

Kymlicka's Theory of Minority Rights and the Situation of Korean Minority of Japan

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Introduction

According to recent estimates, there are 185 independent states containing over 650 living language groups, and about 7,000 ethnic groups in the world.¹ Cultural diversity is present in most countries in the contemporary world, with different ethnic groups being present within their own societies. An individualistic, and egalitarian form of democracy in ethnically plural societies can lead to conflicts between majorities and minorities, which may in turn lead to the violation of the human rights of members of minority collectivities by the majority group. Ethnic cleansing in Yugoslavia, and the genocide in Rwanda are recent examples of this.

A few countries, such as Korea, Japan and Iceland are often regarded as homogeneous: people share the same language and history, or belong to the same nation. Governments in these countries have adopted various types of policies concerning cultural minorities within the framework of a homogeneous state. As a result, citizens are led to believe that the state is homogeneous, even when it is not. Japan is an example of a country falsely believed to be ethnically homogeneous, as it has invisible minorities; such as indigenous Ainu and Korean residents.

The Ainu people are the indigenous inhabitants of Hokkaido and its neighbouring areas, and now probably number less than 100,000. Their primary livelihood is based on hunting, fishing, and small-scale farming, and their culture is distinct from that of mainland Japan, particularly in the areas of language, religious belief, and lifestyle. Since the 15th century, mainlanders settled Hokkaido and entered the Ainu territory. The mainlanders traded with the Ainu people, but also, frequently clashed with

them. Ever since the Japanese State was modernised in the Meiji era, a colonialist policy in relation to the Ainu people has been adopted by the Japanese government. This policy has been one of assimilation, the Ainu people were forbidden to follow their traditional lifestyle, and were forced to use Japanese language and culture. In 1899, the Japanese government enacted the Former Aborigines Protection Act (the Hokkaido Kyu-Dojin Protection Act) for the declared purpose of protecting the Ainu people, however, in reality the act served more to justify its own colonization and assimilation policies. This law left the Ainu with only about 15 percent of their traditional land. The Ainu have brought their grievance about their situation to the Japanese government, which has, however, done little to respond to their complaints. One positive movement was the landmark case on the 13th October 1994 when the Sapporo District Court gave the definition of the Ainu as a minority group for the first time. However, the Japanese government has not recognised status of an indigenous people.

Nowadays, with the exception of Ainu elders, few people are able to speak the Ainu language. Most Ainu people were complete only in Japanese, and as a result of this, much of the Ainu's traditional culture has been lost. The Ainu people have been threatened with total absorption into mainstream Japanese society, however, they have established their own organisations to protect what remains of their culture and promote mutual assistance.²

The position of Korean residents of Japan resembles that of the Ainu. The Koreans were also coercively assimilated, and were forced to adopt Japanese language, religion, customs and nationality during Japan's colonial rule in the Korean Peninsula from 1910 until 1945. During the Second World War, many Koreans were forcibly transported to Japan to augment Japan's internal labour force in mines, factories, or construction. Korean residents of Japan have been the targets of discrimination because of the clash between the perceived notion of homogeneity and the reality of difference. In recent years, many Korean schoolgirls in Japan wearing "chima-chogori" (a traditional Korean dress worn to school) have become the target of violence and harassment on their way to and from school. The "chima-chogori" incidents, representing just the tip of the iceberg, show that Japan is intolerant of minorities. The Japanese government has never accepted Koreans in Japan as a minority because of the controversy regarding the definition of minority. It is a fact that, on the one hand, the Japanese government bestows some fundamental rights and duties on Korean residents, which have been endorsed by the Constitution. On the other hand, however, the Japanese government has not officially supported Korean schools aimed at providing Korean residents'

children with cultural or linguistic education. There are two main reasons why Japanese society has not granted rights to minorities: Firstly, some believe that minorities who enjoy individual rights should not demand facilities for maintaining their ethnic identity. Secondly, some maintain that conferring rights on minorities will result in the destruction of social homogeneity.

So the question arises: is the effective protection of the human rights of individuals sufficient for the protection of the rights of minority groups?

In my understanding, although the effective protection of human rights of individuals is insufficient for the protection of the rights of minorities, theories of the rights of minorities based on liberalism can only protect and promote the rights of individuals as members of minorities. I am convinced that liberty implies not only that everyone can do anything that she/he wants to do so long as it does not harm others, but also the choice of making a good life for individuals with others or within certain groups: friends or colleagues, families, religious groups, social classes, tribes or ethnic groups, national groups, and so on.

For centuries, liberal theory has focused primarily on the relation between the individual and the state. Many traditional liberals think that minorities would be protected by ensuring fundamental civil and political rights to all individuals within the state. Hence, they do not think that ethnic or national minorities should be given further rights beyond the individual.

On the other hand, the protection and promotion of minority rights have been carried out by international conventions. For example, the Universal Declaration of Human Rights (the U. D. H. R., 1948) states, in Article 20, that no one may be compelled to belong to an association, and Article 27 says that every one has the right freely to participate in the cultural life of the community. The first articles of both the 1966 International Human Rights Covenants declare that all peoples have the right to self-determination, and Article 27 of the ICCPR states that minorities shall not be denied the right, in community with others, to enjoy their own culture.³

The purpose of this essay is to examine whether or not Kymlicka's theory of minority rights is defensible when applied to Japan. I shall focus attention on Kymlicka's conception of 'a societal culture', and his idea of 'group-differentiated rights' as collective rights. I will also consider how applicable Kymlicka's theory of minority rights is to the protection and promotion of the rights of Korean residents of Japan. 'The chima-chogori incidents' in Japan illustrate a conflict between majority and minority. Through the examination of this case, I intend to argue that the protection of individual human rights alone is insufficient to protect certain minority groups. Therefore, I

argue that special rights for the latter should be recognized. By examining other different stances of contemporary human rights theorists: Jack Donnelly, Vernon Van Dyke, and Chandran Kukathas, I will attempt to specify what such special rights should be. I shall advocate the notion of minority rights as collective rights, which will be able to coexist with individual rights, and possibly contribute to the establishment of social integrity. As for Kymlicka's theory of minority rights, I recognise the importance of his idea as the current theory of minority rights, and his contribution to development of a conception of minority rights. However, I am not convinced that Kymlicka's notion of minority rights can be applied to the Korean minority of Japan. I shall attempt to criticise Kymlicka's idea of minority rights in the light of whether or not his theory is applicable to the Korean minority.

This paper is composed of three sections. In section one, the situation of the Korean minority in Japan will be discussed, and an example of a conflict between a majority and a minority in Japan will be given. In our short study, however, the current situation of the Korean residents of Japan can only be mentioned as a summary. It is a fact that the current situation of the Korean residents of Japan is more complicated than that of the explanations that I have described in this section. In section two, I shall examine Kymlicka's notion of minority rights, especially his conception of 'group-differentiated rights' as collective rights, and his idea of '*societal* cultures'. In section three I will draw some conclusions.

The Korean Minority in Japan and the "Chima-chogori Incidents"

It is generally said that Japanese society, which has been historically isolated from other countries and cultures for a long time, is characterized by its cultural and ethnic homogeneity. Far from being homogeneous, the Japanese nation is a complex one, which is composed of various nations, such as indigenous Ainu, the Ryukyuan, 'Toraijin' (the Chinese and Koreans settled in Japan from the 14th century to the 18th century, who introduced the continental culture to Japan).⁴ This myth of a single nation led Japanese society to adopt an ethnocentric self-understanding, which excludes minorities such as resident Koreans, indigenous Ainu, and alien workers.

Historical Background and Current Situation of the Korean Minority in Japan

As far as Korean residents of Japan are concerned, they are in Japan as

a result of Japan's 36 year colonisation of the Korean Peninsula. Since residing in Japan, they have been exposed to various forms of social discrimination. Under Japanese colonial rule, many Koreans were forcibly removed to Japan, mostly between 1938 and 1945. They were used as labour force in Japan's mines, factories, and public engineering works. Assimilation policies were enforced which involved the imposition of Japanese language learning, prohibition of the use and learning of the Korean language, and compulsory changes of Korean names to Japanese-style names.⁵

After the Korean Peninsula was liberated from Japan's colonial rule in 1945, a significant number of Koreans returned to their homeland. However, approximately 600,000 remained in Japan. Many who had been born in Japan stayed on because it was their home, and they had no way of supporting themselves in Korea. Others could not afford to pay for the return trip, as the wages for their forced labour were unpaid. Also, the division of Korea and the subsequent Korean War in the early 1950's led many people to decide not to return. The existence of Koreans in Japan was due to coercive importation of labour during colonial rule. Most Korean residents of Japan did not believe that they were immigrants, and did not feel obliged, as immigrants normally do, to become part of mainstream Japanese society. They described themselves as descendants of Koreans who were forcibly brought to Japan during the Second World War. In their view, they had nor willingly chosen to leave their culture and come to Japan, and accordingly they insist that they possess the right to enjoy their own culture and use the Korean language.

At present, there are approximately 940,000 Korean residents of Japan.⁶ They dispersed among almost all the prefectures of Japan (Tokyo-to, Osaka-fu and Kyoto-fu, Hokkaido, and another 43 prefectures). However, about 70 percent of the whole Korean population is concentrated in both Kansai-district and Kanto-district.⁷ This number includes both "Koreans in Japan" (those who reside in Japan as foreigners) and "Korean-Japanese" (those who have acquired Japanese nationality). At the end of 1997, around 650,000 Korean residents of Japan had adopted an alien registration, including nearly 540,000 Korean permanent residents who have the status of "special permanent residents". It might be thought that "Koreans in Japan" are "foreigners" as they have Korean nationalities. However, they should not be considered to be a conventional category of "foreigners" in any sense, because of their historical presence due to Japan's colonial rule of the Korea Peninsula.

The reason why Korean residents of Japan have kept their own

nationality and have refused to be naturalised in Japan is to preserve their ethnic identity, and as they see it to protect their human dignity. Most Korean residents of Japan, mainly the first generation Koreans, are keen to protect their own nationality, because the Japanese naturalisation system forces the assimilation of foreigners when they apply for naturalisation in Japan. For example, foreigners are forced to change their ethnic Korean names to Japanese style ones when they want to be naturalised.⁸ According to research by Kanagawa-ken (Prefecture), the rate of the use of Japanese names among Korean residents in Kanagawa-ken, was 91.3 percent. The reason why they did not use their ethnic names was that 65.8 percent of those who were questioned were afraid of discrimination by Japanese at school or in daily life. They fear discrimination and abuse; for example, the memory of a school girl of primary school age is that the day after telling a good friend of her ethnic identity, the friend would no longer talk to her. Another example given is of overhearing her best friend's mother saying "that child is Korean, so you mustn't play together".⁹ These experiences of discrimination against Koreans of Japan are just the tip of iceberg. Most Koreans of Japan are faced, sooner or later, with ethnic discrimination and abuse in their daily lives, when they reveal their national/ethnic identity — through using ethnic names, wearing traditional ethnic clothes, or practicing an ethnic lifestyle. As a result, a great number of Korean residents of Japan, in spite of obtaining a right to live there permanently, still have Korean nationality as a deliberate attempt to maintain their ethnic identity.

In recent years, the number of those who have obtained Japanese nationality through naturalisation has gradually increased.¹⁰ In proportion to the rise of the number of Korean-Japanese (Japanese nationality), the number of permanent Korean residents in Japan (Korean nationality) has fallen continually. In 1995, for the first time, the number of permanent Korean residents fell in one year by 10,000.¹¹ Before 1994 there had been a decrease of 5,000–6,000 on average every year. All these things make it clear that many Korean residents in Japan will get Japanese nationality in the future. Many Korean-Japanese, have been using Japanese name that may afford some temporary solution from discrimination, as these names conceal their ethnic origins. Thus, most Korean-Japanese are considered to be 'invisible' people in Japan.¹²

Now I shall try to define characteristics of the current situation of Korean residents of Japan: Firstly, the tendency to permanent residence in Japan; Secondly, the diversity of sense of values within the Korean minority of Japan; Thirdly, the enhancement of social fluidity in Japan in accordance

with internationalization of Japanese society.

The tendency to permanent residence in Japan

This can be illustrated in a number of ways: Firstly, the number of Korean-Japanese (Japanese nationality) has been increasing year by year; Secondly, the proportion of first generation Koreans in the population of Korean residents of Japan has been decreasing.¹³ At present, the second and third generations have become the core generation of Korean residents of Japan.¹⁴ Most first generation Korean residents of Japan had keenly desired to go back to their homeland. In contrast, the second generation wants permanent residence in Japan. Almost all of them take the general view that, as place of their birth and upbringing, Japan is their home; Thirdly, the number of intermarriages between Korean residents of Japan and Japanese has been growing every year.¹⁵ What has been described above show that the tendency to permanent residence in Japan has taken a firm hold in Koreans of Japan.

It is interesting to note that most Koreans in Japan, despite choosing to live in Japan, are influenced by the culture of their homeland, because, unlike African-Americans, their own nation state is located directly near Japan, and some of them including young generation have been contact with people in the Korean Peninsula.

The diversity of sense of values within Korean minority of Japan

The tendency to permanent residence in Japan has, resulted in differences of values between generations within the Korean minority in Japan; As the first generation resulted from the Japanese colonial policy their bonds of national history and social place of origin normally lead them to have a strong attachment to their homeland. Their sense of values is one which rests not only on the value of cultural ties, but also on their political ambitions for their homeland; that is, the democratisation and reunification of the Korean Peninsula. They consider themselves as 'the fragments of the nation', believing that the national group and its interest have priority over the individual and their interests; in other words, they have sense of a strongly non-individualist culture. They willingly take an oath of allegiance to the nation, which has suffered from being divided into the two States: South and North Korea, and thus, to their long-cherished dream, which is reunification of South and North.

In contrast, among the later generations, such as the second or third generations, there is a strong tendency to perceive in Japan as the place of

their birth and upbringing the roots of their identities, and to pursue the changing Japanese society to improve their lives; that is to say, their overriding concern is to overcome the national/ethnic discrimination in Japanese society. They hope to change Japanese society to be more open to pluralism and diversity.¹⁶ Beyond that, sub-minority groups such as women, the working class for Koreans, and the disabled have recently emerged. They also seek social reform for the solution of the problem of social discrimination in Japan.

Others among the up-coming generation try to be as similar as possible to Japanese, and in this way to escape from national/ethnic discrimination. As a matter of fact, many the second, third, and fourth generation cannot speak Korean because they were educated at Japanese schools. Generally, the first generation Korean residents speak their mother tongue at home, and in this way pass it on to their children. Some are also educated at ethnic schools, but for almost all the third generation, Japanese has become the mother tongue, and inevitably, Korean language is increasingly lost.¹⁷

For most of the young generation of Korean residents, a dichotomy exists. On the one hand, Japanese culture defines their options, not the culture which their parents have kept. On the other hand, however, they have a feeling that they do not have a shared history with the Japanese. They have negative memories of Japanese colonial rule, especially compulsory immigration. They are also anxious about discrimination or abuse, unless ethnic discrimination ceases to exist in Japanese society.

Among the younger generation of Koreans of Japan, those who have a sense of individualism believe that Koreans of Japan should be equal right-holders in decision-making in the society as citizens, in order to participate in Japanese society. Their belief, unlike most of the first generation, is one of "sharing residence and citizenship only, without a common history or culture" (Walzer, M. 1995, p. 143), to make their lives good in Japan.

The enhancement of social fluidity in Japan in accordance with nationalization of Japanese society

The recent internationalization of Japanese society has had a great impact on the Korean minority of Japan. In 1999, the number of foreign residents registered in Japan at the end of the previous year reached a record of 1,515,116, encompassing about 640,000 Korean residents, accounting for 1.2 percent of the entire population, according to a June 5 report by the Justice Ministry Immigration Bureau. Even though it is the age of internationalization, Korean residents of Japan are still subject to various forms of social discrimination: for example, discrimination against ethnic education,¹⁸ no

compensation for Koreans in Japan victimised in the Second World War,¹⁹ and restrictions in employment as local civil servants.

Japanese society however, has hitherto made efforts, if at a snail's pace, to coexist with this small amount of heterogeneous people, on the basis of the idea that people of different identities, in living together, recognise each other in their very difference. Discrimination against national/ethnic minorities, seems to occur less than it had previously, since internationalization has progressed. This is particularly noticeable since the Japanese government in 1982, passed into force the Convention relating to the Status of Refugees, and a memorandum on the problem of third-generation Korean residents of Japan was signed between the Japanese and South Korean governments in 1991. The Japanese government has enforced measures as specified in this memorandum. For example, in 1992, the Alien Registration Law was partially revised so that the fingerprinting requirement was abolished for people classified 'permanent residents' or 'special permanent residents'. Resident foreigners have also been given the right to take the examination for employment as public school teachers. In 1996, the Kawasaki City government, in principle eliminated the nationality requirement in employment of civil servants for the first time.²⁰ This not only provides Korean residents of Japan with chances to participate in Japanese society with their ethnic identities, but also improves the situation of Koreans by opening up nondiscriminatory opportunities.

Based on our analysis, it is reasonable to say that the current situation of Korean residents of Japan requires a theory of rights that can encompass all of the following; the permanent residence of minorities in Japan; tolerable cultural diversity; and the social integration of minorities into mainstream society, which will enrich the culture of Japanese society.

The Japanese Government's Attitude Toward the Issue of Minorities in Japan

The fact that a great number of Korean residents of Japan still have Korean nationality, despite the fact that they have got the right to reside permanently in Japan, provides the Japanese government with an excuse to deny the existence of minorities in Japan, as "Koreans in Japan were aliens and do not possess Japanese nationality".²¹ In what follows, I shall briefly describe the Japanese government's attitude to minorities of Japan in relation to Article 27 (ICCPR, 1966), which has been seen in the progress of discussion in the Human Rights Committee of the United Nations, from 1981 to the present.²²

With regard to minority rights, we shall utilize two crucial documents on human rights: the International Covenant on Civil and Political Rights (ICCPR, 1966) and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on Minorities, 1992). The ICCPR declares, in Article 27, that:

“In those States in which ethnic, religious or linguistic minorities exist persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

Article 1 of the Declaration on Minorities states that: “States shall protect the existence and the national or ethnic, cultural, religious and linguistic of minorities within their respective territories and shall encourage conditions for the promotion of that identity”.

Japan has tended to deny the existence of minorities in Japan. Japanese government in its first country report in 1981 to the UN (CCPR/C/10/Add. 1 14 November 1980) declared that: it said “minorities of the kind mentioned in the Covenant do not exist in Japan because, according to the delegation's interpretation, ‘minority’ meant a group of nationals who ethnically, religiously or culturally differed from most other nationals and could be clearly differentiated from them from historical, social or cultural point of view”.²³ For that reason, the Japanese government has never regarded both indigenous Ainu and Korean residents in Japan as a minority as defined in article 27. Against the Japanese government's delegate's statement, Mr. Opsahl, a member of the Human Rights Committee, commented:

“I had been surprised to read, in the paragraph dealing with article 27 of the Covenant, that minorities of the kind mentioned in the Covenant did not exist in Japan, for I had learned from one source that the presence of groups of Korean and Chinese descent in Japanese territory raised some difficulties.”²⁴

After that, the Japanese government approved indigenous Ainu as a minority under article 27. In the third periodic report in 1983 it was declared that: “they (the Ainu) may be called a minority under that article because it is recognized that these people preserve their own religion and language and maintain their own culture”. The Japanese government, however, did

not say anything about Koreans under article 27.²⁵

Regarding Koreans in Japan, the Japanese government's delegate Mr. Tomikawa stated the following in 1981:

“Concerning the status of Koreans who had been living in Japan for a long period of time, they, too, were not considered as coming under the category of minorities as mentioned in article 2 . . . Koreans in Japan were aliens and did not possess Japanese nationality . . . Koreans, as aliens, did not have the right to vote or stand for election to public office.”²⁶

In 1993, the Japanese government's delegate's response to the question of Ms. Higgins, a member of the Human Rights Committee, was as follows:

“There was a question whether the Korean residents in Japan are the so-called minorities or not. The answer to this question is as follows: there is no established definition of minorities; I mean (that) the internationally well established definition of minorities is not existing.²⁷ But anyway, Korean residents in Japan are not denied their own rights to enjoy their own culture, religion and languages.”²⁸

The Human Rights Committee responded:

“The Committee notes with concern the exclusion of Koreans from the Government's concept of minorities. This is not justified by the Covenant which does not limit the concept of minority to those who are nationals of the State concerned.”²⁹

The Human rights Committee also adopted General Comment No.23 on 6 April 1994. This said that “the terms used in article 27 indicate that the individuals designed to be protected need not be citizens of the State party”, and “just as they need not be nationals or citizens, they need not be permanent residents”.³⁰

It seems that, legally, the Japanese government should recognise Koreans in Japan as a minority, and should implement certain active measures for the protection and practice of minority rights. Furthermore, positive facilities such as education should be given to them to maintain their ethnic identity.³¹

“The Chima-chogori Incidents” in Japan as a Violation of Article 27

Let us now turn to describe “the chima-chogori incidents” in Japan as a violation of Article 27. In 1994, the report on the ‘nuclear suspicion’ of the Democratic People’s Republic of Korea (North Korea) resulted in discrimination against, and assaults upon, Korean residents in Japan took place. Many Korean schoolgirls in various cities of Japan, wearing “chima-chogori,” the Korean traditional folk costume, were the target of violence and harassment on their way to and from school. There were approximately a hundred and thirty cases of them during the period between April and June, 1994. In some cases, the perpetrators ripped up their traditional dress, “chima-chogori” with knives.

Most of the cases took place in public spaces; on the street, in trains, at subway platforms, so that many people witnessed these attacks. Nobody, however, tried to help the girls, and most pretended to see nothing. A similar incident occurred in September, 1998. It was just after the Japanese mass media reported the launching of a ballistic missile by North Korea over Japan.

The media named the matter ‘the *Chogori* Incidents’, probably because the chief target of the assaults were female students wearing *Chima Chogori*. It is true, that the expression ‘the *Chogori* Incidents’ encapsulates neatly the essential content of the matter: racial discrimination and exclusion or, in Iris Young’s phrase, ‘random violence and harassment motivated by group hatred or fear.’³² On the other hand, however, it seems that this rather simplistic expression can screen and thus make invisible the *individual existence* involved in the incidents. The one discriminated and assaulted, was neither a ‘doll dressed in *Chogori*’ nor the ‘Korean-in-general’. Under that folk costume breathes a living human being with manifold characters and rich sensibility, as well as a face and name of her own, such as Kim, Lee or Park. It was a human being animated with specific individuality that was hurt.

The majority of the Korean residents in Japan conceived of ‘the *Chogori* Incidents’ as the blasphemy against *Chogori* qua symbol of their nation — i.e., the racial discrimination and exclusivism directed by the Japanese against the Korean nation. To be sure, *Chogori* is national/ethnic symbolic objects for those that, in Margalit and Raz’s phrase, “tend to develop conventional means of identification, such as the use of symbolic objects, participation in group ceremonies, special group manners, or special vocabulary, which help quickly to identify who is ‘one of us’ and who is not.”³³ Moreover, they demand “the right freely to express their particularity without fear of prejudice

or discrimination in the mainstream society“ (Kymlicka, 1995, p. 30).

However, I would like to argue that the incidents must not be subsumed under the general structure of conflict between 'collective identities'. The reason is that the incidents refer not only to the racial discrimination, but also to the violation of human rights. It is not a group but an individual member of threatened groups who must exercise their rights, and be compensated. One needs to be attentive to the concrete pain experienced by each of the individuals involved. To be engaged in human rights issues, is to consider the matter from the angle of the individual's rights.

Those incidents have left serious scars both on the bodies and minds of the victims. One of the victims has appealed to the media for support to highlight these incidents (my translation):

“... I have suffered by from not wearing “chima-chogori”... I do not want to live hiding among people. I want to walk openly as a Korean. I want to go to school dressed in a “chima-chogori” as soon as possible.”³⁴

A popular Japanese writer, Keiko Ochiai, refers to “the chima-chogori incidents”, in her own monthly newsletter (my translation):

“Such assaults on Korean girls are triple crimes, because they violate the human rights of an ethnic group, children and women... I shall think about what national identity is, as well as what ethnic discrimination is. Shall we consider a matter of each 'self'-identity, not fixed national identity? In a sense of identity, I would like to consider the individuality, civilised society and the developed relationship among citizens, on the basis of individual identity, and to make a good life” (Ochiai, K. 1994, p. 28).

In response to newspaper coverage of the incidents, the authorities in the Japanese government and the local governments, issued official instructions and notices a strengthening regulations against violence, and a thoroughgoing education in human rights. It was somewhat puzzling, however, to hear the report that Mr. Nagasu, the Governor of Kanagawa Prefecture, apologised on behalf of the population of his prefecture. This is because it is not only the governors but also the assailants themselves who should indeed apologise.

It seems to be a general view that Article 27 requires positive measures to ensure the existence and the exercise of rights against their denial or

violation. The Japanese government, however, has no legislation to punish these crimes as crimes of ethnic discrimination, so that the assailants were not accused of crimes of ethnic discrimination, but merely punished for crimes of violence or damage in general. The Japanese Government did not protect the Korean girls from abuse, therefore, contravened Article 1 of the Declaration on Minorities.³⁵ An anti-discrimination Act should be enacted, which would protect individuals and in particular prevent assault or bodily harm directed towards members of minority groups.

I propose that the responsibility of each assaulter be clarified and an appropriate penalty be imposed upon him/her, in order for the matter to reach a true settlement. The discriminators themselves would have to know the pain from which the discriminated have suffered in bitter silence. In my opinion, the starting-point of the undertakings for an elimination of discrimination and exclusivism, is that each human being shares the pain of being discriminated against, thereby deepening a mutual understanding.

Today, in the so-called age of internationalisation, the number of foreigners residing in Japan, is around one million and five hundred fifteen thousand, which roughly corresponds to 1.2 per cent of the country's whole population. Japanese society has hitherto striven, if at a snail's pace, to coexist with this small number of heterogeneous people. The current towards coexistence must not be hindered by the *Chogori* Incidents. What is demanded of Japanese society now, is the idea that people of different identities, in living together, recognise each other in their very difference.³⁶

In the following section, I shall examine whether or not minority rights are compatible with individual rights, and contribute to the constitution of social integrity.

Kymlicka's Conception of Minority Rights

In this section, I shall concentrate my attention on Kymlicka's theory of minority rights, especially the idea of 'a *societal* culture', and notion of 'group-differentiated rights' as collective rights.

Kymlicka's Vision of Liberalism

Kymlicka attempts to develop a recognisably liberal approach to minority rights. That is to say, his theory of minority rights rests on the basic principles of liberalism. The basic principles of liberalism are founded on individual freedom. Kymlicka holds that liberals will be able to advocate minority rights only on the ground that they are not incompatible with

respect for the freedom or autonomy of individuals. He believes that "minority rights are not only consistent with individual freedom, but can actually promote it" (Kymlicka, W. 1995, p. 75).

In contrast, many traditional liberals think that minorities should be protected by ensuring fundamental civil and political rights to all individuals. Hence, they do not think that ethnic or national minorities should be given rights in addition to individual rights. It would be fair to say that many traditional liberals believe that the human rights doctrine based on the individual should not allow minorities to have facilities for maintaining their ethnic identity. They share with John Stuart Mill the classical political conception, that free institutions are next to impossible in a multination state. Accordingly, traditional liberals think that a free-state (a nation-state) must coercively assimilate national minorities, rather than providing them with minority rights. Mill states that:

"Free institutions are next to impossible in a country made up of different nationalities. Among a people without fellow-feeling, especially if they read and speak different languages, the united public opinion, necessary to the working of representative government, cannot exist" (Mill, J. S. 1991, p. 428).

Mill gives various conditions which create the feeling of a nationality; race and descent, community and language, religion, and geographical limits. Among them, Mill emphasises 'the possession of a national history' as the strongest cause. Mill's view of 'the possession of a national history' as a cause of nationality, cannot however apply to most nation states today: most of those are multi-cultural states. In these multi-cultural states, a national history may not be the foundation of shared pride, but the basis of conflict and hatred between ethnic or national groups.

If Koreans in Japan were to share a national history with Japanese, then they might willingly accept Japanese nationality. However, most will not do so (especially the first generation Korean residents), because of their negative historical memory of Japanese colonial rule. This is a strong reason why many Koreans in Japan have not been naturalized in Japan.

Let us leave aside national history, then, and turn to a theory which does without it. Kymlicka's vision of liberalism is based on: 'a commitment to freedom of choice and personal autonomy', 'equality-based arguments', and 'the intrinsic value of cultural diversity' (Kymlicka, 1995, pp. 7-8). Note that these three elements of his vision of liberalism amalgamate with one

another, and are incorporated in "A liberal theory of minority rights" (emphasis added), which is the sub-title of his work "*Multicultural Citizenship*."

To begin with, Kymlicka insists that the liberal value of freedom of choice presupposes a certain culture. Accordingly, it ought to be emphasised that liberal principles should be composed of problems of cultural membership. He holds that liberalism confers freedom of choice, which leads people to choose the good life. Thus, in Kymlicka's theory of liberalism, freedom of choice is firmly combined with cultural membership. As for 'culture', Kymlicka has coined the phrase 'a *societal* culture' which "provides its members with meaningful ways of life across the full range of human activities" (Ibid., 1995, p. 76).

Kymlicka insists that cultural diversity "disconnected from any assumption of *individual autonomy*, cannot by itself defend the full range of liberal freedom" (Ibid., 1995, p. 163). On the assumption that the value of autonomy is the most defensible in liberal theory, he asserts that the value of cultural diversity "creates more options for each individual, and expands her range of choices" (Ibid., 1995, p. 121).

Furthermore, Kymlicka's understanding of liberalism, a liberal egalitarian theory, like Dworkin's or Rawls's, highlights the importance of amending unchosen inequalities. It concentrates on the case that "the minority is facing some sort of unfair disadvantage which can be rectified by a group-differentiated right" (Ibid., 1995, p. 8). Kymlicka attempts to reinterpret traditional liberalism as follows:

"A government that gives special rights to members of a distinct cultural community may still be treating them as individuals; the provision of such rights just reflects a different view about how to treat them as individuals and as equals" (Kymlicka, 1989, p. 211).

The Conception of Group-differentiated Rights

Let us start with Kymlicka's idea of 'group-differentiated rights'. This has a bearing on the question of whether the effective protection of the human rights of individuals is sufficient for the protection of the rights of minority groups. Kymlicka asserts that "it is legitimate, and indeed unavoidable, to supplement traditional human rights with minority rights" (Ibid., 1995, p. 6). Kymlicka is also convinced that "representation rights and polyethnic rights are consistent with integrating minority groups, and indeed may assist in this integration" (Ibid., 1995, p. 9).

Regarding collective rights, although Kymlicka admits that collective

rights are defined as not individual rights, he pays attention to the fact that individuals exercise various types of group-differentiated citizenship. The question here is “not whether the right is ‘collective’ (as opposed to individual), but that it is group-differentiated” (Ibid., 1995, p.46). Kymlicka rejects collective right, but acknowledges group-differentiated rights. What has to be noticed is that Kymlicka does not think that the term “collective rights” is helpful to indicate various types of group-differentiated citizenship because it is both too broad, and it fails to make the distinction between internal restrictions and external protections. Kymlicka justifies group-differentiated rights on the grounds that they compensate for unequal conditions which drive the members of minority groups to a systemic disadvantage, irrelevant to their personal choices in life.

As for collective rights, many scholars have disputed them: Jack Donnelly, like traditional liberals, insists that the idea of human rights must only be individual rights, so that group rights are to be conceived of merely as collective rights, and not collective human rights. He thinks that individualism is quite compatible with recognizing persons as members of a variety of social groups. He does not deny that:

“Human rights have no collective dimension. Neither should it be denied that many human rights are exercised by individuals in their capacity as members of social groups. But the fact that individuals exercise their rights collectively does not mean that they are held by collective groups” (Donnelly, J. 1993, pp. 133–134).

Donnelly strongly criticises collective rights, and fears collective human rights for the power they might afford a collective over the individual, and regards collective rights as particularly threatening when they are proposed as constraining other human rights.

Vernon Van Dyke, in contrast to Donnelly, argues in favour of the idea of group rights in general on largely pragmatic grounds. He is critical of traditional liberal views on the notion of group rights. Liberals do not afford collective entities' moral status because their very existence is denied. He believes that “the right of the individual is to participate in selecting those who represent not individuals, but the community” (Van Dyke, V. 1977, p. 353). According to Van Dyke, the foundational justification for collective moral rights is the existence of an essential individual interest in the particular collective. Van Dyke asserts that collective rights are required by virtue of the fact that individual interests exist in respect of national and cultural

membership, and that equality of respect for cultures is essential. Thus collective rights are only legitimate in so far as they contribute to the well being of individuals.

I shall support Kymlicka's assertion of group-differentiated rights. These should be recognised for those who are discriminated against, and more who should be compensated for their disadvantages, unless the real discrimination against them ceases to exist. The minorities of Japan, especially Koreans in Japan, taking into account the reality of being discriminated against simply for the fact of being Korean, should be given certain group-differentiated rights to recompense them for their disadvantages.

Before turning to examine the idea of 'group-differentiated rights', we must draw attention to the implication of 'multiculturalism', which Kymlicka tries to define. Kymlicka divides 'multiculturalism' between national minorities and ethnic groups. National minorities, Kymlicka defines as "distinct and potentially self-governing societies incorporated into a larger state", and ethnic groups as "immigrants who have left their national community to enter another society" (Kymlicka, 1995, p. 19).

In the strict sense of Kymlicka's definition of national minorities and ethnic groups, Korean residents of Japan do not qualify as a minority. In rejecting assimilation, Korean residents of Japan and their organisations have no demanded self-governing societies in Japan, despite the fact that they were not voluntary immigrants. We may say that Korean minorities of Japan are another minority group which does not fit into the definition of either national minorities or voluntary immigrants. On the one hand, they have a strong resemblance to African-Americans in that they were forcibly transported. On the other hand, unlike African-Americans, they have their own nation state which is near Japan, and so are more likely to have ties with their homeland.

As I have mentioned before, the first generation of Korean residents of Japan, resulting from Japanese colonial rule, deem themselves to be 'the fragments of the nation', and the coming generation, whatever the pressures that had driven their parents/the first generation to Japan, resulted from individual and familial choices to live in Japan. Almost all of them wish to make a good life in Japan, so that some want Japanese society to be changed to make it more open to pluralism and diversity, while others have naturalized into Japanese to avoid discrimination. Most Korean residents of Japan, want to participate in the mainstream society, while maintaining their ethnic identities. Whilst African-Americans do not have or want a clear national/ethnic identity, but have aimed at participation in the main society, Koreans in

Japan have a strong sense of their own national/ethnic identity, but also want to participate within Japanese society. These circumstances result in the definition of Korean residents of Japan as an ethnic group who have unwillingly left their national community and now demand the ability to participate in another society.

Kymlicka develops an idea of 'group-differentiated rights,' within a social culture. Group-differentiated rights, are often called 'collective rights', and consist of three forms: (1) self-government rights; (2) polyethnic rights; (3) special representation rights. I shall look at these three forms of group-differentiated rights in the light of whether or not they are applicable to Koreans in Japan.

(1) *Self-government rights*, according to Kymlicka, encompass "the delegation of powers to national minorities, often through some form of federalism (Ibid., 1995, p.6). Kymlicka attempts to qualify self-government rights as follows:

"group-differentiated self-government rights compensate for unequal circumstances which put the members of minority cultures at a systemic disadvantage in the cultural market-place, regardless of their personal choices in life" (Ibid., 1995, p. 113).

For true equality, he affirms, what is required is not identical treatment, but rather differential treatment. Kymlicka aims to give all national groups the chance to protect and promote their own ethnic culture.

It leads to a slight confusion with the notion of polyethnic rights. As we have seen, in my understanding, there are not any national groups of Korean residents of Japan, in the sense defined by Kymlicka. Members of the 'Chong-ryun',³⁷ the 'Mindan',³⁸ and other ethnic cultural groups, have actively maintained their cultural identities. In doing so, they all require differential treatment as Koreans in Japan, but absolutely insist that they want neither independence in nor secession from Japan.

(2) Polyethnic rights: are "financial support and legal protection for certain practices associated with particular ethnic or religious group" (Ibid., 1995, p. 7).

According to Kymlicka, immigrant groups in the last thirty years, under the 'Anglo-conformity' model, at first attempted to claim "the right freely to express their particularity without fear of prejudice or discrimination in the

mainstream society" (Kymlicka, 1995, p. 30). After that they expanded their demand to positive steps, such as the provision of immigrant language education in schools, in order to eradicate discrimination and prejudice against minority groups. Kymlicka insists that demanding positive steps, for example, affirmative action within the mainstream society, prove minorities to integrate into the institutions of the mainstream society, not wanting to separate and govern themselves. Therefore, Kymlicka believes that "most polyethnic demands are evidence that members of minority groups want to participate within the mainstream of society" (Ibid., 1995, p. 177).

Members of the 'Chong-ryun', the 'Mindan', and some other ethnic groups in Japan have promoted the expression of ethnic identities through language education, encouraging the use of ethnic names, wearing traditional folk costume, and special ethnic manners. Since these efforts can be seen to develop Japanese society by accepting ethnic diversity, we could conclude the corresponding polyethnic rights are the interests of Japanese society. They aim to make efforts to eliminate racial discrimination, defend the right to ethnic education, and to make a good life in Japan with human dignity. Therefore, polyethnic rights, for example, the right to ethnic education, should be acknowledged by the Japanese government. Furthermore, the Japanese government should legislate an Act to forbid and punish crimes of national/ethnic discrimination.

(3) *Special representation rights*: are "guaranteed seats for ethnic or national groups within the central institutions of the larger state" (Ibid., 1995, p. 7).

It is natural to suppose that ethnic groups, especially disadvantaged groups which feel excluded, demand inclusion into the mainstream of society. Based on Kymlicka's analysis, both representation rights and polyethnic rights are founded on integration rather than separation or secession, and an integrationist philosophy underlies those rights. Moreover, ignoring the fear that these rights prevent ethnic groups from integrating into the larger society, he insists that there is little proof that ethnic groups obstruct the unity or stability of a society. Kymlicka thus arrives at the conclusion that the demand for special representation rights, as well as polyethnic rights, are ones "for inclusion which is consistent with participation in, and commitment to, the mainstream institutions that underlie social unity" (Ibid., 1995, p. 178). It is reasonable to say that Kymlicka's suggestion is applicable to the situation of Koreans in Japan.

Most Korean residents of Japan have demanded the franchise, at least at the local level, for foreigners permanently resident in Japan, in spite of oppo-

sition of the 'Chong-ryun'.³⁹ From a fear that the right to participate in politics is a step towards assimilation into Japanese, the 'Chong-ryun' have disagreed with this demand for the franchise, although they do not demand separation from Japan.⁴⁰ As a matter of fact, the demand for the right to vote has had a great influence on Koreans in Japan, and has been supported by movements such as local city governments which have adopted the agreement in which they petition the Japanese government for the right to vote of foreigners permanently resident at local level.⁴¹ Not only members of the 'Mindan', but also those of other ethnic groups have developed social movements for demanding the right to vote. Considering our analysis of the feature of the current situation of Korean residents of Japan: the rights to permanent residence of minorities in Japan; tolerable cultural diversity; and the social integration of minorities into mainstream, which enrich the culture of Japanese society, it is entirely fair to say that the Japanese government should give the right to vote to Korean residents of Japan, at least at the local level.

The Idea of 'a Societal Culture'

Let us leave 'group-differentiated rights' and turn to Kymlicka's idea of 'a *societal* culture'. Kymlicka's notion of 'a *societal* culture' is the basis for the conception of 'group-differentiated rights'. 'A *societal* culture', according to Kymlicka:

“is a culture which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres. These cultures tend to be territorially concentrated, and based on a shared language” (Ibid., 1995, p. 76).

Kymlicka's conception of 'a societal culture' seems to be similar to the traditional definition of a state, except that he excludes sharing common descent and the possession of a national history. He advocates a liberal vision which rests on a commitment to freedom of choice and personal autonomy. Choice and autonomy, which enable people to make a good life, are dependent on the presence of a societal culture. Kymlicka maintains that in a societal culture, citizens are required to have a strong sense of common identity, that is, 'a common language and history' (Ibid., 1995, p. 77).

This clause has received much criticism. Jeremy Waldron states that, “to put it crudely, we need culture, but we do not need cultural integrity”

(Waldron, J. 1992, p. 108). Waldron asks why culture alone gives meaning to people's lives, in Kymlicka's theory. The second question arises with Kukathas, who questions why build acting as a cultural membership of 'meaningful individual choice'. He points out that: "by insisting that the cultural community place a high value on individual choice, the larger society would in effect be saying that the minority culture must become much more liberal" (Kukathas, C. 1992, p. 122).

It is important to note that Kymlicka has been criticized both for being a 'liberal imperialist', and for being too tolerant of illiberal minorities. The reason why he is criticised as being a 'liberal imperialist' is due to his assertion in that: "The aim of liberals should not be to dissolve their non-liberal nations, but rather to seek to liberalize them" (Kymlicka, 1995, p. 94). Above that Kymlicka holds that, "liberals should not prevent illiberal nations from maintaining their societal culture, but should promote the liberalisation of these cultures" (Ibid., 1995, pp. 94-95).

In my view, it seems that his definition of '*societal* cultures' is almost the same as the traditional definition of a nation. The differences between the idea of '*societal* cultures', and the notion of nation are slight, and create tensions in his account. On the one hand, Kymlicka insists that "in many multination countries, history is a source of resentment and division between national groups, not a source of shared pride" (Kymlicka, 1995, p. 189). On the other hand, he holds that "this common identity is assumed to require a common language and history" (Ibid., 1995, p. 77). In spite of this tension, I agree with Kymlicka's argument in principle, when he insists that an individual's freedom is dependent on the presence of a certain social culture. I am convinced that most people will be able to make a good life and find meaning in life, only when they enjoy their lives among people: friends or colleagues, families, or within certain groups, having a bond to their own various identities, including cultural identity. However, it is not clear that Kymlicka's suggestion is applicable to Koreans in Japan.

Kymlicka deliberately distinguishes between two meanings of collective rights, 'internal restriction' and 'external protections'. In doing so, he attempts to argue that collective rights will successfully be able to coexist with individual rights. Kymlicka defines: 'internal restriction' as "when collective rights could refer to the right of a group to limit the liberty of its own individual members in the name of group solidarity or cultural purity" (Ibid., 1995, p. 7). 'External protections' implies that "collective rights could refer to the right of a group to limit the economic or political power exercised by the larger society over the group, to ensure that the resources and institutions on

which the minority depends are not vulnerable to majority decisions” (Ibid., 1995, p. 7). Kymlicka maintains that in the light of a liberal theory of minority rights, some external protections for ethnic groups are acceptable, while it is doubtful that internal restrictions are, because then the latter would restrict civil and political liberties of group members ‘in the name of group solidarity or cultural purity’.

Chandran Kukathas, contrary to Kymlicka, believes that the recognition of collective rights cannot be reconciled with some essential elements of liberalism. Kukathas sees liberalism as primarily and fundamentally individualist, and as such, plainly incompatible with the notion of collective rights. Kukathas fears that granting collective rights would most likely come at the expense of the rights of individual members. However, he insists that liberals are not opposed to a culture pursuing their own way of life, but rather are aware that liberalism should be principally concerned with the protection of individual group members against types of coercion such as the refusal of the right to exit (individuals have the right to exit/leave the group when they feel it oppressive). Kukathas claims, that “in many circumstances, individuals within the cultural community are free to leave *together or in association with others*” (Kukathas, C. 1992, p. 117).

It does not matter to members of the ethnic group of Korean residents of Japan what the right to exit would be like, because no compulsory ethnic groups of Koreans existed in Japan. Almost all of them have been established voluntarily, so every members of them has the right to participate in or secede from them at any time. However, we should not overlook that internal subgroups, for example, women within Koreans in Japan have been forced to comply with the paternalistically traditional norms and practices of the Korean minority. Moreover, most Koreans in Japan have thought the matter of democratization and re-unification of the Korean Peninsula to be more important than the liberation of women. Thus most Korean women in Japan have suffered pain under both paternalism and political dogmatism.

Kymlicka offers the key to a solution of this conflict as follows:

“as a culture is liberalized, the resulting cultural identity becomes both ‘thinner’ and less distinctive. That is, as a culture becomes more liberal, the members are less and less likely to share the same substantive conception of the good life, and more and more likely to share basic values with people in other liberal cultures” (Ibid., 1995, p. 87).

In Kymlicka's view of liberalism, the members of a liberalized national/

ethnic groups should no longer share non-liberal moral values or non-liberal traditional ways of life. Thus, Kymlicka precisely excludes shared values, that is, normative sphere, from national/ethnic identity. In doing so, he attempts to explain that national/ethnic groups “provide a domain of freedom and equality, and a source of mutual recognition and trust, which can accommodate the inevitable disagreements and dissent about conceptions of the good in modern society” (Ibid., 1995, pp. 105–106). Kymlicka's theory may have an uncomfortable lesson for the Korean community in Japan, namely their non-liberal practices (e.g. paternalistic discrimination) which have been widely accepted need to be criticized.

Kymlicka criticizes Kukathas for being much less sympathetic than he is, to any special external protections against the mainstream. Kukathas does not demand the state to support minority groups in any way, through public funding of schools, the right to language, the right to vote, and so on (Kymlicka, 1995, p. 155). Kukathas insists on identical treatment based on citizenship, as opposed to Kymlicka's assertion of differential treatment.

As far as the relationship between minority rights and social integrity is concerned, Kymlicka emphasises that representation rights and polyethnic rights are not incompatible with integrating minority groups, and may contribute to social integration. Group representation rights are to ensure that disadvantaged groups have representation. Kymlicka holds that groups that feel excluded want to be included in the larger society, so that the basic impulse of representation rights is integration, not secession or separation. Polyethnic demands show that members of minority groups are keen to participate in a larger society.

What matters to integration is that it is a two-way process, which is to say, that both the mainstream and minority groups should adapt themselves to each other (Ibid., 1995, p. 96). In this connection, I shall argue again that both Korean residents and Japanese should not consider ‘Chima-chogori incidents’ as the general structure of conflict between collective identities. What is more important, is to find and share with ‘something common’, for example, ‘common identity’. Regarding ‘common identity’, Kymlicka asserts that it is composed of ‘a common language and history’, and evaluates ‘the role of language and culture in enabling choice’ (Ibid., 1995, p. 51).

Although I agree with Kymlicka's idea of integration in principle, when Kymlicka emphasises ‘a common language and history’ as ‘common identity’, it may create a slight tension when we apply his theory to the Korean minority of Japan, for the following reason. As I said earlier, for most of the young generation of Koreans in Japan, Japanese has become the mother tongue, and

Japanese culture defines their options in life. What has to be noted is that they do not share a history with the Japanese. It is most difficult both Koreans and Japanese to share history, in the sense of agreeing about their history, due to the memory of the colonial era and of coercively taking Koreans to Japan during the Second World War. What matters is that to reconcile and coexist with Koreans and Japanese, proper historical education has been taken at many levels, especially at schools, by the initiative of the Japanese government.

There are other things to note. What integration means is that to participate to the mainstream is not to take private interests into account, but to consider the common interest, that is, the public advantage. If this is done, then ethnic minorities can not only seek their own specific rights, but also exercise their rights concerning the public matters.

As we have seen above, what essentially characterizes the liberals' stance, is the fear that collective rights are dangerous to individual rights. However, this view is blind to recognise collective human rights as the pre-conditions for other human rights.

We have examined Kymlicka's theory of minority rights, especially, the idea of 'a societal culture' and the notion of 'group-differentiated rights'. In spite of disputes concerning minority rights among liberals, it seems reasonable to argue that although the forms in which minority rights should be recognised are context-specific, special rights for minorities should be recognised, and theory about minority rights will be able to coexist with individual rights.

Compared to such a traditional liberal perspective, Kymlicka's suggestion of 'group-differentiated rights' may give strong account of the rights of Korean residents of Japan, and his notion of 'a *societal* culture' will be a foundation of integration of ethnic groups into Japanese society, in spite of its problems.

Conclusion

This essay has examined whether or not traditional human rights theory and Kymlicka's theory of minority rights, based on individual rights can sufficiently protect minority rights, especially in application to Korean residents of Japan.

Most human rights theorists, who base their ideas on individuality, doubt whether minority rights should be given. On the one hand, they regard them as a sub-group of rights, which are included in the basic civil and

political rights available to all individuals, and therefore they believe that individual rights are sufficient to protect minority rights. On the other hand, they worry that to give rights to specific minority groups, might lead to the destruction of social unity. Therefore, they have been opposed to minorities having the resources to maintain their ethnic identity. However, in spite of their predication and belief in human rights, many conflicts between majorities and minorities, have occurred since the end of the Second World War. These conflicts show that individual rights theories cannot successfully respond to the demands of minorities.

Kymlicka's idea of minority rights, rests on the basic principles of liberalism, particularly on his idea of 'group-differentiated rights' as collective rights. Kymlicka has criticized traditional liberals on the ground that "minority rights are not only consistent with individual freedom, but can actually promote it."

Through the examination of Kymlicka's idea of minority rights, it seems to be reasonable to make three conclusions in light of the Japanese situation.

Firstly, Japan, one of the most developed countries, but a developing one concerning human rights, has been considered to be a homogeneous state in spite of the existence of minorities such as the Koreans and indigenous Ainu. I have shown that Japanese society has been intolerant of minorities, through the examination of the recent 'chima-chogori incidents'. The Japanese government has not recognised Koreans in Japan as a minority under Article 27 of the ICCPR. The Japanese government should recognise Koreans in Japan as a minority, and should implement certain active measures for the protection and practice of minority rights: the right to ethnic education, the right to vote, and an anti-discrimination Act, and so on.

Secondly, there is reason to believe that Kymlicka's theory about minority rights will be able to coexist with individual rights, and possibly contribute to the establishment of social integrity. Insofar as discrimination against Koreans exists in Japan, group-differentiated rights should be given to those who are discriminated against to recompense for their disadvantages they have experienced. It was found through the examination of the situation of Koreans in Japan, that Korean residents of Japan show an increasing tendency to remain permanently in Japan as an ethnic minority, and accordingly, they wish to participate in the mainstream of Japanese society, in other words, in the public dimension. In doing so, Koreans in Japan, as well as Japanese people, can cooperate when considering public matters, which may lead to the development of mutual recognition and reconciliation between Koreans and Japanese.

Thirdly, there are some problems with Kymlicka's theory of minority rights. This is due to Kymlicka's assumption that states are multinational, and his argument places too much weight on the value of culture. As mentioned above, Japanese believe that Japan is a homogenous society in spite of the long term presence of the Korea minority. I believe that further study is needed to solve the issue of the Korean minority in Japan. Moreover, his theory is said to be untenable from the perspective of those concerned with the interests of cultural minorities. This is because of an exaggeration of the value of culture and cultural membership in his theory. It has provoked much criticism that he regards history as an overly important factor of 'common identity'. Kymlicka's assertion of history as a common identity is open to question, because that it is next to impossible to apply to Koreans in Japan. However, I shall largely support Kymlicka's idea of 'group-differentiated rights' and 'a *societal* culture'. In the case of Koreans in Japan, Kymlicka's proposal of minority rights will surely provide us with a strong foundation to deepen the concept of minority rights and contribute to the solution of conflicts between majority and minority communities.

Notes

1 Nielsson indicates that "In 1981, the global state system consisted of 183 political unites, including 168 sovereign states and sixteen dependent territories" (Nielsson, G. P. 1985, p. 30). Laczko shows that "the world system's 159 juridically independent states contain at least 651 living language groups and 6,876 ethnic groups" (Laczko, L. S., 1994, p. 21). In 1998, the number of members of the United Nations was 185.

2 Sonohara, T. "Toward a Genuine Redress for an Unjust Past: The Nibutani Dam Case," *E Law-Murdoch Electronic of Law*, Vol. 4, No. 2 (June 1997).

3 "The International Covenant on Civil and Political Rights" and "The International Covenant on Economic, Social and Cultural Rights."

4 Fukuoka, Y. "Zainichi Kankoku-Chosenjin (Japan-resident Koreans)", 1993, pp. 2-6.

5 "Assimilation," is argued by Kymlicka that "Anglo-conformity' model of immigration which were developed in Australia, Canada, and the United States before 1960s, was seen as essential for political stability, and was further rationalized through ethnocentric denigration of other cultures" (Kymlicka, 1995, p. 14).

6 In June 1999, the number of Koreans of Japan who have registered foreign residents was 638,828 (*Japan Times* [international] 1-15 June 1999). It is estimated that the number of Korean-Japanese who have acquired Japanese nationality, was about 400,000 (Kim, K, 1995, pp. 205-208). Therefore, the total number of Korean minority in Japan is about 940,000.

7 In 1992, there were 307,872 Koreans (about 45 percent) in Kansai-district (Osaka, Kyoto, and Nara), and were 172,389 Koreans (about 25 percent) in Kanto-district (Tokyo, Chiba, Kanagawa, Saitama, Gunma, Tochigi, and Ibaragi), total

population was that of 688,144 (Statistics of the Ministry of Justice of Japan, in 1992).

8 In 1975 a priest called "Choi Chang-Hwa" 「崔昌華」 lived in Kyusyu of Japan, accused the NHK (Japan Broadcast Association) of violating human rights, because on its television programme, on the first and second of September 1975, a newscaster working for the NHK pronounced Choi Chang-Hwa's name "Sai-Syo-Ka" which is the Japanese way of pronunciation. Choi Chang-Hwa claimed "1 Yen" from the NHK as compensation. Regarding the meaning of "1 Yen" for the NHK as the compensation, he insisted that "1 Yen" is the denomination of Japanese money, to call someone's name in her/his ethnical way is the foundation of human rights. That is not only to respect the very person, but also to acknowledge her/his personality (Ichiji, N. 1994, pp.41-42).

9 Fukuoka, Y, "The Identity of Young Koreans in Japan", 1997, p. 2.

10 *Japan Times* [international] 1-15 June 1999 said that: "The number of foreign residents registered in Japan by the end of last year marked a record of 1,515,116 accounting for 1.2 percent of the entire population, according to a June 5 report by the Justice Ministry Immigration Bureau. The report says the growth rate of registered foreign residents during the past 10 years is 60.7 percent, whereas the growth rate of the entire population is only 3 percent. North and South Koreans led the way, totaling 638,828, or 42.2 percent of all foreign residents."

11 The number of Koreans in Japan who were naturalised in Japan from the beginning of the post-war period up to the end of 1989, was about 150,000. Almost all of them were naturalized with Japanese names, hiding their origin of birth after naturalization (Kim, K. 1995, pp.77-78).

12 Fukuoka, Y. 1993, pp.19-20.

13 In 1950, the ratio of first generation Korean residents of Japan to the whole population of Korean residents was 50.0 percent (232,371 within 464,277). However, in 1974, the one of that was 24.4 percent (155,621 within 638,806). No data has given after 1974 concerning both number and ratio of the first generation of Korean residents of Japan ("The statistics concerning alien in Japan," 1974). However, it is estimated that this ratio has fallen to 10 percent, with the number of the first generation Korean residents now being about 60,000 (Nakao, H. "The fundamental knowledge of Japan-residents Koreans," 1997, p.98).

14 *Ibid.*, p.22.

15 In 1955, the number of intermarriages between Koreans in Japan and Japanese was 336, and it was in the rate of International marriage between Koreans in Japan and Japanese, to 2.2 Korean-Korean marriages in Japan. In 1992, the number of international marriage between Koreans in Japan and Japanese was 8,341, while Korean-Korean marriages in Japan was 1,805, a rate of 4.6 percent to 1.

16 Fukuoka, Y. attempted to categorize Koreans in Japan under five of characteristics: the pluralist type, the nationalist type, the individualist type, the naturalization-oriented type, and the ethnic solidarity type (Fukuoka, Y. "The Identities of Young Koreans in Japan", 1997).

17 The ethnic (Korean) schools were established by "Chong-ryun", which official name in English is the General Association of Korean Residents in Japan, supported

by the North Korea government. It is estimated that 16 percent of Korean children go to Korean schools in Japan.

18 The official directive, entitled "With Regard to Treatment on Educational Institutions which accommodate Koreans only," issued by the Japanese government on 28 Dec 1965; it says "Korean schools should not be authorised as miscellaneous schools, since, as they aim to provide students with Korean ethnicity and national characters, they cannot be regarded as schools which have positive significance for the society of our country worthy of the status of miscellaneous schools."

19 A lot of Korean former soldiers, who served in Japanese Army during the Second World War, have lived in Japan after the end of the War. In spite of their injured or disabilities, the Japanese government offers no compensation for them (A Joint NGO Report Regarding Rights of Japan's Korean Minority, 1998, p. 20).

20 In Dec 1997, six local governments: Kawasaki City, Yokohama City, Osaka City, Kobe City, Kanagawa Prefecture, and Kochi Prefecture have eliminated the nationality requirement in employment of civil servants.

21 CCPR/C/SR. 324, 10 November 1981, paragraph 47.

22 A Joint NGO Report Regarding Rights of Japan's Korean Minority (1998) precisely outlined discussion between members of Human Rights Committee and the Japanese delegate on minority.

23 CCPR/C/SR. 324, 10 November 1981, paragraph 45.

24 CCPR/C/SR. 319, 6 November 1981, paragraph 18.

25 CCPR/C/70/Add.1, 30 March 1992, paragraph 232.

26 CCPR/C/SR. 324, 10 November 1981, paragraph 46, 47, 48.

27 As for the definition of 'minority' in international law, it is true that no definition is to be conferred in either the International Covenant on Civil and Political Rights (ICCPR, 1966), or in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on Minorities, 1992). However, there had been efforts to define the concept of 'minority' in the Commission on Human rights or the Sub-Commission by their members: the Special Rapporteur, Francesco Capotorti, in 1949, and Mr. Deschênes in 1985, before adoption the ICCPR (Åkermark, A. S. 1997, pp. 88-96).

28 Joint NGO Report Regarding Rights of Japan's Korean Minority, 1998, p. 8.

29 CCPR/C/79/Add. 28, 5 November 1993, paragraph 15.

30 General Comment 23, UN doc. CCPR/21/Rev. 1/Add. 5.

31 See, for example, "The state and local governments should offer full-scale subsidies to Korean schools, at least on the same level as currently offered to private schools in general. They should also make donations from parents of students at Korean schools eligible for tax deduction, as is the case with such contributions at Japanese schools" (The People's Korea, 1999, History and Current State of Ethnic Education for Korean Residents in Japan, p. 8).

32 Young, I. 1989, p. 261.

33 Margalit and Raz, 1995, p. 85.

34 *Asahi Shinbun* [Asahi Newspaper], 24 September, 1998.

35 The Japanese government has not legislated against crimes of national/ethnic discrimination to punish them (Joint NGO Report Regarding Rights of Japan's

Korean Minority, 1998, P.15).

36 'The chador case', similar one to 'chima-chogori' incidents, occurred in October 1989, in France. The Minister Lionel Jospin, right after the case became public, provided clear guidelines for all schools, and ruled that "French students had the right to express their religious beliefs in the public school, as long as they respected others' liberty and on the condition that such an expression did not hinder the normal teaching and school order" (Galeotti, A. E. 1993, p.585).

37 The official name is the General Association of Korean Residents in Japan, supported by North Korea.

38 The official name is the Korean Residents Union in Japan, established by being supported by the government of South Korea.

39 Recently, some scholars attempt to define foreigners permanently resident as 'denizen', distinguishing them from those of short stay foreigners (Kondo, A. *Gaikokujin to Sanseiken [The Alien and the Vote to Right]*, 1996, p. 160).

40 'Chong-ryun' have opposed the right to vote at any level because they regard it as 'interference in the domestic affairs of a foreign country' and as a step toward assimilation (Fukuoka, Y. 1997, p. 5).

41 The number of local city governments which have adopted the agreement, was 1,386 within 3,302 in March 1999 (*Mindan Shinbun [Mindan Newspaper]*, 17 March 1999).

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