

Ethnic Minority Citizenship and the Japanese Constitution

KANG Sangjung

Recently, we have witnessed scenes of yet more waves of refugees wandering amidst the bleak landscapes of Afghanistan, reminding us again of the vast numbers of people being thrown out into 'No man's land' where no rights are enjoyed, nor any laws or rules of any kind pertain. The aerial bombardment by the United States has done nothing but add to the already large numbers of displaced people resulting from civil war in Afghanistan.

We have also recently seen how the adoption of a hard line towards refugees contributed to the governing party's recovery of strength in the lead-up to the Australian general election. Thus, while the American-led military intervention in Afghanistan is causing more and more people to be abandoned in a situation without rights, we also have the government of a country that supports and takes a part in that military intervention (i.e. the Australian government) using refugees as mere pawns in a political game of inter-party competition. How can one explain the fact that denial of rights to refugees is so rife in an age when there is so much talk about the protection of human rights? This use of military force in the name of human rights and democracy has deprived large numbers of desperately impoverished people of the benefits of life as citizens in a nation state, while at the same time denying them even the right of asylum. Furthermore, the numbers of people so deprived are increasing as the world becomes more 'globalised'.

This deeply contradictory aspect of the contemporary 'globalised' world is far from being a new phenomenon. In *The Origins of Totalitarianism*, the political philosopher, Hannah Arendt, who herself was an exile, wrote as follows regarding the problems posed by the existence of refugees or stateless people resulting from the civil wars that followed the World War I:

No paradox of contemporary politics is filled with a more poignant irony than the discrepancy between the efforts of well-meaning idealists who stubbornly insist on regarding as 'inalienable' those human rights, which are enjoyed only by citizens of the most prosperous and civilized countries, and the situation of the rightless themselves. Their situation has deteriorated just as stubbornly, until the internment camp—prior to the second World War the exception rather than the rule for the stateless—has become the routine solution for the problem of domicile of the 'displaced persons'.

The postwar term 'displaced persons' was invented during the war for the purpose of liquidating statelessness once and for all by ignoring its existence. Nonrecognition of statelessness always means repatriation, i.e., deportation to a country of origin, which either refuses to recognize the prospective repatriate as a citizen, or, on the contrary, urgently wants him back for punishment. Since nontotalitarian countries, in spite of their bad intentions inspired by the climate of war, generally have shied away from mass repatriations, the number of stateless people—twelve years after the end of the war—is larger than ever. The decision of the statesmen to solve the problem of statelessness by ignoring it is further

revealed by the lack of any reliable statistics on the subject. This much is known, however: while there are one million 'recognized' stateless, there are more than ten million so-called 'de facto' stateless; and whereas the relatively innocuous problem of the 'de jure' stateless occasionally comes up at international conferences, the core of statelessness, which is identical with the refugee question, is simply not mentioned. Worse still, the number of stateless people is continually on the increase. Prior to the last war, only totalitarian or half-totalitarian dictatorships resorted to the weapon of denaturalization in regard to those who were citizens by birth; now we have reached the point where even free democracies, as for instance, the United States, were seriously considering depriving native Americans who are Communists of their citizenship. The sinister aspect of these measures is that they are being considered in all innocence. (p.280)

As Arendt points out, during the war the 'Jewish Question' was seen as a problem confined only to the Jewish people. However, even after this problem seemed to have been solved by the migration of Jews to Palestine and the violent acquisition of territory there, a new category of 'displaced persons' was born, and the problem of ethnic minorities and statelessness arose in a new form, and has remained unresolved to this day. Notwithstanding the Oslo Accords, the problem of large numbers of Palestinian refugees is still unresolved, and indeed has become increasingly serious. Furthermore, what has happen in Palestine was repeated in the Indian sub-continent, and now in the vast lands of central Asia. Ever since World War I, the formation of new national states has been accompanied persistently by stateless people as if burdened by a curse. This is because of the requirement that all citizens in a nation-state be equal before the law. Should any people fall outside the jurisdiction of any state, and thus be effectively denied any legal protection, the continued existence of the state itself is placed in doubt. Thus, the problem of stateless people is a matter of crucial importance posing serious questions about the institution of the nation-state itself, and about the meaning of membership in it (i.e. citizenship). In addition, we cannot completely separate the problem of ethnic minorities from the issue of statelessness (which means in effect the denial of all legal rights). This is because ethnic minorities have been denied the mutual recognition and capacity for action in public life, which in Arendt's view defines the 'human condition'. The problem posed by the existence of stateless people and ethnic minorities has become even greater as a result of the current 'globalisation' of civil war. As the developed country least willing to open its doors to refugees, Japan is no exception to this issue.

The initial publication of Arendt's *The Origins of Totalitarianism* coincided with the escalation of the Korean War. This event marked a decisive point in the development of the Cold War, casting a deep shadow over the development of Japan following its defeat in the Pacific War. It also had a decisive effect on the Korean Peninsula and the fate of the Korean ethnic minority in Japan. At the end of the Pacific War, well over a million people from what had been the Japanese colony of Korea were resident in Japan with the status of 'subjects of the Japanese Empire'. The existing nationality laws defined such people as 'Japanese'. The issue of what to do with them became an important concern of postwar policy, both for the Japanese government, and for the occupying American military administration.

The policy adopted by the Japanese government just before the 1946 general election (the first postwar election) was to suspend the right of Japanese nationals from the former colonies of Korea and Taiwan to vote and stand for election. This policy made use of an existing distinction in the household registration system between people whose families were registered in the 'inner territories' (*naichi*—i.e. Japan proper) and those registered in the 'outer territories' (*gaichi*—i.e. the colonies including Korea and Taiwan). After the war, being registered in the 'inner territories' and thus ethnically 'Japanese' was made a condition for the right of political participation. In this way, 'Japanese' from the former colonies were effectively robbed of their citizenship. This meant that they were placed outside the bounds of the national community. They remained nevertheless 'Japanese nationals' until Japan regained its independence under the San Francisco Peace Treaty. After enactment of this treaty, people from the former colonies were forcibly deprived of their Japanese nationality, and as foreign nationals were placed under the management and domination of the Immigration Bureau. This was equivalent, in Arendt's terms, to abandoning them as ethnic minority 'pariahs' to a condition in which they enjoyed no rights at all.

The motivation for this forced removal of citizenship rights and reduction to 'pariah' status was the fear that such 'exogenous outsiders' would publicly raise the issue of abolishing the emperor system if given the right to participate in politics. It is this sense of fear about any threatened dissolution of the 'communitarian democracy' (*kyōdōtai minshūshugi*) centred on the emperor system which lies at the basis of the discriminatory exclusion of people from the former colonies.

The Korean minority in Japan were dealt a further blow when they became the subjects of assimilationist pressure. In 1948, the then Ministry of Education imposed an obligation on Korean families to send their children to Japanese schools. An attempt was thus made to end the existence of separate 'ethnic schools' (*minzoku gakkō*) where the language, history and culture of ethnic minorities was taught. This heavy-handedness was further instanced in the use of a 'declaration of a state of emergency' by the occupying American military in order to force the closure of the Korean schools in the Osaka-Kobe region.

The disaster of the Korean War brought about a further worsening of the already desperate situation suffered by the Korean minority. Many people fleeing from the civil strife in the Korean Peninsula were forced to enter Japan by whatever means possible (including 'illegal entry'). Such people became, both de facto and de jure, stateless persons existing in a condition without rights and without the legal protection of citizenship. With the partition of the Korean Peninsula, the Korean minority in Japan lost even its internal unity, and became divided among itself between those with links to the two states of North and South respectively. Thus, the problem of stateless people was reproduced in postwar East Asia in the form of 'illegal immigrants' and 'refugees'.

Nearly fifty years after the Korean War and Japan's regaining of independence, the Korean ethnic minority now constitutes less than 50% of the total number of foreign nationals in Japan (including short stayers). This minority has over the years become 'permanently settled' and several new generations have been born since the first Koreans came to Japan before the war. Members of that first generation at present account for less than 10% of the minority population, and there is even a fourth and fifth generation. Nevertheless, there are still about 600,000 Koreans without Japanese nationality who

remain as permanent 'guests' in the 'host' society of Japan.

In Japan, there is no legally recognized category of 'denizen'. The only legal category mediating the dichotomy between the possession of full Japanese nationality and being a complete foreigner is that of 'permanent resident'. To the extent that it guarantees the right of continuous residence, and economic, social and labour rights, 'permanent residency' has come to bear some resemblance to the full citizenship enjoyed by 'Japanese'. However, one cannot say that it amounts to anything like 'denizenship'. If 'denizenship' is taken to include some degree of political rights besides residency and social rights, then the 'permanent residency' of the Korean minority falls far short of it. So far they have not been granted the right to represent themselves in the public sphere.

Recently, there was a movement to enact a law allowing Korean 'permanent residents' the right to participate in local politics. However, opposition from the ruling party and from the majority population eventually led to this being abandoned. In its place, plans have emerged to relax the conditions required for the acquisition of Japanese nationality. By making it easier for 'permanent residents' to become 'Japanese nationals', the aim is to speed up the process of 'assimilating' ethnic minorities. This goes against any idea of opening up the category of citizenship to include 'non-Japanese' nationals through the recognition of 'denizenship' or 'dual nationality'. This closed system of 'communitarian democracy' is founded on the idea that the three elements of Japanese nationality, Japanese ethnicity, and the sense of identity as a member of a cultural community form an indivisible totality. Any movement towards a multilingual, multicultural, or multiethnic society is thus blocked.

Indeed, the section of the Japanese constitution dealing with 'cultural life' (Article 25) merely speaks of promoting the material advancement of a homogenous nation. It does nothing to protect cultural diversity arising from different ethnic identities.

Thus, ethnic minorities in Japan remain like 'pariahs' lacking what Arendt calls a 'public life', and are therefore denied any footing in the human world. How can one possibly find a way out of this situation in which so many people lack even the basic 'human condition' and are without publicly secured human relations in general? It could be said that an infringement of human rights occurs not only 'when at least one of the rights listed as a human right is violated', but also 'when people lose their footing in the human world'. If this is so, it will be necessary to create a more open public sphere in order to guarantee human rights. As a first step, the rights of citizenship must be made more accessible by having them accrue not only to a single exclusive state community, but also to multiple communities. In concrete terms, this means the establishment of a system and form of citizenship which positively guarantees 'plural nationalities' (i.e. the possession of more than one nationality by a single individual). In order to make this possible, there must be a regional order in Northeast Asia, in which more than one state community can share the principle of national sovereignty. Korea and Japan would form the initial core of such a regional order. Exactly how this can be achieved and what form it should take are matters for investigation henceforth.