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# The Poverty of Rights-Blind Communalism: Looking Through the Window of Japan

Tatsuo Inoue

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# The Poverty of Rights-Blind Communalism: Looking Through the Window of Japan

*Tatsuo Inoue\**

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\* Associate Professor of Law, University of Tokyo. All translations from Japanese to English are the author's unless otherwise indicated. For their illuminating comments on various drafts of this article, I am much indebted to the participants in the 1992 IALS-ASCL cosponsored conference on "Individualism and Communitarianism" at Brigham Young University's J. Reuben Clark Law School, Professor J. Mark Ramseyer (University of Chicago Law School), the editors of the *Brigham Young University Law Review* and many others. Their comments greatly helped me to improve the presentation of this article, even though I am unable to incorporate my response to all of the substantial criticism that some of them offered.

## I. INTRODUCTION

The American people are well known for stressing the role of individual rights within society. In contrast, emphasis on community values or "groupism" is widely regarded as a hallmark of Japanese society. These two contemporary societies therefore provide an ideal context in which to explore the tense, yet complementary, relationship between individualism and communitarianism. This article attempts to deepen our understanding of the relationship between these two ideas and the problems that result from overemphasizing one at the expense of the other.

In the United States, individualism seems to be emphasized to the extreme. Ironically, the dark side of individualism has recently become less visible because of the quixotic euphoria being experienced in liberal democracies. This euphoria stems partly from recent political upheavals. The collapse of communist regimes in Eastern Europe and the former Soviet Union has helped foster an attitude that liberal democracy, which is based on individualism and is epitomized by the United States, has triumphed.<sup>1</sup> However, this attitude

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1. The talk of "the end of history," which Francis Fukuyama has recently popularized, is a striking example of this attitude. FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* xi (1992). Fukuyama argues "that liberal democracy may constitute 'the endpoint of mankind's ideological evolution' and 'the final form of human government' and as such constituted the 'end of history.'" *Id.* (quoting Francis Fukuyama, *The End of History?* 16 NAT'L INTEREST, Summer 1969, at 3). He believes so because "while earlier forms of government were characterized by grave defects and irrationalities that led to their eventual collapse, liberal democracy was arguably free from such fundamental internal contradictions." *Id.* But he seems to recoil from, or even reject, this bold stance near the end of his book when he says:

Liberal democracies, in other words, are not self-sufficient: the community life on which they depend must ultimately come from a source different from liberalism itself. The men and women who made up American society at the time of founding of the United States were not isolated, rational individuals calculating their self-interest. Rather, they were for the most part members of religious communities held together by a common moral code and belief in God. . . . But in the long run those liberal principles had a corrosive effect on the values predating liberalism necessary to sustain strong communities, and thereby on a liberal society's ability to be self-sustaining.

*Id.* at 326-27 (citations omitted). Here Fukuyama echoes the communitarian critique of liberalism which is discussed in the text. *See infra* part II. Therefore, his standpoint seems to be more elusive than provocative.

does not reflect so much a firm self-conviction that liberal democracy truly has "triumphed," as it does an underlying need for psychological compensation for the anxiety and frustration that liberal democracy has produced.

Since the 1970s, the American people have become painfully aware of the chronic diseases in their society such as crime, moral and social decay and inner-city collapse. Many serious thinkers have attributed these problems to the inherent defects or contradictions of liberalism in its existing form.<sup>2</sup> In the arena of political and legal philosophy, a significant body of these critics espouse increased communitarianism.<sup>3</sup> These communitarians believe liberalism, both in its libertarian version—committed to the free market system—and in its egalitarian version—committed to the welfare state and its accompanying bureaucracy—is responsible for the erosion of families, local communities and other forms of primary human associations that traditionally have served as buffers between individuals and the state. The communitarians argue that such community and local associations are indispensable for the cultivation of moral and social responsibility. Critics of modern liberal democracy are calling for a shift towards communitarianism; they are calling for more community in the "land of rights."<sup>4</sup>

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Alan Ryan criticizes Fukuyama for his incoherent understanding of liberal democracies shown in another context, saying that "he does not know what he really believes." Alan Ryan, *Professor Hegel Goes to Washington*, N.Y. REV. BOOKS, Mar. 26, 1992, at 7-8. But the truth may be that Fukuyama does not really believe what he claims to know. At any rate, his evasiveness exemplifies the fact that the current "triumphalism" of liberal democracy is not based on a firm self-conviction.

2. See, e.g., DANIEL BELL, *THE CULTURAL CONTRADICTIONS OF CAPITALISM* 21-22, 54-55, 78-84, 171, 256-58 (1976). Bell, however, believes that it is possible to rescue liberalism from the cultural contradictions of capitalism by separating political liberalism from economic liberalism and combining the former with the idea of the public household. *Id.* at 277-82. Like Bell, a number of intellectuals with liberal sympathies are themselves aware of the crisis of liberalism and the need for its philosophical reconstruction. See, e.g., *LIBERALS ON LIBERALISM* 15-64 (Alfonso J. Damico ed., 1986); NANCY L. ROSENBLUM, *ANOTHER LIBERALISM: ROMANTICISM AND THE RECONSTRUCTION OF LIBERAL THOUGHT* (1987).

3. For the gist of the polemics and bibliographical information, see *COMMUNITARIANISM AND INDIVIDUALISM* (Shlomo Avineri & Avner de-Shalit eds. 1992); *LAW AND THE COMMUNITY: THE END OF INDIVIDUALISM?* (A.C. Hutchinson & L.J.M. Green eds., 1989); *LIBERALISM AND ITS CRITICS* (Michael J. Sandel ed., 1984) [hereinafter *LIBERALISM*]; *LIBERALISM AND THE MORAL LIFE* (Nancy L. Rosenblum ed., 1989); STEPHEN MULHALL & ADAM SWIFT, *LIBERALS AND COMMUNITARIANS* (1992).

4. As far as I know, the first person to use the phrase "land of rights" is

In Japan, the opposite problem exists—a hypertechnical communitarianism has exacted a heavy toll on the people, while it has contributed to the postwar resurgence and success of the country. This article will explore some glaring aspects of this dilemma of communitarianism. Particular attention will be drawn to *kaishashugi*, which is a communitarian reconstruction of capitalism prevalent in Japan. It exemplifies how the communal identity can enhance people's productivity and yet impoverish their lives. A devastating side effect of its prevalence is *karoshi*, meaning literally death from overwork, which deftly symbolizes the dilemma inherent in Japan's emphasis on communitarianism. The lesson learned from these and other related phenomena is that Japan must seek a more balanced approach in accommodating the tension between communitarianism and individualism. In other words, there is a great need for more emphasis on individual rights in what might be referred to as the land of community.

This article discusses how Japanese society can benefit by placing a stronger emphasis on individual rights and how the Japanese experience can shed light on issues raised by the current liberal-communitarian debate. In order to set the Japanese dilemma in vivid relief against the background of this debate, part II begins by briefly surveying the current intellectual movement in the United States called communitarianism. The thrust of part II is to illustrate several theories that try to reconstruct the American Society so that it will foster greater community values and thereby avoid the dangers of excessive individualism. With this understanding of the communitarian movement, part III describes the communitarian character of contemporary Japanese society by looking at *kaishashugi*, a unique feature of communality in modern Japan. Part III also discusses a troubling problem caused by the dark side of communitarianism—*karoshi*. Discussing *karoshi* and other examples of the tyranny of intermediary communities in Japan, part III argues that Japan needs to reorient<sup>5</sup> its society so as to take individual rights more seriously. Finally, by reconsidering the relationship between individual rights and the multiplicity of our communal responsibilities, part IV argues that such a reorientation would

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Mary Ann Glendon. See MARY A. GLENDON, RIGHTS TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE 1 (1991).

5. No pun intended.

enrich Japan's communal life because an adequate form of individualism is an indispensable basis for open communality.

## II. THE CALL FOR COMMUNITY IN THE LAND OF RIGHTS

The United States is a land of individuality and individual rights. Individual liberties and freedoms have become the over-arching concern of the American legal system. Communitarians are now objecting that America has become so polarized on individualism as to be crippled by social ills. While the focus of this paper is not on America's social ills, some brief remarks are appropriate on the current communitarian movement in the United States and how it argues for increased community in this land of rights.

### A. *Four Current Viewpoints of Communitarianism*

Communitarians are all motivated by the practical need they see to rehabilitate or strengthen community-based moral and social values. But their theories involve differences in focus, of course, and as a whole constitute more of an intellectual alliance with family resemblances rather than a unitary ideology. Thus, it is difficult to formulate the ideas of communitarianism in any systematic way. Generally speaking, however, communitarians share all or some of the following four viewpoints.

#### 1. *Conventionalist meta-ethics*

One viewpoint of communitarianism may be referred to as conventionalist meta-ethics. The central thesis of this theory is that moral and political values are the conventions or common understandings developed through the particular history and traditions of a given political community. There are no independent external grounds from which to criticize a community's practices. Political communities are only capable of internal or connected criticism based on their own traditions. Thus, the principles of human rights to which liberals are committed cannot claim universal validity. Moreover, these principles are too abstract to give effective and substantial guidance regarding the problems of political morality.<sup>6</sup>

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6. See generally ALASDAIR MACINTYRE, *AFTER VIRTUE: A STUDY IN MORAL THEORY* 126-27, 221-23, 268-69, 272-78 (2d ed. 1984) [hereinafter MACINTYRE, *AFTER VIRTUE*]; ALASDAIR MACINTYRE, *WHOSE JUSTICE? WHICH RATIONALITY?* 7-11,

## 2. *Anti-atomist anthropology*

Communitarians characterize liberalism as atomistic in its conception of human self and agency. In other words, liberals are said to assume that an individual's self-identity is constituted by her ability to choose her ends, not by any of the ends and values shared in the community to which she belongs. The second viewpoint of communitarianism, which I call anti-atomist anthropology, asserts that this atomistic conception of humans is false.

Anti-atomist anthropology holds that humans are social animals, not separate atomistic beings completely independent of one another. Moreover, individuals who are unencumbered by community values are far from autonomous because they lack any deeply internalized values necessary to make reflective choices. The moral depth and rich self-knowledge that empower human agency can only be enjoyed by the situated selves whose identity is partially constituted by shared ends embedded in the common history or narratives of their community.<sup>7</sup>

## 3. *Politics of the common good*

A third communitarian viewpoint stresses that politics should promote the common good. The aim of politics and law is to promote the community's pursuit of its common conception of the good life, rather than to protect individuals' rights to form and live by their own conceptions. Politics and law can and should endeavor to make people virtuous as defined by this common conception. It is not enough to assure that people are *fair* or *just* in the sense that they refrain from violating other people's rights. The key tenets of deontological liberalism—the primacy of justice over the good and the concept of individual rights as trumps or side-constraints over collective goals—must

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389-403 (1988) [hereinafter MACINTYRE, WHOSE JUSTICE?]; MICHAEL WALZER, INTERPRETATION AND SOCIAL CRITICISM (1987) [hereinafter WALZER, INTERPRETATION]; MICHAEL WALZER, SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY xiv-xv, 312-16 (1983) [hereinafter WALZER, SPHERES OF JUSTICE]; Charles Taylor, *The Nature and Scope of Distributive Justice*, in 2 PHIL. PAPERS 289-303 (1985).

7. MACINTYRE, AFTER VIRTUE, *supra* note 6, at 216-21; MICHAEL J. SANDEL, LIBERALISM AND THE LIMITS OF JUSTICE 15-65, 147-83 (1982); Charles Taylor, *Atomism*, in COMMUNITARIANISM AND INDIVIDUALISM, *supra* note 3, at 29; CHARLES TAYLOR, HEGEL AND MODERN SOCIETY 154-66 (1979) [hereinafter TAYLOR, MODERN SOCIETY].

be rejected so that the community can use its regulating power to restrict individual rights in favor of collective goals and, if necessary, to interfere with the morality of individuals.<sup>8</sup>

#### 4. *Civic republicanism*

A fourth viewpoint of communitarianism is the need for society to strengthen its adherence to civic republicanism. Civic republicanism stands for the idea that society must develop civic virtue in order to advance the common good. Civic virtue consists of the individual's ability and willingness to actively participate in the public affairs of his own community. Liberals favor a centralized representative government constrained by judicial review, but this system has protected the private interests and negative liberty of individuals at the cost of spreading political apathy and public irresponsibility. What is needed to cultivate or rehabilitate civic virtue is to revitalize the self-ruling practices of local communities and other intermediary institutions which can function as the primary schools of participatory democracy.<sup>9</sup>

#### B. *Attempts to Strengthen the Communitarian Movement in America*

The four viewpoints summarized above are closely interrelated, but no logically necessary connections exist between them. In fact, a potential tension exists between the conservative, tradition-based tenets of the first and second viewpoints on the one hand, and the theme of radical participatory democracy underlying the fourth viewpoint on the other. For exam-

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8. MACINTYRE, *AFTER VIRTUE*, *supra* note 6, at 244-55; SANDEL, *supra* note 7, at 179-83; LIBERALISM, *supra* note 3, at 6-7; Michael J. Sandel, *Moral Argument and Liberal Toleration: Abortion and Homosexuality*, 77 CAL. L. REV. 521, 521-38 (1989); Michael J. Sandel, *Morality and the Liberal Ideal*, NEW REPUBLIC, May 7, 1984, at 17.

9. See generally BENJAMIN R. BARBER, *STRONG DEMOCRACY: PARTICIPATORY POLITICS FOR A NEW AGE* (1984); ROBERT N. BELLAH ET AL., *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* (1985); J.G.A. Pocock, *THE MACHIAVELLIAN MOMENT: FLORENTINE POLITICAL THOUGHT AND THE ATLANTIC REPUBLICAN TRADITION* (1975); Michael J. Sandel, *The Procedural Republic and the Unencumbered Self*, in *COMMUNITARIANISM AND INDIVIDUALISM*, *supra* note 3, at 24-28; Charles Taylor, *Cross-Purposes: The Liberal-Communitarian Debate*, in *LIBERALISM AND THE MORAL LIFE*, *supra* note 3, at 159-82; Charles Taylor, *Kant's Theory of Freedom*, in 2 *PHIL. PAPERS*, *supra* note 6, at 318-37. For discussions on civic republicanism, see *Civic Republicanism and Its Critics*, 14 *POL. THEORY* 423-93 (1986).



ple, one commentator has discussed this potential conflict by juxtaposing the traditionalist version of communitarianism, which he calls unitary democracy, with a radical participatory democracy, which he calls strong democracy.<sup>10</sup> While the former regards community consensus as a preexistent collective entity, the latter places great emphasis on creating a community consensus through a transformative participatory process.

One way to relax this tension is to regard the quest for civic virtue itself as a fundamental value inherent in the shared tradition. Such a formulation essentially equates with a republican reinterpretation of American constitutional history.<sup>11</sup> The tension may also be relaxed by holding that participatory democracy requires some shared traditions as the common ground for consensus formation to restrain its own disintegrative tendency.<sup>12</sup>

One can discern, however, a common theme underlying the four viewpoints of communitarianism. This common theme may be described as an attempt to shift the community's focus from abstract individual rights to the concrete common good. It is a movement away from disempowered autonomy of rootless individuals and toward a common flourishing of human agency realized in a community where people share memories and jointly venture to shape their common futures in their own way.

A parallel intellectual movement can be seen in developmental psychology. The dominant model of human moral development constructed on the Piaget-Kohlberg lines regards individual autonomy and universalism of equal rights as the acme of moral maturity.<sup>13</sup> Criticizing this model, Carol Gilligan presents an alternative model in a context specifically aimed at women, but applicable to society at large.<sup>14</sup> She believes that her model can illuminate the complexity and richness of those

10. BARBER, *supra* note 9, at 148-62, 242-51. See also Barber's criticism of MacIntyre in BENJAMIN R. BARBER, *THE CONQUEST OF POLITICS: LIBERAL PHILOSOPHY IN DEMOCRATIC TIMES* 177-92 (1988).

11. See generally BERNARD BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* (1967); POCKOCK, *supra* note 9; GORDON S. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC 1776-1787* (1969). For recent discussions on the subject, see Symposium, *The Republican Civic Tradition*, 97 YALE L.J. 1493-723 (1988).

12. TAYLOR, *MODERN SOCIETY*, *supra* note 7, at 115.

13. See generally LAWRENCE KOHLBERG, *THE PHILOSOPHY OF MORAL DEVELOPMENT* (1981); JEAN PIAGET, *THE MORAL JUDGMENT OF A CHILD* (1932).

14. CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (1982).

dimensions of women's moral experiences which she thinks the dominant model has distorted as a sign of women's moral immaturity.

Gilligan presents a conception of morality that she calls "an ethic of care," in contrast to "an ethic of rights," which she characterizes as the dominant model.<sup>15</sup> An ethic of care accepts interdependence, connection and attachment as the primary human conditions; an ethic of rights assumes that independence, separation and self-sufficiency are the basic conditions for individual security and self-fulfillment.<sup>16</sup>

Other important differences derive from this fundamental difference between the two conceptions of morality. For example, the cardinal value in an ethic of care is the responsibility of caring, or sensitivity and responsiveness to concrete human needs, which enables us to strengthen human relationships. In contrast, an ethic of rights gives primacy to the universal principles of justice, which require us to respect the equal rights of all individuals and to balance those rights in a fair and impersonal way.<sup>17</sup>

Consequently, an ethic of care considers conflicting responsibilities to be the most pressing moral dilemma, requiring for its resolution a contextual and narrative mode of moral deliberation—a mode of thinking sensitive to the contingencies and contextual particularity of each conflict situation.<sup>18</sup> An ethic of rights, on the other hand, interprets moral problems as a conflict of rights, and requires us to solve them by a formal, abstract mode of thinking which "divest[s] moral actors from the history and psychology of their individual lives and separate[s] the moral problem from the social contingencies of its possible occurrence."<sup>19</sup>

Whether we can generalize the association of the gender difference with this contrast between the two conceptions of morality is certainly a debatable empirical question. However, it is not Gilligan's purpose to make this generalization. As she says, "The different voice I describe is characterized not by gender but by theme."<sup>20</sup> Her aim is to make all people, espe-

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15. *Id.* at 19.

16. *Id.* at 24-63.

17. *Id.* at 16-22, 27-38, 54, 73-74, 164-67.

18. *Id.* at 19.

19. *Id.* at 100.

20. *Id.* at 2.

cially Americans, listen more attentively and sympathetically to this different voice—the voice of care—which she thinks has been overpowered by the louder voice of rights. The issue is the message of this different voice, not the gender of the utterer.

Gilligan's ideas have not only widened the horizons of feminism, but have also reinforced the communitarian movement and greatly enriched its content and vocabulary. To fully comprehend the prerequisites of communal relationships, one must first grasp Gilligan's concept of mutual care, which is not completely reducible to participation in the pursuit of what the community deems "the good life."

The communitarian vision also finds an eloquent jurisprudential expression in Mary Ann Glendon's recent work, *Rights Talk*.<sup>21</sup> In this work, she elaborately traces and criticizes the development, in various American legal contexts, of what she considers to be an impoverished version of rights talk.

Glendon's aim is "not the abandonment, but the renewal, of our strong rights tradition."<sup>22</sup> Nevertheless, she clearly shares the communitarian viewpoint when she criticizes the "dominant version" of rights talk in the contemporary American liberal democracy for "its starkness and simplicity, its prodigality in bestowing the rights label, its legalistic character, its exaggerated absoluteness, its hyperindividualism, its insularity, and its silence with respect to personal, civic, and collective responsibilities."<sup>23</sup>

Her communitarian sympathy is even clearer when she looks to the American "indigenous languages of relationship and responsibility" as sources for renewing political discourse.<sup>24</sup> These "languages" have their own "grammar of cooperative living" reserved in the "varied communities of memory and mutual aid," that are, "the seedbeds of civic virtue" like "families, religious communities and other primary groups," which she urges people to revitalize.<sup>25</sup>

The preceding section has given only a skeletal description of the communitarian movement now conspicuous in the American intellectual landscape. Hopefully, this discussion has made

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21. GLENDON, *supra* note 4.

22. *Id.* at xii.

23. *Id.* at x.

24. *Id.* at xii.

25. *See id.* at xii-xiii.

audible the voice calling for community in the country which Glendon calls "the land of rights."<sup>26</sup>

### III. THE CALL FOR RIGHTS IN A LAND OF COMMUNITY

#### A. *Communitarianism and Kaishashugi in Contemporary Japan*

The communitarian vision described above has an affinity to what many consider to be the Japanese outlook on human life and morality. This affinity is manifest in at least four characteristics deemed salient in Japanese culture and society. First, the primacy of group loyalty, said to be a basic feature of the Japanese mind, results in a weak commitment to such universal principles as human rights, justice, and fairness—principles that theoretically do not discriminate between insiders and outsiders.<sup>27</sup> Some Western observers even view this focus on group loyalty as a root cause of the current friction between Japan and Western countries.<sup>28</sup> In this regard, it may be noted that cultural and contextual relativism (as implied by communitarian meta-ethics) is popular in Japan and is sometimes relied on to defend "the uniqueness" or "the particularity" of Japanese society against Western criticism based on universalist principles.<sup>29</sup>

Second, the Japanese group orientation not only determines individual preferences, but also penetrates individual self-identity. To put it in the communitarian language, individuals in contemporary Japan are, despite increased social mobility, still far more apt to be "situated selves" rather than "unencumbered selves."<sup>30</sup> An important type of group that currently attracts Japanese loyalty and helps provide self-identity is the *kaisha* or business corporation.<sup>31</sup> The fact that a person is working for Nissan, for example, is not just information

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26. *Id.* at 1.

27. See, e.g., CHIE NAKANE, *JAPANESE SOCIETY* (1973).

28. See, e.g., James Fallows, *Containing Japan*, ATLANTIC MONTHLY, May 1989, at 40-54; KAREL VAN WOLFEREN, THE ENIGMA OF JAPANESE POWER: PEOPLE AND POLITICS IN A STATELESS NATION 8-11, 202-94 (1989).

29. VAN WOLFEREN, *supra* note 28, at 245-48, 293.

30. For the contrast between the two types of selves, see *supra* part IIA.2.

31. In fact, in discussions about dominant human character types the term *kaisha ningen* is used to signify a corporate person. See, e.g., Shigeru Komago, *Kigyojin heno Tegami* [Letters to Corporate People], NIHON KEIZAI SHINBUN, Jan. 8, 1992, at 1; Minoru Tabata, *'Kaishashugi' no Kiki no Genshogaku* [Phenomenology of the Crisis of the Company-Cult], 12 MADO, Summer 1992, at 43-55.

about his job, but is usually a dominant part of who he is. A person's job is a vital source of his self-respect, a firm basis for his self-interpretation, and a prime determinant of the social recognition he gains.

Third, the Japanese indigenous moral language places special emphasis on the primacy of collective goals over private interests, common good over individual rights, and civic responsibility to engage in public affairs over personal freedom and privacy. The term symbolizing this primacy is *messhi hoko*, which means the virtue of sacrificing one's private life to public service, or more literally, self-annihilation in the service of public interests.

The phrase itself is now unpopular because it was rampantly used or abused for purposes of military mobilization in World War II. But as will be shown below in connection with *karoshi*,<sup>32</sup> a postwar social equivalent of *messhi hoko* still exists in the way contemporary Japanese employees devotedly sacrifice themselves to their companies (*kaisha*) so as to be called *kigyo senshi*, or corporate warriors.<sup>33</sup> For a devoted *kigyo senshi*, the *kaisha* is not just a private business entity with which he has a contractual relationship, but a public or quasi-public space in his world which overwhelms other public spheres in importance. A corporate warrior would not hesitate to say he is rendering his *hoko* (public service) to his *kaisha*.

Finally, the vagueness of self-other differentiation, which implies the importance of human interdependence (*amae*), connection (*en*) and the mutual responsibility of caring (*kikubari*), is often ascribed to the core of the Japanese view of the moral world. On the other hand, individual autonomy and rights consciousness (*kenri ishiki*), which presuppose a sharp self-other differentiation, are regarded as alien to this view.<sup>34</sup>

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32. See *infra* part III.B.

33. The term "corporate warrior" is used, for example, in the title of a book in English on *karoshi* published by a group of Japanese lawyers, researchers (who specialize in economics, medicine and labor problems) and wives of *karoshi* victims. NATIONAL DEFENSE COUNSEL FOR VICTIMS OF KAROSHI, *KAROSHI: WHEN THE "CORPORATE WARRIOR" DIES* (1990) [hereinafter *KAROSHI*].

34. TAKEO DOI, *THE ANATOMY OF DEPENDENCE* (John Bester trans., 1977); ESHUN HAMAGUCHI, *KANJINSHUGI NO SHAKAI NIHON* [JAPAN AS A CONTEXTUALIST SOCIETY] (1982); ESHUN HAMAGUCHI, *NIHONRASHISA NO SAIHAKKEN* [JAPANESENESS REDISCOVERED] (1988); TAKEYOSHI KAWASHIMA, *NIHONJIN NO HO-ISHIKI* [LEGAL CONSCIOUSNESS OF THE JAPANESE] (1967). For a recent discussion on the subject in the context of a philosophical reexamination of the concept of legal person, see Stephen C. Hicks, *On the Citizen and the Legal Person: Toward the Common*

In short, the moral world where the Japanese are said to live is very much like Gilligan's concept of an ethic of care.

Whether this picture of the Japanese moral world is more of an ideological fiction than a description of reality is debatable.<sup>35</sup> I believe it is as much ideological as real. At any rate, it is more or less self-fulfilling, influencing the Japanese in shaping their moral self-understanding. Many Japanese, if informed of Gilligan's work,<sup>36</sup> would certainly think that she is describing Japan's own moral voice when she speaks in terms of an ethic of care. In fact, a Japanese developmental psychologist reported, based on empirical data, that the relative importance of the mother-child relationship (as compared with the father-child relationship) in the upbringing of Japanese children tended to render the moral development of the Japanese better fitted to Gilligan's model than to Kohlberg's.<sup>37</sup>

The foregoing discussion has compared the communitarian vision emerging in the United States with the characteristically Japanese mode of human existence and moral life to show the affinity between the two. However, the preceding treatment of *kaisha* as an important form of constitutive community may surprise or perplex those contemporary communitarian Americans who tend to regard business corporations as enemies to traditional communitarianism. A few more words about the character of Japanese corporations are therefore required.

*Ground of Jurisprudence, Social Theory, and Comparative Law as the Premise of a Future Community, and the Role of the Self Therein*, 59 U. CIN. L. REV. 789, 821-30 (1991).

35. For recent discussions on the question of whether Japanese society is, and will be, non-individualistic, see KOJIN, KANJIN, NIHONJIN: JAPANOLGY O KOETE [THE INDIVIDUAL, THE CONTEXTUAL AND THE JAPANESE: BEYOND JAPANOLGY] (Ross Mouer & Yoshio Sugimoto eds., 1987); RONALD P. DORE, WILL THE 21ST CENTURY WORLD BE THE AGE OF INDIVIDUALISM? 42-117 (1991). In this connection, it may be noted that some Japanese and Western scholars have been critically reexamining the supposed non-litigious character of the Japanese which Kawashima connected with the weakness of rights-consciousness in Japan in his standard work. KAWASHIMA, *supra* note 34. Cf. MASAO OHKI, NIHONJIN NO HO-KANNEN: SEIYOTEKI HO-KANNEN TONO HIKAKU [THE JAPANESE NOTION OF LAW: A COMPARISON WITH THE OCCIDENTAL NOTION OF LAW] (1983); JOHN O. HALEY, AUTHORITY WITHOUT POWER: LAW AND THE JAPANESE PARADOX 83-116 (1991). Skepticism about the alleged Japanese nonlitigiousness, however, does not necessarily imply the view that Japan is an individualistic society. For example, Haley holds that the absence of aversion to litigation is compatible with Japanese society. *Id.* See also *infra* note 86.

36. See *supra* part II.B.

37. Akiko Yamagishi, *Futatsu no Dotokusei to Taijin Kankei* [Two Moralities and Interpersonal Relations], 1 JUNTENDO IRYO TANKIDAIGAKU KIYO 48-55 (1990).

A variety of factors give a communal character to Japanese corporations.<sup>38</sup> The so-called three sacred regalia of Japanese labor-management relations, which consist of lifetime employment, promotion by seniority, and in-company labor unions based on the capital-labor conciliation policy, have undeniably strengthened the identification of employees with their companies. A penetrating analysis has recently been presented by scholars who use the concept of *kaishashugi*, a new term coined by combining *kaisha* and *shugi* (ism), to characterize Japanese labor-management relations.<sup>39</sup> *Kaishashugi* also refers to the entire Japanese social system because that system is strongly influenced by the economic structure based on labor-management relations.<sup>40</sup>

Koji Baba, a leading analyst of *kaishashugi*, formulates the concept of *kaishashugi* by combining these three sacred regalia with the following four features: 1) sharing of membership and control of *kaisha* by labor and management to the exclusion of stockholders, and the homogenization of labor and management by recruiting management from labor; 2) limited and invisible inequality of wages and management participation among the employees, which makes their communal solidarity and competitive motivations compatible; 3) close cooperation, constant communication, and absence of class distinctions between blue-collar and white-collar workers; and 4) long-term business relations between corporations, which help bring about communal relationships at the intercorporate level.<sup>41</sup> In sum, Baba says, "*kaishashugi* is an exquisite combination of the capitalistic competition with the communal or socialistic relations."<sup>42</sup> He observes that *kaishashugi* has made contemporary Japan a country where "the stockholders' control of corporations is too weak for us to find the Big Capitalists; the income differentials

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38. This article merely presents some of those factors without taking sides in the controversy about whether they are culturally, politically or economically determined.

39. The term *kaishashugi* has no English equivalent.

40. See, e.g., 1 GENDAI NIHON SHAKAI [THE CONTEMPORARY JAPANESE SOCIETY] chs. 4-6 (Institute of Social Science, University of Tokyo ed., 1991-92); OSAMU WATANABE, KIGYO SHIHAI TO KOKKA [THE CORPORATE DOMINANCE AND THE STATE] (1991); HIROSHI OKUMURA, HOJIN SHIHONSHUGI NO KOZO [THE STRUCTURE OF THE CORPORATE CAPITALISM] (rev. ed., 1990).

41. Koji Baba, *Gendai Sekai to Nihon Kaishashugi* [The Contemporary World and the Kaishashugi in Japan], in 1 GENDAI NIHON SHAKAI, *supra* note 40, at 29-83.

42. *Id.* at 71.

are generally small; there is little class distinction in wages or work conditions; there is workers' 'participation' in management; on the whole it is difficult to find class differences."<sup>43</sup>

As a Marxist economist, Baba is not completely happy with the prevalence of *kaishashugi*. He adds, in an ambivalent tone:

[U]nder the rule of *kaishashugi*, workers are dealt with as *shutai* [self-ruling agents as opposed to the objects of control to which "the alienated laborers" in the classical sense were reduced], or rather they are coerced to be *shutai* both by the competitive and communal elements, ending up pursuing their self-development only in the direction of improving their productivity for the sake of *kaisha* as the capital.<sup>44</sup>

Despite its ultramodern economy, Japan has preserved its community-oriented character. In fact, as the prevalence of *kaishashugi* shows, Japan's communal character has contributed to its tremendous economic growth. The economic growth of postwar Japanese society has, in turn, caused Japan to reproduce or even reinforce its community-oriented character.

Although the leading Japanese intellectuals involved in the postwar enlightenment movement, who were called *kindaishugisha* (modernists), urged people to accept individualistic values,<sup>45</sup> Japanese society continued to be a land of community in its basic structure. Ironically enough, the communal traits of Japanese society which those modernist intellectuals regarded as signs of its "backwardness" closely resemble the communitarian alternative now emerging in the land of rights, the United States, which epitomizes modernity.

Does all of this mean that it is time for Americans to learn from the Japanese? The answer is both yes and no. Yes, because there is something to learn from Japanese experiences. No, because the lesson Japan can offer is anything but "do as we do." The dark side of Japan's land of community is at least as dark as the dark side of America's land of rights. As for Japan, there is now an urgent need to heed the voice that calls for increased respect for individual rights.

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43. *Id.* at 64.

44. *Id.* at 74. The inserted explanation in brackets of the meaning of *shutai*, a Japanese equivalent of the German word *das Subjekt* in its philosophical use, is based on Baba's passage just preceding the quoted one. Baba also warns that the hyperproductivity of *kaishashugi* will sustain excessive mass consumption societies and thereby aggravate environmental disruption and other social ills. *Id.* at 77-83.

45. See, e.g., DORE, *supra* note 35, at 62-65.



*B. The Dark Side of Japanese Communality:  
Karoshi as Symbolic Death*

The way people die sometimes discloses the dilemma or contradictions inherent in their form of social life. This kind of death may be referred to as a symbolic death. Emile Durkheim gave a classical example of the analysis of symbolic death in his extensive work, *Suicide*.<sup>46</sup> He explained that "egoistic suicide" and "anomic suicide" derive from the individualistic form of social life. When communal cohesion is loosened, individuals are exposed to two great dangers: first, ceasing to find anything meaningful or valuable for which to live; and second, losing the ability to control one's desires and frustrations, and thereby losing one's psychological stability. The first danger makes individuals vulnerable to egoistic suicide, the second to anomic suicide.<sup>47</sup> On the other hand, altruistic suicide results from the collectivistic form of social life which minimizes the value of individual lives by merging them into a collective entity.<sup>48</sup>

By exploring this idea of symbolic death, one discovers a revealing example of the dark side of Japanese communality. This is because contemporary Japanese society has its own kind of symbolic death, although it is different from any of the types of suicide Durkheim discussed. This symbolic death is called *karoshi*, or death from overwork.<sup>49</sup>

*Karoshi* seizes workers in the form of brain hemorrhage, heart failure, cerebral or myocardial infarction and the like, as the cumulative effect of extended overwork (habitualized long overtime and few days off). Among the other causal factors are exhausting commuting conditions and the psychological and physiological stress of job transfers unaccompanied by one's family (*tanshin funin*).<sup>50</sup> *Karoshi* victims do not kill themselves—they "burn away."

The exact frequency of *karoshi* is difficult to determine because of insufficient data and the difficulty of proving causal connections. However, it is certainly not uncommon, as is evi-

46. EMILE DURKHEIM, *SUICIDE: A STUDY IN SOCIOLOGY* (George Simpson ed. & John A. Spaulding trans., 1951).

47. *Id.* at 152-216, 241-76.

48. *Id.* at 217-41.

49. To date, the most detailed English publication on *karoshi* is KAROSHI, *supra* note 33, which examines the complex problem of *karoshi* in its social, legal, economic and medical aspects.

50. *Id.* at 8-10, 98-102.

denced by the *Karoshi* Hotlines, a voluntary consultation-by-phone service program. When a group of Japanese lawyers and doctors opened the *Karoshi* Hotlines in seven major cities on June 18, 1988, they received 135 calls from the family and relatives of *karoshi* victims on the first day alone. During the following two years, they handled 1806 cases.<sup>51</sup>

*Karoshi* has become a serious social issue in Japan not only because the reported cases have been increasing in number, but also because the way *karoshi* victims die represents the difficult living conditions shared by ordinary people. According to a 1991 survey, one out of five (and one out of four male) office workers in Tokyo fear that they may suffer *karoshi*.<sup>52</sup> Moreover *karoshi* is a classless death. It can happen to anyone irrespective of age, sex, occupation, or post. For example, directors and managers constituted about fifteen percent of the *karoshi* victims in the 1806 cases handled by the *Karoshi* Hotlines.<sup>53</sup> The fact that the sense of vulnerability to *karoshi* is widely shared seems to reveal more about Japanese society than its actual frequency does. This fact is part of the reason why *karoshi* can be called a symbolic death.

A human dimension of *karoshi* is poignantly expressed in a note left by Toshitsugu Yagi, a *karoshi* victim who, until his death, rarely returned home from work before midnight. He died in 1987 from a myocardial infarction at the age of forty-three.<sup>54</sup> In his note, Yagi likened "today's armies of corporate workers" on their "daily commuter trains packed to overflowing" to the "slaves [who] were loaded onto slave ships and carried off to the new world."<sup>55</sup> Yagi concluded that today's corporate warriors are more miserable than slaves were because "corporate slaves . . . don't even share the simplest of pleasures

51. *Id.* at 7.

52. *Toshin ni Hataraku OL: Sarariman no Kenko Chosa* [Health Survey of the Office Workers in Tokyo], ASAHI SHINBUN, June 2, 1992, at 26 (quoting the survey of working conditions of office workers in Tokyo conducted by Chuo Rosei Jimusho (the Tokyo metropolitan central office for labor administration) in October and November, 1991) [hereinafter *Health Survey*]. This survey gives a relatively conservative estimate. Another survey reports that 48% of the questioned workers replied that they felt "anxiety about *karoshi*." Kishio Hobara, *Rodojikansei no Arikata* [What the Working Hours Regulation Is and Should Be Like], JURISUTO, May 1, 1992, at 261 (quoting a newspaper article in YOMIURI SHINBUN, Feb. 13, 1992).

53. KAROSHI, *supra* note 33, at i.

54. For a detailed description of the conditions of life for Yagi and his family before and after his death, see *id.* at 37-46.

55. *Id.* at 4.

that those forced laborers of ages past enjoyed: the right to sit down at the dinner table with their families."<sup>56</sup> If nothing else, Yagi's note should "inform people around the world about potential hazards contained in Japanese-style management and serious distortions underlying the Japanese economy."<sup>57</sup>

In the preface to the English report on *karoshi*, published by the National Defense Counsel for Victims of *Karoshi*, the authors proclaim:

It is said that all human rights are based on respect for the individual. We believe that the freedom of an individual to live and die naturally without being subjected to destruction by others is the foundation of all human rights. We therefore believe that conditions and practices which destroy workers' health and life should never be tolerated.<sup>58</sup>

This is a forcible call for individual rights. So far, however, the legal response to the issues it raises has been insufficient or even nonexistent in Japan.

Part of the problem results from Japan's lack of effective regulations. Although the Labor Standards Law stipulates that the maximum working hours should be forty hours per week,<sup>59</sup> this is nothing more than a shabby facade because the same law allows the Cabinet to extend the limit up to forty-eight hours by its ordinance.<sup>60</sup> Since 1991, the limit set by the ordinance has been forty-four hours per week. The law is further diluted by a provision<sup>61</sup> authorizing the employer and the labor union composed of the majority of the employees (or other employee representatives) to raise the legal limit by agreement, the so-called *saburoku kyotei* (the three-six agreement).<sup>62</sup>

In 1991, the Ministry of Labor developed an administrative guidance plan to reduce overtime. The Plan did not make much

56. *Id.*

57. *Id.* at III.

58. *Id.* at IV.

59. RÔDÔKIJUNHÔ [Labor Standards Law] art. 32 (Japan) (Law No. 99 of 1987). Rôdôkijunhō [hereinafter ROKIHO] was originally enacted in 1947. The statute in its current form includes many amendments made on various occasions since then.

60. *Id.* art 131 ¶ 1.

61. *Id.* art. 36.

62. KAROSHI, *supra* note 33, at 85-86; Koichiro Yamaguchi, *Rodokijunho Minaoshi no Ronten* [The Labor Standards Law Reconsidered: Main Issues], JURISUTO, Apr. 1, 1992, at 43-44; Seigo Mori, *Jikangai Rodo no Sakugen to Hoteki Kisei* [The Curtailment of Overtime Work and the Legal Regulations], JURISUTO, Apr. 1, 1992, at 58-63.

sense, however, because the suggested limit on overtime was 450 to 780 hours per year, and work on holidays was disregarded.<sup>63</sup> Thus, there is no mandatory legal limit to maximum working hours, except for certain highly dangerous occupations,<sup>64</sup> female workers,<sup>65</sup> and minors.<sup>66</sup>

Other provisions of the Labor Standards Law also fail to discourage excessive overtime. The premium rate for overtime required by the Labor Standards Law is only twenty-five percent,<sup>67</sup> too low to motivate management to hire additional employees instead of relying on overtime work. As for vacation, the law entitles workers to ten to twenty paid holidays per year, depending on the length of employment,<sup>68</sup> but there is no provision about the minimum number of holidays to be actually taken. On average, Japanese workers take only half the paid holidays to which they are entitled.<sup>69</sup> Finally, enforcement of the law is so ineffective that the so-called *sabisu zangyo* (free service overtime which is unrecorded and unpaid) is a normal practice.<sup>70</sup>

The Japanese courts have also refused to curb overtime abuses. In 1991, the Japanese Supreme Court ruled in *Tanaka v. Hitachi, Inc.*<sup>71</sup> that an individual worker has no right to refuse an employer's request for overtime if the time does not exceed the limit agreed upon by the employer and the union. The court upheld the employer's disciplinary measure of dismissing the plaintiff who refused such requests. The *saburoku kyotei* (the three-six agreement) involved in *Tanaka* included, among its conditions for acceptable overtime, such all-embracing and unrestrained language as "the necessity of working overtime to attain production goals." The Japanese Supreme Court acknowledged the agreement's comprehensiveness but

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63. Yamaguchi, *supra* note 62, at 45-46.

64. ROKIHO art. 36, proviso (Japan) (Law No. 99 of 1987).

65. *Id.* art. 64, ¶ 2 (Law No. 45 of 1985).

66. *Id.* art. 60 (Law No. 99 of 1987).

67. *Id.* art. 37 (Law No. 49 of 1947).

68. *Id.* art. 39, ¶¶ 1-6 (Law No. 99 of 1987).

69. See Susumu Noda, *Magarikado ni Kita Nenkyu Hori: 'Jitan Sokushin' no Nakade* [Vacation Law at the Crossroads: Under the Working Hours Curtailment Drive], JURISUTO, Apr. 1, 1992, at 49.

70. Mori, *supra* note 62, at 59, 63; KAROSHI, *supra* note 33, at 66-67, 87-88.

71. Judgment of Nov. 28, 1991, Saikōsai Daiichi Shohotei [Supreme Court, 1st Petty Bench] 774 HANTA 73 (Japan).

held that it was reasonable and that it met the purpose of Article 36 of the Labor Standards Law.<sup>72</sup>

The situation is no better in terms of workers' compensation benefits. *Karoshi* victims are rarely compensated under the current workers' compensation insurance system because the restrictive coverage formula set by the Ministry of Labor focuses only on the work load immediately prior to the employee's death.<sup>73</sup>

On the whole, Japanese labor unions have not zealously addressed the problems raised by *karoshi*. In fact, the labor unions have contributed to the problem because they often join management in legitimizing the conditions leading to overwork by entering into *saburoku kyotei*.<sup>74</sup> The structure of *kaishashugi*<sup>75</sup> has led the unions to identify their members' collective interests with the prosperity and growth of their *kaisha*. They have therefore cooperated with management to make the success of their *kaisha* a high priority. In addition, the unions realize that lifetime employment structurally requires dependence on overtime as a buffer against any eventual economic pressure for layoffs.<sup>76</sup>

Japanese employees work extremely hard and thereby expose themselves to the dangers of *karoshi* for a variety of reasons. A fundamental explanation is the prevalence of *kaishashugi*, which fosters and requires the strong identification of workers with their *kaisha*. The above-mentioned 1991 survey reports that 24.8% of the respondents ascribed the primary cause of *karoshi* to voluntary overwork and forty-three percent to the overwork demanded by the worker's *kaisha*.<sup>77</sup> Voluntary overwork may involve the workers' self-interested pursuit of a higher income and promotion. But their self interests alone cannot give the full explanation because a considerable part of voluntary overwork is *sabisu zangyo*, unpaid and unrecorded overtime. For a deeper explanation, therefore, we must look to the workers' loyalty to their *kaisha*, which derives from their identification with the *kaisha*. Demanded overwork,

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72. *Id.* at 77.

73. KAROSHI, *supra* note 33, at 89-97.

74. *Id.* at 77-80; OSAMU WATANABE, YUTAKANA SHAKAI NIHON NO KOZO [THE STRUCTURE OF JAPAN AS AN AFFLUENT SOCIETY] 26 (1990).

75. See *supra* notes 39-41 and accompanying text.

76. See generally Yamaguchi, *supra* note 62, at 45. For a criticism of this "buffer theory," see KAROSHI, *supra* note 33, at 70-72.

77. See *Health Survey*, *supra* note 52.

on the other hand would not be as prevalent without the general practice of reinforcing this identification. Workers pressured to overwork would be willing and able to "get out of the rat race" by switching jobs if they had no strong sense of belonging to their *kaisha* and if other *kaisha* were less exclusive or less discriminatory to those freely moving workers who have no such sense of loyalty.

Exposure to the danger of *karoshi* is itself a violation of individual rights, but it only symbolizes a more general and extensive undermining of individual rights by *kaishashugi*. Yagi's analogy of contemporary Japanese workers to slaves cannot be brushed aside as mere rhetoric.

I must hasten to add, however, that this corporate slavery is not a classical capitalist exploitation imposed on workers. It is part of the social structure that has been widely (though with increasing ambivalence) accepted as a pillar of the common interest by those enslaved. For example, an individual employee who refuses overtime work to spend more time with his family or on personal pursuits would be censured as *wagamama* (selfish) not only by his boss, but also by his colleagues.<sup>78</sup> The boss is in the same, or even a worse, situation due to his heavier load of responsibility. The collective interests of the *kaisha* community take precedence over an individual worker's right to lead the kind of life that enables him to situate his identity and seek self-fulfillment outside his *kaisha*.

As discussed earlier, *karoshi* is different from any of the three types of suicide discussed by Durkheim because it is not literally suicide.<sup>79</sup> Moreover, *karoshi* has no resemblance to what Durkheim presents as the Japanese examples of altruistic suicide, such as the *samurais'* disembowelment (*harakiri*) and the collective suicide by "the sectarians of Amida."<sup>80</sup> Durkheim argues that these deeds share such motivations as hypersensitivity to insult, contempt for "clinging to life," re-

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78. Tabata, *supra* note 31, at 45, reports the case of a worker who was censured as *taihenna wagamama* (very selfish) by his colleagues and the labor union because he refused the request for *tanshin funin* (job transfer without his wife's accompaniment). According to a 1992 survey, more than 50% of the questioned workers replied that they felt hesitation in going home from work earlier than their colleagues who are working overtime. 'Kaishashugi' Aikawarazu [*Kaishashugi' Remains Prevalent*], NIHON KEIZAI SHINBUN, Aug. 15, 1992, at 4 (quoting a survey by Nihon Risachi Soken [Japan Research Institute]).

79. See *supra* notes 46-50 and accompanying text.

80. DURKHEIM, *supra* note 46, at 222-25.

ligious fanaticism, and superstitions with other practices of optional altruistic suicide "associated with the most fundamental moral characteristics of lower societies."<sup>81</sup> *Karoshi* has nothing to do with these motivations.

At a deeper level, however, *karoshi* has something in common with altruistic suicide. Durkheim's insight into the fundamental sociological cause of the latter also reveals the cause of the former. In both cases, a person takes a road leading to death because "society holds him in too strict tutelage" and because he is captured in a state "where the ego is not its own property, where it is blended with something not itself, where the goal of conduct is exterior to itself, that is, in one of the groups in which it participates."<sup>82</sup>

*Karoshi*, therefore, is not an isolated personal tragedy. Just as egoistic and anomic suicides symbolize the anxiety and despair of the individualistic society, *karoshi* symbolizes the tension and distress of a hyperindustrialized and secularized communitarian society, not of a primitive and religious community. It symbolizes the deep-seated dilemma of contemporary Japanese society—a society that has experienced what Baba calls "an exquisite combination of capitalistic competition with communal or socialistic relations."<sup>83</sup>

This dilemma can aptly be so called, for human dimensions of life in contemporary Japan have been impoverished by the very same social regimentation that has brought about the success of Japanese society—its miraculous growth into a *keizai taikoku*, or economic world power. This dilemma overshadows the lives of ordinary men and women who have been lucky enough not to meet *karoshi* or its concomitant family tragedy, as well as those who have not been so fortunate.

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81. *Id.* at 222-23.

82. *Id.* at 221.

83. Baba, *supra* note 41, at 71.

### C. *Tyranny of Intermediary Communities*

Awareness of this dilemma is increasing in Japan.<sup>84</sup> The labor front, business circles and the government are now jointly discussing necessary legal reforms in the area of working hours.<sup>85</sup> The issue, however, is deeper and broader than the mere length of working hours. It is deeper because what must now be examined and changed is the structure of *kaishashugi* itself. Unless the excessive communal cohesion of *kaisha* is loosened, Japan's society will not stop reproducing corporate persons or corporate warriors whose individual lives are impoverished and deformed. The issue is broader than the number of working hours because *kaishashugi* is only one specific, although dominant, embodiment of the more general communitarian character of Japanese society.

It should be pointed out that Japan, like other industrialized countries, indeed has its own share of unencumbered individuals who do not feel constrained by communitarian norms. But Japanese society is basically an intricate web of various intermediary communities, each of which has a tenacious hold on the lives of its individual members and a relatively strong group autonomy vis-à-vis the state, as evidenced by the ability of these groups to maintain their internal order by extralegal and informal sanctions.<sup>86</sup> Each community fosters group

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84. *Id.* at 78-80; WATANABE, *supra* note 74, at 9-42, 371-76; Komago, *supra* note 31; Nihonjin to Kaisha Tokubetsu Shuzaihan [Special Reporting Group on "The Japanese and Corporations"], *Nihonjin to Kaisha, Dai-4-Bu: Hokaisuru Kyodo Genso* [The Japanese and Corporations, Part 4: The Common Illusion Shattered], serially published in NIHON KEIZAI SHINBUN, Aug. 6-8, 10, 11, 1991, respectively at 1; TATSUO INOUE, ET AL., KYOSEI HENO BOKEN [AN EXPLORATION FOR A CONVIVIAL SOCIETY] 8-35 (1992).

85. *Zadankai: Jitansokushinho no Koso* [Symposium: Conceptions of Working Hours Curtailment Law], JURISUTO, Apr. 1, 1992, at 10-42. Symposium contributors represented business circles, the labor front, and the Ministry of Labor.

86. Haley has recently examined this structure of Japanese society and its relation to law in a sober historical and sociological analysis. See HALEY, *supra* note 35. He came to the following conclusion:

For better or for worse, therefore, Japan is a society ordered more by extralegal and often quite coercive community and group controls than law or government power . . . . The state remains active and interventionist, but its capacity to control or maintain order depends ultimately upon its ability to persuade and cajole in order to achieve consensus. In this context law and the formal mechanisms of law enforcement function more as tools for consensus building and leverage than coercive instruments of state control.



loyalty, collective identity, and a sense of responsibility for mutual care among its members, but tends to narrow and homogenize the members' mental horizons and to apply the pervasive pressure of social tyranny on deviant individuals, who seek a form of life different from the community's shared life-style.<sup>87</sup>

*Id.* at 200.

The only real antagonists to [this system] are those who seek either a concentration of power or its even greater diffusion through personal, individual empowerment—goals that, from the example of the concomitant rise of individualism and state power in the West, are not as inconsistent as they may at first appear.

*Id.* at 190-91. In other words, the "power brokers of contemporary Japan are those who can manipulate best the community sanctions and the informal, consensual levers of coercion, however peripheral they may be in terms of Japan's hierarchical concentration of authority at the center." *Id.* at 191.

87. Yoichi Higuchi, *When Society is Itself the Tyrant*, 35 JAPAN Q., Oct.-Dec. 1988, at 350, 354. Higuchi, one of the leading constitutional lawyers in Japan, forcefully argues the point in the following passage:

Mill insisted on the importance of "a limit to the legitimate interference of collective opinion with individual independence." One hundred and thirty years later in Japan, freedom from political authority (the state) has come to receive wide support. Freedom from societal authority, on the other hand, tends to be offset by theories about the rights of juridical persons and a "segmented society" [i.e. intermediary association]. The former recognizes juridical persons (potential bearers of vast societal authority) and natural persons (staunch resisters of such authority) as equal bearers of human rights, thus opening the door to legal countenance of oppression against decisions based on the will of the individual. The theory of a segmented society, meanwhile, by seeking self-discipline of groups [in other words, group autonomy], abandons the possibility of aid through the courts in the solution of intrasegmental disputes [in other words, disputes within an intermediary association].

It would seem that within the social relationships that exist before a dispute ever reaches court, most Japanese fear becoming true individuals, each with his or her unique opinion, and instead bury all differences in the majority opinion . . . . In schools those who rebel against picayune rules restricting student clothing and hair styles are treated as heretics, while at the office workers are expected to become "company men" who devote themselves above all to their work, at whatever cost to their personal lives. All of these phenomenon are direct expressions of the widespread tendency to smother individuality.

*Id.* at 354 (comments in brackets are the author's).

Haley quotes part of the same passage and substantiates it with some examples of the dark side of communal controls in Japan that are often hidden by the "vision of Japan as a society dominated by closely knit, interdependent communities and carefully cultivated, mutually supportive interpersonal networks enveloped in the rhetoric of harmony." HALEY, *supra* note 35, at 183-84. For a survey of theories about segmented societies (*bubunshakairon*), see Koji Sato, *Ho, Kenryoku, Shakai: 'Bubunshakairon' ni Yosete* [Law, Power and Society: Toward 'the Theory of Subsocieties'], in III GENDAI HOTETSUGAKU: JITTEIHO NO KISORIRON [3 CONTEMPO-

This social structure has proved its remarkable efficiency in mobilizing people to attain collective goals, such as economic growth, without extensively resorting to legal coercion backed by state power. But the cost for this structure has also been great in terms of individual rights. In addition to the right to life, of which *karoshi* victims have been deprived, the right to individual autonomy and dignity have been callously neglected simply because the group autonomy of intermediary communities has been so respected that state power, including that of the judiciary, has rarely interfered with community practices that violate individual rights.

A case in point is *Tanaka v. Hitachi, Inc.*,<sup>88</sup> in which the Japanese Supreme Court held that the management and labor union of a *kaisha* can jointly force an individual employee to work beyond the legal (if not mandatory) limit of working hours, even against his will. This is only one of many examples. Japan's Supreme Court has also allowed a *kaisha* to discriminate against an individual in employment on the basis of his political beliefs<sup>89</sup> and allowed a *kaisha* to make a political donation in its corporate capacity.<sup>90</sup>

But *kaisha* are not the only types of intermediary communities that enjoy such strong group autonomy. In the matter of religious freedom, group autonomy is also given priority over individual rights. In 1988, the Japanese Supreme Court dismissed a Christian woman's compensation and injunction claims against the Veteran's Association (VA) and the Self-Defense Forces (SDF). Despite her explicit and repeated refusal, the VA and SDF had jointly arranged to enshrine her late husband, an SDF serviceman killed in an accident while on duty, in a Shinto shrine. The Court based its decision partly on the ground that the constitutionally protected freedom of reli-

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RARY LEGAL PHILOSOPHY: FOUNDATIONAL THEORIES OF THE POSITIVE LAW] 351-84 (Ryuichi Nagao & Shigeaki Tanaka eds., 1983). Here Koji Sato, another influential constitutional lawyer in Japan, gives an ambivalent appraisal to *bubunshakairon*. He sympathizes with its pluralistic element which relativizes the state sovereignty and reinforces the freedom of association, but warns against its tendency to leave unchecked the violation of individual rights by intermediary associations. *Id.* at 352-58, 369-74.

88. Judgment of Nov. 28, 1991, Saikōsai Daiichi Shohotei [Supreme Court, 1st Petty Bench], 774 HANTA 73 (Japan).

89. Judgment of Dec. 12, 1973 (Takano v. Mitsubishi Jushi, Inc.), Saikōsai Daihotei [Supreme Court, Grand Bench] 724 HANJI 18 (Japan).

90. Judgment of June 24, 1970 (Arita v. Kojima), Saikōsai Daihotei [Supreme Court, Grand Bench] 597 HANJI 3 (Japan).

gion<sup>91</sup> implied that she, as an individual, had a duty to show "tolerance" for the religious freedom of the Shinto shrine.<sup>92</sup>

Neighborhood communities, which once prospered as the lower reaches of government in prewar and wartime Japan, have generally become less pervasive in terms of their influence on everyday life, partly because of the population's increased mobility. But there still remains a strong national consciousness that neighbors should maintain communal relationships (mutual aid and amicability) with each other and that the law should not interfere with those relationships. This consciousness sometimes comes out in an explosive way, as it did in the so-called *rinjin sosho* (neighborhood litigation) incident in Suzuka City, Mie Prefecture.<sup>93</sup>

In 1977, a couple living in a Suzuka suburb filed a damage suit against their neighbors because the couple's three-year-old son drowned in an irrigation pond while being tended for a brief time by the neighbors. The accident happened after the neighbors let the plaintiff's son play outside with their own four-year-old son without any adult supervision. In 1983, the Tsu District Court deemed both sides negligent and, according to the comparative negligence laws, awarded the plaintiffs about five million yen.<sup>94</sup>

The media reported the case using headlines that were critical of the award, such as "Judgment Hard on Kind Neighbors."<sup>95</sup> The media reports triggered formidable forces of social tyranny against the plaintiffs.<sup>96</sup> The plaintiffs received ap-

91. Kenpō [Constitution] art. XX (Japan).

92. Judgment of June 1, 1988 (Kuni v. Nakaya), Saikōsai Daihotei [Supreme Court, Grand Bench] 1277 Hanji 34 (Japan). Commenting on this decision, Higuchi says, "Majority opinions that treat a shrine's freedom of religion as equivalent to that of the plaintiff, and require the exercise of mutual 'tolerance,' actually give the shrine's rights precedence over those of individuals." Higuchi, *supra* note 87, at 354.

93. This incident shocked the general public as well as jurists and was extensively discussed in law journals and other publications in Japan. See, e.g., RINJIN SOSHO TO HO NO YAKUWARI [THE NEIGHBORHOOD LITIGATION AND THE ROLE OF LAW] (Eiichi Hoshino ed., 1984) [hereinafter RINJIN]; TAKESHI KOJIMA ET AL., RINJIN SOSHO NO KENKYU [A STUDY OF THE NEIGHBORHOOD LITIGATION] (1989). For a detailed bibliography, see *id.* at 252-54.

94. Judgment of Feb. 25, 1983 (Yamanaka v. Kondo), Chisai [District Court], 495 HANTA 64 (Japan) reprinted in RINJIN, *supra* note 93, at 204-33. The court found that the plaintiffs were 70% negligent. *Id.*

95. MAINICHI SHINBUN (Tokyo), Feb. 25, 1983 (evening ed.), at 15; see also KOJIMA ET AL., *supra* note 93, at 243-44.

96. RINJIN, *supra* note 93, at 120-36, 193-97; KOJIMA ET AL., *supra* note 93, at 14-16, 243-44; HALEY, *supra* note 35, at 114.

proximately six hundred phone calls and three hundred letters within the following week. Most of the letters and calls were anonymous and included accusations and threats, such as "Are you using your dead boy to make money?"; "Devils!"; "Do you want me to set fire to your house?"; and so forth. Moreover, the dead boy's father was fired from his subcontracted plumbing job the day after the judgment. The boy's mother was denied service by shopkeepers in the neighborhood and his older sister was teased at school.

Crushed by all of this, the plaintiffs offered to withdraw their suit.<sup>97</sup> To curb this alarming reaction, the Ministry of Justice issued a very unusual announcement stating, in effect, that the threats and insults made against the plaintiffs were a very regrettable violation of their constitutionally protected right of access to the courts.<sup>98</sup> The Ministry emphasized the importance of this right and stated that it should never be violated in this way again.<sup>99</sup> While the propriety of this particular litigation is quite controversial,<sup>100</sup> the litigation and its aftermath clearly demonstrate how easily the virtues of a neighborhood community can turn into cruel intolerance and social tyranny in a country where respect for individual rights has no important place in its shared traditions.

Schools must also be mentioned here, not only because they are a seedbed for communal cohesion in other social spheres, but also because they are themselves an important type of intermediary community whose group autonomy takes precedence over individual rights. Japanese schools have been effective in raising the average achievement of the country's children. But this effectiveness is at least partly due to the fact that many schools strive to control children's lives literally "from head to toe" by meticulous school regulations and discipline, sometimes including corporal punishment. The repressed and frustrated children often vent their discontent by persistent group harassment of certain target children (*ijime*). This

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97. When it was reported that the defendants refused to agree to the plaintiffs' withdrawal, they were also harassed by anonymous calls and letters, though to a lesser extent. Eventually the defendants agreed and the decision was nullified. See RINJIN, *supra* note 93, at 121-22; KOJIMA ET AL., *supra* note 93, at 15.

98. Kenpō [Constitution] art. XXXII (Japan).

99. The Ministry of Justice's full statement is quoted in RINJIN, *supra* note 93, at 234; KOJIMA ET AL., *supra* note 93, at 15-16.

100. For discussions on this issue, see RINJIN, *supra* note 93, at 65-129, 165-93; KOJIMA ET AL., *supra* note 93, at 35-86, 174-212.

treatment, combined with the smothering school control, has driven a number of children into prolonged absence (*toko kyohi*) or even suicide due to school-phobia.<sup>101</sup>

In Kumamoto Prefecture, a public junior high school student defied a school regulation that required close-cropped haircuts of all male students. Because of his defiance, he was harassed by his classmates and treated as a troublemaker by his teachers and schoolmaster. His parents, who supported their son's act of defiance, were heckled by parents of other students at a PTA meeting with disparaging phrases such as "egoists," "mean," and "get out of town!"

The student and his parents sued the schoolmaster and the town for compensation and sought a declaration that the school regulation was a nullity on the constitutional grounds of equality under the law,<sup>102</sup> freedom of expression<sup>103</sup> and due process.<sup>104</sup> But in 1985, the Kumamoto District Court recognized the schoolmaster's broad discretion regarding proper educational measures and dismissed the plaintiffs' claims.<sup>105</sup>

These examples all show that individual rights are an endangered moral species in the land of community. They are chronically endangered by the overgrowth and overprotection of intermediary communities. There is an urgent need to save individual rights because the consequence of their atrophy is that human lives in Japan are now being impoverished, devastated, and even destroyed.

*Karoshi* exemplifies this need by revealing the human tragedies imposed on individuals by *kaisha*, the most vigorous and dominant form of intermediary community in contemporary Japan.<sup>106</sup> *Karoshi* vividly illustrates that the gap between collective prosperity of intermediary communities and individual fulfillment of human beings is deepening and widen-

101. See generally TERUHISA HORIO ET AL., 43 JURISUTO ZOKAN SOGO TOKUSHU: KODOMO NO JINKEN [43 JURISUTO SUPPLEMENTARY FEATURE ISSUE: CHILDREN'S HUMAN RIGHTS] 64-124, 211-19, 230-43 (1986); Koji Sato et al., *Tokushu: Kodomo no Jinken* [Symposium on Children's Human Rights], 38 JIYU TO SEIGI 2-74 (1987).

102. KENPO [Constitution] art. XIV (Japan).

103. *Id.* art. XXI.

104. *Id.* art. XXXI.

105. Judgment of Nov. 13, 1985 (*Shino v. Gyokuto-Machi*), Kumamoto Chisai [District Court of Kumamoto], 570 HANTA 33 (Japan).

106. *Karoshi* victims also include people other than company employees, such as school teachers and civil servants. The structures of human relationships that connect and integrate them in their offices seem to be similar to those found in *kaisha* (although I cannot analyze them in this article).

ing. Japanese society has enjoyed a strong communal cohesion and efficiency in the pursuit of collective goals because people have been led to believe in the promised harmony between an individual's happiness and the collective prosperity of the community to which he belongs. But it is now becoming clearer to many that this promised harmony is not being fulfilled.

The ultimate sense in which *karoshi* is a symbolic death of contemporary Japanese society is this: it shows that Japan's moral infrastructure is worn out and that society needs a moral reorientation which places a greater emphasis on individual rights.

#### IV. RIGHTS AS A BASIS FOR OPEN COMMUNALITY

Reorientation toward individual rights does not necessitate the sacrifice of all the positive aspects of human communality to individualism. Rather, the Japanese experience shows that individual rights are needed in order to enjoy a richer form of human communality. The tyranny of intermediary communities impoverishes both the communal and individual dimensions of human existence.

*Kaishashugi* is again a good example in this regard. It confines individuals to a small and narrow segment of human communal life and thereby incapacitates them for the fuller participation in the community. If an individual gives himself wholly to a *kaisha*, he has almost nothing left to give to, or share with, other people in other spheres of social life.

The life and death of Yagi, who presented the poignant "slave" analogy in his note, show how *kaishashugi* can destroy Japanese workers' family lives.<sup>107</sup> Deprived of "the right to sit down at the dinner table with their families," they not only give up "the simplest of pleasures those forced laborers of ages past enjoyed," but also relinquish one of their most important communal responsibilities—the responsibility to share life with their families.<sup>108</sup> If workers cannot fulfill even their family responsibilities, they can much less afford to care about the public affairs of their local communities and other civic responsibilities. The prevalent apathy and cynicism toward politics, illustrated by low voter turnouts and lack of power change in Japanese society, are partly due to the fact that the ordinary

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107. See KAROSHI, *supra* note 33, at 37-46.

108. *Id.* at 4.

workers' participatory energy and sense of social responsibility are absorbed by their *kaisha*. The narrowing of their social horizon by *kaishashugi* is aptly criticized by a popular pun-like slogan calling for attitudinal reorientation: "From *kaisha ningen* to *shakai ningen*" (from the corporate person to the social person).<sup>109</sup>

It may sound like a paradox to say that human communality is impoverished, not by individualism, but by a certain communal structure in Japan. However, the apparent paradox disappears once we understand the multiplicity of human communality. Our communality flourishes in its fullness only if we foster and sustain our multiple memberships in the different layers or spheres of our communal life: first, family and friends; second, occupational, religious and various voluntary associations; and, finally, local, ethnic, national, and global communities.

People who berate individualism for corroding human communality are prone to overlook or minimize the conflict between the different spheres of communal life. If a certain group in a certain sphere penetrates and dominates the whole personality of its members, it makes them indifferent or even hostile to the other spheres of human communality. A group's strong internal cohesion allows its members to foster interdependence, attachment, responsibility for mutual care and other communal virtues only among themselves. These pitfalls of *kaishashugi* can have their equivalent in any of the other intermediary communities. Some devout religious sectarians, for example, may turn their backs on any communal relationships and responsibilities outside those of their own denomination. "Meism" and narcissism are not exclusively individualistic maladies; there are communal versions of these diseases that may be more intractably antisocial.

The state in which the multiple potentialities of our human communality are well developed and balanced may be called open communality as opposed to the closed communality found in the collectively narcissistic groups described above. Open communality is sounder and richer than closed communality, but it is also more vulnerable if put in competition with the latter. To sustain it, we need a moral sense of balance. We have to balance our moral lives so as not to give too much of

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109. Sato et al., *supra* note 101, at 32.

ourselves to any particular communal sphere. We need to keep our individuality separate from any specific communal sphere in order to strengthen our overall communality.

Respect for individual rights is essential to a moral environment in which we are able to cultivate this sense of balance for three reasons. First, the concept of individual rights entails universalism because it requires one to respect *all* individuals. The universalism of rights has both normative and meta-ethical components. The normative component consists of justice, fairness, equality, fundamental human rights, and so forth. It opens our eyes to the need to give due consideration to each of the conflicting responsibilities we owe to different individuals with whom we are related in different communal spheres, without exhausting ourselves by emphasizing one responsibility in disregard of others. Although Gilligan considers an ethic of care to be the opposite of an ethic of rights,<sup>110</sup> in reality the former presupposes the latter. An ethic of care requires sensitivity to conflicts of responsibilities. But we could not keep this sensitivity unless we were committed to the belief that all the individuals to whom we may have conflicting responsibilities have a right to due consideration. It is this belief that should prevent us from blindly favoring just one of our responsibilities of care to the detriment of the others.

The meta-ethical component consists of commitment to the universal acceptability of one's own principles, which in turn entails openness to criticism from outsiders. The meta-ethical component gives us critical leverage for transcending the kind of dominant convention that embodies the very narrow, exclusive, and exhausting group-centeredness of a particular community.

Second, the concept of individual rights requires us to respect individuals *as individuals*. Individualism of rights includes a trump function that gives individuals a veto over the collective goals of their community. However, we need not interpret this veto in the absolutist sense that Glendon critically ascribes to the current American rights talk—which allows us to disregard collective goals and general interests.<sup>111</sup> In fact, Ronald Dworkin, one of Glendon's targets,<sup>112</sup> gives us a more

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110. GILLIGAN, *supra* note 14, at 19.

111. See generally GLENDON, *supra* note 4, ch. 2.

112. *Id.* at 40.



relaxed non-absolutist interpretation of individualism when he says:

The strength of a particular right, within a particular theory, is a function of the degree of disservice to the goals of the theory, beyond a mere disservice on the whole, that is necessary to justify refusing an act called for under the right. In the popular political theory apparently prevailing in the United States, for example, individuals have rights to free public speech on political matters and to a certain minimum standard of living, *but neither right is absolute* and the former is much stronger than the latter.<sup>113</sup>

According to Dworkin's interpretation, the point of individual rights is not to allow an individual to do whatever disservice to the collective goals he likes, but to set a limit to the degree of service to the collective goals which he cannot refuse. Even a stronger right is not absolute in the sense that the right holder can refuse any degree of service to the collective goals in the name of that right. However, an individual can refuse *some* degree of that service as long as he has a right.

Dworkin's "goals of the theory" are those of a political theory. The collective goals he has in mind are those of political community—a community with organized coercive power. The formal structure of rights described here can and should be generalized to cover the relationship between rights and the collective goals of nonpolitical communities because nonpolitical communities can also threaten or violate their individual members' rights by various informal pressures.

Interpreted this way, the trump function of rights is indispensable to a moral sense of balance. It does not blind an individual to the collective goals or interests of various communities. Rather, it enables him to participate in various communal pursuits in various spheres which he thinks worthwhile by refusing to dedicate the whole of himself to the collective pursuits of a particular group.

Lastly, individualism of rights not only enables but also motivates us to develop our communality. It is our sense of our own individual dignity that leads us to appreciate the same worth of the individuality of other persons. While diagnosing

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113. RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* 169-70 (1977) (emphasis added).

the maladies of individualism, Durkheim also gave a penetrating insight into this moral power of individualism:

The fact is stressed that the motives of certain altruistic suicides reappear in slightly different forms as the basis of actions regarded by everyone as moral. But is egoistic suicide any different? Has not the sentiment of individual autonomy its own morality as well as the opposite sentiment? If the latter serves as foundation to a kind of courage, strengthening and even hardening the heart, the other softens and moves it to pity. Where altruistic suicide is prevalent, man is always ready to give his life; however, at the same time, he sets no more value on that of another. On the contrary, when he rates individual personality above all other ends, he respects it in others. His cult for it makes him suffer from all that minimizes it even among his fellows. A broader sympathy for human suffering succeeds the fanatical devotions of primitive times.<sup>114</sup>

By way of comparison, it may be noted here that Gilligan acknowledges the "right to include oneself in the compass of a morality of responsibility" and the need to give moral weight both to "the sense of concern for another human being and your sense of concern for yourself."<sup>115</sup> Accordingly, the ultimate task of a morality of responsibility, or an ethic of care, is to resolve the conflict of responsibilities to care for oneself and other persons. Gilligan believes that human moral maturity consists in carrying out this task.<sup>116</sup>

But Durkheim looks at a deeper truth: only by keeping our sense of the worth of our individual existence can we maintain our sense of concern for others. The belief in individual rights by which we can refuse to abandon ourselves to "the fanatical devotions" to collective goals is the real basis for "a broader

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114. DURKHEIM, *supra* note 46, at 240.

115. GILLIGAN, *supra* note 14, at 134.

116. *Id.* at 151-74.

sympathy for human suffering."<sup>117</sup> This is another sense in which an ethic of care presupposes an ethic of rights.

## V. CONCLUSION

In summary, communitarians urge that the liberal belief in individual rights impoverishes our communal life and human agency. But the Japanese experience presented in this article shows that this is at most a half-truth and only applicable to a misguided version of rights talk. The closed community that neglects individual rights and absorbs its members' personality

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117. This view seems to complement the conception of liberal community that Ronald Dworkin recently presented in his *Liberal Community*, 77 CAL. L. REV. 479, 499-504 (1989). The liberal community, in his view, consists of "liberal civic republicans" or "integrated citizens." Each "accepts that the value of his own life depends on the success of his community in treating everyone with equal concern." *Id.* at 501. Therefore, an individual's value depends on whether the rights of other citizens as well as his own are duly protected. They "know that they win or lose together." *Id.* at 502. Dworkin concedes that this liberal vision of community is utopian, but in the following statements he gives a reason "why people should accept integration in the liberal sense, why they should regard the success of their lives as dependent . . . on the justice of their community's political decisions." *Id.*

Someone lives well when he responds appropriately to his circumstances. The ethical question is not how should human beings live, but how should someone in my position live? A great deal turns, therefore, on how my position is to be defined, and it seems compelling that justice should figure in the description. The ethical question becomes: what is a good life for someone entitled to the share of resources I am entitled to have? . . . Someone does *pro tanto* a poorer job of living—responds *pro tanto* more poorly to his circumstances—if he acts unjustly. . . . Perhaps the great lives of some artists would not have been possible in a fully just society, and it would not follow that they had bad lives. But it does follow that it counts against the goodness of any life, even theirs, that it was supported by injustice.

*Id.* at 503.

But what if I do not have more nor less than, but just as much as the share of resources I am entitled to? What if the misery of the people victimized by an unjust practice prevails because some others' lives, not mine, are supported by that practice? Does it follow that I would not have to care a bit about their misery? I do not think Dworkin would say yes. The affirmative answer implies that I can be indifferent to the misery of others as long as I am not involved in the injustice which brings it about—as long as my own hands are clean. This does not fit Dworkin's conception of the community of integrated liberals. But his argument given above does not seem to prevent us from accepting this conclusion. So it seems to me that "a broader sympathy for human suffering," to which our sense of the worth of individual personality commits us, gives a simpler and stronger ground for his vision of a liberal community. It is true that the range of liberal integration in question is narrower than this sympathy—it is confined to the political community (the state). But this could be explained by the fact that our ability to make common political decisions is still basically limited to the territory of our state in the present world order.

also impoverishes our communal life, as well as our individuality. Adequately conceived individual rights based on universalism, a non-absolutist trump function and a sense of the worth of individuality are the bases for a richer form of communality—namely, open communality. This form of communality activates and widens our sensitivity to the wide range of our communal responsibilities. In other words, individual rights can sustain the delicate equilibrium of various competing communities by checking the overgrowth of each of them. In this sense, the tension between rights and community is indispensable to their reconciliation.