nationality Act provides for relaxation of the requirements for naturalization for a person born in Japan, not having any nationality since the time of birth, and continuously having a domicile in Japan for three years or more since that time. Further, Article 2 (3) of the Nationality Act provides that a child can acquire Japanese nationality if born in Japan and both of the parents are unknown or are without nationality' (Abe, 2010, p. 62).

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