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Matsuda, Tsuyoshi
Fujiki, Atsushi

(Citation)

21世紀倫理創成研究, 10:75-91

(Issue Date)

2017-03

(Resource Type)

departmental bulletin paper

(Version)

Version of Record

(JaLCD0I)

<https://doi.org/10.24546/81009820>

(URL)

<https://hdl.handle.net/20.500.14094/81009820>



Asbestos in Japan: Social Mobilization and Litigation to Boost Regulation

Matsuda Tsuyoshi, Kobe University,
Fujiki Atsushi, National Institute of
Technology Kurume College.

“Victims use the scientists as tools for their own aims, it is not the case that scientists treat the victims as their data” ⁽¹⁾

Introduction

It cannot be overlooked that in East Asian level we have been now and still facing with a variety of pollutions or environmental crises including the results of the severe accidents of Fukushima 1st nuclear power plants of Tokyo Electric Company after Tsunami on 3.11 in 2011.

In this paper we are going to report and discuss about some aspects of social mobilization and litigation to boost regulation of asbestos in Japanese society from applied philosophical points of view by referring to two recent representative cases, so as to make explicit some features and contributions of Japanese ban asbestos activities in the comprehensive sense to the solution of such types serious social and ethical problems in comparison with similar ones of South Korea, China and Taiwan, as they were introduced by our colleagues in AAS conference named “*Horizons of Hope*” in 2016 ⁽²⁾.

The topics of our session, “Managing Harm in East Asia: Regulation or Class Action?”, were actually electric-waste in Japan and China (Peter Wynn Kirby & Anna Lora-Wainwright, University of Oxford), electronics industry and occupational health hazards in Taiwan (Chen Hsin-hsing, Shih-hsing University, Lin Yiping, National Yangming University), air pollution in the context of neoliberal governmentality in Korea in connection with informational regulation

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(JooHui Kim & Doogab Yi, Seoul National University) and the regulation of air pollution challenged by citizens in Taiwan (Rodolfo Hernandez, Rensselaer Polytechnic Institute/Qinghua University, Paul Jobin, Paris Diderot University/Academia Sinica).

All these presentations discuss about the legal and social conflicts concerning about harms and health risks (potentially and actually) caused by toxics or carcinogen by way of the general environment such as air pollution including asbestos or PM_{2.5} and industry wastes produced by high tech industries. However these problems are not always publicly visible nor recognized in our societies, because the truth of the related diseases such as ARD (asbestos related diseases), for example, are usually unremarkable for the lay citizens in the ordinary life, so far as the patients of ARD die in the obscurity in the bed of the hospital.

In this situation our issue here is among all to focus on the significance of the activities of the social movements by victims or their families as lay-citizens and the members of NPOs or NGOs in the case of ban asbestos movements in Japanese society, besides experts such as lawyer, medicals, media and academics et al., outside of court. This fact in our society can be interpreted as a consequence of the history of the social and local mobilization of the anti-pollution in Japan since 1960s as one of the most important backgrounds from the comparative points of view of the societies facing environmental crises. This is our main point in this short paper.

The case of Kubota-Shock

“Hanshin 阪神” (the district between Osaka 大阪 and Kobe 神戸) has been one of the most developed traditional industrial region in Japan. However especially in Amagasaki city⁽³⁾ we have had one of the worst asbestos hazards in the world besides the case of Casale Monferrato near Turin (Torino) in Italy⁽⁴⁾. It is said that because of its occupational and environmental exposure we have had almost 500 victims⁽⁵⁾, citizens and factory workers in sum until recently only in this city⁽⁶⁾. The number of the victims of the first

announcement in 2005 by the epidemiological research done by two experts of medicine and public health was about 100 since 1978. The magnitude of the victims in Amagasaki is outstanding in statistical comparison with those of all over the Japanese country where the total sum of the legally relived including asbestos workers and non-asbestos workers from 2006 to 2015⁽⁷⁾.

Generally speaking, the issue of asbestos had not been officially and widely recognized in the Japanese society before 2005 until coming outs of three volunteer patients of mesothelioma who were ordinary citizens before this incident, claiming for apologizing of the responsible company⁽⁸⁾. This was the beginning of the so-called “Kubota-Shock”; Kubota, known as a producer of farm machine, had produced asbestos water pipes or building materials until 1975 and 1997 respectively. And this incident raised acute public concern about asbestos health risks. Kubota has been paying at last the money officially for the victims after the negotiation that amounts to the same level of workers’ compensation in general.

And the Japanese government not only soon enacted “Act on Asbestos Health Damage Relief” (石綿健康被害救済法), but also has been conducting health risk surveys about previous inhabitants every year in some cities or areas like Amagasaki related with asbestos industries⁽⁹⁾ since 2006 besides additional actions clearing up the asbestos in the public buildings such as school or university, for example.

A series of these events from the beginning of “Kubota-Shock” has been making deep impacts for asbestos victims to make aware of the unclaimed legal and ethical responsibility of the same hazards from so to speak “the natural order of things” (according to the word of Yuoka Kazuyoshi as below) as it was traditionally and typically the case in the area of Sennan for 100 years and other victims all over the Japanese country⁽¹⁰⁾.

From these we can discern at least tentatively two stages or grades of the Kubota-Shock in itself. Those are the case of Amagasaki as such and the others after that. And concerning the case of Amagasaki, we can focus on the relatively rapid agreement for the “quasi compensation” between victims and

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the company in comparison with other prolonged litigations concerning the public hazards or pollution such as about Minamata disease from the view point of the Japanese modern history after the defeat of the Second World War or the creation of the Constitution of Japan⁽¹¹⁾. Therefrom we can indicate some important social factors such as the activities of the veteran negotiators of NPO and local politician⁽¹²⁾, the decision making of the head of the company with the consciousness of the Corporative Social Responsibility (CSR) at that time, the efforts of the detection of the victims by victims such as Furukawa Kazuko besides media coverage and so on. The complex of these elements could dramatically mobilize thereafter the regulations of the asbestos and the lawmaking for the related compensation and many lawsuits by the victims beyond the local incident.

These factors have proper backgrounds to be further explored from a more general point of view as follows: first, two negotiators were members of the Amagasaki city council in that time. One of them was supported by the union of the Kubota-company. The other also came from the union related with the following NPO⁽¹³⁾. This is one of the important condition of the successful agreement, (it is rather difficult for outsiders of the negotiation to make aware of it,) while the head of the company announced the decision making of the agreement by CSR for the local community of Amagasaki, without officially recognizing the causal relationships of the asbestos products of the company with the outbreaks of the mesothelioma of the victims according to “the scientifically strict standard” of the probability for each token case. Despite it the responsibility of the company had been virtually expressed by their “quasi compensation” at least before the lawsuits of other group against Kubota⁽¹⁴⁾.

About these circumstances could we say that this is a way of the social solution instead of the litigation facing with the highly critical situation of the victims for the relief and a sort of the “restoration” of their unjust illness? This question can be an issue for further researches and discussions from various points of view such as applied philosophy or STS (Science Technology and Society), as we can compare the Japanese cases with those of UK, South Africa

and India or Italy, not to mention East Asian countries. As for the cases of former three countries, for example, we can learn the complexity of the socio-cultural and political-historical constraints of facing and solving (or enhancing in a bad sense) the hazards and risks such as asbestos from the work such as *The Politics of Asbestos* by Waldman⁽¹⁵⁾. As for the case of Casale Monferrato, we can know the critical situation of the community from the psychological research of Granieri from the viewpoint of healthcare⁽¹⁶⁾. We have no such detailed and thoroughgoing researches about asbestos hazards and risks especially from the viewpoints of Humanities and Social Sciences in Japan yet.

Second, three coming out victims were mentally supported or empowered by the activities of group of “Association of Mesothelioma and Asbestos Related Disease Victims and their families” for the negotiation in the various levels. This group was established in 2004 by Furukawa with two other persons which has over 500 members all over Japan at the end of 2015. Furukawa got the Tajiri prize⁽¹⁷⁾ in 2006 because of her inexhaustible activities both of detecting the victims of ARD and of supporting them such as the application of the financial compensation, the mediation of the medicals for the patients, by corroborating with NPOs, doctors and other academics and making the voices of affected heard for the public. This advocacy for the health and life of the victims is indispensable for the trust of such type of the social movement.

And NPOs such as Occupational Safety and Health Resource Center and Ban asbestos organization in Tokyo and other cities since the late 1980s have been playing significant roles for this occupational and public health issue, not only the exposures of asbestos but also of radio activities after the nuclear accidents in 2011. They have raised public and governmental concerns as a sort of think tank and research center of asbestos risks in society also through the negotiations with the Ministry of Health, Labor and Welfare, Ministry of the Environment, and taking place the international events such as Global Asbestos Congress Tokyo in 2004, besides the ordinary supporting the victims of asbestos for the claim of workers' compensation, for example, and asbestos health risk communication including the education in school including the projects of the

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alert of the health risk after the severe earthquake such as Hanshinawaji in 1995 and Tohoku 2011⁽¹⁸⁾.

As we can see it clearly from the activities of the victims and NPOs in the case of asbestos hazards, the initiative factors of the citizens in “new social movements”⁽¹⁹⁾ of Japanese society has been actually very remarkable and characteristic for the trends of the counter actions against public hazards or technological risks⁽²⁰⁾, although these people belong to neither public institutions as city or state administrative offices nor faculties of universities. This factor is to be emphasized for thinking about not only its influence on the policy making of legislations for relief such as “Act on Asbestos Health Damage Relief”⁽²¹⁾, but also for the philosophy of risk evaluation, management and communication by participating of the related lay citizens from the beginning of these three processes.

The case of Sennan district of Osaka prefecture

As well as in Amagasaki, we also have had tragic case in Sennan district located southern part of Osaka prefecture. Sennan district was a center of Japanese asbestos industry. Before the rise of asbestos industry, there was already textile manufacturing in this district. Around the end of Meiji period, they took over the equipment of those textile factories and converted them to the asbestos spinning and weaving machinery. Since then, asbestos spinning and weaving had been a key industry in Sennan district over 100 years⁽²²⁾.

Obvious differences between Amagasaki and Sennan are their operational form and scale. In Sennan, almost all factories were household industry, that is, many of them were run by small and tiny companies that had only under ten-employees or so. Hundreds of these factories stood close together at the height of prosperity. So to speak, “whole town forms a huge asbestos factory”. Under this circumstance, people can hardly distinguish residential area from factories. These companies were gone out of their business several decades ago and therefore former workers, their family members and residents living in vicinity of those asbestos factories who demanded compensation for asbestos-related

health damage were not able to bring a suit against them. With the passage of time, as several regulations on asbestos were enacted, the numbers of factories gradually decreased. Now there is no asbestos factory in Sennan.

Kubota-Shock also had a significant effect on the asbestos issue in Sennan, as it was above suggested. About after a half year from the Kubota-Shock in 2005, “Japan Federation of Democratic Medical Institutions” (民医連), played a central role in making medical examination to the former workers and residents who had a history of residence in Sennan and revealed that 61% of 99 examinees had some sort of medical findings on asbestos related diseases in November 27, 2005⁽²³⁾. After that, the bereaved family members took the matter to Osaka District Court as a suit seeking redress by the state suing for compensatory damages for mental suffering on May 24, 2006. This is the first group and the very beginning of a series of lawsuits for government compensation, known as “Sennan asbestos class action launched against the State.” The second group also filed a class action on September 24, 2009. “The Government had known the hazard, and could control the asbestos, but did nothing”⁽²⁴⁾ is the slogan of these parties.

A main point of the issue is whether State’s non-use of regulatory authority has been illegal or not. The judgements had swung: on May 19, 2010, Osaka District Court gave an epoch-making judgment on the first case that admitted the liability of the Government. However, on August 25, 2011, Osaka High Court overruled the original decision and rejected the plaintiffs’ claim because the regulatory agency’s non-use of regulatory authority was not equivalent to the sins of omission. The judgment denied the liability of the government as if to say that industrial development should have been prioritized to life and health of the people⁽²⁵⁾. Victims and their supporters were disappointed at this decision, which caused repercussions in Japanese society. In contrast, Osaka District Court on March 28, 2012, and Osaka High Court on December 25, 2013, both recognized State liability in the second Sennan case⁽²⁶⁾. Osaka High Court gave different decisions between first and second cases⁽²⁷⁾. In brief, excepting Osaka High Court judgment on the first case, the judiciary

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handed down a sentence that partly granted the plaintiffs' demand.

On October 9, 2014, at last the Supreme Court held in the Sennan Asbestos case that the State was liable for failing to promptly issue the ministerial ordinances to regulate asbestos based on the Labor Standards Act and the Industrial Safety and Health Act⁽²⁸⁾. Judges condemned the Government for failing by 1958 to have legislated that factories be equipped with mechanical measures to remove asbestos dust from the air; guidelines which had been issued were advisory and not mandatory. The five judges who adjudicated this case found that the Government's failure to take timely and appropriate action was "extremely unreasonable" as well as "illegal." As a consequence of its negligence, the Government was liable for ARD contracted by two groups of claimants including ex-factory workers from Osaka's Sennan industrial district. This was the first time the Supreme Court ruled against the State in an asbestos case ⁽²⁹⁾.

After the decision, the Ministry of Health, Labor and Welfare accepted the sentence. The Minister of Labor apologized and announced that the government was willing to settle with the plaintiffs of other similar actions, and pay compensation under the same conditions as the Sennan cases⁽³⁰⁾. The Ministry of Health, Labor and Welfare now opens the procedure of settlement for asbestos lawsuits to the public ⁽³¹⁾.

As a matter of course, these achievements were accomplished not only by the defense counsel. The group of Yuoka Kazuyoshi⁽³²⁾, Asbestos Victims and Citizens in Sennan District, has supported the victims and their bereaved family members and have enlightened citizens who do not know about asbestos in Sennan. It might be hard to win the lawsuits without these grassroots or new social movements.

Concerning the judgments from the viewpoint of the environmental justice, it is important to note that Osaka District Court dismissed the claim of three plaintiffs on May 19, 2010. The claim as neighborhood was rejected because one of judges said, "I cannot pronounce that symptoms of plaintiffs have been caused by asbestos exposure, and neighborhood inhabitants are

ineligible to be legally protected.”⁽³³⁾ The judgment showed a sharp contrast between Okada Yoko and her mother Harumi. Okada Harumi had worked at asbestos spinning mill in 20 years and was recognized as a victim suffering from ARD. She was diagnosed as asbestosis after her retirement in 1987, and subsequently, was acknowledged her health problem as occupational disease in 2005. Meanwhile, Yoko had no work experience in asbestos industry. So she was not recognized as work-related disease although she was diagnosed with asbestosis as same as her mother. Defense counsel insisted that her disease was probably caused by para-occupational exposure to asbestos fibers, but the court did not accept the causal relationship between asbestos and disease. Besides that, she was not relieved by the Act on Asbestos Health Damage Relief, enacted on 2006 at least at that time. This was obviously a lack of the law⁽³⁴⁾. Minami Kazuko also complained that her deceased father, a farmer working in the rice fields near the asbestos factories, had been damaged over the years, but as well as Okada Yoko, the court disallowed the claim for compensation⁽³⁵⁾. It is true that the victims, bereaved family, defense counsel and their supporters such as NPOs or NGOs won the historic victory, however, relief for all victims does not realize yet.

Conclusion

Conclusively it is no exaggeration for us to say from our brief characterization of two cases of “Kubota-Shock” in Amagasaki and Sennan especially in connection with the “quasi-compensation” by the company and lawsuits about State liability that “new social movements” with various local traits as well as legal fights in the lawsuits are essentially and normatively decisive both to build public consensus about the various problems of asbestos risks and hazards and to boost its regulation in Japanese society. In other words, we should not ignore the socio-ethical importance of multilayered relationships with asbestos related victims, NPO activists, together with lawyers, experts or academics of various disciplines and media for making possible both social mobilization and litigation, as one of the paradigmatic case

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of the environmental issues such as asbestos.

notes

- (1) *Reconstruction without human beings, Evacuation from the nuclear accidents and the “non-understanding” of the Japanese people*, p. 358. Chikuma-bunko, Tokyo. 2016. Y. Yamashita, T. Ichimura, A. Sato. [『人間なき復興 原発避難と国民の「無理解」をめぐって』ちくま文庫、山下祐介・市村高志・佐藤彰彦]
- (2) This session was held in Doshisha University. 2016.6.25. The panel organizer and chair was Paul Jobin and the discussant was Anne Gonon (Dôshisha Univ.). This paper is an extended version of the presentation of two authors on that conference.
- (3) Amagasaki with about 450,000 citizens in 2016 was one of the representative heavy and chemical industrial city in Japan until 1980s, where also a lot of asthma patients have suffered from air pollution.
- (4) The details of the case of Casale Monferrato is described by *Eternit and the Great Asbestos Trial*. 2012. Ed. by David Allen and Laurie Kazan-Allen. IBAS, London. The criminal court in Torino in Italy judged Swiss and Belgian owners of the Casale Monferrato factory of Eternit guilty for the victims of their industrial actions in EU in 2012. However the Supreme Court in Italy changed the lower court's decision against one of the owner by prescription in 2014 (The other was dead after the first judgement). The above mentioned e-book reports the cases caused by Eternit also in Brazil, Holland, France, Belgium and Denmark. The Japanese edition of it adds the case of the Japanese Eternit. The career of one of the owner of the company, Stephan Schmidheiny is a typical “green wash” to camouflage his life of the criminal manager with the gaudy activities of the supporter for the environment.
- (5) This is reported by Iida Hiroshi, secretary of “中皮腫・アスベスト疾患患者と家族の会”(“Association of Mesothelioma and Asbestos Related Disease Victims and their families”) in Amagasaki in 2016. According to the epidemiologist, the peak of the outbreak of mesothelioma in Japan has not

been ended because of the history of the use and imports of the asbestos, especially crocidolite.

- (6) Succinctly speaking, asbestos has two faces, namely “a magical natural mineral” for industries, that is, individually unseen micro-fiber, and a “killer dust” that can cause ARD as mesothelioma, lung cancer and asbestosis. Among ARD mesothelioma is the most serious in its pain and prognosis for remaining life, because of no efficient cures. Additionally, this disease has remarkable features: one of its awkward problems is its very long incubation period, from 20 to 50 years after exposures. And one cannot unconditionally determine the threshold of exposures. To make matters worse, asbestos has been rather ubiquitous in our life world for its technical usefulness and economic effectiveness still after its ban in Japan.
- (7) One comparative data to the case of Amagasaki is the number of the recognized by the “Act on Asbestos Health Damage Relief” for not asbestos-workers since 2006. Until the end of 2016 the total sum of the relived is 11,598 according to the office of ERCA.
http://www.erca.go.jp/asbestos/relief/uketsuke/pdf/20161227_nintei.pdf.
- (8) In 1986 so to speak the first asbestos panic that was motivated by the detection of crocidolite in the school buildings in Japan was reported by media in rather large scale. However that did not work for the efficient alert for its public awareness of the problems and its complete prohibition of asbestos. Japanese government postponed the regulation of it against ILO convention because of “the safety of the asbestos use under control” in its words in the same year.
- (9) These health risk surveys cannot be called epidemiological research in genuine or strict sense because the participants of them are only volunteers and very partial among the target persons in each objective region. About some problematic aspects of this survey from the view points of the applied philosophy one of the authors of this paper discusses in other places: Matsuda. 2012. “Applied Philosophical Possibilities of Qualitative Research, From Experiences of Fieldwork about Environmental Risks” *The 2nd*

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International Conference Applied Ethics and Applied Philosophy in East Asia, ed. Wang Qian, 大連理工大学出版社 pp.105-114. Matsuda. 2011. "A consideration on the underscore of asbestos health risk survey from the case of Yokohama Tsurumi" *Journal of Innovative Ethics*, Vol.4, pp.86-113. [In Japanese]

- (10) The general situation of the asbestos problems in Asia can be known from Laurie Kazan-Allen, 2007. *Killing The Future: Asbestos Use in Asia*. (Japanese edition Atworks.2007.trans.by Yasma Takeshi. BANJAN). Many Asian countries including China and India still do not prohibit chrysotile by claiming that it can be controlled, as the Japanese government previously insisted on it.
- (11) The readers can know the essentials about the problems of Minamata disease also from English translations of the works of Ishimure Michiko and the doctor Harada Masazumi, such as *Paradise in the Sea of Sorrow: Our Minamata Disease* (translated by L. Monnet 2003 from Michigan Classics in Japanese Studies) and *Minamata Disease* (translated by Tsushima Sachie and Timothy S. George, edited by Timothy S. George Kumamoto Nichinichi Shinbun Culture & Information Center, 2004) beside a lot of sociological, legal and epidemiological researches written about it in Japanese.
- (12) The sociologically important problem of the negotiation is discussed by Shrader-Frechette in chapter 12 of her *Risk and Rationality Philosophical Foundations For Populist Reforms*. University of California Press 1991.(Our Japanese translation from Showado,2007)
- (13) The brief history of the Kubota-Shock is told in the chapter 1 of *ISHINOWATA*(『石の綿 マンガで読むアスベスト問題』かもがわ出版 松田毅・竹宮恵子監修) in 2012 which was produced by us, the Project of Innovative Ethics of Kobe University and the group of the students of the graduate school of Kyoto Seika University from the interviews with the related persons and in the corporation with "Association of Mesothelioma and Asbestos Related Disease Victims and their families." One of these two is Iida Hiroshi. He was an activist in his youth in the university who decided his mind to be a real worker in the factory so as to change the society according to his words. This motive of the activists cannot be

- underestimated in the case of ban asbestos movements in Japan also from other cases of veteran activists in NPOs.
- (14) The data of the quantities of imports of asbestos by Kubota, for example, was disclosed by the company to the group of the victims at that time that includes two epidemiologists showing the dispersions of the patients in Amagasaki city and its causes from the meteorological situations around the previous asbestos factory.
- (15) *The Politics of Asbestos Understanding of Risk, Disease and Protest*. Waldman, L., 2011. London. Very succinctly speaking, the workers' ethos of masculinity in UK, the reform after the regime of Apartheid for relief of victims in South Africa and the knowledge politics about risks in India are remarkable points or issues in her explanation for the situations of different societies concerning about asbestos problematic.
- (16) Cf. Granieri, A., 2015. "Community exposure to asbestos in Casale Monferrato: from research on psychological impact to a community needs-centered healthcare organization" *Ann Ist Super Sanità*. 51. N.4:336-341. Granieri is the head of the support team of this operation. I appreciate Doctor Helen Clayson for sending this paper for my attention of it. This paper focuses on the aspects both of the interpersonal relationships in the suffering community and its resilience from bottom up level or participations of the patients and the relatives through the multidimensional intervention by oncologist and other experts.
- (17) Tajiri Muneaki (1928-1990) was a public officer or "Kogai G-men" accusing many public hazards as criminal since the late of 1960s. He committed with also asbestos problems including Ban asbestos organization 石綿全国連 (Ban Asbestos Network) in 1987.
- (18) In cooperation with the local governments their activities have been making impacts on the protection of the workers and inhabitants from asbestos exposure also after the severe earthquake such as in Kumamoto in 2016. Our Project Innovative Ethics in Kobe University has been making some inventions of the pamphlets by story manga about the asbestos risks after

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the earthquake and the trials of the card game “Cross Road” by work shop method for the reduction of risks and better decision making, so as to make much more sensitive to the risks for lay citizens and students.

- (19) Our concept of “new social movements” comes from Italian sociologist, Alberto Melucci in his *Nomads of the present: social movements and individual needs in contemporary society*, edited by John Keane and Paul Mier, 1989 Temple University Press. Melucci emphasizes the moments of the “spontaneous” and “self-expressive” mentality of members of these social movements from the cases in Italy in contrast to the typical labor movements for pay dispute in a confrontation between labor and management.
- (20) This trait of “new social movements” can be already seen from the movements of inhabitants, students and intellectuals for the patients of Minamata diseases caused by industrial mercury contamination in Minamata bay since 1960s.
- (21) https://www.env.go.jp/en/chemi/asbestos/law_aahdr.pdf. This law is revised by the committee of Japanese government including the member of “Association of Mesothelioma and Asbestos Related Disease Victims and their families.” About the problematic limitations of this law are discussed by Sakamoto Masahide, for example. 坂本将英「包括的石綿健康被害補償制度の構築に向けた提言—被害者の立場から考える新たな補償制度について」『環境経済・政策研究』Vol.8.No.1 (2015.3),1-18. This paper includes also both the financial and statistical data of the system of the asbestos victims relief by this law and the proposals for a new scheme of compensation according to the model of “Pollution-Related Health Damage Compensation Act” (公害健康被害補償制度).
- (22) The asbestos story of Sennan is also told through a fictional character created from the interviews with victims in Sennan in the chapter 6 of 『ISHINOWATA』. A well-known Japanese film producer Hara Kazuo has been producing a documentary film about the victims and the related people in Sennan for 9 years titled “Sennan Asbestos in Japan, How much

- do lives of asbestos victims cost?” (『ニッポン国泉南石綿（アスベスト）村
—劇場版 命で なんぼなん？—』). It is expected to see the movie soon.
- (23) Isono Yayoi, “Supreme Court Decision in the Sennan Asbestos Case” ,
Research on Environmental Disruption, vol. 44, No.3, Winter 2015, p.55 (磯
野弥生「泉南アスベスト最高裁判決の意義と課題」、『環境と公害』 pp.55-60. [in
Japanese])
- (24) Osaka Lawyers Advocacy for the Victims of Asbestos Disease, “Serious
Health Hazard of Asbestos in Sennan Area”
<http://www.asbestos-osaka1.sakura.ne.jp/kataseru/english.html>
- (25) *Ibid.*
- (26) Okubo Noriko, “Judicial Control Over Acts of Administrative Omission:
Environmental Rule of Law and Recent Case Law in Japan” , pp.189-202., in
Volker Mauerhofer ed, *Legal Aspects of Sustainable Development: Horizontal and
Sectorial Policy Issues*, 2016, Springer
- (27) Fujiki Atsushi, “Responsibility of the State and Employers; Workers’ Health
in Asbestos Issues” , pp.82-83., in Naoe Kiyotaka and Morinaga Shinichiro
eds, *JABEE Kijun Taiou (Science and Engineering Ethics for the Students in STEM Fields*
(『理系のための科学技術者倫理』): *Conforming to the JABEE Accreditation
Criteria*, 2015, Maruzen [in Japanese]
- (28) Okubo Noriko, *op. cit.*, p.195
- (29) Most of this paragraph is quoted from Laurie Kazan-Allen, “Historic
Asbestos Ruling by Japanese Supreme Court” in English. [http://www.
ibasecretariat.org/lka-historic-asbestos-ruling-by-japanese-supreme-court.php](http://www.ibasecretariat.org/lka-historic-asbestos-ruling-by-japanese-supreme-court.php).
In connection with this it is interesting and important to talk about one of
the related judgments, in the second instance in Osaka concerning this state
compensation in 2013. In this case defendants of Japanese government have
claimed for individual responsibility of workers with no previous knowledge
of asbestos risks working without protective masks, as it was the same
legal reason as in the previous judgment of the first instance. However, the
judge of the second instance claimed for the Japanese government that they
legally should have forced the employers to let the asbestos workers wear

protective masks during work time, because the voluntary wearing of this mask was not expectable for workers from uncomfortableness of difficult breathing and hand working etc. The first judgment recognized the patients as necessary evil associated with the burden of modernization of economy, to decriminalize the government. <http://www.asbestos-osaka1.sakura.ne.jp/2014/02/2-4.html>. cf. Matsuda. "Ethics for Public Health from the view point of Advocacy" *Research on Practice Route of Applied Ethics in East Asia Proceedings of the 5th International Conference Applied Ethics and Applied Philosophy in East Asia* ed.by. Wang Qian and Wang Hulil. Science Press Beijing. 2015. pp.65-75. Matsuda discusses the meaning of this judgement in 2013 in comparison with that of the court of USA in 1980 concerning about no smoking rule in the workplace introduced by the Johns-Manville Corporation in USA. Manville was one of the biggest asbestos industry company in the world until 1980s that began to try reducing asbestos exposures of its employees through dust apparatus on workplace mainly in the preparation for worker's compensation by occupational ARD. This prohibition of smoking in the factory by Manville was judged "unjust" from legal priority of free decision of the worker's lifestyle.

(30) Okubo Noriko, *op. cit.*, p.196

(31) The Ministry of Health, Labor and Welfare, On procedure of settlement for asbestos lawsuit [in Japanese] <http://www.mhlw.go.jp/stf/seisakunitsuite/bunya/0000075130.html>

(32) Yuoka studied the Asian history in Kyoto University and his family managed the asbestos spinning factory in Sennan before and after the Second World War. And he is citizens' ombudsmen. These complexity of his career is also one of the important elements of social mobilization in its backgrounds that should be made more explicit from the traditions and contexts of the thoughts of locality or "local knowledge" in Japanese modern society and history. We have some examples of them such as "Yanaka-gaku 谷 中学" by Tanaka Shozo, "Minamata-gaku 水俣学" by Harada Masazumi. We have some similar minds also in our two cases

indeed. With them we could acquirer a kind of “social capital” in rather wider sense. See Matsuda, 2015. “Towards environmental ethical conception of “social capital” as “commons” ” *The 6th International Conference Applied Ethics and Applied Philosophy in East Asia* 国立台湾大学 (manuscript)

(33) *The Sankei Shimbun*, May 20, 2010.

(34) The law was amended later for the patients of severe asbestosis by the appeal of the victims group.

(35) *The Yomiuri Shimbun*, May 20, 2010.