

Thesis  
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***BŌTAIHŌ*: JAPANESE ORGANISED  
CRIME UNDER THE *BŌRYOKUDAN*  
COUNTERMEASURES LAW**

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This thesis is dedicated to

Chiba Shinichi Sensei

*“Jibun ni Kibishi”*

## ABSTRACT

This thesis is an investigation into the effects of the 1992 *bōryokudan* countermeasures law (*bōryokudan taisaku hō* or, more simply, *bōtaihō*) on Japan's organised crime syndicates (*bōryokudan* or *yakuza*). Underlying this examination is a functionalist perspective of organised crime which rests on the premise that, far from being unambiguously socially dysfunctional, organised crime groups exist because they satisfy needs held by various sections of society (both in the upper and under-worlds). This approach demystifies many of the supposedly unique aspects of the *bōryokudan/yakuza* (such as *yakuza*-authority symbiosis) and places Japan within the compass of modern organised-crime studies. An empirical overview of the *bōryokudan*'s development from 1945 to 1992 shows that the prime dynamic behind this evolution has been the legal and law-enforcement environment within which these groups exist and that frequently the impact of these changes has been socially undesirable. Attempts to examine whether or not the *bōtaihō* has similarly exacerbated organised criminality in Japan are hampered by the collapse of Japan's bubble economy in 1990. This event had profound consequences for *bōryokudan* groups rendering many activities unviable, whilst simultaneously creating new opportunities. Despite these extraneous considerations, the *bōtaihō* has had an observable impact on many aspects of the *bōryokudan*'s activities and some of these consequences have been socially undesirable. The legal analysis of the *bōtaihō* is placed in the wider context of international organised-crime control measures, in

particular America's RICO statutes and European laws, both of which were highly influential in the debate within Japan concerning the framing of new anti-*bōryokudan* laws. The thesis concludes by arguing that the radically different structure of the *bōtaihō*, vis-à-vis these alternative models, is part of a wider reversion to pre-war legal and policing norms in which, in addition to enforcement of the criminal law, the police also exercise considerable administrative powers.



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## CONVENTIONS

Japanese words are transliterated according to the modified Hepburn system, with macrons used to express long vowel sounds (with the exception of long “i” sounds as in Ishii). Macrons are not used in commonly known Japanese place names. Thus Tokyo and Osaka do not take macrons: Hokkaidō, Kōbe and Kotobuki-chō do.

Japanese personal names are given in the normal Japanese order with family names preceding given names. Where it has been impossible to confirm personal names the most likely reading has been given.

Sterling values of Japanese yen (¥) sums are given at the exchange rate prevailing at the year in question. A yen-sterling conversion chart for the years 1970-1998 is given in the appendix. At the time of writing (May 2000), the current rate is ¥158 to the pound.



GLOSSARY

<i>Amakudari</i>	‘descent from heaven’, post-retirement employment for bureaucrats
<i>Bakuto</i>	gambler/gambling <i>yakuza</i> group
<i>Bōryokudan</i>	‘violent group’, official term for Japanese OC groups
<i>Bōtaihō</i>	<i>Bōryokudan</i> Countermeasures Law
<i>Bōtsūsen</i>	Centres for the Eradication of <i>Bōryokudan</i>
<i>Chūshi meirei</i>	Stoppage order ( <i>bōtaihō</i> injunction)
DKB	Dai-ichi Kangyō Bank
<i>Gashira</i>	See <i>waka-gashira</i>
<i>Gokudō</i>	‘The extreme way’, <i>yakuza</i> way of life
<i>Gurentai</i>	Non-traditional Japanese gangster group, racketeers
<i>Habōhō</i>	Subversive Activities Prevention Law
<i>Hamon</i>	Expulsion
<i>Hanzai Hakusho</i>	White Paper on Crime
Heisei (period)	1989 -
<i>Hōmu-shō</i>	Ministry of Justice
HSB	Heiwa Sōgō Bank
<i>Ikka</i>	<i>Yakuza</i> (fictive) family
<i>Jun-kōsei-in</i>	Uninitiated <i>bōryokudan</i> members, apprentices and affiliates
<i>Keisatsu-chō</i>	National Police Agency
<i>Keisastu Hakusho</i>	White Paper on Police
<i>Keizai Yakuza</i>	Economic <i>yakuza</i> – <i>bōryokudan</i> involved in sophisticated financial and business crimes

<i>Kobun</i>	Fictive son, protégé, follower
<i>Kōsei-in</i>	Full gang member
<i>Kumi (-chō/-in)</i>	<i>Yakuza</i> group (boss/member)
<i>Kyōbai Bōgai</i>	Auction obstruction
<i>Kyōdai</i>	Brother
LCN	La Cosa Nostra (Italian-American organised crime)
LDP	Liberal Democratic Party, <i>Jimin-tō</i>
Meiji (period)	1868 - 1912
<i>Mizu-shōbai</i>	‘Water trades’, Japan’s hospitality/entertainment industry
MOF	Ministry of Finance
MOJ	Ministry of Justice
<i>Nawabari</i>	(Gang) territory
<i>Ninkyō (-dantai)</i>	Chivalry (‘chivalrous group’ i.e. <i>yakuza</i> )
NPA	National Police Agency
NRIPS	National Research Institute for Police Science
OC	Organised Crime
<i>Ōkura-shō</i>	Ministry of Finance
<i>Oyabun</i>	Fictive father, patron, boss
RICO	Racketeer Influenced and Corrupt Organizations Statute
<i>Saihatsu bōshi meirei</i>	Repetition prevention order ( <i>bōtaihō</i> injunction)
<i>Sakazuki</i>	Ritual exchange of sake cups creating fictive familial relations within <i>yakuza</i> society
<i>Sarakin</i>	High interest rate loan companies
<i>Shinogi</i>	Any source of <i>yakuza</i> income, fund-raising activity

Shōwa (period)	1926 - 1989
<i>Sōkaiya</i>	Corporate blackmailer
<i>Songiri</i>	Loss cutting
Taishō (period)	1912 - 1926
<i>Tekiya</i>	Peddler/peddler <i>yakuza</i> group
<i>Waka-gashira</i>	Sub-boss
<i>Yakuza</i>	Traditional Japanese ( <i>bakuto/tekiya</i> ) outlaws, popular term for <i>bōryokudan</i>
<i>Yama-ichi tōsō</i>	Conflict between the Yamaguchi-gumi and breakaway Ichiwa-kai (1984-9)
<i>Yubitsume</i>	Ritual <i>yakuza</i> finger amputation
<i>Zetsuen</i>	Severing of connections, irrevocable expulsion

## CHAPTER ONE

### RESEARCH NOTES

#### RESEARCH AIMS

The researcher's interest in the *yakuza/bōryokudan* (Japanese organised crime syndicates), which ultimately resulted in this thesis, was first stimulated by the apparent paradox of a number of large, clearly identifiable criminal gangs operating openly within a society widely regarded as one of the industrialised world's most crime-free. Initial recourse to the popular English-language literature, such as van Wolferen (1989) and Kaplan and Dubro (1986), suggested that this paradox was resolved by seeing these syndicates themselves as an integral part of the crime-control process in Japan and enjoying a quasi-symbiotic relationship with the legitimate law-enforcement authorities.

This raised a number of questions. Is this popular '*yakuza* as social guardians' folk-thesis correct? If so, was this control function unique to Japan or can it be seen also in the behaviour of non-Japanese organised-crime groups with respect to their own host communities? Is it appropriate to categorise the *yakuza/bōryokudan* as organised-crime groups or should some other term be applied? Is Japan actually as crime-free as is popularly asserted?

The researcher's curiosity was further aroused when he learned that, in 1992, a law had been introduced that specifically targeted these groups. The existence of the

'*bōryokudan* countermeasures law' (*bōryokudan taisaku hō* or, more simply, *bōtaihō*) suggested that either the folk-thesis, with its implicit assumption of symbiosis, was not entirely correct, or that this law was merely a sham introduced to disguise the underlying reality.

The main purpose of this thesis is therefore to ascertain what effects the '*bōryokudan* countermeasures law' has had on the *bōryokudan*. This investigation rests on a theoretical model of organised crime derived from American and European criminologists. An empirical examination of the pre-*bōtaihō* *bōryokudan* shows this model to be entirely applicable to these groups. It is therefore appropriate to class the *bōryokudan* as manifestations of organised crime. This theoretical approach provides us with a powerful analytical tool to examine the roles that the *bōryokudan* play in Japanese society and their relationship with the law-enforcement authorities. In investigating the effects of the *bōtaihō*, therefore, we should also be able to answer the more general questions stimulated by the folk-thesis outlined above.

However, before embarking on this investigation, it is perhaps pertinent to examine the other half of our apparent paradox. Is Japan's reputation as a low-crime society justified and, if so, what are the underlying causal factors for this?



## JAPANESE CRIMINALITY

Over recent decades Japan has been held up as a criminological anomaly in that it has uniquely managed to combine increased urbanisation and industrial development with a decreasing crime rate. Not only have crime rates been decreasing, but they have long been considerably below those of other major industrial countries. As a consequence of Japan's apparently low criminality, many attempts have been made to explain this phenomenon in the hope that this will lead to policy prescriptions for more criminogenic societies.

It is however necessary to question the underlying supposition that Japan really is the criminological aberration that the literature claims. It should, first of all, be noted that Japan's (non-traffic) crime rate (non-traffic criminal-law violations per 100,000 of the population) is no longer declining and has not done so since the mid-seventies; more recently it has risen from 1,091 in 1973 to 1,607.5 in 1998 (*Keisatsu Hakusho* 1999, 116). Professor Shiibashi of Chuo University law department points out that of even greater importance than the overall rise is the dramatic increase in youth crime which, combined with the declining arrest rate, has led to a heightened public perception of crime as a significant social problem (interview Tokyo: June 1999).

Despite this, Japan still boasts crime statistics considerably below those of other advanced industrial countries. In 1997, 1,511 crimes were recorded by the police per 100,000 of the population. The comparable figures for England and Wales, Scotland, France and the USA are larger by factors of 5.84, 5.42, 3.84 and 3.33

respectively (Home Office 1998, 214). These statistics are, however, misleading because the Japanese figure consists only of non-traffic criminal law (*keihō*) violations but not special law (*tokubetsuhō*) infringements including drugs, firearms and prostitution-related cases. To give some idea of the scale of special law violations, note that the 1997 *Hanzai Hakusho* (p. 79) records that 1,134,350 people were processed by the prosecutor's office for offences of this type. However, even if the Japanese crime rate is doubled to account for the difference in measurement techniques, Japan still has a lower recorded crime rate than the other countries cited above.

There are perhaps grounds for believing that Japan's 'dark figure' of unreported crime is higher than that of the other countries with which it is usually compared. Reporting levels are difficult to estimate with any degree of confidence but the 1988 British Crime Survey suggests that the overall reporting rate of crimes in Britain was 37% (Mayhew et al 1988, 11). Compare this with an investigation reported in the Japan Times (16 October, 1978) suggesting crime rates that exceeded the official reported ones by factors of 11 for burglary, 24 for shoplifting and 54 for assault. More recently, Tanioka (1997, 42), in his test of the applicability of control theory, found that the total number of offences committed by juveniles in Osaka exceeded those known to the police by sixteen times.

Perhaps more significant is the comparison made by Kersten of rape statistics for Germany, Japan and Australia. In this study Kersten observed that, whilst the overall rape figures were much lower in Japan, the breakdown of the Japanese statistics showed a much higher proportion of rapes by strangers than was the case

for the other two countries. Kersten himself is careful not to jump to the conclusion that Japanese rape victims systematically fail to report acquaintance rapists. Instead he suggests that there may be other factors making acquaintance rape less likely in Japan than in either Germany or Australia. He does, however, concede that this type of crime is “dramatically under-reported” in Japan (1996: 389). Indeed the Japanese police themselves now admit this and accept that, in the past, police treatment of victims has been insensitive (Aldous and Leishman 1999: 28).

Whilst it does not give an overall figure for Japan, an international comparison conducted in 1988 of reporting rates for various different categories of crime consistently showed Japan to be lower than the other countries surveyed (North American and European countries plus Australia). On average Japan showed a reporting rate less than two-thirds that of the total sample population (JUSRI 1991, 130).

Under-reporting of crime is least likely for homicide and for this crime there is also least likelihood of different statistical techniques blurring international comparisons (though even here differing legal definitions and recording practices prevent problem-free comparisons). In 1997, 1,281 homicides were recorded in Japan. This translates to a rate (per 100,000) of 1.02. The comparable rates for England and Wales, Scotland, the USA and Germany are 1.42, 2.51, 7.34 and 1.44 respectively. Whilst Japan therefore enjoys a much lower homicide rate than the United States, it is not greatly lower than England and Wales and is actually higher than Norway (0.87) (Home Office 1998: 215). This fact clearly illustrates the pitfalls of taking the United States as one’s point of reference. Such a comparison tends to



accentuate a difference which may be marginal, or even non-existent, vis-à-vis other countries.

Whilst therefore the statistics concerning Japanese criminality are both worsening and not as remarkable as much of the celebratory literature would suggest, it must be concluded that Japan is still less troubled by crime than most other modern, heavily urbanised societies. Even the most vociferous critics of Japan such as van Wolferen (1989: 194) accept this. If we accept these statistics, what possible reasons are there to explain Japan's relatively low criminality?

In a 1997 review of the relevant literature since the 1970s, Won-Kyu Park identifies four key trends amongst the various explanations of Japan's comparative absence of criminal behaviour. These he categorises as cultural, demographic/geographic, socio-economic and finally legal/administrative. Although it is recognised that there will inevitably be a degree of overlap in these various factors, with many writers proposing multi-causal theses, this convention is adopted for clarity of analysis.

The most common approach taken by the literature is to credit low Japanese criminality to cultural factors. This tendency has been especially prevalent since the 1970s and the development of theories of Japanese uniqueness (*nihonjinron*) as a response to the challenge to cultural identity imposed by rapid economic growth. Although these arguments were initially deployed by triumphalist Japanese observers, they were subsequently adopted by American commentators such as the 1975 Citizen's Crime Commission and, most famously, Vogel (1979). The main

components of the culturalist thesis are that Japan is a group-centred society with Confucian values stressing an acceptance of authority, conformity, discipline and hard work. Moreover, this society exerts effective informal social controls on its members, which are reinforced by Japan's status as a 'shame culture' (Benedict 1946) or a dependency (*amae*) culture (Doi 1973).

These cultural arguments are supported by one branch of the demographic/geographic trend in the literature. One of the central pillars in the *nihonjinron* thesis is the oft-repeated assertion of Japan's racial homogeneity and this is also applied to the criminological debate. As an island nation with a long history of isolation, it is argued that Japan is free from the conflicts inherent in multi-cultural societies and can more comfortably achieve consensus and social stability. On a more concrete level, geographic factors have also been seen as significant; Japan's absence of land borders with other countries has inhibited the inflow of both drugs and weapons, thereby contributing to its low crime levels.

Attempts to explain Japan's crime rates with reference to socio-economic factors have concentrated on the affluence generated by the high growth of Japan's economic miracle and the comparatively egalitarian way in which that wealth has been distributed. High rates of economic growth also stimulated a correspondingly high demand for labour resulting in unemployment rates lower than those of other industrialised countries. Potential criminals have therefore been absorbed into the labour market and have not, consequently, been available for recruitment into full-time criminal activity. Japan's high rates of education have also been cited as a

factor encouraging socialisation and therefore a contributory element in the low propensity to crime for the Japanese.

The final category in Park's typology of the Japanese crime-rate literature concerns the effectiveness of legal and administrative factors. The components of this are the efficiency of the criminal-justice system, good community policing, effective controls on drugs and guns and a more enabling environment for law-enforcement officers. Japan's high clearance rates of crime by the police and even higher conviction rates by prosecutors are taken as indicative of a highly professional system of law-enforcement and justice administration. The supposedly excellent relations that Japan's police have forged with the wider community, typified by the *kōban* (neighbourhood police box) system, have given them a high degree of trust and public support. This is seen as a highly significant contributory factor in the control of crime.

On a more ambiguous note, it has been argued by some such as Miyazawa (1992) that the Japanese police operate in an environment unhampered by the constraints of due process that law-enforcement personnel in other countries are obliged to work within. They are therefore free to perform their crime-control function in a more efficient manner. Whilst this may well be the case (though several police interviewees asserted that the formal powers they have are far less than their fellow officers in either Europe or the United States), whether this is a politically acceptable price to pay for more effective crime control is open to question. This aspect of the Japanese police will be dealt with in more detail later.

In his study, Park found that the most commonly cited factor was the efficiency of the criminal-justice system (mentioned in 67% of the literature). This was followed by group-centricity (66%), community policing (56%), ethnic homogeneity (50%), effectively controlled drugs and firearms (42%), increasing economic affluence (39%), Japan's disciplined, dutiful and law-abiding society (37%), high employment (37%) and the effectiveness of informal social processes for exercising control (35%). Whilst a critical analysis of each of these factors lies out-with the narrow scope of this thesis, the examination of Japan's criminal-justice and law-enforcement systems provided in the concluding chapter will shed light on the significance of these two particular considerations.

If we accept that Japan remains a society less afflicted by crime, or perhaps more accurately disorganised crime, than other modern industrial countries, which of these competing explanatory arguments is correct and what are the processes by which their effectiveness is currently declining? Whilst it is not the main objective of this thesis to answer these questions, it is hoped that the evidence presented in the following chapters will offer insights into the way in which law is enforced in Japan. In the concluding chapter, therefore, attempts will be made to draw this investigation of organised crime in Japan into the wider debate on Japanese criminality.

## **RESEARCH NOTES**

Research consisted of eight months' fieldwork combined with an examination of the available published sources. Unfortunately, due to the extreme paucity of up-to-



date and relevant literature available in the United Kingdom, the researcher found himself trying to carry out literature searches and research simultaneously. It is greatly regretted that it was not possible to make a short exploratory trip to assemble the basic literature early in the first year of this research. Not only would this have expedited conclusion of this project, but it would also have enabled the researcher to commence his fieldwork with a firmer grasp of the subject.

## **SOURCES**

### **PROBLEMS WITH THE LITERATURE**

“Much of what has been written on the subject of organized crime is either inaccurate or distorted” (Nelli 1986: 1).

There are a number of substantial obstacles facing any serious academic study of organised crime (hereafter OC) behaviour and this is reflected in the current state of the literature. Due to the considerable problems of access, very little academic investigation into OC has been based on participant observation or other primary research based on direct contact with active crime-group members. As a consequence, most of the literature in the field is derived from insider, journalistic or governmental sources. These sources are problematic for a variety of reasons.

Due to the illegal and highly competitive nature of most of such organisations' activities, OC groups must, to remain effective, retain a high degree of operational security to protect themselves from both law-enforcement agencies and their

business rivals. Information provided by OC sources themselves must therefore be treated with a high degree of caution. Stark (1981: 7) notes that, even when the information may be entirely innocuous, members will be reluctant to disclose details of their gang's activities as it may be interpreted as a lack of discretion.

The desire for secrecy is not the only reason for such sources to be considered with suspicion; as is the case for all organisations, there is a tendency for OC groups to have a public image which they wish to present to the world. Information they disseminate to the outside world will therefore tend to be limited to that which is highly functional towards propagating this image (Stark 1981: 18). A significant proportion of the journalistic *yakuza* literature has come from the pens of those who, whether consciously or not, have been used by gangs to further their public relations in this way. Although writers on Japan tend to couch this phenomenon in terms of *tatemae* and *honne*, or *omote* and *ura*<sup>1</sup>, such behaviour is not peculiar to that country as Goffman (1959) and Machiavelli (1983 [1532]) so clearly illustrate.

Autobiographies by former gangsters may not only endeavour to legitimise OC by putting forward the organisation's public image; they may also, paradoxically, pander to the dictates of the market place by exaggerating, or even fabricating, the more lurid aspects of their trade. One example of this, cited by Abadinsky (1994: 104), is the bizarre autobiography of self-styled "Mafia kingpin" Sonny Gibson who boasted amongst other things to have "executed twenty-four persons; (run) 150 different corporations; (thrown) nine prison guards over the wall...(and had) sex with 10,000 different women".

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<sup>1</sup> Making the distinction between the surface appearance/polite pretence (*tatemae/omote*) and the reality (*honne/ura*) of a given social or political situation.

This tendency towards sensationalism is even more pronounced in the treatment of OC by the media and in books derived from journalistic sources. Shady conspiracy theories and sinister bogeymen make good copy. This problem is exacerbated by the use of the media by “sources”, in both the underworld and the law-enforcement community, to further their own interests. Abadinsky (1994:103) cites a number of cases in which government bodies had leaked fabricated information in order to protect their agents or to foment conflict between members of OC groups.

As well as a desire for a favourable public image, governmental agencies can be postulated as having a set of objectives. Foremost amongst these will be the desire for increased budgetary allocation and power. It can therefore be expected that the information generated and released to the outside world by these bodies will, in part, be influenced by considerations as to how these underlying objectives may be served. For example, Baer and Chambliss (1997), in a powerful critique of the United States’ burgeoning ‘law-enforcement-industrial complex’, show how official crime statistics are manipulated, either up or down, according to the prevailing political imperatives. It should be noted here that those bodies responsible for law-enforcement are usually the same as those responsible for the collation and presentation of the official data.

A more mundane problem with the official literature is that it necessarily concentrates on those aspects of criminal activity which have, in some way or other, failed and thus attracted the attention of the police. Those operations which are successful, remain unobserved. A reliance on the official statistics, therefore, yields

a highly partial interpretation of a more complex reality. In particular the police statistics might be assumed to accentuate the level of violence and other hard-to-conceal criminality.

### LITERATURE ON THE *BŌRYOKUDAN*

Within the criminological community in Japan there appears to be a prejudice against research into the *bōryokudan*. As a consequence, the bulk of the academic literature dealing with this field is almost entirely dependent on the official presentation of reality as provided by the National Police Agency. Much of the academic literature on the *bōryokudan*, therefore, presents no significant advance on the pre-existing official literature.

Perhaps the most notable exception to this tendency is Iwai Hiroaki's *Byōri Shūdan no Kōzō* (the structure of pathological groups) published in 1963 which is rightly acclaimed as the classic text on the *yakuza*. Writing with a solid grounding in the contemporary western literature in social psychology and criminology, Iwai provides over eight hundred pages of highly detailed description and analysis of the history, structure and operation of the *bakuto* (gambling), *tekiya* (peddler) and *gurentai* (racketeering) groups out of which the modern Japanese *bōryokudan* evolved. It is now over thirty years since the publication of this work and unfortunately no single work of equal stature has emerged in recent years to update



it. Iwai has also produced short chapters in English in Lebra (1974) and Kelly (1986), and these offer clear and pertinent introductions to the subject.

The main official source is the National Police Agency's annual white paper (*Keisatsu Hakusho*)<sup>2</sup>. This document provides a police appraisal of the previous year's crime levels, arrests, and police activity, plus whatever topics are perceived to be of current importance (for example, the 1999 paper contained a 54-page chapter on the fight against trans-national crime). The police white papers tend to be written in a highly formulaic way and the reader becomes conditioned to skip over the ritual claims that:

Under these circumstances and in order to chase the *bōryokudan* to dissolution and destruction, the police are raising up all their strength and powerfully pursuing a general anti-*bōryokudan* strategy based on the three pillars of a thorough crackdown on *bōryokudan* crimes, effective use of the *bōryokudan* countermeasures law, and the promotion of *bōryokudan* eradication activity (identical wording in *Keisatsu Hakusho* 1997: 183, 1998: 174, 1999: 147 – only marginally different in the preceding two years).

Similarly upbeat wording is to be found in police white papers over the previous two decades. Despite this subtext, it is a valuable resource in showing the police's

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<sup>2</sup> The Ministry of Justice produces an annual White Paper on Crime (*Hanzai Hakusho*), a similar document, though from the perspective of the Prosecutor's Office.

interpretation of reality. It can also shed light on trends in police activity and priorities – for example, the increased police interest in victim-support in recent years.

In addition to the police white paper, a valuable official source is the Journal of Police Science (*Keisatsu-gaku Ronshū*) produced by the National Police Academy. This is published monthly and largely comprises articles written by serving police officers and, less frequently, by researchers from the National Research Institute for Police Science and other academics. Whereas the police white papers are essentially for public consumption, the readership of this journal is largely composed of police officers (especially those preparing for promotion exams). In addition to detailed reports on various aspects of police work it regularly gives explanations of new laws and how they relate to police work. Although the articles in this journal usually contain an early disclaimer that the views are those of the writer rather than the NPA, they tend to be highly uncontroversial in their analysis. Another journal, *Keisatsu Kōron*, serves a similar, educational, function but is directed at lower-ranking police officers.

The third official source of information is the National Research Institute for Police Science (*Kagaku Keisatsu Kenkyū-jo*, or within the police, *kakeiken*). Although part of the NPA, NRIPS is jointly staffed by police officers and academic researchers. The Crime and Delinquency Prevention Department of this institute contains highly able criminologists who conduct much of the most interesting primary criminological research in Japan. In addition to publishing reports of their research

findings, NRIPS personnel also produce numerous conference papers; after his first visit there, the researcher returned heavily laden with papers dealing with every conceivable aspect of contemporary Japanese social pathology.

Following their retirement, NRIPS researchers, such as Mugishima, Hoshino and Nishimura, are recruited by universities as criminology professors. Of these, Hoshino is perhaps best known for his work on the *bōryokudan* and he has produced an enormous number of papers on this subject in both Japanese and English. Since the retirement of Hoshino Kanehiro from NRIPS, the emphasis of the Crime and Delinquency Prevention Department's research interests seems to be shifting. There is less work currently published on *bōryokudan*-related matters and an increased interest in juvenile delinquency and victim-support.

Despite the caveats about using official sources of information, it is argued here that their use is justified. In particular, the NRIPS research and the articles in the *Journal of Police Science*, having the primary function of fulfilling the informational requirements of practising law-enforcement officers, can be considered to be essentially accurate. Stark, in his outstanding research on the *yakuza* (of which more later) found that the official data were superior to those produced by journalistic and academic sources and were corroborated by his own research findings (1981: 10).

The other major source of information is journalistic. Through the system of *kisha* clubs, whereby bureaucratic agencies limit the flow of information to favoured groups of journalists, the mainstream press exercises a high degree of self-

editorial censorship over what they print. As a consequence, little is printed in the major broad-sheet papers on the *bōryokudan* unless a major event unfolds, in which case it is covered in an uncontroversial manner relying on police briefings for its material.

However, in addition to the mainstream press, there is a vibrant and irreverent assortment of weekly magazines (*shūkanshi*) which maintain a tradition for investigative journalism. Whilst these magazines are unashamedly low-brow, with nude photographs and salacious reviews of establishments selling sexual services being regular features, the *shūkanshi* provide a much more robust presentation of the news and are generally responsible for exposing scandals (an American acquaintance, working on the Tokyo desk of a well-known newspaper, confessed to this researcher that much of her most interesting work originated in *shūkanshi* articles). Alongside exposés of the other sleazy aspects of Japanese society, these magazines carry regular articles on the *bōryokudan*.

Existing as a sub-genre of these magazines are a collection of weekly and, more usually, monthly magazines devoted exclusively to dealing with the *yakuza*. These contain news and photographs of recent succession ceremonies and *yakuza* funerals, interviews with bosses and historical articles. These magazines, known as either *jitsuwashī* or *gokudōshi*, enjoy the same sort of relationship with the *bōryokudan* as the mainstream press does with the police. Consequently the journalists covering *bōryokudan* affairs take care to present their subject as their sources would like it to be seen. *Jitsuwashī* are popular with gang members themselves, and one of the



researcher's lawyer informants reports that he is often asked to take the most recent issues to his incarcerated clients.

Although the status of these magazines as little more than *bōryokudan*-propagandists makes them sources which must be treated with extreme caution, they are extremely useful in terms of keeping abreast of *yakuza* personnel developments, arrests and inter-gang conflicts. Not surprisingly the police, both at operational and bureaucratic levels, are avid readers of these journals (NPA interviewee). On one occasion, when the researcher requested background information from the police on the loose umbrella federation covering the *bōryokudan* active in the Kantō area, he was given a copy of a recent article from *Jitsuwa Jidai*, one of these magazines.

Several of these *gokudō* journalists have written books dealing with the *bōryokudan*; these have the same drawbacks as the journals themselves but also contain much pertinent information. Yamada's three-volume account of the fifth-generation Yamaguchi-gumi, for example, contains a comprehensive chronology of the most important events in the organisation's recent history. However, the first volume's opening hagiographic account of fifth-generation boss Watanabe's simple lifestyle, passion for reading early Chinese history and deep knowledge of the *bōtaihō*, sets the tone for the remainder of the series.

Perhaps the most useful articles produced from the *yakuza* journalists are collected within Takarajima's series '*Yakuza to Iu Ikikata*' (1986, 1992 & 1997). Of these, '*Kore ga Shinogi ya!*', the second in the series, contains the most detailed

examination of the various sources of *bōryokudan* income (collectively known as *shinogi*). An Osaka-based lawyer, with a long history of defending *bōryokudan* clients, particularly recommended this text as accurately representing the reality of contemporary *bōryokudan* economics. As well as featuring such well-known *yakuza* writers as Ino, Yasuda, Hinago and Asakura, these collections also contain chapters written by Yamanouchi who achieved notoriety due to his work as legal advisor to the Yamaguchi-gumi. Following his resignation from the Japan Bar Association, Yamanouchi has capitalised on this notoriety working as a *yakuza* journalist, novelist and film maker.

Although initially a *yakuza* journalist, Mizoguchi Atsushi, stands above this genre for both the quality of his writing and for the unbiased and highly critical observations he makes of the modern *bōryokudan*. As well as making notable contributions to the weekly magazines, the Takarajima series and similar publications, Mizoguchi has published many works of his own, including a three-volume history of the Yamaguchi-gumi's civil-war (the Yama-ichi *tōsō*). Perhaps his most significant work, and the best single one-volume introduction to the modern *bōryokudan*, is his 1997 work '*Gendai Yakuza no Ura-chishiki*'. Mizoguchi's work was recommended to the researcher by both police research officers and serving gang members. Perhaps the greatest boost to his credibility came in 1990 when he fell victim to a Yamaguchi-gumi-inflicted stabbing.

Another interesting journalistic source is Kyōdo News Agency's 1993 '*Riken Yūchaku*', an examination of the links between the worlds of politics, business and the *bōryokudan*. This work is unusual in that it is a serious exposé of the links between these different constituencies and lies outside the field of *yakuza* journalism. *Riken Yūchaku* concentrates on two specific *bōryokudan*-related scandals of the late 1980s (Kōmintō and Heiwa Sōgō Bank) to illustrate the way in which the *bōryokudan* continue to play a functional role for both business and political elites in Japan.

There are very few English language sources dealing with the *bōryokudan*, and most of those that exist are now highly dated. DeVos (1973) provides a historical overview of the *yakuza*'s development and the relationship they have traditionally enjoyed with the authorities due to the *yakuza*'s usefulness as agents for the repression of a perceived threat from radical and subversive forces.

DeVos also recounts legends and folk-tales of past *yakuza* heroes, noting the way in which these legends have continued to find favour in Japan as an outlet from the repression inherent in modern Japanese society. This mythologised past has also furnished the current *bōryokudan* with a romantic public image that persists today. Buruma (1984) deals with these media portrayals of the *yakuza* in greater detail. In recent years there has been a tendency, however, for less flattering representations of *bōryokudan* in films and television dramas. Tōei studios, the film-makers most

responsible for the *ninkyō eiga* genre, stopped making these films in 1994 (though grittier hard-action *bōryokudan* movies are still churned out for the video market) (Schilling 1996, 41). Itami Juzō's *Minbō no Onna*, an irreverent spoof of the modern *bōryokudan*, stands outside either genre.

Without doubt the finest piece of original research on the *bōryokudan* available in English is the unpublished 1981 PhD thesis of the anthropologist Harold Stark. Stark's work was based on one year's observation of a gang in western Japan. This fieldwork was firmly grounded on a command of the available Japanese literature. Stark's work successfully demystifies the *bōryokudan* and demonstrates convincingly that they are an integral part of the wider social fabric rather than a purely parasitic aberration. As well as providing an outstanding analysis of the *bōryokudan*, Stark's account of his fieldwork methodology is recommended to any aspiring researcher of social life and clearly illustrates the enormous reserves of patience and fortitude required for such research.

The other case of primary anthropological research on *yakuza* groups available in English is that of Jakob Raz (1992). Raz's academic background is in Japanese theatre and this is apparent in his 1992 paper which concentrates on "self presentation and performance in the *yakuza* way of life". The choice of the word "*yakuza*" rather than "*bōryokudan*" is significant and reflects the broadly sympathetic treatment Raz gives his subjects. Raz's fieldwork was with a traditional festival-peddler (*tekiya*) gang and he uses this experience to explore the



contradictions expressed in the language, rituals and dress of this gang, which show both their desire for inclusion and their marginality. These strains are manifested in their emphatic assertions of Japaneseness and defiance in the face of rejection by *katagi* society. Raz argues that the theatricality of the *yakuza*, as seen in the colourful participation of *tekiya* in Japan's *matsuri*, plays a central part in Japanese cultural life.

Although Raz is right to stress the Japaneseness of the *yakuza/bōryokudan*, this does not invalidate the thesis developed below that the underpinning theoretical considerations of OC transcend the cultural differences of its many manifestations. Dale's (1986) contention – that what are often cited as aspects of “Japanese uniqueness” can be found to have analogies in traditional patterns in other societies – is relevant here. This is clearly the case with the quasi-feudal nature of OC groups in America and Europe.

Due to the official policy of eradicating *tekiya* from Japanese festivals, such groups are now a dwindling minority relic of the traditional *yakuza*. Raz's work, therefore, should not be seen as representing the totality of the contemporary *yakuza/bōryokudan*. In addition to his short 1992 monograph, Raz has published a fuller anthropological study in Hebrew (translated into Japanese under the title ‘*Yakuza no Bunka-jinrui-gaku*’) though this is not available in English.

Wolfgang Herbert is currently active conducting primary research on the *bōryokudan*. Not only does Herbert have a solid grasp of the relevant Japanese

literature and an academic background in critical criminology, he has forged good contacts with *bōryokudan* members active in western Japan. Herbert's most recent work (2000) adopts the latest contributions to OC theory developed by Gambetta (1993) and Fiorentini and Peltzman (1995) (and also deployed in this thesis). Unfortunately much of his work is confined to a German-literate audience (thereby excluding, for one, this researcher) though his PhD thesis, dealing with illegal foreign workers and law-enforcement, has been translated and published (1996). Herbert has also published a number of more general, journalistic articles.

Although now slightly dated, there are two English-language historical analyses of Japanese OC. Both Shikita and Tsuchiya (1992) and Huang and Vaughn (1992) are largely derived from official sources but, of the two, Huang and Vaughn is superior in both detail and scale. After a straightforward account of the five phases in the post-war evolution of OC in Japan, the characteristics of the modern *bōryokudan* and recent trends in their development, Huang and Vaughn deal with the countermeasures the police have taken in opposition to *bōryokudan* activity. They conclude, in agreement with the consensus in the literature, that the relationship between the police and the *bōryokudan* is essentially a symbiotic one and it is only when the gangs go beyond the bounds of acceptable behaviour that the police feel compelled to adopt a less accommodating stance.

Without doubt the most influential English language publication on this topic is Kaplan and Dubro's 1986 work, '*Yakuza: The Explosive Account of Japan's Criminal Underworld*'. This book is well-researched and written in a highly

readable, fast-paced journalistic style. It has become a major source for non-specialist, introductory texts and internet web-sites. Although Kaplan and Dubro rightly identify the ever-changing nature of the *bōryokudan*, the emphasis these authors give to the historical links between *yakuza* and political elites, itself an evolving relationship at the time of the book's publication, still lingers in much of the literature derived from this book. Kaplan has also produced an informative occasional paper (1996) on the activities of the *bōryokudan* in the bubble economy of the late 1980s. At the time of writing, Kaplan is preparing a second edition of his 1986 book.

Tamura (1992) and Vaughn, Huang and Ramirez (1995) have both published useful papers, in English, on the role of the *bōryokudan* in Japan's drug trade. Szymkowiak (1996) gives a fully comprehensive account of the activities of *sōkaiya* corporate-extortionists and their relationship with *bōryokudan* syndicates. Although there is no comparable dedicated analysis of the *bōryokudan*'s involvement in other economic sectors, a number of English-language works provide useful side-references on various aspects of the *bōryokudan*'s multifarious business activities. For example, Fowler's excellent 1996 work on the day-labourers in San'ya gives a good account of the labour-broking and other services provided by the various *bōryokudan* groups in that area. Constantine (1993) and Bornoff (1994) shed light on the *bōryokudan*'s involvement in Japan's sex industry.

## LITERATURE ON THE LAW

The most useful single source on the legal framework within which the police operate vis-à-vis the *bōryokudan* is the NPA's 1997 '*Bōryokudan Taisaku Roppō*' (Complete Laws of *Bōryokudan* Countermeasures). In addition to the full text of the *bōtaihō* itself, this work contains those criminal, special and administrative laws which collectively comprise the *bōryokudan* countermeasures available to the police. This work is primarily intended as a reference for serving police officers. In addition to this the NPA (including the affiliated Centres for the Eradication of *Bōryokudan*) provides a number of explanations of the *bōtaihō* at varying levels of complexity according to the target audience.

More critical analysis of the new law is provided by Endō (1992), a criminal defence lawyer famous for his work defending prominent Yamaguchi-gumi members, and more recently Asahara Shoko, leader of the Aum Shinri-kyō doomsday cult. Another useful critique of this law is given by the published proceedings of a 1992 symposium on the *bōtaihō* organised by lawyers and legal academics concerned at this increase in police powers (Kai & Ōno 1992).

The *Nihon Bengoshi Rengō-kai* (*Nichibenren* or Japan Bar Association) is another invaluable source of legal material. In addition to formal legal analyses of the *bōtaihō* (see, for example, 1997), this organisation produces simpler guides (such as



*Bōryokudan Hyakutō-ban*, 1998) for the benefit of non-specialists who might find themselves victims of *bōryokudan* harassment. It also produces more specialised guides, such as the introduction to the available legal mechanisms facilitating the eradication of *bōryokudan* offices (*Bōryokudan Jimusho Haijō no Hōri*, 1998).

An excellent appraisal of the *bōtaihō* set in the wider context of general *bōryokudan* countermeasures is given in a set of essays commissioned by the All Japan Centre for the Eradication of *Bōryokudan* (ed. Fujimoto, 1997) to mark the fifth anniversary of the new law's implementation. Not only does this provide a very clear commentary on the law's structure, development and legal rulings, there are also interesting chapters on other means of combating *bōryokudan* groups such as current *bōryokudan*-eradication activity and the increased use of civil law to sue gang members for wrongful harm.

English language sources on Japanese law are scarce. Whilst the Ministry of Justice publishes translations of many laws, the *bōtaihō* has not been officially translated. General introductions to Japanese law are provided by Noda (1976) and Oda (1992). Not only is the latter text more up-to-date and clearly laid out; it is preferable in that, unlike Noda, it does not seek to explain Japan's apparent aversion to formal legal procedure in terms of nebulous socio-racial characteristics. This tendency to avoid full utilisation of the civil and criminal justice systems in preference for informal social mechanisms is brilliantly dealt with by Haley in his outstanding 1991 work, 'Authority Without Power: Law and the Japanese Paradox'.

Haley's central thesis is that this preference for 'extralegal, informal mechanisms of social control' rather than being the product of some innate cultural characteristic, has been artificially imposed by the authorities to compensate for the weakness of their coercive power.

Whilst Haley argues this case convincingly, the most recent judicial statistics are suggestive of a shift towards greater reliance on formal legal sanctions. This raises a number of interesting questions. Assuming Haley is correct in his analysis, do subsequent shifts imply an increase in the coercive power of the state or rather that informal social-control mechanisms are no longer effective? Whilst an in-depth examination of such questions lies out-with the scope of this thesis, it should be remembered that they have important implications for the study of organised-crime groups in Japan: norms of informal conflict resolution, combined with a slow, expensive and uncertain system of formal justice, are important factors in creating a market for private protection that, as we shall see, is the core competence of organised crime.

### LITERATURE ON THE POLICE

Obviously, any study of organised-crime countermeasures must accord a high degree of importance to the role of the police. It was not until midway through his research, however, that the researcher became aware as to the fuller implications of this thesis as an aid to understanding not only the nature of the *bōryokudan*, but also Japanese policing norms.



The most enlightening Japanese language source on the police, is the Japan Bar Association's examination of them (*Nichibenren*, 1995). In particular this book was most useful in alerting the writer to the problems associated with the Public Safety Commissions. Tanioka Ichirō's excellent 1998 work on the *pachinko* industry provided a further pointer as to the ways in which the Japanese police may make use of administrative law (*gyōseihō*), of which the *bōtaihō* is an example.

There are also a number of books in English which deal with the modern Japanese police. Bayley is largely responsible for creating the perception of the Japanese police as a model of community policing centred on the *kōban* system with his highly laudatory 1976 work. Parker (1984) adopts a similar tone and both these works conclude a direct causal relationship between Japan's supposedly excellent community-police relationship and its low crime rate. Ames (1981) offers a more balanced analysis noting the strain between the durability of authoritarian traditions and modern democratic policing structures. Ames' chapter on the relationship between the police and organised-crime groups is particularly excellent.

Recently there has been a perceptible trend towards a more critical analysis of the Japanese police in the English-language literature (though the same pattern is not to be found in the Japanese literature). The most notable contribution to this field is Miyazawa Setsuo's superb account (1992) of his fieldwork observations and interviews of police in Hokkaidō<sup>3</sup>. Miyazawa's work is unique in that since its

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<sup>3</sup> Although Miyazawa's work can be seen as part of this trend in the English-language literature, it is, in fact, based on an earlier Japanese publication, and his fieldwork was conducted in 1974.

publication no prefectural police chief has granted permission for academic observation of operational police investigations.

McCormack (1986) in his damning indictment of the criminal-investigation methods employed by the Japanese police, most noticeably their use of 'substitute prisons' (*daiyō kangoku*), also fits into this more critical trend in their portrayal in the (English-language) literature. More recently, the concerns expressed by McCormack have recurred in Amnesty International's annual reports on Japan. These concerns are echoed in Herbert's (1996) examination of law-enforcement and foreign workers. Aldous and Leishman (1997 & 1999) are the most recent contributors to this 'realist' reappraisal of the Japanese police, taking into account developments such as the flawed police investigation into the Aum Shinrikyō subway gas attack.

Aldous, in his investigation of the police during their period of post-war reform and later reversion, places the authoritarian-centralised and democratic-decentralised aspects of the police, identified by Ames, in their proper historical context. Another useful historical work is Mitchell's examination of thought-control in pre-war Japan (1976). This work illustrates the traditional preference for administrative, rather than strict legal, controls and the tendency to use these controls in a surprisingly lenient fashion. This idea is further developed in Haley (1991).

## FIELDWORK RESEARCH

Fieldwork was conducted between January and September 1998. During this time I was a visiting researcher at the Institute of Social Science (*Shakai Kagaku Kenkyūjo* or, more usually, *Shaken*) at Tokyo University. Because this institute has no direct research interest in the *bōryokudan*, most of my time on campus was spent in literature searches rather than discussing my research with the academic staff there. In retrospect it is to be regretted that I did not fully exploit the legal expertise of the professors at *Shaken* as this would have alerted me much earlier to the fuller implications of my research.

Despite affiliation to *Shaken*, my most important academic contact was Professor Hoshino Kanehiro of Teikyō University. Due to his former employment at the National Research Institute of Police Science, Hoshino has both an encyclopaedic knowledge of the *bōryokudan* and a vast network of contacts in both the academic and law-enforcement communities. He was most generous in sharing this experience with me as well as arranging introductions to many of the other leading experts in this field.

The foremost introduction provided by Hoshino was to the personnel at NRIPS, in particular, Tamura Masayuki, Uchiyama Ayako, and Yonezato Seiji. Not only were these researchers most generous of their time and research papers, but they were also instrumental in arranging interviews with various aspects of the police

machinery. Unfortunately, for some reason, these official interviews entailed Yonezato having to accompany the researcher to the sites of these interviews.

These initial interviews were of uneven usefulness. Whilst this is partly due to the inexperience and breathtaking ignorance of the researcher in the early days of his fieldwork, the official route through which these interviews had been arranged, and the environment in which they were conducted, led to their yielding little information outside that available in the official police literature. One interview, conducted in a busy working office, with the interviewee's colleagues bustling by, sticks in the researcher's memory as an abject lesson in how not to conduct research. This tendency, combined with my reluctance to further unnecessarily disrupt Yonezato's busy working schedule, led me to move away from these NRIPS-sponsored interviews.

Later police research conducted through informal, personal connections proved to be vastly more informative. In particular two weeks of fieldwork conducted with the police in Iwate prefecture was made possible due to the introduction from my old karate teacher to Superintendent (now Senior Superintendent) Numazaki, his school-friend. During this period I was based at the Police School (of which Superintendent Numazaki was then head) and went each day to conduct research at a different department of the Police Headquarters.

It was later explained to me by an interviewee in the security police (*kōan keisatsu*) that Numazaki had *kobun* (protégés) in every department save security. It had been these *kobun*, mostly acquired during Numazaki's time in the *kidōtai* (riot squad),



who had been primarily responsible for facilitating my research and looking after me. The importance of informal *oyabun-kobun* networks, more usually associated with *yakuza* organisations, even within the formal bureaucratic hierarchy of the police, is highly illuminating. Without access to this network of personal ties provided by Numazaki, it is most unlikely that this research would have been feasible; at best it would have taken considerably longer to establish links of my own.

It had initially been hoped to conduct research with *bōryokudan* groups in Iwate. During an earlier two-year stay in Iwate, I had met, and enjoyed the hospitality of, the boss of the largest gang in the prefecture who was related to my karate teacher. This individual had retired in the late 1980s when the Yamaken-gumi had moved into the prefecture and taken over his organisation. By the time of my fieldwork, he was seriously ill with liver-disease (a major cause of *yakuza* mortality). Due to my well-publicised research with the Iwate police, the poor health of this boss and a reappraisal of the social impact my research might have on the numerous friends and connections I have in the area, I decided that it would be better to conduct primary *bōryokudan* research elsewhere.

Fortunately my sister's former German exchange, currently studying in Japan, was able to introduce me to her initial host in Kōbe who was a criminal-defence lawyer with many prominent Yamaguchi-gumi members amongst his clients. This lawyer, after hearing of my research aims, agreed to meet me and proved to be an invaluable contact. During my first, exploratory, visit to the Kōbe/Osaka conurbation, I was



able to interview this lawyer. He also introduced me to two of his close colleagues, one of whom was Yamanouchi Yukio, formerly the legal advisor to the Yamaguchi-gumi. These individuals were of enormous help with my research.

During my second visit to Kōbe, my lawyer friend had arranged to introduce me to two of his clients that he felt would be of most use to me. Unfortunately, on my arrival, I discovered that one of them had just been arrested whilst the other had gone to Korea. I was consequently introduced to two other clients of my lawyer contact. The first of these, 'Tori', was the boss of a third-level Yamaguchi-gumi sub-group whilst 'Mihara', the second, was a senior executive of the first and boss of a fourth-level organisation in his own right.

At the introduction my guarantor stressed that I was neither a journalist nor a policeman and was engaged in academic research. To corroborate this I presented them with my name card identifying me as a visiting researcher at Tokyo University. Due to the enormous status-consciousness of *yakuza* members, this was an asset. The fact that they had a foreigner from Tokyo University seeking knowledge from them, enhanced the status of these interviewees in the eyes of their colleagues and associates.

It quickly became apparent, however, that as research subjects they were far from ideal. Although they were happy to entertain me, they certainly, and understandably, did not want to provide me with a factual analysis of their business operations. Despite visiting both Tori and Mihara's gang offices and spending an evening drinking with them alongside two of Tori's more able associates, little

credible information was forthcoming. Tori himself seemed to be intent on impressing me with ever more outlandish claims as to his martial-arts accomplishments and this undermined the credibility of his more relevant observations. Whenever I tried to turn the conversation round to my research topic, he would fill up my glass and suggest that I ask his associates, 'Kurihara' and 'Inugami', later as they were men of real ability whilst he himself was a fool<sup>4</sup>. Although the short time spent in the company of Tori and Mihara's gangs was by no means wasted, I was largely neutralised in my research aims. Given the considerable length of time it took Stark to gain meaningful access to the Araki-gumi, the superficial nature of my research with Tori and Mihara is not entirely surprising.

During my third visit to Kōbe/Osaka, I had considerably more success due to my introduction to 'Fujimura', a retired fourth-level boss of a Yamaguchi-gumi (later Ichiwa-kai) sub-group. Fujimura, whose intelligence was highly rated by my lawyer contacts, was an enormously valuable source of credible information. Rather than trying to impress me, Fujimura was keen to demythologise the *yakuza*, stressing rather the extremely ordinary nature of such organisations. Consequently, Fujimura was my most useful single interviewee.

Another useful contact was made through the introduction of an old university friend whose ex-girlfriend's father, 'Ujihara', was a business associate of a high-ranking Yamaguchi-gumi official in a provincial city in central Japan. Just before

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<sup>4</sup> There is a certain justice in this in that the researcher also frequently adopted the role of harmless fool when in an unpredictable research environment.

my return to Scotland, this business associate was released from prison and I was able to corroborate some of the information gleaned from Fujimura and elsewhere. Ujihara was extremely open and helpful though, like Tori and Mihara, he saw me as something of a status symbol. At each bar we visited he insisted on my presenting my name-card to the mama-san so that they would know of my university affiliation whilst he explained to them the nature of my research.

Whilst my most important interviews were conducted through the introductions of personal contacts, where no such contacts existed and there were no great problems of sensitivity, I managed to arrange interviews with writers, such as Ino Kenji and Mizoguchi Atsushi, and the anti-*bōryokudan* lawyer Yamada Hitoshi, by approaching them directly.

Whilst the majority of formal interviews with official sources were recorded, those with gang-related people were not. In addition many recorded interviews were followed by invitations to go out drinking. It was frequently during these drinking bouts that the most interesting information would start to come out. Whilst alcohol has the advantage of loosening people's tongues, it has the disadvantages of speeding their speech, strengthening regional accents and impairing the researcher's ability to mentally catalogue this new information.

According to Hoshino, Stark, who apparently had a formidable alcohol-tolerance, got round this problem by cultivating a reputation for a weak bladder. During his frequent trips to the bathroom, he would quickly take down his research notes. Ames, by contrast, was a Jehovah's Witness and consequently drank no alcohol, a

fact which made Hoshino wonder how he could ever have done useful research on the police. Invariably I would end up sitting in the last train home trying desperately to construct sensible notes.

My third trip to the Kansai area coincided with a mini-conference on organised crime in Kōbe<sup>5</sup>; so, although not able to spend much time in interviewing or fieldwork, I was able to make the acquaintance of many criminologists and lawyers who were later to provide invaluable advice and comments on my work. Foremost amongst these are Dr. Wolfgang Herbert and professors Miyazawa Setsuo, Nishimura Haruo and Mike Levi. This conference was part of the larger 12<sup>th</sup> International Congress on Criminology held in Seoul (August 24-9, 1998), which I was also fortunate enough to attend. Attendance at these conferences was useful not so much for deepening my understanding of organised crime in Japan as for suggesting to me that my knowledge of the subject surpassed that displayed by the papers presented by the various representatives of officialdom.

In addition to the interviews and meetings outlined above, I also conducted various trips to areas of interest. In the day-labourer areas of San'ya, Kotobuki-chō and Kamagasaki, I talked to the homeless residents of those unhappy places, communist and Christian activists and various low-ranking *yakuza*. In Kamagasaki, on two consecutive days I visited an illegal gambling den. Fellow *Shaken* visiting researcher, Apichai Shipper, introduced me to Kotobuki-chō and the foreign

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<sup>5</sup> "Organised Crime and Organisational Crime: Frontiers in Research, Theory and Policy" Kobe, 19-21 August 1998.



prostitutes' area of Shin-ōkubo. Chance meetings on the streets (for example a group of extreme-right-wing boxers) and in bars (such as the public-relations chief of a large religious organisation) also yielded good information or promising contacts for future investigation.

I found this approach tended to be considerably more enlightening than much of the more formal research I carried out. It is greatly to my regret that I did not spend more time 'hanging-around' in bars and other disreputable places rather than trawling through libraries or putting on a suit and tie to interview the experts.

In the summer of 1999, I was able to return briefly to Japan to fulfil a longstanding social obligation. The limited research objective of this visit was to clarify various legal queries concerning my work. Due to financial and time constraints, little primary research was accomplished, though I was able to discuss the development of my work with many of my most significant informants.

## RESEARCH ETHICS

Right at the beginning of this research, an American academic smilingly assured me that I would never complete my project but would instead get sucked into gang life and 'go native'. *Yakuza* members are indeed frequently highly intriguing individuals who entertain their guests well, and the writer must confess to a certain ambivalence in his feelings for them. Mizoguchi once remarked to me that this is a general characteristic of American and European writers on this topic and results in their being soft on the *yakuza*. Given the tightly defined nature of my project, the danger



of becoming too close to my subject was less of a threat than it might have been in a more open-ended anthropological study.

On visiting Tori's gang headquarters, the first questions asked of me were, firstly, whether I had any drugs on me and, secondly, what firearms I had at home. Herbert has also found this type of opportunism amongst his various contacts. It must be remembered that these are people who live on their wits and are always looking for business opportunities. Actively aiding *bōryokudan* members in the commission of criminal activities was not a price I would have been prepared to pay to further my research aims. Over and above ethical objections to this, such activity would inevitably have altered profoundly the relationship with my lawyer contact.

As mentioned above, much of my research was made possible through personal, rather than official, connections. This obviously presents potential problems of obligation, conflict of interest, reciprocity and, ultimately, objectivity. My work with the police in Iwate was arranged through my karate teacher, who for ten years has looked on me as a son. Because of this relationship Numazaki agreed to let me study with the police in Iwate and said I would stay in his house during my period of study. Whilst accepting his hospitality would leave me open to the charge of compromising academic objectivity, not to have done so would have caused embarrassment to my karate teacher and offence to Numazaki; possibly to the extent of jeopardising access to the police.

Numazaki justified my existence in the police school and prefectural headquarters by telling his subordinates, in my presence, that it would provide good PR for the

police. Accordingly I not only spent days with the departments related to my research, but was also taken to see the aspects of police work that fitted the community-policing paragon popularised by Bailey. A typical example of this was the residential rural police box (*chūzaisho*) where an eventful year might entail a couple of minor crimes. The main demands on the resident police sergeant's time appeared to be ensuring that the elderly were taken care of and providing bells for primary-school children in order that they could scare away bears on their way to school. Despite this PR objective, to their credit, various senior officers in the Iwate police, admitted to me the ambiguous historical relationship they have enjoyed with the *yakuza*.

In addition to these excursions, I participated in various activities at the police school teaching English to the students and taking part in the *jūdō* and arrest-technique (*taihō-jutsu*) classes. Whilst much of this research time was not therefore directly relevant to the immediate purposes of my research, it provided me with a much greater understanding of the Japanese police which informs both this and future research. The danger of 'going native' was therefore far higher during my time with the police in Iwate than during my, much more limited, exposure to gang members in Osaka. Whilst Numazaki's PR objectives were partially successful, I believe that this has not entirely clouded my judgement, and my concluding chapter hopefully bears witness to this.

As mentioned above, much of my research was made possible due to the personal guarantees of friends, and this engendered greater trust in my subjects than would

have been possible had the same access been derived through official channels. This presented ethical problems in that the essentially exploitative nature of the researcher-researched relationship made that trust and friendship potentially open to abuse or alternatively to dishonestly presenting research findings. Whilst such a conflict did not arise, I am aware that the implicit personal guarantees provided by my karate teacher, Numazaki and my lawyer in Osaka, acted to moderate what might have otherwise been more aggressive research.

## CHAPTER OUTLINE

Chapter two constructs the theoretical framework of organised crime within which the rest of the thesis lies. Little, non-sociological, theoretical work on Japanese organised crime has been done and, consequently, the theory deployed in this chapter is derived largely from American and European academics. In particular the model developed by Gambetta, in his outstanding analysis of the Sicilian mafia as a system of private protection, and the work of the American economist Thomas Schelling, noting the dual governmental/business nature of organised crime, are influential. The perspective adopted in this thesis can be broadly described as functionalist in that it locates the existence of organised crime within the broader socio-economic matrix and identifies the ways in which different constituencies have requirements that may be filled by organised-crime syndicates.

The third chapter provides an empirical overview of the development of the *bōryokudan* over the second half of the twentieth century. This serves to illustrate the applicability of the previous chapter's American/European-derived model of

organised crime to the Japanese *yakuzal/bōryokudan*. In particular, the detailed investigation of the various sources of *bōryokudan* income in the second half of the chapter shows the centrality of the protective function of the *bōryokudan*. The fact that these simple theoretical concepts are as relevant to a study of the *bōryokudan* as of the Sicilian Mafia or American crime families helps to strip away the protective mystification provided by their arcane rituals and mythologised historical antecedents.

This examination also shows the highly innovative and mercurial quality of these groups and, in particular, their economic activities. The empirical observation that the main cause for this evolution of new business techniques has been change in the legal and law-enforcement climate suggests that the simple symbiosis model prevalent in much of the English-language literature demands re-evaluation.

Given the understanding of the peculiarities of organised crime that the theoretical chapter provides, it becomes possible to see why organised-crime countermeasures present problems not found in disorganised criminal activity. After discussing these problems, the fourth chapter examines the different legal frameworks deployed by the authorities in continental Europe and the United States to deal with organised crime. Both of these approaches were influential in the Japanese debate concerning the introduction of new anti-*bōryokudan* laws. However, as the description of the *bōtaihō* given in chapter four shows, the eventual Japanese law was radically



different, adopting an administrative approach to regulating *bōryokudan* activity. A full explanation of why this should be is postponed until the conclusion.

The penultimate chapter investigates the impact of this law on the *bōryokudan* syndicates. This is complicated by the enormous impact that the collapse of Japan's bubble economy has had on these groups. Although it is impossible to completely disentangle the effects of these two distinct events, there are specific developments in *bōryokudan* activity that can be largely attributed to legal factors. What is much less ambiguous is that the *bōryokudan* are currently suffering under the combined effects of these two calamities. However, as shown in chapter three, these organisations are extremely adaptive and resourceful. Accordingly, as income-generating opportunities become blocked, due to either legal or economic factors, these groups quickly develop new sources of income. Change due to increased law-enforcement may not, therefore, necessarily result in an overall gain to society.

The concluding chapter attempts to locate the *bōtaihō* within the wider context of Japanese legal and policing norms. Only by identifying the traditional preference for a wide-ranging regulatory function rather than a narrowly defined law-enforcement role, can we understand the deeper implications of the *bōtaihō*. This thesis therefore has implications for, and generates research questions with respect to, police studies out-with the more limited primary objectives of this research on which it is based.



Finally, we return to the question of criminality in Japan with which this thesis started. It will be argued that the most significant explanatory factor for the low crime-rates, which made Japan such an object of criminological curiosity, is that, for much of the post-war period, Japanese society has successfully exercised greater informal social controls than other modern industrialised societies. However, it will be further argued that these controls are becoming successively weaker and this is reflected in Japan's currently rising crime-rate. The implications of these developments are seen as of profound significance for the *bōryokudan*.

## CHAPTER TWO

### THEORY OF ORGANISED CRIME

#### INTRODUCTION

Organised crime (hereafter OC) as it manifests itself in Japan is often portrayed as a uniquely Japanese phenomenon with nothing in common with OC in other parts of the world. In order to test the extent to which this is true, it is important to develop a theoretical model of OC against which Japanese OC can be compared. The vast bulk of theoretical work in this field is concerned with the experiences of the United States and Southern Italy. A synthesis of these theoretical arguments with the empirical analysis in Chapter Three outlining the development of OC in Japan, will indicate the degree to which the structural preconditions under which OC exists, transcend cultural differences. A theoretical analysis of OC will also offer insights into the problems of creating legal measures to deal satisfactorily with this type of crime, how these may best be overcome and the effect such resulting countermeasures can reasonably be expected to have.

Unfortunately, there is no universally accepted definition of OC. The first task of any theoretical analysis of this phenomenon must therefore be to determine clearly what is meant by the term 'organised crime'. When we have defined OC, various aetiological factors will be considered. The aetiology of crime is far too complex and multi-faceted a phenomenon to be reduced to any mono-causal explanation. With respect to the more limited field of *organised* crime, however, anomic

conditions resulting from the strain between socially induced aspirations and structural barriers to those aspirations being fulfilled, are briefly considered as contributory factors.

In preference to sociological explanations of OC, this chapter argues that an economic analysis of this phenomenon is an approach which more effectively demystifies this secret, and often romanticised, world. Without doubt the most important single economic factor encouraging the development of OC is the existence of a market demand for the goods and services that are supplied by the groups collectively identified as OC. The theoretical perspective of OC adopted by this thesis can therefore be broadly categorised as functionalist.

There are essentially three different perspectives of OC. Whilst current academic debate has largely discounted the “evil empire” perspective, this view still persists in political rhetoric. The other two paradigms, the neo-Marxist and the functionalist perspectives, both show how OC survives because it provides goods and services to a number of different constituencies. These include not only the individual citizen consumer of drugs, prostitution and illegal gambling, but also business, the state, politicians and even law-enforcement agencies may make use of OC. Following Gambetta (1993) it is considered here that, of the various services provided by OC groups, the one crucial commodity is protection. As we shall see, the existence of a market demand for OC services, and in particular protection, is absolutely central to an understanding of the nature of OC. *Vis-à-vis* its relationship with the legitimate world, OC is therefore in a highly ambiguous position; at times the relationship can be characterised as symbiotic, at others as one of rivalry, whilst, at other times,

organised crime is purely parasitic. Despite this ambiguity, the net social effects of the continued existence of OC are overwhelmingly negative.

The ambiguous nature of OC is also revealed in the way it functions; OC exhibits the characteristics both of a business firm, and of a government. As a firm, it provides goods and services to individual consumers in both the legal- and illegal-market sectors. As a government, OC makes use of its intelligence networks and reputation for violence to adopt a regulatory and tax-extracting role both within the underworld and, where possible, within the legitimate economy. This need not necessarily imply a purely exploitative relationship; frequently economic actors, operating on either side of the law, find the regulatory framework provided by OC to be advantageous.

## DEFINITIONS

In everyday conversation and in journalistic writing, the term “organised crime” is used in a very loose fashion. Similarly, references to “the *yakuza*”, “the Mob” or “the Mafia” abound with no attempt made at elucidation as to what these phenomena actually are. This confusion is further exacerbated by the way in which OC can refer to the crime itself or the organisation perpetrating it. Whilst this deficiency may not be overwhelming in popular or journalistic writing, it presents serious difficulties to law-enforcement officials and legislators. For example the United States’ Organised Crime Control Act of 1970 provides no clear definition of that which it is supposed to control.

As pointed out by the President's Commission on Organised Crime (PCOC), "the problem in defining organised crime, stems not from the word 'crime', but from the word 'organised'. While society generally recognises and accepts certain action as criminal, there is no standard acceptance as to when a criminal group is organised. The fact that organised criminal activity is not necessarily organised crime complicates the definition process" (PCOC 1986, 25).

As the PCOC indicated, OC is obviously more than crime that is organised. Even a comparatively straightforward felony will require a certain amount of planning whilst a large professional robbery will involve a high degree of division of labour, specialisation and organisation. This does not make them examples of organised crime, and to differentiate them the terms 'project crime' and 'organised criminality' have been applied to this type of criminal operation. Similarly, highly systematic and sophisticated white-collar crime within organisations is not considered to be an example of OC. This is not to imply, however, that OC will not involve itself in either type of operation, merely that they are not, in themselves, "organised" in the sense of OC.

Definitions of OC vary according to the priorities of the definer. At a presentation of an early draft of this chapter to a group of high-ranking retired Japanese police bureaucrats, the audience suggested gently that, in a law-enforcement context, the sort of definitions outlined below lacked operational applicability. Whilst this is true, such law-enforcement-oriented definitions are not of immediate interest to us here, as the purpose of this chapter is to achieve a theoretical grasp of the



underlying processes of OC. Strictly legal definitions of organised crime are more properly discussed in chapter four dealing with OC countermeasures laws.

Even within the academic sphere the diversity of disciplines and perspectives produces an oriental profusion of differing definitions. For example, Sutherland, widely regarded as the father of American criminology, defines OC in terms of the crimes themselves. As well as syndicated crime, Sutherland identifies two other distinct criminal activities that, he asserts, are manifestations of this phenomenon (1937, 209). However, as these are “professional” (project) crime and white-collar crime, they can be discounted for the reasons given above. Modern studies of OC concentrate on the activities of criminal syndicates such as the Triads, traditional Italian OC families and the *bōryokudan*. These are very different from Sutherland’s examples.

Cressey (1969, 319), as a sociologist, sees the relationships between the key protagonists as the determining factor:

An organised crime is any crime committed by a person occupying, in an established division of labour, a position designed for the commission of crime providing that such division of labour also includes one position for a corrupter, one position for a corruptee, and one position for an enforcer.

Whilst a division of labour, specialised roles and corruption are all undoubtedly features of OC, Cressey’s definition is problematic in that it does not necessarily exclude project crime from this definition. There are peculiarities of OC which are

not satisfactorily illustrated by Cressey. There have been attempts to overcome this deficiency by defining OC in terms of what OC groups actually do.

The 1967 US Task Force On Organized Crime states that “the core of organised crime activity is the supplying of illegal goods and services – gambling, loan-sharking, narcotics, and other forms of vice – to countless numbers of citizen consumers” (1967, 1). This description is useful in highlighting one crucial difference between OC and “normal” crime. This is the way in which, whilst disorganised crime can be characterised as unambiguously socially dysfunctional, OC exists because it functions as a business satisfying a demand among members of the “legitimate” world. The Task Force definition is, however, inadequate in that it omits another central feature of OC.

Schelling (1984) divides OC activity into two different types. The first of these is its involvement in illegal markets as described by the 1967 Task Force. The second field of OC business is racketeering. This refers to the use, or threat, of violence either to run an extortion racket, or to maintain monopolistic control of it. This control may be exerted over a legitimate industry, an illegal market, or a key factor, such as labour. Schelling (1984, 182) therefore asserts that the crucial characteristic of OC is its desire to exercise governmental control over the illegal-market sector. OC does not just behave as a business, but as a government.

This view has been criticised by Reuter (1983, xi), who suggests that this stress on monopolistic control is not supported by the empirical evidence. Accordingly, he provides a much more general definition of OC as “organisations that have

durability, hierarchy, and involvement in a multiplicity of criminal activities” (1983, 175). Though these are all indeed attributes of OC, this definition deals neither with OC’s desire to control criminal activity nor with its central involvement in black markets. It also encompasses political terrorist groups, as well as religious cults, which are organisations of a totally different order.

Whilst Reuter is undoubtedly right that the reality of OC is generally characterised by oligopolistic competition rather than central control, Schelling’s analysis of OC as fulfilling essentially a governmental role is one which offers powerful insights into the workings of organised crime. This approach has been refined by Gambetta (1993), in his outstanding theoretical examination of the Sicilian mafia. Gambetta argues that the essential characteristic of the mafia is that it is “a specific economic enterprise, an industry which produces, promotes, and sells private protection” (1993, 1). Gambetta himself maintains that it is a misconception to equate the mafia with OC. This is because, he maintains, the mafia is primarily responsible for supplying the “organising force”, whilst the range of criminal entrepreneurs subject to this organisation (which Gambetta apparently identifies as OC) are “usually independent economic agents licensed and protected by the former” (ibid, 227).

In identifying the provision of private protection as the essential characteristic of the mafia, Gambetta therefore places himself alongside Schelling in arguing that the mafia, or OC, exercises a governmental function. They differ however in that Schelling asserts that OC is also a direct participant in illegal markets. This is an empirical observation. Although it remains outside the present writer’s expertise to comment with respect to the United States or Sicily, as far as Japan is concerned the

*bōryokudan* not only provide the governance structure for criminal markets, but their members are also the main participants in this sector.

Due to the enormous problems of establishing a problem-free definition of OC, many experts side-step the issue by presenting instead a list of characteristics of such organisations. Below are given three attempts to present the main attributes of OC by Lupsha (1986, 33), Maltz (1985, 24-32) and Abadinsky (1994, 6).

LUPSHA	MALTZ
<ul style="list-style-type: none"> <li>• Ongoing interaction by a group of individuals over time</li> <li>• Patterns of role, status and specialisation</li> <li>• Use of corruption</li> <li>• Use, or threat, of violence</li> <li>• Lifetime careerist structure orientation among members</li> <li>• Participants' view of crime as instrumental</li> <li>• Goal of the long-term accumulation of capital, influence and power</li> <li>• Complex criminal activity – long-term planning and division of labour</li> <li>• Interjurisdictional /international patterns of operation</li> <li>• Use of fronts, buffers and legitimate associates</li> </ul>	<ul style="list-style-type: none"> <li>• Corruption</li> <li>• Violence</li> <li>• Sophistication</li> <li>• Continuity</li> <li>• Hierarchical structure</li> <li>• Internal discipline</li> <li>• Multiple criminal enterprises</li> <li>• Involved in legitimate business</li> <li>• Initiation rites</li> </ul>
	<p style="text-align: center;"><b>ABADINSKY</b></p> <ul style="list-style-type: none"> <li>• Non-ideological</li> <li>• Hierarchical</li> <li>• Exclusive membership</li> <li>• Self-perpetuating</li> <li>• Uses violence and corruption</li> <li>• Specialised division of labour</li> <li>• Monopolistic</li> <li>• Governed by rules and regulations</li> </ul>

As we can see, these three different sets cover essentially the same aspects of OC.

It should be remembered that these lists are of the general characteristics and these items are not all necessary conditions for categorisation as OC. It is easy to envisage, for example, an OC syndicate which operates only within one jurisdictional area. Let us briefly examine some of the most significant attributes.



## Corruption and Violence

Both violence and corruption are tools that may be used by OC groups to further their own interests. Whilst this is not unique to organised, as opposed to disorganised, crime, they have a higher operational importance to the former. Corruption is primarily used to effect insulation from law-enforcement efforts, though it may also be useful in achieving a comparative advantage when OC groups are active in the legitimate economy. Violence is more commonly employed as the resource empowering an OC group to exercise its rule-making function over those in the underworld (where actors are necessarily deprived of legitimate sources of protection). Violence may also be useful in acquiring a competitive edge in the legitimate economy and discouraging people from co-operating with the anti-OC activities of law-enforcement officials.

It should be noted that the actual deployment of military force carries with it a number of costs. Not only is violence expensive in terms of personnel and other resources, but it carries the risk of increased law-enforcement. Rather than violence, the primary resource of OC groups is more typically the credible threat of it. Those OC groups that are most prone to use violence tend to be those that have yet to establish their credibility. As Gambetta elegantly points out, “the more robust the reputation of a protection firm, the less the need to have recourse to the resources which support that reputation” (1993, 44). This explains the extraordinary importance that individuals involved in OC groups attach to ‘face’ or honour and the necessity to seek redress for any suggested slight however trivial.



This obsession with honour is a characteristic of social contexts where individuals can not rely on outside forces to resolve their disputes (Pinker 1998, 413).

Although the credible threat of violence is an essential characteristic of OC, corruption need not be necessary to the continued existence of OC (though, in the vast majority of cases studied, it is indeed an important factor). It will be shown later how official tolerance of OC can transpire in the absence of corrupt relationships between the upper and underworlds.

### Hierarchy

Perhaps because of their ultimate dependence on violence, OC groups tend to have a militaristic multi-tiered power structure consisting of at least three levels with each rank exercising power over the one below. These positions are permanent and the power vested in any particular position is independent of the individual holding it. In this respect Cressey (1969) suggests that OC has a bureaucratic structure similar to that of a large corporation or government. However, as will be shown below, Cressey's view of OC is no longer held by most contemporary criminologists. The extent to which OC is bureaucratic is questionable; Ianni (1972; 1974) suggests that the organisational structure of OC is essentially composed of personal bonds between individuals. Even with this organic, familial model of OC, an authoritarian power structure with a clearly defined hierarchy is a central organisational characteristic.

In this hierarchy composed of bonds of personal allegiance, OC closely resembles a feudal structure. This will be brought into sharp focus in the following chapter when we are looking at the financial structure of large Japanese OC syndicates such as the Yamaguchi-gumi. By contrast, it appears that the highly rationalised business of importing cocaine into the United States from South America has adopted a highly bureaucratic and anonymous structure.

### Discipline

Within this hierarchy order is maintained through a code of conduct and regulations. This is rigorously enforced with severe penalties, including death, for significant infractions. A comparative analysis of the rules adopted by different OC organisations shows a marked degree of similarity (see, for example, Chu 2000, 3; Gambetta 1993, 147). Most significant of these are the need for secrecy, obedience to one's boss, not interfering with the women of other members, and not cheating fellow members. These similarities show us that the structural conditions under which OC exists transcend cultural differences.

Whilst the propaganda of OC groups themselves, as well as that of those seeking to portray them as evil empires, accentuate this idea of an iron code of discipline, the empirical evidence, both from Japan and elsewhere, suggests that this ideal is far from realised. The fact that these rules exist at all, suggests that the temptations to maximise self-interest at the expense of the group, or more usually the boss, are strong. For example the universal rule against skimming profits from gang-related activities is one over which bosses must always maintain extreme vigilance.

## Exclusive Membership and Bonding

Not everyone is suited to life as a member of a criminal organisation. More importantly, two of the main constraints in the existence of organisations operating in a criminal environment are the problem of trust and the need for secrecy. OC groups therefore tend to limit membership often by way of shared ethnicity, family links, prison contacts, or an established reputation in youth-gang or street-crime activity. Recruits will usually need a sponsor or otherwise prove their suitability; usually the sponsor will be an organisation member. Apprenticeship training periods are common, and joining requirements, such as participation in an OC-related homicide (which Italian-American crime families refer to as 'making bones'), not unknown.

The idea of exclusivity is frequently reinforced by initiation rituals. These are possibly more important for those groups which are not composed of members with close blood ties, and in Japan the initiation rite amongst *yakuza/bōryokudan* groups specifically forges fictive father-son ties through the exchange of sake cups. The bizarre nature of many of these ceremonies has the additional advantage of enhancing the mystery, and hence the ability to inspire fear, surrounding these organisations. Maltz suggests that these types of bonds possibly also serve as a managerial strategy to facilitate the control and exploitation of subordinates by gang bosses (1985, 32). If we look at the highly unequal distribution of wealth and the system of monthly membership dues within Japanese crime syndicates, this certainly seems a credible analysis.

## Division of Labour

In his definition of OC, Cressey maintains that these organisations contain a number of specialist positions, and, as the size and complexity of the organisation increases, the number of these roles increases. One essential role is that of *enforcer*. The *enforcer's* prime task is to direct the threat and actual use of violence to ensure that the organisation's wishes are met. An extension of this arm of the organisation will be the role of *executioner*. The *fixer* is another key specialisation within larger organisations. The *fixer* is responsible for maintaining diplomatic links with political and law-enforcement figures for purposes of corruption. Money laundering is also an important, and highly specialised, job that is becoming increasingly important due both to the large drug-related income that is the mainstay of much modern OC activity, and to increased sophistication in law-enforcement methods.

Here again Cressey's analysis seems excessively formal. To the extent that all members of crime groups must maintain their own reputation or lose credibility, they are their own enforcers. Rather than having a specialised executioner, *bōryokudan* murders tend to be carried out by one of the most expendable members of the group. Diplomatic links with the upper-world are similarly not the preserve of any one individual. Whilst all of Cressey's roles are essential, they are not rigidly confined to any particular person. The main division of labour within the *bōryokudan* is most usefully considered in economic terms. The principal bifurcation along these lines is between entrepreneurs (who develop independent



sources of income) and runners (who do their bidding in return for pay). Maltz (1985, 28) also questions Cressey's assertion of a formal role-specific structure; so these criticisms are not peculiar to the Japanese context.

### Continuity

An OC group differs from a project-crime gang in that it has a continued existence beyond the working life of any particular member, whilst the latter is often assembled on an ad-hoc basis for the perpetration of a particular crime. The fact that it perpetuates itself enables the organisation to attract new recruits. Able recruits are retained by the prospect of ascending the organisation's hierarchy.

### Monopolistic

The desire for monopoly control may be directed at a particular market or area. The overwhelming majority of OC violence is concerned with either defending the organisation's territorial or market domination from others, or extending it. Reuter (1983) argues that the empirical evidence suggests that in many areas of OC activity, such as gambling, no such monopoly exists. Whilst this may be correct, it is not inconsistent with asserting that it is the ambition which OC organisations share. If we consider the defining, governmental, nature of organised crime, it becomes immediately clear that the monopoly to which it aspires above all else, is the monopoly of power within a given area or sector.



## Participation in Multiple Criminal Enterprises

Whilst we can not exclude *a priori* the concept of an OC syndicate involved in only one type of criminal activity, there are good reasons why in practice this rarely, if ever, happens. Foremost amongst these are the economies of scale in the protection business. As will be discussed in greater depth below, once a group has acquired the military and diplomatic attributes necessary to exercise control over one criminal industry, the costs of extending this power to other areas of economic activity are low compared to the potential rewards.

### Non-ideological

Although OC groups may frequently be involved in politics, they do not generally have any political agenda of their own. Political activity is aimed at gaining political leverage, which will increase OC immunity from prosecution by the authorities, boost the organisation's own power and further its economic interests. OC groups can therefore be differentiated from terrorist groups in which political power is sought for its own sake and often in direct opposition to the state. This does not mean that terrorist organisations and political movements are above adopting OC practices to fund their operations; in Northern Ireland, both sectarian fringes are involved in extortion and attempts to control illegal markets (Thompson 1995, 310-311, Maguire 1993, 273-292).

Much has been made of the link between Japan's extreme right-wing organisations and the *bōryokudan*. Whilst this link is undeniable, in so far as it manifests itself

today, it is essentially a front to extort money. The role the *bōryokudan* have played in the past as strike-breakers should be seen as a commercially-provided protective service rather than indicative of any political preference.

The antipathy that OC groups frequently have for left-wing ideologies may similarly be seen as reflecting naked self-interest rather than abstract theories of political morality; conditions of unfettered capitalism are those which are most likely to create a market for protection that OC groups can exploit. To the extent that this pragmatic pursuit of economic self-interest may be considered an ideology, Abadinsky's general characterisation of OC as non-ideological is open to challenge; as will be mentioned below, such pragmatism may be seen as the apotheosis of capitalism.

Another reason for OC's antipathy to left-wing ideologies is that communist governments are thought to be more enthusiastic in OC eradication than free-market liberal-democracies (though fascist Italy has also been credited with temporarily eliminating the mafia). Certainly authoritarian regimes are less likely to tolerate alternative foci of power but it should be noted that a vibrant OC entity built an existence on circumventing the numerous obstacles to trade imposed by the Soviet Union's command economy. Perhaps the fact that such regimes have a tight control over the media ensures that the existence of OC is less likely to be publicly exposed.

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Whilst many of the above characteristics of OC groups are not unique to such groups but are commonly observed in firms, trade unions, clubs and political parties, taken together as a whole they build a picture of a distinct entity which we recognise as organised crime. Despite the attractions of this approach, in order to clarify what is precisely meant by OC in the course of this thesis, as well as to expose the most important elements of what OC actually does, a definition is called for.

Of the attempts to define OC outlined above, the ideas of Schelling and Gambetta provide the most profound theoretical insights into this phenomenon and the definition developed here owes much to these two scholars. **For the purposes of this thesis, Organised Crime entities are therefore defined here as structures which exercise rule-making, tax-collecting and protective functions over primarily, but not exclusively, illegal markets in a given geographical and/or economic sector.** The questions and issues raised by this definition will be discussed below.

This definition will no doubt displease some as it fails to adequately encompass, for example, entrepreneurs engaged in the highly deregulated and competitive drug-importation business. Objections of this type lead us to what Levi (1998a, 2) cynically considers to be the “true *social* definition of ‘organised criminals’: a set of people whom the police and other agencies of the State, regard or wish us to regard as ‘really dangerous’ to its essential integrity”. This type of bogeyman treatment of OC, inextricably linked with the “evil empire” perspective discussed below, is a

serious obstacle to the primary objective of this chapter, which is the rational analysis of OC.

## **PERSPECTIVES ON ORGANISED CRIME**

Fijnaut (1990, 324) identifies three distinct perspectives through which OC has been analysed. These can be labelled the “evil empire” view, the neo-Marxist view, and the functionalist view. Academic studies of OC, whether consciously or not, fall into one of these three categories.

The “evil empire” perspective is most closely associated with the work of Cressey and, until recent years, official publications of the various interested United States government bodies. Its central argument is that OC is a monolithic national, and in the view of some writers such as Sterling (1995) international, conspiracy. This sprawling, unitary organisation exists in a parasitic relationship with its host society and, in its relentless drive for wealth and power, “is threatening the foundations of economic, legal, and political order” (Cressey 1969, 54). The ethnic-minority composition of many OC groups enables OC to be portrayed as an alien aberration extrinsic to the host culture in which it thrives.

This highly simplistic and alarmist view has been attacked by proponents of the other two perspectives. Whilst both of these apply an essentially functionalist analysis of OC, they are most usefully examined separately in that the neo-Marxist view offers a more tightly confined view of the services provided by OC than the



broader functionalist perspective. Perhaps it would be appropriate to consider the former as a sub-set of the latter.

The neo-Marxist perspective is exemplified by Frank Pearce's *Crimes of the Powerful* (1976). With reference to the history of OC in the United States, the myth of a national criminal conspiracy is simply not sustainable; inter-group conflict has been the norm (1976, 117). Even the idea of a monolithic Italian-American Cosa Nostra is not supported by the available evidence, and the shifting alliances and cleavage lines between the various OC groups have been based on each group's own self-interest rather than ethnicity. Whilst it is true that minority groups are disproportionately represented in the ranks of criminal organisations, this is due to the fact that such groups are denied equal access to legitimate means of advancement.

Far from the apparent existence of OC as a threat to the state, the neo-Marxist analysis identifies OC as a servant of the state. OC has provided many services, both to the interests of 'capital' and to the government itself. It has not, however, threatened either; most legitimate OC business activity is confined to marginal industries characterised by a low return on capital, such as garbage carting and catering, whilst OC extortion activities are principally directed at small businesses located in working-class areas. Primarily OC has been employed by the economically dominant class as a means of controlling labour and as a force with which to combat a perceived threat from radicalism. It has also played a significant role in machine politics, delivering campaign funds and votes as well as disrupting the electoral efforts of rivals.

Pearce also points out that the “evil empire” perspective is highly functional to the state’s own ends; by the creation of a moral panic about this evil cancer, a climate is generated in which law-enforcement officials are able to increase their powers of surveillance and control. These new powers may well be arrayed against the perceived threat of political radicalism rather than OC (1976, 114).

The second perspective challenging the “evil empire” view of OC is that of the functionalists. Whilst most non-Marxist functionalists would not dispute the fact that OC has been useful to political and business elites, they adopt a more sophisticated analysis, arguing that reality is a more complex affair than is portrayed by Pearce’s reductionist exposition. The relationship between state/ruling class and OC has not been entirely one-sided; OC will exploit whatever opportunities it can find, and these will include both the state and business, and at all levels. Moreover, the functionalists, in showing how OC’s activities can be beneficial to a wide range of groups, provide a better understanding of the factors giving rise to the phenomenon as well as its continued existence. This understanding is also likely to yield more fruitful suggestions as to effective OC countermeasures than either the neo-Marxist or the “evil empire” perspective. Most of the theoretical arguments presented in this chapter fall loosely within the functionalist perspective and, for that reason, the approach will not be discussed in detail at this stage.

Essentially functionalism argues that OC exists because it fulfils a role in society. It is not an alien aberration as argued by Cressey, but “an integral part of the.....social system...and should be viewed as one end of a continuum of business enterprises with legitimate business at the other end” (Ianni 1974, 15). Indeed OC may be seen

as the apotheosis of the capitalist way as pointed out by Capone (cited in Pearce 1976, 127):

Listen, don't get the idea that I'm one of those radicals. Don't get the idea I'm knocking the American system...This American system of ours, call it Americanism, call it Capitalism, call it whatever you like, gives to each and every one of us a great opportunity, if we only seize it with both hands and make the most of it.

Bell encapsulates this attitude in the title of his chapter on OC in *The End of Ideology* (1965, 127) in which he describes "crime as an American way of life: a queer ladder of social mobility". Immigrants arriving in the United States would find that legitimate avenues for advancement would be blocked to them as previous waves of immigrants would have managed to monopolise these. OC presents one of the only alternative means to material success for immigrants. Once success has been achieved, there will be a tendency for individuals to shift from illegitimate to legitimate industries and to adopt the norms of the mainstream culture. There will be a pattern of ethnic-progression in OC development with each new group of immigrants taking the place of the preceding one, which will itself increasingly dissociate itself from criminal sources of revenue.

Bell argues that this process can be seen at work in the development of the ethnic composition of OC from one that was predominantly Irish, then Jewish, then Italian to one that is becomingly increasingly dominated by Hispanic and Black groups. Whilst there is no doubt that the process of immigration has had a profound impact



on the development of OC in the United States, the ethnic-progression hypothesis optimistically assumes that successful incumbents, or at least their progeny, will vacate their market niche. Empirically it appears that, whilst some have, many others have not. OC in contemporary America is therefore more diverse than at any time in its history, with representatives of all of the country's constituent ethnic groups actively participating in the industry. A similar process has been observed by Amir (1986) with respect to Jewish immigrants in Israel.

Initially it might seem that the idea of ethnic-progression has little relevance to the development of OC in Japan, which prides itself on its ethnic homogeneity. However, ethnically Japanese *burakumin*<sup>1</sup>, as well as Japan's Korean minority, are disproportionately represented in the ranks of the *bōryokudan*. This suggests that use of OC as a rational strategy for self-advancement adopted by disadvantaged minorities, regardless of their ethnicity, is not confined to the United States but is also applicable to Japan. The theory of ethnic-succession suggests that it is plausible that the increasing numbers of low-skilled migrant workers from Asia, the Middle East and South America, may become a prime recruiting ground for *bōryokudan*.

Not only can a functional analysis be adopted to explain how OC may benefit ambitious and talented individuals in minority groups as a means to social mobility, but, more importantly, it may also explain how other members of society may find the existence of OC advantageous. This includes not only the relationship enjoyed

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<sup>1</sup> The descendants of outcast communities in Japan (see chapter three).



by OC with political and business elites (as described in the neo-Marxist perspective), but also that with the law-enforcement community, ordinary members of society, and the members of the underworld who find themselves governed by OC. If this were not so, OC would not continue to exist. These different considerations will be explored individually below.

## **THE AETIOLOGY OF ORGANISED CRIME**

Bell's view of OC as a mechanism to social mobility is implicitly based on the strain theory of criminology in its explanation for the development of OC. Essentially, in strain theory, crime is seen as resulting from "the disjunction between the culturally induced aspirations in society and the structurally determined opportunities" (Young 1981, 283). Many members of society who are denied equal access to the opportunities necessary for the realisation of these aspirations will become estranged from it.

Merton (1964, 218-19) suggests that the resulting anomie may take one of five forms. Firstly individuals may abandon their aspirations yet retain, and even cling to, their low status role in society. A second reaction may be to retreat into a passive existence rejecting both their socially imposed role and any aspirations they may once have had. Alternatively, individuals may seek solace in rituals, often of a religious nature. Others may adopt a strategy of rebellion denying the validity of socially constructed aspirations for material success. This group differs from the retreatists in that the rejected goals are replaced with others. The fifth response is that of innovation. Individuals may retain the goals held by the wider society but

seek alternative strategies for their attainment. Crime is therefore a normal and rational reaction to a given social context.

The frequency of a criminal response to anomic conditions will be influenced by the social environment in which an individual is raised. In a social setting in which criminality is the norm, and where the most widely respected and successful members of that society owe their success to criminal activity, it is to be expected that individuals will become socialised to that criminal sub-culture. Given that the overwhelming majority of OC members are recruited from socially disadvantaged and crime-ridden neighbourhoods, strain theory seems to offer a partial explanation of why OC finds a continuing supply of personnel. The evidence presented by Hobbs (1994, 445-9) and Abadinsky (1994, 208-9), however, casts doubt on anomie being the sole impetus to participation in OC. Autobiographical material suggests that a desire to get the better of others through superior cunning or by virtue of one's warrior spirit is often the prime motivating force. Far from aspiring to the mainstream of straight society, many OC figures have nothing but contempt for the "suckers" who comprise it.

Nor does strain theory explain how OC itself comes into being. To do that, economic theories may offer greater explanatory power. Annelise Anderson (1995, 35-8) identifies three key factors leading to the development of OC: the lack of adequate control by the legitimate authorities, an excess of bureaucratic intervention, and the existence of market demand for illegal goods and services. These are not necessarily mutually exclusive, and a combination of them may be expected to further encourage OC's development.



The first factor is the lack of effective state control. Where the state is unwilling, or unable, to assert its authority, there will be a tendency for individuals to depend on private means to protect themselves, their property and the binding force of agreements they have entered into. Where individuals are too weak to do this themselves, they may find it advantageous to ally themselves, through either the payment of tribute or the offering of services, with a group capable of affording them security. Whilst the “protection” offered may be little more than freedom from further predation by the tribute collecting organisation, it may well be preferable to anarchy. OC is, in other words, another manifestation of the iron law of oligarchy. This is suggested by the work of Skaperdas and Syropoulos (1995) who use economic modelling to show how, in a simple two-player economic model starting from conditions of anarchy, exploitation through coercion will be a stable-equilibrium outcome if one of the individuals has a comparative advantage in the means to violence.

The example most usually cited of ineffective government power leading to the growth of OC is the traditionally lawless Mezzogiorno of southern Italy in the late nineteenth century. Other equally valid examples would be the explosion in OC activity in what was the Soviet Union following its disintegration and the collapse of communism, and the post-war chaos in Japan. Even when the state may otherwise exercise effective control, in conditions where people are disinclined to make use of legitimate channels of law-enforcement and dispute resolution then a market for alternative mechanisms of adjudication and enforcement will exist. This may, for example, happen when a minority group or class lacks trust in the

legitimate authorities or when the legal machinery for conflict resolution is highly priced or inefficient.

The excess of bureaucratic intervention inevitably creates the potential for corruption. This tendency increases when there are no clear criteria on which bureaucratic decisions are based or where the mechanisms for monitoring such decisions are weak. Corruption of bureaucratic decisions as to the allocation of resources and the awarding of contracts need not necessarily lead to OC formation but it is certainly a facilitating factor. A classic example of this type of OC-bureaucrat interaction is given in Stark's 1981 study of Japanese OC, in which he identifies a network of bureaucrats, politicians and colluding construction firms, with OC at its nexus (1981, 205).

An excess of bureaucratic regulations and interference in private and commercial life may also encourage OC by engendering a culture characterised by a contempt for bureaucratic meddling and a dependence on working within the black market. Therefore, whilst the second of Anderson's conditions seems to contradict her first, this is not necessarily the case. Italy and India, for example, both display Byzantine bureaucratic regulations but fail to police them properly. The consequences are inevitable.

It is however problematic to determine what level of state intervention can be justifiably identified as excessive. Many examples of state intervention in the economy might reasonably be seen as proper manifestations of a civilised society; one need only think of rules concerning child-labour, environmental protection and minimum standards of work-place safety to see that such intervention may be



socially desirable. There are however clear financial incentives to circumvent these regulations.

The most significant of Anderson's conditions is the existence of illegal markets. The main impetus to the growth of OC in the twentieth century has undoubtedly been this factor. Prohibition of alcohol in the United States, the black market in post-war Japan, and, most spectacularly, the enormous market in illegal drugs everywhere, have all created the potential for vast profits. This potential has been exploited both by traditional OC groups, such as the Sicilian mafia and the Chinese Triads, and also by new organisations such as the South American cartels.

Schelling (1984, 77) argues that it is the existence of these illegal markets that provides the cash-generating "core" around which the necessary OC infrastructure can be built. To function effectively, OC requires both a military capability, on which its power is based, and diplomatic relations with the legitimate world, through which it attempts to gain protection from law-enforcement harassment. Both of these are expensive and do not, in themselves, bring in an income. Illegal markets are therefore a major stimulus to OC development. Whilst traditionally these markets have comprised prostitution, gambling, loan-sharking, and black-marketeering in rationed or highly-taxed goods, in recent decades the traffic in narcotics has become an increasingly significant component.

This is important for two main reasons. The first of these is that, because the profits to be made from drugs are so much larger than those from more traditional OC industries, market share has become very keenly contested. Some of the newer entrants, such as the Colombian cartels, have started to employ unprecedented firepower in their bid for control. The second is that the public perception of the

trade in drugs, especially white drugs, such as heroin and cocaine, is far less tolerant than it is for more traditional sources of OC income, such as gambling, which can be portrayed as a victimless, consensual activity. It can therefore be expected that increased dependence on drug income will be matched with growing levels of public anxiety and condemnation of OC.

In addition to the conditions suggested by Anderson as being conducive to the development of OC, there are a number of factors which can be seen as encouraging this phenomenon. If crime is going to exist, there are, in economic terms, considerable advantages (to the criminal) in its large-scale organisation. The foremost of these are the considerable economies of scale that accrue to the big organisation. The corruption of political, judicial, and to a lesser extent law-enforcement, figures will only be viable once a certain degree of economic centralisation has been achieved. Monopolisation of criminal industries will also cut out unnecessary and wasteful duplication of the costs of corrupting the legal and political systems. There are also substantial economies of scale involved in money laundering. At a more basic level, the larger the size of the organisation, the greater will be its degree of market power and its ability to reap the benefits of a price-fixing role.

Another key factor contributing to the development of OC groups is the importance of military power, in either its threat or its actual application. This is, at least partially, a function of size. Violence is, however, a considerable cost to the organisation as it both removes men from money-making operations and raises the organisation's public profile, making it harder to avoid harassment from the forces of law and order. Violence-minimisation will therefore be beneficial. One way to



eliminate this cost is either to eliminate, or to come to a collusive agreement with, the opposition. This is another crucial factor in the tendency towards large organisations.

### THE BUSINESSES OF ORGANISED CRIME

Although we have defined OC as the governing structure over-arching illegal markets, rather than those markets themselves, an examination of the criminal businesses in which OC typically directly involves itself yields valuable insights into the nature of OC itself. Under Schelling's analysis, OC exhibits attributes both of business organisations and of governments. In these different functions it behaves in very different ways.

As Anderson points out, one of the main reasons that OC exists is that there is a demand for goods and services that cannot be legally supplied. This inevitably draws us to consider the role of the state in this problem. At a basic level, the law-making power, in labelling certain activities as criminal, creates crime. For activities that are evidently undesirable and dysfunctional to social life, such as rape, murder and theft, the labelling of such activities as criminal is uncontroversial. Such acts can be described as bad in themselves (*mala in se*). Other activities may be "criminal" purely by virtue of arbitrary government fiat or to further some policy or revenue objective, for example to protect a government monopoly (*mala prohibita*). The fact that many people see nothing wrong in consuming goods and services that happen to be illegal implies that there is no universal consensus on the category to which these goods and services belong. At best they occupy a grey area. Unfortunately the government, in enforcing laws of this kind, may well exacerbate the problem. In imposing legal restrictions on activity in certain markets,

effectively the government sets significant barriers to entry. This enables those individuals prepared to risk government penalties by trading in these markets to charge higher prices than they could if the market were truly competitive. This is particularly true for those goods and services characterised by high inelasticity of demand. According to Abadinsky (1994, 294):

Translating morality into a statute backed by legal sanctions does not provide for greater morality; it merely widens the scope of the law and creates both temptation and opportunity for a particular set of social actors.

The obvious conclusion to be drawn from this is that legalisation of the illicit businesses in which OC is active will expose it to the full competitive pressures of the market. It is not improbable that Glaxo, Richard Branson and Camelot could run drugs, sex and gambling businesses more efficiently than the current incumbents. This is of considerable significance to a discussion of OC countermeasures.

Although media representations of OC dwell on its violent nature, it should be noted that, with regard to its business operations, this is not fundamental. In order to attract customers, violence is to be avoided. Even in the loansharking business, most usually associated with violent debt-reclamation techniques, such practices are the exception and not a desirable outcome for either borrower or lender (Reuter 1983, 98-9). Most customers of a loanshark will have need of his services in the future, and this, not just a fear of being worked over, is the main motivation for prompt repayment. The majority of loanshark customers are also acutely aware that they have no other source of credit. Many gamblers find themselves in need of the services of loansharks whilst, simultaneously, it is advantageous for OC to keep the



revenues from its various other activities, including gambling, earning yet more. There are therefore synergetic forces causing OC to drift into the loansharking business.

If we see OC as a rule-making and protective entity, then when OC group members directly participate in markets other than that for protection, “they should be considered, as it were, their own customers” (Gambetta 1993, 19). Let us now examine this central aspect of OC.

### **OC AS GOVERNMENT**

Whilst OC involves itself in a myriad of illegal business activities, these by themselves are not defining characteristics of OC. A small, unconnected gambling operator or pimp is not an example of OC activity as it has been defined. It is only when there is an attempt to exert a rule-making function that crime becomes organised crime as we understand it. In this respect OC behaves not so much as a business enterprise, but as a government. This governmental role is, in all probability, a natural spin-off from OC’s business involvement in illegal markets and due to the peculiarities of those markets.

There are two key problems for individual entrepreneurs in illegal markets, which are not faced by legitimate traders. Firstly, they continually run the risk of incurring sanctions imposed by the legitimate world’s authorities. Secondly, because their operations are illegal, they are unable to seek the help of the state’s legal apparatus to enforce contracts or uphold property rights. Those involved in illegal markets must therefore develop alternative strategies to protect their own interests. The most obvious method of security open to criminals is to maintain absolute secrecy. However, this is not a viable strategy for those operating in illegal markets as they

depend for their livelihood on the patronage of customers and are therefore obliged to remain accessible. Two alternative strategies remain. The first, which can be called the diplomatic strategy, is to gain the protection of key members of the legitimate world through their corruption. This may take the shape of straightforward financial bribery, the provision of important services, blackmail, or a combination of the above. It may operate at the stratum of street-level law-enforcement, or may extend to political and judicial figures. The second option is the creation of military power sufficient to defend the business interests of the OC group concerned. This will consist of both intimidating the host community from informing on it, and defending the group's businesses by ensuring that rivals are capable neither of setting up competing businesses within the group's territory nor of posing a military threat to it.

Once a fledgeling OC group has established military and diplomatic control within certain territorial limits, it is in a position to use this monopoly of power to exert control over other criminal activity within this territory. This is the point at which crime becomes *organised crime*. Criminals operating within the group's jurisdictional limits will be obliged to pay a street tax for the right to do so. Alternatively, the group may grant franchises for various enterprises. OC may expand its tax base to include legitimate businesses too.

Just as OC occupies an ambiguous position in its role as a business supplying desired, but legally prohibited, commodities, OC as a government may not enjoy a wholly predatory relationship with regard to its subjects. Since organisations participating in illegal activity cannot rely on legal protection, the same is true for individual criminal entrepreneurs. By paying taxes to the shadow government,

individual criminals may be shielded by its political and military strength from both predation by other criminals and harassment by law-enforcement officials. One interesting conclusion to be drawn from this is that an increase in law-enforcement activity directed against any given illegal market will encourage unaffiliated traders in that market to seek the protection that OC links may provide.

OC may also provide a number of services to its criminal subjects. Loansharks and gambling operators may make use of the organisation's reputation for violence to ensure that debts are repaid. Gambling operations may need to place lay-off bets or have access to large amounts of capital at short notice to finance a big payout. There are a wide variety of people, in and on the periphery of the underworld, with a desire to curry favour with OC personnel (Abadinsky 1994, 297). These will provide an intelligence grapevine of information that may be useful not only to the organisation itself but to some of its subjects. For example, OC may prove useful in providing such individuals with information as to the credit rating of customers. Thieves may find that OC-controlled fencing operations are safer and more efficient than unprotected ones because of their wider contacts and superior distribution networks.

The governmental nature of OC is clearly seen in the way that it can become involved in dispute resolution and negotiations. This can involve actors operating in either the criminal or the legal economy. It is important to see that this role need not be exploitative. This is perhaps best illustrated by Gambetta's account of "Peppe" who is sought out by people wishing to trade but lacking the essential conditions of trust. Due to his status as a 'man of respect', Peppe is able to act as a guarantor for otherwise difficult transactions (1993, 17).



Although a fee may be charged for this service, that is not always done. According to Tanzi (1995, 166-9) this may be explained in terms of “social capital” or favours owed. One example Tanzi gives is taken from the film *The Godfather* in which an undertaker seeks justice after his daughter is raped. Years later he repays his debt by laying out his dead benefactor’s corpse. This type of arbitration service will lend legitimacy and moral authority to the local OC group.

Even when OC extends its tax base to the legitimate sector, this need not be as much of an encumbrance on the industries concerned as might at first be imagined. To see how this can be so, let us consider the most commonly victimised legal industry, the restaurant/bar trade. This business is particularly susceptible to OC extortion, as even the menacing presence of gangster types is sufficient to drive custom away.

To be acceptable to taxpayers the tax imposed must be seen to be “fair”. The most obvious way of doing this is by providing something in return, in this case protection. This need not mean merely protection from predation by OC groups themselves. A good example of this is given by the current situation in Russia, where protection is tellingly described as a ‘roof’ (*krysha*):

When a business comes ‘under the roof’ of a ROC (Russian OC) group, it is not always seen as a clear case of extortion. Often the *krysha* offers a range of services. The business can be expected to be defended from other racketeers, including corrupt law-enforcement; effective technical and guard protection of property; debt collection; assistance with customs clearance; legal and business advice from an adroit ‘legal staff’; and banking privileges



at criminal controlled banks (Center for Strategic and International Studies, 1997, 29).

Gambetta (1993, 28-9) gives an amusing example of one case in which two thugs taking money from stall-holders on the spurious pretext of protection became forced to become genuine suppliers of protection when one of their taxpayers unexpectedly demanded it. If they had not provided this service, they realised that their future ability to extract money would be seriously impaired.

A tax must also be payable in a way that does not damage the self-respect of taxpayers, impair the competitive position of the individual entrepreneur vis-à-vis his rivals, or cause unaccountable payments that might cause problems with the (legitimate) tax authorities. To ensure these criteria are met, the OC group must ensure that all competing businesses in this industry within the organisation's territory must be paying an equal rate of tax. The businesses can then safely pass on the costs to their customers without the fear of losing market share. By maintaining a monopoly on the supply of a key commodity such as linen, beer, or snacks, or by leasing cigarette, pinball or gaming machines, the OC group can charge an extortionate amount that can be presented in the business's accounts as a tax-deductible business expense.

OC, just like any other government, gives structure to what may otherwise be an anarchic, dangerous environment for its subjects. When this is seen in the context of political theories regarding the state as a body enjoying a monopoly to the means of violence within set geographical limits, the validity of this analogy becomes even clearer. Political theories of the state fall into two broad categories: those that regard the state as an exploitative agency imposed from above and backed up by

force, and those that see the state as the product of a social contract. The extent to which an individual will find this analogy valid, therefore, clearly depends on that individual's perspective of the state.

Baumol (1995), buying into the exploitative perspective, suggests that the analogy is so apt that not only is it fruitful to analyse OC groups as fledgling governments, but it is also pertinent to examine states as the logical extension of OC. If the state is considered in the broad sweep of both history and geography, Baumol's analysis has a disturbing plausibility; exploitation of the majority, in the interests of a small elite backed up by power, is the norm, and representative democracy an aberration. Some theorists would go further and argue that even these democratic trappings are an ideological myth concealing the true structure of power and exploitation.

Grossman (1995) develops this idea of an exploitative or, in his words "kleptocratic", state and sees that OC may act in direct competition with the state. Grossman's theory of kleptocracy rests on the assumption that the primary objective of the state is the maximisation of revenues. Like all good economic theories of maximisation, that of kleptocracy assumes that the economic actor is constrained, in this case by the decisions of the state's subjects. One of the key factors influencing this constraint is the existence of a rival producer of public services in the form of a mafia. The introduction of competition seriously undermines the ability of the state to maximise tax revenues. It need not, however, necessarily affect the welfare of the taxpayer in a negative way.

To see how this is possible, let us first consider an economy in which the state has a monopoly on the lawful provision of goods and services. The citizen producer chooses what proportion of his resources he allocates to lawful economic activity



(which is taxable) and what to the black-market (which includes the production of both illegal goods and undeclared legal goods). In both black and legal market production the individual producer must combine his own resources with state-provided public services.

A major constraint on the government is that the producer can use public services in the illegal sector, benefiting himself but lowering tax revenue for the state. If the government sets the tax rate too high, then producers will switch their resources to the black market thus reducing state revenue. Ultimately, however, excessive black market activity will result in a reduction in the supply of public services, with the consequent negative feedback on total production.

Once our "mafia" is introduced to the model, the situation changes. Assume that the mafia also provides public services. Let it also be assumed that these services can only be utilised in the black-market sector and that the mafia can only collect rents in this sector. In this new economic environment, the individual must decide, as before, what proportion of his resources to allocate to legal and illegal markets so as to maximise his utility. He must now, however, take into account four key variables: these are the relative tax rates charged and public services provided by both state and mafia.

State and mafia will therefore compete for market share through the manipulation of tax and benefits. In the simple model outlined above the stable equilibrium point will set the producers' resource allocation equally between straight and illegal-market activities. The beneficiary is the individual producer, whilst the state loses its ability to charge monopoly rents.

Whilst it might seem at first glance to be extraordinary to consider OC and the government to be rivals, given our definition we can see theoretically how this can be. Empirically the theory finds supporting evidence. The famous anti-mafia judge Falcone once admitted that, due to the inefficiency of the Italian legal system, disputants frequently relied on the mafia to resolve civil disputes (Gambetta 1993, 170). The same has long been true of Japan. Similarly, where the police offer protection on a partial or preferential basis, it creates a market for alternatives.

With respect to the factors influencing the rate at which the state sets taxes, a number of considerations should be taken into account. The assumption of a revenue-maximising state should be qualified by the existence of a number of constraining factors, not least of which is a continued grasp on the handles of power. Whilst competitive pressures impacting on tax-rate decisions do exist in modern states, they are more usually associated with the ballot box than the underworld. Undoubtedly higher taxes do increase the propensity to black-market involvement, but it is not thought that this is a major factor in governmental tax-setting.

Grossman's analysis raises one interesting question: if the state and OC are rivals, and if, as Baumol suggests, the OC group is a fledgling government, why does the state not take more vigorous steps to eradicate this threat to its hegemony? To answer this we must examine the relationship between state and OC.

## OC AND STATE

Pearce (1976), writing from a neo-Marxist perspective, argues that, far from being the rival of the state, OC is its servant. OC is just one more means of social control



and the perpetuation of the existing hegemonic structure. There is much evidence to support this claim, but it will be shown that, in reality, the relationship is much more complex and subtle than that suggested by Pearce. Even the oft-used term “symbiotic” is not entirely apt, as the state could quite happily exist without OC whilst it is likely that, in the absence of effective state control, OC would not only flourish, but also be compelled to expand its governmental role. An example of this latter scenario might be the republics of the former Yugoslavia where it is hard to tell where state starts and OC ends.

Pearce’s paradigm of OC as servant rests on the assumption of a monolithic state representing the interests of the ruling capitalist class. Whilst it would be naïve to deny that the interests of business are a significant influence on governmental behaviour, the distribution of power in society is much more diffuse than is suggested by Pearce. Even within the apparatus of “the state” there are a number of competing agencies with different, sometimes conflicting, objectives. Differences might even be apparent in the objectives of different departments and levels within the same agency.

There are, however, numerous examples of OC providing services to different branches of the state and its most prominent representatives. The most striking of such examples are those in which the security/intelligence apparatus of the state has co-opted OC, usually in its fight against political radicalism. A famous example of this is the use by US naval intelligence of ‘Lucky’ Luciano to prevent labour unrest and aid counter-intelligence on the New York waterfront during the Second World War (Abadinsky 1994, 137).

Though they should not be conflated with the state, individual political figures have also been aided by OC. In politics, and especially machine politics<sup>2</sup>, OC can provide campaign funding and organise voters. At a more basic level OC may intimidate rival politicians and their supporters. Whilst OC is here serving the interests of politicians, it should not be seen as their servant; there is a very clear understanding that such support is conditional on OC's business activities being viewed leniently by the politician once in power.

In this respect there is little difference between campaign contributions made by OC and those made by legitimate business interests or other lobbying groups. This suggests an inconsistency in the neo-Marxist analysis of OC: if the state is the servant, or "executive committee", of business interests, and OC behaves like a legitimate business with respect to political figures, then possibly it is more reasonable to assert that, far from OC being the servant of the state, political leaders serve their sponsoring OC group. With the exception of extreme cases of weak and corruption-ridden states, with immensely wealthy, powerful criminal organisations such as South American drugs cartels, this would be overstating the case. It is more reasonable to assume that OC is just one other interest group which may exert influence over the political process.

Another interest to which the authorities must pay heed is that of public opinion. The ability of a government to accommodate OC may well be tempered by the level of public concern about OC activities. Where OC businesses are perceived as victimless transactions between consenting adults, as may be the case with gambling, loansharking, and prostitution (whether or not this perception is

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<sup>2</sup> The term 'machine politics' refers to the systematic corruption of the democratic process into a system of patron-client networks designed to ensure a continued monopoly of power.

accurate), there may be a general tolerance of OC and consequently little pressure to enforce the relevant laws. Even high levels of OC violence may not engender corresponding levels of public anxiety provided it is 'kept inside the ghettos'. The widespread perception of drugs as a serious threat to society makes a tacit acceptance of OC much harder. The increasing importance of drug trafficking to OC finances is one major feature in the more overtly antipathetical treatment of OC by governments in recent years.

Even with regard to the drugs trade, law-enforcement resources may well be directed at that aspect which most directly concerns the public, street-level trading. This is characteristically a level at which there is no direct OC involvement (under our definition, street-gangs can be seen as, at best, proto-OC). Given that law-enforcement resources are seriously constrained, they will be targeted in electorally efficient ways, i.e. against those crimes that voters are most worried about such as disorganised violent street and property crimes, and, in so far as the drugs trade is targeted, its relatively 'disorganised' retail arm.

At the level of law-enforcement, officers may also find reasons to accommodate OC. These may not be due to straightforward corruption, though such cases are by no means unknown, but OC may benefit the police in other ways. Because of their extensive network of contacts and consequent intelligence grapevine, OC groups are in a position to provide the police with information concerning crimes not connected with themselves. Where these crimes represent a threat to the interests of the group concerned, it will be advantageous for them to use the police to remove their rivals. The 1950 Kefauver Committee discovered that the local police were actively employed by the OC group running the illegal gambling wire service in



Miami, to ensure that only affiliated gamblers remained in business (Reuter 1983,124, Schelling 1984, 164-5).

Even if we assume that both law-enforcement officials and policy makers are opposed to the continued existence of OC, it is still possible that they may adopt a quasi-co-operative policy. The way in which this might happen is explored by Celantini, Marrelli and Martina (1995), who use economic modelling to show how the state might regulate OC. Celantini, Marrelli and Martina's model is composed of a repeated fixed-stage game in which the government is facing two criminal groups, both of which are rational discounted-profit-maximisers. The government's objective is the minimisation of the combined profits of the two gangs. The government has at its disposal fixed resources available for action against these two groups, which it can allocate to the two groups in any ratio it thinks fit. The probability that a gang will be put out of business is directly proportional to the level of resources arrayed against it. If a firm is destroyed by government action, then a new one will take its place in the next game cycle.

At the beginning of each game cycle, the three players choose their game plan and, at the end of the game, the result is revealed and they receive their payoff (profits for the gangs and a negative payoff for the state equal to the sum of these profits). Because the gangs value future as well as current profits, it will not be in their interests to adopt an aggressive short-term profit-maximising strategy as this will incur a higher probability of being exterminated by the government in the next game period. A stable equilibrium can be reached in which the government "rewards" gangs that play by the rules and do not antagonise it.



This pragmatic relationship can be seen in the real world. The government must accept that it does not have a total monopoly of power and must therefore come to terms with other power groups. On the other side, OC will tend to adopt codes of practice that avoid its coming into direct confrontation with the government. This need not imply any cordiality between the two parties; it can be likened to two powers locked in a military confrontation having a tacit understanding as to the “limitation of war.....and the delineation of spheres of influence” (Schelling 1984, 173).

Schelling (ibid, 172) therefore suggests that, from a social point of view, there may be at least one advantage organised criminality has over its disorganised variant. This rests on the argument that a large organisation may internalise costs that would be externalities to a small one. Whilst an act of violence carried out by an individual criminal in the perpetration of a crime may register as a significant cost to that individual, it also burdens other criminals with additional costs. Because violence increases public anxiety, it will stimulate law-enforcement efforts to crack down on crime. If crime is organised in regional monopolies, then they will have an interest in reducing violence. It may well be the case, of course, that in certain circumstances the costs of violence to the criminal organisation will be more than outweighed by the benefits. This does not alter the principle that, *ceteris paribus*, a monopolised criminal underworld will have an interest in maintaining discipline amongst its members.

Not only can we see the advantage to OC groups of not antagonising the authorities; the argument above suggests that such groups also have a clear incentive to prevent others, operating within the group’s own jurisdiction, from doing so. It can

therefore be conjectured that OC may paradoxically exercise a *crime-control* function over and above its need to eliminate rivals. Empirically there is evidence to support this surmise. Gambetta, for example, observes that “the mafia at times polices its territory as if it were responsible for public safety” (1993, 166). The same has been said of the *yakuza* to the extent that it has become a cliché.

## OC AND BUSINESS

In conjunction with OC’s involvement in illegal markets, it also inevitably becomes enmeshed in legitimate business. There are a number of reasons for this. Firstly, the considerable profits generated by the illegal “core” activities will need to be invested. It is possible that not all of these profits can be usefully reinvested in criminal operations as that might entail coming into competition with other groups. It is also preferable if this investment is invulnerable to government sequestration; so there are clear advantages to investing in legitimate industries (though a few countries, notably the USA, have provisions for the seizure of assets even when they are not directly related to OC or other criminal activity).

At the same time, the organisation’s illegal activities may require a legitimate front to mask such activities. Import-export, road haulage and tourism may provide a useful cover for smuggling. Restaurant chains, with frequent deliveries of perishable foodstuffs from abroad, may also facilitate drug import and distribution. Bars and restaurants have the added advantage of providing a secure base in which to meet.

Money laundering is another reason for the necessity of a legitimate side to the organisation’s portfolio. Restaurants and casinos, both characterised by a high cash-turnover, are good ways of turning tainted money into clean. However, for the



large sums generated by successful modern OC syndicates, large-scale real-estate speculation and exploitation of global financial markets are increasingly significant aspects of money laundering in OC.

Even disregarding the benefits to its criminal operations that an OC syndicate may derive from involvement in legitimate business, a diversified portfolio is always a sound investment strategy, and this is even more appropriate when the rest of one's capital is involved in comparatively risky criminal ventures. There may also be benefits in the increased respectability that ownership of legitimate business gives. The ability to provide legitimate employment to retainers, relations, parolees and others is a valuable tool in building "social capital" and prestige. Legally held businesses can be passed on to one's heirs in a way that is rarely possible in the underworld.

The takeover of a legitimate business as payment of a loansharking or gambling debt is frequently cited as a standard OC procedure. Once the business is under OC ownership, it may be left with the existing management running the business as before but handing the profits to the new owners. Alternatively it may be systematically bled dry; existing credit lines will be used to order goods that will be resold, with all the proceeds going to the criminal group whilst the company heads for bankruptcy leaving huge debts. A tangled mess of documentation will be left to protect those responsible from prosecution. Reuter (1983, 100-1) questions this conventional wisdom, suggesting instead that loansharks rarely desire to take over legitimate businesses and few possess the degree of sophistication necessary for this type of operation.

One type of activity that OC in Japan indulges in, but is not seen to nearly the same extent in Europe or the United States, is that of corporate blackmail. Why *sōkaiya*<sup>3</sup> should be such a prominent problem, whilst their occidental counterparts are not, is an interesting question. Whilst an answer might be framed in cultural terms emphasising a greater consciousness of ‘face’ in Japan, a more compelling, structural, explanation is that accounting practices in the United States and European countries provide for higher standards of transparency in their business communities than obtain in Japan. In addition, at least as far as the Anglo-Saxon world is concerned, there is a general acceptance of the legitimacy of aggressive shareholders.

The relationship between OC and legitimate business need not be entirely predatory; OC may also become involved in legitimate business because it is beneficial to the firms concerned. The services that OC brings to legitimate industry may be considered to be an extension of their “governmental” function as they involve the use or threat of violence to enforce rules. The best known example of this is the way in which companies employ organised-crime syndicates to control potential, or actual, labour problems. Woodiwiss (1990, 34) points out that this can work both ways; Jimmy-Hoffa, the notorious mafia-connected labour racketeer of the Teamsters Union, tended to secure good gains for his members. The major tendency is, however, in the opposite direction, with firms finding it considerably more cost-effective to pay the relevant gang than to face a strike or become involved in free collective-bargaining. On his release from prison in 1949, Kodama Yoshio, the far right *yakuza* fixer (*kuromaku*), started up the Midori Kikan, which

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<sup>3</sup> See chapter three.



specialised in providing this type of service (Hunziker and Kamimura 1994, 48).

OC has also been of use to firms in quelling opposition to its actions from citizens' groups. Two examples of this are the use of *bōryokudan* by the Chisso Corporation (in an attempt to prevent disruption of its annual general meeting by relatives of those affected by mercury poisoning in the Minamata area) and Mitsubishi Heavy Industries (to deal with similar disruption by anti-Vietnam war protestors) (Szymkowiak 1996, 105).

Real-estate development is another area in which business has made extensive use of OC groups. In Japan, *bōryokudan* have been instrumental in creating plots of developable land by intimidating owners of adjacent small plots to sell up. This process, known as *jiage* (landsharking), became an important source of income and a feature of Japan's bubble economy in the late eighties.

As mentioned above with reference to the Russian *krysha*, OC may also offer a debt collection service to legitimate firms. When faced with a difficult-to-recover debt, a company may call in a gang to collect it for them (minus the collector's commission and expenses). Alternatively, they may opt for the more clear-cut option, pioneered recently by the Tokyo-based Sumiyoshi-kai, of selling the debt on to a *bōryokudan* front company at a twenty-percent discount.

It is clear from the above that the existence of OC in the legitimate sector of the economy is not a purely parasitic one. OC provides services that are actively sought out by firms of their own volition, just as individual citizens seek out the goods and services that OC provides in its black-market operations. Gambetta and Reuter's

study of the mafia in legitimate industries suggests that the main beneficiary of this relationship may be the firm itself (1995, 116-139). Their analysis focuses on the use of the mafia to enforce cartel agreements in various industries in both Sicily and the United States.

One of the main problems with market collusion and the maintenance of collusive agreements is that there is always an incentive for an individual member of the cartel to cheat by undercutting the monopoly price agreed by the colluding firms. This will increase its market share and profits at the expense of the other firms. Cheating ultimately leads to the breakdown of the cartel and the loss of monopoly profits for all. Because this type of agreement is illegal, it cannot be policed by the authorities. For this reason there is a role for an 'honest broker' with the capacity to impose effective sanctions to place the agreement under its jurisdiction.

One example cited by Gambetta and Reuter of mafia-enforced collusive activity shows clear similarity to the Japanese experience. In Sicily building contractors share out work on an alternate basis. The colluding firms take it in turns to tender the winning bid whilst the others put in much higher "courtesy bids". This enables the participants to charge more than they could in a competitive environment. Should firms cheat at the last minute by putting in a competitively priced bid, "men of respect" will be called in to enforce the agreement. The similarity of this system to the *dango* bid-rigging circles in Japan as described by Woodall (1996) is strong, whilst Stark's description of a provincial city's *bōryokudan*-centred clique suggests that cartel enforcement is also similar (Stark 1981, 196-215).

As well as policing the cartel agreement, another advantage offered by OC involvement in these conspiracies is that it may well cow customers, preventing



them from seeking alternative suppliers or complaining about monopoly prices and shoddy goods and services. New entrants may also be deterred. It should be noted, though, that, as long as the new entrant abides by the cartel rules, and pays the mafia for its policing service, the OC group will not share the incumbents' desire to restrict entry. Presumably incumbents will have to pay a premium for this extra deterrence service. However, the administration costs of cartel supervision increase with the number of colluding firms. This will presumably create an upper limit on the size of such a cartel.

Cartel collusion can take one of three forms: price fixing, quotas or market-sharing. Gambetta and Reuter find that the first is hard to maintain once the number of participants exceeds a certain point whilst the second requires too much detailed measurement to be economic to police. The main form of OC-run cartels are, therefore, market-sharing deals. There are three forms this can take: sharing by territory, customers or queues. The preferred form will depend on the market in question. For example, in the case of taxis, queues are a more sensible arrangement than market-sharing by territory.

In the New York garbage-carting industry, customers are shared and become effectively one of the firm's assets and can be bought and sold. The high prices that these customers are traded for, combined with the low level of rents demanded by the policing group (typically 2-3% in this market), indicates that the main gains from this arrangement accrue to the firms themselves. It is possible that the organisation judges that, if it were to retain all the benefits itself, then there would be no incentive for the participants to perpetuate the agreement, and it would have to resort to expensive coercive measures.

## CONCLUSION: DOES OC MATTER?

As has been shown by the above, the existence of OC is not unequivocally disadvantageous to numerous components of the wider society on both sides of the law. It provides goods and services to consumers in black markets (which, in so far as they are crimes, are “victimless” crimes), justice to the disenfranchised and a stable business environment to criminal entrepreneurs; it is also a bastion of the free market system in the face of radical and subversive pressures. On a sociological level, it is a means to upward social mobility for those who are deprived of legitimate opportunities for advancement. Through its fencing operations, it functions as a mechanism for the redistribution of wealth from the haves to the have-nots.

Moreover, if crime is going to exist, is it not possible that organised crime is preferable to disorganised crime? As we have seen, OC may exercise a controlling function on violent excesses that would otherwise upset the apple cart.

There are a number of flaws with the argument that the existence of OC does not matter. The first of these is the premise that the black markets in which OC is involved are victimless crimes. Whilst this may be true for gambling, and for loansharking (assuming Reuter, Ianni and others are correct in their assertion that violence is not a significant feature of it), drugs and prostitution are more problematic. Addiction to drugs, especially to heroin, cocaine and crack, means that retail transactions are not between freely consenting individuals. Moreover, to feed their addiction, individuals are often forced into criminal activity. Therefore, even disregarding the illegality of the trade, these drugs are potentially criminogenic.



There are also a number of social costs to the trade in illegal drugs; because of the unsupervised nature of the business, drugs are cut with any number of substances, purity levels are irregular, needles are shared, and as a consequence there are serious health concerns. The high cost to individuals with a heroin or crack addiction to support engenders poverty and all its attendant miseries. The introduction of otherwise law-abiding citizens to the periphery of the underworld may lead to a disrespect for the law and encourage a process of criminalisation. These problems are all independent of the question of whether or not drugs are, in themselves, “a bad thing”.

Prostitution is another black market in which the assertion of victimlessness may be questioned. Whilst some women make an informed career decision to go into this business, others are forced or tricked into prostitution and then compelled, by the threat or use of violence, to remain in it. Frequently such women are further prevented from recourse to law by virtual imprisonment, drug-dependency or by virtue of the fact that they are illegal aliens with no clear understanding of their legal rights. Regardless of the moral stand one takes on prostitution *per se*, such a situation is indefensible. It is interesting to note, however, that the most vociferous opponents of the legalisation of prostitution are the working prostitutes themselves. This is essentially due to the fact that, under a legalised regime, their income would be taxed by the authorities. Does this imply that their current protection costs are competitively set vis-à-vis those of the legitimate world, or is it merely based on the fatalistic assumption that legalisation would lead to their paying taxes both to OC and the state?

There are also a number of costs that OC imposes on the wider society because of its effect on the legitimate economy. The consequences of OC-backed market conspiracy and OC-protected business are similar to those of monopoly. Consumers are forced to pay excessive prices and new entrants are excluded. Furthermore, the security that OC-enforcement brings to the cartel increases the firm's disregard for quality, efficiency or customer satisfaction. If the industry is prone to violent bouts of enforcement, competent businessmen may exit, leaving only those firms that lack the skills to survive in any other business. This is a further blow to efficiency.

OC involvement in labour racketeering exploits workers whilst simultaneously exposing employers to higher labour costs than would appear in a free labour market. In economic terms, this is the worst of both worlds. OC extortion rackets in legitimate industries, even if Schelling is correct in his suggestion that the bulk of the additional costs are merely passed on to the final consumer, result in a loss to the wider society. As taxpayers, citizens also suffer from the fact that the profits that OC makes in its various business operations are largely untaxed and this represents a considerable loss to public finances.

Whilst OC protection of companies operating in legal markets has negative economic consequences, the protection which it extends to criminal entrepreneurs yields even greater social disbenefits. Where crime is organised, there tend to be higher overall levels of crime than where it is not. Whilst it is obviously problematic to determine the direction of causality, the fact that OC protects criminals, and this protection is frequently effective, makes crime a less risky career choice for potential participants and a more intractable problem for officialdom.

Perhaps the most significant cost of all that the continued existence of OC imposes on society as a whole is the cost of corruption. This undermines the legitimacy of the state and its institutions. Loss of respect for political, legal and law-enforcement agencies in this way will reinforce a culture of corruption and cynicism. If everyone is on the take, not to do so is foolish. The consequences of this will be twofold: OC will further flourish and ordinary citizens and businesses may be compelled to adopt corrupt practices to gain access to justice or bureaucratic decisions.

On balance, the existence of OC does matter and it is 'a bad thing'. This does not, however, invalidate the functionalist arguments, which attempt to show how OC can be beneficial to different constituent parts of society. These arguments are important and it is only through an understanding of the forces giving OC its durability that intelligent and clearly-thought-out countermeasures can be developed.



## CHAPTER THREE

### THE DEVELOPMENT OF ORGANISED

### CRIME IN JAPAN

#### HISTORICAL ANTECEDENTS

Although the history of Japan can hardly be said to be devoid of ‘violent groups’ (the literal definition of *bōryokudan*), that of the *bōryokudan* really only starts with the end of the Second World War in 1945. The groups commonly referred to as *yakuza* however, do lay claim to a much longer lineage. Whilst much of this is of dubious historical validity, the *yakuza* mythology is important in conditioning the perceptions held by both the OC group members themselves and the wider society of the place of the *yakuza/bōryokudan* in Japanese society. Historically the term *yakuza* itself is imprecise in that it is commonly used to refer to two distinct groups, the *bakuto* (gamblers) and the *tekiya* (itinerant peddlers). The derivation of the word itself from the ‘*ya*’ (eight), ‘*ku*’ (nine) and ‘*sa*’ (three) making up the worst possible hand in a traditional Japanese card game, shows clearly its original reference to gamblers.

It is probable that for as long as there has been commerce there have been peddlers travelling around local fairs and markets using trickery and deceit to sell shoddy goods and cure-all medicines at inflated prices. However, due to the fragmentary and largely unwritten history of the underclass, it is hard to say when these traders



first banded together into gangs of *tekiya* or *yashi* (Iwai 1963, 57). It is however clear that for such gangs, employing violence would have been an effective way of limiting competition. By 1740 the Tokugawa had appointed the more prominent gang leaders as supervisors responsible for organising open-air trading within a certain area. This example was followed at the shrines and temples where many markets were held. The supervisor was responsible for allocating sites for each stall as well as collecting rent from each trader.

Iwai (1963, 34) traces the history of the gamblers back to the seventh century and as early as 689 AD an imperial edict had banned gambling whilst contemporary documents refer to the existence of organised gambling gangs by the Kamakura period (1185-1392). By the early Tokugawa period (1600-1867) recognisable *bakuto* organisations had appeared. The reaction of the authoritarian military dictatorship to these groups was initially highly restrictive with severe penalties for gamblers. Later however the central government developed a pragmatic policy of secretly aiding the more powerful of the *bakuto* leaders in order to exercise leverage over them to its own advantage (DeVos 1973, 283). During this period, the police authorities also co-opted key *bakuto* and *tekiya* personnel into their intelligence networks. This is an early example of the symbiotic OC-state relationship that was discussed in the previous chapter.

Under this more relaxed political climate, the *bakuto* flourished to the extent that the most powerful bosses of gambling gangs became significant figures in the upper, as well as the under-world. Some of these prominent gamblers also operated as labour brokers supplying construction workers for the large public works programmes of

this period. Labour broking, and raking off a percentage of the labourer's wages (*pinhane*), is another continuous feature of the history of these organisations. There is a happy synergy in these two industries; the lure of gambling attracted potential labour whilst, after work, their wages could be fleeced off them at the gaming dens.

The most famous of these gambler/brokers was Banzuiin Chōbeii. Banzuiin's fame is due to his perceived role as a protector of the common man against arbitrary treatment by gangs of discontented samurai. The unification of Japan under the Tokugawa brought to an end centuries of warfare and revolt. With peace, came a crisis for the large, and economically useless, warrior class. Whilst many samurai responded by becoming bureaucrats and scholars, others reacted against the change in the political situation by forming gangs which became known as the *hatamoto yakko* (servants of the Shogun). These bands scorned the decadence of contemporary society and set themselves apart by their ostentatious dress, stress of the *bushidō* code of their forebears and devotion to the martial arts. The *hatamoto yakko* would roam the streets terrorising the townspeople. Banzuiin, and others like him, supposedly set up civil defence groups composed of his gamblers, labourers and other young toughs such as local firemen to counteract the *hatamoto yakko*. These groups, in turn, became known as the *machi yakko*, the servants of the town. Rather than being primarily altruistic anti-*hatamoto yakko* forces, Ino (1993, 44) maintains that the rationale for the *machi yakko*'s existence was as mutual-aid societies. They were largely composed of victims of the Tokugawa regime such as farmers (who had abandoned the land due to land taxes), debtors, and also masterless warriors, some of whom had set up martial arts schools for townspeople.



The *machi yakko* quickly became folk heroes and the subject of songs, *kabuki* plays, novels and, more recently, films. This Robin Hood mythology is claimed by the modern *bōryokudan* who assert that they are the descendants of the *machi yakko*. Interestingly, in their reactionary political views, exaggerated attire, elaborate rituals and defiant self-exclusion, they perhaps share more with the *hatamoto yakko*. Despite the claims made by the *bakuto* to *machi yakko* ancestry, these groups were finally eradicated by the Tokugawa in the late seventeenth century and the main leaders executed (DeVos 1973, 286).

During the struggle for supremacy between the decaying military dictatorship of the Tokugawa and the pro-imperial faction, the larger *bakuto* groups with their reserves of disciplined fighting men became important political forces. They adopted an opportunistic attitude with different groups supporting whichever side they considered more likely to win. The most well-known of these gamblers turned politicians was Shimizu Jirōchō. Not only were his past crimes pardoned in return for his military support, but he was made a local authority (Iwai 1963, 45; Kaplan and Dubro 1986, 30-1).

Despite the services that various gambling groups had rendered to the Meiji government in establishing itself, the new administration persecuted gambling and the *bakuto* groups. This practice by the authorities of making use of gangs when it is advantageous and restricting them when they are perceived as a threat to public order, is a persistent theme in the history of the relations between Japan's ruling elite and the *yakuza* groups. With the maturation of an industrial capitalist economy, an increasingly militant labour movement developed in Japan. This

received a large boost from the 1917 Bolshevik revolution in Russia whilst, in Japan, high food prices and a post-war depression led to strikes and rioting (Beasley 1990, 126).

In order to counter this threat both the government and industrialists hoped to harness *bakuto* groups as shock-troops to break strikes and enforce labour acquiescence. In 1919, a national alliance of gamblers, the Dai Nippon Kokusui-kai (the Greater Japan National Essence society) was set up at the instigation of Home Minister Tokonami Takejirō with backing from several top military figures. Like later attempts to organise such federations, the Dai Nippon Kokusui-kai was wracked by internal conflict and not susceptible to external control. Consequently it only had limited impact (Iwai 1963, 46).

However links between political and military leaders on one hand and *bakuto* and *tekiya* bosses on the other, increased into the early Shōwa period. *Yakuza* groups played active roles in extreme right-wing groups such as the Kokuryū-kai which were involved in violent strike-breaking, combating left-wing and liberal political movements and engineering 'incidents' in China and Manchuria (Iwai 1963, 46-7). Whilst some members may have found a political justification for their actions, the *yakuza* also benefited substantially from this relationship. This was profitable both in terms of increased political influence, and materially from the revenues to be made from protecting the opium dens supplying the Chinese (Vaughn, Huang and Ramirez 1995, 496). It might be reasonable to conjecture that *yakuza* gangs had also been responsible for supplying 'comfort women' to the Imperial Japanese



Army. However, Iwai, who before becoming one of the foremost authorities on the *yakuza* had served in the Imperial Japanese Navy, disputes this, saying that there was no need for *yakuza* involvement in this business and legitimate merchants were responsible for employing comfort women (interview Tokyo, 1989).

With the mobilisation of the Japanese economy onto a war-time footing, there was no longer any reason to cultivate the *yakuza*. Therefore, gang members who had not been directly incorporated into the war effort were once again the target of official crackdowns. It would not be until the end of the Pacific War that gangs would once again become active.

## POST-WAR DEVELOPMENTS

The forty-three year period between the end of the Second World War and the death of the Shōwa emperor (1989) saw enormous changes in Japan and, in response to the opportunities and challenges that these changes offered, organised crime in Japan developed profoundly too. The 1989 *Hanzai Hakusho* (Ministry of Justice White Paper on Crime) identifies five separate historical periods in this development. Although the National Police Agency only considers there to be four (*Keisatsu Hakusho* 1989), the academic literature (Huang and Vaughn 1992, Shikita and Tsuchiya 1992) adopts the *Hanzai Hakusho* classification as facilitating a more detailed analysis. These are the Period of Post-war Confusion (1945-50), the Gang War Period (1950-63), the Summit Strategy Period (1964-70), the Period of Reorganisation, Expansion and Oligopolisation (1971-80), and the Period of Generation Change (1981-88).

Despite the disparity in these authorities' historical breakdown of the post-war Shōwa period, there is no significant difference in their conclusions of the significant trends in *bōryokudan* development.

### PERIOD OF POST-WAR CONFUSION

By the end of the war, Japan was devastated; its major cities lay in ruins, many of its people were facing starvation, unemployment stood at 13.1 million (of which 17.6% were disbanded troops), manufacturing capacity stood at 52.7% of its 1937 level and rice production at 59% (Nakamura 1981, 12-22). To exacerbate matters the police had been disarmed, purged and discredited and were temporarily unable to enforce public order whilst the occupying American authorities, faced with budget constraints of their own, did not treat policing the underworld as a priority (Huang and Vaughn 1992, 25).

In the face of these almost impossible circumstances, black market trading became the only way that many people could survive. With a lack of effective state control and a large potential market, two of Anderson's conditions for the development of OC discussed in the preceding chapter were fulfilled; it is only to be expected therefore that OC would be the result. The enormous black market that appeared in this chaotic situation featured not only the traditional street traders the *tekiya*, but the *bakuto* and non-traditional gangs of racketeers known as *gurentai*. This is considered a clear break with the past as formerly the *tekiya* and *bakuto* had specialised in their respective fields of expertise and it would have been considered

an admission of incompetence for a gambler to earn money in any other way (Saga 1991, 78).

Whilst some traditional gambling groups attempted to remain aloof from these developments, they tended to be forced out of business or into alliances with the more aggressive *gurentai* (DeVos 1973, 295). The development of diversified gangs operating in black markets and extortion as well as such more traditional activities as gambling can be considered as the birth of OC in Japan as it has been defined in the previous chapter. It should however be noted that Japanese gangs ran diversified drugs and extortion operations in occupied China and Manchuria in the 1930's. This was perhaps indicative of the way in which OC would develop in Japan.

Ironically, government actions in the immediate post-war period inadvertently accelerated the shift of traditional *yakuza* groups into alternative economic activities. In an attempt to increase government revenue by taking over the most popular forms of gambling, the government squeezed the *bakuto*'s main source of revenue thereby forcing them to diversify.

The black market did not just deal in essentials such as food and cooking oil, but also in drugs and, in this period, drug use reached epidemic proportions. This was chiefly for three reasons: During the war the government had produced large quantities of amphetamines to boost both workers' productivity and the endurance of troops. With Japan's defeat the remaining stock-piles, as well as the technical know-how to produce amphetamines, quickly found its way into the hands of



criminal gangs. Secondly, the use of these drugs had been lent legitimacy by their role in the war effort and, since many otherwise law-abiding people were already making purchases from the black-market, there was no stigma attached to the use of amphetamines. Thirdly, given the shortage of food, amphetamines were a useful way of suppressing fatigue and hunger (Vaughn, Huang and Ramirez 1995, 498).

Amongst the *gurentai* groups were large numbers of Koreans, Taiwanese and Chinese who had been brought over to Japan as forced labour for Japan's shipyards, mines and factories. People from these three countries (known as *sangokujin*) had endured years of appalling treatment at the hands of their Japanese masters and many sought revenge in violent reprisals. Therefore the conflicts that inevitably arose over control of the illegal and highly lucrative markets often took on a racial tone with native Japanese gangs portraying themselves as defenders of the common people against foreign hoodlums. Given that many of the participants of these fights were battle-hardened veterans with access to military weaponry, they presented a severe threat to public safety (*Hanzai Hakusho* 1989, 348).

### **GANG WAR PERIOD**

During the 1950's Japan's economy started to pick up. This process of recovery received a massive boost when the Korean War created an enormous demand for military equipment. The Jinmu boom of 1955-6 and the Iwato boom of 1959-60 generated large construction projects for roads, apartment blocks and infrastructure of all types. At the same time this increased economic activity led to a massive increase in shipping cargo. As, by this time, the labour supplies of both the



construction and docking industries were largely dominated by OC groups, they profited handsomely from this development.

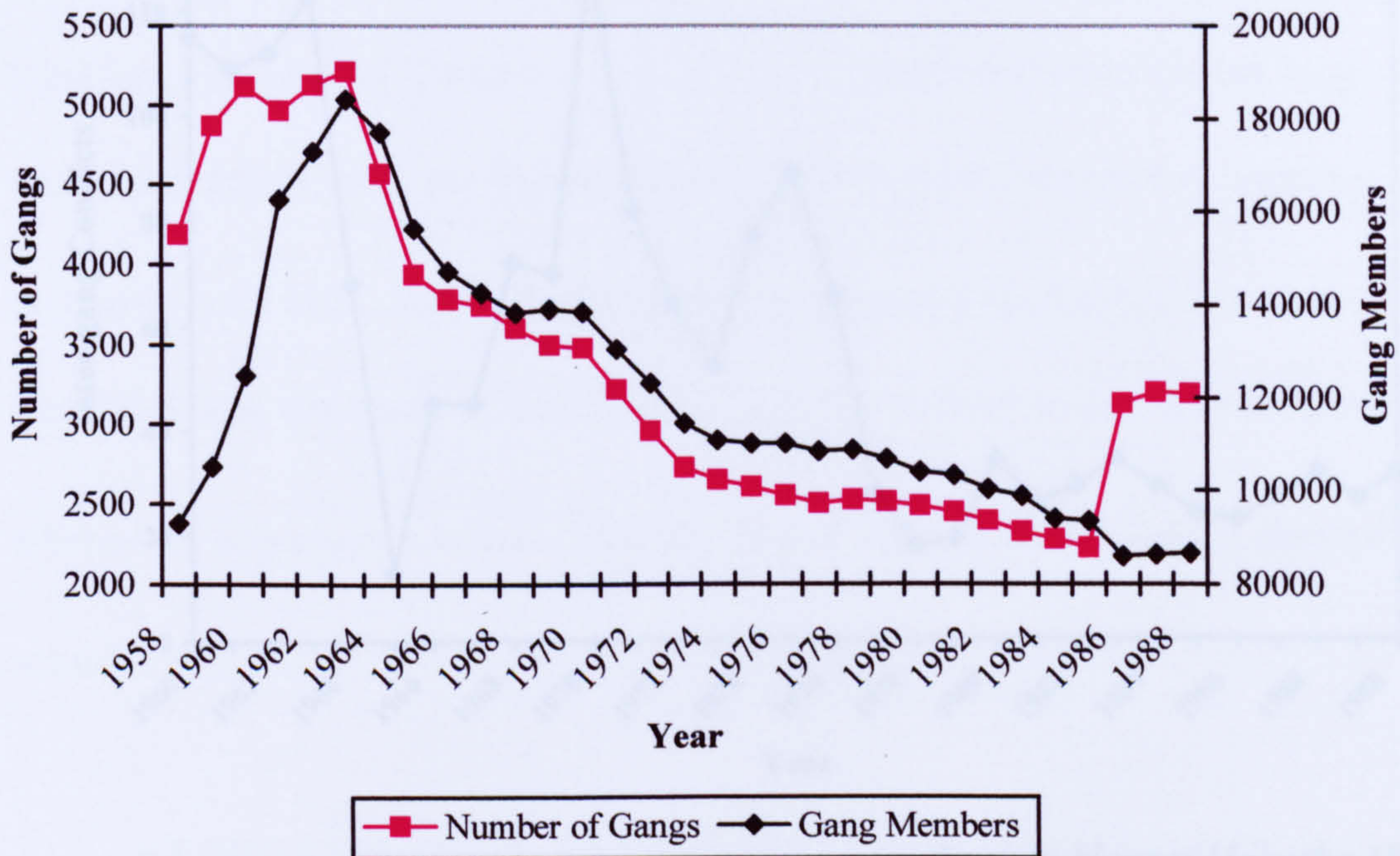
Whilst economic growth led to the withering away of the black market for necessities, prosperity spawned a thriving entertainment industry including *pachinko*, public gambling, as well as *mizushobai* trades such as bars, restaurants and prostitution. The criminalisation of prostitution in 1958 also increased the vulnerability of the sex industry to OC predation but it should be noted that the law was sufficiently filled with loopholes for much of this business to remain within the law. There was therefore considerable scope for protection rackets and extortion. This period consequently saw a considerable growth in the number and membership of *bōryokudan* groups. As can be seen in figure 3.1, the size of organised crime groups reached a peak in 1963 with 184,091 members in 5,216 gangs.

The increase in opportunities also saw increased competition between the various groups over control of these new sources of funds. This is illustrated by figure 3.2 showing the incidence of violent inter-gang conflicts from 1960 to 1988. The violence of these conflicts is demonstrated by the fact that during the peak year of 1963, 48.4% of all *bōryokudan* arrests were for either murder or GBH (*Hanzai Hakusho* 1989, 343). This period of warfare resulted in a few organisations achieving national prominence by a process of swallowing up their weaker neighbours in military alliances or by destroying them in open conflict. In particular seven groups were identified by the police as major syndicates. These were: the Yamaguchi-gumi, the Honda-kai (later the Dai Nippon Heiwa-kai), the



Sumiyoshi-kai (Sumiyoshi Rengō), the Kinsei-kai (Inagawa-kai), the Nippon Kokusui-kai, the Kyokutō Aio-kai and the Matsuba-kai.

Figure 3.1 *Bōryokudan* Gangs and Gang Members 1958-88



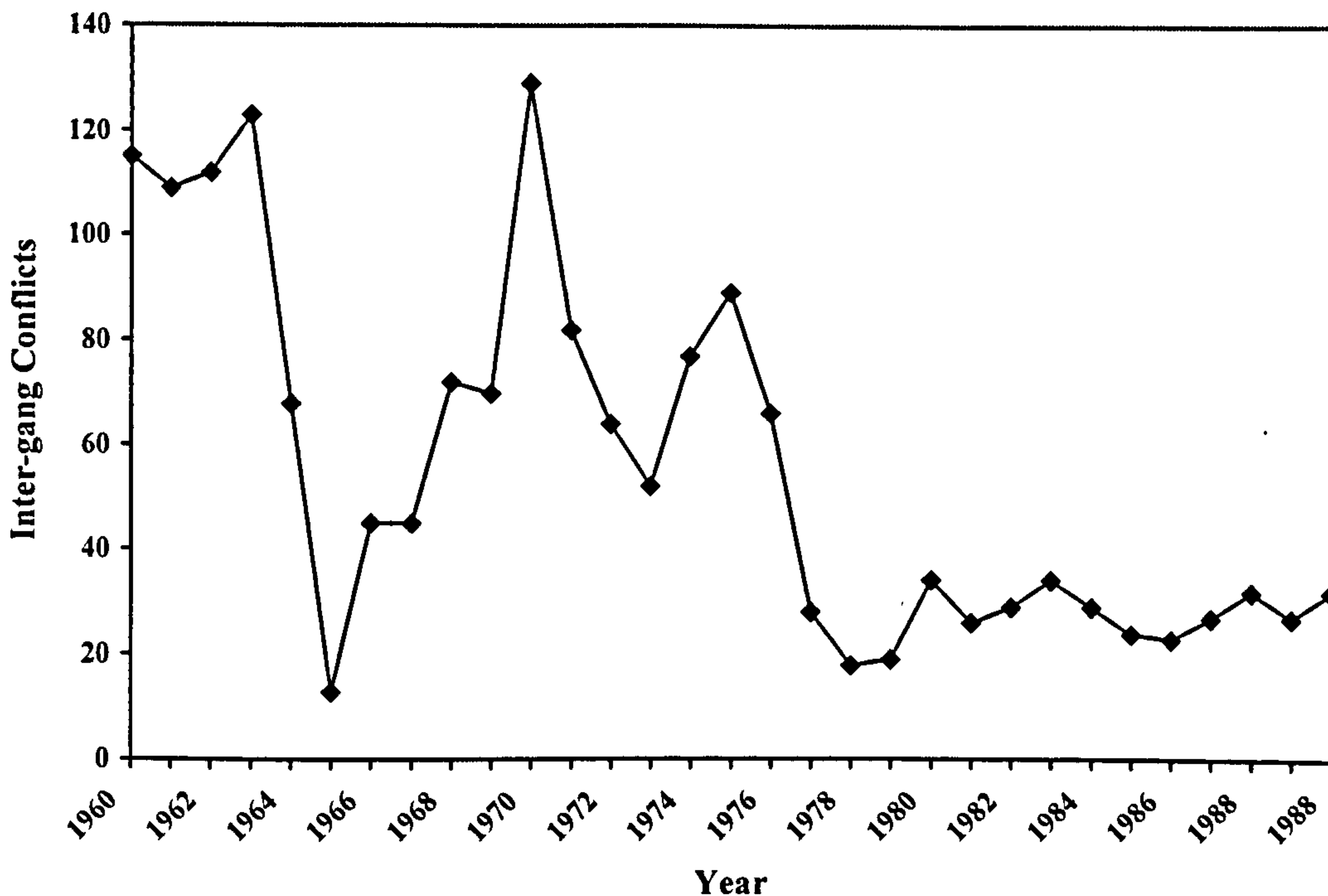
Source: *Hanzai Hakusho* 1989

In an attempt to control *bōryokudan* crimes, a number of laws were introduced. In 1958 the criminal law was changed to include the crime of witness intimidation and provisions were made for the protection of witnesses. At the same time penalties against lethal weapons such as guns and swords were increased and a law forbidding assembly with weapons was enacted. Given that inter-gang conflict did not decrease until 1963, these laws seem to have had little impact. Possible reasons



for this will be discussed below. In 1964 legal sanctions against crimes of assault with either swords or firearms were further strengthened.

Figure 3.2 *Bōryokudan* Inter-gang Conflicts 1960-88



Source: *Hanzai Hakusho* 1989

### SUMMIT STRATEGY

In the early sixties, widespread public discontent, including a 1964 campaign by the *Mainichi Shimbun*, with the high level of gang feuds put pressure on the police to take more comprehensive anti-OC measures. The forthcoming Tokyo Olympics also spurred the authorities to clean up the capital. The police response was to put into effect its “summit strategy” of nationally co-ordinated arrests of gang members, targeting particularly high-ranking personnel of executive grade or above. In particular the police made efforts to control illegal sources of income and firearms

(Shikita and Tsuchiya 1992, 88). Both the police and crime white papers try to show the success of the summit strategy crackdowns by pointing out that during this period a number of powerful groups including the Sumiyoshi-kai, the Kinsei-kai and the Honda-kai, as well as a large federation, the Kantō-kai disbanded. What they do not mention is that whilst these large syndicates disbanded, in many cases their component sub-groups remained in existence. Consequently both the Sumiyoshi-kai and the Kinsei-kai were able to re-establish themselves not long after and today remain, after the Yamaguchi-gumi, the largest *bōryokudan* organisations in Japan (Ino 1992a, 263). Furthermore, as discussed by Kaplan and Dubro, the Kantō-kai was the result of a politically inspired attempt to set up a nation-wide alliance of *bōryokudan* which collapsed due to internal dissent rather than police action (1986, 95).

### **REORGANISATION, EXPANSION AND OLIGOPOLISATION**

Whilst the summit strategy had a marked effect on the level of inter-gang struggles and caused a number of gangs to disband and total membership to decline, it also had other, unanticipated, consequences. Because the police crack-downs targeted primarily traditional *bōryokudan* crimes such as gambling and violent extortion, the main brunt of this assault on the *bōryokudan* fell disproportionately on the small and medium sized organisations who depended entirely on these activities for their income. The larger groups, with much more diversified portfolios of legal and



illegal businesses, were much better able to withstand the effect of police crack-downs.

Furthermore the top leadership of the big groups quickly developed a system which effectively insulated them from successful prosecution. This system, known as *jōnōkin*, consisted of payments from gang subordinates and meant that bosses received a substantial income without direct involvement in criminal activity themselves. Therefore the large *bōryokudan*, most notably the Yamaguchi-gumi, were actually in a position to improve their standing during this period. As overall numbers of gangs and gang-members dropped, the large syndicates expanded into new territories either by taking over the weakened small gangs or filling vacuums left by disbanded groups (*Keisatsu Hakusho* 1989, 13). The police summit operations can therefore be considered, at best, only a qualified success.

The period immediately following the police crack-down era was therefore characterised by a process of expansion as a few large gang syndicates came to dominate the OC landscape of Japan. This tendency was stimulated in the early seventies by the gradual release of some of the most able bosses and executives who had been arrested during the previous decade. In particular the growth of the big three groups, the Yamaguchi-gumi, the Sumiyoshi-kai and the Inagawa-kai, stands out. The relative size of these is illustrated in the table below.

As well as geographically expanding their territories, these groups found it necessary to continually seek new business activities, both legal and illegal, due to the pressure of law-enforcement crackdowns on established OC criminal operations.

Diversification was also necessitated by the oil shock of 1973, which had a big impact on *bōryokudan* income. As a response to economic depression and a more hostile legal environment, the *bōryokudan* became increasingly involved in new fields, such as organising foreign gambling trips, *sōkaiya* corporate blackmail, finance and forming spurious social movements and right-wing political organisations, as pretexts for raising money.

Table 3.1 Indexed Changes in *Bōryokudan* Strength 1968 - 1979

(1968 = 100)	Gangs	Members
Total <i>Bōryokudan</i>	69.9	77.2
Seven Designated Groups	134.9	119.9
Big Three	153.9	140.4

(Source: *Hanzai Hakusho*, 1989)

During this period *bōryokudan* also became increasingly heavily dependent on amphetamines as a source of income. Tamura (1992, 102-3) identifies the beginning of the “second stimulant epidemic” as 1970 and suggests that this industry provided the cash-generating engine which financed the expansion of the big groups. This agrees with Schelling’s observations on the need for a “core” business providing the resources to build the necessary political and military infrastructure of a large OC operation. It also seems to be corroborated by the

empirical evidence; the epidemic originally started in the Osaka area which is next-door to the Kōbe Headquarters of the Yamaguchi-gumi, the most prominent of the large groups.

### GENERATION CHANGE

Throughout the 1980's the trends of the previous period continued: the large organisations became increasingly sophisticated and diversified whilst the smaller groups were swallowed up by one or other of the large syndicates, disbanded or condemned to a marginal existence. However, the seemingly relentless progress of the big three gangs was rocked in July, 1981 when the third-generation boss of the Yamaguchi-gumi, Taoka Kazuo, died. In February of the following year, his designated successor, Yamamoto Kenichi, also died. The organisation quickly became divided as to who would succeed Taoka. After two years of political manoeuvring Takenaka Masahisa was finally selected as fourth-generation boss of the Yamaguchi-gumi in 1984 and the organisation was split in two as Yamamoto Hiroshi, another top executive, broke away forming a rival organisation, the Ichiwa-kai. The resulting gang war lasted for five years and was on an unprecedented scale: in nineteen prefectures and two metropolitan areas over three hundred violent incidents took place causing twenty-five deaths (including the new *kumi-chō*, Takenaka), seventy injuries including four innocent bystanders, and over five hundred arrests for crimes directly related to the conflict (Yamadaira 1993, 287-8).

Although the Ichiwa-kai had initially consisted of 13,000 members, its numbers quickly dwindled. This was due to the Yamaguchi-gumi successfully luring back



many of the defectors. This was aided by the fact that many Ichiwa-kai members found that without the established reputation of the Yamaguchi-gumi behind them, it was much harder for them to raise money (Yamadaira 1992, 37). This illustrates the crucial importance of reputation and brand image to OC groups as discussed in the previous chapter. Eventually, in 1989 the defeated rump of the Ichiwa-kai disbanded. Although severely hit by the schism of 1984, the Yamaguchi-gumi quickly restored its pre-eminent position and by the last year of the Shōwa period the organisation consisted of 737 groups and 20,826 members (*Keisatsu Hakusho* 1989, 17) whilst its reputation for invincibility had, if anything, been enhanced.

The problem of generational change affects not only the Yamaguchi-gumi. Other large gangs also have an ageing leadership and due to the changing age structure of *bōryokudan* in the last decade of the Shōwa period, it is possible that gangs will find it increasingly difficult to find suitable personnel to fill their key leadership positions. The process of gerontification (*kōreika*), though a reflection of demographic change in Japan as a whole, is particularly acute for the *bōryokudan*. The trend towards an increasingly aged OC community is shown in table 3.2 below.

“Formerly it had been said that the supply of *bōryokudan* members would never dry up, but now they are facing a severe crisis of new personnel” (*Hanzai Hakusho* 1989, 349). In one extreme case a Hokkaidō-based group found itself so short of personnel that it felt compelled to advertise in an employment magazine for students to work on a part-time basis (Yamadaira 1992, 140). This process of “*bōryokudan*

*banare*” (movement away from the *bōryokudan*) may well be a major long-term problem for Japanese OC. A number of hypotheses are generated by this phenomenon and the reasons for, and consequences of the *bōryokudan banare* merit further research.

Table 3.2 - The Ageing Composition of *Bōryokudan*

	20-29 year olds	over forty year olds
1966	73, 259 (49.8%)	21, 185 (14.4%)
1976	39, 614 (36.7%)	27, 523 (25.1%)
1985	22, 594 (24.2%)	34, 295 (36.7%)

Source: *Hanzai Hakusho* 1989

It first seems essential to determine whether this is an industry-wide process; if it is confined to the smaller, declining groups, then this would merely reflect a rational career move on the part of young potential gangsters to avoid employment in groups with no perceived future. If youngsters are also avoiding the dynamic, growing, large groups, then it would seem that other factors are the cause. One possible explanation is that, rather than being seen as glamorous, *bōryokudan* life is now perceived as *kitsui*, *kitanai* and *kiken* (arduous, dirty and dangerous) and consequently recruitment is becoming harder amongst an increasingly soft and pampered Japanese youth. Another possible factor at play is that the social

conditions encouraging *bōryokudan* recruitment are changing. Merton's theory of anomie amongst an underclass and an innovative response of some members of that underclass may well be of relevance here.

It does not seem plausible that the decline in the apparent ability of Japanese OC to attract young apprentices was due to a decline in the profitability of the industry in the eighties. The bubble economy generated enormous wealth and *bōryokudan* became heavily involved in real-estate and stock market speculation. In particular the *bōryokudan* developed the lucrative business of *jiage* (land-raising) in which small landholders on adjoining plots would be forced to sell so that a larger, more profitably developable site could be created. The heady economic atmosphere of the late eighties also engendered financial irresponsibility, in which *bōryokudan* were able to acquire enormous loans. At the same time companies, awash with money, were easy prey for corporate blackmail and extortion.

Another development during this period was the increase in crimes targeting ordinary citizens and businesses (*minji kainyū bōryoku*). Traditionally, part of the code of ethics of the *yakuza* had been to avoid inflicting harm on the common people. This is shown by the pride taken in the legends of the *machi yakko* as defenders of the commoners against exploitation by the rich and powerful. Whilst certain sections of society, especially those working in *mizushobai*/entertainment industry had always been susceptible to violence and exploitation, for most of the post-war era the majority of ordinary people had not been victimised by the *bōryokudan*. With the diversification of the *bōryokudan*'s business activities as



they felt compelled to seek out new sources of funds, the old *yakuza* code of respecting straight (*katagi*) society became increasingly disregarded.

Throughout the periods of reorganisation and generation change the modernising, diversifying and expanding *bōryokudan* had developed an international dimension to their operations. This process has continued into the Heisei period with gathering momentum. There are a number of reasons for this. Firstly the modern *bōryokudan* depend on overseas countries, especially in Asia and the Pacific-rim, as a source of drugs, firearms and prostitutes. These are all commodities that play an increasingly important part in the *bōryokudan* economy. Secondly, international investment, especially real-estate, provides an avenue for money-laundering. Thirdly, the boom in overseas travel from Japan, spurred by the strong yen, created opportunities for the *bōryokudan* and they became involved in organising sex-tourism and gambling trips in various Asian countries for Japanese businessmen in conjunction with local OC groups.

As mentioned above, from about 1970 onwards, the *bōryokudan* have become increasingly well-armed and there has been a marked shift from swords and daggers to modern firearms. This tendency has become especially pronounced since the mid-eighties, though seizure rates from that period may be attributed to the abnormal circumstances of the Yama-Ichi *tōsō*. It is possible that the *bōryokudan* are trying to compensate for their manpower crisis by increasing their firepower through investing in efficient modern weaponry (*Hanzai Hakusho* 1989, 353).

## BEHIND THE SCENES

The historical development outlined above is largely derived from official sources and in particular from the *Keisatsu* and *Hanzai Hakusho*. One question that arises from the official picture is how, given the apparently concerted attempts by the police to eradicate the *bōryokudan* (especially since the mid-sixties), did OC manage to remain such a large and vibrant aspect of Japan in the late Shōwa period? Indeed the largest groups actually grew in both relative and absolute terms during this period. To answer this question it is necessary to go behind the surface (*tatemae*) of official arrest-rate statistics.

The links between the post-war *bōryokudan* and, usually right-wing, politicians are well known. This is not so much due to fearless investigative journalism or mass-arrests of corrupt politicians as to the extraordinary degree to which these links were openly displayed for most of this period. In some cases during the period of immediate post-war chaos, the links were in fact so close as to make it impossible to differentiate between the authorities and OC. In Nagahama City in Shiga prefecture, the *oyabun* of the Hakuryūsha crime-gang not only sat on the city council, but also served as the city's chief of police. The Hakuryūsha were therefore able to control the local black-market and terrorise the populace with impunity (Iwai 1963, 692). Corruption of this type was largely a result of attempts by the occupying authorities to impose a decentralised system of policing on Japan. The problems associated with this will be discussed in later chapters.

One of the most prominent gangsters of this period was the leader of the Kantō Ozu-gumi, Ozu Boss, who controlled the Shinjuku black-market. Having refused an invitation to join the Socialist Party, Ozu was persuaded to run for the Diet by the leadership of the Liberal Party with which he had very cordial relations; the foreword to his autobiography was penned by the then Finance Minister, Ishibashi Tanzan, whilst another senior Liberal Party figure, Ōno Banbuko, was his sworn blood-brother. As conditions returned to normal and the police reasserted their control over the more overt abuses, exceptional cases such as the above disappeared. However, politicians still found it useful to maintain links with the *bōryokudan*.

One major reason for this apparent flourishing of large OC groups despite changes in the law and high levels of arrests by the police is that, once again, certain powerful constituencies found the existence of these groups beneficial. Initially, the occupying American forces under General MacArthur had intended to purge Japan's government and business elites of extreme right-wing figures. With the onset of the Cold War and the fear of Japan's indigenous communists and trade union activists, this policy underwent a *gyaku koosu* or "reverse course". One result of this is that certain members of the government saw the *bōryokudan* as a means to counteract trade-union militancy and the threat of socialism. Various anti-communist organisations such as the Jiyū Kurabu and the Meikyōkai brought together conservative politicians, *bōryokudan* and right-wing extremists in an



alliance reminiscent of the *ingaidan* (political lobbying groups) which characterised Japan's pre-war politics (Iwai 1963, 693).

The role played by these *ingaidan* is graphically illustrated by an incident in which socialist Diet members and left wing students were trying to oppose the passage of the Subversive Activities Bill (*Hakai Katsudō Bōshi Hō* or *Habōhō*). Fearing that the Diet was to be invaded, Justice Minister Kimura and Chief Cabinet Hori contacted Unabara Seitaira, a prominent liberal party politician, who also happened to be the chairman of one of these associations, the *Dōkō-kai*. Unabara quickly arranged for a composite force of the strongest fighting men from the main *tekiya* groups in Tokyo to surround the Diet and the Bill was passed (Iwai 1963, 693; DeVos 1973, 299).

In 1951, Justice Minister Kimura was also responsible for attempting to organise a 200,000-strong force of assorted rightists, gamblers, *tekiya* and *gurentai*. This organisation, known as the *Battō-tai* (literally drawn-sword squad), was to act as an anti-communist shock-troop opposing the revolution that Kimura believed to be imminent. As a sweetener to this arrangement, Kimura revised the criminal law so that gambling offences were only indictable on the basis of red-handed arrests. Only when Kimura presented a request for the *Battō-tai*'s proposed annual budget of ¥370m to Prime Minister Yoshida, was this plan scrapped (Hori 1983, 137-8; Ino 1993, 254-7).

Kaplan and Dubro (1986, 85) give another example of the government's use of the largest Tokyo-based gangs in their arrangements for the security of Eisenhower during his projected visit during widespread discontent and rioting opposing the Japan-America Security Treaty in 1960. The visit was eventually cancelled but the *bōryokudan* had already agreed to help and had made their preparations. Between five and six hundred million yen had been provided by the government to finance Eisenhower's protection but, following the cancellation, the money disappeared (Ino 1992a, 269). The link-man between the Kishi government and the *bōryokudan* in this operation was an extreme right-winger, Kodama Yoshio<sup>1</sup>.

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<sup>1</sup> The career of Kodama is a case study of the interaction between the worlds of politics and OC. After an apprenticeship in various ultra-nationalist organisations interspersed with three prison terms, Kodama spent the war as an agent of the Imperial Japanese Navy charged with securing essential raw materials. To this end he created the Kodama Kikan which amassed enormous wealth including interests in precious metals, industrial diamonds, fisheries, forestry, mining and opium. So successful was the Kodama Kikan that Kodama was able to finance not only the Shanghai branch of the *Kempeitai*, but an extensive intelligence network throughout the sphere of his operations from Manchuria to Indochina (Hunziker and Kamimura 1994: 48).

At the end of the war, the Navy, keen to distance itself from the activities of the Kodama Kikan, effectively handed it over to Kodama. With this vast personal fortune he was able to set himself up as a key *kuromaku* (behind-the-scenes power-broker) linking together the extreme right-wing, OC and mainstream politics. According to Kaplan and Dubro, after his release from prison, Kodama also had extensive links with American intelligence agencies (1986: 68-9). One of Kodama's first, and most significant, post-war political acts was to provide one hundred and sixty million yen to finance the formation of a new political party at the request of Hatoyama Ichirō. Aided by the further financial support of Kodama, Hatoyama was later to become Prime Minister, as did another Kodama protégé, Nakasone Yasuhiro, in 1982. The Liberal Party merged with the Democratic Party in 1955 and this conservative coalition successfully monopolised political power for the next four decades.

Alongside his political interests, Kodama set up a business, the Midori Kikan, which specialised in strike-breaking and labour intimidation. Kodama was also a central figure in the formation in 1963 of the Kantō-kai, an ill-fated federation of *bōryokudan* groups in the Tokyo area. Initially this had been intended to be a pan-

In addition to providing muscle to oppose truculent radical elements and silencing opposition, the OC-politician link has proved to be very useful to politicians in terms of fund raising, organising voters and discrediting opponents. It is for this reason that throughout the 'fifties and 'sixties large floral wreaths, with the donating politician's name prominently displayed in the centre, were a common feature at *bōryokudan* succession ceremonies, weddings and funerals. Important politicians would often be the guests of honour at such parties. This relationship did, however, go far beyond the ritual exchange of social pleasantries; in 1958 a petition calling for the release of a gang member arrested for his participation in a territorial gang-war was signed by the prefectural governor, the mayor and the head of the prefectural assembly as well as several Diet members (Iwai 1963, 692-5).

Even as late as 1971, bail for a Yamaguchi-gumi boss arrested for murder was guaranteed by former Prime Minister Kishi and former Education Minister Nakamura (Kaplan and Dubro 1986, 116). However, the exposure of the Lockheed scandal in the mid-seventies and the generally worsening public perception of the *bōryokudan* generated a climate in which the open flaunting of OC-politician links was becoming electorally disadvantageous. This is not to say that such connections no longer existed, merely that they became more discreet. By the time that Stark

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Japanese *yakuza* alliance with a decided political emphasis. However the Yamaguchi-gumi refused to have anything to do with it and the organisation disbanded in 1965 due to internal dissent and the police summit strategy.

On another occasion Kodama was instrumental in making peace between the fierce rivals the Yamaguchi-gumi and the Inagawa-kai. Only the breaking of the Lockheed bribery scandal in 1976, displaced Kodama from his nebulous role as political-OC fixer.



was carrying out his fieldwork in the late 1970's they were firmly part of the *ura* (behind-the-scenes) of Japanese society.

Stark's description of "the clique" composed of the locality's prominent businessmen, politicians, representatives of the bureaucracy and with Noda Boss of the Araki Gumi as its nexus, shows how these different worlds interact and make use of their clique connections to further their own particular interests (1981, 196-209). The business members provide money to the other clique members. In return the other members of the group aid the business interests in the competition for contracts. Businessmen may also be useful to politicians in mobilising employees and dependents as a voting block. The political figures are responsible for the awarding of public works contracts and consequently wield considerable power within the clique. The bureaucrats play the relatively minor role of flexible application of regulations concerning contract bidding. The bureaucrats' rewards are correspondingly minor consisting of money and perks such as free entertainment in gang owned or associated bars and clubs.

The role of the OC within the clique is to fulfil the "quasi-governmental functions" of adjudicating and enforcing clique decisions. As discussed in the previous chapter, when business transactions are of dubious legality, the participants are unable to seek legal enforcement of contracts. The gang boss, with expertise in clandestine extra-legal control and access to the machinery with which to carry it out, is therefore uniquely placed to provide the structure within which the clique operates.

Although Stark was describing the workings of a local clique in a provincial city, there is a high degree of similarity to the high-level structural corruption illustrated by Woodall (1996). The one significant difference is the absence of *bōryokudan* in Woodall's analysis. One possible explanation is that there is a significant difference in the nature of business-politics connections at local and national levels though this is suspect on the grounds that national politics can hardly be said to be free from corruption scandals. An alternative explanation might be that in the intervening fifteen years, the *bōryokudan* have been successfully purged from the clique but this seems unlikely given that the corruption itself persists (as successive scandals illustrate). The fact that these scandals are coming to light, and the revelations acted upon, suggests, however, that the media are becoming more outspoken, the electorate less tolerant and efforts are being made to clean up government.

### **THE *BŌRYOKUDAN* AND THE POLICE**

Another factor widely held to be responsible for the continued existence of *bōryokudan* organisations is the relationship between the police and the gangs. The English language literature generally stresses the “symbiotic” nature of this relationship (Ames 1981, Huang and Vaughn 1992, Kaplan and Dubro 1986, van Wolferen 1989). Consequently it is claimed that “no serious attempt to break the gangs has ever been made” (van Wolferen 1989, 103). This extravagant assertion seems to be in direct contradiction to the police white papers with their constant references to repeated and intensified crackdowns and widespread arrests. To assess

the validity of these rival views of the nature of OC-law enforcement interaction in Japan, it is necessary to look at the evidence.

Ames, during his fieldwork with the police in western Japan in the late 1970's was struck by the "remarkable cordiality" between *bōryokudan* members and police officers (1981, 105). Even during interrogations of arrested gang members, both sides would maintain a jocular banter. Ames, however, does point out that this is not necessarily indicative of close friendship interpreting excessive joking as suggesting a potentially hostile relationship. Ames (1981, 107) notes that it is recognised by both parties that it is not in their interests for this underlying hostility to manifest itself:

The relationship is mutually beneficial: Police and gangsters each find it advantageous to maintain rapport and to enhance it with a façade of cordiality. This nucleus of goodwill and understanding seems to remain when the police must severely crack down on a gang after a major incident. A complete rupture in the relationship would be counter-productive for both sides.

It is also important to note that this cordiality does not imply corruption. Given that these organisations exist, the police may conclude that it is preferable to adopt a pragmatic strategy in their dealings with them. This is exactly the conclusion reached by Celantini, Marrelli and Martina in their model discussed in the previous chapter; both OC and law-enforcement players adopt an unantagonistic stance *vis-à-vis* each other.



Police tolerance of the *bōryokudan* in the post-war era has historically been aided by a number of factors. Firstly the well-known links existing between conservative politicians and prominent gang leaders have not encouraged the police to actively pursue *bōryokudan* infringements of the law. Secondly, as noted in chapter two, OC acceptance is facilitated when OC activity can be characterised as ‘consensual’ and ‘victimless’. Despite the evidence to the contrary, the *bōryokudan* of the post-war era have profited from romantic associations with the outlaw heroes of the past and a perception that throughout this period, they have remained essentially concerned with gambling and peddling.

A final factor encouraging police acceptance of OC groups is the degree of sympathy found amongst the police for the idealised value system of traditional *yakuza* chivalry expressed by such terms as *jingi*, *ninkyō* and *kyōkaku*. This is evinced by the widespread following enjoyed by *yakuza* films (also known as chivalry films – *ninkyō eiga*) amongst both police and *bōryokudan* circles. These films typically depict extreme devotion to a code of honour and such traditional Japanese virtues as endurance (*gaman*), duty (*giri*), humanity (*ninjō*) and self-sacrifice and, as such, appeal to the conservative world-view that is shared by policemen and gangsters. Ames suggests that a degree of identification between the *bōryokudan* and police might also be fostered by the fact that both groups have, in the past, recruited members from comparable social and educational backgrounds. Given that almost two-thirds of the recruit intake for the prefectural police were university graduates in 1995, this can no longer be considered a relevant factor.

It has been argued that the OC-police connection is founded on more than an uneasy co-existence. Ino (1993), Kaplan and Dubro (1986), van Wolferen (1989), Huang and Vaughn (1992) amongst others, suggest that, tacitly, the police have actually welcomed the existence of the *bōryokudan*. As in the projected use of the *bōryokudan* in the security arrangements for Eisenhower's visit, or their opposition to radical groups, it is believed that the gangs have played an active role in containing social disorder. They are also seen to have played a part in controlling disorganised crime within their *nawabari* thereby contributing to Japan's reputation as a 'crime-free society'. As we saw in the previous chapter, this perception is by no means unique to Japan.

The Japanese police, like the bureaucracy, have long enjoyed a reputation for competence and honesty. This reputation has been enhanced both by Japan's low crime statistics, and by a number of highly laudatory books written by Americans (Bayley, 1976; Clifford, 1976; Parker, 1984). Recently however, a number of corruption scandals have broken which suggest that the cordial relationship described by Ames is occasionally based on more than a desire to avoid rocking the boat. Kaplan and Dubro give evidence of one case in Osaka in which police officers routinely took bribes to provide advance warning of raids on gaming-machine operations. Eventually 124 officers in the Osaka police force were either dismissed or disciplined, whilst the former police chief, who had also been implicated, committed suicide (1986, 157-9).

Bornoff, writing about the sex industry in Japan, also notes that premises are usually aware beforehand of impending raids due to "a lot of money changing hands under

the table” (1994, 495). Ames suggests that the high-profile raids since the days of the summit strategy “assume almost a ritual air” and most arrestees are quickly released due to a lack of concrete evidence or the insignificant nature of any crimes proved. Sometimes the *bōryokudan* have been informed prior to a raid, thereby enabling them to hide incriminating evidence, weapons and drugs. However, often they will enable the police to confiscate a few weapons in order to save face (1981, 127). This illustrates the problem of relying too heavily on official statistics; whilst they may be accurate, they show only the surface (*omote*) appearance concealing a more profound (*ura*) reality.

Corruption in Japan is notoriously hard to pin down. This is largely due to the deep-rooted culture of gift-giving, reciprocity and obligation in which all major social occasions are marked by presentations of envelopes filled with cash. On a more subtle level, just as retiring bureaucrats find rewarding employment in the industries they formerly regulated (a process known as *amakudari*, descent from heaven), it is not unknown for retired police officers to be employed in industries concerned with the sale or distribution of gambling machines.

However, there are grounds on which to question the extent to which this dominant symbiotic perspective is still relevant. Although books and articles published in the last decade (Huang and Vaughn, 1992; van Wolferen, 1989) have still put forward this line, much of the primary research on which this paradigm of symbiosis has been based, is decidedly dated. Since the rise in the levels of gang violence in the gang war period and the increasingly diverse criminality of gangs from the period of



reorganisation, it has become progressively harder for the police to turn a blind eye to *bōryokudan* activity.

Stark (1981, 16-7) describes the relationship between the Araki Gumi and the local police in less glowing terms. Whilst there is contact between gangs and the authorities, the

limited amount of co-operation with law-enforcement personnel is all behind-the-scenes, marked by mutual contempt, and necessitated only by their respective self-interests.

This antagonism was reflected in the poor relations that Stark had with the police authorities within his fieldwork area. Despite Stark's backing by the National Research Institute of Police Science, the local police attempted to frustrate his research by intimidating his informants.

Ames also accepts that the police have been adopting an increasingly hard line against the *bōryokudan* since the summit strategy period of the mid-1960's (1981, 124-9). This has manifested itself not only in high-profile arrests and harassment of gang members but in the development of public awareness campaigns, education programmes and the initiation of, and support for, the citizens' anti-*bōryokudan* movement. As the gangs have become perceived as increasingly violent and involved in non-consensual crimes in which ordinary citizens have become victims, the police have come under growing pressure to take serious steps against them.

Whilst individual cases of corruption may still persist, it therefore seems that the cosy picture of symbiosis portrayed by van Wolferen (1989) can no longer be sustained. The extent to which the police are making a serious attempt to get rid of the gangs in contemporary Japan is one of the central areas to be explored later. By the end of the Shōwa period, the police had recognised the *bōryokudan* as a serious problem and had managed to reduce both gang numbers and membership from their 1963 peak. However, the formidable state of the *bōryokudan* by 1988, especially of the big three national syndicates, suggests that police countermeasures were still far from adequate.

## THE *BŌRYOKUDAN* IN THE LATE SHŌWA PERIOD

### STRUCTURE AND ORGANISATION

In December 1988, there were 3,197 *bōryokudan* groups with a total membership of 86,552 men, recognised by the police. Of these 1,397 gangs (34,492 men) were affiliated to one of the three national syndicates, the Yamaguchi-gumi, the Inagawa-kai and the Sumiyoshi-kai, whilst 737 (20,826 men) of these groups were connected with the Yamaguchi-gumi (*Keisatsu Hakusho* 1989; 17). As mentioned above, whilst in the previous two decades there was a decline in overall *bōryokudan* statistics, the three large gangs have grown in both relative and absolute terms.

These syndicates are composed of *ikka*, or (fictive) families. These *ikka* (sometimes also referred to as *kumi*) are the fundamental organisational units of the *bōryokudan*

(Iwai, 1986, 214). Stark (1981, 62-88) identifies three distinct overlapping internal structures within the *ikka*: 1) a formal administrative hierarchy; 2) a hierarchy based on the traditional Japanese model of the household (*ie*); 3) the hierarchy within internal groups. These structures give “cohesion and tightness to the group and counter the factionalism inherent in the three hierarchies” (1981, 62).

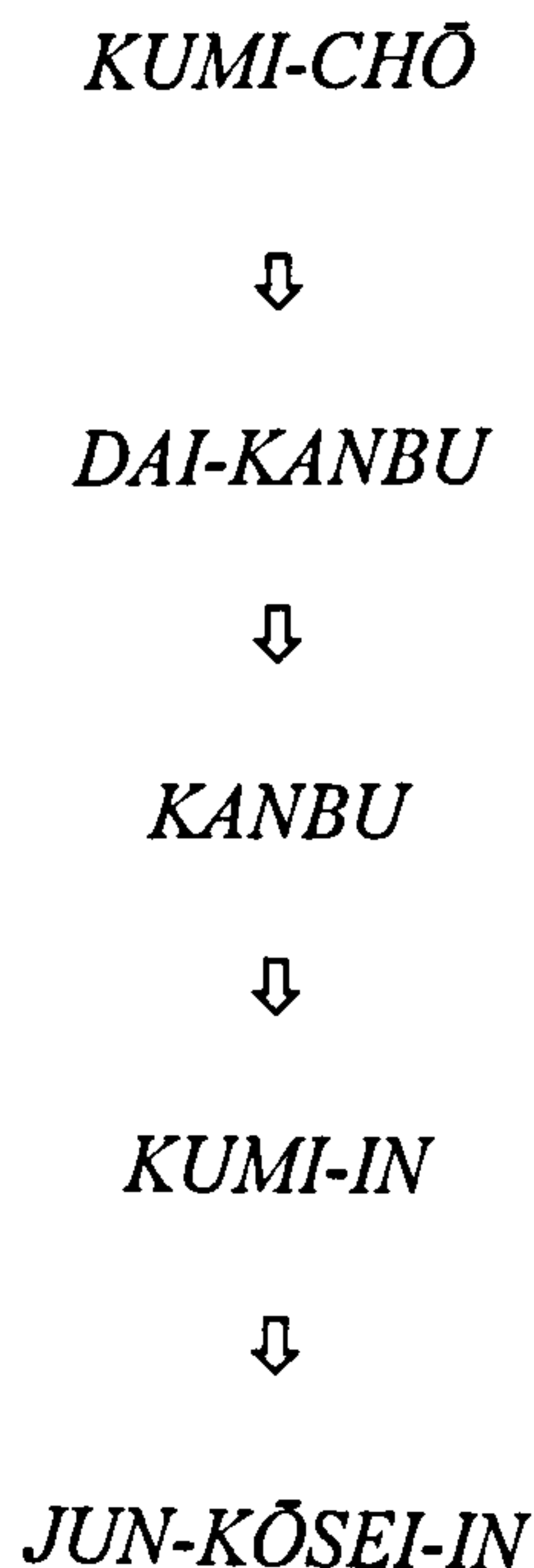
The administrative, or “rank and duty” hierarchy is the most visible feature of Stark’s structures. It describes the formal structure of the organisation with clearly defined strata each with specified tasks, duties, status and privileges. These are: *Kumi-chō* (family head/boss); *dai-kanbu* (senior executives); *kanbu* (executives); soldiers (*kumi-in*); and *jun-kōsei-in* (trainees) (Stark 1981, 65). The category of *jun-kōsei-in* also includes peripheral figures (*shūhensha*), such as *kigyō shatei* (business brothers), who are not officially connected with the *ikka*, but who profit from maintaining informal links. With respect to this formal hierarchy the gang is similar to a legitimate corporation or military organisation. It is also practically identical to the formal rank structures of the American *La Cosa Nostra* and Chinese Triads.

Ultimate responsibility for the *ikka*’s business activities rests with the *kumi-chō*. He is advised on gang business by the senior executives, one of whom may act as under-boss (usually known as *waka-gashira*). Both the *dai-kanbu* and *kanbu* are entitled to form their own internal groups, though not all may have sufficient funds to maintain the branch office and personnel that this entails. The *kumi-in* are responsible for guard duties, driving, manning the telephone, cleaning, serving



guests and supervising the apprentices. The *kumi-in* may also be employed in businesses owned by the *kumi-chō* or *kanbu* or otherwise connected with the *ikka*. The apprentices are usually given the most menial tasks. As well as working for their boss, *kanbu* and *kumi-in* often operate on their own account though where such business activities are illegal and make use of the *ikka*'s reputation, some of these earnings will usually be passed on to the boss. Until the 1970's these payments were generally a percentage of earnings but the system was subsequently changed to a fixed amount as too many gang members were under-reporting their incomes.

Figure 3.3 *Bōryokudan* Rank Hierarchy



In the Araki Gumi, the organisation studied by Stark, of the roughly 125 men below the Araki *kumi-chō*, 12% held *kanbu* rank, 68% *kumi-in* and 20% *jun-kōsei-in*. These figures deviate from the national average for the same period in which 3.2%

are *kumi-chō*, 26.9% are *kanbu*, 54.2% are *kumi-in*, and 15.7% are *jun-kōsei-in*. No particular reason is given for this difference but it is possible that the leadership of national syndicates would have an incentive to promote personnel as higher level personnel pay higher levels of tribute (*jōnōkin*) to their superiors. Recent rank structure data are not currently available and this needs to be rectified as the situation will certainly have changed in the last two decades. The recruiting crisis mentioned above, combined with the increasing sophistication of *bōryokudan* crimes, can be expected to have encouraged a positive skew towards the upper echelons of *bōryokudan* rank structure.

The type of formal hierarchy and division of labour outlined above has been used by OC researchers, such as Cressey and Salerno, to assert that OC groups are effectively bureaucratic organisations. What Cressey fails to realise is that there are parallel hierarchy structures within both Japanese and traditional Italian OC groups, based on traditional kinship ties, that coexist with this corporate/bureaucratic structure. Within the *ikka* these social bonds are based on the family relationships of father-son (*oyabun-kobun*) and brother-brother (*kyōdaibun*). It is important to note that these bonds connect individuals to each other rather than to a group. These fictive kinship links are seen as crucial in maintaining group cohesion both vertically (*oyabun-kobun*) and horizontally (*kyōdaibun*).

These relationships are established by the ritual exchange of *sake* in the *sakazuki* ceremony. The nature of the relationship is determined by the ratio of *sake* in the

recipients' cups; for example, an equal *kyōdai* relationship would involve equal quantities of *sake* whilst an unequal *aniki-shatei* relationship would be reflected in a six-four or a seven-three distribution of *sake*. OC groups are considerably more meritocratic than traditional large Japanese enterprises characterised by seniority promotion. Consequently, the social kinship hierarchy within the *ikka* is fluid and this is reflected in the way that an equal *kyōdai* relationship can become a six-four relationship as one member progresses faster than his less able brother. Equally, a *kumi-in*, on promotion to *kanbu* status may become the *shatei* (younger brother) to other executives who may have formerly been his uncles or even his *oyabun*.

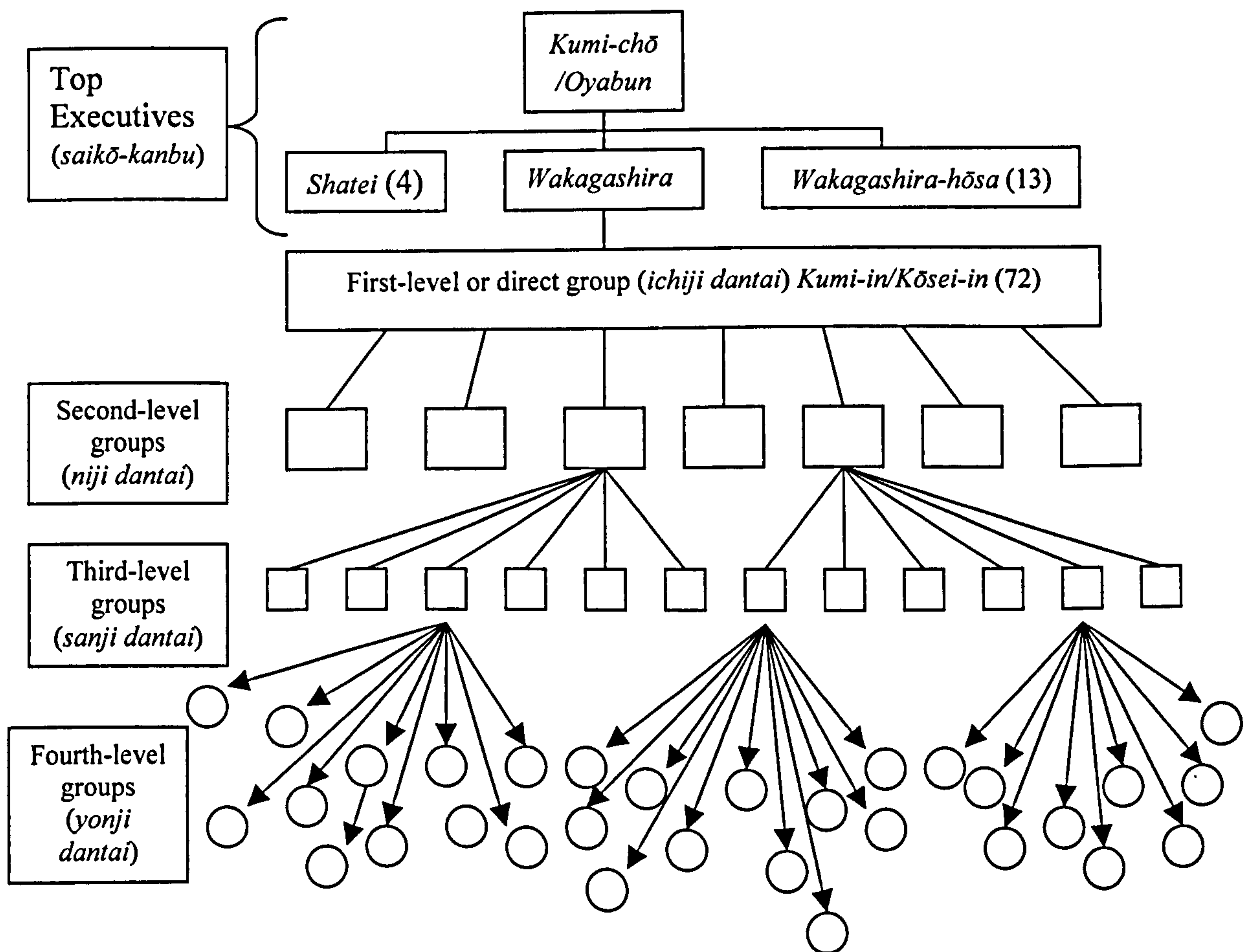
The third hierarchy within the *ikka* is the internal group, which forms when an executive takes on his own *kobun*. Within the *ikka*, individual members occupy two different positions; that within the *ikka* as a whole and that within the internal group. Most internal groups tend to be small groups composed of less than ten members. Due to their small size and the fact that most day-to-day business and interaction is carried out at this level, internal groups tend to be the most cohesive and intimate units within the *bōryokudan* world.

Stark stresses that it is vital that these three structures are flexible enough to accommodate the constantly changing vicissitudes of gang fortunes. Arrest, imprisonment, inter-gang conflict, temporary cessation of certain business activities due to law-enforcement harassment and new market opportunities make OC a highly precarious and dynamic process unsuited to a rigid bureaucratic structure.



A large area syndicate may form when a strong group subsumes weaker ones into its organisation either voluntarily or through military pressure. The *kumi-chō* of the weaker group will become a *kobun* of the boss, or the younger brother of an executive, of the dominant one. Alternatively internal groups may expand out forming semi-autonomous *ikka* in new territory. In a national syndicate such as the Yamaguchi-gumi, this results in a multi-tiered pyramidal arrangement in which executives within the central group are themselves *oyabun* heading *kumi*, the executives of which also have their own groups, and so on. This is shown in figure 3.4.

Figure 3.4 Structure of the Yamaguchi-gumi (Source: Iwai 1986)



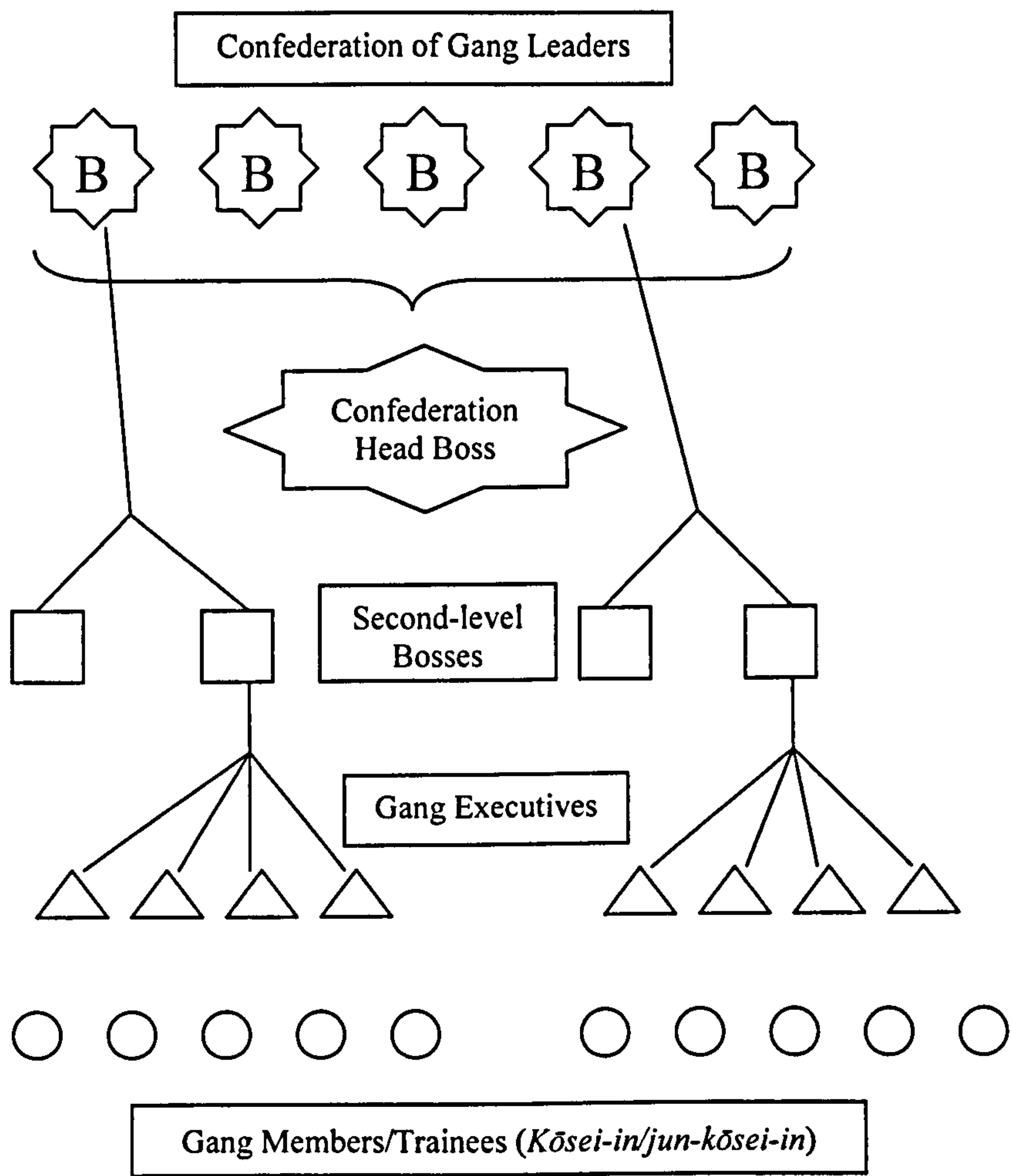
Alternatively, a syndicate can arise when groups voluntarily form an alliance of equals. The obvious benefits of such an arrangement are the economies of scale, security from outside predation and reduction in competition arguments put forward in chapter two. The group studied by Stark was a member of a nine-member alliance in the west of Japan, which had formed to block the spread of the Yamaguchi-gumi. Alliances of this type are cemented by *sakazuki* rituals in which the leaders of the participating groups become brothers.

Another example of a federation of gangs is the Sumiyoshi-kai (formerly known as the Sumiyoshi-rengō) in which the leaders of the large component groups retain control over their own organisations although a president is selected from among their number (refer to figure 3.5). The president is responsible for maintaining the overall smooth running of the organisation and adjudicates in cases of intra-federation disputes (Iwai 1986, 225-6). This operates in an analogous way to the commission composed of the leadership of the top Italian-American crime families or the *cupola* by which Sicilian Mafia families attempt to maintain inter-familial harmony.

Within large-scale syndicates of either type, control exerted over sub-gangs by the parent body is usually confined to major decisions that will have ramifications beyond the sub-gang's established territory (*Keisatsu Hakusho* 1989, 32-3). For example approval from above will be required when dealing with problems such as succession of leadership, expansion of the gang's *nawabari*, the dissolution of the gang and the use of punishment torture. Most gangs do not require permission to sell drugs or move into new areas of criminal activity. In part this may be because

large syndicates maintain an official policy of non-involvement in the drugs business.

Figure 3.5 Structure of the Sumiyoshi-kai



Source: Iwai 1986

Although the Japanese criminal syndicates have not managed to forge a nation-wide governmental organ along similar lines to the commission of the Italian-American crime families or the *cupola* of the Sicilian Mafia, within the Kantō area the major *bakuto* gangs have a loose association which fills a similar function. The Kantō



Hatsuka-kai traces its lineage to the Kantō-kai set up by Kodama in 1963. Although the Kantō-kai was disbanded the following year due to the increased police pressure on the *yakuza* brought about by the summit strategy, in 1972 the original members formed the new organisation. The membership consisted of the two largest Tokyo-based groups, the Inagawa-kai and the Sumiyoshi-kai plus the Matsuba-kai, the Kokusui-kai, the Gijintō, the Tōā-kai, the Kōwa-kai (all of which had been in the former Kantō-kai), the Nibiki-kai and the Soai-kai<sup>2</sup>.

The Kantō-kai had originally been politically motivated but the Kantō Hatsuka-kai was set up purely as a mechanism for promoting peaceful co-existence between the various *bakuto* groups within the Kantō area and for ensuring that, when conflict does break out between sub-groups, this trouble does not escalate and is quickly resolved. This is carried out through a rotational system of chairmanship (*tsuki tōban*) by which the member groups take it in turns to be responsible for resolving problems within the association. In addition to this, the original charter of the Kantō Hatsuka-kai provides for strict penalties for those who jeopardise intra-association harmony.

The Kantō Hatsuka-kai derives its name from its habitual meeting on the twentieth day of every month (unless this clashes with an important event in which case it is shifted to the preceding or following day). The meeting is composed of two parts.

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<sup>2</sup> Gang names are given in their most modern form. At the time of formation the Sumiyoshi-kai still called itself the Sumiyoshi-rengō-kai and the Kokusui-kai, the Nippon Kokusui-kai.

The first of these is the business meeting attended by the headquarters chiefs of all the component groups at which any areas of inter-group friction or other problems are discussed. The second phase of the monthly meeting is a purely social affair in which senior executives of the member groups share a meal in the private room of a restaurant and then take turns in singing *karaoke*. Because this second meeting is conducted in a non-secure environment, announcements concerning gang-related business are not made.

To further minimise the risk of trouble within the Tokyo area the Kantō Hatsuka-kai also maintains fraternal relations with the Kantō Shinnō Dōshi-kai which is the federation comprising the Tokyo-based *tekiya* gangs. This group has observer status within the Kantō Hatsuka-kai and each February a formal dinner is held in order to further the amicable relations between these two groups (*Jitsuwa Jidai*, July 1999, 94-6).

The group studied by Stark in Okayama prefecture was also the member of a loose association of independent groups. However, in this case the prime motivating force had been a desire to withstand the relentless advance of the Yamaguchi-gumi, rather than an attempt to restrict conflict between the component groups (although doubtless this was an important side product) (Stark 1981, 49-56).

It should be stressed that associations such as the Kantō Hatsuka-kai are not themselves monolithic gang organisations under the guidance of some 'Mr. Big'. Decisions concerning the internal discipline, economic activities or military

endeavours of member groups remain entirely at the discretion of these individual member groups' bosses unless they directly impinge on other members. It should also be pointed out that the Kantō Hatsuka-kai has been very successful in reducing trouble within the Tokyo area. This is indicative of the way in which the Kantō-based *yakuza* groups have traditionally been much more sensitive to the need to prevent provocative displays of violence than the Kansai *yakuza* groups (interviews: Iwai, Tokyo, June 1998; Yoshimura, Tokyo, June 1998).

### INTERNAL CONTROL

As a self-governing entity, operating in a hostile environment with no recourse to legal protection, *bōryokudan* organisations must create and enforce their own rules. Essentially there are five cardinal rules which have remained unchanged for centuries: 1) don't disobey, or cause a nuisance to your superiors, 2) don't betray your gang or your fellow gang members, 3) don't fight with fellow members or disrupt the harmony of the gang, 4) don't embezzle gang funds and 5) don't touch the woman of a fellow gang member. As mentioned in chapter two, these rules bear a remarkably close similarity to those of Italian-American and Chinese OC groups suggesting that OC groups are continually subject to the same sorts of pressures.

The most important virtue within the *bōryokudan* code is unquestioning obedience, even in defiance of logic. This is reflected in the well-known traditional *yakuza* saying, which states that if the *oyabun* says that the passing crow is white, then the *kobun* must agree. A police survey of members of large syndicates carried out in



1985 found that 64% of their interviewees said that they would unquestioningly carry out the orders of their *oyabun*. A further 21% said that they would carry them out if they agreed (*Keisatsu Hakusho* 1989, 30). The opinion of the remaining 15% is not recorded but it can be seen that this virtue is largely, but not universally, recognised.

A graphic illustration of *kobun* obedience is the phenomenon of *migawari*, in which low-ranking *kumi-in* hand themselves in to the police and admit to crimes committed by their superiors. This obedience is of course rewarded by promotion, financial remuneration and an elaborate ceremony on the release from jail (*demukae*) of the individual concerned. During his incarceration, maintenance will be paid to his dependants. For a *kumi-in* of low ability, *migawari* may actually be the best career move he could make. Hoshino suggests that incidence of *migawari* is in decline as sentencing patterns become more severe. In addition to this, one case related to the researcher in Iwate prefecture concerns the local boss forcing a subordinate to go to prison in his place and then failing to provide adequate support or remuneration on the subordinate's release. Both these points show that the relationships governed by traditional *yakuza* codes, are under strain.

Whilst the fictive kinship bonds and socialisation imbued during the period of apprenticeship go some way to fostering this spirit of blind, self-sacrificing obedience and *kumi-harmony*, the authoritarian nature of *bōryokudan* can place great strains on the *oyabun-kobun* relationship. Referring to this, Iwai (1986, 222) writes:

Frequently this gives rise to a strong, usually unspoken, antipathy between the leader and his followers which may threaten the *oyabun's* authority and the cohesion of the group at large. In spite of the obsequious displays of loyalty and fealty, it is not rare for a *kobun* to reject his *oyabun*.

It is therefore necessary for control within *bōryokudan* to be reinforced by a system of rewards and punishments. As mentioned above, cases of *migawari* are rewarded by money and promotion. Similarly money and promotion are the two major reward mechanisms for other outstanding examples of obedience, ability and results. At the other end of the scale there are a number of punishments available to the *kumi-chō* in order to enforce discipline. For relatively light offenses these include shaving off hair (narcissism is an accepted facet of the *bōryokudan* subculture), confinement, fines, and temporary expulsion from home (Yamadiara 1992, 48). More serious breaches will be punished with beatings (known confusingly as *rinchi*), *yubitsume* (finger amputation), *hamon* (expulsion from the *ikka*), and *zetsuen* (the irreversible severing of links); the ultimate sanction is death.

*Yubitsume* (also known within *yakuza* circles as *enkozume*) is perhaps the most famous aspect of traditional *yakuza* culture and one that arouses considerable fascination outside Japan. It is significant that both of the most widely known American films concerning Japanese organised crime, *Black Rain* (1989) and *The Yakuza* (1975), include scenes depicting this custom. Usually *yubitsume* is not demanded as a punishment but will be the decision of the transgressor to show atonement for his misdeeds and in the hope of escaping a heavier punishment. It

seems that the custom of *yubitsume* is becoming less prevalent amongst younger gang members who prefer to pay fines. Whether this is due to an increased desire to avoid identification as a gang member as the *bōryokudan* become less open, or whether it reflects a weakening of traditional *yakuza* ethos amongst the *bōryokudan* is not clear. In 1971, 42% of members of *bakuto* groups, 45% of *gurentai* and 30% of *tekiya* had at least one amputated finger (Mugishima et al 1971, 133). By 1994, police data suggested that the national average of finger amputees amongst *bōryokudan* had declined to 33% (Yonezato et al 1994, 43).

*Yubitsume* exists not only as a punishment/sign of atonement but may also be undertaken for positive reasons. Whilst a finger cut off to erase some misdeed is referred to as a 'dead finger' (*shinu yubi*), a 'living finger' (*iki yubi*) is one which is sacrificed to show one's commitment to "resolve an issue or conflict that one is not directly responsible for" (Stark 1981, 113). Both of the gang bosses in Stark's fieldwork had lost more than one *iki yubi*, usually in order to bring peace between conflicting gangs<sup>3</sup>.

A more significant punishment than *yubitsume* is expulsion (*hamon*). *Hamon* differs from *zetsuen* in that there remains a possibility of return for expellees depending on the nature of the offence and their behaviour whilst outside the gang (Yamadaira 1992, 48). On expulsion, special post-cards known as *hamon-jō* are sent to all *bōryokudan* groups throughout the country with which that group enjoys

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<sup>3</sup> Originally the significance of *yubitsume* was that it reduced one's grip on a sword therefore limiting self-defence ability. More recently it has adversely affected amputees' golf swings.



friendly relations informing them that the person concerned no longer has any connection with the gang and respectfully asking them not to employ or help him.

*Hamon-jō* are printed in either black or red ink with red indicating a more severe punishment and a correspondingly smaller possibility of rehabilitation (*fukuen*).

Obviously for an *ikka* to employ, or otherwise help, an expelled gangster from another group without that group's consent, is both a severe breach of the traditional code of the *yakuza* and a grave affront to the dignity of the group that will demand redress. More recently it appears that *hamon* messages have come to be sent by fax.

An expellee is forbidden to take part in illegal activity, to make use of his former affiliation with the gang, or even to adopt the loud dress and arrogant behaviour patterns of a gang member. Those that disobey may be challenged, beaten or, if this persists, killed (Stark 1981, 109). Expulsion is severe for gang members because it is not easy for them to make a living outside their group's protective fold. Whilst they have been deprived of illegal employment, few legitimate employers will want to take them on. It is particularly difficult for those that have been permanently stigmatised as *bōryokudan*, either through *yubitsume* or a body tattoo (*irezumi*<sup>4</sup>), to conceal their former status. If, after an appropriate length of time, expellees have conducted themselves properly outside of the gang and show a reformed attitude, they may be reinstated. This will be accompanied by the sending of *fukuen-jō* to *bōryokudan* throughout Japan.

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<sup>4</sup> This term carries slightly negative associations with the medieval practice of tattooing convicted criminals. For this reason tattoo artists prefer to talk about *horimono* whilst *yakuza* themselves refer to their tattoos as *monmon* (private correspondence, Herbert).

## RECRUITMENT

In order to make up for the wastage in numbers due to imprisonment, retirement, illness and members leaving for other reasons, *bōryokudan* are constantly struggling to maintain their existing strength. As mentioned in the 1989 *Hanzai Hakusho*, in the late 1980's the process of recruiting new, young, members, seems to have become particularly problematic for *bōryokudan*. Recruitment is important not only at the gang level; advancement within the organisation is aided by an individual's ability to bring in suitable new blood. This is especially important for an executive wishing to create his own internal group. Gang members are therefore always on the lookout for likely material. *Bōryokudan* life is obviously not suited to everybody and recruitment tends to be concentrated within certain clearly defined groups.

The underlying rationale behind the theory of ethnic progression put forward by Bell (1965) and Ianni (1974), is that, when certain ethnic groups are denied access to legitimate means to self-advancement, OC may remain the only route by which these disadvantaged groups can attain their material goals. This argument is often applied to Japan where it is held that discrimination against *burakumin* and *sangokujin* (particularly ethnic Koreans) is a prime motivation forcing members of these groups into OC associations. Many *bōryokudan* leaders play on this idea of discrimination to justify their existence: society is to blame not them, moreover (they say), the *bōryokudan* play a vital social role in providing a niche for society's outcasts.

Due to the sensitivity publishers, editors and even official publications have in dealing with *burakumin* issues (van Wolferen 1989, 342), there is no recent hard data on the levels of *burakumin* and Korean involvement in the *bōryokudan*, and it is not in anybody's interest to provide any. Even for the police to conduct surveys would be considered discrimination whilst the legitimate *buraku* liberation movements are not keen for their minority group to be tainted with *bōryokudan* associations in the minds of the public.

It is however widely believed that the proportion of minority groups within the *yakuza* is disproportionately high: whilst roughly 0.5% of the population is considered ethnically Korean and 2.5% of *burakumin* origin, unofficial police estimates cited by Ames (1981,112) suggest that within the Yamaguchi-gumi 10% of total *bōryokudan* strength is Korean and 70% *burakumin*. These figures are however problematic and illustrate the dangers of inappropriate extrapolation of data. Whilst in areas of Japan with high concentrations of such minorities, such as Okayama prefecture where Ames conducted most of his research, these figures are credible, it is highly dubious that they apply to the country as a whole.

Attempts to establish the extent of minority representation within the ranks of the *bōryokudan* during the course of the researcher's fieldwork were not successful. Criminal defence lawyers Shimamura and Yamanouchi agreed that it was 'still high' but were reluctant to give even a rough figure. One group of third-level Yamaguchi-gumi executives estimated that about two-thirds of Yamaguchi-gumi



members were of Korean extraction but this does not seem credible and, at best, probably only reflects the composition of their own immediate group. Their own gang office was situated in the Nishinari area of Osaka, which has a high percentage of residents of Korean ancestry.

Discrimination also exists against those who fail to meet the demands of Japan's *gakureki shakai* (school-record society). Police statistics show that 80% of recently joined gang members had either left school after completing compulsory schooling or dropped out during high school. In their last year at school 66% had played truant for one month or more (*Keisatsu Hakusho* 1989, 37-8). This contrasts with national educational advancement rates of 95% for high school, and 30% for university (*Tōkei Kyoku* 1990, 666). Educational and ethnic discrimination need not necessarily be mutually exclusive. It is likely that there is a correlation between low, culturally induced expectations, and those expectations being met.

Another significant aspect of *bōryokudan* recruits is their home background. Whilst it might be expected that they tend to come from poorer families, what is surprising is the high levels who come from single parent families (43%) or feel they have been neglected as children (50%) compared to those who had been "doted upon" or "looked after too much" (10%). One third had run away from home (*Keisatsu Hakusho* 1989, 37; Ames 1981, 112-3). More recently it seems that the significance of single-parent families has been declining but parental neglect within conventional two-parent families has increased as a factor contributing to *bōryokudan* recruitment (Hoshino 1994, 139). It seems reasonable to assume that the tight, closed social

structure of the *bōryokudan*, and the kinship bonds of the *sakazuki* take on an added significance in the light of the dysfunctional family background of many *bōryokudan* entrants.

As would be expected by Merton's theory of crime as an innovative response to anomic conditions discussed in chapter two, not all members of these disadvantaged groups become members of *bōryokudan*. *Bōryokudan* talent scouts do not try and induct individuals *because* they are Korean, or *burakumin*, or have no educational qualifications but because they are suitable. In *bōryokudan* terms suitable recruiting material is to be most readily found amongst those who have already embarked upon a career of deviancy. In the 1989 police survey of recent *bōryokudan* recruits, 11.3% were shoplifters, 33% solvent abusers, 75% had been arrested prior to joining *bōryokudan* and 50% more than once. Of the survey's interviewees, the majority (60%) had been involved in delinquent groups especially *bōsozoku* hot-rod groups and local street-gangs (*Keisatsu Hakusho* 1989, 38-9).

*Bōryokudan* 'talent scouts' will patrol game centres, street corners and other delinquent hang-outs making contact with likely individuals (Yamadaira 1992, 141). Potential recruits may be given pocket money, meals, or drugs. They may then be employed on errands and slowly drawn into the talent scout's circle. Herbert reports that karate clubs at some of the less-prestigious universities have also been targeted as potential recruiting grounds; whilst this has not been corroborated by other sources it is not unfeasible. Martial arts schools have long

been run by Chinese Triad groups purely as recruiting and training vehicles (Booth 1999, 173; 212) whilst this researcher is aware of at least one foreigner who used his credentials as a *karateka* to gain part-time employment as a driver and ‘acrobat’ for a Tokyo-based gang.

Recruitment need not be a one way process. All of the interviewees who commented on their motives for joining, joined of their own volition. Tanomura, a *tekiya* in Iwate prefecture, had been attracted to the bright lights and excitement of festivals. In contrast to this, Fujimura joined in his mid-twenties because his bars were consistently pestered by *yakuza* seeking to squeeze money out of him in some way or other. Most of the interviewees had joined at an early age having spent a childhood apprenticeship. In one police survey, as much as 15.8% of recruits had approached the *bōryokudan* on their own initiative whilst 26.8% had asked to join rather than waiting to be invited (*Keisatsu Hakusho* 1989, 40). This attraction to the *bōryokudan* is reflected in the reasons given by interviewed *bōryokudan* arrestees for joining their organisations:

Table 3.3 Motivation for Joining *Bōryokudan*

Initial Motivation	Agreement Rating
Attracted by the <i>yakuza</i> image ( <i>kakoi</i> )	36.5%
Attracted by the world of <i>giri-ninjō</i>	29.1%
They will recognise even someone like myself	17.1%
You can achieve an enjoyable lifestyle	16.7%



To support immediate lifestyle	12.2%
Feel attraction for controlling through violence	9.5%
Convenient for work	7.2%
It is easy economically	7.1%
It is easy work	3.9%
Forced to join against will so no motivation for joining	3.5%
No reason in particular	4.1%

(source: *Keisatsu Hakusho* 1993, 31)

It is significant that gang members themselves see the flashy image and *giri-ninjō* value system, beloved by Japanese film makers, as more important than the perception that the *ikka* will recognise even people like them (whilst society doesn't). This does not necessarily contradict the discrimination thesis. Narcissism is a common factor within OC sub-cultures (Hobbs 1994, 448-9) and may be considered to reflect low self-esteem and a defiant rejection of societal judgement.

Whilst most members join in their youth, this is not necessarily the case. Released convicts, dismissed policemen and failed salarymen (possibly fired for fraud or similar irregularities), may all find themselves deprived of legitimate employment. The latter two categories may bring particular skills to the organisation. Due to the increasingly white-collar nature of Japanese OC activity, computer and financial expertise is especially welcome.

Although it is not given above as a major motivating factor in joining, interviews of *kumi-chō* frequently reveal that economic considerations are also important. Whilst money itself is not necessarily given as a reason for joining, the status and power that money gives is undoubtedly important (Yasuda 1993, 207). This is reflected in the ostentatious display of wealth, which is such an important part of the *yakuza* image. An often overlooked factor in this is that people join *bōryokudan* for the simple reason that, for the successful, crime pays extremely well.

### FINANCIAL FLOWS

In 1989, the police estimated that the total income of *bōryokudan* groups in Japan was over ¥1.3 trillion (£5.8 billion) (*Keisatsu Hakusho* 1989, 46). This translates into an average annual per capita income of ¥15 million (£66,371). 1979 police data on *bōryokudan* income (the first year such measurements were made) put total *bōryokudan* income at ¥1 trillion and average annual income per head at ¥10 million (Mizoguchi 1986, 183). If these figures are correct, it implies that although income has grown only by 30%, due to the smaller less competitive *ikka* being forced out of business, productivity has increased by 50%. In real terms (discounting inflation) these increases are, of course, less.

To put *bōryokudan* per capita income levels in perspective, the average annual salary of a regular company employee in 1989 was ¥3.6 million, or one quarter of the average gang member's (Tōkei Kyoku 1992, 98). Of course, *bōryokudan* are

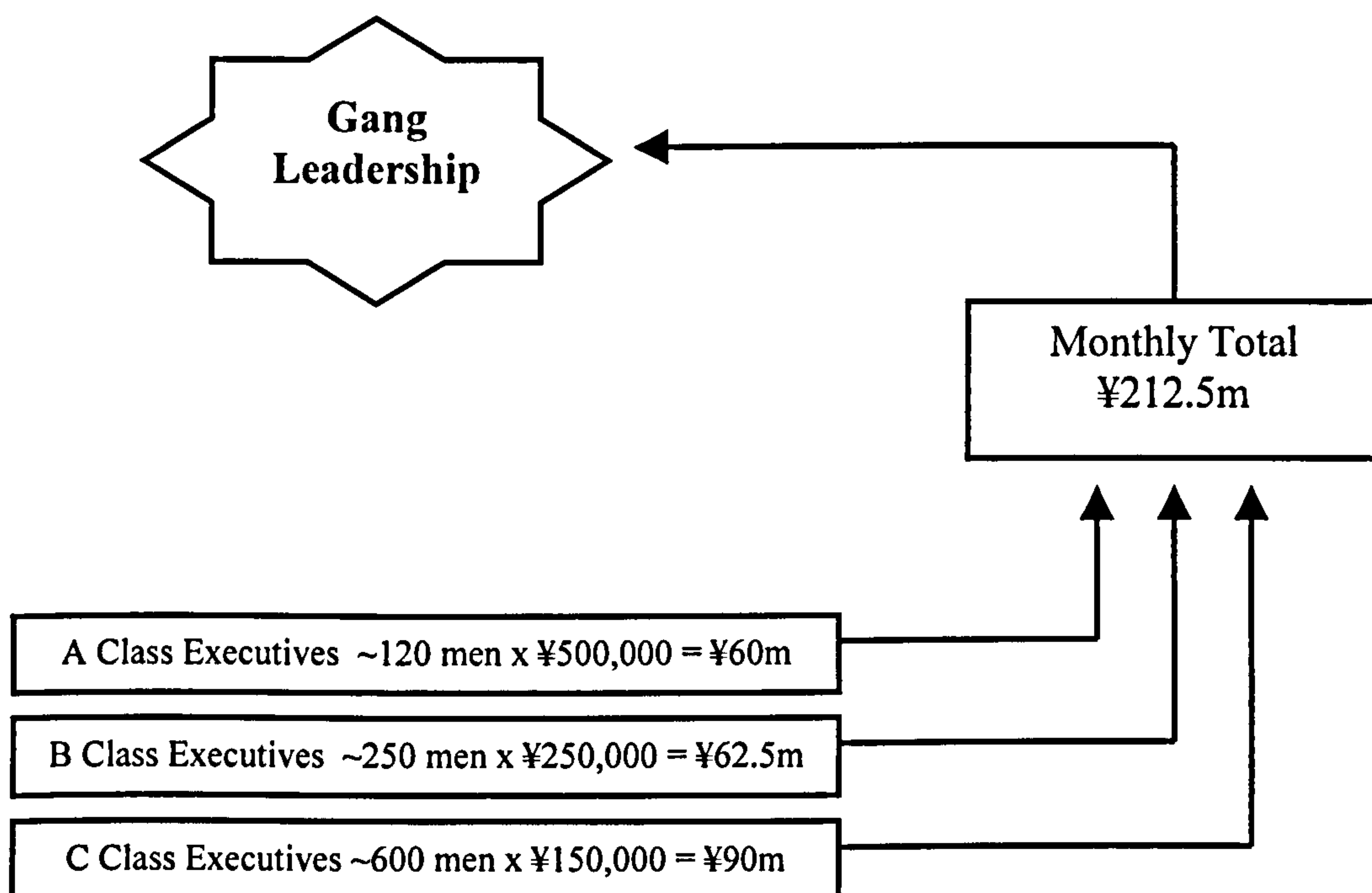
not egalitarian organisations and the distribution of the organisation's income reflects this. Uchiyama (1989, 89) in a survey of 925 *bōryokudan* arrestees found that the average annual income for bosses (¥26.7m) was nearly eight times that of average *kumi-in* (¥2.46m); executives averaged ¥7.7m. It should be noted that these figures are averages; for senior bosses this differential will be considerably higher. Retired third-level Ichiwa-kai boss Fujimura states that most ordinary young *kumi-in* are permanently broke, living a parasitical hand-to-mouth existence off the income of girlfriends, parents or their *oyabun* (Fujimura interview Osaka, August 1998). Most of the proceeds from OC end up in the higher echelons of the organisation.

Large syndicates operate on a system of tribute known by the police as *jōnōkin* (literally 'upward payment money') whilst the *yakuza* themselves prefer the term *kaihi* (association fees). Under this system subordinate gangs must pay a monthly amount to their parent organisation. This system evolved as a direct consequence of the first and second police summit strategies of the mid-to-late 1960s. Because of these concentrated arrests of senior executives and bosses it became necessary to insulate the top leadership from direct criminal involvement whilst retaining a secure and stable source of income. As a result of the *jōnōkin* system the number of arrests of senior *bōryokudan* figures declined dramatically and remains a serious problem for police *bōryokudan* countermeasures (Ino 1992a, 264). It should be noted that, within second and third-level gangs, there is no hard rule concerning *jōnōkin* and it remains at the discretion of the boss of the gang in question.



Fujimura states that within the Mizohashi-gumi (a second-level group within the Yamaguchi-gumi and then the breakaway Ichiwa-kai) there was no *jōnōkin* but he voluntarily paid the telephone bill for the gang headquarters (Fujimura interview Osaka, August 1998).

Figure 3.6 *Jōnōkin* payments within a large syndicate



Source: *Keisatsu Hakusho* 1989

The *jōnōkin* structure of a typical large syndicate is shown in figure 3.6. In the example in the diagram, the syndicate leadership receives a monthly income of ¥212.5 million (roughly £1m at contemporary exchange rates) without recourse to direct criminal involvement. Since its introduction, there has been a trend for *jōnōkin* to rise. Within the Yamaguchi-gumi this process started with a reorganisation of the syndicate's finances under the then *gashira*, Yamamoto

Kenichi, in 1971. At that time, members of the first level Yamaguchi-gumi would each pay ¥50,000 per month. By 1982 this had doubled to ¥100,000. Over the next decade *jōnōkin* increased over thirteen-fold to an astonishing ¥1,340,000 yielding the headquarters an annual income of ¥21.26bn (approximately £90m at contemporary exchange rates)<sup>5</sup> (Mizoguchi 1997, 54; 58). Consequently, meeting the burdens of *jōnōkin* payments has become problematic for many *ikka*, especially for the second and third level gangs on whom the financial responsibility ultimately rests (Ames 1981, 118). In some cases this has resulted in the dissolution of the gang.

### ***SHINOGI – SOURCES OF INCOME***

Whilst the police estimates of gang income may seem large, journalistic sources consider the figures to be highly conservative. In particular, doubt may be cast on these figures in that the previous official police estimates of *bōryokudan* income conducted in 1979, yielded a figure of ¥1 trillion (Mizoguchi 1986, 183). In the succeeding ten years, *bōryokudan* sources of income had substantially increased, diversified and become more sophisticated. In the light of this, it is simply not credible to maintain that *bōryokudan* income only increased by 30% in this period.

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<sup>5</sup> Although such detailed figures are not available for the other two large syndicates, police estimates suggest that the 2,900 executives of the Inagawa-kai paid a monthly average of ¥137,000 yielding an annual total headquarters income of ¥4.77bn (£20m). Within the Sumiyoshi-kai 2,500 executives paid an average monthly fee of 52,000 yen which provided an annual income of ¥1.56bn (£6.6m). The lower level of Sumiyoshi-kai *jōnōkin* reflects the flatter management structure of that particular syndicate.

Ino Kenji, a well-known writer on the *yakuza*, suggests that police figures underestimate the real figure by a factor of three (Kaplan and Dubro 1986, 183). A former lawyer (presumably Yamanouchi Yukio) of the Yamaguchi-gumi criticises the 1979 figures for ignoring the substantial revenue from Japan's sex industry, debt-collecting and out of court settlement of bankruptcy charges. Professor Nato Takatsugu of Tokyo International University has suggested that total annual *bōryokudan* income could be as much as seven trillion yen (Reuters 16/11/1994). Seven trillion yen is also the figure cited by Mizoguchi (1986, 182) though he suggests this represents *bōryokudan* turnover rather than profit (which he estimates at 70-80% of this total arguing that most *yakuza* businesses have very low costs). From his direct observations of the standard of living of senior *bōryokudan* personnel, Mizoguchi does not find such a figure surprising<sup>6</sup>.

Perhaps more significantly, within the NPA itself, doubt has been cast on the official figures. One of the research officers at the National Research Institute for Police Science (NRIPS), who had been responsible for creating the methodology by which the data were obtained, pointed out in interview that some sources of funding were seriously under-represented in the final figures. In particular the amounts of money that *bōryokudan* groups extract from businesses was under-estimated and the interviewee asserted that this had been a politically-motivated decision by superiors within the NPA (NRIPS interview Tokyo, March 1998). Another senior researcher at NRIPS confessed with unnerving cheerfulness that despite a never-ending stream

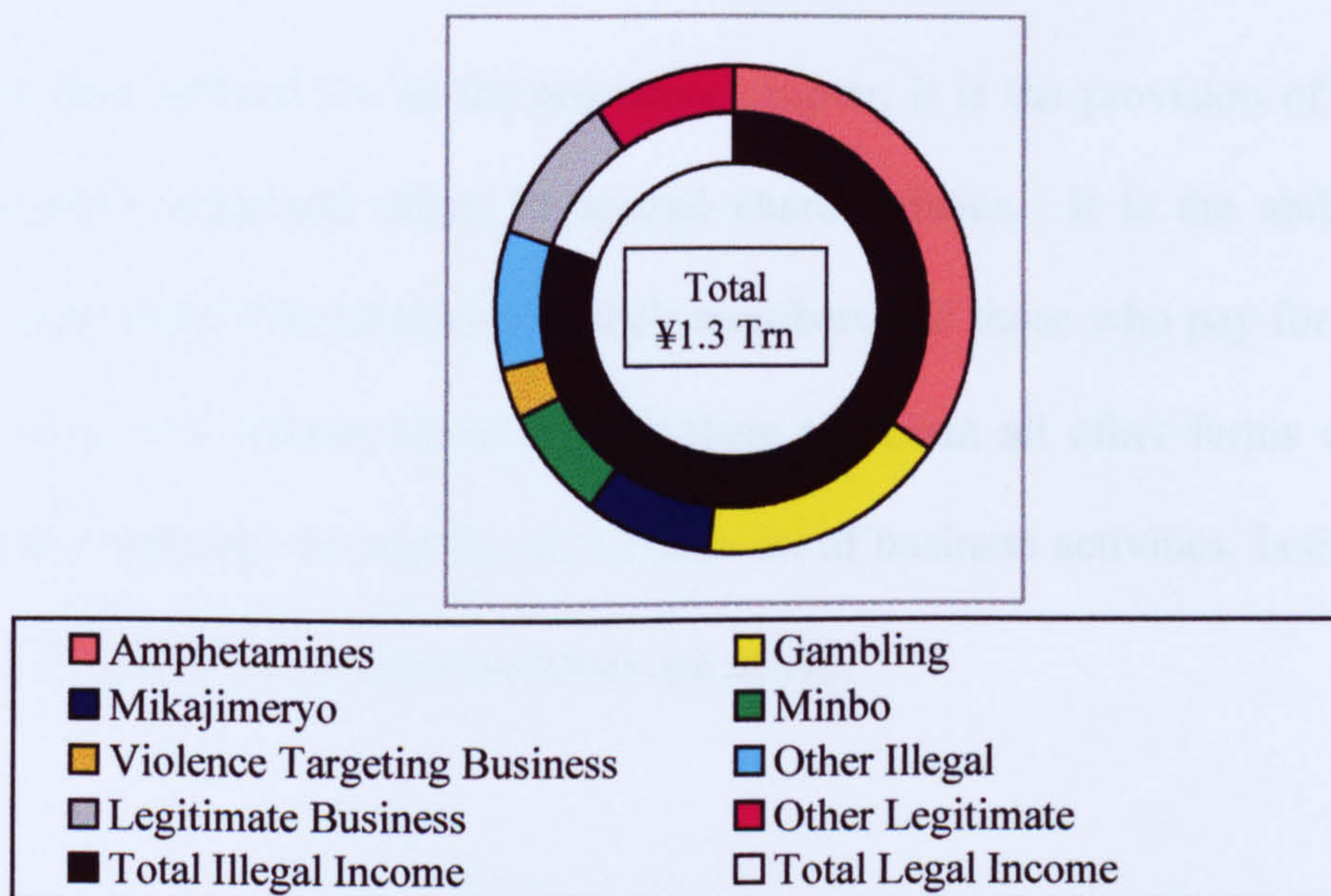
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<sup>6</sup> Hoshino Kanehiro also confessed to the researcher that, having visited top *yakuza* and seen the opulence of their lifestyle, he found the official figures to be suspect.



of journalists and researchers beating a path to his door with requests for facts and figures, he was unsure to what extent the data his institute produced were accurate (NRIPS interview Tokyo, February 1998).

Figure 3.7 Sources of *Bōryokudan* Income



Source: *Keisatsu Hakusho* 1989

As can be seen from figure 3.7, according to police estimates, the overwhelming majority of *bōryokudan* income is derived from illegal sources. What is more surprising, given the changing nature of *bōryokudan* activity, is that conventional, established sources of income, namely, gambling and bookmaking, amphetamines, protection and other traditional forms of extortion, still account for over 60% of this total. Within the *bōryokudan* world, all types of economic activity from which they derive money are known collectively as *shinogi*. *Shinogi* is defined in Kenkyusha's New Japanese-English Dictionary as "to be in a helpless condition; be driven to the



wall; be quite at a loss how to tide over difficulties”. This captures quite well the desperate and transient nature of the hand-to-mouth existence of many low-ranking *yakuza*. The main forms of *shinogi* are as follows:

## PROTECTION

As we have defined OC in the preceding chapter, it is the provision of protection which gives organised crime its special characteristics. It is the ability of OC syndicates to provide protection to their members and those who pay for it, as well as to deny it to others, which enables them to obtain all other forms of *shinogi*. Protection therefore overarches the diverse set of business activities, both legal and illegal, in which *bōryokudan* members are active.

Protection (known colloquially as *mikajimeryō*) is therefore the most basic of *bōryokudan* businesses. According to the police estimates, even in the late eighties, it accounted for just under 10% of *bōryokudan* revenue. Traditionally the main focus of *bōryokudan* protection has been the entertainment industries comprising restaurants, bars, night-clubs and sex industry known collectively as *mizu shōbai* (water trades). There are many ways in which *bōryokudan* can extort money from shops and bars. The most straightforward form of *mikajimeryō* is to demand *yojimbōdai* (bodyguard fee). A more subtle approach is to pressure the victim to buy goods and services from *ikka*-run businesses at inflated prices. *Oshibori* (hot

hand towels) and *tsumami* (snacks) are often provided to bars and restaurants in this way. Alternatively, pictures, potted plants and other decorations may be leased at above market rates.

A 1988 questionnaire of 1,500 traders carried out by the police in Ishikawa prefecture yielded the data shown in table 3.5:

Table 3.5 Payment of *Mikajimeryō*

Currently paying <i>mikajimeryō</i>	6.6%
Of which ¥1,000/month	0.1%
¥5,000/month	6.5%
Have paid <i>mikajimeryō</i> in the past	5.4%
Being forced to buy goods	19.6%
of which ¥5-10,000/month	0.5%
¥3-5,000/month	19.1%
Have made use of <i>bōryokudan</i> in the past	1.4%
of which, used to sort out trouble	1.0%
recover money owed	0.4%

(Source: *Keisatsu Hakusho* 1989)

Although these percentages are not high, within the sample population this represents total monthly payments amounting to roughly ¥2.2 million. When it is considered that *bōryokudan* protection activity has traditionally been concentrated in Japan's vast *mizu shōbai* (entertainment) industry, then they become more significant. A 1980 survey carried out by police in the Yokohama area, showed that more than 70% of enterprises in the *mizu shōbai* sector paid *mikajimeryō* to



*bōryokudan*. This yielded an annual figure of approximately ¥1.5 billion (Kaplan and Dubro 1986, 169). A rough estimate by a *yakuza* associate working in the entertainment area of Shinjuku suggests that two-thirds of the 3,000 bars and clubs in Kabuki-chō were paying an average of ¥30,000 per month. This gives an annual pay out of ¥720 million (Hinago 1992b, 75). This is probably an underestimate in that Kabuki-chō bars may well have paid more. The figures cited by Mizoguchi for typical *mikajimeryō* payments in the Kōbe area are ¥100,000 per month for a club and ¥300-500,000 for a *pachinko* (pinball) parlour. In the fashionable Ginza district of Tokyo, some clubs pay as much as ¥1 million per month (1997, 82).

Protection covers not only the entertainment industry. Sagawa Kyūbin, the parcel delivery company, reputedly paid ¥2 billion per year to Ishii Susumu, Inagawa-kai boss 1986-90, to ensure trouble free business (*ibid.*). In total the Tokyo Metropolitan Police estimate that roughly ¥100 billion flowed to Ishii from Sagawa Kyūbin. It is not clear whether this was all protection money but many observers think so (Nakagawa 1992, 235).

The construction industry is also one in which *bōryokudan* protection is significant. Like the trucking industry it is vulnerable to the pilfering of articles and delays. It is also dependent on a large, unskilled workforce. As argued in the preceding chapter, such industries are more likely victims of OC than capital-intensive industries with a small, highly-skilled workforce. As will be shown below, *bōryokudan* involvement in construction is facilitated by partial control over the supply of labour

to this industry (see labour-broking). Because of the high value of land in Japan, especially at the time of the bubble economy, construction costs are a lower proportion of the total project than in most other countries. Delays may also therefore be more expensive than elsewhere. For these reasons, the Japanese construction industry is especially susceptible to *yakuza* protection<sup>7</sup>.

The standard fee to ensure trouble-free construction is three percent of the total construction cost (Fujimura 1998, interview). In 1985 total investment in construction reached ¥50 trillion, or 16% of GNP for the same year. Of this ¥30 trillion was private sector investment and the remaining ¥20 trillion, public<sup>8</sup> (Hasegawa 1988, 2-3). Assuming that protection is extended to just one third of this total, the *bōryokudan* are earning ¥500 billion from this industry alone. Although it is not clear to what extent the construction industry pays protection, the police recognise that it is a major source of *bōryokudan* income (Hiraoka 1987, 71).

Of course, *bōryokudan* involvement in construction operates at more than one level. The other ways in which criminal groups extract funds from this industry are more properly dealt with in the sections concerning legitimate business and activities targeting legitimate business.

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<sup>7</sup> These factors are even stronger in Hong Kong where an estimated 12% of the total cost of, for example, skyscraper construction is consumed by protection and bribery payments (Booth 1999: 243).

<sup>8</sup> Coincidentally, three percent was also the sum typically paid to LDP cliques in exchange for public construction contracts (Johnson 1995: 216-7). The high costs of corruption within the Japanese construction industry, combined with the inefficiency it engenders, go some way to explaining why it costs nine times more to build a road in Japan than in the USA (McCormack 1996: 35).

The term *mikajimeryō* carries wider connotations than the provision of protection in that it also applies to payments made to a group in return for permission to conduct business within that gang's territory. Therefore, traders at the economic and legal margins such as outdoor stall-holders, drug-dealers and street prostitutes pay a street tax to the relevant gang. For women on the streets of Shin-ōkubo this amounted to three thousand yen per woman per day (police interviewee, Tokyo, 1998).

This tax need not be an entirely exploitative relationship. One Israeli stall-holder<sup>9</sup> explained why he had little trouble with the police in the following way:

The bosses (those running the Israeli jewellery hawkers) have a relationship with the *yakuza* and they have a relationship with the police. It is a good system and it works well (stall-holder Kōbe, 1998).

For bar-keepers, protection ensures that problems involving unruly customers, or those that refuse to pay their bill, can be resolved quickly. In one incident witnessed by the researcher in a bar in central Japan, the local boss arrived within five minutes of a situation developing. Whilst it is not to be argued that payers of protection get value for money, the protection relationship is not a purely exploitative one and many entrepreneurs actively seek out protection rather than finding it thrust upon them.

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<sup>9</sup> Street-stalls selling jewellery are monopolised by Israeli organisations. Stalls are usually manned by young Israelis in need of funds for their post-military service travels. These organisations operate as territorial franchises and generally purchase their supplies of jewellery from the regional boss to whom they also pay a percentage in exchange for their spot.



The need for this service is not confined to traders in the entertainment business; as has been discussed above both politicians and businesses have long found it useful to maintain a relationship with *bōryokudan* elements. Although, by the late 1980s, overt *yakuza* connections were no longer a political advantage, many politicians retained such links behind the scenes as the Sagawa Kyūbin scandal, to be discussed in chapter six, illustrates. The business-*yakuza* nexus is discussed below in the section dealing with *minji kainyū bōryoku*.

## DRUGS

As is the case with Great Britain, Japan's history with recreational drugs is far from unambiguous. During the 1930s and early 1940s Japan had a twin-track narcotics policy. Within Japan the use of drugs was strictly prohibited, whilst in the occupied territories, opium trafficking was seen as both as a source of revenue and a means of keeping the populace docile. On taking control of Manchuria, Japan quickly established an opium monopoly. By 1939 this industry was yielding \$90 million in tax revenues to the Japanese government. Because this industry was legal, legitimate traders could operate though *yakuza* groups provided protection at the numerous opium dens (Vaughn et al. 1995, 495-6).

At the same time amphetamine-based stimulants were freely and legally available in Japan. The first such product came on the market in 1931 under the brand name Hiropon and was sold either as ampoules of injectable liquid or as lozenges. At the time amphetamines were widely regarded as an almost miraculous panacea and used

to treat a number of conditions ranging from low blood pressure to obesity (Abadinsky 1994, 382-3). They were also recognised as having considerable military application not only for raising the stamina of combat troops, but also for ensuring continued industrial production despite an increasingly malnourished workforce. Most famously, *kamikaze* pilots would be given a 'special attack lozenge' before boarding their aircraft (Yamanouchi 1992a, 79-80).

At the end of the war, huge stocks of military amphetamines came onto the civilian market where they became a popular means of combating the fatigue and hunger resulting from chronic food shortages. The consequences of this were that amphetamine abuse exploded in what became known as the 'first epidemic period' (1945 to 1955). At its peak in 1954, it involved an estimated 2 million (2.2% of the total population). By 1948, amphetamine had become officially recognised as a 'dangerous drug' (though still legal) and the potency of the ampoules was reduced. In 1951, the Stimulant Drug Control Law (*Kakuseizai Torishimari Hō*) was passed. This was followed in 1953 by a widespread public awareness campaign (Brill and Hirose 1969, 179-80).

As a response to the harsher penalties imposed by the revision of the Stimulant Drug Control Law in 1954, there was a rapid decline in amphetamine consumption and by 1957 the problem was effectively over<sup>10</sup>. However, as pointed out by Brill and Hirose, "as amphetamine abuse declined, there was a sharp rise in heroin

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<sup>10</sup> Although the first epidemic period finished in Japan, its effects lingered elsewhere; American troops stationed in Japan became acquainted with injected amphetamine usage in Japan. Many of them brought this habit back home with them and, as college students on the G.I. Bill, used amphetamines as an aid to pre-examination cramming. This "laid a foundation for the later patterns of (American) amphetamine abuse" (Rawlin 1968: 51-65).

addiction” (ibid.). This is interesting because it is frequently claimed that the current absence of heroin in Japan is due to its not suiting the ‘Japanese temperament’.

The second period of epidemic amphetamine abuse started in 1970. It peaked in 1984 and by 1988 was slowly starting to decline. In contrast to the first epidemic, the *bōryokudan* played a crucial role in its development. As the senior *bōryokudan* figures who had been arrested due to the police summit strategies of the mid-1960s were released from prison, they needed an easily developable cash-generating activity on which they could re-establish their syndicates. The epidemic started in the Osaka area and spread from there to the rest of Japan. It is reported that this was facilitated by construction workers, who had gathered in Osaka to build the Osaka Expo World Fair, later returning to their homes taking their newly-acquired habit with them (Tamura 1992, 102-3).

Although illegal drug abuse in Japan overwhelmingly involves the injection of meth-amphetamine hydrochloride (known colloquially as *shabu* or ‘*pon*), other types of substance abuse are not unknown. Narcotics abuse is a relatively minor problem; in 1988 only 105 arrests were made for narcotics violations and 1,464 for cannabis whilst 20,399 were made for stimulant violations. Police interviewees reveal that the *bōryokudan* are not seriously involved in cannabis trafficking which is largely carried out on a disorganised basis by individuals involved with what the police identify as ‘alternative’ lifestyles such as surfing, the arts and rock-music. Cocaine-related arrests in 1988 numbered a comparatively negligible 35 (*Keisatsu*



*Hakusho* 1997, 140). More significant, however is the number of cases of solvent abuse amongst juveniles.

The trade in amphetamines is monopolised by the *bōryokudan* as only they have the organisational networks, connections and ability to deploy sufficient protection to operate, or allow those paying the appropriate 'street-tax' to operate, within this illegal market. Furthermore, many gang members themselves are users of stimulants (Tamura 1992, 101-3). However, by no means all *bōryokudan* participate in this type of fund-raising activity or *shinogi*. Nor does any one particular group hold monopoly power over this market. The three large syndicates maintain a formal policy of non-involvement in the amphetamine trade. The Yamaguchi-gumi has taken this a step further by forming the *Zenkoku Kokudō Jōka Dōmei* (National Purification League) which is supposedly dedicated to the eradication of amphetamine abuse.

The police dismiss this as, at best, a poor public relations exercise or a cynical attempt to run the competition out of town. However, amongst most *bōryokudan* and related interviewees there was undisguised contempt for drug dealing *yakuza* who they dismissed as those lacking either the strength or brains to succeed at any other type of *shinogi*. There are also very good reasons why these organisations would wish to distance themselves from this particular business. Because it is perceived in Japan as a more pernicious crime than gambling or prostitution, involvement in amphetamine dealing is likely to incur more rigorous law-

enforcement and severe penalties. It is also likely to exacerbate a negative public perception of organisations involved in this business.

Despite this, it seems clear that the pressure to pay the expenses which a *bōryokudan* lifestyle entails, forces many subgroups into the amphetamine business.

However, Yamaguchi-gumi members arrested for drugs-related offences are formally expelled. In the case of Pao, a young *kumi-in* expelled from a Yamaguchi-gumi Yamaken-gumi sub-group visited during fieldwork, rehabilitation was achieved after a year. It seems reasonable to suggest that as long as *jōnōkin* payments are forthcoming, a blind eye is turned to discreet trading. In Britain, professional criminals reputedly had a similar disdain for the drugs industry - and similarly this disdain has disappeared once its lucrative nature becomes fully apparent (Morton 1992, 399).

Just how lucrative Japan's market for meth-amphetamine is exactly, is extremely difficult to gauge. Tamura (1988) illustrates these problems in a 1988 review of the various attempts by the NPA to estimate the scale of amphetamine use in Japan. Early police estimates rested on a number of questionable assumptions that render their results highly dubious. For example, a 1978 estimate rested on the assumptions that the volume of amphetamine seizures represented 5% of the total amount of the drug in circulation. Similarly, drug-related arrests amounted to 10% of all consumers. This led the NPA to conclude that roughly two tons of amphetamine were imported in 1978 and consumed by 200,000 individuals. Making the further, but more reasonable, assumption that the average consumer injects one shot of

0.03g per day gives a total annual consumption of 2.19 tons (0.03g x 365 x 200,000) which is not so far off their estimate for circulation.

To evaluate the level of profit generated by this trade, the NPA multiplied this figure by the street price minus initial wholesale price (at the time, ¥250,000/g and ¥10,000/g respectively). This yielded a total profit of ¥4.6 trillion (£11.4 billion). It was further assumed that all of this profit accrued to *bōryokudan* members and those actively participating in dealing were numbered at 40,000 (working on the assumption that 20% of all dealers are arrested per year). The NPA therefore calculated the average annual profit per *bōryokudan* dealer in 1978 at ¥11.6m (£28,800).

Even disregarding the NPA assumptions concerning the ratio of seizures and arrests to the “dark figures”, the estimates as to profit levels are too simple. For example they disregard the facts that street-level dealing is often carried out by non-*bōryokudan* members and that many dealers are also users who withdraw a certain amount, at whatever level of the distribution chain they occupy, for their own consumption. The 1978 methodology also falls down when applied to 1987 arrest and seizure statistics. This was because the volume of drugs seized had increased by over six times whilst the number of arrests had remained roughly constant.

By the late 1980s a more sophisticated picture had emerged due to the collation of intelligence gathered by the various prefectural police headquarters. The results of the 1987 NPA survey of the amphetamine situation are considered by Tamura to be



much more dependable than anything hitherto conducted (1988, 54). It was estimated that 2,125 *bōryokudan* groups were involved in the sale and distribution of amphetamines (this represented 85% of all gangs in Japan). Of these groups, 300 were considered to be operating at the wholesale level (dealing in kilograms rather than grams). About 50,000 *bōryokudan* members were dealing and this was augmented by 50,000 non-*bōryokudan* which gives us a total employment of 100,000. Of this, 90% (including all non-*bōryokudan*) were dealing in units of 1g or less.

From interviews of arrestees it appeared that each dealer had an average of five customers. In addition it was apparent that most dealers were themselves consumers. The total number of consumers was therefore estimated to be 550,000 ((90,000 x 5) + 100,000). This is roughly 27 times the number of drug-related arrests made each year. The total amount of consumption was estimated by assuming that the amphetamine-consuming population could be broken down into five equal groups according to usage frequency as shown below.

Usage Frequency	g/p/a	%ge	# users	Total (Kg)
3 x /day	30g	20%	110,000	3,300
2 x /day	20g	20%	110,000	2,200
1 x /day	10g	20%	110,000	1,100
2 x /week	3g	20%	110,000	330
2 x /month	1g	20%	110,000	110
TOTAL				7,040 Kg.

Whether this frequency is based on police interview data or not is unclear, however the all too tidy breakdown of the figures urges caution. Despite this, the total consumption figure of just over seven tons seems reasonable given that 620kg (or 8% of the total imported) was seized by the police in 1987.

There are a number of ways of attempting to estimate the revenue this seven tons generates. The most elementary is to simply subtract the amount that the 100,000 dealers themselves consume and then multiply the remainder by current street prices as follows:

Street price	$¥100,000/g = ¥ 100m/kg$
Total consumed by non-dealers	$7,040 \times 0.82 = 5,760 \text{ kg}$
Total revenue	$5,760 \times 100m = ¥ 576 \text{ billion (£2.5bn)}$

This however assumes that dealers share the consumption patterns of their customers. It seems plausible that dealers, with ready access to supplies, will be heavier consumers than non-dealing users. Given that we are interested in *bōryokudan* income rather than dealers' income we should perhaps not exclude non-*bōryokudan* dealers from our calculation. To complicate matters these individuals, as dealers themselves, are not purchasing at street price.

Taking into account the differing prices at the various stages along the distribution chain, the NPA have constructed a diagram representing the structure of the amphetamine trade in Japan as of 1987. This yields total sales of ¥450bn and profit of ¥209bn (roughly £1.9bn and £0.9bn respectively). Tamura stresses that these are

estimates and that there is a need for further research to clarify the nature of this industry (1988, 60).

Most of the groups involved at the importation level of the business are relatively small. Typical of these is the 'M-gumi' a sub-group of the Fukuoka-based Dōjin-kai consisting of about twenty members. This group imported several hundreds of kilograms per year, meeting with Taiwanese exporters on the open sea, where amphetamines would be exchanged for ¥1,000 per gram. This would be distributed via parcel-delivery companies to Dōjin-kai sub-groups in Hokkaidō and Kyōsei-kai sub-groups in Hiroshima. At a wholesale price of ¥4,500 per gram, M-gumi had annual sales of ¥600m (Mizoguchi 1997, 85-6).

The monthly finances of 'S-gumi', a lower-level drug dealing organisation, are given below:

Table 3.6 Breakdown of drug dealing group's finances

SALES	¥9,400,000	£40,343
COSTS	¥600,000	£2,575
PROFIT	¥8,800,000	£37,768
EXPENSES		
<i>Jōnōkin</i>		¥250,000
Food for duty <i>kumi-in</i>		¥90,000
Gang office building rent		¥250,000
Land rent		¥300,000
Heating/lighting		¥300,000
Insurance		¥70,000
TOTAL		¥1,260,000



DISTRIBUTION TO SUB-GROUPS ETC.

A Gumi	¥300,000
B Gumi	¥200,000
<i>Kumi-in</i> ①	¥120,000
<i>Kumi-in</i> ②	¥120,000
Living-in <i>wakashu</i>	¥360,000
Boss's children's education	¥100,000
TOTAL	¥1,200,000

SAVINGS ETC.

Boss's accounts	¥1,200,000
Boss's family accounts	¥300,000
Imprisoned <i>kumi-in</i> accounts	¥120,000
Loan repayments	¥1,000,000
Boss's safe	¥3,720,000
TOTAL	¥6,340,000

Source: Mizoguchi 1997, 87

This clearly shows that, at the level of a small-scale drug-dealing gang, this trade is economically attractive. After allowing for the necessary expenses of maintaining gang infrastructure, the group is able to clear ¥76m a year (£326,000) most of which accrues to the boss. As illegal income, this is obviously not subject to tax. It should however be noted that the boss will also be expected to attend various *yakuza* ceremonies each month. At each of these he is obliged to present a gift of money. This can be a considerable drain on resources.

As of 1988 purity levels remained high as the drug is uncut with other materials. This is because consumers are experienced users who would seek out alternative sources of supply if sold a sub-standard product (interviews Drug Countermeasures Rooms – Iwate Police Headquarters, April 1998 and Fukugawa Police Station, Tokyo, May 1998). Price levels are unresponsive to major drug seizures suggesting

sufficiently large stockpiles of amphetamines exist to maintain steady supply (Tamura 1988, 60).

Stimulants are almost entirely imported from other countries in Asia as domestically produced drugs are hard to manufacture secretly, the raw materials are controlled and the high exchange rate makes them uncompetitive vis-à-vis foreign imports. Originally Korea was the main source of supply; in 1980 police analysis of confiscated drugs indicated that 79% came from Korea and 21% from Taiwan. However, due to Korean attempts to 'purify' the country in the run up to the 1988 Seoul Olympics, there were widespread crackdowns on Korean OC groups. Consequently, there has been a shift in purchasing patterns and by 1987, 78% of amphetamines were imported from Taiwan and just 11% from Korea (Tamura 1992, 104).

In both of these countries, *bōryokudan* groups have good, established links with local OC groups. In particular, the Four Seas and United Bamboo Triad organisations in Taiwan and the 14K in Hong Kong have mutually beneficial associations with *bōryokudan* groups. Japanese drug manufacturing technology has been provided to Chinese OC groups (Booth 1990, 142). This close co-operation extends beyond merely supplying amphetamines to the Japanese market; Japanese and Chinese OC groups are now apparently involved in joint heroin ventures. Due to its significance as a leading trading nation, Japan has become a major transit point for heroin shipments to Europe and America (Vaughn et al. 1995, 506-7).

Chinese heroin dealers have also proposed setting up partnerships with *bōryokudan* selling heroin in Japan but they have been turned down (Booth 1999, 199).

The other significant sources of amphetamines are the Philippines and Hawaii where the *bōryokudan* are well established in their own right.

## **GAMBLING**

Gambling has long been illegal under Japanese law. The current criminal law of 1907 provides no break with this tradition and provides two categories of gambling 'simple criminal gambling' (*tanjun tobaku zai*) and 'habitual criminal gambling' (*jōshu tobaku zai*). However, special laws provide exemption for gambling on certain types of officially-sanctioned racing and lotteries (Sibbitt 1997, 571). *Bōryokudan* participation in gambling in Japan takes three quite distinct forms: organising various types of card, dice and, latterly, roulette games (*bakuchi*); illegal bookmaking (*nomikōi*); involvement in Japan's *pachinko* (a kind of electronic bagatelle).

Gambling alongside peddling are the economic activities which gave rise to the *yakuza*. Prior to post-war legal changes it was difficult to prosecute individuals for habitual criminal gambling because arrests could only be made when gamblers were caught red-handed. In addition, as a victimless-crime, gambling was accorded a low priority by the law-enforcement officials. However, with the police summit strategy of 1964, this change in the law allowed the authorities to prosecute *yakuza* for



gambling related crimes purely on the testimony of two witnesses regardless of when the offence took place. Over half of the arrests of gang-bosses and top executives made during the first summit strategy period were arrests of this type (Yamadaira 1992, 88). As mentioned before, in this way the first summit strategy was largely instrumental in causing a reduced dependence on gambling as a source of income and the diversification of the *yakuza* into alternative economic activities.

Despite this, some organisations were still actively engaged in this type of business throughout the 1980s. For example Takenaka Masahisa, the Yamaguchi-gumi's fourth-generation boss, was a pure gambler. It was reputed that his organisation, the Takenaka-gumi, made ¥1 billion in the three years 1979-82 (Yamadaira 1992, 88).

The diversity in scale of *yakuza* gambling operations offers a good illustration of the different levels at which *bōryokudan* economic activity exists. At the bottom end of the market one-man dicing operations at a minimum stake of ¥100 exist on the streets of the day-labourers' quarters. The stall of this type in Kotobuki-chō visited by the researcher during the course of his fieldwork existed openly though not long after his appearance, protection arrived with a bulge under the waistband of his trousers to ensure that the researcher posed no threat.

At the other end of the spectrum are luxury gambling trips for the seriously wealthy. These take place at private country villas, hot-spring resorts, mountain retreats or, since the late sixties, abroad. The foreign gambling trip was pioneered by the highly able and innovative Inagawa-kai executive (and later boss) Ishii Susumu in an attempt to create gambling income which was secure from police interference

(Ishii had himself been arrested for gambling during the first summit strategy). The standard procedure was to provide flights, luxury accommodation and sumptuous entertainment (including female company) free of charge. Suitably pampered, clients would then be allowed to win small amounts before being systematically fleeced. Usually customers would pay up as they had been entertained so well. In 1976, however, Ishii was arrested when a client on a Korean trip complained of cheating. Apparently the dealer had attached a small mirror to the shoe enabling him to read the cards (Nakagawa 1992, 227-8).

At a more typical level an apartment will be rented and the windows heavily blacked out. Clients will be directed to park their cars some distance from the gambling place and then will be escorted there by a low-ranking member. A number of lookouts (*tachiban*) surround the premises to maintain security. These precautions illustrate that, although it is a low priority target for law-enforcement, gambling still exists in a hostile legal environment.

Although it is not clear as to the sums generated by this type of gambling, the fact that Ishii managed to provide travel, lavish accommodation and entertainment free to his customers suggests that despite the legal changes, it remains an attractive source of income.

Illegal bookmaking exists in direct competition with government-run bookmaking and police intervention becomes effectively a defence of the government's monopoly, a fact not lost on the manager and lookout of one bookmaking premises in Kamagasaki visited during the course of the researcher's fieldwork. At such

places bets are placed on the horse, cycle and motor-boat races of the officially sanctioned industry. However, because they are illegal operations, they do not pay the ten percent tax that the legal bookmakers at race-courses or 'television tracks' are obliged to. The odds offered by illegal operations are however the same as legal bookmakers and therefore illegal operations generally offer much better value to the customer. However, unlike their legal equivalents, illegal bookmakers impose a ceiling on the payout on a single bet (¥10,000 on an initial stake of ¥100 and a total maximum of ¥1 million) (Yamanouchi 1992b, 129).

Although most illegal bookmaking has been successfully driven out of race-courses, apparently the Osaka-based Sakaume-gumi successfully avoided this fate due to a highly efficient advanced-warning system which enabled them to disappear before the police arrived. Apparently this warning system functioned satisfactorily even when top-ranking NPA officers decided to make a snap inspection without informing the Osaka police (retired NPA-related interviewee 1998).

Security at an off-course illegal bookmaker's premises, such as the one visited in Kamagasaki, was maintained by a guard-man manning a heavy steel door. This was augmented by a system of lookouts at crossroads further up the street. Twice in the course of conversations with guard-men they disappeared mid-sentence to slam their doors shut and await the all-clear signal. Because such businesses are heavily concentrated within a small number of streets within the Kamagasaki area, the costs and benefits of maintaining this lookout system are shared. *Yakuza* involvement insures that there are no free-riders.



Within the bookmaker's premises itself, security is further enhanced by limiting communication between the trading floor and the office by a small trap-door in the ceiling through which the paperwork, and presumably also takings, on each race are passed via a small basket on a string. Security at similar premises in Kotobuki-chō seemed much lower. Possibly this reflects the reputation for laxity of Kanagawa prefectural police.

The standard penalty for bookmaking is a fine as well as the confiscation of television monitors and other paraphernalia. Given that the site visited was equipped with 11 large screen monitors as well as two closed-circuit television cameras, seizure would present a very real financial downside. Partly for this reason, but more significantly for reasons of security, most bookmaking is carried out by telephone. Usually an apartment will be rented and a number of telephone lines installed. These lines will be manned and all calls recorded. As a security precaution powerful magnets are kept on hand to wipe cassettes should the police try and break through the doubly-locked doors.

Telephone bookmaking offers a convenient service to the customers as they can conduct betting from the comfort of their own home. Typically the customer's account will be cleared on a weekly business by a gang-member. Alternatively, the customer may pay money into a special bank account. In addition to boat, horse and cycle racing, telephone bookmakers also accept bets on baseball, *sumō* and other popular sports. In order to reduce their exposure to risk, bookmakers adopt a system of point spread or handicaps. Setting the handicap of any given event is a

highly-skilled job requiring close attention to the sporting press and the likely preferences of customers.

Reputedly a very profitable business with margins of about 25% of total sales, telephone bookmaking offers a good income on minimal overheads. One typical third-level boss cited by Yamanouchi received a monthly income of ¥8-10 million per month from four phone lines manned by three *kobun* (1992b, 129) whilst another Yamaguchi-gumi executive generates a profit of ¥6 million per racing day (Mizoguchi 1997, 79). However, success in this business is not automatic and requires a sharp assessment of customers' likely betting patterns and the reduction in exposure through lay-off betting with other bookmakers.

*Pachinko* is a staggeringly lucrative industry in Japan. The most reliable estimates as to the turnover of this business vary from around ¥26 to ¥31 trillion (£167-£199 billion). The profits generated are even less clear (the tax authorities consider this industry second only to bars and clubs for the inaccuracy of their tax returns) (Tanioka 1998, 18, 113). The *pachinko* industry in Japan occupies an "amorphous legal space" in that, whilst this business is not unambiguously excluded from the gambling provisions of the criminal law, the Public Morals Law categorises *pachinko* as a 'type seven business'. As such these businesses are subject to police restrictions as to the value and type of prizes they issue (Sibbitt 1997, 571-2).

To get round this, successful *pachinko* players take their prizes to a small booth situated close to the *pachinko* parlour and exchange their prizes for cash. Under the provisions of the Public Morals Law it is considered illegal if this exchange booth

(*kōkansho*) then resells prizes directly to the *pachinko* parlour. It is also held to be illegal if both exchange booth and *pachinko* parlour are owned by the same person. It is however permissible for the exchange booth to sell prizes on to a third company (*keihin monya*) (Mizoguchi 1997, 83). The legal grey area of this stage of the *pachinko* industry makes it one which easily falls victim to *bōryokudan* predation. It should however be noted that, due to close police supervision of the *pachinko* parlours, under the auspices of the Public Morals Law, *bōryokudan* members are unable to directly run *pachinko* businesses (an estimated 70% of *pachinko* owners are ethnic Koreans resident in Japan (Tanioka 1998, 112)).

Originally *yakuza* developed the prize-exchange industry. When, in the face of fierce competition, parlours started issuing cigarettes as prizes, gang-members would stand outside the parlour and purchase them at 70% of their retail value. They would add a percentage then resell them directly to the parlours. Since about the mid-sixties and the first summit strategy, the police in most parts of Japan started to put pressure on the *pachinko* industry to sever links with organised crime. Because the police, through their control of the Public Morals Law, exercise considerable regulatory power over the industry this was largely effective. In most areas of Japan the *bōryokudan* were effectively excluded from this source of funds. In particular, Hyōgo prefecture and Osaka have developed a system by which the exchange business became the preserve of public welfare businesses (the top executive positions of which are held by retired police officers) and there is consequently no *yakuza* involvement in this area of the business.



Up until the end of the Shōwa period the two noticeable exceptions to this, otherwise successful, eradication of *bōryokudan* from the exchange business are Tokyo and Hokuriku (the northern part of Japan). The available literature fails to offer any explanation as to why this should be. As far as Hokuriku is concerned, it seems likely that this was not deemed necessary as the local *yakuza* were not perceived to be a major social problem during the period currently under consideration. The police in Iwate prefecture responsible for *bōryokudan* countermeasures certainly admitted as much during the course of the researcher's fieldwork.

In Tokyo it seems plausible that the *pachinko* industry was left untouched by the police as a stick hanging over the *bōryokudan* to ensure good behaviour vis-à-vis less socially acceptable forms of organised crime activity. Discussions with police during the course of the researcher's fieldwork repeatedly emphasised the more sophisticated and politically savvy behaviour of the Kantō *yakuza* compared to their much less socially responsible colleagues in the west and that this is reflected in the different styles of policing in the two regions.

Whatever the reasons, continued access to the prize exchange business yielded enormous funds for the Tokyo syndicates. The Tokyo metropolitan police estimated that the exchange business generated by the roughly 1,500 *pachinko* parlours in the capital yielded Tokyo *bōryokudan* groups ¥60 billion per year (Hinago 1992 a, 201).

Even in areas in which the *bōryokudan* had been driven out of the exchange business, they had by no means severed all links with the industry as a whole and *pachinko* remained a highly attractive target for extortion and protection type activities.

## ***TEKIYA***

Most modern treatments of the contemporary *yakuza* completely ignore this traditional source of income (for example it does not even feature in the police estimates of gang income). The notable exception is Raz who conducted fieldwork with *tekiya* groups. The group to which his friend belonged travelled from town to town setting up their stalls at over 200 festivals per year (1996, 198). The goods sold by *tekiya* are extremely cheap and cheerful in appearance but sold at a considerable mark up. However, it seems that very little of the profit accrues to the stall-holder himself. Firstly, he must pay a fee for the use of his stall site to the boss of the *tekiya* organisation in whose territory<sup>11</sup> the festival is. According to the two former *tekiya* interviewed by this researcher in Iwate prefecture, this varied from ¥2,000 to ¥10,000. Included in this would be electricity and cleaning fees. Because the potential profits of a stall are dependent on where the stall is situated, the allocation of sites is highly important (interviews Iwate, August 1998). Originally this was decided by threats and pressure from the bosses of the various groups attending the festival. More recently this came to be decided by precedent (Raz 1996, 202).

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<sup>11</sup> Within *tekiya* groups, territory is known as '*shima*' (island) rather than *nawabari*.

In addition to paying *shobadai*, the Iwate *tekiya* also had large capital outlays related to their membership of *yakuza* groups. One of the interviewees paid ¥50,000 per month *jōnōkin*. In addition he was occasionally obliged to fill the duty (*tōban*) roster at his gang headquarters and attend gang ceremonies such as funerals at which he was expected to present a cash gift. Such events would take place at an average frequency of three per month. His total monthly cash outlay on *yakuza* affairs therefore totalled ¥2 million (£8,600) per year. Neither interviewee claimed to have any source of income other than that from *tekiya* activities.

By the end of the Shōwa period, *tekiya* business probably contributed no more than a negligible fraction to total *yakuza* income. For instance, Ōshima, at this time the most powerful gang boss in Iwate prefecture, although officially the leader of a *tekiya* group, was far more heavily involved in other *bōryokudan* sources of income and this is probably true for other successful *tekiya* bosses.

## LABOUR-BROKING

As mentioned above, the early history of the *bakuto* was closely linked with the history of the brokers responsible for assembling labour for the large public construction projects of Edo Japan. This has remained a role traditionally filled by *yakuza*. The construction industry in Japan depends on a pyramidal structure in which a few very large companies sub-contract work to medium sized companies which in turn sub-contract work to smaller companies. This enables these firms to maintain a small core of skilled labour, based on the lifetime employment system,



which can be almost instantly, and cheaply, augmented by unskilled and semi-skilled labour. At the base of this labour market are the day labourers (*hiyatoi rōdōsha*<sup>12</sup>) who assemble at dawn each day in the labour markets (*yoseba*), most notably San'ya in Tokyo, Kotobuki-chō in Yokohama and Kamagasaki in Osaka. Before containerisation transformed the docking industry, *yakuza* brokers performed a similar function in the great ports of Kōbe, Yokohama and Tokyo.

The labour-brokers (*tehaishi*) responsible for supplying these workers to the construction industry are overwhelmingly either themselves *yakuza* or in some way connected to the *yakuza*. The workers' wages are paid to the broker rather than to the labourers themselves. From this sum the broker takes his cut (known as *pinhane*) before paying the labourers. Although wages vary according to the level of demand, the going rate for an unskilled labourer would typically be ¥13,500, whilst that for a skilled steeple-jack (*tobi*) would be ¥18 – 20,000 per day. From this the *tehaishi* skims between ¥2,500 and ¥3,000. Occasionally brokers find some pretext to refuse payment to labourers though if this happened too often, labourers would presumably find a more reliable broker. Inagaki San, a remarkable guardian and protector to the day labourers of Kamagasaki, states that in cases of non-payment the official channels for complaint do not work effectively though he is usually able to resolve the problem with a telephone call to the broker in question (interview, Kamagasaki, June 1998).

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<sup>12</sup> Usually known more colloquially as *ninpu* (coolies). It should be noted, however, that not all day labourers are unskilled navvies as steeple-jacks (*tobi*) and other skilled craftsmen are also employed in this way.

Although there exists a formal labour exchange for the employment of day labourers in the form of the *shokuan* (*kōkyō shokugyō antei sho* or public employment security office) and the local labour centre, these however only account for the minority of employment in the *yoseba*; Fowler (1996, 33) suggests a figure of less than one quarter whilst a political activist interviewed in Kotobuki-chō (1998) gives a figure of between 20-30%. This is because, even when their commission has been removed, *tehaishi* offer higher rates of pay than the official labour market as they exercise greater quality control over those they employ (Fowler 1996, 34). It is also observed that construction companies prefer using *yakuza*-related *tehaishi* as their involvement is seen as facilitating trouble-free labour-relations (interviews Inagaki, Yamanouchi, et al.).

During the late 1980s there were over one hundred labour-brokers operating in the San'ya labour market (interview, San'ya, July 1998). The much larger market in Kamagasaki would have had at least three times that number during the same period. At the beginning of the 1970s there was a police movement to drive out the *bōryokudan* from the *tehaishi* business in the Kamagasaki labour market. This was partially successful and the Yamaguchi-gumi and the Matsuda-gumi temporarily disappeared. Not long after, however, they returned. Since then, observers on the ground report that, although there are occasional raids on gambling and drug-dealing, no police efforts have been made to eliminate gang-members from the labour-broking business. It is hard to escape the conclusion that the police in these areas see the *bōryokudan* as a useful bulwark against the unpredictable and potentially dangerous day-labourers of the *yoseba*.

## PROSTITUTION

Until the passing of the Prostitution Prevention Law (*baishun bōshi hō*) in 1956, prostitution was not illegal in Japan. Indeed for much of Japan's history, rulers have encouraged a system of licensed prostitution which was seen not only as an essential component of maintaining public order but a useful means by which the police, through their brothel-keeping informants, could keep a close eye on the population. Even such noted advocates of Western thought, including monogamy and women's rights, as Fukuzawa Yukichi could claim in 1885 that licensed prostitution was "the only way to preserve social peace" (in Garon 1997, 101). Although the system of military prostitution, known euphemistically as 'comfort stations', adopted by the Imperial Japanese Army may be seen as a logical development from the licensed prostitution system, this type of arrangement was by no means unique to the Japanese: the brothels run by the legions of imperial Rome bear a "remarkable similarity to (those of) the Japanese military" whilst parallels also exist with the British Army in India and the Wehrmacht in occupied Europe to name but two (Hicks 1994, 29-30).

Because prostitution was legal until 1956, it was not an industry directly managed by *yakuza*. This is not to say that it was not a consumer of protection. However, close links between brothel-keepers and the police, reinforced with free entertainment for some police officers, may have entailed that this was not as necessary as is the case under different legal regimes.



After 1956 the situation became more complex. The Prostitution Prevention Law has been described to this researcher as a *kagohō*<sup>13</sup> (a ‘bamboo cage law’ i.e. full of holes) (Hoshino interview Yokohama, June 1998). Under Article 2 of the 1956 law prostitution is defined as “sexual intercourse with an unspecified other party for compensation or for a promise of compensation”. This means that any sexual services that exclude vaginal penetration fall outside the provisions of this law.

As a consequence, Japan has spawned a large and legitimate sex industry ranging from ‘soapland’, in which naked, soap-covered women massage customers with their bodies, to ‘fashion-health’ massage parlours offering masturbation and fellatio services. Because these industries come under the jurisdiction of the Public Morals Law, and consequently require police certification, it is difficult for *yakuza* to directly manage such businesses. Even the overt traditional brothels of the Tobita area of Osaka are officially licensed as eating and drinking establishments and as a consequence tend to lack direct *yakuza* involvement. A further barrier to *yakuza* entry into this end of the market is provided by the high degree of capital outlay required for the installation of suitable premises (Yamanouchi interview Osaka August 1998, Yamanouchi 1992a, 51).

There are, however, two areas of the sex industry that are monopolised by the *bōryokudan*. These are ‘date clubs’ and the management of street and foreign prostitutes. The advantage of these types of businesses is that they require very

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<sup>13</sup> For comparison, prostitution itself is legal in Britain but soliciting, kerb-crawling, advertising and managing brothels are all illegal. Similarly, in many European countries prostitution is legal but circumscribed with legal restrictions. The most bizarre of these is the legal requirement under Greek law that prostitutes must retire by 55 (*The Times* 28/8/99, p. 11).

little fixed-capital investment which runs the risk of police seizure. Date clubs require little more than a number of telephone lines, a driver, a receptionist and a stable of prostitutes. Clients telephone the number advertised on fliers fixed to the interior of public telephone boxes and are directed to a love hotel where they will be met by a prostitute.

If run successfully, date clubs are an attractive source of revenue. Fujimura, a retired third-level boss from the Kansai area, earned profits of roughly ¥20 million per month on sales of ¥60 million during the early 1980s from his stable of 80 women (Fujimura interview, Osaka August 1998). Unlike the Sicilian mafia, Japanese gangsters have no compunction about living off the earnings of prostitutes and about one-third of the women working in date clubs have *yakuza* boyfriends (Yamanouchi 1992a, 59). This is corroborated by the police data showing the high proportion (28%) of, usually low-level, *yakuza* who are financially dependent on their girlfriends (Mizoguchi 1997, 64).

To minimise potential problems with the police it is in the date club manager's interest to look after his employees well. According to one of Yamanouchi's interviewees it is also important for pimps to screen employees for drug-users, as well as under-age and runaway girls. The former tend to have violent mood-swings which causes problems with both colleagues and customers. The latter group is subject to greater police vigilance and the employment of minors carries heavier legal penalties. Date club employees can freely enter and exit this sector of the labour market, though many reportedly find the financial rewards and flexible

working hours such that other sources of income become difficult to readjust to (Yamanouchi 1992a, 59-60).

The treatment of foreign prostitutes is an altogether different matter. Because these women have usually either entered the country illegally or are overstaying their visa, they are unable to seek legal protection. Most of these women are recruited in Asian countries such as Thailand, the Philippines, Malaysia and Indonesia (though more recently Chinese and South Americans have increased) by brokers promising them jobs as waitresses, factory workers, hostesses and nannies (although one fifth of the women in a survey conducted by Sālā<sup>14</sup> intended to work as prostitutes). On arrival in Japan, the broker typically sells them on to a second broker for between ¥1.5 to ¥2 million (which covers the cost of ticket, passport, visa and overheads). The secondary broker then sells or auctions these women on to clubs for between ¥3.5 to ¥4 million. Generally the initial broker will be a native of the country concerned and the second broker will belong to a *bōryokudan* group.

These women therefore start their careers as indentured labourers with a substantial debt, which must be paid off before they can earn any money for themselves. In addition they are expected to pay for their own food and clothing, though accommodation is often provided. Frequently a woman about to repay her debt, or found to be pregnant will be resold to another club and therefore incur a new debt. In addition to these debts, foreign prostitutes are subject to fines for such offences

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<sup>14</sup> A charity running hostels for, and otherwise assisting, runaway prostitutes.



as putting on weight or failing to have a customer in three days (Sālā 1996, 1-7).

Much of the information concerning this business comes from women who have successfully fled their employers. It is hard to know whether their tales of brutality and confinement are representative of the business as a whole. The facts that some women return to Japan for another stint whilst others end up being driven to murder their managers suggest that the range of experiences is broad.

Foreign prostitutes typically work on the streets in areas such as Shin-ōkubo near Kabuki-chō in Shinjuku, or in foreign clubs where they formally work as hostesses. In the early 1990s there were reportedly between two and three hundred such clubs in Kabuki-chō alone (Hinago 1992b, 70).

## **LOAN-SHARKING**

The modern Japanese banking system has primarily concerned itself with serving the needs of its business clients and consumer banking services remain extremely poor. Many Japanese use post office accounts or credit unions (*shinyō kinko*), rather than bank accounts, to deposit their savings. As a consequence of this, commercial banks are not active in the market for loans to small businesses and individual citizens. This niche is generally filled by companies known as *sarakin*. These organisations offer loans at very high rates of interest to small businesses and individuals experiencing short-term liquidity problems.

Money lending in Japan is governed by several laws. The Interest Rate Limitation Law (*risoku seigen hō*) limits the interest rates charged by deposit-taking financial institutions (such as banks) to 15% per year for loans of more than ¥1 million, 18% for those between ¥1 million and ¥100,000, and 20% for loans of less than ¥100,000. The second law, the Investment Law (*shusshi hō*) limits the interest rates on loans to 109.5% per year. In 1983, the *Sarakin* Regulation Law (*sarakin kisei hō*) was added. Under the provisions of this law, *sarakin* loans were limited to annual rate of interest of 73%. Since then this rate has been reduced to 40.004%. The 109.5% limit of the Investment Law only applies in particular circumstances so for most purposes the two other laws cover the majority of cases.

Provided that they stay within the limits of the *Sarakin* Regulation Law, *sarakin* businesses are legal. Contrary to public perception, these *sarakin* operations are not run by *bōryokudan* groups, except for very small outfits. Under the provisions of article six of the 1983 law, those who have been punished for violating the Finance Law, the Violent Acts Law, the Price Control Ordinance or any criminal-law provisions within the past three years are unable to register as *sarakin* businesses. This limitation had the express purpose of removing *bōryokudan* from this business. *Sarakin* do however retain links with *bōryokudan* (as well as the police) as an insurance policy (*Keisatsu-chō* 1997, 623, 281; Mizoguchi 1986, 191 and private correspondence 1999; interview Fujimura, 1998).

For those who are denied access to *sarakin* finance, either because their credit rating is too poor or they are operating in wholly illegal markets, there exists a parallel system of financing. *Bōryokudan* loan-sharking generally operates on a system known as *tō-ichi* (ten-one). This means that every ten days, a charge of ten percent of the principal is paid to the lender until the principal is repaid in full. The annual rate of interest, assuming the loan was kept outstanding for one year, would therefore be 365% ((365/10) x 10). Because many borrowers are themselves *yakuza* requiring short-term finance, there is always the risk of a strong gang-member defaulting on a debt to a weaker one (interview Fujimura, 1998).

### ***MINJI KAINYŪ BŌRYOKU***

Perhaps the most significant development in the *bōryokudan* in the post-war period is their adoption of new techniques of money earning known collectively as *minji kainyū bōryoku* (usually abbreviated to *minbō*). As was the case with their increased involvement in the drugs trade, this type of business was a response to increased police pressure on traditional sources of income like gambling. The *jōnōkin* system, also a response to the police summit strategies, further encouraged this development.

*Minji kainyū bōryoku*, literally the violent intervention in civil affairs, is defined by the police as “those activities in which *bōryokudan* members or associates make use of the threat of that *bōryokudan* in order to intervene in the everyday lives of the



general public or, by taking the form of rightful or interested parties and taking advantage of areas in which the legal procedures do not function adequately, intervene in economic transactions". The police have a number of sub-classifications of *bōryokudan* activities falling under this definition. These are:

1. Debt-collection (*saiken toritate*).
2. Activities targeting company annual shareholders meetings (*sōkaiya* and *kaisha goro*).
3. Incidents related to finance.
4. Incidents related to promissory notes.
5. Bankruptcy management (*tōsan seiri*).
6. Real-estate and rent related problems (esp. *jiage*).
7. Out-of-court settlements of traffic accident disputes.
8. Disputes over prices of goods and other everyday matters.
9. Other civil disputes.

As will be seen from a brief analysis of these different activities, *minji kainyū bōryoku* is effectively another type of protection. The justification for dealing with it as a separate topic is that it is essentially a new (post-summit strategy) development in Japanese organised crime. In particular, it is significant in that it involves the increasing penetration of legitimate society and business by the *bōryokudan*.

*Bōryokudan* intervention in civil affairs represents a particular problem for the authorities for three main reasons. The first of these is that in many of these activities, the perpetrators are not committing a crime as defined by law. Although a threat is being made, it is usually implicit and falls short of the legal definition of intimidation. Consequently many *minbō* activities occupy, at best, a legal grey zone. Secondly, as admitted in the police definition, many of these activities take place due to inadequacies of the legal system. In particular, the cost in both time and money that civil cases take to reach a conclusion means that potential litigants may find it advantageous to employ *bōryokudan*, rather than official, channels for the resolution of their civil disputes. Consequently, here again, we see a clear demand for *bōryokudan* services. These two problems will be discussed in greater detail in later chapters.

The final problem with this type of practice is that, unlike other *bōryokudan* activities, it directly impinges on the lives of ordinary members of the public, as opposed to marginal elements such as day labourers, prostitutes and bar-keepers. There will consequently be a greater political pressure on the authorities to be seen to be doing something about dealing with the *bōryokudan*.

## **PRETEXT RACKETEERING**

At the most basic level of *minbō*-type operations, *bōryokudan* exploit some injury, real or invented, to gain financial advantage. The most well-known example is

*bōryokudan* intervention in traffic disputes. The legal machinery involved in insurance claims is complex and time consuming. These problems can be circumvented if the injured party subcontracts his or her claim to a *bōryokudan* group. In the face of pressure from such groups, insurance companies have generally paid much more quickly than they would otherwise. For this service, *bōryokudan* groups typically charge a commission of between 30 and 50% (Hiraoka 1987, 71).

Operations of this type once more show that the relationship between criminal organisations and members of the business community/civil society may not be a universally predatory one. In an imperfectly functioning world, such groups may have a competitive advantage in the provision of protection services vis-à-vis legitimate alternatives. However, this system of intervention in discussions has also degenerated into one whereby *bōryokudan* deliberately engineer incidents for their own advantage.

Another type of pretext for racketeering commonly used by *bōryokudan* is to find some fault with a good or service. For example, the boss's expensive suit sent to the dry-cleaners may have been 'ruined' and compensation demanded. Alternatively a product purchased may be sub-standard or overpriced and therefore recompense appropriate. The examples of this type of activity given in the Juzo Itami film '*Minbō no Onna*', though fictitious, show the breadth of *minbō* extortion: a cooked cockroach is 'found' in a plate of lasagne; a bag containing money is



misaid; guests at a hotel are unable to use the swimming pool and sport their expensive new swimming trunks because they have extensive body tattoos.

A further twist is given to many of these racketeering practices by their being performed under the guise of social or political movements. These are dealt with in greater detail below.

Whilst activities of this kind may cause the most inconvenience to ordinary members of the public, they are largely at the bottom end of the scale of *bōryokudan* economic activity. Many of the more sophisticated fund-raising techniques falling under the broad definition of *minji kainyū bōryoku* are far more lucrative.

## DEBT-COLLECTION

Under Japanese law, only lawyers are authorised to collect debts. However, the length of time and expense involved in employing the appropriate channels means that many creditors prefer to cut legal corners. The standard rate charged by *bōryokudan* debt-collectors is 50%. In addition they may charge expenses (known as *ashidai* or leg-fee) (Yajima 1992b, 22-3). As a consequence of this, the majority of the money involved usually accrues to the debt-collector rather than the creditor. Because both parties are officially criminal conspirators, the creditor is unable to seek legal redress should he be charged exorbitant expenses.

Former gang boss Yajima evaluated this form of activity as one that earns a lot of money if conducted successfully and is relatively easy to carry out. For this reason it is one form of *shinogi* that even the least able *bōryokudan* member can involve himself in. However, as it frequently involves intimidation, it is a business in which the risk of imprisonment is high and, as a consequence, could not be said to be a terribly good source of income (Yajima 1992a, 11). Despite Yajima's assessment, the criminal-law's provisions concerning intimidation only governed explicit threats. For the implicit threat involved with *yakuza* turning up at a debtor's house, in a highly conspicuous fashion, and at a time when the neighbours would be in, the criminal law could do very little. It is only when such an implied threat is insufficient that collectors escalate to legally-actionable intimidation followed by the actual use of violence.

As has been mentioned above, organised crime mirrors the legitimate economy. As a consequence of this, the bursting of the bubble economy in 1989 saw a big increase in the market opportunities for *yakuza* involving themselves in this business (as was also the case for bankruptcy management). Therefore, concrete examples concerning the upper-underworld interaction in this area will be discussed in subsequent chapters.

## ***JIAGE***

Another recent development in *bōryokudan* activities in which ordinary citizens are victimised is the business of land-sharking (*jiage*). *Jiage* refers to the practice of forcing small landholders on adjacent plots to sell up. This renders a larger, more

lucratively developable site. Common tactics involved the playing of loud music and banging of metal sheets at night, threats, crashing of cars into targeted property, and even arson. On one occasion, a *jiageya* from Osaka went to the extent of installing one hundred live chickens next to a property he had targeted in the hope that the smell would drive out the occupants (Business Week 29/1/96, 15). *Jiage* reached its heyday during the bubble economy of the late eighties when land prices reached absurd levels. During the period of the bubble economy *jiage* became the biggest single source of income for *bōryokudan* in both the Kansai and Kantō regions (Mizoguchi 1997, 66).

The complicity of real-estate companies in the *jiage* process once more indicates the ambivalent relationship existing between OC and the 'straight' world. Initially the *bōryokudan* were employed by real-estate agents to clear a given site. For this service they would typically receive a commission of 3% of the market value of that site (2% or 1.5% if it was a particularly valuable property). On discovering the scale of profits to be made in this industry, the more astute *bōryokudan* executives became directly involved in the property-development business. In order to maximise profits they developed the tax-evasion technique of using the land as collateral on a loan so as to obscure ownership of the property in question. Alternatively the site would be sold on to a number of bogus intermediaries before its final disposal (ibid.).

Most prominent of the *bōryokudan*-members involved in *jiage* operations was the quintessential white-collar gangster (*keizai yakuza*), Ishii Susumu of the Inagawa-



kai. On his release from prison in 1985, Ishii used his prison release celebration donations to start up Hokushō Sangyō, Kasen Sangyō, Daishin and other companies, which he then used to move in on Tokyo's real-estate business. The extent of his success in *jiage* operations, largely in the Shinjuku area of Tokyo, is illustrated by the rapid increase in the turnover of Hokushō Sangyō from ¥250 million (£1.m) in 1986 to ¥12.2 billion (£51.5m) the following year (Nakagawa 1992, 233-4). Much of the immense profits which the more able *bōryokudan* members, such as Ishii, made from *jiage* were ploughed into stock market speculation.

## BANKRUPTCY MANAGEMENT

Bankruptcy management (*tōsan seiri*) is one of the most sophisticated and skilled techniques by which *bōryokudan* members make money. When a company goes bankrupt in Japan, the legal machinery for the settlement of the various creditors' claims usually takes several years (occasionally up to ten) and the amount of debt eventually repaid is a small percentage of that actually owed. Creditors may therefore find it advantageous to sell their debt to a specialist bankruptcy manager (*tōsan seiriya*) even for as little as 5% of face value (Mizoguchi 1986, 189). Emotionally fragile managers of bankrupt firms may also prefer to bring *yakuza* on board to protect them from the wrath of angry creditors (Fujimura, 1998, interview).

The two most important things for bankruptcy management specialists are speed of action and the accumulation of more debt than other creditors. What *seiriya* will often do is identify a company on the point of collapse and then move in with short-term financial support. From this position of strength, the *seiriya* will force the manager to write and seal a document granting power of attorney and gain possession of the firm's books, seals and deeds. The *seiriya* may then forge promissory notes and other documents in his favour. Once the company has finally gone bankrupt, it is important to occupy the company's premises and collect any money outstanding from credit sales before any other creditors, or *bōryokudan*, can get their hands on the company's assets.

Speed is important because, once a company has been declared bankrupt, the courts appoint a lawyer as the legal trustee (*kanzainin*) of the company to ensure that it is disposed of lawfully. The trustee is however weak *vis-à-vis* the major creditor. From his position as major creditor in possession of the company's assets, the *seiriya* can have himself nominated chairman of the creditors' meeting and can consequently control its proceedings and cow opposition into submission. Through this mechanism, the skilled *seiriya* can therefore ensure that the lion's share of the bankrupt firm's realisable assets ends up with himself. If there are items which can be quietly appropriated before the trustee appears, so much the better. However, excessive concealment may undermine the *seiriya*'s credibility (Yajima 1992a, 16-21).

Because *tōsan seiri* is a specialised operation in which comparatively few *bōryokudan* are involved, the amounts of money made from it are not clear. It is

however clear that the potential earnings are enormous. In 1977 there were 18,000 bankruptcies in Japan (the comparable figure for the United States was 800) and the total liability of Japan's bankrupt businesses in this year was valued at ¥ 4.3 trillion (£9.2 billion) (Saxonhouse 1979, 290). Throughout the first half of the 1980s the rate of bankruptcy remained at around 18,000 per year though after a 1984 peak (of over 20,000 with total debts of ¥ 3.6 trillion or £11.4 billion), the rate declined and by 1988, only 10,123 companies went bankrupt with total liabilities of ¥ 2 trillion (£8.8 billion) (*Tōkei Kyoku* 1985, 384; 1990, 386). The high rate of bankruptcy in Japan is largely due to the precarious position of small companies who are forced to act as shock-absorbers for the big firms for which they carry out subcontracting work. Given the high rate of bankruptcy in Japan and the cumbersome machinery for the legal unravelling of such incidents, it is reasonable to assume that this is a significant source of income for those capable *bōryokudan* who choose to specialise in it.

## ***SŌKAIYA***

*Sōkaiya* translates literally as 'general meeting specialist' and this well illustrates their *modus operandi*. *Sōkaiya* are essentially corporate blackmailers. Having bought one share (until changes to the commercial code in 1982) in a company's stock, *sōkaiya* are entitled to attend that company's annual general meeting. They then use this right to extort money from companies by threatening to disclose sensitive information about either the company's financial status, irregular



management practices (including scandals concerning the private lives of managers) or simply to disrupt the shareholders' meeting. This is facilitated by the fact that the commercial code of Japan does not oblige companies to issue annual financial reports or allow transparency into their business operations at all. Information concerning a company's performance has traditionally been privileged information only available to favoured major stockholders.

*Sōkaiya* first started to appear in the rumbustious and murky beginnings of modern Japanese capitalism at the end of the nineteenth century. However, with the notable exception of the gambling boss Takebe Kosaku, these individuals were unconnected to the traditional *yakuza* groups of that time. It was not until the late 1960s that *yakuza* involvement in this business became a significant phenomenon. As had been the case with the development of other non-traditional sources of *bōryokudan* income, the stimulus for this phenomenon was essentially the first summit strategy of 1965 in which traditional *yakuza* activities were targeted by the police.

One of the first of these *yakuza-sōkaiya* was Ogawa Kaoru, of the Hiroshima-based *Kyōsei-kai*, who formed the 'Hiroshima Group'. In 1971, this group became involved in a violent conflict with a traditional *sōkaiya*, Shimazaki Eiji, at a shareholders' annual general meeting in Tokyo. This confrontation was resolved by a traditional *yakuza*-style reconciliation (*teuchi*) in which Shimazaki relied upon a retired *Matsuba-kai* boss for support. This incident (reportedly the first of its kind) was significant as it illustrated the way in which the traditional *sōkaiya* were to

become dependent on the protective umbrella of the *bōryokudan* (Szymkowiak 1996, 91-4).

As has been mentioned above, the inability of groups or individuals to benefit from legitimate sources of protection creates a market niche for providers of alternative protection. As companies found themselves unable to effectively combat or pay off all *sōkaiya* targeting them, many companies found it expedient to employ *sōkaiya-yakuza* to protect them from other groups. This gave rise to the sub-classification of *sōkaiya* into ‘*yotō-sōkaiya*’ (insider or protector *sōkaiya*) and ‘*yatō-sōkaiya*’ (outsider or aggressor *sōkaiya*).

Protection was helpful not only in dealing with predatory extortionists but also with demonstrators protesting at the company’s business practices. Most notable of these were the protests directed at the Chisso Corporation, by victims of that company’s dumping of mercury compounds into the sea off Minamata, and at Mitsubishi Heavy Industries, by peace campaigners criticising MHI profiting from the Vietnam war. In both these incidents the companies concerned relied heavily on *yakuza* and extreme right-wing groups to violently confront protestors attempting to disrupt their shareholders’ annual general meetings. Szymkowiak identifies these protests as a “watershed in Japan’s postwar corporate history” as they revealed the full extent to which companies’ reputations were vulnerable to criticism through disruption of shareholders’ meetings. As a consequence of this, companies became increasingly reliant on the services of protective *sōkaiya* (ibid. 98-104 ).

Following this watershed, the numbers of *sōkaiya* rose rapidly throughout the 1970s. In 1973, the police estimated a *sōkaiya* population of 1,763; by 1982 this number had risen to 6,783 – an increase of 385% in a decade. The increase in *yakuza* involvement in this industry was even more dramatic, jumping by 615% over the same period (ibid. 70)

*Yakuza* involvement in *sōkaiya* activities was not only due to their provision of protection to existing groups and *yakuza* intimidation of *sōkaiya* at the behest of business contacts. Szymkowiak reports that throughout the 1970s, promising *bōryokudan* executives served apprenticeships with *sōkaiya* groups after which they set up their own organisations. As a consequence of this process, by 1982 the police estimated that, of the total *sōkaiya* population, 2,012 (30%) were *bōryokudan* members (ibid.)

In response to the rapid increase in the number of *sōkaiya*, the Commercial Code was revised in 1982 to make it harder for *sōkaiya* to operate. There were two legal changes affecting the operation of these groups. The first of these was that a threshold of ¥50,000 worth of stock became necessary for an investor to hold full shareholder's voting rights and, more importantly, the right to attend shareholders' meetings. Secondly, it became illegal for companies to pay money to *sōkaiya* (Okumura 1997, 13; Szymkowiak 1996, 145-7).



The immediate effect of the minimum stock rule was a drastic 75% reduction in the numbers of *sōkaiya* identified by the police from 6,783 in 1982 to 1,682 the following year. The drop amongst *yakuza-sōkaiya* was even more pronounced, falling from 2,012 to just 167 over the same period. Rather than reflecting a real change in the situation, however, this drop was largely due to different accounting practices. In order to act as a *sōkaiya* under the post-reform regime, an individual required ¥50,000 worth of stock in a given company. Those that fell short of this threshold were, by definition, no longer *sōkaiya* regardless of the way in which they made money.

The police were therefore forced to create a new category to accommodate those extortionists who fell short of the post-reform requirements. Such individuals became known as *shinbun goro*, *zasshi goro*, and *kaisha goro* (newspaper, magazine and company ruffians respectively). Instead of disrupting shareholders' meetings, these groups would extort money from companies by such techniques as threatening to disclose company scandals in their publications. Other groups developed fronts behind which they could continue extortionate activity. Most noticeable of these were fake *burakumin* liberation movements (*ese dōwa*) and fake right-wing political organisations (*ese uyoku*). *Ese dōwa* groups are dealt with in greater detail below.

The second anti-*sōkaiya* measure of the 1982 Commercial Code reform also failed to have a decisive impact on this problem. Although it became illegal for

companies to make pay-offs from company funds to *sōkaiya*, there were a number of ways in which these payments could be disguised. Most commonly, *sōkaiya* groups would set up research organisations, business consultancies or bulletins supposedly containing economic analysis. Alternatively, they might set up front companies leasing art works or potted plants to companies (Alletzhauser 1990, 284). Entry fees to golf tournaments, or parties are another means of camouflaging payments. Szymkowiak relates how at least one company even resorted to paying excessive bonuses to the employees working in the general affairs section which were then returned to the department in order that the money could be paid out to *sōkaiya* (1996, 147).

The 1982 reform of the Commercial Code can not be seen, therefore, as completely successful. This is illustrated by a succession of *sōkaiya* scandals during the 1980s. These included some of the most prestigious companies in Japan. For example, in 1985 Japan Air Lines called upon the research department of Rondon Doyukai, a well known *sōkaiya* organisation, to ensure a smooth shareholders' meeting following a particularly unprofitable year. Another case involving the payment of *sōkaiya* with the then rapidly-appreciating Mitsubishi Heavy Industries convertible bonds was dropped by the police when it became apparent that numerous senior politicians had also received allocations of these bonds (Alletzhauser 1990, 286-90).

## FAKE SOCIAL MOVEMENTS

A more recent development in *bōryokudan* activities is the hijacking of social movements, which can then be exploited for financial gain. In particular, the development of *bōryokudan*-related organisations pretending to be dedicated to the liberation of *burakumin*, usually known collectively as *ese dōwa* (*dōwa* now being the politically-correct term for *burakumin*) became noticeable in the mid 1980s. In 1986 the NPA identified the new category of ‘Fake Social Movement Thugs’ (*shakai undō hyōbō goro*) as a target for police countermeasures (Hiraoka 1987, 67).

There have been legitimate organisations dedicated to fighting *burakumin* discrimination since the early 1920s. In more recent years, however, this movement has been characterised by division as rival political parties formed their own *dōwa* associations<sup>15</sup> which have been characterised by ineffective leadership and intra-group struggles (Herzog 1993, 74).

After ignoring the problem of *burakumin* discrimination, in 1969 the government introduced the *Dōwa* Countermeasures Special Provisions Law (*dōwa taisaku jigyō*

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<sup>15</sup> The main and oldest group, the *Buraku* Emancipation League (*Buraku Kaihō Dōmei*) is associated with the Socialist Party, whilst the Liberal Democratic Party countered this by forming the All Japan *Dōwa* Association (*Zen-Nippon Dōwa Kai*) in 1960 and in 1970 the Communist Party established the *Buraku* Emancipation League National Liaison Conference (*Buraku Kaihō Dōmei Seijōka Zenkoku Renraku Kaigi*). The All Japan *Dōwa* Association disbanded in 1986 amidst internal squabbles.



*tokubetsu sochi hō*) to ameliorate the condition of the *buraku* communities. In particular, this law provided financial help for developing housing, roads, social amenities, educational programs and the like. As a consequence of this, obtaining government money “became the main business of the *buraku* organisations” (ibid.).

As a consequence of increased police pressure on traditional *bōryokudan* activity and the change in the Commercial Code in 1982 targeting *sōkaiya* activities, a pattern of *yakuza* groups changing their organisations into spurious *dōwa* liberation groups began to appear. By 1986, over two thousand groups purporting to be dedicated to *buraku* liberation were in existence (Mizoguchi 1986, 194-6).

In 1986 the Ministry of Justice Human Rights Protection Office published the preliminary findings of a nation-wide survey of 5,030 companies in seventeen different industries concerning the extent of *ese dōwa* activity. Of the survey’s respondents, a total of 26% had been victimised by groups of this kind. In the Osaka area (a major concentration of people of *buraku* extraction), this figure rose to 36.5%. The construction industry was the most heavily targeted but banks, credit unions and insurance companies also reported victimisation rates of over 50% (Hiraoka 1987, 66-7).

Fake *dōwa* group victimisation of the business community first caught the attention of the Osaka police in July 1985 when a group started sending bulletins to companies which were asked to purchase them for the edification of their

employees. Those that refused would be angrily confronted and asked what measures they were taking to deal with the *burakumin* problem. The persistence and vehemence of these confrontations often resulted in firms agreeing to purchase the bulletins. The finances of this classic technique are seen from another case brought to the attention of the police. Every month a group would receive 500 copies of a bulletin from its parent group. It would sell five copies each to 100 companies, from each of which it would receive ¥10,000 per month. This therefore yielded annual sales of ¥12 million. Of the respondents to the MOJ survey, 19.8% had been subject to such demands (ibid. 68-9).

Another area in which fake social movement racketeers have been active is in the standard *bōryokudan* activity of intervening in traffic disputes. *Ese dōwa* groups have similarly been employed by *sarakin* for the collection of debts, by businessmen seeking an official permit and ordinary citizens wanting authorities to pay attention to a complaint (Hiraoka 1987, 71; Mizoguchi 1986, 194).

Insurance companies are also subject to fraudulent claims by *ese dōwa* groups. Fraud is employed by these groups in other ways as well. In one case a group instructed people in techniques for evading inheritance tax by forging spurious debts for the deceased. This group naturally took a commission of the money saved. When tax officials became suspicious and started to investigate, they were subject to threatening phone calls at their homes (Mizoguchi 1986, 196).

In addition to these techniques, *ese dōwa* groups are constantly on the lookout for pretexts for extortion. For example, construction companies that are breaking building regulations or causing a nuisance in the neighbourhood are blackmailed with threats of court injunctions. One group, in little over one year, targeted one hundred such firms, was successful in half these cases and extorted ¥16 million. Because of cases like this, construction firms frequently find it advantageous to have links with *bōryokudan* groups. Another suitable pretext for denunciation may be publishing material detrimental to the cause of *buraku* emancipation. Consequently, publishers are extremely sensitive to publishing any material concerning this issue. Ames' excellent work on the police, for example, had to have offending sections excised before being published in Japanese.

Alternatively, *ese dōwa* groups make demands for subcontracting work, the purchase of goods and services at extortionate prices, or loans on favourable terms. Those that refuse are aggressively denounced for discriminatory practices.

The MOJ survey however gives an incomplete picture of fake *dōwa* activity in that it ignores the extensive abuse of government measures to help *burakumin* under the provisions of the 1969 special measures law. Such techniques were actually responsible for the bulk of *ese dōwa* revenue. There were a number of ways in which *ese dōwa* groups could exploit these measures: the 1969 law provided tax breaks for *dōwa*-promotion activities and *ese dōwa* racketeers could extract rebates and commissions from these; they could gain licenses for developing land,



ostensibly for the benefit of *buraku* communities, which could then be sold on to real-estate developers at a substantial profit; they could extract government money for spurious *buraku*-related projects; the list goes on. These activities were backed up by a highly aggressive and confrontational attitude towards public officials who opposed them; Mizoguchi (1986, 196) reports that after they became pseudo *dōwa* groups, former *bōryokudan* actually employed more violence than before and government officials are particularly afraid of this type of violence.

In his 1988 book examining the *dōwa* problem and *dōwa* groups, Takagi Masayuki drew a number of conclusions concerning the aetiology and persistence of the *ese dōwa* phenomenon. The first of these was that executives within the legitimate *dōwa* movement had become corrupted by the money making opportunities their position afforded. The splintering of the movement and internal conflict within the main groups exacerbated this problem and resulted in a number of independent groups and lone operatives. At the same time, increased police pressure on both the mainstream *bōryokudan* groups and the *sōkaiya*, encouraged their adoption of this less dangerous business (Takagi 1988, 152-3).

The development of these groups was facilitated by three key factors. The first of these was the low level of understanding of the nature of the *burakumin* problem by most people. This misunderstanding engendered a high degree of fear. Secondly, Takagi identifies an attitude amongst both businesses and government officials to accept peace at any price. It is also likely that victims of *ese dōwa* activity, have

been confused by the protection the *Dōwa* Countermeasures Special Provisions Law affords to legitimate *dōwa* activity into thinking that they are powerless to confront pseudo *dōwa* activists. Thirdly, the measures taken by the police have been inadequate to deal with this problem (ibid.). This is evinced by the remark made by a victim, cited by Hiraoka, explaining why he had not notified the police because he had been in doubt as to “whether or not the police were really serious about getting to grips with it” (1987, 74).

### **FAKE RIGHT-WING MOVEMENTS (*ESE UYOKU*)**

Although there have long been links between the right-wing and *yakuza*, fake right-wing movements as a front for *bōryokudan* fund raising became a significant problem at around the same time as the *ese dōwa* phenomenon and for the same broad reasons. The activities in which they participate are also remarkably similar. In addition to these standard practices, which fall largely under the category of *minji kainyū bōryoku*, fake *uyoku* activity also includes the use of armoured cars (*sendensha*) fitted with enormously powerful speakers and Japanese flags. The most common practice is to position one of these vehicles outside a targeted company, which is then bombarded with high volume martial music and political speeches, usually demanding the return of the Russian-occupied islands in the Chishima (Kurile) chain, until the group’s demands for political contributions have been accepted.

Within all prefectures there are administrative ordinances governing excessive noise pollution (*bōsō'on jōrei*) which theoretically should provide a legal antidote to the problem of right-wing propaganda trucks. The ordinance in Iwate prefecture for example limits publicity trucks to 85 decibels. Unfortunately these ordinances are limited to empowering the police to tell the noise-polluter to stop. Only if the offending activity continues can action be taken against them. Dealing with fake right-wingers is also problematic because they skilfully exploit the constitutional guarantees to freedom of speech and freedom of association.

## LEGITIMATE BUSINESS

Throughout the period under consideration, there was an increasing trend for *bōryokudan* to involve themselves in legitimate business. There are many factors which have encouraged this. As mentioned in the previous chapter, individuals involved in OC activity find it advantageous to establish legitimate sources of income to reduce the risk of seizure and other uncertainties inherent in illegal activities. As police pressure on *bōryokudan* criminal activities increased, these considerations became more important.

Police pressure on traditional *yakuza* crimes also encouraged the process of these groups moving into crimes, known collectively as *minji kainyū bōryoku*, targeting both civil society and the business world. This growing proximity to corporate Japan, in which business was frequently a willing accomplice, further encouraged this process; as mentioned above, having been employed by real-estate companies



to perform land-sharking services, it was no great jump for *yakuza* to directly participate in real-estate speculation on their own account.

An increasingly aggressive attitude taken by the police towards *yakuza* crime has also made it more important to have a legitimate front through which illegal income can be channelled and criminal activity organised. Frequently, the owner of this business will attempt to further insulate it from law-enforcement intervention by registering the business in the name of a wife or girlfriend.

The enormous wealth generated by the system of *jōnōkin* payments also led high-ranking *oyabun* to seek new legitimate sectors in which to invest their money. Although businesses traditionally associated with Japanese OC such as construction, outdoor stalls, trucking and the entertainment industry are still heavily represented, the *bōryokudan* have been moving into real-estate, finance, English-language schools, private hospitals and hotels. In short, anything that will provide a legitimate front whilst earning a good return on their capital.

Whilst it might be argued that it is socially advantageous for criminals to 'go straight', increased *bōryokudan* involvement in the legitimate business is not necessarily to be welcomed. This is because, all too often, OC group members retain their former operating procedures when shifting from the illegal to the legitimate market sector of the economy. For example, *bōryokudan* businessmen might use the threat that their gang-affiliation implies to demand loans on favourable terms, reduced prices from suppliers of goods and services whilst their

own customers might be expected to pay a premium. Alternatively, competitors might be given disincentives to underbid *bōryokudan*-owned firms.

A variation on this theme became apparent with the development of *kigyō shatei* (business brothers). *Kigyō shatei* refers to businessmen who, whilst not formally members of *bōryokudan* organisations themselves, make use of their affiliation with such a grouping to achieve an unfair competitive edge in the marketplace. Such people may be former gang members who retain their underworld links, or alternatively, businessmen who have formed a quasi-brotherhood relationship with a senior gang-member to further their business interests. Needless to say, this development presents particular problems for law-enforcement authorities in that identifying these seemingly legitimate businessmen is much harder than dealing with well-known criminals. This problem is exacerbated by the fact that these businessmen do not advertise their relationship through ostentatious displays of *yakuza*-style attire or tattoos. Furthermore, the nature of the influence that *bōryokudan*-affiliation gives is often such that the existing criminal and commercial legal codes are incapable of effectively combating the activities of the business associates of *bōryokudan*.

One industry in which *bōryokudan* find they have a competitive advantage is industrial waste disposal. The waste disposal business in Japan is said to be worth ¥4 trillion (£18 billion). Since the rampant pollution of Japan's high growth period, typified by the tragedy of mercury poisoning at Minamata and elsewhere,

environmental controls and regulations governing the disposal of rubbish have become progressively stricter. Because *bōryokudan* are less scrupulous in their adherence to these regulations than legitimate waste disposal companies, they are able to operate much more cheaply and can pass on some of these savings to their customers in the shape of lower haulage costs. Moreover, the low start-up costs of this type of business, consisting merely of the cost of a four ton lorry or large dump-truck, make this an attractive business for even low-level *yakuza* to enter (Mizoguchi 1992a, 142).

In order to participate in this business it is first necessary to receive a licence from the prefectural governor. This is not granted to those who have spent time in prison within the previous three years, so in many cases, *bōryokudan* members conduct this business under another name. Licences are much harder to gain for the management of rubbish dumps themselves, especially those dealing with hazardous material. However, many gang-members simply ignore these obstacles.

An example of this is the case of S, an executive in a second-level Yamaguchi-gumi gang in Hyōgo prefecture. This man, who ran his own contracting company, collected rubbish from construction companies in several cities in Hyōgo prefecture. S charged only ¥1,000 per ton for this service, which was less than half the going rate amongst his legitimate competitors. The rubbish would then be taken at night to nearby publicly-owned mountains where it would be burned and buried. Despite complaints from local residents, this enterprise was given no more than repeated official warnings, which were ignored. Although S was eventually arrested for



violations of the Industrial Waste Disposal Law, this was not before he had illegally dumped several tens of thousands of tons of waste. Mizoguchi suggests that one interpretation for this lack of effective measures is that such is the amount of rubbish, the local Public Health Centre must rely on illegal dumping to get rid of it all (1997, 144).

In another case an executive of a Yamaguchi-gumi front company rented land in the mountains which he then opened up as an illegal industrial waste dump. Because none of the expensive legal requirements concerning the treatment of such waste were observed, he was able to undercut legitimate dumps charging only half the industry standard. Every night, about 90 trucks would come to deposit rubbish at an average charge of ¥13,000. This therefore yielded a daily income of ¥1.17 million (£5,131) and, in total, the executive and partner netted several tens of millions of yen (*ibid.*).

As well as involving themselves directly in business management, during the 1980s many ambitious *bōryokudan* became aggressive speculators in the Japanese stock-market. Frequently this was financed by borrowing money. As in their investment in legitimate businesses, *bōryokudan* investment strategy has not been hindered by an excessive concern for the finer points of the law. In one incident in 1985 the Shinjuku branch manager of Nomura Securities passed on to some of his underworld clients information concerning a miracle drug at Yamanouchi Pharmaceutical. Unfortunately for him rumours concerning unpleasant side-effects of this drug caused a drop in the share price and, after months of stalling, one of these irate customers severely beat him up leading to a coma followed shortly by the

broker's death (Alletzhauser 1990, 205-6). More typically, when faced with a stock that fails to perform up to their expectations, *bōryokudan* investors approach their broker and demand that they be reimbursed for their losses.

The most famous of these *yakuza* speculators was Ishii Susumu of the Inagawa-kai. Ishii's involvement in the Heiwa Sōgō Bank take-over and his subsequent investment in the Tokyu Corporation made him a household name in Japan. This scandal is discussed in chapter five. Although such high-profile cases as Ishii's hit the headlines, it was not only the elite of the *bōryokudan* world who were active in stock market speculation during this period. At a time of extremely low interest rates and when banks were actively pressuring their clients to borrow more money, riding the wave of rapidly rising land and stock prices was seen as too good an opportunity to miss. It would not be until things had gone horribly wrong with the collapse of this bubble and even more so with the disaster of the *jūsen* problem that the extent and implications of this became appreciated. Indeed, at the time of writing, the exact scale of *bōryokudan* speculation during this period remains unclear – but we get ahead of ourselves.

## CONCLUSION

Looking at the historical development of the *yakuza/bōryokudan*, a number of trends become evident. The most striking of these is the way in which the authorities have oscillated between two very different attitudes towards OC. At

times they have adopted a pragmatic policy of tacit acceptance. This has periodically developed into attempts to co-opt the *yakuza/ bōryokudan* into their machinery of social and political control. When they have been perceived either to have outlived their usefulness, or to have become a threat to social order, the *yakuza/bōryokudan* have become the target of official crackdowns. Whether this cycle of acceptance and repression has finally been broken due to the increasingly unacceptable nature of *bōryokudan* activity, remains to be seen. It is however certain that since the first summit strategy of 1964, the authorities have adopted an increasingly hostile stance *vis-à-vis* OC groups.

The key consideration in the modern history of Japanese OC is the way in which the *bōryokudan* have developed and adapted to reflect changes in the host culture. OC is a social phenomenon and, given the enormous changes in Japanese society during the post-war period, it is only to be expected that the *bōryokudan* too will have modernised. *Bōryokudan* evolution in the post-war period has been characterised by two parallel trends. The first of these trends is the tendency towards oligopolistic control of OC in Japan by three large, national syndicates. This process has, in part been encouraged unwittingly by increased police pressure on traditional *yakuza* crimes, which has tended to be more effective in eradicating smaller groups, with a limited portfolio of criminal activities, than in dealing with large diversified syndicates.



Secondly, these large syndicates have developed increasingly diverse and sophisticated means of making money in both the legal and illegal market sectors. The forces acting on *bōryokudan* stimulating this process of diversification are both internally and externally generated. The main internal pressures spurring the unending quest for new sources of funds are the demands imposed by the *jōnōkin* system of the large syndicates. Whether the feudal system of the Yamaguchi-gumi and other large syndicates can survive if *jōnōkin* payments can no longer be met remains to be seen, but it can be imagined that it has been severely strained as economic conditions declined in the Heisei period.

The main dynamic behind this process of change is, however, the relationship between the forces of law-enforcement and OC groups themselves. Each time that there have been legal changes or more rigorous controls of *bōryokudan* activity, these groups have developed in ways enabling them to survive in this new environment. Usually this has been by developing new sources of criminal or quasi-criminal income. This has led to a vicious circle in which diversification into less acceptable, increasingly ‘criminal’, activity has brought about a political climate demanding increased law-enforcement. This, in turn, has pushed the *bōryokudan* into yet another phase of diversification.

It is this amorphous quality of OC that frustrates attempts by the authorities to control it. In the light of this it is expected that the assault on the *bōryokudan* under the *bōtaihō* since 1992 will have elicited a similar response. Whether this is indeed

the case and, if so, in what way the *bōryokudan* have evolved since 1992, will be one of the central concerns of the following chapters.

These cycles of diversification have been accompanied by a marked rise in the importance of drugs as a source of finance and the use of sophisticated modern weaponry. Both guns and drugs require contacts in foreign countries and, since the 1970's, the *bōryokudan* have become increasingly international in their outlook. As such they are no longer a purely Japanese law-enforcement problem. The trans-national nature of global OC has clear implications for OC countermeasure strategies.

According to the 1989 *Hanzai Hakusho*, another development in Japanese OC in recent years is the process of *bōryokudan-banare* (the movement away from *bōryokudan* by young, potential recruits). It remains to be confirmed whether or not the *bōryokudan* are facing a recruiting crisis. If they are, this raises a number of interesting questions concerning possible causal factors as well as the response of *bōryokudan* groups themselves. One plausible hypothesis is that a process of ethnic succession may be taking place with illegal immigrants from the rest of Asia and Iran filling the gap left by an increasingly affluent Japanese youth. Alternatively, the increasingly sophisticated nature of *bōryokudan* activity may no longer require such a large unskilled workforce.

It is of course possible that the recruitment problems faced by *bōryokudan* are indicative of the changing public perception of *bōryokudan* and the hardening of the police attitude towards their activities. By the late 1980's, the continued validity of the perceived wisdom of a symbiotic relationship between the police and *bōryokudan* had become hard to sustain. With the introduction of the *bōtaihō*, it no longer seems tenable. It seems reasonable to suggest that increasingly effective law-enforcement will act as a deterrent to recruitment. If this is indeed the case, then *bōryokudan* recruiting problems may well support the argument that the police are actively pursuing viable long-term *bōryokudan* countermeasures.



## CHAPTER FOUR

### BŌTAIHŌ: ORGANISED CRIME COUNTERMEASURES

#### JAPANESE STYLE

The discussion in chapter two of the peculiarities of OC vis-à-vis the diverse collection of other crimes suggests that the legal strategies employed to deal with individual criminal activity may not be appropriate to control organised criminality even when the laws being violated are the same in both cases. To successfully analyse OC countermeasures it is therefore necessary to apply our theoretical understanding of this phenomenon to identify the particular problems of designing effective OC control measures.

From a synthesis of the two preceding chapters an important conclusion is reached. In all significant respects the functionalist theoretical exposition of OC given in chapter two, which has been essentially generated by analyses of traditional syndicated crime in Italy and the United States, proves to be applicable to the Japanese variant of this phenomenon. In fact, far from being a uniquely Japanese phenomenon, the *yakuza/bōryokudan* may be identified as conforming to an ideal type of traditional syndicated crime. Given that this is the case, it is reasonable to conclude that similarly, there will exist a high degree of cross-applicability in the legal strategies employed to combat OC. It will therefore be fruitful to preface a discussion of Heisei era developments in Japanese *bōryokudan* countermeasures with an analysis of the major legal approaches specifically targeting OC which other

countries have adopted. It is significant that this conclusion was shared by many of the writer's legal and law-enforcement interviewees who clearly identified the American RICO statutes as the benchmark for OC countermeasures.

From the historical overview of the *bōryokudan*'s development in the Shōwa period it is apparent that there was a large gap between the declared aim of the law-enforcement community, as given in such publicly available material as the *Keisatsu Hakusho* and the *Keisatsu-gaku Ronshū*, of “the annihilation of the *bōryokudan* and the eradication of illegal violent activity” (*Keisatsu Hakusho* 1989, 70) and the reality of the widespread existence of highly visible *bōryokudan* groups seemingly immune to these police efforts. *Bōryokudan* countermeasures clearly were inadequate to satisfy these proclaimed aspirations.

In May 1991, a “Law Regarding the Prevention of Unjust Acts by *Bōryokudan* Members” (*bōryokudanin ni yoru futō na kōi no bōshi nado ni kan-suru hōritsu*) was passed into law and implemented the following March. This title was usually dropped in favour of the more manageable “*bōryokudan taisaku hō*” or *bōryokudan* countermeasures law, which was itself truncated to “*bōtaihō*”. Gang members themselves, as always rejecting the label “*bōryokudan*”, preferred to refer to this law as “*yakuza shinpō*” or the new *yakuza* law. What is this law, how does it work and what were the reasons for its introduction? How does it compare to other countries' OC-specific laws? How can we interpret this law given the theoretical

and empirical grounding of the previous two chapters? How does this law fit into the wider context of legal and other controls by which the authorities attempt to maintain social harmony within Japan? Addressing these questions should enable us to assess the significance of this law and draw conclusions as to whether or not this law marks a break with the past and unites the *tatemae* of police declarations with their real intentions.

### BACKGROUND TO THE *BŌTAIHŌ*

In order to make sense of the *bōtaihō* it is necessary not only to consider the problems of OC control measures and the major foreign OC laws, but also to examine the domestic context. What, in particular, were the factors causing this law to be introduced in 1991? Does the introduction of the *bōtaihō* indicate that the *bōryokudan* were becoming less socially acceptable, or does this legal change suggest a more profound underlying change in the political and legal administration in Japan? An alternative explanation might be found in external factors with the nature of both the gangs and authorities remaining constant. A final hypothesis is that all of these factors were working in interplay to create the conditions in which it became necessary for Japan's legislators to pass this law.

As has been shown in the previous chapter there was an evolution of traditional, locally-based *bakuto* and *tekiya* groups involved in gambling, labour-broking and open-air vending to *gurentai* organisations conducting black-marketeering and extortion. The most successful of these became the large-scale *bōryokudan*



syndicates that came to exert oligopolistic control of the underworld economy. With increased pressure on their traditional sources of income and the relentless demands for *jōnōkin* payments, members of these organisations were continually seeking new ways of raising money. Oligopolisation was therefore accompanied by diversification and increased sophistication.

One of the most important of these diversifications was that of *minji kainyū bōryoku* (violent intervention in civil affairs or *minbō*). *Minbō*, though initially a dispute-resolution service capitalising on the inadequacies of the civil courts, quickly became a form of extortion, targeting sections of society that had not traditionally been prey to *bōryokudan* groups. Chapter two discusses the way in which OC tolerance may be facilitated by the characterisation of OC crimes as consensual, victimless activities. The increase in *minbō* as a source of revenue for these groups can be expected therefore to have had the effect of increasing public perception of *bōryokudan* as sociopathic organisations.

Under the then existing criminal-law, *minbō* occupied what the Japanese literature almost universally refers to as a “*gurē zōn*” (grey zone). The *bōryokudan* members obtaining money through this type of activity would typically ensure that their requests for money were couched in such a way as to avoid infringing the law’s provisions regarding intimidation or extortion. The member would hand over his name card, with his organisational affiliation prominently displayed in the top right-hand corner, or ensure that his tattoo and amputated fingers were visible. The

organisation's reputation for violence was therefore clearly displayed and the recipient of the request left in no doubt as to the consequences of non-compliance. However, no explicit threat had been made. Technically, much of this activity was not illegal, and that which was illegal was very difficult to prosecute.

From the last decade of the Shōwa period onwards, the increasing *bōryokudan* involvement in the affairs of ordinary members of the public was matched by an increased involvement in quasi-legitimate business activity. Although *yakuza* had long been involved in various industries such as running bars and construction firms, the economic conditions of the bubble encouraged much greater *bōryokudan* participation in the legitimate economy.

The first of the factors encouraging this development was that cash-flush banks during this period were so desperate to lend that some of them even resorted to threatening their clients that, if they wouldn't borrow whilst conditions were good, then credit would be denied them in the future. In such a climate, little effort was made to assess the credit-worthiness of borrowers and *bōryokudan* members were easily able to raise money based on the collateral of unrealistically-valued land.

The funds raised in this way could then be employed in real estate and stock market speculation. Although, in this respect, the *bōryokudan* were behaving no differently from anybody else, what was different was that at each stage there was the possibility that the *bōryokudan* would use their organisational leverage to achieve loans and purchases either on favourable terms or on credit. When a share price

behaved less well than expected, *bōryokudan* speculators might demand compensation from the firms that had sold them the shares.

Another factor contributing to diminishing public tolerance of the *bōryokudan* was the continuing outbreak of inter-gang conflicts in the years preceding and following the imperial succession. It is clear that from the time of the Yama-ichi *tōsō*, the major inter-gang conflict of the 1980s, members of the NPA responsible for *bōryokudan* countermeasures had felt the need for new legal powers to control these groups. Similarly, it is reported that in 1986 during this conflict, Ishii Susumu, the then head of the Inagawa-kai, had tried to persuade the Yamaguchi-gumi leadership to bring the war to an end. He argued that it was adversely affecting public opinion, bringing increased police attention on the *yakuza* world as a whole, and that the police were currently considering a new *yakuza* law (Mizoguchi 1992b, 247-8).

However there is a time-lag between the peak of the Yama-ichi *tōsō* in 1985 and the final decision to introduce new anti-*bōryokudan* laws. This suggests that the Yama-ichi *tōsō* was not by itself the prime causal factor. It is clear that by 1988 senior members of the NPA were considering that a change in the law was overdue; in reaction to a 1988 incident in Hamamatsu-chō involving the Ichiriki-ikka<sup>1</sup>, the then head of the NPA's Criminal Investigation Bureau was quoted (Miyagi 1992, 97) as

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<sup>1</sup> See chapter six.



saying:

The most effective *bōryokudan* countermeasure is to seal off their sources of income. In America there is a law that cuts off the Mafia from their financial base. The time has come when in Japan also we should investigate a similar kind of law.

After the conclusion of the Yama-ichi *tōsō* there were two significant inter-gang violent struggles both of which had a significant impact on public opinion and police attitudes.

The first of these conflicts preceding the introduction of the *bōtaihō* was the Hachiōji war in the western outskirts of Tokyo. In February 1990, two executives of a Yamaguchi-gumi Takumi-gumi sub-group were battered and stabbed to death in Hachiōji by members of the Nibiki-kai, a locally based group. Although officially the Yamaguchi-gumi had an understanding with the Inagawa-kai that they would not raise the Yamaguchi-gumi diamond crest in Tokyo, at the time it is reported that there were over 30 Yamaguchi-gumi related offices and nearly 300 men in the capital. On not one of these offices did the gang's diamond emblem appear (Yamada 1994a, 265-8).

In order that honour be satisfied, the Yamaguchi-gumi mobilised a 150-man revenge force composed largely of Takumi-gumi members. In a ten-day succession of revenge attacks two people were killed and a number of revenge shots fired on

buildings before the Yamaguchi-gumi called a halt and a settlement was reached with the Kantō Hatsuka-kai, the Tokyo groups allied to the Nibiki-kai. The reason for the truce was not so much fear of the Tokyo gangs as the response of the authorities to this conflict. The Tokyo Metropolitan Police mobilised twelve hundred officers specifically to deal with this incident, and increased pressure was put on the organisation's other activities. At the same time a hostile press reaction further damaged the syndicate's public image.

Despite the comparative unimportance of this conflict, the Tokyo Metropolitan Police viewed it with alarm as they feared that it might have a more profound significance; "although it was sparked off by a drunken quarrel, this (incident) has deep roots in that, with the establishment of the fifth-generation leadership, the expansion into Tokyo brings (the Yamaguchi-gumi) into opposition with other groups" (ibid. 266). The Tokyo Police have long held the view that there is a profound difference in the organisational culture of the Kantō-based and Kansai-based *bōryokudan* groups. The former are seen as much more prepared to adopt a co-operative relationship with the police. Yamaguchi-gumi expansion into the capital would also inevitably lead to widespread conflict with the incumbent groups including a collapse of the relationship with the Inagawa-kai. The police were obviously highly concerned that this should not happen.

The second, and perhaps the more significant, conflict was the Okinawa war, which lasted from September 1990 to February 1992. Although this war was fought between the third-generation Kokuryū-kai and the breakaway Okinawa Kokuryū-

kai, at the time it was called a proxy war between the Yamaguchi-gumi and the Inagawa-kai. The cause of this conflict was the expulsion of a group of executives from the third-generation Kokuryū-kai because they refused to support a move to increase links with the Yamaguchi-gumi (against which they had fought in the seventies; several of their fellow members were still serving prison sentences for attacks made during that struggle). These expelled executives then formed the Okinawa Kokuryū-kai.

Although the Yamaguchi-gumi top executives urged resolute treatment of the renegade group, this was problematic for two reasons. Firstly, the new Okinawa Kokuryū-kai had six hundred members whilst the third-generation group remained with only four hundred. Secondly, the expelled executives had gained the support of the Inagawa-kai, with which the Yamaguchi-gumi officially enjoyed friendly relations. In the ensuing conflict seven people were killed and nine injured. Included amongst this total was a high school student who had been mistaken for a gang member whilst he was painting a fence at a gang office in order to earn pocket money. Two police officers were also injured in the course of this fight (Mizoguchi 1997, 42-4). Uchiyama Ayako, of the National Research Institute of Police Science, identifies this conflict, and in particular the death of the high-school boy, as the single most important factor in changing public-opinion concerning the nature of the *bōryokudan* and consequently as a major stimulus in the creation of the *bōtaihō*.

The increasing reliance on *minbō*, the increased intrusion of the *bōryokudan* into the legitimate economy, and the victimisation of innocent bystanders and the police in



inter-gang conflicts are the standard reasons given in the Japanese literature for the introduction of the *bōtaihō*. There are also, however, underlying political and international factors which have not been given due consideration in these accounts.

As mentioned in the previous chapter, the authorities made use of criminal syndicates as agents of social control in the post-war period. The two key factors for this were firstly, the weakness of the police and secondly, the real fear of large left-wing organisations. Throughout this period however, changes in both these factors meant that the basis for this relationship was gradually eroded throughout the latter part of the Shōwa period. The increase in police power, and especially the growth of the security police since the early sixties (Katzenstein 1996, 61), has meant that the police are now confident of their ability to deal with violent opposition without recourse to outside groups.

Over the same period, the perceived threat posed by extreme left-wing groups has largely been diffused, as Japan's economic success has undermined the support for the large labour and student organisations advocating radical change during the fifties and sixties. Such groups as remain are small marginal organisations and, though the security police take their existence very seriously, they present no mortal threat to the continued existence of the Japanese state. This contrasts with the post-war situation as perceived by Justice Minister Kimura at the time that he attempted to establish his anti-communist *yakuza* shock-troops, the *Battōtai* (Hori 1983, 137-8). The end of the Cold War, with the collapse of the Soviet empire, underlined this development.

On a more immediate political level, events involving the ruling Liberal Democratic Party must also be considered as possible factors for the introduction of new *bōryokudan* control measures. In September 1988 it became apparent that a number of senior figures within the LDP had received cut-price shares in Recruit Cosmos, the real estate branch of the Recruit business group, prior to the company's official listing on the Tokyo Stock Exchange. By the following month, police investigations had revealed that a large proportion of the former (Nakasone) cabinet had purchased unlisted shares whilst many members of the current cabinet, including Prime Minister Takeshita himself, had received money from the company. A number of senior bureaucrats were also implicated (*The Economist* 12/11/88; Mitchell 1996, 124-5).

Eventually Takeshita resigned as Prime Minister (though he continued to exert considerable influence within the party) to be replaced by the ineffectual Foreign Minister Uno, largely because he had not been considered worth bribing and was therefore one of the few senior LDP politicians untainted by the scandal. Uno's leadership lasted for two months, during which time he was undermined by a sex scandal (unusual in Japanese politics) in which a former mistress complained of his meanness and coarseness. The mainstream Japanese press had ignored this story until *The Washington Post* ran the story, whereupon they felt obliged to follow suit. Popular contempt for Uno, and for the LDP (which had struggled to elect even him), was compounded by the highly unpopular consumption tax to create widespread public dissatisfaction with the governing party. It seemed to many voters that the government was forcing austerity on the general public whilst lining their own pockets (Mitchell 1996, 125).



These factors combined to reduce the LDP's electoral support to a mere 27% in the upper house elections of July 1989. The opposition, which had campaigned on a platform of anti-corruption and opposition to the 3% consumption tax, for the first time gained mastery of the upper house (*The Economist* 27/789; *Tōkei Kyoku* 1990, 708). Taking responsibility for this defeat, Uno resigned, and in August was replaced as Prime Minister by Kaifu Toshiki.

Kaifu struggled to repair the tarnished image of the LDP with such measures as the reform of the consumption tax, the introduction of two women to the cabinet, and promises to reform the political system, specifically the ways in which it was funded, in order to reduce corruption. It was also under Kaifu's leadership that the political go-ahead was given for the NPA to draw up its proposals for new *bōryokudan* control measures that would become the *bōtaihō*. It is not therefore a large jump to postulate that the *bōtaihō* was part of a wider strategy to present a cleaner image to the electorate.

The domestic audience was not, however, the only political pressure on Kaifu's government. Since the early 1980s there was an increasing awareness amongst American law-enforcement officers, particularly the FBI, that Japanese crime syndicates were operating in the United States (Kaplan and Dubro 1986, 241-2). This was largely confined to those areas with large Japanese communities and tourist destinations, such as Hawaii and California. With the rise of the *keizai* (economic) *yakuza*, overseas *bōryokudan* activity started to include real-estate development as well as more overtly criminal activity. At a time when Japan's



enormous trade surplus with America was a serious stumbling block in the two countries' relations, the fact that Japan was now exporting its crime as well was a gift to the media, providing it with excellent ammunition for "Japan-bashing".

Ino Kenji, in an interview conducted in Tokyo on 9 April 1998, described the impact of this development:

In 1987 the Japanese and American Police held the first of the Japan-US Joint Meetings (*Nichibei Gōdō Kaigi*) in Hawaii. At that time there was talk that the Japanese *bōryokudan*, the Japanese *yakuza*, had started a process of linking up with the American Mafia in places like Hawaii and Los Angeles, where there are an extremely large number of Japanese tourists, and was conducting business with them.....Therefore the American side pressed that Japan abandon its indulgent way of thinking of these groups as fulfilling a bodyguard function within traditional Japanese society.

In reply to the question 'so it was *gaiatsu* (foreign pressure)?', Ino continued:

Yes, yes, exactly as you say....Thereafter there were about three meetings of this *Nichibei Gōdō Kaigi*. FBI officers participated on the American side, whilst, for the Japanese, for the most part they were chiefs of the Second Investigation Departments of the NPA and the Metropolitan Police, with responsibility for organised violence and organised crime investigations.

Another interviewee, Yamada Hitoshi of the Nichibenren's *bōryokudan* countermeasures group, also suggests an international dimension:

The consciousness of the police has changed. The most sensitive ones are the police executives who attend international meetings... at these meetings they are frequently asked how Japan's *bōryokudan* counter-measures are going. It would be no good if they weren't doing anything so they made it, this law (the *bōtaihō*).

Whilst Ino and Yamada assert that on a police-administration level *gaiatsu* was a factor, something police interviewees indignantly reject, there was also pressure at a much higher political and diplomatic level. With the end of the Cold War, there was considerable political rhetoric concerning the establishment of a "New World Order". Under this new system the rich industrialised countries, having defeated communism, were to switch their attention to the fight against the new bogeymen of Organised Crime and the international menace of drugs.

The major motivating force behind this was the American War on Drugs, which Bush had enthusiastically inherited from Reagan. Whilst, as far as American political interests were concerned, the War on Drugs and the fight against OC were synonymous, the reality of Japan's position was very different. The *bōryokudan*, according to police statistics, made one third of their income from drug dealing, though, given that the official figures underplay the amount of money received from business, this figure is probably too high. Also the drugs with which the United

States were concerned, cocaine and heroin, have not recently been a significant problem in Japan, which has an overwhelming preference for amphetamines.

However, despite these differences, in September 1989 Kaifu publicly united with Bush in “declaring a global partnership in the war against drugs” (Friman 1996, 64).

Friman goes on to identify the reason for this partnership:

(T)he extent of co-operation has been largely determined by domestic factors. Japan’s participation in the global partnership reflects the link between drug issues and bilateral economic relations with the United States. Faced with increasing threats of economic retaliation, Japanese policy makers have viewed co-operation on drug issues as a means to defuse broader bilateral tensions.

At the 1986 G7 Tokyo Economic Summit, the participating countries issued a joint declaration supporting improved international co-operation in anti-drugs measures. The following year the United Nations held a special drugs conference and this led directly to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Under this convention, signatory countries were required to co-operate with other countries in the punishment of money-laundering, and the identification and seizure of illegal profits from drug dealing (*Hōmu-shō Keijikyoku Keijihōseika* 1997, 1).

At the time Japan did not sign. This was considered to be due to the fact that Japan’s laws did not contain the provisions necessary for compliance, although



newspaper reports at the time indicated that both the NPA and the MOJ were considering the required legal changes. Failure to show concrete achievements towards this end meant that, at the Paris Summit of July 1989, US Secretary of State Baker criticised Japan and urged it to adopt a more proactive attitude. It was in this international context that the newly installed Kaifu entered into his “global partnership” (Friman 1996, 77-8).

The roles of summit embarrassment and direct *gaiatsu* as causal factors in Japanese legal change is clear. The evidence is however strongest for the new Drugs Law of 1991, anti-money-laundering measures and the three OC countermeasures laws (*soshiki hanzai taisaku hō*) passed in August 1999. The comments of Miyazawa Kōichi, a member of the specialist research group assembled by the NPA to consider *bōryokudan* countermeasures (the findings of which became the initial draft of the *bōtaihō*), confirm that international considerations also played a part in the creation of the *bōtaihō*:

The *bōryokudan* problem is not just an internal problem. We cannot ignore the fact that the Japanese *yakuza* are causing a nuisance in various other countries, especially several nearby Asian countries....As a country governed by law, it is a very grave problem to leave *bōryokudan* crimes as they are. Considering the strength that Japanese business has in the world economy and this sort of strange existence forever prevalent on the surface of Japanese society and continuing to exert an influence on the economy,

these illegal groups stir up international opinion and provide good material for Japan-bashing when they proceed into European and American society.

In this situation, we must do something (*Jurisuto* 1/1/1991, 14).

There were therefore a number of political, diplomatic and attitudinal changes, as well as changes in *bōryokudan* behaviour, which encouraged the introduction of new anti-*bōryokudan* legislation. There is no conclusive evidence to support any simple monocausal explanation as to why the *bōtaihō* should have been introduced. It seems likely, however, that all of the factors discussed above were influential in creating an environment in which legal change became expedient.

### PROBLEMS OF OC COUNTERMEASURES

There is an inherent strain within every constitutional liberal-democratic state regarding its efforts to maintain law and order. In classical liberal political theory, in order to protect the rights and freedoms of citizens, paradoxically, laws partially restricting some of these rights and freedoms, and officers of the state empowered to enforce these restrictions, are deemed necessary. In order that these officers, or the state itself, do not exceed or abuse their powers, restrictions are in turn placed on these powers. Law-enforcement must itself be carried out within the law; evidence gained and arrests made through extra-legal means are, according to this legal principle, inadmissible in a court of law. Law-enforcement officers within liberal-democratic states therefore are at a disadvantage *vis-à-vis* their colleagues in authoritarian or totalitarian states in that they have considerable constraints of due



process placed on their ability to identify and apprehend criminals. Disregard for the moment whether the reality of this situation is quite as tidy as this simple exposition, or whether classical liberal theory is relevant when discussing Japan. The point is that those countries with a written constitution that can satisfactorily be described as liberal-democratic, of which Japan is one, have these clearly-defined formal constraints on police and judicial powers. Similarly, in such systems, individual citizens have clearly stated rights.

Whilst the problem of due process is general to all law-enforcement efforts, there are a number of peculiarities of organised as opposed to other categories of crime that make OC-specific countermeasures problematic. The first of these is that, given the functionalist analysis of OC in chapter two, the whole concept of OC countermeasures is itself open to question. If the existence of OC may be beneficial to certain constituencies, possibly including judicial, political and law-enforcement personnel either at street or at administrative level, are all of these actors seriously committed to the enactment, implementation and enforcement of such measures? If these actors have different or even conflicting objectives, then it may be expected that countermeasures will have no clear strategic aim but represent rather an untidy political compromise. Having noted in chapter two the use of organised crime as a political buzz-word, we can further postulate that the introduction of new 'countermeasures' may have a purely symbolic role.

The most obvious way in which OC groups may provide benefits to the constituencies identified above is via a straightforward exchange of money or goods in exchange for immunity. The ability of a large criminal syndicate to corrupt those



in positions of authority will typically be greater than that of an individual criminal operator.

Even if we are to accept that OC control measures are genuine in their intent and actively enforced, there are severe obstacles to their success. Because many OC activities are consensual crimes providing goods and services to consumers, they will not be reported to the authorities as would be more likely to happen in the case of a crime in which there was a clearly defined victim. Much predatory OC crime is also unlikely to be reported as those victimised are themselves operating within the criminal economy. A purely reactive police strategy is therefore totally inadequate for OC control.

Because the main trading commodity of OC is the reputation for, rather than the actual exercise or explicit threat of, violence, it is very difficult to prosecute the significant category of activities in which economic advantage is gained through the exploitation of that reputation. It is very difficult to construct laws concerning intimidation and extortion which include this type of unstated, but universally recognised, threat.

The criminal organisation's reputation for violence and penalties for co-operating with the authorities are further obstacles to effectively controlling OC. Even when gang-members are brought to trial, if witnesses refuse to testify against them, then even the best-planned of control measures may come to naught. Credible witness-protection schemes are therefore an integral part of any viable OC control strategy.

In extreme cases such as Sicily, Colombia and the former Soviet Union, it may be necessary to routinely extend this protection to judges as well.

As has been seen from chapter three and its description of Japanese *bōryokudan* development, OC is a highly amorphous phenomenon, which is constantly adapting to changes both in economic opportunity and in the legal and administrative environment. Given that it is involved in a number of different economic activities, increased enforcement *vis-à-vis* one of these sources of income may be successful in inflating arrest statistics and driving out OC members from that sector, only for those displaced to seek alternative employment in other types of criminal activity. “It is hardly a net gain to society if bookies become drug dealers or hold up men” (Maltz 1990, 14).

With specific reference to the Japanese experience in the 1960s and ‘70s, increased police targeting of traditional *yakuza shinogi* had not only exactly the effect described above but drove the smaller, locally based *gumi* into extinction to be replaced by the more highly diversified wide-area syndicates. Such considerations show the importance of clearly defining one’s strategic goal (even if it can not be explicitly stated in public) and designing a set of control measures that offer the best hope of achieving that goal.

Although most criminal-law codes contain provisions concerning conspiracy, it is usually much harder to prove collective responsibility to prove a crime, in which only one or two actors may have been directly involved, than for the individual

criminal liability of those one or two gang members. Giuliani (1987, 104), writing from an American perspective, clearly identifies this problem:

We have a system of justice in which laws defining crimes for the most part focus upon individual behaviour and proscribe conduct in the context of isolated criminal episodes....Even the crime of "conspiracy", generically defined as a criminal partnership, requires each member of the conspiracy to join in the same criminal scheme.

Typically, those at the higher end of the hierarchy will attempt to dissociate themselves from direct participation in criminal activity, especially crimes which carry a high risk of arrest. Because these higher-echelon figures often receive much of their income from taxes, tribute or dues paid by their subordinates, they are effectively insulated from indictment. Therefore OC arrests may be made but, without access to special legal provisions and surveillance techniques, these arrests are typically of lower-level members on an individual basis for an individual crime. Consequently the organisational infrastructure remains intact and business carries on much as before. Katō (1991, 50-58,) likens this to *mogura tataki* (mole-bashing), the fairground entertainment in which the object is to hit mechanical moles with a mallet as they randomly stick their heads out from a number of different holes.

Even control measures specifically targeting, and successfully indicting, the leadership of an OC group, may have only a limited effect if the criminal infrastructure is untouched despite the favourable publicity such high-profile arrests



may generate. The Japanese “summit strategy” of the 1960s and American arrests of La Cosa Nostra (LCN) family leaders in the 1970s both show clearly that, in isolation, this type of strategy is ultimately ineffective.

There is therefore clearly a need for special legal devices, specifically designed to combat OC, which take into consideration these problems. In particular consideration should be given to the last point concerning the problem of dealing with organisationally conducted crimes by the use of laws intended for individual criminal activity. Before the creation of the *bōtaihō* there were two main approaches which those responsible for drafting the new law could refer to, the European and the American. Whilst there are other anti-OC strategies, the debate within Japan on changing the laws with reference to the *bōryokudan* was essentially fought out within the parameters of these two approaches. For this reason they will be given priority in the discussion below.

## **OC LAWS 1 – EUROPEAN MODEL**

### **THE CRIME OF CRIMINAL ASSOCIATION**

The origins of the European approach to OC control laws can be traced back to the 1810 criminal law under the Napoleonic code (Morishita 1997, 290). The countries which are most usually cited as examples of laws targeting criminal association, France, Italy and Germany, have all been heavily influenced by this code. This approach is without doubt the most direct and straightforward legal strategy for dealing with OC. Quite simply the law in these three countries criminalises membership of a criminal organisation. Whilst this is straightforward it is not

completely unproblematic. The most obvious difficulty is that of framing an operationally enforceable definition of criminal association without infringing the rights of individuals to join legitimate associations.

Although German criminal law has various provisions referring to criminal gangs, “in Germany, there is no legal definition of organized crime” (Kühne, private correspondence 1998). However, in January 1991, a working definition was drawn up by the Interior Ministers of the various Länder as a guide for German federal police (*Bundeskriminalamt*) and prosecutors. This definition states that:

Organised crime is the planned violation of the law for profit or to acquire power, for which offences are each, or together, of a major significance, and are carried out by more than two participants who co-operate within a division of labour for a long or undetermined time span using

- a) commercial or commercial like structures, or
- b) violence or other means of intimidation, or
- c) influence on politics, media, public administration, justice and the legitimate economy.

Although this definition is widely adopted by European law-enforcement bodies, Kühne asserts that “everybody - including the ministers of justice – agrees that this definition is pretty vague and can only give some hints to describe this phenomenon”. For example it remains open to interpretation exactly what is meant by “major significance” (Levi 1998b, 2).

Under Article 416 of Italian criminal law a “mafia-type association” is defined as one in which, in order to commit crimes, or to gain an unfair profit for themselves or others, the members of that association directly or indirectly control economic activity, sales, or the allocation of public contracts and licenses, by making use of a rule of silence, based on the power of the organisation’s threat (Katō 1991, 56).

Under the provisions of the same article, members of such a grouping composed of three or more persons are liable to between three and six years imprisonment.

Katō, a hawkish critic of Japanese OC countermeasures, evaluates this approach highly, crediting it for the absence of OC groups in Germany (1991, 57). This line of argument was also reflected in the comments of several retired police bureaucrats in their reaction to a paper the researcher presented during the course of his fieldwork. This argument is surprising given that the existence of the Mafia, the Camorra and the ‘Ndrangheta in Italy would have suggested that this law, by itself, was by no means sufficient to eliminate, or even control, OC. It is also unreasonable to assert that there are no OC groups in, for example, Germany. Whilst, for largely historical reasons, Germany does not have a tradition of syndicated crime such as can be found in Italy or Japan, representatives of many different criminal syndicates are operating in Germany especially since the fall of the Berlin wall and reunification (Freemantle 1995, 23-4, 272-3; Sterling 1995, *passim*).

Morishita (1997, 291) suggests that, in fact, very few guilty court verdicts are reached under this type of law. For obvious reasons, if membership of a criminal association, however that is defined, is made illegal, then such affiliation is



concealed. It is arguable that this in itself is a desirable strategic goal; if OC groups are going to exist, then let them at least be consigned to the darkest reaches of the underworld. In terms of OC eradication, however, this type of law will not offer the magic bullet.

## **OC LAWS 2 – THE AMERICAN MODEL**

### **THE RICO STATUTES**

The Racketeer Influenced and Corrupt Organisations Act (RICO) is the “most important substantive and procedural law tool in the history of organized crime control” (Jacobs 1994, 10). Passed on October 15, 1970, with the express purpose of seeking “the eradication of organized crime in the United States” (OCCA, 84 Stat. at 923 in Randolph 1995, 1191), RICO shares with the crime of criminal-association approach the aim of targeting the criminal organisation itself rather than the individual crimes of its members. Whilst it also makes membership of an organisation falling under the jurisdiction of the RICO statutes a crime, the main significance of this law is that it makes possible the “single prosecution of an entire multidefendant organized crime group for all of its many and diverse criminal activities” (Giuliani 1987, 105). The RICO law also makes possible the sequestration of the organisation’s assets gained through RICO violations. In short it is “a law that leaves the ‘crime’ to other laws and addresses the idea of being ‘organised’” (Rebovich 1995, 141).

Although there are other crimes under the provisions of the RICO law, the most often used and overwhelmingly the most significant is Section 1962(c):

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

The three crucial considerations here are the definitions of 'enterprise', 'pattern' and 'racketeering'. Under Section 1961(4) "'enterprise' includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity".

With respect to our second term, 1961(5) states:

A pattern of racketeering requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter (15 October 1970) and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.

Racketeering is defined in Section 1961(1) to include "any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year." This is supplemented with "a 'laundry list' of federal offenses" (Abadinsky 1994, 453) including loansharking,

obstruction of justice, fraud, Hobbs Act violations (labour or commercial racketeering), counterfeiting, contraband cigarettes and white slavery.

Those found guilty of RICO violations are liable to a fine of up to \$25,000 or imprisonment of up to twenty years, or a combination of the two. In addition to these considerable penalties, there are even more substantial costs to RICO violators. Under the provisions of 1963 (a) those found guilty of RICO offences are liable to the sequestration of any assets or interests acquired, either directly or indirectly, in violation of these statutes or acquired with the proceeds thereof. This forfeiture includes gross profits thereby precluding a defendant from claiming reductions for overheads or taxes paid on illegally gained proceeds. RICO also allows for citizens who have suffered materially due to these violations to sue with respect to this loss and to claim for threefold damages and legal costs.

Whilst RICO is a federal statute confined to federal crimes or violations carried out in an inter-state or international context, as of 1995 twenty-nine states had enacted their own anti-OC legislation closely modelled on this law (Rebovich 1995, 141-2).

As can be seen from the brief outline above, RICO clearly circumvents one of the most significant problems of legal OC countermeasures, that of Katō's mole-bashing; rather than prosecuting individual members for individual crimes leaving the organisation itself intact, RICO enables blanket prosecution of the organisation's membership. Moreover, the "second major purpose of RICO is to attack the economic infrastructure of organized crime, depriving it of its life blood,



by providing for criminal forfeiture and civil injunctive relief ” (Giuliani 1987, 107).

Despite the attractiveness of this approach and its evident potency as an OC control measure, RICO has met with a number of criticisms, four of which are listed by Abadinsky (1994). The most significant of these is that historically the courts have interpreted the provisions of this law in a flexible fashion. In 1981 the Supreme Court upheld the judgement that the term ‘enterprise’ is to include illegal as well as legal organisations in *United States v. Turkette* (Randolph 1995, 1191; Giuliani 1987, 105). This is of course the point of the law; however in *NOW v. Schiedler* 1994, the same court asserted that the law “does not require that the enterprise be economically motivated” (Randolph 1995, 1189). This judgement enabled RICO to be used to prosecute activists “conspir(ing) to shut down abortion clinics through a pattern of racketeering activity” (ibid).

Similarly this law has been successfully employed to prosecute other cases, not coming under the rubric of traditional syndicated crime: as well as serious cases of enterprise crime perpetrated by the “junk-bond king”, Michael Milken, and executives involved in the Savings and Loan fraud scandals (Rosoff, Pontel and Tillman 1998, 158, 208), RICO has been employed to prosecute a firm for commodities transactions so common “that on some days they account for a third of the volume on the New York Stock Exchange” (Epstein in Abadinsky 1994, 456). In another case cited by Abadinsky, a firm was forced into liquidation before a RICO charge was even brought to trial due to the \$24 million bond demanded by the prosecutors (ibid.).

Another criticism of RICO is that the pre-trial freezing of assets allowed for under its provisions can place devastating strains on a business. So much so that “the threat of freezing assets can induce corporate defendants to plead guilty even when they believe themselves to be innocent” (ibid.).

The third of Abadinsky’s criticisms is that, given that this law has been employed against defendants who would not normally be described as racketeers, the stigmatisation as such resulting from a successful RICO prosecution may not be suitable. The threat of this, combined with the threefold damages provided for, may intimidate defendants to settle a case they would otherwise have disputed.

The fourth problem given by Abadinsky also concerns RICO’s provisions for threefold damages. These present such an enticing prospect to litigants that cases are brought under RICO when they would otherwise not be considered worth the trouble. This runs the risk of unnecessarily clogging up federal courts. To avoid this courts have fined lawyers who have filed spurious RICO claims.

Another important question mark concerning RICO is the way in which forfeiture has actually been applied. Forfeiture is considered to be a major tool in OC and drug countermeasures where the enormous size of the financial rewards often far outweigh the costs of incarceration. The potency of this approach is evinced by the comments of a *pentito mafioso* (Sterling 1995, 287):

“What bothers us most is when you take our money away. We’d rather stay in jail and keep the money than be free without the money; that’s the main thing”.

Forfeiture is a very appealing measure to the authorities for the added reason that it provides them with government revenue without taxation.

Despite these attractions, there must be clear restrictions on the ability of the state to seize the assets of citizens without satisfactory proof that the assets in question were derived, either directly or indirectly, from crime. Because this is often extremely difficult to do, in America the onus has been shifted so that citizens must prove that property confiscated under civil forfeiture provisions (for which no criminal conviction is necessary) has been acquired through legitimate means. With the escalation of America’s War on Drugs, in the eighties and early nineties, the burden of proof for civil forfeiture became progressively lighter (Baum 1996, 112, 172, 196).

In addition, since 1985, the proceeds from asset seizure are paid in to the National Assets and Forfeiture Fund. The Fund then distributes this money to the various law-enforcement agencies, which are obliged to use it in some way on the War on Drugs. The consequences of these two factors is that the system has been abused, with over-zealous law-enforcement officers seizing property out of all proportion to the scale of the crimes committed and occasionally when no crime had been committed at all (Baum 1996, 243, 317). It is important that seizure provisions are framed in such a way as to prevent the law-enforcement community behaving



effectively as bounty-hunters. It seems that recently these abuses have been recognised by the authorities and the Supreme Court has recently made decisions demanding proportionality in the level of seizures (Levi 1998a, 20-1).

The radical and complicated nature of the RICO statutes meant that initially courts and law-enforcement agencies were unsure as to how this law should be applied. Consequently it took some time before the full impact of this law could be ascertained. It is now clear, however, that RICO has been an extremely effective tool in combating OC in the United States.

The effectiveness of RICO depends however on the availability of sufficient evidence for a successful prosecution. Due to criminal organisations' stress on organisational security, problems connected with the reliability of informers and the reluctance of victims or witnesses to provide useful intelligence to the authorities, gathering this kind of evidence is difficult using conventional police techniques. Attempts have been made to plug this gap through the use of such measures as electronic surveillance. In order to prevent abuses of this tool, investigative agencies in the United States, and most other liberal-democratic states, wishing to tap a suspect's phone or bug his/her property, are required to obtain a court warrant authorising this. This authorisation is typically limited in both duration and scope.

Because of these restrictions, the heavy costs in manpower such an investigation requires, and the obvious countermeasures taken by professional criminals to limit their susceptibility to electronic eavesdropping, surveillance of this type is actually limited in its effectiveness. According to Abadinsky the cost of an average thirty-

day operation in the United States is “in excess of \$40,000...and less than 20 percent produce incriminating evidence” (1994, 484). In contrast to Abadinsky’s down-beat assessment of electronic surveillance, Jacobs (1994, 8) identifies it as one of the three “most important legal weapons deployed in the (US) government’s attack on organized crime” (along with RICO and the Witness Security Program).

Controlled delivery<sup>2</sup>, undercover investigators, and sting operations are also considered major tools whereby the authorities can gather evidence in OC and drugs cases. Whilst these are not without their problems they can yield spectacular results as in the six-year undercover operation involving FBI Special Agent Pistone which contributed to the successful conviction of more than one hundred members of various LCN families.

Japanese OC countermeasures must therefore be considered not just with reference to the substantive laws of other countries but to the investigative techniques available to, and used by, the officers entrusted to enforce these laws. The legal framework within which the Japanese police have operated in the post-war period has precluded extensive use of the investigative techniques outlined above.

### **THE *BŌTAIHŌ* - DRAFT ONE**

In November 1990, the NPA set up a research group composed of external

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<sup>2</sup> Whereby law-enforcement officers maintain tight surveillance over shipments of illegal goods rather than seizing them at the port of entry. This reveals a greater section of the distribution chain, thereby maximising potential arrests.

academics and legal experts with the express task of preparing an anti-*bōryokudan* law. At the time, with the exception of the chairman, Professor Narita of Yokohama University, and the two representatives from the *Nichibenren*, the identities of the members of the fifteen-man committee were kept secret. Originally the group had been told that they had two to three years to prepare this law but this was soon cut down radically and their initial proposals were published after only four meetings, the last of which was held on February 6, 1991. The extraordinary speed with which this draft was produced has led some observers to suggest that the NPA had already done provisional work towards the drafting of this bill (Miyagi 1992, 97-8). Shimamura (1992, 9) claims that the way in which this law was prepared was unusual in that it did not proceed through a legislative deliberative committee and then legislative office under the oversight of the MOJ. Instead it was drafted under conditions of secrecy by the NPA.

On February 27, the NPA produced its “Basic Considerations on the Bill Concerning *Bōryokudan* Countermeasures” (*bōryokudan taisaku ni kan-suru hōan no kihonteki na kangaekata*). Whilst in many respects the “Basic Considerations” was what became the *bōtaihō*, there were a couple of important provisions that were included in this document that were dropped from the draft bill. These were the seizure of illegally gained profits and the exclusion of *bōryokudan* members from certain industries.

The seizure of illegally gained profits was seen by the research group and the NPA as an important part of their general anti-*bōryokudan* strategy and was clearly



influenced by the American RICO seizure provisions. These provisions were dropped from the bill not only due to the operational problem of identifying what were illegally gained assets and what legitimate, but also because there were more profound legal implications in seizure. If assets were seized under the criminal law (*keiji bosshū*), then it was considered that there would be the risk of double punishment (Shinozaki et al 1991, 24).

It should be noted, however, that the “Basic Considerations” had been drafted in such a way as to avoid this problem; technically, illegally gained assets were not to be subject to seizure (*bosshū*) but subject to a surcharge payment order (*kachōkin nōfu meirei*) in which “violation money is levied administratively” (interview Fujimoto, Tokyo, March 1998). Because the *bōtaihō* was drafted by the NPA, rather than the MOJ, this type of administrative approach, which operates without recourse to the courts, was employed. As will be seen from the finally enacted version of the law, the *bōtaihō* relies entirely on administrative law (*gyōseihō*) rather than criminal law (*keihō*).

The other reason that this type of seizure/surcharge payment was not included in the finally enacted law was that at the same time the MOJ was drafting a law which would enable Japan to conform to the requirements of the UN Convention Against Illicit Drugs and Psychotropic Substances. Included amongst the proposed provisions for the law were the seizure (under the criminal law) of the proceeds from drug trafficking and it was therefore felt a good idea to wait and see how the

new drugs law ended up. Some members of the committee also felt that, given the various legal problems and the pressure to create this law quickly, it would be better to omit it for the time being and consider it at greater length at a later date (Takebana in Shinozaki et al 1991, 24).

The other item dropped from the bill was the proposal to exclude *bōryokudan* members from certain industries. In particular, the involvement of *bōryokudan* members in debt-collection, real-estate racketeering (*jiage* etc.) and bankruptcy management were seen as the main targets. However it was concluded that attempts to include provisions to exclude *bōryokudan* members from the relevant industries would possibly conflict with Article 22 of the 1947 Constitution. This guarantees the freedom of individuals to choose their own occupation, though this guarantee is qualified in that this freedom shall exist “to the extent that it does not interfere with the public welfare”. It seems, therefore, that a good legal case could have been made for the retention of this provision.

On a more practical level it seems that to have included this measure would have resulted in interminable discussions with the various ministries controlling the industries from which *bōryokudan* members were to be excluded. It seems more likely therefore that, rather than for constitutional reasons, this proposal was dropped in the interests of speedy enactment and implementation of the whole (ibid. 25).

## THE *BŌTAIHŌ*

Only one month passed from the date of cabinet approval for the submission of this legislation to the date of its being passed by the Diet in May 1991. This was exceptionally fast. Moreover it was passed unanimously with no parties or individual members offering criticism. Miyagi (1992, 100) suggests that due to the media build-up to this law “an atmosphere had been created in which it was hard for the communist and socialist (opposition) parties to oppose (this law) even if they thought it strange”.

The central aspects of the *bōtaihō* were the designation of *bōryokudan* groups by the Public Safety Commission, administrative control over certain prescribed activities by members of these groups, increased limitations on the use of gang offices during inter-group conflicts, and the establishment of regional centres to assist the victims of *bōryokudan* activities and forward the cause of *bōryokudan* eradication.

Under the provisions of the new law, a *bōryokudan* is defined as “a group of which there is the risk that its members (including members of its component groups) will collectively or routinely promote illegal violent behaviour” (Article 2 paragraph 2). “Illegal violent behaviour” (*bōryokuteki fuhō kōi*) is in turn defined as those “illegal acts which meet the criteria at the discretion of the National Public Safety Commission” (Article 2 paragraph 1). Having provided these definitions, the law empowers the regional Public Safety Commissions (hereafter Public Safety



Commissions) to designate *bōryokudan* groups. A designated *bōryokudan* is defined as a “*bōryokudan* of which there is a *high* risk that its members will collectively or routinely promote illegal violent behaviour” (Article 3, emphasis added).

Despite the definitions of designated and undesignated *bōryokudan* differing only with respect to one word – a “high risk” rather than just a “risk” – there are more concrete criteria on which designation is to be based. The first of these is that it has been shown that, “regardless of the ostensible purpose, a member of a *bōryokudan* makes use of that *bōryokudan*’s influence” to gain some kind of financial advantage (Article 3 paragraph 1).

The second factor required for designation is that a certain proportion of the group’s members have a criminal record. This proportion declines as the size of the group increases: whilst 66.6% or more of the members of a three to four-man group are required to have a record to merit designation, this proportion drops to 4.2% for a group, or syndicate, of 1,000 men or more (see appendix). For the purposes of this law the criminal record of an individual is no longer taken into consideration if a certain period of time, varying according to the severity of the offence, has elapsed. The details of this are given in Article 3 paragraph 2 a-f.

When a Public Safety Commission attempts to designate a *bōryokudan* group it is obliged to hold public hearings in which representatives of the group in question are

able to put forward arguments and evidence in their defence. The organisation must be informed in advance of the time, place and reason for these hearings and this notification must also be publicly displayed. The obligation on the Public Safety Commission to hold a public hearing is waived if it is not possible to locate members of the group in question and if they fail to attend the hearing when due public notification has been given.

Once the Public Safety Commission has satisfied itself that a group meets the criteria for designation, it must present the appropriate evidence and a record of the official hearing to the National Public Safety Commission for official confirmation. For the National Public Safety Commission to confirm this designation it must base its judgement on the opinion of a specialist examining board. Once the National Public Safety Commission has reached a decision, it is obliged to quickly inform the relevant Public Safety Commission.

If designation is confirmed then the Public Safety Commission must inform a representative of that *bōryokudan*. Designation is also publicly notified in the official gazette (*Kanpō*), from which time the *bōryokudan*'s designated status is effective. If designation is not confirmed then the group in question can not be designated as a *bōryokudan*. Designation remains in force for a period of three years.

Once a *bōryokudan* group has been designated, then its members are forbidden to carry out a number of activities by means of which they could attempt to gain some

kind of financial advantage through making “violent demands” (*bōryokuteki yōkyū*).

For the purposes of this law a “violent demand” describes a demand or request which is made by a member of a *bōryokudan* whilst in some way using the influence of the organisation to which that member belongs. Therefore referring to one’s group or passing over a name card on which gang affiliation is shown, combined with a request coming under the provisions of Article 9, is a “violent demand”.

The categories of demands prohibited under the provisions of Article 9 are as follows:

1. Demanding money, goods or other benefits in return for not revealing secrets about the victim of these demands.
2. Demanding donations and contributions for whatever reason.
3. Demanding contract work or the supply of goods.
4. Demanding that individuals pay a fee in order to conduct business within the designated *bōryokudan*’s territory.
5. Demanding that businesses operating within the *bōryokudan*’s territory purchase goods, or certificates, or that they pay for bodyguard or other services.



6. Demanding payment of interest rates in excess of the maximum rate allowed under the 1954 Interest Limitation Law. Demanding compensation for non-payment of debts in contravention of the same law. Making a nuisance, on behalf of creditors, in connection with debt repayment.
7. Demanding postponement or non-repayment of debt either in part or full.
8. Demanding loans on favourable terms, demanding loans in spite of refusal, demanding loans of individuals not involved in the money-lending business.
9. Demanding that site or building occupiers leave and give up title to that site or building.
10. Entering into discussions concerning a traffic dispute or other incident and demanding compensation for damages incurred.
11. Demanding compensation for damage or injury due to a traffic accident or other incident. Demanding compensation for losses due to changes in stock or goods prices.

If a member of a designated *bōryokudan* group makes a demand falling under the provisions of Article 9 then the victim of the demand can notify the authorities and the Public Safety Commission is empowered to issue an injunction (*chūshi meirei*) preventing the member from making these demands. In cases where the Public Safety Commission judges that a designated *bōryokudan* member is likely to make

similar demands in the future it can issue an injunction prohibiting a recurrence of that type of demand (*saihatsu meirei*). This type of injunction remains in force for no more than one year. The Public Safety Commission is also empowered to issue an injunction prohibiting designated *bōryokudan* members from making violent demands in order to force juveniles (under Japanese law those under twenty years of age) to join their gang.

Before a *saihatsu meirei* injunction is issued, the Public Safety Commission in question must hold a public hearing concerning that injunction. The time and place of this hearing must be publicly displayed beforehand and the *bōryokudan* member responsible for the alleged demands informed of the time, place and reason for the hearing. These hearings may, however, be held in private if it is thought necessary for reasons of confidentiality. If it is not possible to contact the *bōryokudan* member in question or if he does not show up within thirty days of the public notification, then the injunction can be issued without recourse to a public hearing. A provisional injunction (*kari no meirei*) can also be issued in cases of great urgency when there is not time to arrange a public hearing. Provisional orders are effective for a period of no more than fifteen days within which time a hearing must be held.

As well as dealing with “violent demands” by members of designated *bōryokudan*, the Public Safety Commissions are able to issue injunctions concerning the use of gang offices. During times of inter-gang conflicts and if the Public Safety Commission judges that there is a risk that this office will be used for assembling

groups of gang members, command and control, or the storage or construction of weaponry concerned with this conflict, then it can issue an order lasting for up to three months preventing the use of this office. An injunction can also be issued if it is judged that office use during periods of inter-gang conflict endangers the public. This injunction can be extended for a further three months.

Even during periods of peace there are certain restrictions imposed by this new law on the use of gang offices. Publicly displaying signs in the vicinity of gang offices (or inside in such a way that they can be seen by passers-by) that the Public Safety Commission judges likely to intimidate members of the general public are liable to a Public Safety Commission order for their removal. Acts in the vicinity of gang-offices, which are judged to similarly upset the general public, are also potentially subject to an injunction prohibiting their repetition.

The penalties for violating an injunction issued by a Public Safety Commission under the provisions of this law are, at their most severe, up to one year imprisonment, a fine of up to one million yen or a combination of the two. Less serious violations carry the penalty of six months imprisonment, a fine of up to half a million yen or a combination of the two. For the least significant infractions a fine of up to two hundred and fifty thousand yen is payable.

In addition to the provisions concerned with controlling *bōryokudan* violent demands and limiting the use of their offices, the *bōtaihō* also takes measures designed to encourage the eradication of these groups and assist their victims. Central to this end is the designation of Centres for the Elimination of *Bōryokudan*



*(Bōryoku Tsuihō Undō Suishin Sentaa)* in each administrative region (*Todōfuken*).

Designation of a centre is at the discretion of the National Public Safety Commission but each region is to have no more than one centre and, to qualify, an applicant must meet certain minimum requirements. Firstly, it must be a legal entity (*hōjin*) under the terms of the civil law. It must also have personnel with the necessary expertise and be otherwise capable of accomplishing the various tasks required of it.

There are ten separate responsibilities that the centres are given under the provisions of the *bōtaihō* and they are as follows:

1. Running publicity campaigns to increase public awareness of the threat posed by *bōryokudan*.
2. Providing help to non-governmental anti-*bōryokudan* movements.
3. Holding discussions with, and offering advice to, victims of *bōryokudan* demands.
4. Taking measures to remove the harmful influence of *bōryokudan* on juveniles.
5. Taking measures to help *bōryokudan* members who wish to leave.
6. Operating training courses for employees of businesses particularly susceptible to violent *bōryokudan* demands.

7. Providing assistance to the appropriate bodies dealing with information on *bōryokudan* violent demands.
8. Providing help for victims of *bōryokudan* violent demands with civil suits, making contact with *bōryokudan* groups to facilitate the return of goods and money, and providing sympathy money (*mimaikin*).
9. Conducting training for youth instruction officers.
10. Conducting the administration necessary for the above-mentioned tasks.

Under the provisions of the law the National Public Safety Commission also designates a body as the National Centre for the Elimination of *Bōryokudan* (*Zenkoku Bōryoku Tsuihō Undō Suishin Sentā*). This centre is responsible for overseeing the operations of the regional centres, providing the necessary training for their specialist staff and conducting research on the social impact of *bōryokudan*.

### REVISIONS OF THE *BŌTAIHŌ*

Since the law was introduced it has been revised twice, once in May 1993, and then again in May 1997. The purpose in both cases was, mainly, to expand the scope of the law to take into account ways that designated *bōryokudan* had adapted their operations to avoid the main provisions of the *bōtaihō*.

The 1993 revision had four main themes. The first of these was concerned with encouraging the process of secession and rehabilitation of members of these organisations. Whilst the original law had attempted to restrict the manpower of the designated *bōryokudan* by prohibiting forcible recruitment of juveniles, it had not taken adequate steps to encourage secession and rehabilitation of gang-members. To rectify this the 1993 revision contained provisions prohibiting the obstruction of members wishing to leave their organisation. In particular, demanding either finger amputation or money as a mark of contrition before leaving, could be subject to an injunction. As both amputated fingers and body tattoos were identified as major obstacles to successful rehabilitation, demands that a juvenile member have a tattoo also came under the provisions of the revised law. In order that these provisions could be deployed against the gang-bosses and executives as well as ordinary *kumi-in*, it was also prohibited to request or order another gang-member to make these demands.

The second measure of the 1993 revision was concerned with tightening up the provisions concerned with forcible recruitment of juveniles. It had become apparent that, rather than putting direct pressure on the juvenile in question, designated *bōryokudan* members were putting pressure on close relatives or people with a close relationship (*missetsu kankeisha*) with that juvenile. Such activity was therefore included under the provisions of the revised law. Similarly ordering, entreating or relying on other people to make demands that a juvenile join a designated *bōryokudan* group became liable to an injunction.



From the limited success at attempts to rehabilitate gang-seceders, it became apparent that the vaguely worded duty of the Centres for the Elimination of *Bōryokudan* to “assist those people who wish to leave *bōryokudan*” must be expanded. In particular the regional centres were required to provide the necessary advice to those gang members wishing to leave (*ridatsu kibōsha*) and facilitate their transition to a normal social environment. The most important aspect of successful rehabilitation is employment; so the centres were also obliged to conduct public-awareness campaigns to reduce discrimination against former *bōryokudan* members. It was also recognised that the centres would have to increase co-operation with related groups such as probation officers (*hogoshi*), corrections service (*kyōsei shidō*), and the Employment Security Administration (*shokugyō antei gyōsei kikan*).

The final part of the 1993 revisions was the increase in the categories of violent demands covered by the provisions of Article nine. There were three new categories and they were a direct response to developments in *bōryokudan* activity since the introduction of the *bōtaihō*. The first of these prohibited designated *bōryokudan* members from demanding that stockbrokers should let them conduct share-trading on credit or that they should waive the usual conditions for credit-trading (Article 9 paragraph 9). Secondly, demanding that companies sell shares, or demanding that shares be sold on favourable terms, also became liable to an injunction (Article 9 paragraph 10). Finally, in response to the increased involvement of *bōryokudan* in auction-obstruction following the collapse of the

bubble (see chapter five), prohibitions were made against making demands for compensation with respect to leaving premises or removing gang paraphernalia (Article 9 paragraph 12).

In addition several of the pre-existing categories of violent demands contained in Article 9 were expanded. Paragraph 5, concerning demands for bodyguard fees etc., now includes a prohibition against selling entrance tickets to *bōryokudan*-connected shows or parties. Demands for discounts on the sale of promissory notes was included in paragraph 8 and the provisions of paragraph 14 were enlarged to cover making demands for compensation on a spurious or inflated pretext.

Although the pre-revision law had forbidden non-gang members from asking, or hiring, designated *bōryokudan* members to make violent demands, there were no provisions covering non-member participation in these activities. This was rectified in the 1993 revision, which made the act of assisting a designated *bōryokudan* member to make violent demands liable to a *bōtaihō* administrative order.

The 1997 revision of the *bōtaihō* contained five changes, which further expanded the scope of this law. The first of these was to create another category of demand coming under the umbrella of Article nine. This was the “collection of debts under unjust circumstances” (*futō na taiyō ni yoru saiken toritate*). Under Article 9 paragraph 6 of the pre-revision law there had been provisions concerning the collection of debts that violated the Interest Limitation Law but not normal fully

legitimate debts. Under Article 9 paragraph 6.2 of the revised law, the use of “phone calls, visits and rough language or other actions causing a nuisance”, by members of designated *bōryokudan* demanding repayment of these debts, became actionable.

The second change brought about by the 1997 revision was the widening of the scope of the possible subjects of Public Safety Commission injunctions. Under the original law, an injunction would be issued with respect only to the perpetrator of a violent demand. This meant that typically lower-level *kumi-in* would become subject to such injunctions whilst the higher authority responsible for directing violent demands would remain untouched. To remedy this it became possible under Article 12 paragraph 2 of the revised law to issue injunctions to those designated *bōryokudan* members in positions of authority over those violating the provisions of Article 9 (*jōisha sekinin seido*).

Since the introduction of the *bōtaihō*, it had become clear to the authorities that a large number of designated *bōryokudan* members were successfully circumventing the provisions of the law. This was achieved by what the NPA came to describe as “semi-violent demands” (*jun-bōryokuteki na yōkyū*). Semi-violent demands are those acts which would come under the provisions of Article nine were they to be carried-out by designated *bōryokudan* members, but are carried-out by people who, though not members themselves, employ the threat of a designated group to reinforce these demands. The 1997 revision therefore took account of this



development by expanding the scope of Article 9 to include demands made by peripheral figures (*shūhensha*) such as *jun-kōsei-in* and *kigyō shatei* (Article 12 Paragraphs 3-6).

Due to the inclusion of semi-violent demands within the remit of Article 9, a further revision was to expand the provisions concerning assistance for victims of *bōryokudan* demands so as to include people who had been subject to this class of demands (Article 13).

Another trend in the post-*bōtaihō* *bōryokudan* was the further oligopolisation of the large wide-area syndicates. This process, combined with reduced opportunities to make money following the collapse of the bubble economy, meant that different groups within the same syndicate increasingly came into conflict with one another. This increased the risk of intra-syndicate warfare. Whilst, under Article 15 of the pre-revision law, it was possible to restrict the use of gang offices in times of inter-gang conflicts, intra-group struggles had not been included. This was rectified in Article 15-2. As will be shown in the next chapter, the timing of this was most fortunate for the police.

### ANALYSIS OF THE *BŌTAIHŌ*

As can be seen from the description of this law above, the *bōtaihō* is a very different type of OC countermeasure from either the European model of outright criminalisation, or the American RICO statutes with their whole-organisation

prosecution and substantial seizure provisions. The fundamental difference is that both RICO and the European model are parts of the criminal legal code (although RICO also contains extensive civil components) whilst the *bōtaihō* is an example of what the Japanese refer to as administrative law (*gyōsei hō*). The significance of this difference is that acts which violate the criminal law can be subject to prosecution and punishment whilst behaviour coming under the provisions of administrative law is subject to an injunction directing the perpetrator to stop. It is only when that injunction is violated that punishment can be administered.

Comparatively, therefore, the *bōtaihō* seems at first glance to be an extraordinarily weak weapon in the fight against organised crime. It should however be noted that this law also differs from RICO in that it is essentially concerned with only one type of OC activity, namely the exploitation of a group's reputation in order to secure financial or other advantage. As has been noted above, these *minbō*-type activities fall short of extortion or intimidation as defined under the criminal law. It would be practically impossible to frame provisions under the criminal code which could effectively tackle this type of activity without the law also applying to legitimate social exchanges. Due to this fact, it is arguable the use of *gyōsei hō* is more appropriate to deal with *bōryokudan* intervention in civil disputes and other 'grey-zone' operations.

Whilst it is very different from the two foreign models, the *bōtaihō* combines features of both. In creating a separate class of individuals who are to receive

different treatment under the law because of their connection with a criminal organisation, the *bōtaihō* has similarities to the European model. At the same time, in creating a new category of actionable behaviour (“violent demands” or “pattern of racketeering”) supposedly specific to OC groups, there are similarities between RICO and the *bōtaihō*. Although the *bōtaihō* is, in this respect, a hybrid OC countermeasure, it lacks the most potent features of either RICO or European-style criminalisation.

From the comparative weakness of the penalties and the restriction of the *bōtaihō* to one area of *bōryokudan* activity, it is apparent that, *ceteris paribus*, the introduction of this law can not achieve the goal, declared by the police, of eradicating these groups. At best, and assuming that it actually works as described, it will only drive out gang participation in *minbō*, protection and those other categories of “violent demand” covered by Article 9, without reducing the many other, more overtly criminal, enterprises in which the *bōryokudan* are engaged.

In fact, there are very good reasons for believing that the *bōtaihō* will fail to achieve even that. Firstly, and at a most basic level, it must be noted that the *bōryokudan* have not refrained from acts just because they are out-with the bounds of legality. If we accept that economic rationality is applicable to OC groups<sup>3</sup>, then if the projected costs are only marginally raised by a change in the law (or level of

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<sup>3</sup> An assumption that is more reasonable for OC groups than individual, disorganised criminals as a whole.



enforcement) and benefits remain constant and above expected costs (the costs of punishment multiplied by the probability of being caught), then little or no change is to be expected. It can be seen from the description of the *bōtaihō* above that the penalties are light compared to those for either RICO violation or membership of a mafia-style association in Italy. Moreover, because *bōryokudan* violent demands are first to be met with an injunction rather than a concrete penalty, there are no immediate material costs to making these demands until an injunction has been issued. It is, of course, possible that less tangible costs such as the loss of face incurred in backing down when confronted by an injunction may be taken into account.

If the functionalist analysis expounded in chapter two is correct, then the relationship between OC and other socio-economic entities is complex and not entirely predatory. Although they may be overpriced, there are real services provided by OC groups especially to those for whom the law fails, or is unable, to provide adequate protection. In particular, those involved in *mizu shōbai* such as bars and sexual-entertainment establishments may rely on these groups for protection not just from OC predation but from problematic customers. To what extent the *bōtaihō* can be expected to limit protection racketeering (*mikajimeryō*) can not therefore be determined *a priori* but it is unlikely to eliminate it totally.

Despite these potential weaknesses, the *bōtaihō* was seen as “epoch making” (*kakkiteki*) by many commentators, both opposing and supporting this law (Boku 1997, 27; Ino 1992b, 50; Uchiyama et al in interview). This was not just because

the new law was targeting activities that were hitherto immune from legal intervention, or because of the novel way in which it tackled them. The *bōtaihō* was seen as a clear break in that, for the first time, there was a legal definition of *bōryokudan* and a law existed that specifically and explicitly identified these groups as a social evil to be subject to special controls. In addition, therefore, to the substantive provisions of the new law, the symbolic significance of the *bōtaihō* must be considered in evaluating the impact of this legal change. The full significance of this will be seen when examining post-*bōtaihō bōryokudan* behaviour.

Although the *bōtaihō* was passed unanimously by both houses of the Diet, this should not be interpreted as an indication of universal approval. In fact, it met with criticism both from those considering it excessive and from those who felt the new law to be risibly feeble and quite inadequate for the task of eradicating the *bōryokudan*. Boku (1997, 28) categorises these groups as the anti-control lobby and the pro-control lobby respectively. The anti-control group had effectively five main criticisms of the law: its conflict with the constitution; its potential extension to groups other than *bōryokudan*; the increase in police powers it introduces; the possibility of the police hi-jacking the autonomous anti-*bōryokudan* movement; the lack of attention to underlying causal factors and the role played in Japanese society by *yakuza/bōryokudan* groups.

The major criticism of the new law put forward by those opposing the increase in state powers was that it conflicted with the constitution. Fukuda (1992, 24) sees the attitude one has towards this law as a “litmus test” as to whether or not you understand the values on which the post-war constitution was based.

Article 98 of the 1947 Constitution states:

This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the prescriptions hereof, shall have legal force or validity.

The charge that the *bōtaihō* conflicts with the constitution is therefore a most serious one. Under Article 21 of the constitution the freedom of assembly and association is guaranteed. This is usually cited as the reason why the Japanese could not adopt a European-style law criminalising membership of a *bōryokudan* group. It was argued by these critics of the *bōtaihō* that this law interfered with this freedom and was therefore unconstitutional. Because the *bōtaihō* does not actually penalise membership *per se*, but acts which these members commit, this criticism can be questioned. What is much harder to refute is the argument that the new law conflicts with Article 14, which affirms the equality of all citizens under the law and that there shall be no discrimination “because of race, creed, sex, social status or family origin”. The second criterion for *bōryokudan* designation under the *bōtaihō* is the proportion of members with a criminal record. This, it was argued, is a clear case of discrimination. Whilst this is the case, it should be noted that discrimination



against those with a criminal record is not specifically covered by Article 14 of the constitution.

However, the equality-under-law argument seems more telling. Under the *bōtaihō*, an action committed by the member, or following the 1997 revision, an associate, of a designated *bōryokudan* is subject to legal prohibition, whilst this is not the case when the same action is carried out by a person with no *bōryokudan* connection. That this conflicts with the letter and the spirit of Article 14 appears to be unambiguous. However, as can be seen from the existence of the Self Defence Forces despite Article nine's assertion that "land, sea and air forces, as well as other war potential, will never be maintained", it has long been possible to interpret the constitution in more than one way.

The second main argument deployed by the opponents of increased legal controls was that these new powers would be deployed against not only *bōryokudan* members but also left-wing groups and trade unions. This fear is based on historical precedents. For example, the 1926 Law Concerning the Punishment of Violent Activities (*bōryoku kōi nado shobatsu ni kan-suru hōritsu*) was used to repress the labour movement during the early Shōwa period. This was despite the fact that at the time of its introduction the cabinet issued assurances that it was "a law to control *yakuza*....it won't be applied to the left-wing movement" (Endō 1992, 28).

Similarly, in 1958, the criminal law was amended to include the crime of assembling with lethal weapons. Contemporary Diet records show that the government made similar assurances that it was a law designed to control gang conflicts and would not be used to combat the left. However, two years later, this law was frequently used in an attempt to control students and unions during, and after, the *Ampō* disturbances (ibid.). The way in which these laws have been employed out-with their original ostensible remit has left those on the political left with a deep-rooted suspicion of the police.

To support this argument, a number of critics, such as Fukuda (1992, 26) and Ino (1992b, 51), have pointed out that the foundations on which this law is built are vague; the two key definitions, “illegal violent activity” and “*bōryokudan*” ultimately rest on the subjective interpretation of the National Public Safety Commission. “Illegal violent activities” are those illegal acts which are so defined at the discretion of the NPSC. Endō (1992, 29-33) argues that many of the legal provisions included amongst those categorising illegal violent activities are practices which have traditionally been deployed against left-wing groups, including some that are not typical of *bōryokudan* such as the use of fire-bombs. Moreover, employing the implicit threat of an organisation’s power in order to gain some economic advantage, which is the central concern of Article 9, is hardly unique to the *bōryokudan*; it is, for example, the *raison d’être* for trade unionism.

Police interviewees have pointed out that these arguments are groundless in that there is the additional, and more objective, necessary criterion for designation: the

presence of a given proportion of members with criminal records. Indeed, they argue that the reason for including this criterion was precisely to exclude the possibility that the law would be applied to suppress legitimate political expression.

The third main criticism deployed against the *bōtaihō* by the anti-control lobby follows on from the second. Given the widespread fear and mistrust of the police amongst left-wing and many liberal commentators, an extension of police powers will inevitably be a cause for alarm. From a reading of the law, it seems at first that at each stage of its operation there are checks on the police provided by the provisions requiring hearings and ratification by the various Public Safety Commissions. If these bodies actually operated as envisaged in the 1954 Police Law, then they would provide oversight of the *bōtaihō*'s implementation. However, as will be shown in chapter six, the work of the Public Safety Commissions is effectively carried out by the police. The checks provided for by the *bōtaihō* are therefore an irrelevance. Because so much of the detail required for the actual operation of the law is 'left at the discretion of the Public Safety Commission', and because the law provides for no appeals procedure further than the National Public Safety Commission, the introduction of the *bōtaihō* does indeed represent a significant, unchecked increase in police powers.

The introduction of the Centres for the Elimination of *Bōryokudan* also came in for criticism from the anti-control lobby. It was argued that the official imposition of anti-*bōryokudan* centres would stifle the pre-existing citizens' movements opposing



gang-activity. These movements had sprung up spontaneously as an expression of local communities' reactions to their own experiences of the *bōryokudan*. Imposing bureaucratic or police control over these groups would radically change their character so that they no longer reflected the needs or aspirations of the communities from which they had sprung.

Whilst there is nothing in the law which explicitly states that these centres will be police-controlled, the fact that designation of regional centres is in the power of the NPSC suggests that this would be a strong possibility. As will be shown in the following chapter, this has in fact happened and, despite formal independence, the regional centres are located within the prefectural police headquarters and the permanent staff are retired police officers. Whilst there may be ample justification for this on the grounds for expertise and experience, it does leave the police open to the charges of empire-building and generating *amakudari* positions for former employees.

The final charge of the anti-control tendency was that the law is fundamentally flawed as an anti-*bōryokudan* measure in that it fails to recognise the close links which exist between these groups and members of Japan's political, financial and law-enforcement communities. As has been discussed, attempts to eradicate OC without adequately dealing with the various aetiological factors, can not be expected to meet with complete success. If the *bōtaihō* were really to be judged as the central pillar in a *bōryokudan* eradication programme, then this criticism would be pertinent. However, if we accept that it has the more limited aim of removing

*bōryokudan* from civil disputes and legitimate industry, this argument loses its relevance.

It can also be argued that the work for which the Centres for the Elimination of *Bōryokudan* are responsible includes tackling some of the broader social considerations concerning the *bōryokudan*'s place in Japanese society. It is debatable, however, how effective public-awareness campaigns and training of employees responsible for dealing with *bōryokudan* can be when their employing companies are benefiting from links with these same groups. As the Centre's propaganda implicitly accepts when it exhorts the public "don't make use of *bōryokudan*", these groups can be useful. A comprehensive *bōryokudan*-eradication programme must take this into account.

The *yakuza* themselves took on board these arguments as well as putting forward several of their own. There were essentially three supplementary arguments employed by *bōryokudan* groups against the new law. The first of these is that they provide a valuable control function within the Japanese underworld. They operate as employers of last resort to violent, ill-educated and otherwise unemployable young males, subjecting them to a hard code of discipline and control. Without this, these individuals would be wandering the streets causing random trouble. It is true that newly-inducted trainees are subject to a harsh regime of training in which correct manners are beaten into them. However, this argument lacks the validity it would have had in the days when the primary sources of *yakuza* income were

gambling and festival stall-holding. In an age of *minbō* and corporate blackmail, the question must be asked whether centrally-controlled, organised violence is preferable to its disorganised, random equivalent.

The second *yakuza* critique of the *bōtaihō* was that the protection role they have traditionally played within the entertainment industry has had the valuable social side-effect of policing the streets of their respective *nawabari*. Gang-members argued that, without this service, the level of disorganised street-crime would rise as there would no longer be an effective deterrent to juvenile delinquents. Similarly it was argued that, with the disappearance of *yakuza* from the *mizushōbai* industry, their place would be filled with less-scrupulous Chinese and other foreign OC groups (Ino 1994, 10-15).

Even if we accept that there is a policing function, this argument is open to question on the grounds that, if the *bōryokudan* actually provide a service within the *mizushōbai* industry, then the *bōtaihō* is not likely to have any noticeable effect on *bōryokudan* participation in this sector. With respect to displacement by Chinese OC groups, it can be argued that these groups can equally be subject to designation as *bōryokudan* under the provisions of the *bōtaihō* as well as those of the criminal law (though admittedly police intelligence concerning these groups is harder to accumulate than that for the native Japanese groups).



A more significant criticism of this law coming from the gangs themselves is that the effect of the law will be to exacerbate the problem that they pose both to the police and the wider Japanese society. Driven out of business activities at the margins of legality and unable to make open use of their gangs' reputations, gang-members will become increasingly reliant on income from amphetamines and theft in order to survive. As they become more overtly criminal in nature, the *bōryokudan* will necessarily sink further underground and become increasingly like America's LCN (which, the *yakuza* insist, they have never resembled). The *bōtaihō* will therefore prove to be counter-productive.

As has been seen from the description of police anti-*bōryokudan* efforts in the 1960s and '70s presented in chapter three, as well as the general discussion of the problems of OC countermeasures provided in this chapter, increased enforcement in one sector of OC activity can result in displacement to new areas of criminality. This may well result in a net loss to society. Therefore this prediction seems highly plausible, and cannot be refuted *a priori*. For this reason, special attention must be paid to this point when examining the effects of the *bōtaihō*.

On the other side of the ideological barricades, the pro-control lobby criticised both the liberal and left-wing proponents of the arguments above as anachronistic *yakuza*-apologists, and the law itself for its lack of teeth. Although the arguments outlined below are largely derived from Katō (1991), they are representative of views held by senior police-related interviewees unable to speak on-record. The first major drawback, according to this perspective, is that the most potent items

contained in the research group's report, 'Basic Considerations', were dropped from the final legislation. With the watering down of the law the "movement to eradicate the *bōryokudan* ends up as a mere declaration" (Katō 1991, 52).

In particular the failure to include provisions for seizure of *bōryokudan* assets was a major object of criticism. On this point the pro-control critics bifurcate into those who demanded the introduction of a tough RICO-style law and those who suggested that this was unnecessary as the existing criminal law already contained provisions for seizure (Article 19). It was argued by the second group that these little-used provisions should be more proactively deployed against *bōryokudan*. The problem with this line of argument, the RICO advocates point out, is that the existing law would fail to deal with the considerable assets held by top-level bosses and executives derived from *jōnōkin* (ibid. 53); under the provisions of Article 19 of the criminal law, only assets that can be directly linked to crimes can be seized (*Bōryokudan Taisaku Roppō* 1997, 480).

Katō also attacks the failure to include outright criminalisation of *bōryokudan* membership in the new law. Having gone to the trouble of providing a legal definition of *bōryokudan* clearly identifying them as criminal organisations, why stop at administratively curtailing their 'violent demands'? Given that the constitutionality of the *bōtaihō* is already questionable, and that the constitution is interpreted loosely in other areas, the argument that criminalisation would violate the constitution's guarantee of freedom of association lacks force. It seems

reasonable to assume that there are therefore more practical reasons for excluding this measure from *bōryokudan* countermeasures.

One such reason is that, despite the apparent simplicity of criminalisation, there are clear operational problems in applying it within the Japanese context. Police figures for 1989 give total *bōryokudan* membership of 86,552 identified men (*Keisatsu Hakusho* 1989, 15). The Japanese prison population in the same year was only 45,736 (*Hanzai Hakusho* 1997, 252). Would criminalisation result in almost trebling the overall prison population? Regardless of the cost of such a measure, would it be desirable? In the vacuum left by mass *bōryokudan* incarceration what sort of groups would appear to meet consumer demand and take control of legally prohibited markets? Even mass-fines could overload Japan's creaky judicial system to the point of collapse.

Katō argues that even if a criminalisation law is not introduced, it is possible to employ the Subversive Activities Prevention Law (*hakai katsudō bōshi hō* or, more simply, *habōhō*) to order the disbanding of organised crime groups. This law has largely fallen into disuse, because of its discredited history as a tool for attacking left-wing students and other radical groups, and its use remains politically sensitive. It would indeed be ironic for it to be used as an anti-*bōryokudan* measure, because politicians had mobilised a shock-force of *tekiya* street-fighters to counteract the demonstrators trying to prevent this law's enactment.



It is similarly argued that other laws, already existing in the criminal code, could be more robustly employed to drive *bōryokudan* groups out of existence. Katō identifies the 1926 Law Concerning the Punishment of Violent Activities (*bōryoku kōi nado shobatsu ni kan-suru hōritsu*) as being particularly useful since it includes provisions dealing with collective violence and the showing of a group's threat (Article 1), customary and collective blackmail and intimidation in interviews and discussions (Article 2) and entrusting others to commit acts of violence (Article 3) (*Bōryokudan Taisaku Roppō* 1997, 516). As mentioned above, although this law was used largely to suppress left-wing dissent, at the time of its introduction it was claimed to be a law specifically to combat the *yakuza*. Although Katō claims that Article 2 of this law could be used to deal with *minbō* and *sōkaiya* scams, the way in which many of these activities are at the margins of legality would make practical application very difficult. It is precisely this grey-zone which the *bōtaihō* is designed to tackle.

It would be satisfying to show that the existing criminal law contained all the necessary provisions to adequately combat the *bōryokudan*. If this were the case then it would be reasonable to conclude that the *bōtaihō* had been introduced for the purely symbolic reason of showing, to both the domestic and international audience, that the authorities were 'getting tough' with the *bōryokudan*. Several academic as well as senior and retired law-enforcement-related interviewees asserted that the legal structure prior to the *bōtaihō* was indeed sufficient to control these groups.

However, it is by no means certain that courts would accept stretching the law to encompass scams which the *yakuza* had painstakingly developed to avoid infringing those same laws. In this respect, the *bōtaihō* does seem to have a role that is not adequately filled by other laws.

The criticism that the existing laws should be employed more robustly does not seem to be a coherent criticism of the *bōtaihō*. The introduction of this new law does not logically preclude a more aggressive use of these other laws. The mistake of many critics of the *bōtaihō* was to fall under the spell of its hype and to see it as an all-encompassing *bōryokudan*-countermeasures law. If we view it more realistically as one weapon in a wider armoury, then this criticism loses relevance. Whether the introduction of the *bōtaihō* was matched with stricter enforcement of other laws, will be investigated in the following chapter.

Katō's final criticism of the *bōtaihō* was that it did not include provisions covering those areas not adequately dealt with under the existing law; money-laundering, electronic surveillance and police sting operations (*otori sōsa*). Limited money laundering provisions had been introduced into the drugs legislation of 1991 as will be discussed in chapter six. Chapter six also details the constitutional problems with wire-tapping and legal prohibitions on sting operations.

## CONCLUSION

The *bōtaihō*, despite its description as epoch-making, is a comparatively mild OC countermeasures law. Compared to either the European model of criminalisation, or the United States' RICO statutes (both of which were highly influential in the debate within Japan on framing new OC laws), its scope and penalties are small. Given that this is the case, the question must be asked whether the authorities are serious in their professed aim of *bōryokudan* eradication. For a comprehensive anti-*bōryokudan* drive, the introduction of the *bōtaihō* would need to be accompanied by significantly increased use of the existing criminal law.

The influence of *gaiatsu* and the reaction to repeated political scandals as catalysts in the creation of this law suggest that a certain degree of symbolism may be involved. However, it seems fair to accept that the new law does have a role to play in reducing the adverse effects of *bōryokudan* intervention in the private and business affairs of law-abiding members of society. To what extent this has been successful will be examined in the following chapter.



## CHAPTER FIVE

### HEISEI YAKUZA – BURST BUBBLE AND BŌTAIHŌ

#### SCANDALS

Around the same time as the *bōtaihō* was being prepared and passed through the Diet, a succession of scandals came to light which provided the world with a glimpse of the nature of the relationship that the *bōryokudan* enjoyed with both business and political elites. These incidents also illustrated clearly that the police estimates for *bōryokudan* income discussed in chapter three significantly underplayed the amounts of money that these groups were generating from financial and business sectors through both the provision of various protection services and more straightforward extortion. Most significant of these incidents were the Sagawa Kyūbin scandal (with its related scandals of the Kōmintō and Heiwa Sōgō Ginkō incidents) and the Itoman scandal.

Although throughout the early post-war period of the 1950s and 1960s, the links between politicians and underworld figures had been, more or less, openly displayed, since the 1970s it had been generally felt that such open connections were no longer an electoral asset. By 1979, when Stark was conducting his fieldwork, the operation of the *bōryokudan*-centred ‘clique’ occurred behind closed doors. Whilst cases of *bōryokudan*-related politicians appeared from time to time,

they tended to involve individuals who had fallen into serious debt and lacked more acceptable financial backing. However, the complex web of the Sagawa Kyūbin scandal revealed that the two most powerful and well-funded politicians in Japan at the end of 1980s were making direct use of the *bōryokudan*.

In 1992, prosecutors started investigating the activities of Sagawa Kyūbin, a parcel delivery company. During the course of these investigations it became apparent that, in 1989 Watanabe Hiroyasu, the then president of Tokyo Sagawa Kyūbin, had provided Kanemaru Shin, then LDP vice-president and king-maker, with ¥500 million (£2.2m) in cash. Approximately one hundred other politicians also received money, totalling more than ¥2 billion, from Watanabe including those in positions of influence in the Ministries of Transport and Labour. Because of the highly regulated nature of this particular industry, Sagawa Kyūbin had found it prudent to maintain good relations with important political figures<sup>1</sup>. Watanabe also used his connections with Kanemaru to keep Tokyo Sagawa Kyūbin's bankers from causing trouble over the company's outstanding debts, which at the time stood at around ¥500 billion (£2.2bn) (*Japan Access* 31/8/1992). As the investigation continued however, it revealed more than a simple case of business-political corruption.

In May 1987, a party was held at the Tokyo Prince Hotel in Minato ward as part of Takeshita Noboru's campaign to gain the LDP nomination for Prime Minister in the forthcoming general election. During the course of this event, seven armoured

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<sup>1</sup> As mentioned in chapter two, this type of business is also highly susceptible to delays and pilfering. As a consequence, Sagawa Kyūbin also paid Ishii Susumu, head of the Inagawa-kai, to protect deliveries against these eventualities.

trucks equipped with public-announcement equipment (*sendensha*) circled the hotel with their speakers blaring out exhortations to “support Takeshita for prime-minister for the straight reform of politics”. Over the following months, these trucks cruised round Nagatachō, Japan’s political centre, encouraging people to “make Takeshita prime-minister – in all Japan he’s the best at making money”. Far from furthering Takeshita’s political ambitions, the purpose of this campaign was to destroy Takeshita’s career with a tactic known as ‘*homegoroshi*’ (killing with praise).

This black propaganda campaign was launched by an obscure extreme right-wing organisation, of about forty members, from Kagawa prefecture called the Nihon Kōmintō (which translates roughly as the Emperor’s Subjects’ Party of Japan). This group had been founded by the former Shirakami-gumi gang under-boss (*gashira*), Inamoto Torao, who had left his gang, to follow a political career, when it was taken over by the Yamaguchi-gumi in the early 1970s. Inamoto retained his links with his former gang through gang-boss Shirakami Hideo, who became the Nihon Komintō’s advisor. He also held a brother relationship with Takumi Masaru, then one of the most important and able men in the Yamaguchi-gumi who occupied the post of *gashira hōsa* (assistant under-boss) and later became *gashira* (under-boss).

In response to the Kōmintō’s *homegoroshi*, a number of parliamentarians from Takeshita’s faction approached Inamoto to try and persuade him to cease this attack. Most notable of these politicians was Hamada Kōichi, who had formerly been a full member of the Inagawa-kai and still retained a nodding acquaintance with the



underworld. Despite this persuasion, Inamoto refused to call his trucks back to Kagawa prefecture.

Therefore, late in the summer of 1987, Kanemaru approached Watanabe, the Tokyo Sagawa Kyūbin president, and discussed the problem with him expressing the fear that if the Kōmintō continued to undermine Takeshita, then prime minister Nakasone might withdraw his nomination of Takeshita as his successor. In response to this, Watanabe suggested that Ishii Susumu would be the person best qualified to deal with the Kōmintō. Kanemaru therefore entrusted Watanabe to seek Ishii's help.

In turn Ishii approached Mikami Tadashi, the boss of an Aizu-kotetsu sub-group, with whom Ishii enjoyed a close relationship. Mikami also knew Inamoto and was therefore capable of introducing the two men. Inamoto refused to accept money but agreed to stop his propaganda campaign if Takeshita were to go and apologise to his former patron, Tanaka Kakuei, for betraying him. Mikami fixed the day for this visit for October the fifth. However, when Takeshita went to make his apology, he called it off at the last minute due to the large number of press reporters waiting at the gates for him. Eventually, the following day, Takeshita appeared at the gates of Tanaka's compound in Mejirodai to pay his respects only to find that, once more, the assembled ranks of the press were waiting for him. Both Inamoto and Mikami had tipped them off.

In February the following year, Kanemaru approached Ishii directly to resolve another problem. Hamada Kōichi, the former Inagawa-kai member and parliamentarian, had publicly called a colleague a murderer. Kanemaru wanted Hamada to resign from his position as chairman of the Lower House Budget Committee as penance for this and secured Ishii's help in persuading him to do this. Ishii was also responsible for silencing right-wing criticism of Kanemaru following his trip to North Korea in 1990. In December of 1988, Kanemaru personally thanked Ishii by inviting him to a high class Japanese style restaurant. The public testimony given later by one of those present reveals that both Kanemaru and Ishii offered the other the place of honour at the head of the table. Furthermore Kanemaru praised Ishii's 'thing' as 'real chivalry' (Mizoguchi 1997, 114-125; *Kyōdo* 1993, 118-128; Schlesinger 1997, 246; *Reuters* 05/11/1992; *Japan Access* 10/08/1992).

These extraordinary revelations beg two questions: firstly, why did Inamoto launch his negative publicity campaign against Takeshita? Secondly, why did Takeshita and Kanemaru treat such a small and insignificant political group as the Kōmintō so seriously? The usual answer provided at the time by the press to the first question is that Inamoto was outraged by the way in which Takeshita had betrayed his mentor and patron, Tanaka Kakuei. Takeshita had secretly created a faction within the Tanaka faction and, alongside Kanemaru and their lieutenant Ozawa Ichirō, used this to usurp Tanaka's position as power broker and financial fountainhead. The fact that Inamoto refused offers of ¥3 billion (£12.6m) at the time (though he later

received a small 'political contribution' of ¥50 million from Ishii) would seem at first glance to support that<sup>2</sup>.

*Kyōdo* (1993) however suggests an alternative explanation that Inamoto had had a financial relationship with Takeshita's office in his home constituency in Shimane prefecture. This had later been terminated and Inamoto intended to wreak his revenge on Takeshita for this. *Kyōdo* cites the executive of the Nippon Seinensha, a right wing organisation with links to the Sumiyoshi-kai, to illustrate the prevalence of this type of link in Japanese politics:

In elections, a number of LDP candidates are running in the same constituency. If a local right wing group backs one candidate, then other right wing groups quickly appear on the scene. Nearly all LDP Diet members have these links<sup>3</sup>. However, in front of the microphone, they make out that *bōryokudan* and right wing extremists are disgraceful.

(*Kyōdo* 1993, 130)

If this hypothesis were correct, it seems probable that other commentators would have picked up on the Kōmintō's links to Takeshita. Admitting this link to the public prosecutors during the subsequent investigation of this scandal would have

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<sup>2</sup> This need not necessarily follow. When targeting banks with propaganda trucks, right wing groups frequently refuse money from their first victims so as to make it easier to collect money from future victims.

<sup>3</sup> Yamada Hitoshi, head of the Japan Bar Association's *Bōryokudan* Countermeasures Committee, suggests that the current level of LDP parliamentarians with links to extreme right-wing groups is between 10-20% (interview Tokyo, 1998).



been perhaps the best revenge that the Kōmintō could bring on Takeshita.

Another, more murky, explanation is put forward by Mizoguchi Atsushi in “*Gendai Yakuza no Ura-chishiki*” (1997) in which he connects the Kōmintō incident to an earlier scandal surrounding the take-over of the Heiwa Sōgō Bank (hereafter HSB) by the Sumitomo Bank in 1986. By 1985 HSB was extensively debt-ridden and threatened by take-over. It did however have an extensive network of branches in the Tokyo area and this made it attractive to Sumitomo Bank which lacked a strong presence in the capital. After a power struggle within the company, Komiyama Eiichi, whose family had founded the firm, retired and sold his 33% holding of HSB to one of the bank’s major creditors, Satō Shigeru, for ¥8 billion (£26m) in 1985. Satō, president of Kawasaki Teitoku, was a businessman with extensive connections within both the legitimate and underworld economies.

Within the HSB a group of senior executives was desperate to reject the attentions of Sumitomo. To this effect they contracted Ishii Susumu to prevent a take-over. This was facilitated by the fact that Ishii felt a debt of gratitude towards the bank after it had helped finance his mistress’s mansion block whilst Ishii himself had been in prison.

In order to secure their position, HSB also made efforts to purchase Satō’s 33% block of shares. Satō, however, refused to sell. HSB was then approached by

Manabe Toshinari, director of Yaesu Gallery in Tokyo. Manabe was a friend of Satō's and claimed that if HSB purchased a gold lacquer-work folding-screen, he would persuade Satō to sell the shares. The price Manabe demanded for his folding screen was ¥4 billion (£13m) whilst it had an estimated market value of only ¥120m. At the negotiations for this sale was Takeshita's private secretary, Aoki Ihei. At the time Takeshita was Minister for Finance and had the power to block or approve the proposed take-over. Part of the money from this sale was shared out by Satō and various Takeshita-related politicians and it is widely believed that Takeshita also received a cut.

Despite this, the shares were not sold to HSB. Moreover, Ishii had been persuaded to drop HSB. This was accomplished by giving him the chance to fulfil his lifelong ambition, that of owning a golf course. HSB owned a subsidiary company, the Taiheiyō Club, which owned a number of courses throughout Japan. Once it had taken over the HSB in August 1986, Sumitomo Bank disposed of Taiheiyō Club's assets and agreed to sell the Iwama Country Club Development Company to Watanabe of Tokyo Sagawa Kyūbin for ¥4.8 billion (£19.4m). The company was placed under the management of Satō and a trusted associate of Ishii's. Not long after the development permission had been obtained in 1988, 60% of this company was obtained by one of Ishii's front companies (*Kyōdo* 1993, 94-115; Mizoguchi 1997; 119-125, *Tokyo Business Today* 12/1994).

Mizoguchi argues that, having been swindled over the sale of the folding screen, the HSB executives resisting Sumitomo's take-over, made use of their right-wing connections to strike back at Takeshita for permitting the take-over. This is made credible by the fact that HSB had earlier made use of the right-wing fixer Toyoda Kazuō to lobby the Diet over a scheme involving one of HSB's bad investments. Toyoda had been responsible for introducing Inamoto's former gang boss and Kōmintō political advisor, Shirakami Hideo, into politics (Mizoguchi 1997, 21).

A further twist to this scandal was provided by Ishii in 1989 when the Iwama Country Club issued receipts for fake membership licences through which Ishii raised ¥38.4 billion (£170m). The companies from which Ishii received this money included two of Japan's largest securities companies, Nomura and Nikko, as well as Tokyo Sagawa Kyūbin and two large construction companies. These 'memberships' were essentially worthless as the Iwama Country Club was public and did not operate a system of preferential membership. For all of these firms, however, Ishii had provided bodyguard or trouble resolution services (Nakagawa 1992, 234).

With this money, Ishii started to purchase shares of Tōkyū Dentetsu, a railway and property holding company. By the end of 1989, Ishii's holding in this company had reached 29 million shares (26% of the company). Nomura Securities then ramped the value of these shares by advising other clients to purchase Tōkyū Dentetsu. By November 1989 the share value peaked at ¥3,060 making Ishii's block worth on



paper ¥88.74 billion (£6.5bn). Unfortunately for Ishii, however, in January of 1990 the Tokyo Stock Exchange collapsed before he had realised this capital gain.

It seems that Ishii then sold the shares to a company belonging to his business partner Satō with the intention of pressuring Tōkyū Dentetsu to buy them back at a higher price (a technique known as green-mailing). When this did not happen, Satō later claimed that Inagawa-kai personnel came back to him and requested that he let them handle the situation. These Inagawa-kai executives implied that they would kill some Tōkyū bosses, if necessary, to encourage the others. Satō apparently persuaded the *yakuza* not to follow this strategy through (*Kyōdo* 1993, 241-2; *Tokyo Business Today* 12/1994).

The other case with which we are concerned is the Itoman scandal. This incident was the largest single financial scandal in post-war Japanese history and resulted in an unprecedented flow of capital from the legitimate economy to the *bōryokudan* and their associates. Although the full details of this incident remain unclear (due to Sumitomo Bank's taking over the Itoman Corporation before too many embarrassing revelations became public), enough is known to show another important facet of modern *bōryokudan* fund raising activity.

Itō Suemitsu was a typical product of the bubble economy of the 1980s. After aggressively expanding his father's wedding hall business in Hokkaidō, Itō quickly diversified into real-estate speculation in the Tokyo area and elsewhere. In 1985, he

made his biggest investment by purchasing 1,300 square metres in the Ginza area of Tokyo for ¥83.8 billion (£273m), on which he built a large development, the Ginichi Building. This building was then used by Itō as a never-ending source of funds.

In 1988, Itō raised a loan of ¥27 billion (£118m) using the Ginichi Building as collateral. He then lent this money to Ikeda Hōji, a former member of the Yamaguchi-gumi and, at the time, a business brother (*kigyō shatei*) of the same organisation. Not long after this, Itō also became a business brother of Takumi Masaru, the Yamaguchi-gumi's under-boss (*gashira*). It was at this point that the financial scandal began.

When Ikeda disappeared that year, Itō was left with Ikeda's collateral, shares in a sightseeing company, but no capital. However, in 1989, Nagoya Itoman Real-estate Corporation gave Itō ¥46.5 billion (£206m) in exchange for equal rights on the Ginichi Building which it wanted to use as its new Tokyo headquarters. In June the following year, Itō was made a director of Itoman. Thereafter, Itoman was systematically raped by Itō and his associates. Artwork was purchased at several times its market worth; money lent without adequate security; and equal rights on other properties held by Itō transferred for large sums. By the time of Itō's arrest in July 1991, it was estimated that between ¥500 – 600 billion (£2.1 – 2.5bn) had been diverted from Itoman to the criminal economy. Of that, ¥200 billion (£840m) had

reached the Yamaguchi-gumi (Mizoguchi 1998, 193-6; *Tokyo Business Today* 12/1994).

Taken together, these three incidents show the extent to which the modern *bōryokudan* were playing an integral role in the operations of both business and political life. They also show that, whilst in the case of the Itoman scandal the relationship between *bōryokudan* groups and legitimate commercial interests may be wholly predatory, this may not always be the case, and both political and business elite groups have been unforced consumers of the protective services that these groups provide. Moreover, as can be seen by the behaviour of Nomura Securities, these firms may be willing accomplices in the questionable business practices of *bōryokudan* groups.

Most significantly (and disturbingly) for the purposes of this research is, however, the glimpse allowed by the Kōmintō incident into the relationship between the elite power-brokers of the Liberal Democratic Party and Ishii, then head of one of Japan's largest criminal syndicates. In a world where such individuals are disputing over who should occupy the seat of honour at banquets in high class restaurants, the sincerity of the political establishment in its avowed commitment to eradicate the *bōryokudan* must be viewed with suspicion. This must be borne in mind whilst we look at the introduction and implementation of the *bōtaihō*.



There are further grounds for scepticism as to the likely effectiveness of the *bōtaihō*, in the light of what these three scandals show us about the nature of *bōryokudan* in the Heisei period. In particular the use of front companies and business associates, such as *kigyō shatei*, meant that such activities are not only harder to identify, but, until the second revision of the *bōtaihō* in 1997, fell outside the provisions of the new law altogether.

### BURSTING OF THE BUBBLE

The analysis provided in chapter three of the various ways in which *bōryokudan* make money shows clearly that, by the end of the 1980s, they were actively involved in many areas of the legitimate economy. Therefore, as mentioned above, an appraisal of the *bōtaihō*'s impact on the *bōryokudan* is made problematic by the effect of economic changes occurring around the time that the law was implemented. The most significant of these was the collapse of Japan's speculative bubble. From its peak in February 1989, the Nikkei index fell by 63% in just eighteen months whilst, between 1990 and 1994, the total market value of Japan's land dropped from ¥2,389 to ¥1,823 trillion. It has since been estimated that, in sum, this crash resulted in a total theoretical loss in value of ¥800 trillion (£3.1 trillion) (Hartcher 1998, 98-100).

## REAL-ESTATE AND STOCK MARKET SPECULATION

In chapter three it was claimed that, by the late 1980s, the largest single source of revenue for the *bōryokudan* was generated through land-sharking (*jiage*). With the collapse of land prices, this activity dried up, as property developers no longer saw a profit in large projects. Chapter three also relates how the more ambitious and capable *bōryokudan* members were themselves involved heavily in real-estate and stock market speculation. Frequently their investment portfolios had been high risk ones, which were entirely dependent on ever-booming stock and real-estate markets: money would be borrowed to invest in real-estate; this would then be used as collateral for further loans to reinvest in shares or more land.

When the markets crashed, *bōryokudan* were left holding property which was worth a fraction of their total outstanding debt. It should of course be emphasised that this investment strategy had not been unique to the *bōryokudan*, and many businesses and individual investors were left with debts that they were quite incapable of repaying. As we shall see, however, *bōryokudan* debtors represented particular problems to their creditors.

The most spectacular manifestation of the *yakuza*-related bad debt problem came to light with the collapse of the housing and loans companies known as *jūsen*. *Jūsen* first appeared in the early 1970s to fill a gap in the market for housing loans<sup>4</sup>. As

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<sup>4</sup> Japanese banks had traditionally confined themselves to a business clientele and had ignored small businesses and individual consumers.

non-bank financial institutions, *jūsen* were unable to take deposits and were therefore dependent on other institutions, such as the banks – under which most of these companies had been set up – for loans, which could then be re-lent to customers.

During the 1980s, however, the business environment in which the *jūsen* existed underwent a profound change. Businesses no longer relied on banks for finance, but started to raise capital by share issues in the buoyant stock market. As a consequence the banks were forced to seek other customers for bank loans and they came into direct competition with the *jūsen* companies. This seriously undermined the *jūsen*'s market; because the *jūsen* had been dependent on bank loans to finance their lending, the banks were able to offer more competitive rates of interest to the final customer. Furthermore, many *jūsen* had been dependent on their parent banks to introduce customers to them.

The *jūsen* were therefore obliged to lend to those businesses that failed to raise all their capital requirements from banks. Such businesses tended to be those where the risk of failure was higher. However, such was the desperation of *jūsen* companies for business, the level of scrutiny of prospective customers was low. In financing real-estate investment, however, *jūsen* reasoned that, with land as collateral, even if the debtor could not repay the loan, they would be able to recover their costs. This was, of course, dependent on continued high land prices.



By 1990, the Ministry of Finance (MOF) became worried about the level of land prices and, in March that year, it issued administrative guidance to the finance industry to restrict the funds made available to real-estate speculators. Unfortunately MOF left a loophole in this arrangement by not placing any restrictions on *jūsen* to borrow from agricultural co-operatives (*nōkyō*) and pump this money into the real-estate market. The volume of money flowing through this route quickly swelled as the agricultural co-operatives had confidence that the *jūsen*, which were subsidiaries of the top banks in the country and headed by former elite MOF officials, knew what they were doing (Mabuchi 1997, 10-5).

Unfortunately this was not the case:

All seven top *jūsen* commonly made loans against collateral with a value lower than that of the loan itself. They made loans to borrowers whom they knew to be using false names. They loaned for speculative stock buying, for *pachinko* parlours ... and for sex hotels. Many loans were made to companies associated with politicians. Most of the *jūsen* loans made after the 1990 restriction were paid to the companies of criminal syndicates (Hartcher 1998, 128).

By January of 1996 the total scale of the bad debt held by the seven *jūsen* companies was estimated at ¥6.4 trillion (£38bn). In addition these companies had a further ¥2.1 trillion of non-performing but salvageable loans (*Australian Financial Review* 23/01/1996). The proportion of this which was *yakuza*-related was not

clear. One sample of 93 loans made by the Sojo Jūkin Company contained 40 which had been made to *bōryokudan* (*National Business Review* 15/03/1996). Whilst it would be unsound to extrapolate from this small statistical base to conclude that 43% of all *jūsen* bad debt is held by *bōryokudan* members, this sort of proportion is in the mid-range of journalistic estimates (generally between one third and a half) as to the total scale of the problem. MOF sources cited by the *South China Morning Post* (31/05/1998) admitted that 'yakuza gangs and their front companies borrowed at least five trillion yen' from the *jūsen*.

When the names of the main *jūsen* debtors were eventually made public, the largest single borrower was an Osaka-based property development company called Suenō Kōsan. Suenō Kōsan had taken ¥186 billion (£1.1 bn) from five *jūsen* companies as well as ¥54 billion from other sources. Such was the strength of suspicion that Suenō Kōsan's president was himself a *bōryokudan* affiliate that a press conference was arranged by him to deny these charges (*Los Angeles Times* 24/02/1996). Whatever the accuracy of these protestations, it was clear that several of the company's buildings were occupied by Yamaguchi-gumi sub-group members whilst the nominal ownership of many of the most valuable assets had been transferred, therefore rendering the loans irrecoverable (Hartcher 1998, 128).

Whilst the *jūsen* debacle was the most spectacular manifestation of Japan's bad debt problem, it was just one aspect of it. Although Japanese accounting practices allow



banks and companies to conceal much of their debt<sup>5</sup>, by July 1998, the official figure for bad debts held by Japan's banks and non-bank financial institutions, was put by the new Financial Supervisory Agency at ¥35 trillion (£162bn) (*Financial Times* 18/07/1998). Although journalistic estimates vary widely from between 80% (*Los Angeles Times* 14/2/1996) and 5% (*Daily Yomiuri* 05/08/98), the most frequently quoted estimate of the degree of *bōryokudan* involvement with this total was 40%. This commonly accepted figure seems to be based on a survey of 49 loans carried out by an American private security and investigation company, Kroll Associates, for a prospective investor client. This survey was cited in an article by David Kaplan in *US News and World Report* in April 1998. This article was then picked up by a number of newspapers and magazines, both in Japan and outside, and, as a consequence, the 40% figure has acquired a quasi-official status.

The small statistical base on which this figure is built does not engender confidence. However support for this 40% figure comes from Miyawaki Raisuke, formerly of the NPA and currently a consultant on *bōryokudan*-related problems, who suggests that 10% of bad debt is directly tied to *bōryokudan* groups whilst 30% has some probable, indirect, connection (*Financial Times* 12/12/1995). The differences between these two types of involvement will be discussed below.

In December 1995, *Newsweek* magazine published an article which effectively

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<sup>5</sup> Changes in accounting regulations introduced this fiscal year (1999-2000) (requiring Japanese companies to consolidate the finances of subsidiary companies in their annual accounts) and the following financial year (in which assets must be valued at market value rather than book cost) are expected to alleviate these problems (*Economist* 27/12/99).



blamed Japan's bad debt problem and attendant economic woes on the *bōryokudan*. This is clearly not the case; the *bōryokudan* were simply part of a wider phenomenon of reckless speculation. If blame is to be apportioned, it should be directed largely at the banks, non-bank financial institutions and MOF bureaucrats for their lamentably poor scrutiny and regulation. *Bōryokudan* involvement does, however, make this problem much harder to resolve.

In August 1993, Koyama Toyosaburō, vice president of Hanwa Bank, was shot dead on his way to work. Koyama's duties had included recovering debts and, although his assailant was not apprehended, at the time it was widely accepted that his death was caused by *bōryokudan*. Several months before his death, Koyama had been responsible for approving a ¥590 million loan to a real-estate company run by the wife of a Yamaguchi-gumi sub-boss, Nishihata Haruo. This approval had been granted because Nishihata's group had been instrumental in silencing a monthly political magazine, which had been running a serial campaign exposing various scandals associated with the bank. It is possible that his death was related to this incident. Mizoguchi (1998, 192) however reveals that there were various other *bōryokudan*-related problems concerning Hanwa Bank. Most alarming is the disclosure that bitterly competing factions within the bank made use of political organisations and *bōryokudan* to thwart their rivals. When, in 1996, MOF announced that Hanwa must stop trading, a list of 'special investments' contained categories for *bōryokudan* and political group debts.

Also in 1993 a number of fire-bomb attacks on Sumitomo Bank executives' homes were recorded. Several branches were disrupted after their locks were filled with glue. In September the following year, Hatanaka Kazufumi, the manager of the Nagoya branch of the Sumitomo Bank, was shot dead as he opened his front door to talk to what he thought was someone apologising for damaging his gate with his car. Police investigating this murder, convinced that the bank was not entirely forthcoming with relevant information, took the unusual step of impounding Hatanaka's desk and filing cabinets. An NPA official, writing under the pseudonym of Sakurada Keiji, attributes the bank's reticence to the links Sumitomo had forged with *bōryokudan* figures during their highly aggressive business activities in the years of the bubble economy. Sakurada further floats the hypothesis that the murder relates to Sumitomo's involvement in the Heiwa Sōgō Bank Scandal (*Tokyo Business Today* 12/1994).

However, Yamada Hitoshi, head of the Japan Bar Association's anti-*bōryokudan* committee, more plausibly identifies the cause of the Hatanaka killing in this way:

Sumitomo had a policy of collecting collateral no matter what and they started using crime syndicates to collect on loans connected to other crime syndicates. Sumitomo's loan collection efforts drove the head of the Aizukotetsu gang into suicide in Kyoto and then another gang leader killed himself in Tokyo. At this point, gangsters started to realise they could be next so they murdered the Nagoya branch manager who had been most

aggressive at trying to collect on such loans (*South China Morning Post* 31/05/98).

As a consequence of this attack, MOF granted Sumitomo Bank permission to write off ¥500 billion (£3.2bn) worth of *bōryokudan*-related debts tax-free. The other major banks were also all allowed to similarly write off their most problematic loans (*ibid.*). In total, by 1997, 21 major financial institutions had been allowed to write off ¥20.5 trillion (£103.5 bn) (Konishi 1997, 101).

When attempts were made by the present writer to confirm this analysis of the Hatanaka murder at the NPA, one interviewee chuckled that Sumitomo was by no means exceptional in its links with *bōryokudan*.

This type of problem has not been confined to Japanese financial executives. In 1998, there was a spate of newspaper articles concerning increased interest amongst foreign investors in salvaging problem Japanese loans. This was, in part, stimulated by an attack on two employees of Kroll Associates who were investigating the ownership of various properties in which their clients were interested. In another case, in 1997, a fire at the home of an executive of Cargill, a large American company which had invested in Japanese bad debt, was widely interpreted as *bōryokudan*-related arson though no arrests were made. By May 1998, Ishizawa Takashi, of the Long Term Credit Bank's economic research division, was reported as claiming that American financial institutions investing in Japanese bad debt were subject to five attacks per month (*South China Morning Post* 31/5/1998). *Shūkan*



*Jitsuwa* (25/6/1998) claimed that two representatives of the American CIA had been sent to Japan earlier that year to gather information and liaise with MOF about *bōryokudan* involvement in Japan's bad-debt problem.

The circumstances surrounding the murders of Koyama and Hatanaka illustrate two important points. Firstly, that, in the words of lawyer Miyazaki Kenrō:

Generally speaking, if a company has trouble with *yakuza*, it is fair to assume that it had a friendlier relationship with them in the past...This cynical marriage of convenience is at the root of the troubles besetting the Sumitomo group and others....The rule is: if you hire *yakuza* for any reason, you leave yourself open to attack by them later on (*Tokyo Business Today* 12/1994).

Secondly, that the collapse of the speculative bubble and the consequent economic recession generated new business opportunities for the *bōryokudan*, in this case, an increased market for debt collection, just as established economic activities, such as *jiage*, lost viability. The rapid adaptation of the *bōryokudan* to the changing economic climate illustrates once more the highly flexible and amorphous nature of organised crime. These developments will be considered below.

## BANKRUPTCY MANAGEMENT

The level of bankruptcies in Japan, always high by international standards, became more severe in the 1990s. As can be seen from table 5.1 below, although the number of bankruptcies grew only moderately, the total value of liabilities shot up dramatically. There was therefore considerably more scope for money to be made from this type of activity than had been the case during the 1980s.

Table 5.1 Bankruptcies in Japan 1987-1997

Year	Number of Bankruptcies	Liabilities (¥bn)	Liabilities/GDP (%)
1987	12,655	2,122	0.6
1988	10,122	2,001	0.53
1989	7,234	1,232	0.30
1990	6,468	1,996	0.46
1991	10,723	8,149	1.77
1992	14,069	7,601	1.61
1993	14,564	6,848	1.44
1994	14,061	5,629	1.17
1995	15,108	9,241	1.91
1996	14,834	8,124	1.62
1997	16,464	14,054	2.76

Japan Economic Institute of America, 1998

Although bankruptcy management is a specialised area of *bōryokudan* business dealt with in chapter three, this type of *shinogi* became potentially more lucrative during the 1990s. It also experienced changes since the late 1980s and therefore merits revisiting here. Despite the larger pot of money available, in various ways bankruptcy management has become harder than in the 1980s (Yamada 1994b, 300). Mizoguchi (1998, 190-1) identifies a number of reasons for this. The first is that companies increasingly rely on lawyers to oversee their liquidation.

Alternatively, companies may undergo the procedure set up under the provisions of the Company Resuscitation Law. In addition, the police *bōryokudan* counter-measures sections (*bōtaishitsu*), set up in the early 1990s, are prone to intervene quickly when they suspect *bōryokudan* involvement in bankruptcy management. Finally, and perhaps most significantly, Mizoguchi claims that people are now less afraid of *bōryokudan*.

As a consequence of these problems, it is easier instead to attach oneself to a company before it goes bankrupt and exploit it from the inside. A classic case of this was the Itoman scandal discussed above.

### **AUCTION OBSTRUCTION - *KYŌBAI BŌGAI***

In the light of these problems facing *bōryokudan* should they involve themselves with bankruptcy management, other techniques for exploiting bankrupt companies have come to prominence. The most significant of these has been *bōryokudan* obstruction of property auctions (*kyōbai bōgai*). This type of activity can take many forms but effectively *kyōbai bōgai* involves artificially depressing the value of a property to be sold. The ability to do this can be profitable to *bōryokudan* in three different ways. Firstly, they may continue to use the property as before following the auction's collapse. Secondly, they may hope to acquire the property cheaply



and then sell it on at its market price. Thirdly, they may be paid money to vacate the premises by those wishing to sell it.

Originally, auction obstruction had been rampant in the real-estate industry, leading to the creation of the term *kyōbaiya* to describe individuals involved in this business. These specialists would turn up at auctions and intimidate other potential purchasers. If a property had not been sold on the first day of auction, its reserve price would drop by 20%. *Kyōbaiya* would make use of this fact to purchase property cheaply. In 1979, in an attempt to clean up this business, a system of sealed bids (*kikan nyūsatsu*) was adopted under which, it was hoped, such intimidation would no longer be possible. However, as we have seen before, a change in the law does not necessarily eradicate a problem; more frequently it causes the form that the crime in question takes to change. In this case, the auction specialists evolved into occupation specialists (*senyūya*).

There are five main ways in which *bōryokudan* come to occupy property under threat of auction. The most direct route is for the *bōryokudan* group or individual members themselves to have purchased the property concerned with borrowed money that cannot be repaid. The property is then lawfully occupied by the group concerned, or let to another group.

Alternatively, *bōryokudan* might enter premises via the high-interest-rate-lending route. As a company's financial position deteriorates, it will often turn in

desperation to high-rate money-lenders with *bōryokudan* connections or *bōryokudan* themselves. As collateral the lenders will acquire the short-term leaseholder's rights to the property. This is the classic mechanism by which *bōryokudan* become involved in auction obstruction.

The third way in which criminal syndicates can occupy threatened property is through their involvement in conventional bankruptcy management. Having hijacked a financially distressed company, the *bōryokudan* 'consultant' uses the company's seals to dispose of its assets and therefore take control of the property.

Surprisingly enough, property owners themselves frequently approach *bōryokudan* groups, enter into conspiracy with them and grant short-term rights to them. In these cases, the objective is to deter the owner's creditors from closing in and recovering their debts. In many cases of problem real-estate-related loans, the properties in question have multiple mortgages on them. Should the property be sold, the first mortgage holder will recover nearly all of the revenue from the sale whilst the third and fourth mortgage holders receive little. These lower priority mortgage holders may therefore sell their rights to *bōryokudan*.

The final way in which *bōryokudan* may come to occupy a property is by simply pretending to be a legitimate company or ordinary occupants.

In order for leaseholders' rights to be effective, they must have been established prior to the decision to sell the property in question. Frequently, therefore, the contract is forged to predate the announcement of auction. Forged contracts usually contain clauses empowering the occupant to sub-lease and alter the building's interior. Such forgeries are difficult to detect if the *bōryokudan* group is working in conspiracy with the owner or has hijacked the company.

Once occupation has been achieved, the standard practice is to advertise the fact by displaying *bōryokudan* affiliation from windows and on doorplates. Alternatively, an armoured public-announcement truck festooned with right-wing paraphernalia parked outside the property provides a clear signal to prospective purchasers. A name card, showing gang-affiliation, may be inserted in the public notification of sale. If these tactics prove insufficient, more direct intimidation remains an option, though this runs the risk of criminal prosecution. More sophisticated occupation specialists may prefer to entrench their position by establishing a factory on the site and claiming special rights due to the scale of capital investment. If the aim is to reduce the value of the property this may simply be achieved by damaging it in some way or dumping industrial waste around it.

The increasing number of cases of property subject to civil execution procedure shows the potential for this type of activity. During the bubble period there were between 1,500 and 2,000 new cases each year dealt with by the Tokyo district court. By 1993, this figure had increased to about 6,000 and, in the first eight months of 1998, 5,100 (Ishibashi 1998, 119). Moreover, the low economic costs and legal



risks, combined with the high potential rewards, of this business make it an attractive form of *shinogi*.

Like many other areas of *bōryokudan* activity, gangster occupation of buildings can be highly difficult to deal with under Japanese law. In particular, the way in which Japanese law provides greater protection to tenants than landowners enables this type of activity to be profitable to *bōryokudan*. However, under the criminal law, cases of forged documents, falsifying official documents and forcibly obstructing civil proceedings can be prosecuted. In addition, in recent years the courts have become prepared to interpret intimidation more flexibly. This can be seen from the 1991 Matsuyama district court ruling that the insertion of a *bōryokudan* name card into the binding of a report on the particulars of real-estate for sale was intimidation (Konishi 1997, 110).

In most cases, however, the onus is on the civil law to deal with cases of *bōryokudan* occupation of property. Here also there is perhaps a tendency to a more robust application of the available laws by the authorities. This is suggested by the first case of forced eviction of *bōryokudan* from an occupied property in July 1997.

The Housing Loan Administration Corporation (HLAC, *Jūsen Kinyū Saiken Kanri Kikō* or *Jūkan Kikō*)<sup>6</sup> successfully persuaded Kumamoto District Court that the occupation by *bōryokudan* members of rooms in a mansion block was tantamount to

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<sup>6</sup> The quasi-governmental organisation set up in 1996 to dispose of the problem loans of the *jūsen* debacle.

auction obstruction as the value of the property had fallen dramatically as a consequence. The following month, the HLAC won a case in Kanazawa forcing *bōryokudan* to vacate premises used as a gang office (Konishi 1997, 99). In addition to the more robust stance taken by the courts, credit for these successes should be attributed to the HLAC. Under its ex-lawyer president, Nakabo Kōhei, the HLAC adopts the uncompromising stance vis-à-vis this problem that has been conspicuously lacking in Japanese banks.

There is also evidence that, in recent years, the police have attached greater priority to *bōryokudan* activity of this type. In February 1996, the NPA set up the *Kinyū Furyō Saiken Kanren Jihan Taisaku Shitsu* (Finance and Bad Debt-Related Crimes Countermeasures Room) to deal with this problem. Possibly as a consequence of this, the number of arrests made by the police for crimes of this type has risen dramatically since 1996. This is shown in Table 5.2 below. It is probable that this increase reflects this change in priority rather than a change in the level of actual crimes of this type. Despite the rise in arrests, it should be noted that the absolute numbers are small in proportion to the scale of the problem.

Table 5.2 Arrests for *Bōryokudan* Finance and Debt Reclamation-Related Crimes

1994-98

	1994	1995	1996	1997	1998
Total	8	18	55	79	85
Debt-Reclamation-Related	6	13	51	77	74
Finance-Related	2	5	4	2	11

*Keisatsu Hakusho* 1999

Although the legal climate in which auction obstruction occurs is slowly changing, it still remains a significant problem for the resolution of Japan's bad-debt crisis. Even if the occupation is clearly illegal, it is difficult to deal with. As will be discussed in greater depth in the concluding chapter, this is because the civil law procedures to deal with problems of this type function so slowly and expensively, that it is frequently more cost-effective either to pay the occupants to leave or to hire another *bōryokudan* group to solve the problem.

Konishi likens the relationship between obstruction and its legal countermeasures to that between a virus and its vaccine: the virus quickly evolves immunity to the latest vaccine (1997, 109). As has been shown in preceding chapters, the same could be said for *bōryokudan* countermeasures generally.

### **LOSS-CUTTING – *SONGIRI***

In addition to auction-obstruction, another development in *bōryokudan* economic activity, which can be directly attributed to the economic consequences of the bubble bursting, is the appearance of loss-cutting specialists (*songiriya*). The way in which *songiri* operates is perhaps best illustrated by an example cited during an NHK special investigation into *bōryokudan* business associates. During the bubble period financial institution 'A' lent ¥350 million to company 'B' managing a mansion block. With the collapse in the bubble economy, the company was unable to repay the loan and the collateral became worth a fraction of the outstanding debt.



At this stage the *songiriya* appeared. Having gained the appropriate powers of attorney from the financial institution, this individual negotiated with the debtor and persuaded it to settle the debt with a payment of ¥40 million (merely 11.4% of the outstanding debt not including interest payments). The debtor paid a further ¥20 million to the *songiriya* as thanks for reducing its debt burden by so much.

This type of activity is legal. This begs the question, why is it an activity dominated by *bōryokudan* and their business associates? The answer to this is that, although it is not illegal, to be effective it relies on the implied threat of *bōryokudan* association. The further obvious question is why creditor and debtor don't negotiate directly. Each would have been better off by ¥10 million if they had cut out the middleman and settled the debt with a ¥50 million pay-off. It seems likely that the reason that this does not happen is the debtor has, in some way, a connection with a *bōryokudan*. In other negotiations, covertly filmed during the programme, this was indeed the case.

The figures given in the NHK example seem questionable. More plausible are those given by Hinago (1998, 166) in which his *songiriya* interviewee suggests a debt of ¥5 billion might be reduced to ¥3 billion for which the *songiriya* might receive 3% (¥90 million). This seems in line with the 3% commission that *bōryokudan* typically received for *jiage* services or from construction companies. Hinago's source also claims that with the exception of Tokyo Mitsubishi Bank, all of the large banks are prepared to deal with *songiriya*.

Regardless of which of these two sources is more accurate, it is clear that this business is highly lucrative. The *songiriya* interviewed during the NHK special claimed an annual income of over ¥100 million.

It is important to note that the post-bubble developments in *bōryokudan* economic activity require a degree of financial expertise. Though there will always exist a niche within the organised criminal economy for those whose skills are confined to the deployment of violence, the opportunities for such individuals within this new environment are now reduced. Whilst the *bōryokudan* elite may be economically secure, what will the implications be for an under-employed mass of unskilled *bōryokudan*? This becomes especially pertinent when we consider that the *bōtaihō* specifically targets those activities which make use of the implicit threat of these thugs being unleashed. The unequal nature and highly divergent levels of ability within *bōryokudan* society is a most important consideration in our evaluation of the effects of economic and legal changes on it. This should be remembered during the following discussion on the implementation of the *bōtaihō*.

### THE *BŌTAIHŌ*

Even before the introduction of the new law, the *bōryokudan* were taking measures to minimise any adverse impact on their operations. Of the large syndicates, the Yamaguchi-gumi took by far the greatest steps to prepare for the new law (Mizoguchi 1992b, 246). Towards the close of 1990, at a monthly meeting

(*teireikai*) attended by all direct members of the Yamaguchi-gumi, the executive committee (*shikkō-bu*) warned those assembled, each of whom was a gang boss in his own right, that a new law was under consideration. In order to protect the headquarters from the threat of RICO-style seizure, it was decided to purchase third-generation boss Taoka's house and register it in the names of all direct members. To this end, at the beginning of 1991, each member contributed ¥10 million (£42,000) (Yamada 1994b, 183-4).

At the monthly meeting on the 5 March 1991, by which time the 'basic considerations' had been published, the meeting went on for longer than usual and it was reported that the discussion had concentrated on ways in which to deal with the proposed new law. The day after the meeting, the executive committee sent fax messages to each of the sub-bosses responsible for the regional blocks instructing them that gang signs were to be removed from the outside of all gang offices. By the tenth of March, roughly half of the 1,500 Yamaguchi-gumi gang offices around Japan had complied with this (Yamada 1994b, 183-6). This was clearly to pre-empt the provisions of what became Article 29 of the *bōtaihō* which made the display of gang paraphernalia susceptible to the threat of a Public Safety Commission injunction.

In addition, each regional block was instructed to set up a study group to examine the new law's provisions. This increased the importance of the regional blocks, which had hitherto largely existed for the twin purposes of ensuring good communications and fostering amicable relations between the various groups within a certain geographical area (in much the same way as the Kantō Hatsuka-kai). Just



before the implementation of the *bōtaihō*, the monthly meeting of all direct group members was also cancelled in favour of block-level meetings. The new law therefore stimulated the move to an increasing role for the regional blocks and we can therefore say that the law has caused not only operational change, but also organisational restructuring within the Yamaguchi-gumi.

Under the guidance of the criminal defence lawyer Endō Makoto, the headquarters also formed an eleven-man study group including the *gashira*, Takumi Masaru, and headquarters' chief, Kishimoto Saizō.

At the April 1991 general meeting, the direct members were issued with further instructions to sever all connections with the police, not to co-operate with them at all and not to let them into gang offices without a search warrant. Although the Yamaguchi-gumi had long had a far worse relationship with the police of Osaka and Hyōgō prefecture than that enjoyed between the more politically savvy Tokyo syndicates and the MPD, a limited degree of communication and co-operation had existed. Following the April directive, all such co-operation officially ceased.

Whilst it severed its relations with the authorities, the Yamaguchi-gumi put effort into establishing better relations with the other major criminal syndicates. During May and June, senior executives played golf and had meals with their peers in the Inagawa-kai and Sumiyoshi-kai. On 27 September 1991, senior representatives of the four largest syndicates, the Yamaguchi-gumi, the Inagawa-kai, the Sumiyoshi-kai and the Aizu-kotestu, held a '*gokudō* summit' at a restaurant in the Asakusa area

of Tokyo. At this meeting it was agreed, amongst other things, not to cause annoyance to ordinary members of the public, not to invade each other's territory, and not to accept as gang members those individuals who had been expelled from other groups. It was clear that the *bōryokudan* were, above all else, attempting to minimise the risk of inter-syndicate conflict (Yamada 1994b, 406; *Japan Access* 13/1/1992; Mizoguchi 1992b, 252).

The following year, on the 22 February, a larger, secret 'gokudō summit' of about forty senior *bōryokudan* figures was held somewhere in the Kansai area. As well as the bosses of the four syndicates mentioned above, in attendance were the leaders of the other three syndicates ear-marked by the police for the first-wave of designation under the *bōtaihō*. These were the Kyōsei-kai, the Gōda-ikka and the Kudōrengō Kusanō-ikka (based in Hiroshima, Yamaguchi and Fukuoka prefectures respectively). Together these syndicates comprised over half of the total *bōryokudan* strength as identified by the police. Apart from a general agreement to refrain from inter-group conflict and upsetting the ordinary public, it is not clear what was discussed at this meeting (Yamada 1994b, 245-6). However, from the widely different reactions to the process of designation, it is reasonably clear that no workable agreement as to a common front in opposition to the *bōtaihō* was achieved.

In addition to high-level diplomacy within the *bōryokudan* world, the Yamaguchi-gumi launched a charm-offensive aimed at affecting public opinion. As part of this



strategy, the syndicate donated money, including ¥10 million from Watanabe Yoshinori, to various charities and emergency appeals (something that Taoka had done in the mid-1960s just after the launch of the first summit strategy but had not been carried out since)<sup>7</sup>. The Yamaguchi-gumi also set up a political organisation 'The National Purification League' (*Zenkoku Kokudo Jōka Dōmei*), supposedly having the purpose of eradicating drugs. To establish this league, as well as provide a fighting fund to deal with the new law, all direct members were required to pay ¥20 million in addition to their normal *jōnōkin* (Mizoguchi 1997, 57).

In January 1992, Yamaguchi-gumi *gashira* Takumi Masaru sent a secret fax message to each of the 115 direct members instructing them that they were to establish a corporate identity with the headquarters sited on the sub-gangs' offices. The deadline for this was the end of the month. Although the message ended with instructions that it be destroyed once the contents had been confirmed, the full text was leaked to the press. As a consequence of this, sensitive messages are no longer sent by fax but are transmitted by word of mouth or telephone (Yamada 1994b, 240).

The urgency of this message reflects the strong sense of unease at the time that the new law would make it impossible to operate gang offices. Under Article 15, in the event of an inter-gang conflict, offices could be closed for three months. If the office in question also housed a registered business, forced closure of the premises

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<sup>7</sup> The Yamaguchi-gumi later achieved a notable public relations coup following the catastrophic Hanshin earthquake of 1995. Whilst the national government was dithering as to how best to respond to this crisis, the Yamaguchi-gumi was distributing free food, disposable babies nappies, milk and water from outside its Kōbe headquarters (*Reuters News Service* 22/1/1995).



might be opposed on the grounds that it infringed economic freedoms. This unease as to the security of offices was matched with widespread pessimism amongst *bōryokudan* that a number of their traditional income sources would be completely severed under the new law (criminal defence lawyer interview, Kōbe, 1998).

By the beginning of February 1992, over half of the direct Yamaguchi-gumi groups had followed these instructions and had registered companies<sup>8</sup>. Most of these were ostensibly involved in finance, construction, real-estate and bar/restaurant management (the sectors long-associated with *bōryokudan* front-companies). There were however a few exceptions from this pattern including companies managing old-folks' homes, ceremonial events halls, a missing persons retrieval agency and aerobics classes (Yamada 1994b, 240-1). The organisation's head-quarters had itself set up a joint-stock company in March 1991. Under the directorship of direct group boss and senior executive Katsuragi Masao, the company (named 'Yamaki') was involved in leasing reception halls, managing golf practise ranges and dealing in men's jewellery (Mizoguchi 1992b, 251).

Other gangs formed religious groups. An executive from the Yamaguchi-gumi direct group Hisshin-kai, for example, made himself a missionary of the 'Watoku-kyōkai' and installed a branch at the gang office. There were also numerous articles, later confirmed by interviews with legal experts and police sources,

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<sup>8</sup> The fact that not all direct groups had met Takumi's deadline suggests that the nature of control within the Yamaguchi-gumi is by no means absolute. Events to occur later show this even more clearly.

reporting that many *bōryokudan* gangs were forming right-wing political organisations.

In February, the month before the law came into force, the Yamaguchi-gumi leadership produced a guide to the *bōtaihō*, 'Concerning the New *Bōryokudan* Law' (*Bōryokudan Shinpō ni Tsuite*), which was distributed to all sub-groups. This document provided the reader with advice as to how to avoid the provisions of the law. Within the month, police in the Hyōgo area had managed to seize a copy (*Reuters News Service* 18/02/1992).

These various preparatory measures imposed a certain degree of strain on relations within the syndicate. In particular the financial cost of setting up a company combined with making payments for the purchase of Taoka's house, the establishment of the drug-eradication group and the *bōtaihō* countermeasures fund, caused a certain degree of resentment amongst Yamaguchi-gumi direct members (interviewees Osaka 1998, Tokyo 1999). Because these changes followed closely after the appointment in 1989 of Watanabe Yoshinori (second-generation boss of the Yamaken-gumi) as successor to fourth-generation boss Takenaka Masahisa, much of this resentment has been directed at the new leadership. Mizoguchi (1992b, 253) suggests that the reason for the leak in information concerning the Yamaguchi-gumi's preparations for the new law can be explained by this unhappiness.

The *bōtaihō* can therefore be said to have had a significant impact on the Yamaguchi-gumi. This impact was most immediately visible in terms of changes in the syndicate's establishment of various legal fronts but extended to important changes in diplomatic relations both with other syndicates and the legitimate world. Perhaps of only marginally less importance is the psychological impact wrought by the threat of this new law; not only was the organisation put on the back foot but, within the syndicate itself, there were rumblings of discontent at the ever-increasing demands for money from the head-quarters leadership.

The two big syndicates on the eastern plain, the Sumiyoshi-kai and the Inagawa-kai did not show the same degree of concern as the Yamaguchi-gumi. One Tokyo-based gang-leader interviewed on television claimed that “the new law might be a nuisance but it won't really have much effect on us *yakuza*, we'll just take new titles like president and manager” (*Reuters News Service* 2/3/1992).

This difference in attitude is perhaps due to the less confrontational, more politically sensitive, posture adopted by the Kantō syndicates. As mentioned in chapter four, the Inagawa-kai leadership blamed the Yamaguchi-gumi for being the cause for the introduction of the law so it is possible that they also felt that the main brunt of the law would be borne by them as well. It should however be noted that thorough structural reorganisation was less necessary for the Tokyo syndicates as many sub-groups had operated behind business fronts for some time before 1992. Ishii Susumu, to take the most well-known example, had juggled his business affairs between numerous front companies.



## INTRODUCTION OF THE *BŌTAIHŌ* - DESIGNATION

The difference between east and west can also be seen in the attitudes taken by the big three syndicates towards designation. On the 10<sup>th</sup> of April 1992, public hearings were held in Tokyo and Kōbe under the provisions of the *bōtaihō*. At the Tokyo hearings Tanaka Keizō, representing the Inagawa-kai, declared that “we are *yakuza*, not crime organisations. Ours is a chivalrous group that dates back through history”. Nishiguchi Shigeo, head of the Sumiyoshi-kai, urged for caution in the application of the law, arguing that foreign crime syndicates might displace the *yakuza* were they to be undermined. He further asserted that “if you disturb the balance the drug problem will increase”. Inagawa-kai executive, Mori Izumi, took a more legalistic approach arguing that the law infringed constitutionally guaranteed human rights (Yamada 1994b, 247; *Reuters News Service* 10/4/1992). However, the Tokyo syndicates’ more politically accommodating attitude is reflected by Tanaka’s statement that “whatever the law might be, the laws decided on by the state are humbly and solemnly accepted”. Once they had been designated as *bōryokudan*, the Tokyo syndicates accepted the fact.

In contrast, the Yamaguchi-gumi adopted a more aggressive stance. In a thirty-minute presentation to the Hyōgo Prefectural Public Safety Commission, Yamaguchi-gumi *gashira*, Takumi Masaru, attacked the new law on three grounds. The first of these was to assert that the Yamaguchi-gumi was a chivalrous organisation imbued with the spirit of helping the weak and crushing the strong. In support of this line he mentioned the gang’s re-assertion of public safety on the

streets of Kōbe straight after the war, as well as the more recent efforts to eradicate drugs and donations to victims of natural disasters.

The second argument adopted by Takumi was the rejection of the law's validity on the grounds that it conflicted with the constitution. These arguments have been discussed in detail in chapter four but essentially concern the principles of equality before the law and freedom of association.

The third ground for the syndicate's ineligibility for designation was a more subtle organisational point. Takumi asserted that the Yamaguchi-gumi itself only consisted of the (at that time) 115 direct members, all of whom had ritually exchanged cups with the fifth-generation boss, Watanabe. The Yamaguchi-gumi had no direct control over, or responsibility for, the activities of the members of the various sub-groups. Consequently, it was inappropriate to simultaneously designate the direct Yamaguchi-gumi group and its various sub-groups.

Although the *ninkyō-dantai* and unconstitutional defences were essentially the same as those adopted by the Inagawa-kai, the Yamaguchi-gumi differed in that they refused to accept the legal validity of this designation and launched a suit at Kōbe District Court to challenge the new law. Similarly, groups in Fukuoka, Naha and Kyoto took legal action in an attempt to overturn the law. This is illustrative of the difference in general cultural characteristics of the *bōryokudan* in the west and east of Japan.

One notable exception to this pattern is the behaviour of small Osaka-based gambling organisation, the Sakaume-gumi. This group, which numerous interviewees from both sides of the law asserted had very good diplomatic relations with the authorities, adopted the same acquiescent stance exhibited by the Kantō groups. At the public hearing concerning the group's designation, the top executive representing the Sakaume-gumi stated that "it is the duty of the people to obey the laws decided on by the state. If the Sakaume-gumi fulfils the conditions for designation, then we will have no option but to accept it" (*Shūkan Jitsuwa* 14/10/1999).

On 4<sup>th</sup> March, the NPSC confirmed that all of the big three syndicates satisfied the criteria for designation and on the 23<sup>rd</sup> their designation as *bōryokudan* was published in the Official Gazette. The following month, the Yamaguchi-gumi appealed to the NPSC to review its decision. After this appeal was rejected in October, the Yamaguchi-gumi met with its legal team and the case was submitted to Kōbe District Court on 26<sup>th</sup> November. After nine hearings, spread out over more than two years, it was finally decided to drop the case at the Yamaguchi-gumi top executives meeting in January 1995. Three months later, the Hyōgo prefectural Public Safety Commission held public hearings on the re-designation of the Yamaguchi-gumi; the syndicate did not send a representative to argue its case.

Those gangs which did pursue their legal challenges of the *bōtaihō* to a final verdict all met without success. Whilst the plaintiffs had argued that the rights guaranteed



by the constitution were absolute, the defendants argued that they were conditional. In the rulings given by all the courts concerned, the judges, whilst recognising the rights of the various plaintiffs, stressed that these rights were circumscribed by the rights of others:

It is difficult to deny that *bōryokudan* rely on violent activities and, accordingly it is clear that they exist by violating the basic human rights of individuals. To externally manifest this philosophy is unpardonable. Even though there is the basic human right of freedom of expression, which is guaranteed by the constitution, it is only proper that this be intrinsically limited to accord with other human rights. Moreover, it is understood that, for the general welfare of society, i.e. ‘to preserve the safety and peace of civic life’, it is permitted to have reasonable limitations on the smallest scale necessary (Fukuoka District Court 28<sup>th</sup> March, 1995 ex Yamaguchi 1997a, 70).

Because the *bōtaihō*'s system of administrative regulation imposed only light penalties for violations, and the freedom to be member of a *bōryokudan* group itself was not denied, the restrictions were seen as limited, reasonable and necessary. The argument that legal rights and freedoms can be reasonably limited in order ‘to preserve peace and social welfare’ was based on a Supreme Court ruling of 22<sup>nd</sup> June 1983:

What it is that makes this limitation accepted as necessary and reasonable, should be decided on the degree to which the limitation is necessary for the public good, the quality and contents of the restricted freedoms, the real nature of the restrictions and their comparative weights (*ibid.*).

Naha and Kyoto District Courts' rulings, of 17<sup>th</sup> May and 29<sup>th</sup> September respectively, both concurred with the decision of Fukuoka.

The Aizu-kotetsu group in Kyoto also attempted to have its designation overturned on technical grounds. In February 1997, following the retirement of Takayama Tokutarō and the succession of Zugoshi Toshitsugu, the syndicate officially changed its name from Yondaime (fourth-generation) Aizu-kotetsu to Godaime Aizu-kotetsu. Because of this change in name, the group appealed to Kyoto District Court that the designation was no longer valid. This was rejected by the District Court in July and, after the syndicate had appealed, by the Kyoto High Court in September. On October the Aizu-kotetsu abandoned its attempt to overturn its re-designation as a *bōryokudan* (*Keisatsu Hakusho* 1999, 185-6).

By March 1993, 18 groups had successfully been designated as *bōryokudan*.

According to police statistics, these groups accounted for 44,340 full members (*kōsei-in*). Of this total, the big three syndicates comprised 38,500 men (87%).

The latest figures available (*Keisastu Hakusho* 1999) show that the number of designated *bōryokudan* groups currently stands at 23 comprising 38,350 members (of which 28,800 men were big three syndicate-members). The police statistics now

only deal with designated *bōryokudan*; consequently it is not clear what proportion of *yakuza*-style groups remain undesignated. The designated *bōryokudan*, as of March 1999, are shown in the appendix.

## EFFECTS OF THE *BŌTAIHŌ*

### IMMEDIATE IMPACT OF THE *BŌTAIHŌ*

Between January and February 1993, just eight months after the law's introduction, the National Research Institute of Police Science (NRIPS) conducted interviews of 1,440 *bōryokudan* arrestees throughout Japan to evaluate the impact of the *bōtaihō* (Tamura et al.1993). Although the study had various research aims, the findings of particular interest to us here are those concerning *bōryokudan* perceptions of the new law and their reactions, both individual and collective, to it.

The data were broken down into the three large syndicates, other designated *bōryokudan*, non-designated *bōryokudan* and all *bōryokudan*. It would have also been interesting to see a break down by hierarchical status (boss, executive and *kumi-in*) though, where it was deemed relevant, NRIPS provided such figures elsewhere in their paper. All figures show the percentage of interviewees expressing agreement with the statement in the left-hand column (the three possible responses were 'agree/yes', 'disagree/no', 'don't know').



The views of the arrestees concerning their perceptions of the changes in their operating environment following the *bōtaihō*'s introduction are given in the table below.

Table 5.3 *Bōryokudan* perceptions of the *bōtaihō*

	Yama	Inagawa	Sumi	Other Des	Non-Des	All BRD
Police controls have become harsher	82	81	78.9	86.2	80.4	81.7
Public criticism is severe	73.1	73.5	67.1	72.5	72.5	72.4
Citizens have lost their fear	41.2	41.8	40.8	34.8	44.2	41.2
Reduction in citizens asking for help	45.1	46.6	42.8	30.4	35.1	41.7
Business has become stingy	39.0	38.6	45.4	37.7	35.1	38.8
<i>Shinogi</i> has become harder	63.5	63.5	66.4	66.7	57.2	62.9
Struggling to pay <i>jōnōkin</i>	33.7	39.2	39.5	29.0	27.2	33.3
Number of new recruits has decreased	55.6	55.6	52.6	53.6	48.6	53.8
Number of those wanting to leave has increased	57.5	53.4	40.8	54.3	45.3	52.6
Reduction conflict	62.6	48.1	45.4	53.6	43.5	54.4
Members have become careful about behaviour	70.2	63.0	62.5	71.7	65.9	67.8
Gang punishments have become severe	35.9	22.8	27.6	26.1	24.6	30.2

NRIPS (Tamura et al) 1993

The NRIPS data in Table 5.3 shows that since the introduction of the *bōtaihō*, there has been a perceptible change in the operating environment of *bōryokudan*. At the most basic level, 80% of members from all groups felt that police controls had become harsher following the law's introduction. On a social level, 70% of *bōryokudan* felt that public criticism of them had become more severe. This can be seen in the rash of anti-*bōryokudan* resolutions passed by all prefectural assemblies and the increase in community action, to drive *bōryokudan* out of towns, that the *bōtaihō* encouraged.

In terms of the effect this has had on income-generating activity the numbers do not appear so convincing. Though only 40% felt that the incidence of people asking them for help had declined, this is twice as many as the 20% who thought that there had been no change. Members of the big three syndicates were more likely to agree, which is probably due to their greater reliance on debt-collection. 40% of respondents thought that business had become tighter with their money following the new law against only 10% who felt that it had not (50% don't know). It is not clear, however, to what extent this is due to the collapse of the bubble economy rather than the *bōtaihō*.

There is a reasonably clear level of agreement however that, following the new law, it has become harder to make money (60%) but, at this stage, only 30% have found it harder to pay *jōnōkin* (nearer 40% for the two big Tokyo syndicates). This decline in economic fortunes is reflected in perceptions concerning recruitment and retention. 50% felt that new entrants had declined (20% disagree) and similarly 50% felt that the number of members leaving the organisation had increased (under 30% felt that there had been no change). Perceptions of retention levels were particularly gloomy for Yamaguchi-gumi members (nearly 60%) especially when compared to the Sumiyoshi-kai (40%).

The pessimism of the Yamaguchi-gumi interviewees is interpreted by NRIPS as being due to that group's status as the main focus of the police's anti-*bōryokudan* efforts. This suggests that the greater sense of crisis felt by the Yamaguchi-gumi before the law's introduction was justified.

This is also shown in the significantly greater perception of reduced conflict among Yamaguchi-gumi interviewees (20% points clear of their competitors in the Sumiyoshi-kai). This is largely due to the Kōbe syndicate's more aggressive behaviour in the recent past leading to greater room for improvement than their more diplomatically-accomplished rivals. All groups share an encouragingly high perception that, following the *bōtaihō*, there has been a reduction in inter-group conflict.

The responses from all categories also indicate much greater concern for their behaviour following the introduction of the law. This ran at nearly 70% overall, though noticeably less for the two big Tokyo syndicates. This difference also perhaps indicates the greater political sensitivity, long preceding 1992, of these two groups.

We can also see the concrete effects of the new law in changes in *bōryokudan* behaviour. These changes are given in Table 5.4 below. Here again we see that the Yamaguchi-gumi took significantly more proactive steps to avoid the provisions of the law. This is to be expected given the number of directives issued by the Yamaguchi-gumi's executive committee prior to the law coming into force.

The most noticeable changes were the removal of gang paraphernalia from the outside of gang offices (to avoid the provisions of Article 29) and members' name-tags from office interiors (to thwart easy police identification of membership



changes). In both these actions, Yamaguchi-gumi levels were 10% higher than those of the Inagawa-kai and 20% more than the Sumiyoshi-kai.

Table 5.4 *Bōryokudan* reactions to the *bōtaihō*

	Yama	Ina	Sumi	Other Des	Non Des	Total
<i>Bōtaihō</i> study group/lecture	42.0	36.0	39.5	40.6	31.5	38.8
Removed gang crest and sign	78.7	66.7	58.6	68.8	68.5	72.1
Removed <i>kumi-in</i> name-tags	73.0	65.1	54.6	63.8	58.7	66.4
Reorganise <i>Kumi-in</i>	29.1	19.6	19.1	16.7	16.3	23.1
Prohibit mention gang-name	62.2	40.7	44.7	44.9	43.5	52.3
Prohibit trouble with public	67.0	55.6	62.5	60.1	62.0	63.4
Prohibit conflict with other <i>bōryokudan</i>	72.1	53.4	63.2	55.1	50.4	62.9
Create corporate identity	34.7	21.2	18.4	21.7	23.2	27.6
Create Political identity	6.4	5.3	4.6	1.4	4.0	5.1

NRIPS (Tamura et al) 1993

In terms of restructuring their organisations by reorganising *kumi-in* and adopting business or political identities, the Yamaguchi-gumi also clearly outstripped the other groups. This clearly corroborates the widespread perception in 1991 that the Tokyo syndicates were considerably more relaxed vis-à-vis the new law. Note that comparatively few individuals admitted that their groups had actually formed political organisations.

NRIPS argues that there are clear limits to the extent to which *bōryokudan* groups are able to reorganise their membership. If they were to get rid of all the members who meet the criteria for designation, they would be left with so few members as to

be ineffective. This however ignores the prospect of mock expulsion (*mogi-zetsuen*, *mogi-hamon*) and the establishment of business-brother (*kigyō-shatei*) relationships with former members. As it happened, none of the major groups managed to avoid designation.

Given the high level of directives issued by the Yamaguchi-gumi, it is surprising that the level of compliance with these demands is not higher. This shows that, as we look down the hierarchy from direct group to second-level group to third and so on, control is not directly wielded from the top over grass-roots sub-groups. This is an important clue to the nature of the present Yamaguchi-gumi, which will be explored more fully later.

Incomplete control can also be seen in the individual reactions of gang-members to the *bōtaihō* given in table 5.5. These generally show that the individual-level reactions to the new law, though still significant, were not as thorough as those taken at an organisational level.

Generally speaking gang-members are trying to have *shinogi* that doesn't involve them with the new law (only 30% said no). Although there was no big difference between ranks with respect to this, in response to all other questions bosses tended to show a greater degree of responsibility with more of them studying the law, using non-*yakuza* name-cards and taking care not to use their gang's name, than their subordinates. Similarly, more gang-bosses experienced a decline in income (60%) than *kumi-in* (40%).

Table 5.5 Individual gang-members' reactions to the *bōtaihō*

	Yama	Ina	Sumi	Other Des	Non Des	All Gangs
Studied <i>bōtaihō</i>	30.8	26.5	27.0	34.1	23.6	28.8
Use non- <i>yakuza</i> name-card	28.3	18.5	27.6	18.8	23.6	25.1
Avoid trouble with other BRD	53.6	41.3	49.3	47.8	46.4	49.6
<i>Shinogi</i> without using gang name	52.0	42.9	49.3	46.4	43.1	48.3
Try hard to have legitimate business	42.6	32.3	43.4	41.3	42.0	41.1
Try to have <i>shinogi</i> that doesn't violate <i>bōtaihō</i>	62.0	51.9	61.2	63.0	58.3	60.0
Income has declined	50.2	45.5	52.0	50.0	42.0	48.5
Family advise that quit	39.0	34.9	34.9	37.7	35.9	37.3

NRIPS (Tamura et al) 1993

There was also a rank/age difference in the responses concerning family pressure on the interviewees to leave the organisation. 40% of *kumi-in* experienced such pressure as opposed to 20% for bosses. For those *kumi-in* under twenty the figure rose to 50%. NRIPS suggest that declining economic rewards from *bōryokudan* membership and increased familial pressure to secede provide fertile ground in which the Centres for the Eradication of *Bōryokudan* may actively pursue measures for the secession and rehabilitation of gang-members. Whether or not this opportunity has actually been realised will be discussed later.

The above data show that in the first year of its operation, the *bōtaihō* had had a significant impact on the operation of *bōryokudan* and the perceptions of their members. Did *bōryokudan* members feel that this impact would continue in the



medium and long term? Forecasts of the effect the *bōtaihō* will have on the *bōryokudan* are given in Table 5.6 below.

Table 5.6 *Bōryokudan* forecasts of the *bōtaihō*'s impact

	Yama	Ina	Sumi	Other Des	Non-Des	Total
Decline of new members	75.6	72.0	82.9	76.1	77.9	76.4
Increase in seceders	76.1	75.7	73.7	76.1	74.3	75.4
<i>Shinogi</i> will become impossible	73.7	68.8	77.0	75.4	76.8	74.2
Increase of straight business	74.0	61.9	77.0	76.1	77.2	73.5
Decline inter-gang conflict	81.5	68.3	67.1	73.9	71.4	75.6
Increase in front companies	74.3	73.0	76.3	75.4	71.7	74.0
Increase in political groups	50.4	49.7	55.9	42.0	50.4	50.1
Become invisible secret-societies	54.6	49.2	53.9	51.4	55.4	53.7
<i>Bōryokudan</i> will become extinct	4.8	4.2	5.9	4.3	6.2	5.1

NRIPS (Tamura et al) 1993

This set of data suggests that most of the interviewees held a generally pessimistic view of the medium term prospects of their industry. There was a strong degree of agreement that the number of those wanting to join will decline whilst that of those wishing to leave will increase. Perhaps a major causal factor underlying this was the widely-held view that in the ensuing five years it would become impossible to earn *shinogi*. In the light of this lack of *shinogi*, *bōryokudan* members see themselves becoming increasingly reliant on straight business as a source of income. Interestingly, NRIPS do not ask whether their interviewees predict an increase in other anti-social activity such as amphetamine-trading and theft (as various commentators, including various high-ranking gang-leaders, had done).

Many subjects also predicted that their organisations would become less visible through the increased use of front companies (74%) and political organisations (50%). Over half of the respondents felt that the *bōryokudan* would become underground secret-societies. Practically none of those questioned, however, thought that the *bōryokudan* would disappear. This last view seems to be inconsistent with the perception that *shinogi* will become impossible. The *bōryokudan* cannot exist without some economic rationale. If members are purely involved in legitimate industry then the only advantage for them in remaining *bōryokudan* members will be if such membership confers a comparative advantage over purely legitimate competitors i.e. some protective function, which is one of the characteristics of *shinogi*.

Table 5.7 Evaluations of the strength of the *bōtaihō*'s impact

	Yama	Ina	Sumi	Other des	Non- des	Total
Will have a long term effect	48.5	42.3	51.3	47.8	48.9	48.0
Only have a temporary effect	33.4	35.4	31.6	32.6	30.1	32.8
An extremely insignificant effect	14.3	16.9	12.5	15.2	15.6	14.8
No answer	3.8	5.3	4.6	4.3	5.4	4.4

NRIPS (Tamura et al) 1993

Somewhat at odds with this generally pessimistic medium-term view, the long-term predictions of the arrestees was less clear. Whilst 50% felt that the *bōtaihō* would have a long-term effect on the *bōryokudan*, 30% held a more optimistic view that

any effect would be temporary with the situation eventually returning to the *status quo ante*. The yet more optimistic view that, even if the *bōtaihō* has an effect, it would only be a small one, was held by 15% of respondents. If we combine both these optimistic categories, there is very little difference in the levels of support for pessimistic and optimistic views of the long-term prospects for this law.

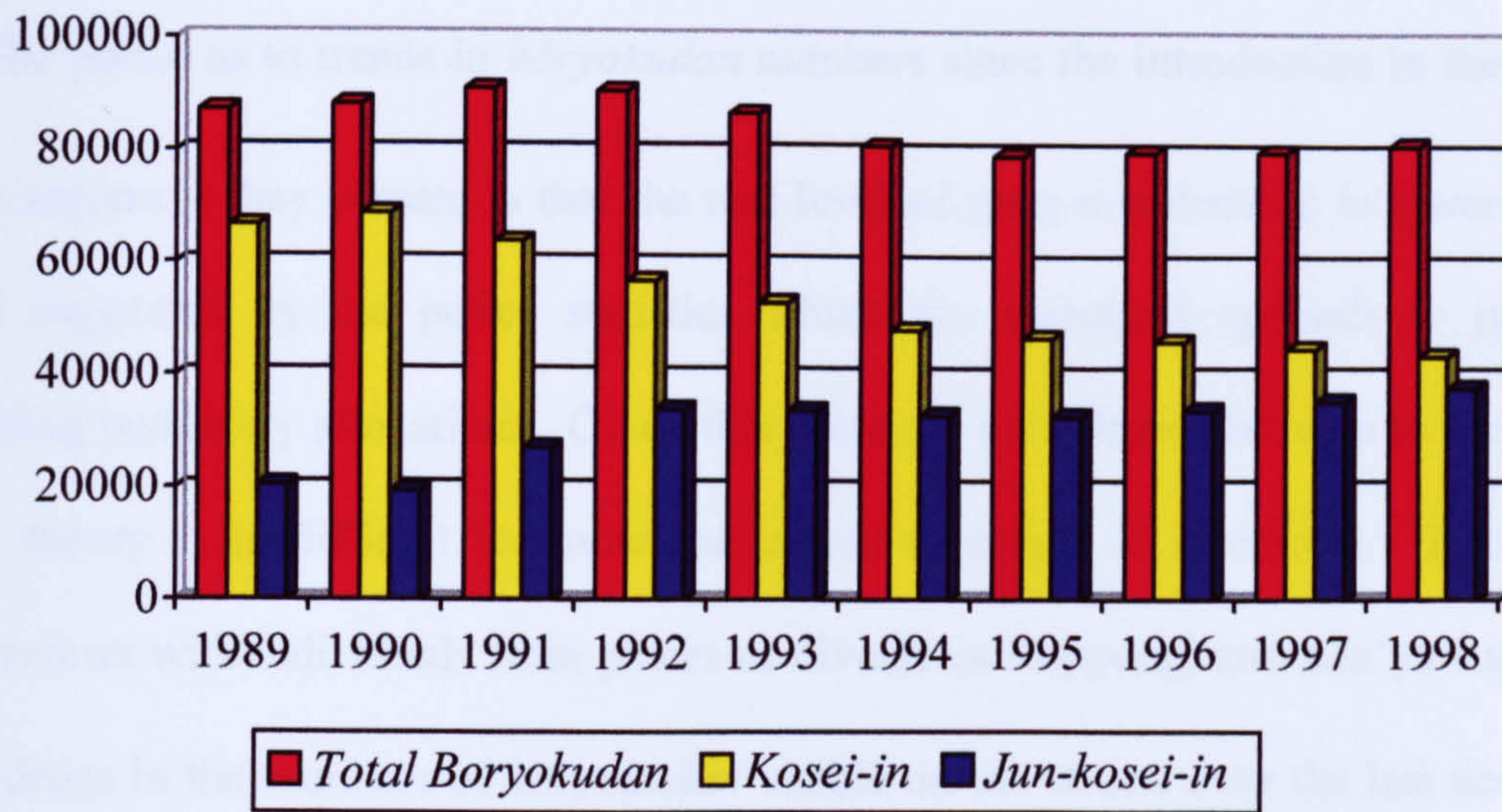
At this stage we are still not able to evaluate the long-term impact of the *bōtaihō*, but sufficient time has elapsed to see what the medium-term effect of the *bōtaihō* has been. Let us begin our examination by looking at the available police statistics.

### **BŌRYOKUDAN STRENGTH**

If we look at the police statistics for *bōryokudan* numbers over the period (see Table 5.8) we can see that the *bōtaihō* has had a clear impact on the composition of these groups. Until 1990 there had been a trend for the numbers of *bōryokudan* to grow (undermining the thesis put forward by the 1988 *Hanzai Hakusho* that the *bōryokudan* were facing a recruitment crisis). From 1991 onwards (the year the law was passed), this trend is reversed. Although this drop is not enormous, the fall in full members (*kōsei-in*) is more pronounced, which might be interpreted as evidence of the law's success.



Table 5.8 *Bōryokudan* Strength 1989-1998



	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
All	87,300	88,300	91,000	90,600	86,700	81,000	79,300	79,900	80,100	81,300
Full	66,700	68,800	63,800	56,600	52,900	48,000	46,600	46,000	44,700	43,500
Jun	20,600	19,400	27,200	34,000	33,800	33,000	32,700	33,900	35,400	37,800

Hanzai Hakusho 1999

However, this decline is partly explained by the restructuring that *bōryokudan* groups undertook to evade the provisions of the law. Many full members officially retired, or were ‘expelled’ from their gangs only to continue operations as before under the guise of a political organisation or as a ‘business-brother’ (*kigyō-shatei*).

It is significant that over the same period the total value of *bōryokudan* strength, as recognised by the police (*jun-kōsei-in* and *kōsei-in*), did not decline by nearly as much. Clear evidence for this is shown by the significant *increase* in *jun-kōsei-in*, or peripheral members over the same period (25% between 1991 and 1996). Rather than this increase reflecting a jump in the number of apprentices, these ‘new’ *jun-kōsei-in* were full gang-members seeking to evade the provisions of the new law by relinquishing formal membership.



Some experts, such as Yamanouchi and Mizoguchi, question the figures provided by the police as to trends in *bōryokudan* numbers since the introduction in the law. The argument they present is that the real level of gang-membership is lower than that suggested by the police statistics which are massaged upwards to justify existing budgetary allocations. Given that there are no independent data to back up this theory it is difficult to know the extent to which it is correct. Informal interviews with individuals from places as diverse as Roppongi and San'ya suggest big drops in the numbers of *bōryokudan* visible on the streets over the last decade. This need not necessarily mean a decline in actual numbers; it might alternatively be that *bōryokudan* are adopting a lower profile in a changed legal and economic environment. As will be shown later, this is undoubtedly a factor.

## DISBANDMENT

Alongside the fall in *bōryokudan* numbers, since 1991 there has been a rise in the number of groups disbanding. Whilst some of these cases were merely due to *bōtaihō*-avoidance tactics as groups re-formed as political or social movements, many are genuine and directly attributable to problems in maintaining financial viability under the *bōtaihō*. Whilst the numbers of *bōryokudan* members involved has been between 1400-2600 per year, many of these individuals are reabsorbed by other gangs, form loose criminal associations or become lone-wolves (*ippiki-*



-ōkami). Consequently the declining number of groups has not yielded a corresponding decline in the total criminal workforce.

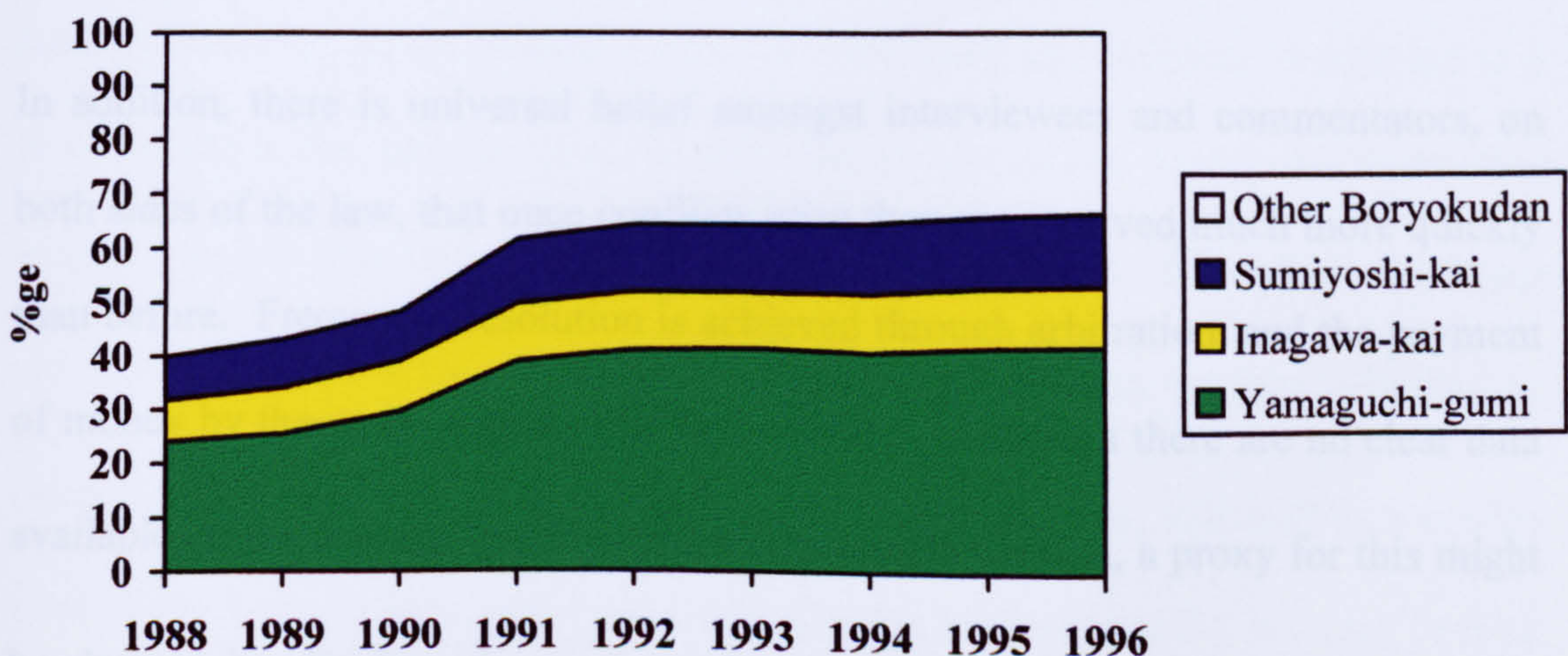
Table 5.9 *Bōryokudan* Disbandment

	1991	1992	1993	1994	1995	1996	1997	1998
Groups Disbanding	131	158	222	211	234	218	220	192
<i>Kōsei-in</i> Displaced	1,430	2,050	2,600	1,940	1,440	1,590	1,390	1,390

*Keisatsu Hakusho* 1999

In figure 5.1 we see that the process of oligopolisation by the three big syndicates has been slowed, but not completely stopped, following the introduction of the *bōtaihō*. This contrasts with the effects of the summit strategies of the 1960s and 70s, which, by having a disproportionately heavy effect on smaller gangs, ultimately encouraged big-syndicate expansion. Aggressive Yamaguchi-gumi expansion into such areas as north-east Japan during the late 1980s was largely quelled, at least for the time being, by the introduction of the *bōtaihō*.

Figure 5.1 Oligopolisation by Big Three Syndicates





## INTER-GANG CONFLICT

The suggestion that the *bōryokudan* have adopted a lower profile since the introduction of the new law has already been prompted by the pre-implementation diplomatic measures taken by the main groups to limit inter-gang conflict. To what extent have such conflicts actually been affected since the introduction of the *bōtaihō*? The NPA data show that there has been a general declining trend in the number of inter-gang conflicts since the end of the 1980s with the most significant drop occurring in 1991.

Table 5.10 Inter-Gang Conflicts 1988-1998

		1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Inter-gang Conflicts		32	30	27	12	12	12	11	4	9	6	11
Number of Incidents	Total	128	156	146	47	39	77	44	28	29	53	48
	Firearms Used	112	142	118	47	29	75	38	28	25	40	39
Incidents/Conflicts		4	5.2	5.4	3.9	3.3	6.4	4	7	3.2	8.8	4.4
Fatalities		3	4	16	5	5	4	4	1	2	3	13
Injuries		12	40	29	10	9	11	10	1	8	20	28

*Keisatsu Hakusho 1999*

In addition, there is universal belief amongst interviewees and commentators, on both sides of the law, that once conflicts arise they are resolved much more quickly than before. Frequently resolution is achieved through arbitration, and the payment of money by the party judged to be in the wrong. Although there are no clear data available on the average length of inter-*bōryokudan* conflict, a proxy for this might be derived by dividing the total number of violent incidents by the number of

conflicts. This suggests a more confusing picture with a drop in incidents per conflict over the 1991-1992 period followed by erratic swings. This is probably due to the small statistical base which makes the figures easily swung by one particularly long-running conflict as in the case for 1997.

Although there has not been a clean linear decline in the number of firearms incidents over the 1990s (5.12), from 1991 on the figures remain considerably below those of 1988-90. The significant drop in 1991 is thought here to be due to the gangs' efforts to restrict conflict in anticipation of a new legal onslaught.

Table 5.11 Number of Firearms Incidents 1988-98

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Firearms Incidents	249	268	255	182	174	178	210	128	108	124	134
Fatalities	28	19	35	23	17	16	29	21	14	16	13
Injuries	60	75	65	45	32	34	24	21	27	21	28

*Keisatsu Hakusho 1999*

One point of interest illustrated by the data in table 5.11 is the low level of fatalities and injuries, measured as a proportion of total incidents, that 'inter-gang conflicts' actually involve. In the bloodiest year, of 1990, only one incident in nine led to a death whilst in the previous year the ratio was as low as one fatality per thirty-nine attacks. Rather than indicating poor weapon-handling skills, this reflects the ritual nature of much *bōryokudan* conflict. For the most part such warfare is limited to the symbolic firing of shots at the office exterior or gang crest, followed by a similar retaliation. Only in the minority of cases does the level of hostility increase beyond

this. Even during the exceptional conflict of the Yamaguchi-gumi and Ichiwa-kai, only 25 fatalities and 70 injuries occurred in the course of three hundred incidents, spread out over five years. By the standards of organised crime in Colombia or Russia, such stuff must seem tame indeed.

It is probable that this comparative pacificity is a product of the settled, mature state of organised-crime in Japan. The period of rapid expansion of *yakuza* groups in the period up to 1963 was characterised by much greater violence between competing groups. Once groups have established their reputation for violence, it becomes paradoxically less necessary to deploy actual violence on a routine basis. At the same time the costs of all-out warfare, in the current context of more potent law-enforcement and well-established rivals, means that ritual displays of non-lethal conflict allowing each side to evaluate who roars the loudest, have become the norm.

In contrast, in such countries as those of the former Soviet Union, where organised crime has mushroomed in the fertile conditions of ineffective policing and abundant market opportunities, and where a stable equilibrium has not become established, the opposite will be true.

The imperative to reduce violent conflict between the various *bōryokudan* syndicates, and thereby avoid the compulsory closure of gang-offices, also encouraged further diplomatic efforts following the introduction of the *bōtaihō*. The most visible manifestation of this was the cementing of friendly relations



through the creation of brotherhood bonds (through the ritual of *sakazuki* discussed in chapter two) between high-ranking personnel of different groups.

In June 1993, a relationship-group (*shinseki-engumi*) was formed between Watanabe, Takayama Tokutarō (fourth-generation boss of the Aizu-kotetsu) and their top executives in order to stop conflict between the two groups. Despite their best efforts however, conflict was not eradicated. In February 1996, a three-way brotherhood *sakazuki* took place between Kuwata Kanekichi, assistant Yamaguchi-gumi *gashira* and head of the Yamaken-gumi, Okimoto Tsutomu, leader of the Hiroshima-based Kyōsei-kai (with which the Yamaguchi-gumi had fought the infamous *jinginaki tatakai* in the 1960s), and Zugoshi Toshitsugu, fifth-generation boss of the Aizu-kotetsu. Officiating in the capacity of guardian (*kōkennin*) was Watanabe Yoshinori.

In much the same way that the brotherhood relationship between Yamaken (then Yamaguchi-gumi *gashira*) and Ishii Susumu in 1972 had cemented relations and prevented conflict between the Yamaguchi-gumi and Inagawa-kai, the triple *sakazuki* of Kuwata, Zugoshi and Okimoto was seen as stabilising relations amongst the western syndicates (Yamada 1998, 228).

In September 1996, a brotherhood *sakazuki* took place between the two most high-ranking gang-leaders in Japan, Watanabe Yoshinori and Inagawa Chihiro, third-generation boss of the Inagawa-kai. Although in many ways, this exchange was less important than the triple *sakazuki* in that it was re-affirming a pre-existing

relationship, the fact that it was between the two most important *yakuza* in Japan gave it greater weight. An attack by a Yamaguchi-gumi member on an Inagawa-kai interest would become an affront to the dignity of Watanabe demanding recompense. This is reflected in the Yamaguchi-gumi executive committee's directive to direct members following the brotherhood ceremony instructing them to respect the Inagawa-kai's territorial integrity.

This policy of '*sakazuki* diplomacy' shows a clear contrast to the strategy of aggressive expansion adopted primarily by the Yamaguchi-gumi (though also shown by the other two big syndicates) up to the time of the *bōtaihō*. The attempt by the Yamaguchi-gumi and the other western syndicates to achieve peaceful co-existence can be seen as the adoption of the diplomatic norms of the Kantō syndicates exemplified by the Kantō Hatsuka-kai.

The main inter-group relations amongst the major designated *bōryokudan* groups are shown in Appendix 4.

### ***BŌTAIHŌ* INJUNCTIONS**

Since the introduction of the *bōtaihō*, the number of administrative orders (*chūshi meirei* and *saihatsu bōshi meirei*) issued by the Public Safety Commissions has increased dramatically each year. Rather than suggesting that the *bōryokudan* have shown an increasing propensity to flout the provisions of Article 9 of the new law,

the obvious reason for this is that it has taken time for victims of unfair *bōryokudan* demands to understand how the law applies to their own personal circumstances. The apparent levelling off of this increase suggests either that the process of dissemination is approaching its upper limits (given the existing level of public awareness and educational activity by the regional Centres for the Elimination of *Bōryokudan*) or, alternatively that *bōryokudan* are becoming less prone to make violent demands.

It is argued here that this former factor is more likely to be the dominant one. Under the *bōtaihō*, an administrative order merely tells the individual infringing the provisions of the law to desist from the relevant activity. Provided that the individual then complies with the order, then no further penalties are incurred. Apart from the intangible costs to reputation, infringing the provisions of the *bōtaihō* therefore carries no loss, and potential gains. To *bōryokudan* constantly under pressure to raise money, it is likely to be a chance well worth taking.

Table 5.12a *Bōtaihō* injunctions 1992-98

	1992	1993	1994	1995	1996	1997	1998
Stoppage Order ( <i>chūshi meirei</i> )	241	610	1,057	1,321	1,456	1,737	1,900
Repetition Prevention Order ( <i>saihatsu bōshi meirei</i> )	7	35	37	33	43	60	43
Total	248	645	1,094	1,354	1,499	1,797	1,943



Table 5.12b Injunctions by category 1994-98

		1994	1995	1996	1997	1998
Total		1057 (37)	1321 (33)	1456 (43)	1737 (60)	1900 (43)
Article 9	Unfair demands for gifts/donations	117	197	224	347	483
	Demands for protection money	73 (3)	120 (5)	127 (4)	150 (90)	147 (3)
	Demands for bodyguard fees	175 (25)	256 (22)	267 (36)	290 (40)	244 (24)
	High interest rate debt-collection demands	8	10	7	10	16
	Unfair debt-collection demands	-	-	-	2	12
	Unfair demands for written waivers of existing obligations	116	146	165	193	243 (1)
	Unfair demands for loans	20	19	15	18	27
	Auction-obstruction	2	1	1	1	-
	Unfair intervention in discussions	10	4	-	1	1
	Using pretext for unfair demands for goods/money	65	34	66	76	39
	Other	27 (2)	27	21	37(1)	23
Article 10	Demanding that others make violent demands	(2)	(2)	(2)	(2)	(2)
	Assisting at the scene of violent demands	36	66	90	148	178
Article 12-2	Demands concerning the business of <i>bōryokudan</i>	-	-	-	(2)	(3)
Article 16	Demanding that juveniles join <i>bōryokudan</i> or obstructing secession	50 (2)	58	58	35	43 (3)
	Demanding with menace that join <i>bōryokudan</i> or obstruct secession	296 (2)	302 (2)	344	366 (5)	377 (5)
	Using closely related person to demand that join <i>bōryokudan</i> or obstruct secession	59	77	71	61	64
Article 17	Ordering others to demand joining of <i>bōryokudan</i> or obstruction of secession	(1)	-	-	-	-
Article 20	Demanding finger amputation etc.	1	2	-	1	-
Article 24	Demanding juveniles to have tattoos	-	1	-	-	-
Article 29	Activities forbidden at gang offices etc.	2	1	-	1	-

( ) Repetition prevention order (*saihatsu bōshi meirei*)

Taken together, the various categories covered by Article 9 account for the bulk of injunctions issued under the provisions of the *bōtaihō*. Of these, the most prominent are the demands for protection money/bodyguard fees, demands for gifts/donations and demands for written waivers from existing obligations. Surprisingly, given the level of attention to auction-obstruction in recent years, this type of activity has received a negligible number of injunctions. Perhaps this is because cases of auction obstruction tend to be dealt with primarily by the existing commercial and criminal codes.

The other class of *bōtaihō* injunctions which feature heavily in the statistics is that dealing with forcible recruitment and the obstruction of gang-members wishing to leave the organisation. Unfortunately the statistics do not reveal whether recruitment or secession is the larger; it seems probable that it will be the latter. The statistics provided by the regional Centres for the Eradication of *Bōryokudan* (discussed later) show that more inquiries and discussions deal with secession-obstruction than forcible-recruitment. This suggests a high level of dissatisfaction amongst the *bōryokudan* workforce and a severe pressure on gang-leaders to maintain manning-levels.

Demands by leaders that subordinates amputate fingers or have tattoos are so low as to be negligible. This seems to be indicative of the trend away from the use of *yubitsume* amongst groups, in preference for fines, as a form of punishment. It is questionable whether tattoos have ever been systematically demanded by bosses. Horishi, an Osaka-based tattoo master (and, to one who has seen his work, no other

title seems appropriate), argues that many modern-minded bosses actually encourage their subordinates not to have tattoos so that their future may not be confined to traditional *yakuza* activities. Apparently some even mention to their minions that the time may come when they wish to leave the *yakuza* and a tattoo would present a major barrier to employment in a legitimate business.

However, the overwhelming majority of *yakuza* met during the course of the fieldwork were extremely proud of their tattoos and insisted in showing them off. The Yamaguchi-gumi sub-group visited in Osaka had gone to the trouble of purchasing a disposable camera precisely for this purpose. In another case an Inagawa-kai sub-group leader even removed his shirt in a busy hostess-bar near Nagoya so that the researcher could admire the art-work. The idea that *yakuza* members are dragged kicking and screaming into the tattoo studio is not credible.

It is also noteworthy that the number of injunctions concerned with gang-offices is also extremely low. This would seem to suggest that *bōryokudan* groups have, like the *Yamaguchi-gumi*, instructed all gang-offices to remove offending paraphernalia. Not all gang offices have done so. This researcher has seen the emblems of designated *bōryokudan* outside at least two gang offices whilst Yamanouchi asserts that various sub-group offices similarly run the risk of injunctions (interview, Osaka, July 1998).

If we look at the number of injunctions by *bōryokudan* group (Table 5.13), we see that the vast majority of them are issued to Yamaguchi-gumi groups, with the other



two large syndicates also having significantly higher numbers than smaller groups. This is only to be expected given their vastly superior size. In order to get a clearer idea of the relative propensity of the different groups to infringe the *bōtaihō*, it is necessary to convert the data to show the number of injunctions per thousand members (Table 5.14).

These figures show the big three syndicates to have slightly higher number of injunctions per member than the average. Interestingly, the Aizu-kotetsu, which has a violent reputation, had a surprisingly low number, little more than half the average for all *bōryokudan* groups. It is also interesting to observe that the Sakaume-gumi, which is usually characterised as an inoffensive group involved primarily in gambling, received, proportionately, almost an equal number of injunctions, as the Yamaguchi-gumi. Relative to its small size, the group by far the most heavily burdened with injunctions is the Kumamoto-based Yamano-kai. This group achieved an average of 0.171 injunctions per member in 1999, which is over four times the average.

Table 5.13 Administrative Orders by *Bōryokudan* Group 1994-98

	1994	1995	1996	1997	1998
Godaime Yamaguchi-gumi	469 (15)	536 (13)	577 (17)	740 (19)	846 (16)
Inagawa-kai	169 (5)	237 (3)	268 (13)	278 (9)	347 (10)
Sumiyoshi-kai	149 (7)	189 (5)	244 (5)	291 (10)	243 (10)
Nidaime Kudōrengō Kusanō-ikka	19	18 (1)	22	13 (1)	9
Rokudaime Gōda-ikka	2	1	5	4	3
Godaime Aizu Kotetsu	34	29 (2)	25 (2)	26	33 (1)
Yondaime Kyōsei-kai	10	5	5	4	11
Yondaime Kozakura-ikka	7	4	4	3	3
Nidaime Dōjin-kai	24	12	17	18	25
Sandaime Kyokuryū-kai	7	2	1	7	1
Okinawa Kyokuryū-kai	7	8	4	6	6
Sandaime Asano-gumi	1 (1)	10	2	7	1
Shinwa-kai	4	2	2	3	4
Sōai-kai	20 (4)	19 (1)	29 (1)	19(4)	29 (2)
Sandaime Yamanō-kai	1	3	1	5	12
Ishikawa-ikka*	5	2	-	-	-
Nidaime Kyōdō-kai	7 (1)	14 (1)	4	5	4
Sandaime Taishū-kai	5	4	4	11 (2)	-
Rokudaime Sakaume-gumi	6	17 (1)	20 (1)	13 (1)	14
Kyokutō Sakurai Sōke Rengō-kai	4	12	19 (1)	3 (2)	18 (1)
Kyokutō-kai	27 (2)	64	53	55	66
Azuma-gumi	11	6 (3)	9 (1)	10	9
Matsuba-kai	22 (1)	50 (3)	50 (1)	76 (7)	62 (2)
Nidaime Dainippon Heiwa-kai**	11	1	0	-	-
Kokusui-kai	9	15	29 (1)	22 (5)	29 (1)
All Small Groups (members<1,000)	166	162	182	168	182

\* Ishikawa-ikka designation removed in October 1995

\*\* Nidaime Dainihon Heiwa-kai not re-designated and designation therefore lost effect in April 1997

Table 5.14 Injunctions per 1,000 Members (1997-98)

	Injunctions/1000 members	
	1997	1998
Average	38.2	38.9
Godaime Yamaguchi-gumi	41.5	49.3
Inagawa-kai	51.3	70.0
Sumiyoshi-kai	45	40.8
Nidaimo Kudōrengō Kusanō-ikka	26.4	17.3
Rokudaimo Gōda-ikka	19	3.7
Godaimo Aizu Kotetsu	20	16.2
Yondaimo Kyōsei-kai	13.3	28.3
Yondaimo Kozakura-ikka	21.4	39.3
Nidaimo Dōjin-kai	36	15.8
Sandaimo Kyokuryū-kai	22.6	25.0
Okinawa Kyokuryū-kai	12.8	8.3
Sandaimo Asano-gumi	53.8	47.2
Shinwa-kai	37.5	23.5
Sōai-kai	57.5	67.4
Sandaimo Yamanō-kai	50	171.4
Nidaimo Kyōdō-kai	25	2.0
Sandaimo Taishū-kai	108	-
Rokudaimo Sakaume-gumi	41.2	41.2
Kyokutō Sakurai Sōke Rengō-kai	13.5	51.4
Kyokutō-kai	27.5	33.0
Azuma-gumi	55.6	50.0
Matsuba-kai	48.8	37.6
Kokusui-kai	50	55.6

There does not seem to be any significant correlation between size of group and number of injunctions per thousand members. There is however a noticeable difference between the smaller groups (here defined as those with membership under one thousand) and the larger syndicates in terms of year on year trend. For the small groups (which collectively had a total strength of 4,540) there was an underlying stability to the number of injunctions received in each year. In contrast to this, the three big syndicates showed substantial increases each year (with the



Sumiyoshi-kai breaking this pattern in 1998). This is shown by indexing the figures for the big three syndicates and all small groups against the base year of 1994 as shown in table 5.15.

Table 5.15 Trends in injunctions by group 1994-98

Group	1994	1995	1996	1997	1998
Yamaguchi-gumi	100	113	128	157	178
Inagawa-kai	100	138	161	165	205
Sumiyoshi-kai	100	124	160	193	162
All Small Groups	100	98	110	101	110

*Ceteris paribus* (especially assuming that increased public awareness of the law affects all *bōryokudan* equally), this suggests that the small groups have, on the whole, tended to be more sensitive to the new legal environment. This would seem to bear some similarity to the experience of previous anti-*bōryokudan* efforts which disproportionately affected the smaller groups.

### INJUNCTION VIOLATIONS

From 1992 up to the end of 1998, a total of 8,580 injunctions (8,322 *chūshi meirei*, 258 *saihatsu bōshi meirei*) had been issued under the provisions of the *bōtaihō*.

Despite this high number, the incidence of injunctions being violated is very low.

Up to June 1997, there had been a total of 20 injunction violations, only three of which were stoppage orders and the rest repetition prevention orders. This low number is to be expected in that, once an injunction has been issued, it should be

clear to the perpetrator that the game is up and continuation of the proscribed activity is highly likely to result in a penalty.

This is less likely to be the case for repetition prevention orders (*saihatsu bōshi meirei*) than stoppage orders (*chūshi meirei*). This is because the former category of injunctions applies to an ongoing activity with multiple potential victims (such as selling spurious ‘economic research papers’) whereas a stoppage order applies to a specific incident which has been brought to the attention of the relevant Public Safety Commission by the intended victim. There is therefore a greater chance of success in violating the former type of injunction than the latter.

Whilst the low number of violations suggests that the system of injunctions imposed by the *bōtaihō* has been broadly effective, recent trends suggest that this effectiveness is declining. Until 1995 there had only been one case of a repetition prevention order being violated. The following year this jumped to six and in the first half of 1997 another three such injunctions were ignored. Until 1997 no stoppage orders had been violated but, in that year, two such cases occurred as well as seven repetition order violations. In 1998, one further stoppage order and seven repetition orders were broken. Although the numbers are too small to draw firm conclusions, it seems likely that the *bōtaihō*’s injunctions are starting to lose the respect of the *bōryokudan*.

## ARRESTS

As was mentioned in chapter four, the *bōtaihō* was significant not merely for the administrative regulations it imposed on the *bōryokudan* but had a wider symbolic importance in that, for the first time, a law explicitly identified the *bōryokudan* as a social evil to be eradicated. Police White Papers since 1992 routinely identify the introduction of the law as a turning point stimulating the police to renew their *bōryokudan*-eradication efforts. This is to be achieved through a coherent three-pillared strategy (*sanbonbashira*) making proactive and aggressive use of the existing criminal law and the *bōtaihō* combined with the broader social approach of the regional Centres for the Eradication of *Bōryokudan*.

This being the case we should expect to be able to see this reflected in the *bōryokudan* arrest statistics. These however show that following the introduction of the *bōtaihō*, arrests of *bōryokudan* members actually declined in line with a general trend since 1988. The only significant exception to this pattern was the Yamaguchi-gumi which saw a 10% rise in arrests for 1992, followed by a decline.

Table 5.16 Arrests by group 1988-98

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
All <i>Bōryokudan</i>	22,113	18,627	17,028	16,188	16,306	14,648	12,922	11,699	11,808	10,746	10,615
Yamaguchi-gumi	6,365	6,124	6,297	6,619	7,316	6,017	5,425	5,120	5,314	4,879	4,913
Inagawa-kai	2,596	2,210	2,290	2,130	2,112	2,151	1,804	1,480	1,629	2,454	1,504
Sumiyoshi-kai	2,804	2,553	2,208	2,106	2,219	2,143	1,984	1,707	1,754	1,588	1,503



The noticeable rise in Yamaguchi-gumi arrests in 1992, whilst the figures for all other *bōryokudan* and for the two big Tokyo syndicates remained stable, suggests that the *bōtaihō* was largely seen by the police as a specifically anti-Yamaguchi-gumi law. As if to make the point, the day the law came into effect Osaka police made a high-profile search of the gang's Kōbe headquarters.

One Yamaguchi-gumi third-level boss interviewee did not identify the *bōtaihō* as marking a sea change in police attitudes towards his group which had been 'extremely bad' for many years. In a limited sense, he said, the new law actually ameliorated operating conditions for him in that some activities that would formerly have resulted in an arrest, now merely become subject to an injunction. This may go some way to explaining why the arrest rate has declined since the introduction of the *bōtaihō* (but probably not by much given that the trend precedes 1992 by several years). This interviewee's assertion seems at odds with the fact that the *bōtaihō* was supposedly introduced to deal with *bōryokudan* activities that could not be dealt with by the existing body of laws. Assuming he was telling the truth here, it remains puzzling why this should be the case.

## CRIME LEVELS

As has been discussed in chapter three, legal changes concerning *bōryokudan* activity tend to have been the major spur to *bōryokudan* evolution; rather than

eliminating the *bōryokudan* problem, these laws have pushed crime syndicates into alternative areas of criminal activity. To what extent can the same be said for the *bōtaihō*?

Firstly, what impact has there been on the *bōtaihō*'s main areas of concern, the violent intervention on civil disputes and protection-type activities? Because the *bōtaihō* was introduced to plug the gap in pre-existing law, there are no satisfactory police statistics on the levels of *minbō*-type activities before the *bōtaihō* came into effect. Examining the data on *bōtaihō* injunctions does not help us greatly as we have no idea as to the level of reporting rates. The information provided by NRIPS' investigation of *bōryokudan* arrestees does suggest a broadly positive impact in that gang-members are trying to avoid trouble with ordinary members of the public.

Assuming that purely predatory *bōryokudan minbō* has broadly declined as a consequence of the *bōtaihō*, what is the situation for protection-type activities in which the *bōryokudan* are providing a service to a consumer?

The most obvious sub-category of this type is the traditional *bōryokudan shinogi* of taking protection money from Japan's enormous bar, club and restaurant industry collectively known as *mizushōbai*<sup>9</sup>. In an attempt to ascertain the post-*bōtaihō* level

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<sup>9</sup> Despite declining by 14% from its 1992 peak, corporate entertainment expenses in Japan during 1997 totalled ¥5.3 trillion (£27 billion).

of *bōryokudan* protection of this industry, the NPA commissioned the Social Safety Research Foundation (*Shakai Anzen Kenkyū Zaidan*) to conduct a study of the industry. The research project was carried out between January and February 1998 and consisted of a postal survey of 5,000 eating and drinking establishments throughout Japan.

The main findings of this survey were that 12.4% of respondents had experience of violent demands from *bōryokudan* (84% had not, 3.6% no answer). Of these demands, 86.1% included demands that various products be bought, 13.5% involved demands for *shobadai* (a charge for the use of space), 3.1% were demands that people be employed and 7% covered miscellaneous demands.

In 37.1% of cases of violent demands the premises in question acceded to these demands. This suggests that only 4.6% ( $12.4 \times 0.371$ ) of respondents were paying protection money etc. to *bōryokudan*. However, as Mugishima Fumiō, the director of this research project and formerly of NRIPS, stressed when he provided the researcher with a copy of the report, the worth of these findings was severely undermined by the very poor response rate of 17.5%<sup>10</sup>. Mugishima himself was inclined to believe that the true rate of protection payment money in this industry was considerably higher notwithstanding the effects of the *bōtaihō*.

Worryingly, 10.3% of respondents (who might be expected to represent the more

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<sup>10</sup> Postal surveys have a notoriously low response rate (Gilbert 1993: 96).



responsible part of the wider survey population) subscribed to the view that the *bōryokudan* are 'a necessary evil and (I) would not like them to disappear'. As one former bar-owner (and later Yamaguchi-gumi third-level boss) stated in interview, were he to have telephoned the police requesting help with difficult customers, he would not have expected a positive reaction (interview, Osaka, August 1998). In this situation there is a clear market opportunity for alternative sources of protection and the existence of this market has not itself been affected by the appearance of the new law.

Ujihara, a bar-owner and Yamaguchi-gumi business-brother from a provincial city near Nagoya, also corroborated this analysis. As a *bōryokudan*-associate (he described himself as 'half-*yakuza*') he had no requirement to pay protection money but during a 1998 interview claimed that, of the 2,500 eating/drinking establishments in the entertainment area of his city, 30% were currently paying protection money of between ¥20-50,000 per month to the *yakuza*. Assuming an average of ¥30,000, this yields a total annual income to the local *bōryokudan* of ¥270m. Although this income had been affected by the introduction of the *bōtaihō*, Ujihara suggested that economic factors were of greater significance. During the years of the bubble economy, there had been 4,000 hostess-clubs and snack-bars in this entertainment district. Revenue for Ujihara himself was down 25% on the previous year.

Ujihara claimed that following the introduction of the *bōtaihō* some clubs had attempted to sever relations with *bōryokudan*. In order to maintain a protective

umbrella in case of trouble these establishments had encouraged off-duty policemen to frequent their premises with the enticement of free or cheap drinks. Ujihara asserted that this cure was worse than the disease as, in his experience, policemen ranked alongside teachers and doctors as the worst behaved customers and the ones most likely to cause trouble with his girls.

Ujihara escorted the researcher round various clubs at one of which he was fortunate enough to see some trouble-resolution in operation. In response to a call from the club's mama-san, Tsuru, the boss from the protecting Inagawa-kai sub-group, arrived to pacify a drunken and unruly customer. Although the vigorous tongue-lashing this boss dealt out was hardly the most discreet means of resolving the situation, it was not more intrusive than police intervention would have been. In terms of response time, it is highly unlikely that the police would have matched Tsuru. More importantly, given that the incident itself was a relatively minor altercation, it is not clear that the police would have involved themselves anyway.

When the researcher returned the following year (1999), Ujihara explained that the situation had changed out of all recognition. Due to a concentrated police drive on excluding *bōryokudan* from the prefecture's hospitality industry, many bars in the area had cut all links with their former protectors<sup>11</sup>. Through their exercise of the Public Morals Law (*fūeihō*) police are able to exert considerable influence over these businesses. It seemed from Ujihara's description that this drive had had a far

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<sup>11</sup> It is probable that this crack-down was triggered by the amendment of the Public Morals Law in 1998.

greater impact on the 'water trades' than the *bōtaihō* seven years earlier. It is not clear how drinking establishments maintain their security in this new environment.

As has been described above, following the collapse of the bubble some financial institutions have made use of *bōryokudan* loss-cutting services whilst others have attempted to use *bōryokudan* to recover outstanding debts (though in the case of Sumitomo bank, with a less than satisfactory outcome). The succession of large-scale *sōkaiya* scandals that have been brought to light in recent years shows that business has found it very difficult to free itself from the protection/predation of Japanese organised crime.

Just how hard was illustrated by an incident in February 1994 in which Suzuki Juntarō, the head of Fuji Film Corporation's 'General Affairs Department', was stabbed to death. It was widely speculated at the time that the company had been attempting to cut links with *sōkaiya* extortionists and Suzuki's death had been the result.

Although the police have recently had periodic campaigns putting pressure on Japanese companies to rid themselves of *sōkaiya*, and many claim to have done so, as Nomura did in 1991, this has been easier said than done. Between 1996-7 several high-profile incidents, involving such major firms as Ajinomoto, Nomura Securities, Takashimaya and Mitsubishi Cars, occurred to demonstrate this. In the Takashimaya case, the large retailing company was found to have paid out ¥160m



to a group of *bōryokudan/sōkaiya* in order to maintain quiet shareholders' meetings between 1994 and 1995. It was further revealed that, in the seven years up to 1996, the chain had made a total of ¥700m in illegal payments to *yakuza* (originally to quell fake social-movements) and partners in a price-fixing (*dango*) ring (*Jiji Press Newswire* 22/5/1997, 6/6/1997, Iwahashi 1998, 6).

The Nomura scandal was on a far larger scale. Between 1994 and 1996 Dai-ichi Kangyō Bank (DKB) lent ¥26 billion to Koike Ryūichi, a well-known *sōkaiya* since the 1970s, with practically no collateral. With some of this money Koike purchased 300,000 shares of Nomura Securities. From this position as a significant shareholder, Koike was able to extort ¥320m from Nomura. As well as several arrests and indictments of senior DKB and Nomura executives, this incident resulted in the suicide of one DKB man involved in initially arranging the loan. The plot became yet thicker when Koike admitted to investigating prosecutors that three other major securities companies had also given him money (*Reuters News Service* 04-10/7/1997). Coming, as it did, on the eve of Japan's financial 'big bang', this scandal, showing persistent organised crime penetration of the mightiest financial institutions in the land, did not bode well for Japan's bid for a transparent and globally-competitive financial system.

Why did DKB provide Koike with such an enormous uncovered loan? A possible explanation may be found by looking at Koike's background. Koike inherited his power from a right-wing extortionist and publisher, Kijima Rikiya, who in turn was a protégé of the infamous Kodama Yoshio. Koike's ascendancy was apparently telegraphed to the business community at the wedding of Kijima's son. At the

reception, attended by a mixture of *sōkaiya*, top *bōryokudan* bosses and big business executives, Koike was placed at a special table for the most important gang-leaders and famous singers. Backing up Koike is a *bōryokudan* group who provide him with credibility but who also make use of him (*Shūkan Gendai* 23/8/97). It seems probable that it was the existence of Koike's backers that made it possible for him to 'borrow' the initial money from DKB. Koike was eventually sentenced to nine months in prison and a ¥690m fine (*Kyōdo News Agency* 21/4/1999).

The following year Japan Airlines (JAL) was involved in a *sōkaiya*-related incident. Despite claiming to have cancelled all subscriptions to *sōkaiya* publications, they had overlooked one contract they had with a plant-leasing company. This was in fact a cover for *sōkaiya* payments mounting to ¥23 million (£105m) over a three-year period (*Keisatsu Hakusho* 1999, 155). Geoffrey Tudor, a spokesman for JAL, claims that the police now are serious about *sōkaiya* and have recently put more pressure on companies to cut their links with these people (interview Tokyo 1998).

Alongside this stern police guidance to company General Affairs Departments, the more aggressive attitude can also be seen by the heavy police presence at the company annual general meetings which are increasingly being held on the same day. At the 1998 round of AGMs the Tokyo police deployed 5,000 officers to deal with only around 100 *sōkaiya* actively participating in the meetings (*Shūkan Jitsuwa* 2/7/1998). The overall numbers of *sōkaiya* have, according to police statistics, also

fallen in recent years and by 1997 stood at 900 members and thirty groups. Only half of these identified individuals attended company AGMs in 1997 (Yokouchi 1998, 38).

In a 1999 survey of large businesses carried out by the National Centre for the Eradication of *Bōryokudan*, an attempt was made to evaluate the current levels of *bōryokudan/sōkaiya* activity in this area. Of the 3,191 companies surveyed, 2,326 replied (giving a surprisingly high response rate of 73%). Of these respondents, 1,031 claimed that, in the past, they had received demands for money from *bōryokudan/sōkaiya*. Sixty-seven firms admitted that they had given money to such groups. Perhaps more significantly are the figures for the previous year (1998) during which 706 companies had received demands and fifty-nine had acceded. Whilst most (53) of these companies had paid out less than ¥1m, two had given out more than ¥100m (one of which apparently exceeded this sum by a factor of ten) (*Asahi Shinbun* 19/5/1999). If we make the assumptions that non-respondents are more likely to retain links with *bōryokudan/sōkaiya* groups, and that some respondents may not be entirely truthful<sup>12</sup>, the situation is worse than the survey immediately suggests.

It seems, therefore, that the less proficient *sōkaiya* are being squeezed out of the industry but a hard core remain; even after they have formally announced that all links have been cut and subscriptions to spurious information sheets cancelled,

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<sup>12</sup> Senior company management may deliberately adopt a policy of ignorance by giving broad discretionary powers to its General Affairs department and not asking too many questions.



some individuals are 'overlooked' and new ways found to pay them. As these individuals become increasingly hard to spot, there is likely to be a corresponding increase in the uncertainty as to the accuracy of the police figures.

Whilst the sophisticated *bōryokudan* aristocracy may continue to find a niche in offering protective services to Japan's companies, what has happened at the other end of the *yakuza* hierarchy? It seems clear that the *bōtaihō* has been broadly effective in removing *bōryokudan* from purely exploitative *minbō*-type *shinogi* targeting those engaged in legitimate activities. Of course, those operating outside of the law remain highly vulnerable to *bōryokudan* predation. In the light of this reduced market, how have *bōryokudan* members tried to maintain their income levels?

Since the introduction of the *bōtaihō*, two disturbing trends have appeared in the crime statistics that suggest that *bōryokudan* members displaced by the new law have become reliant on income generated from activities that present social problems equal, or greater, than the ones they replace: drugs and robbery.

If we look at the police statistics for drugs offences since the beginning of the Heisei period, we see that from 1995 there has been a significant rise in the number of arrests for amphetamine law violations. Since 1996, with the figure standing close to 20,000, the police consider that Japan is currently experiencing the third post-war period of epidemic amphetamine abuse (Higuchi 1998, *Keisatsu Hakusho*

1998, 131). Although the number of arrests in 1998 dropped below the 1996 level, the police still view the current situation as severe. From the fact that over half of the arrestees are first time offenders, the police infer that the market is still growing (*Keisastu Hakusho* 1999, 96).

Table 5.17 Amphetamine-related arrests and seizures 1988-98

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Arrests	20,399	16,613	15,038	16,093	15,062	15,252	14,655	17,101	19,420	19,722	16,888
Seizures (Kg)	214.1	217.6	275.8	121.0	163.7	96.2	313.3	85.1	650.8	171.9	549.0

*Keisatsu Hakusho* 1999

The figures for amphetamine seizures do not follow such a simple pattern reflecting the importance of serendipity in uncovering large shipments, but if we compare the average level of seizures for 1988-92 with that for 1993-98, we see a clear difference. Between 1988 and 1992 an average of 174.9 kg was seized each year; the corresponding figure for the following five years was 354.0 (*Keisatsu Hakusho* 1999, 95). In 1999, the police seized a staggering 1.98 tons – more than the total seizures of the preceding five years (*Kyōdo News* 2/4/2000). As we would expect, increase in supply has been matched by a major drop in street-prices from ¥10,000 per shot in the 1980s to current levels of ¥2,000. This price-drop supports the contention that this third period of amphetamine abuse is supply-pushed rather than demand-led.

Independent estimates of current levels of consumption suggest a market of as many as 1.2m users, and police from the NPA drugs countermeasures section do not feel this to be an exaggeration (Ōhashi 1998, 16). There are several special

characteristics of this new period but perhaps the most significant is the alarming proportion of first-time offenders, and in particular youngsters, amongst the arrestees. This is seen as being due to greater preparedness amongst dealers to sell indiscriminately to junior and high school students (of which 60% of customers are girls). The rapid increase in consumption amongst this group is illustrated by a five-fold jump in arrests of high school students between 1994 (41) and 1996 (214).

Because of this younger, less-experienced, market, since 1998 purity levels have started to drop (Mizoguchi interview 1999). This development of a younger clientele has also led to a move away from intravenous injection as the main form of taking the drug. Currently amphetamines may be drunk mixed with juice, inhaled as a vapour or ingested as a lozenge. Although the main source of supply is now China, recently the Golden Triangle has started producing amphetamine lozenges called 'yābā', which may also contain heroin or LSD (Higuchi, 1998).

Recently North Korea has also become a major source of amphetamines. In January 1998, Thai officials seized 2.5 tons of ephedrine destined for North Korea. Furious North Korean diplomats argued that the shipment was wanted for the legitimate purpose of making cough medicine (2.5 tons of ephedrine is almost sufficient to meet the world demand for cough syrup). The following August a shipment of 100kg of amphetamine from North Korea was seized by Japanese police in Sakai and two *bōryokudan* members and a Korean arrested (*Bangkok Post* 13/05/1999, *Korean Herald* 12/05/1999). The NPA estimates that 43.7% of total amphetamine seizures in 1999 originated from North Korea (*Kyōdo News* 2/4/2000).



In the media and also the police literature, much is made of the importance of Iranian drug-peddling organisations in this third epidemic period. It is these groups which are held to be responsible for the indiscriminate sale of drugs to minors. If we look at the statistics for arrests of Iranian dealers compared to *bōryokudan* dealers, the relative importance of the two becomes apparent.

Table 5.18 Drug arrests for Iranians and *bōryokudan* 1993-8

	1993	1994	1995	1996	1997	1998
Drug-related arrests of Iranians	195	270	253	294	328	289
Of which related to amphetamines	5	85	120	218	220	217
<i>Bōryokudan</i> amphetamine-related arrests	6,401	6,329	7,377	7,912	7,817	7,204

*Keisatsu Hakusho* 1998-9

These figures clearly show that, in terms of numbers, the Iranians account for a very small proportion of total arrests. If these Iranians occupied the apex of the distribution pyramid then indeed they might be appropriately apportioned a greater level of significance than the low numbers would otherwise warrant. However, as Ōhashi admits, they generally operate as street-level traders receiving their supplies from *bōryokudan* wholesalers (1998, 22). The dominant position occupied by the *bōryokudan* at the upper levels of the supply chain can be shown by the fact that of the 549.0 kg of amphetamines seized by the police in 1998, 466.0 kg (85%) was seized from *bōryokudan* (*Keisatsu Hakusho* 1999, 98).

Although the general contempt among *bōryokudan* for drug-dealing *yakuza* as weaklings lacking the ability and courage to earn money in more manly ways remains, the removal of alternative opportunities has meant that many *bōryokudan* have latched on to this business as a means of survival. Even the large syndicates, which formally prohibit their members from participation, have found themselves unable to prevent this. We can see this from the periodic directives from the Yamaguchi-gumi's executive committee instructing members not to have anything to do with drugs.

During the course of one of the researcher's earliest interviews, he proposed to a career NPA officer that one side-effect of the *bōtaihō* might have been to exacerbate the amphetamine problem. The interviewee showed a mild degree of irritation at this suggestion and advised the researcher not to spend too much time worrying about such journalistic interpretations. It is however hard to believe that the increase in amphetamine-dealing is not connected to the closure of other sources of revenue. The journalistic sources, so decried by the NPA interviewee, regularly make this connection.

The other noticeable trend in the crime statistics in recent years is the increase in thefts by organised gangs. The incidence of arrests of *bōryokudan* members for theft has jumped by almost 100% from 13,016 in 1991 to 24,838 in 1997 and this the police do accept is a side-effect of the *bōtaihō* (Yasuda 1998, 27-8). In particular the number of such cases involving ten or more individuals has shown a

massive jump from below ten in the preceding years to 60 in 1997 (*Jitsuwa Jidai* 12/1998).

During 1997 the NPA identified 11 theft rings composed of *bōryokudan* members. One arrested member admitted to the police that “*katagi* (non-*yakuza* citizens) have started issuing victims’ reports so we can’t make money as we used to”. This individual also claimed that to quickly raise the money required for monthly *jōnōkin* payments in the harsh environment of the depressed economy and the *bōtaihō*, many gang members were resorting to drug-dealing (*Yomiuri Shinbun* 20/4/1998).

Of particular concern is the increase in the sort of violent, professional robbery which had hitherto been practically unheard of in modern Japan. In 1993 there were six robberies of armoured delivery cars compared to a total of five in the preceding three years. In 1994, there were nine, including one in Hyōgo prefecture in which two robbers made off with ¥541m in cash (*Keisatsu Hakusho* 1995, 153). Three years later the number of such raids had risen to 24. In 17 of these cases firearms had been discharged. In 1998 the number of delivery-car robberies was eleven (in three of which guns were fired) (*Keisatsu Hakusho* 1998, 154-5; 1999, 123).

*Bōryokudan* groups are also establishing specialist groups stealing luxury cars to order and providing them with fresh key cylinders, plates and papers before selling them on for 15-20% of show-room price. One 23-man group (Yamaguchi-gumi related) processed over 80 cars in this way before being arrested. Other groups



specialise in diggers and trucks for the market in China and Russia where a truck can fetch as much as ¥3m (*Jitsuwa Jidai* 12/1998, Iwate police, 1998).

Some *bōryokudan* have themselves become victims of theft-gangs. One group, which operated in the Tokyo area, specialised in targeting the homes of gang bosses. It is not clear how many fell victim to this group, as to have reported to the police would have resulted in a loss of face. Eventually the group's leader, who had been expelled from a syndicate, committed suicide and his followers gave themselves up to the police. Other such groups, composed of former *bōryokudan*, are still said to exist (*Jitsuwa Jidai* 12/1998). One defence lawyer remarked that many of his gang-boss clients admit to now feeling unsafe on the streets (interview, Osaka, June 1998). When the researcher met some of the same individuals, they were quick to blame the increase in robbery on expelled *yakuza* but claimed that these renegades were no match for the strength of the *yakuza*<sup>13</sup>.

Ironically, the self-restraint on inter-group conflicts that the large *bōryokudan* syndicates had exercised as a response to the *bōtaihō*, in certain respects made the streets less safe. Because firearms were no longer as essential, financially embarrassed *bōryokudan* members started selling their handguns to ordinary members of the public including, according to a police spokesman, professors, office-workers and students. In one case in November 1994, a patient used such a

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<sup>13</sup> In discussions with criminal defence lawyers it became clear that the way in which *bōryokudan* presented themselves to their lawyer was very different from the way in which they portrayed themselves to the researcher. To the former they stressed that they were essentially legitimate businessmen trying to get by in a hostile environment, whilst to the researcher there seemed greater emphasis on projecting an impressive *yakuza* image.

weapon to shoot his surgeon due to dissatisfaction with a hernia operation (*Reuters News Service* 25/10/1994, 10/11/1994).

Traditionally the *yakuza* had involved themselves in illegal activity but had a code of morality. In this code, theft was seen as something shameful. To what extent this traditional code was actually adhered to is debatable but it is a fact that in earlier times theft was not a recognised source of *yakuza* income. This development is another major step in the evolution of organised crime in Japan of similar magnitude to the shift from traditional *yakuza shinogi* to *minbō*.

### CUT-BACKS

It should be clear from the above that many *bōryokudan* groups are currently suffering considerable financial hardship. In recognition of this fact, at the Yamaguchi-gumi direct-members' meeting (*teireikai*) on the fifth of April, 1994, the attendees were instructed to show restraint in holding the traditional *yakuza* ceremonies, collectively known as *girikake*, at which the participants are expected to make large cash donations. The following July, the monthly *jōnōkin* dues paid by direct members to the organisation were dropped by ¥200,000 to ¥650,000. This cut did not apply to the top-level executives, who were deemed to still have a stable income (Yamada 1994b, 306).

Yamada, broadly sympathetic to the Yamaguchi-gumi, reports that many sub-groups slashed *jōnōkin* payments by as much as fifty percent (*ibid*, 293). News

reports however indicate that other sub-group bosses responded to their own financial hardship by raising the *jōnōkin* burden of their subordinates (*Asia Intelligence Wire* 22/10/1999). This is putting a lot of strain on the various organisations and encouraging the sort of desperate measures outlined above.

It is also clear that the *bōryokudan* are trying to curb excessive expenses. Some groups have given up manning their offices round the clock under the *tōban* system.

Others have started employing non-*yakuza* to man their telephones therefore freeing *kumi-in* to concentrate on finding money. In common with the rest of Japanese society, the *bōryokudan* have felt the need to rein in their entertainment expenses.

Most severely hit are those at the bottom, over half of whom are currently dependent on the earnings of others (Yamada 1994b, 293).

Ujihara notes that those *bōryokudan* members with stable and high incomes are increasing the wealth disparity within syndicates by lending money to their less-fortunate colleagues (interview 1999). This causes problems of intra-organisational harmony, especially in cases of default, which, it appears, frequently occur when there is a significant difference in power between lender and borrower. Since September 1994, the Yamaguchi-gumi executive committee has forbidden intra-syndicate money lending.



## **BŌRYOKUDAN ERADICATION CENTRES**

As well as increasing the scope of controls on *bōryokudan* activity, the *bōtaihō* also made provisions for the establishment of centres promoting the eradication of *bōryokudan* (*bōtsusen*). The main functions of these centres are to provide the following: counselling on *bōryokudan*-related problems, training for company employees particularly susceptible to violent *bōryokudan* demands, literature and posters increasing public-awareness of the threat of *bōryokudan* and the available countermeasures, advice and assistance for *bōryokudan* members wishing to leave their gang and return to straight society.

The first of these centres actually predates the *bōtaihō* by several years as Hiroshima prefecture had created the *Bōryoku Tsuihō Hiroshima Kenmin Kaigi* in 1987. By the time the new law was passed, eight other prefectures had followed suit due to the favourable evaluation of Hiroshima's centre. With the implementation of the *bōtaihō*, the remaining administrative areas quickly created their own centres with Niigata being the last to do so in July 1992 (Sumida 1997, 207).

All of these centres enjoy the legal status of foundations (*zaidan hōjin*) and receive no central government funding. Sumida (1997, 208) suggests that they are largely dependent on donations (tax-deductible) from private business. However, in the

case of the two centres visited by the researcher (Kanagawa and Iwate) the vast bulk of their endowments came from local government. Half of Kanagawa's ¥500 million fund came from the prefectural government, 40% from the city, town and village assemblies and only ten percent came from business. In Iwate just under a quarter of the ¥632 million fund was derived from business.

Although the researcher was not shown a breakdown for the figures in Kanagawa, in Iwate by far the biggest single private contributor was the local *pachinko* industry (nearly 5% of the total fund). This seems natural in the light of the historical relationship between this business and the *yakuza*. However, it is hard to avoid the conclusion that the control that the police wield over *pachinko* through the Public Morals Law (*fūeihō*) also encourages generosity on the part of the *pachinko* association.

The formal organisation of these centres is closely wedded to the prefectural and police hierarchies with the posts of president and vice president being held by the governor and director general of the prefectural police respectively. At the operational level, however, the centres are effectively police concerns being situated in the regional police headquarters and staffed by retired police officers. In this respect it is impossible to ignore the observation made by several academic interviewees (Katō, Nishimura et al.) that one of the underlying motives behind the establishment of these centres was to provide *amakudari* (post-retirement job) positions for retired police officers.

No doubt the police can defend their close association with the regional centres in that they have the requisite experience to most effectively fulfil the duties of the *bōtsusen*. In addition, they have the advantage of being the one organisation impervious to *bōryokudan* intimidation. These justifications notwithstanding, the researcher finds it hard to reject the cynical institutional empire-building interpretation.

Alongside the full-time staff (four in Kanagawa, three in Iwate) there is a team of part-time counsellors (*sōdan yakuin*) (totalling eleven in Kanagawa and nine in Iwate) composed of lawyers, probation officers, youth guidance officers and retired policemen. Nationally there were a total of 680 such counsellors by 1997 (Sumida 1997, 214). As shown in table 5.19 below, in 1998 counsellors from the regional centres conducted 12,450 separate discussions with members of the public.

As we can see from these figures, two-thirds of all *bōryokudan*-related discussions are actually conducted by the police. If we remove general discussions concerning the *bōtaihō* and the work of the centres themselves, and confine ourselves to discussions concerning concrete problems, this proportion rises to over three-quarters. This might suggest that, at least in terms of counselling activity, these centres are of only marginal importance. The potential argument that some individuals may be unwilling to talk to police officers is weakened by the close police-links enjoyed by the centres both in terms of facilities and personnel.



Table 5.19 *Bōryokudan*-Related Discussions (Police and Centres) 1998

	Police	Centres	Total
1. Discussions concerning Article 9 of the <i>bōtaihō</i>	7,636	3,056	10,692
1) Demands for money taking advantage of weakness	672	218	890
2) Unfair demands for contributions	1,322	794	2,116
3) Unfair demands for subcontracting work	238	63	301
4) Unfair demands for protection money	493	82	575
5) Unfair demands for bodyguard fees	336	21	357
6) High interest rate debt-collection	225	183	480
7) Unfair debt-collection	802	346	1,148
8) Unfair demands for exemption of liabilities	833	279	1,112
9) Unfair demands for loans	162	27	189
10) Unfair demands for trading on credit	82	7	89
11) Unfair demands to purchase shares	11	1	12
12) Unfair land-sharking ( <i>jiage</i> )	26	20	46
13) Auction obstruction	89	61	150
14) Unfair intervention on negotiations	337	215	552
15) Unfair demands for money on some pretext	2,008	739	2,747
2. Discussions concerning 'semi-violent demands'	3	-	3
3. Discussions concerning secession & forced-recruitment	1,269	532	1,801
1) Secession	856	472	1,328
2) Demands/enticements to join <i>bōryokudan</i>	413	60	473
3. Discussions concerning gang offices	901	409	1,310
1) Forbidden activities	25	16	41
2) Grievances/requests for crackdowns etc.	555	75	630
3) Prevent arrival/force withdrawal of gang office	102	86	188
4) Eviction	219	232	451
4. Discussions concerning other unfair <i>bōryokudan</i> acts	11,649	2,161	13,810
1) Acts covered by criminal law	3,691	868	4,559
Acts covered by special laws	1,435	171	1,606
2) Other activities	6,523	1,122	7,645
5. Discussions concerning the <i>bōtaihō</i>	2,587	6,292	8,879
1) Concerning the <i>Bōryokudan</i> Eradication Centres	204	3,134	3,338
2) Other	2,383	3,158	5,541
TOTAL	24,045	12,450	36,495

*Keisatsu Hakusho* 1999

Another of the key responsibilities of the centres is to provide training in appropriate techniques for responding to *bōryokudan* demands. Up to April 1999,

331,800 individuals had received such training (*Keisatsu Hakusho* 1998, 188; 1999, 161; Sumida 1997, 220). According to the police white papers, most of these trainees were employed in the standard *bōryokudan* victims: finance/insurance, construction, real-estate and game-centres (*pachinko*). In Iwate there were also a high number of taxi-drivers, parcel-delivery company employees, car salesmen and petrol-pump attendants, trained in 1997<sup>14</sup>.

Training consists of an afternoon's package of lectures introducing the trainees to the current state of the *bōryokudan* and the provisions of the *bōtaihō*. This is followed by a video portraying various (quite convincing) scenarios involving violent *bōryokudan* demands. In conclusion there is a forty-five minute lecture on mental preparation, reaction to *bōryokudan* demands and the availability of the centres and police for discussion (training program Kanagawa centre). Trainees are also presented with manuals to take away for further study and phone numbers for the centre and police. The police white papers state that role-playing exercises are also part of the training but this did not appear on the Kanagawa program, and the Iwate centre claimed that this was only available for those attending the refresher course (three years after the initial one).

Although the reality of the training does not seem to quite match the expectations raised by the description of this aspect of the centres' work in the police/centre literature, it is evidently a useful exercise. The police white papers routinely give

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<sup>14</sup> Given that these courses have been running for several years, it is probable that those in the highest risk categories had already received training and the police were widening the catchment area for potential trainees.

examples of employees making use of their training (1999, 161). It is however questionable to what extent the trainees' employers themselves were actually taking *bōryokudan* countermeasures seriously. In February 1993, the police surveyed 3,061 big businesses with a response rate of 77%. Of the respondents, only 25% claimed that they were taking steps to prevent falling victim to *bōryokudan* demands (Sumida 1997, 220). It is to be expected that the non-respondents were even less scrupulous.

More importantly, training company employees in how to deal with *bōryokudan* demands is of dubious worth if the same companies are themselves making use of these groups. As we have seen, in the past businesses and politicians have frequently dealt with *bōryokudan* demands by calling on the services of other similar groups. Recent incidents suggest no great grounds for optimism that this practice is in significant decline.

## REHABILITATION

The other major duty of the regional centres is to promote the secession and rehabilitation of *bōryokudan* members. Given the current financial hardship experienced by many *bōryokudan* members, this would appear to be an ideal opportunity to persuade them to leave. However, in so far as this hardship is economically determined (rather than due to the *bōtaihō*), the centres are faced with a catch-22 problem: because of the recession, seceders have little hope of alternative



employment; if the economy were booming, *shinogi* would be better and there would be little incentive to leave.

As of mid-1998 the police and centres had managed to persuade approximately 4,250 gang-members to leave their groups since the introduction of the *bōtaihō* (*Keisatsu Hakusho* 1999, 159). The most important factor contributing to the successful rehabilitation to society of these individuals is their ability to find legitimate employment. To this end, each prefecture has a Social Rehabilitation Strategy Council (*Shakai Fukki Taisaku Kyōgikai*) composed of representatives of the centres, police, prison service, probation service and the local employment security office.

In addition, a number of industries co-operate with these councils by offering assistance in providing employment to *bōryokudan*-seceders. By 1996, an impressive total of 5,190 companies were helping in this way (Sumida 1997, 217). However of the 4,250 gang-leavers, only 540 (13%) have found work through the good offices of the councils and the co-operating companies (*Keisatsu Hakusho* 1999, 159-61). These dismal figures may not reflect the entire situation. A follow up survey conducted in 1993 showed that, of the 1,064 individuals persuaded to leave gangs by the police or centres in the first year of the *bōtaihō*, 621 (58%) had found work within three months. A further 7.5% were actively looking for work whilst the same proportion had no strong motivation to find work or were doing nothing. The fate of another 10% was unclear (Sumida 1997, 217).

Given the current state of the Japanese economy, it is highly unlikely that, were a similar survey to be conducted now (2000) it would yield results as favourable to the centres. In both Iwate and Kanagawa, the researcher found rehabilitation rates even lower than those of the 1998 police white paper. At the Kanagawa centre during 1997 about 400 separate discussions were held with *bōryokudan* members about leaving their group. Of these, only ten members actually left.

Over the same period the Kanagawa police managed to persuade 34 *bōryokudan* members to leave. The greater effectiveness of the police is due to the fact that most of these leavers are in prison and will receive shorter sentences if they agree to leave their gangs. Because of the high likelihood of deception there is a need to check up on gang-leavers. Unfortunately the Kanagawa police can only conduct surveys within their own prefecture and consequently it was not clear what happened to many of these individuals though the interviewees suggested that many of them returned home or possibly joined gangs in other areas.

Since the introduction of the *bōtaihō*, nine *bōryokudan* members had left gangs in Kanagawa and had found work. Of this total four had quit; so only five were still known to be in gainful employment, most of them in the construction industry. In Iwate only two former *yakuza* had found work through the social-rehabilitation council and one had since rejoined his gang.

Iwate also runs a more specialised scheme for former *tekiya* (outdoor stall-holder) *yakuza*. Up until the end of the Shōwa period, the *yakuza* in Iwate had been

overwhelmingly involved in *tekiya* activities and had been broadly tolerated by the police. In 1991 Kuwata of the Yamaken-gumi arrived in Iwate and 'invited' the most prominent gang to join his group. Once this had happened, the other *yakuza* groups in Iwate felt compelled to join one of the large syndicates for their own protection.

Alarmed at this development, the police started to take more aggressive measures against the *bōryokudan*. One of these steps was to prevent *bōryokudan* participation in festivals – hitherto the traditional economic bedrock of the *tekiya*. To help those that agreed to leave their gangs, three stall-holders' unions (essentially legitimised *tekiya* groups) were set up under police guidance. The impact of this change has been mixed. Under this new system, the allocation of stall sites is no longer determined by seniority within the *yakuza* world. Allocation by drawing lots, though fair, introduces an element of uncertainty as traders cannot gauge in advance how much stock they require. Consequently place-allocation is now determined through negotiations with the police and festival organiser (interview Morioka 1998).

Because now non-*yakuza* stall-holders are able to participate in festivals, an element of competition has been introduced which has reduced profits. Harada, the director of one of the unions and former Sumiyoshi-kai man, claimed that his sales had dropped by 30% since 1992 though he accepted that the bubble had been the largest factor behind this.



Income has also been affected by the recent trend for some festivals to restrict participation to local inhabitants in order to keep things clean. Interestingly, the fees for cleaning and electricity have also increased now that they are no longer set by the *yakuza*. Whereas they would formerly range from ¥2,000 to ¥10,000 per day, currently they may be as much as ¥30,000. On the other hand, now that he has left the Sumiyoshi-kai, Harada no longer has the financial burden of paying *jōnōkin*, taking his turn at the office-manning (*tōban*) rota and attending various *yakuza* ceremonies. Harada estimates that this cost him a total of ¥2 million per year.

Although the net effect of these changes means that Harada is no better off materially, he was keen to stress that the current situation was preferable and that his wife and children were much happier now he had left the Sumiyoshi-kai. He also praised the police for the help they had given him in going straight. Because the interview was conducted with two policemen sitting close by, it is not clear to what extent credence can be given for this last affirmation. It is however clear that this is one area in which rehabilitation is likely to be successful as there is no change in the individual's basic business.

The problem with rehabilitation of retired *bōryokudan* is that many of them are practically unemployable. In general, they possess extremely low educational qualifications and, according to most police interviewees, are lazy with little willpower. The additional stigma of a criminal record, tattoo and amputated fingers, mean that the employment available to them tends to be confined to construction type work. Given the depressed state of the construction industry this

sort of employment is currently very uncertain and many former *bōryokudan* have ended up living rough on the streets of San'ya and Kamagasaki (interviews, San'ya, 1998, corroborated by observation of half-finished tattoos and truncated fingers amongst the inhabitants).

In a 1994 NRIPS investigation (Yonezato et al 1994) into the factors promoting secession and rehabilitation, it was found that essentially those factors encouraging the former also assisted the latter. In particular they drew attention to a negative correlation between age and successful rehabilitation; younger members are far better able to leave and adapt to legitimate employment. They are also less likely to bear tattoos and amputated fingers. The findings noted that counselling and a supportive environment were also highly important both to secession and rehabilitation; so in this respect there is clearly a role for the centres to perform.

In order to remove the stigma of tattoos and missing fingers, it is now surgically possible to remove the former and replace the latter. This is however highly expensive. A fake finger typically costs ¥50,000, transplanting a toe ¥100,000 and tattoo removal ¥20,000 per square centimetre. Neither the police nor the centres can help *bōryokudan*-leavers with these expenses; the most they can do is provide living expenses for a couple of days (¥10-20,000) whilst the seceder finds his feet (Kanagawa centre).

## INTERNAL CONFLICT

The considerably reduced opportunities to make money in the current climate have also resulted in increased competition over *shinogi* between members of the same syndicate. Although same-syndicate membership might be thought to prevent this, the main focus of loyalty is to one's immediate gang rather than to the wider syndicate. It does, however, provide a mechanism for the rapid resolution of conflicts of this type (Yamaguchi-gumi sub-bosses interviews Osaka, 1998).

When such trouble does occur, as far as the Yamaguchi-gumi is concerned, settlement is currently determined according not to the merits of the case but to the relative strength of the disputants. In this sense intra-group conflicts are essentially the same as inter-group ones. Within the Yamaguchi-gumi the strongest organisations are the Yamaken-gumi and, until 1997, the Nakano-kai. The ascendancy of the Yamaken-gumi, combined with the constant demands for money from the fifth-generation leadership, itself drawn from the Yamaken-gumi, has caused discontent amongst the other groups within the syndicate (Fujimura interview Osaka 1998, Mizoguchi interviews 1998, 1999).

Some illustration of this discontent is given in the interview of an unidentified former Yamaguchi-gumi senior executive interviewee of Mizoguchi (1997, 258):

If we talk about the Yamaguchi-gumi, Watanabe san just shows favouritism to his allies and the view has taken hold that he is trying to make the Yamaguchi-gumi into a Yamaken-gumi chain. At the moment Takumi



(*gashira*) is around so somehow or other it keeps going without splitting up. But Takumi is sick<sup>15</sup> so it is a question of what happens if he dies. There is a real possibility that it will break up.

On 28 August 1997, Takumi was shot dead in the coffee shop of a Kōbe Hotel, where he had been discussing the proposed new organised-crime counter-measures law (*soshiki hanzai taisaku hō*) with headquarters chief Kishimoto Saizō (who had been unharmed in the attack). No other recent incident within the *yakuza* world more clearly illustrates the way in which political, economic and personal rivalries within large syndicates stress the bonds holding these groups together. Given the types of people who rise within such organisations, this is perhaps inevitable within a large syndicate such as the Yamaguchi-gumi.

Suspicion for Takumi's shooting quickly fell on the Nakano-kai when the get-away car was traced to a member of one of its sub-groups. The reaction of Yamaguchi-gumi leadership however, showed confusion and indecision. After weighing up the available evidence, three days after the incident Watanabe punished Nakano Tarō, the 1,700 man-strong Nakano-kai's leader, with expulsion (*hamon*).

The following day police from Hyōgo, Kyoto and Osaka police forces launched coordinated searches of Yamaguchi-gumi and Nakano-kai offices. The NPA also assembled *bōryokudan* specialists from police forces throughout Japan for an emergency meeting in Hyōgo prefecture. Given that it was widely felt that this

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<sup>15</sup> Diabetes and liver disease.

event could trigger off another internal war of the magnitude of the Yama-ichi war of the 1980s, the police were evidently keen to prevent the conflict escalating.

Nakano apparently met his expulsion with equanimity and reportedly told his top executives that he would probably be reinstated within two to three years. At the same time, many other groups within the syndicate felt that this punishment was insufficiently severe and on the third of September, Watanabe felt compelled to completely sever all relations (*zetsuen*) with Nakano. Even before this change, revenge attacks on Nakano-kai offices had started but, from the fourth onwards, these increased, causing the Yamaguchi-gumi headquarters to contact all block chiefs with orders to prevent such attacks. This order had little effect and the attacks continued. On the 30th September the headquarters issued a second, sterner, warning that 'if groups attack Nakano-kai-related buildings, we will deal with the leaders of superior groups'. This directive also failed to prevent retaliatory action.

In response to these attacks, the police took vigorous measures with frequent and widespread searches of both Yamaguchi-gumi and Nakano-kai offices and houses. Between Takumi's shooting and the 17<sup>th</sup> of October, the police made at least 910 separate searches and 87 arrests directly related to the *vendetta* shootings (Yamada 1998, 453-463). An Osaka-based delivery driver friend of the researcher also recalled massive police security around prime targets during this period.

Perhaps the most significant police action of this time was the arrest of Kuwata Kanekichi, head of the powerful Yamaken-gumi, on 26<sup>th</sup> December for violation of the firearms and sword regulation law (*jūtōhō*). This was important because, at the

time of arrest, Kuwata was not himself armed but subordinates travelling in a separate vehicle were. The police argued that, as their superior, Kuwata shared criminal liability. A month before, the police had tried to arrest two other top executives, Tsukasa Shinobu and Takizawa Takashi, on similar legal grounds, but they had managed to escape, though several *kumi-in* were arrested and found to be armed. Following this, Tsukasa and Takizawa were on the run for several months before finally giving themselves up.

This more flexible interpretation of the law is a major blow to the *bōryokudan* and is indicative of a shift to a more aggressive style of law-enforcement vis-à-vis these syndicates. At the time of writing, these cases are still being tried so it remains unclear whether the courts will uphold the police interpretation of the law.

It is worth noting that despite the provisions of the *bōtaihō* allowing for the closure of gang offices at times when they present a threat to the safety of the general public, during this period only one gang office was subject to such an order when, on the 1<sup>st</sup> December, the Nakano-kai headquarters was closed. Perhaps this was due to confusion as to the status of the Nakano-kai as it was not a designated *bōryokudan* in its own right.

As we can see, the killing of Takumi has therefore had a profound impact on the leadership of the Yamaguchi-gumi, which the weekly press still refer to as in a 'state of paralysis'. We can see this from the chart in Appendix 3 showing the top executives of the organisation. Takumi, the man who had been responsible for the



day-to-day running of the organisation, was dead. His role was temporarily filled by headquarters chief Kishimoto Saizō. Nakano was expelled; Kuwata was under arrest; Takizawa and Tsukasa were wanted by the police. In addition, Hanabusa and Kuramoto were both ill (Kuramoto died the following year on 4<sup>th</sup> December).

Kuwata had been Takumi's chosen successor as *gashira*, but later refused the post. At the time of writing (January 2000) this all-important post remains unfilled, with Kishimoto operating as '*gashira* representative'. According to the strict hierarchy consciousness of the *yakuza* world, Kishimoto is ineligible for the role of *gashira* as he has a brother relationship with Watanabe whilst a prerequisite is that he should be a *kobun* (fictive son). Given the current state of the top executives, it is not envisaged that this situation will change in the foreseeable future.

Why did Nakano kill Takumi? The weekly press abound with theories, some of them suggesting that Watanabe himself had a hand in the affair. What is clear however is that there was personal enmity between the two men. Nakano is a highly aggressive, argumentative man (known as '*kenka* Tarō' – literally 'quarrel Tarō') whilst Takumi was a much smarter, politically adept 'economic *yakuza*'. For some years Nakano had been busily expanding into Kyoto in order to take advantage of the massive public-works projects, such as the reconstruction of Kyoto's railway station, then underway. This had inevitably brought him into conflict with the local Aizu-kotetsu, and, in July 1996, Nakano was attacked by a squad of Aizu-kotetsu hit-men. Nakano's bodyguard shot and killed two of the assailants, successfully foiling the attack.

A peaceful reconciliation was quickly brokered between the two groups by Takumi and Zugoshi (then the *gashira* of the Aizu-kotetsu) with one of Zugoshi's subordinates offering an amputated finger by way of apology. Nakano, still helping the police with their enquiries, was not involved with this settlement and, once released, wanted revenge not amicable settlements. Takumi however forced him to accept this situation despite the massive slight to the dignity and reputation Nakano felt this represented to both himself personally and the syndicate as a whole.

This personal animosity is not however sufficient reason for the killing. The most plausible theory, and the one widely held by informed interviewees, as to why Takumi actually was killed is that he had become too powerful within the organisation. One interviewee close to the Yamaguchi-gumi believes that Nakano operated on his own initiative but was convinced that he was doing a favour for Watanabe. This would explain both the confused reaction of the leadership and Nakano's conviction that he would shortly be readmitted to the Yamaguchi-gumi.

The circumstances surrounding the death of Takumi and its aftermath are enlightening for a number of reasons. Firstly the incident illustrates the tensions currently within the Yamaguchi-gumi leadership. This is an almost inevitable consequence of the size and composition of the syndicate; all of the top executives are leaders of their own power groups. In this respect the Yamaguchi-gumi resembles a feudal monarchy with powerful barons to whom the king is in thrall. This is in marked contrast to the strong central leadership of third-generation boss

Taoka, who had single-handedly created the modern Yamaguchi-gumi through military conquest.

This incident is also important because it helps explode another *yakuza* myth concerning loyalty and the sanctity of the *oyabun-kobun* relationship. Once it became clear that the Nakano-kai was not going to be readmitted to the Yamaguchi-gumi, and with the pressure of police searches and Takumi-gumi retaliation making it practically impossible to earn money, it became clear to many in the Nakano-kai that their group had no future. By the 10<sup>th</sup> October, of the sixty-four sub-groups comprising the Nakano-kai, only fifteen remained. These groups expressed the wish that they realign themselves with other groups within their former syndicate. When, later that month, the top executive committee lifted its ban on readmission of Nakano-kai sub-groups, many of them flocked to the Yamaken-gumi headquarters. The Nakano-kai itself has since shrunk to a tiny rump group of Nakano's closest associates.

Although this behaviour is perfectly rational, both economically and in terms of self-preservation, in terms of traditional *yakuza* ethics of unquestioning obedience to one's boss and endurance, the Nakano-kai falls short of the ideal. During the early stages of this incident, the popular press had made much of the Nakano-kai's reputation as being a heavily-armed, hard-fighting group with plenty of *teppōdama* (literally 'bullets' - members ready to risk their lives for the cause). When put to the test, however, the sub-groups quickly fled to the security of the main syndicate.



Takumi's death also throws into relief the limits of control that the central executive exercises over the rank-and-file membership. Despite the repeated instructions not to commit revenge attacks on Nakano-kai facilities, they continued unabated. The fact that other executive committee instructions have to be repeated suggests that lack of control is not confined to this particular event. If we look at the repeated demands from the top executives/executive committee not to have anything to do with drugs, not to have anything to do with *jūsen*, not to have anything to do with 'business terrorism', the picture of an organisation which is constantly struggling to keep control over its members emerges.

In chapter two we noted Schelling's observation that one possible advantage of organised crime over disorganised crime is that the organisation internalises the costs of increased law-enforcement that would otherwise be externalities to the individual perpetrator. It is argued here that the Yamaguchi-gumi leadership is trying to square the circle in that it makes these demands on its members whilst continuing to place unrealistic financial burdens on them. In the current hostile legal and economic environment, the imperative to make money transcends all other considerations including the prohibitions of both the legal and under-worlds.

### **CONTINUED EASTWARDS EXPANSION**

If we look at Nakano's behaviour in moving into Kyoto, we can see that the tendency to ignore directives extends to the highest reaches of the Yamaguchi-gumi; Kuwata had become a brother of Zugoshi, and Yamaguchi-gumi members were consequently instructed to avoid causing trouble with the Aizu-kotetsu.

Similarly, the brotherhood exchange between Watanabe and Inagawa carried the understanding that the Yamaguchi-gumi would keep out of Tokyo.

Though the Yamaguchi-gumi maintained this fiction by not opening gang offices, many subgroups operate in the Tokyo area through business fronts. In addition many Yamaguchi-gumi groups have established offices in the surrounding prefectures. Tokyo police estimated in 1999 that 500 Yamaguchi-gumi men (in seventeen groups) were operating in the capital.

The syndicate has been actively trying to expand into Tokyo since the end of the 1980s but the pace of this process is said to have slowed slightly since the death of Takumi<sup>16</sup>. The forces causing this expansion however are still present. Most important of these is the fact that the Kansai area is so heavily populated with Yamaguchi-gumi men chasing limited opportunities that those not belonging to one of the reputed groups have little chance to progress as they are unable to deploy violence against fellow syndicate members. The other reason is that there is five times more money available to the *bōryokudan* in Tokyo than in the Osaka-Kōbe area (criminal defence lawyer interview, Osaka, August 1998).

Consequently, in recent years there have been a number of small conflicts between Yamaguchi-gumi sub-groups and Kantō gangs. In the first half of 1998 there was a running spat between the Matsuba-kai and a Yamaguchi-gumi group following the shooting of a Matsuba-kai advisor in Tsukuba city. This was followed in October

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<sup>16</sup> This is more likely to be due to the increased police pressure on the syndicate and the executive-level confusion rather than a deliberate change of policy.

of the same year by a conflict between the Sumiyoshi-kai and Yamaguchi-gumi Konishi-ikka (*Shūkan Taishu* 16/11/98, *Shūkan Jitsuwa* 12/11/98). In June 1999, in a two day-long flash-fire of retaliatory attacks, the Konishi-ikka clashed with the Kokusui-kai in 16 separate incidents in Tokyo and adjacent prefectures. This last conflict is of interest as it was the first time in which the police made use of provisional injunctions (*kari meirei*) prohibiting the use of five separate gang offices. The police, fearing widespread escalation of this conflict, also sent warnings to all prefectural police headquarters and mobilised 600 men to stand watch over 260 separate gang-related facilities (*Shūkan Jitsuwa* 24/6/99).

Although these conflicts are generally resolved very quickly through the mediation of the Kantō Hatsuka-kai and the Yamaguchi-gumi representative responsible for the Kantō block (block-*sekininsha*), it is easy to understand the police reaction. The movement of Yamaguchi-gumi groups into Tokyo can only upset the balance maintained by the Kantō Hatsuka-kai. It is not clear what the initial causes of these various conflicts were but there have been several cases in which Kantō *bōryokudan* groups have occupied buildings and the owners have brought in Yamaguchi-gumi groups to remove them. More recently, an article in *Asahi Evening News* (21/8/99) reported that the Yamaguchi-gumi Asakawa-kai was attempting to take over the illegal pornographic video market in Tokyo's Kabuki-chō entertainment district.



## CONCLUSION

Given the enormous impact of the bubble's collapse on *bōryokudan* finances, it is extremely difficult to quantify with any degree of precision, the impact of the *bōtaihō* on Japan's organised crime syndicates. Although the bursting of the bubble economy has seriously undermined many, formerly profitable, areas of *bōryokudan* activity, the rapid evolution of new types of business to take advantage of this changed environment clearly illustrates the highly fluid nature of organised crime. Despite the problems of disentangling the effects of these two events, it is clear that the *bōtaihō* has had significant effects on the *bōryokudan*.

Perhaps most encouraging of these is that, to the extent that a formerly grey-area has become subject to controls, the *bōtaihō* has been effective. In cases of purely predatory *bōryokudan* 'violent demands' in which no service is provided to the victim, the *bōtaihō* now provides a legal remedy. The increase in numbers of injunctions issued under the provisions of the *bōtaihō*, combined with the extremely low rate of injunction-violation, shows that within these limited parameters, the *bōtaihō* may be positively evaluated.

However, for cases in which the victims of *bōryokudan* violent demands are themselves operating outside, or at the margins of, the law, recourse to the *bōtaihō* is not an option. For such individuals as illegal foreign workers and street

prostitutes, *bōryokudan* predation therefore continues as before. Perhaps more significantly, is the continued existence of an active demand for the *bōryokudan*'s protective services from various sectors of the legitimate world (as the succession of *bōryokudan* related scandals unfolding at the time of the *bōtaihō*'s introduction and after illustrates). Given the existence of this demand, it is highly unlikely that *bōryokudan* interaction with the legitimate world will ever entirely disappear regardless of administrative orders or other legal prohibitions.

In many cases the main protective function provided by these groups is to squash other *bōryokudan* or right wing groups. This immediately begs the question why the consumers of *bōryokudan* protection don't instead make use of the law to resolve their initial problem. The answer to this is that these individuals themselves are frequently tainted by scandal, criminal involvement or earlier *bōryokudan* connection, making them reluctant to seek legal, and public, redress. The researcher's discussion with the public relations chief of the large religious organisation mentioned in chapter two, provides a classic illustration of this phenomenon.

As we saw from the immediate reaction of the various *bōryokudan* syndicates to the law, the threat of gang-office closure at times of inter-syndicate conflict has been a broadly effective inducement for these groups to quickly resolve their differences peacefully when conflict arises. The two *bōryokudan* 'summits' of 1991 and the

subsequent '*sakazuki* diplomacy' suggests a trend for the western syndicates to adopt the less confrontational norms of the Tokyo-based groups. This is a direct consequence of the *bōtaihō*.

Despite the pacifying effects of the *bōtaihō*, there are limits to which this control function can remain viable, as the reaction to Takumi's murder in 1997 shows. The apparent inability of the Yamaguchi-gumi's leadership to exercise total control over sub-groups can also be seen from the strident directives repeatedly issued by the executive committee. This has become increasingly significant as sub-groups, suffering from the combined effects of the *bōtaihō* and economic recession, become more dependent on proscribed, and hitherto disparaged, sources of income such as amphetamine trading and organised theft despite instructions to the contrary from their superiors.

This increase in drugs and theft crimes, in addition to the disorganised activities of former *bōryokudan* members, is a partial vindication of the thesis put forward by Ino Kenji and others that the *bōtaihō* will exacerbate the crime situation in Japan. Given that we have seen that previous organised crime countermeasures have pushed *bōryokudan* members out of certain activities into others, this is not entirely surprising. However, Ino's thesis can be no more than only partially vindicated. This is due to two separate considerations. Firstly, we lack an acceptable calculus to determine whether the drop in one category of crime accompanied by a rise in another represents a net gain or loss to society; secondly, we can not exclude the



contributory role of extraneous economic factors to the recent evolution of the *bōryokudan*.

It is also highly likely that Yamaguchi-gumi headquarters' control will be subject to further strain in the near term, as Yamaguchi-gumi subgroups, frozen out of the crowded economic niches available in the Kansai area, turn to the capital in greater numbers in search of new sources of income. This will in all probability test the 'peaceful coexistence' and conflict resolution mechanisms of the modern *bōryokudan* to breaking point.

## CHAPTER SIX

### LAW, LAW-ENFORCEMENT AND CRIME-CONTROL IN JAPAN

In chapter four it was shown that whilst the debate concerning legal countermeasures to the *bōryokudan* was framed within the structures of the RICO statutes and European OC laws, the final draft of the *bōtaihō* took a radically different shape. This disparity raises the question: why did the Japanese opt for this highly limited approach to OC control when they were so clearly aware of more potent alternatives? In order to answer this question it is necessary to look at Japanese legal and law-enforcement norms and the way in which they have evolved. These norms show that, although the formal structures of modern Japanese law have been derived from French, German and, later, American models, the way in which these have been implemented and enforced has been very different. In particular Japan has historically shown a marked preference for informal, extra-legal procedures, over recourse to formal legal mechanisms, for exercising social control and resolving disputes. This has been combined with a remarkably high degree of leniency in the treatment of offenders.

This analysis will therefore begin with a brief examination of the historical development of law and law-enforcement in Japan. It will be argued that the Japanese police deliberately chose an administrative, rather than criminal-law-centred, approach to controlling *bōryokudan* groups, as this not only fitted most

comfortably within Japanese policing and legal norms but also provided them with control over the law's operation with no external interference from the Ministry of Justice.

Having examined these legal and policing norms, we will return to the Japan-as-a-crime-free-society debate with which this thesis began. It will be argued that neither the legal system nor Japanese policing is the prime factor governing Japan's low post-war criminality. This has rather been achieved through informal social processes. The current rise in Japanese criminality is to be attributed to the breakdown in social control in an increasingly atomistic Japanese society. Due to this development there is now a trend towards more formal use of both criminal and civil law. Declining social control and a greater use of law both have profound implications for the *bōryokudan*.

## THE EVOLUTION OF LAW IN JAPAN

As every Japanese schoolchild can tell you, Japan's first constitution was introduced by Prince Shōtoku in AD 604. However, it was not until the second half of the seventh century that recognisable legal codes, known as *ritsuryō*, appeared in Japan. The first of these codes, the *Ōmi-ryō*, was introduced in 664. This was succeeded by the *Tenmu ryō* (689), the *Taihō ritsuryō* (701) and finally the *Yōrō ritsuryō* (718). Like so much of Japan's culture, the *ritsuryō* were imported from China and adapted to native conditions. The *ritsu*, or penal aspect of the codes, was only



modified to reduce the severity of its penalties whilst the *ryō*, or administrative code, was more heavily adapted to Japanese political realities (Oda 1992, 15; Noda 1976a, 23).

The importance of the *ritsuryō* as a system of laws was significantly undermined as centralised imperial rule (which had never been completely achieved) was superseded by a feudal system based on powerful warrior clans with considerable regional autonomy. The disparity between the nominal laws of the *ritsuryō* and the requirements for effective administration and social control was resolved by the development of customary law supplemented by the introduction of new laws on an ad hoc basis and a flexible interpretation of the *ritsuryō* as circumstances required (Oda 1992, 16). However the *ritsuryō* were never abrogated and, until the adoption of European-based laws during the early Meiji period (1866-1912), the *ritsuryō* held a symbolic role conferring legitimacy on those who held power despite the fact that this power was largely wielded arbitrarily by regional warlords (Haley 1991, 33-5).

With the unification of Japan in 1587 by Hideyoshi Toyotomi and the subsequent establishment of the Tokugawa Shogunate in 1600, regional lords came under the direct control of a highly centralised political system. Under this system regional lords were required to spend alternate years living in the capital whilst their families were kept there permanently as hostages. Similarly, samurai warriors were required to leave their villages and live in castle towns. One result of this control strategy was to leave villages without direct rule and they developed a high degree of

autonomy over their internal affairs provided that they fulfilled their legal obligations vis-à-vis the outside world. Because of the system of vicarious responsibility in which the village as a whole would be punished for the violation of these legal obligations by individual members, coupled with a desire not to attract unwanted attention from officialdom, villages developed informal mechanisms for managing internal control and the resolution of disputes. These mechanisms were backed by social sanctions such as ostracism and the withdrawal of co-operation, which were highly potent in the context of the mutual dependence of village society.

Despite the higher degree of official surveillance, towns also had a degree of autonomy combined with a collective liability for the behaviour of individual members. Consequently they too developed patterns of informal social control combined with external shows of deference to authority. We therefore see a two-tier system of governance. On the first tier there was a highly regulated hierarchical system maintained by rigidly enforced rules governing those areas directly concerned with the security and maintenance of the state, as well as the state's relations with groups under its jurisdiction. On the second tier there was a system of extra-legal controls exercised at a local, intra-group level. Notwithstanding the great changes wrought by the introduction of European-based laws early in the Meiji period, aspects of this dual system remain in Japan's contemporary legal order.

The second infusion of foreign legal ideas to Japan came with the end of the isolationist policy of the Tokugawa period and the opening-up of the country to foreigners following the Meiji restoration of 1868. There were two crucial reasons

why legal reform was imperative for Japan at this time. The first of these was that the desire to create a modern state, based on direct government by the emperor necessitated the replacement of the existing feudal system of regionally-varying customary laws with a coherent, unified legal code. Secondly, under the treaties Japan had signed with more technologically advanced (and militarily powerful) powers, foreign citizens were immune from prosecution under Japanese law. This immunity was predicated on notions of Western superiority and disdain for backward, non-Western law. Legal reform was therefore not merely a political imperative, but a matter of national pride.

After a failed attempt to introduce a code based on modified *ritsuryō*, attention was turned to European models. In particular the Napoleonic codes of France, which had been the basis of many other countries' legal systems, were admired by Japan's first minister of justice, Eto Shimpei. He consequently ordered the rapid translation of these codes with the idea of their being directly implemented as law. Mitsukuri Rinsho, the academic charged with this job, completed it in under five years despite having no specialist legal training or access to French experts. The radical nature of this break with past practice is illustrated by the fact that Mitsukuri had to invent many of the Japanese legal terms such as 'right' (*kenri*) and 'obligation' (*gimu*) that are still used today (Noda 1976a, 43-4). As pointed out by Haley (1991, 83) until then, the idea of rights, for example, had been totally alien to Japanese legal thought:

Neo-Confucian imperatives of loyalty and filial piety precluded any conception of a litigant's assertion of a claim as a legal right to be enforced



by a neutral arbiter. Judicial governance in Japan represented an assertion of political power to maintain a stable order and to enforce only those legal rules of value or important to those who ruled, or an accommodation out of commercial necessity.

Although the translated codes were not adopted *in toto* as Japanese law, the first criminal and criminal-procedure codes (1880), which had been drawn up largely by the French law professor Gustave Boissonade, closely followed the French model. Boissonade's subsequent draft for a civil code was not however adopted as it was felt that it was incompatible with Japan's established legal customs and mores (especially the status of the family, rather than the individual, as the basic unit of social organisation). Both Oda (1992, 27) and Noda (1976a, 48) identify however a more important, political, reason for the rejection of French-inspired law and a move towards the Prussian model.

Increased exposure to European legal and political thought had led to the development of a Popular Rights Movement (*Jiyū Minken Undō*) and calls for a parliamentary system of government. Although the figures behind the Meiji restoration desired the establishment of a modern state, this was to be based on absolutist, rather than bourgeois-democratic, lines. There was therefore a shift from the French pattern of law in favour of one based on the more authoritarian, monarchical Prussian state which seemed to be in greater accord with the aspirations of the Japanese modernisers. This shift was completed with the establishment of the 1889 Meiji Constitution, which had been heavily influenced by the 1850 Prussian Constitution. The legal codes finally adopted in 1890 were also

largely modelled on Prussian law, though they also contained French influences as well as modifications to allow for local practice.

The third major phase of legal change came just over half a century later with Japan's military defeat in 1945. The most significant of these changes was the replacement of the emperor-centred 1889 Meiji Constitution with the liberal and democratic 1947 constitution. In order that they comply with this document, the legal codes of the Meiji period were also subject to partial amendment. Despite this, the declared aim of the occupying authorities was to "bring about the minimum of political and legal changes" consistent with eliminating militarism, feudalism and the police state (Oppler 1976, 1). Consequently the essential character of Japanese law remains European with American influences. However, as we have seen, this has been adapted and interpreted within the very different context of native custom and tradition. Consequently law, and more importantly the way in which it is exercised, differs significantly from that of either Europe or America.

In Japan today, the law is laid out in six distinct codes (*roppō*). The most important of these is the 1947 Constitution and all other laws must conform to the constitution to have validity. Subordinate to the Constitution are the civil code, the code of civil procedure, the criminal code, the Code of Criminal Procedure and the commercial code. In addition to the six codes, there are a large number of statutes, Cabinet orders, local ordinances and administrative regulations, all of which carry the weight of law. It is important to remember that the *bōtaihō* falls into this latter category rather than being part of the criminal law.

## THE STATUS OF LAW IN MODERN JAPAN

Although the structure of law in Japan is based on German, French, and to a lesser extent American, models, the way in which the law is actually employed in Japan appears very different from any of these three countries. In particular, Japan is usually characterised as showing an extreme reluctance to make use of formal legal procedures, and this tendency can be seen in both criminal and civil law. Tanaka (1976, 255) for example, asserts that “the number of civil suits per capita brought before the courts in Japan is roughly between one twentieth and one tenth of the figures for the common law countries of the United States and Great Britain.”

Although a quarter-century has elapsed since Tanaka’s observation, Japanese use of law remains lower than in European countries and, *a fortiori*, the United States. For example, compared to other countries the number of legal professionals (judges, prosecutors and lawyers) in Japan is tiny. In 1998 Japan had one legal professional for every 5,995 head of population. This compares to ratios of 1:1,641 for France, 1:724 for Germany, 1:656 for Great Britain and 1:285 for the United States (*Yomiuri Shinbun* 3/8/1998). This phenomenon is often explained as being due to cultural factors, which cause the Japanese to be a highly non-litigious people. This attitude is even to be seen amongst Japanese legal scholars such as Noda (1976b, 307):

We Japanese tend to feel uncomfortable with a black-or-white type of adjudication, if a Japanese loses in a lawsuit, being of emotional inclination, he is bound to be embittered against the winner, and even against the judge.



We do not want to leave the embers of a grudge smouldering. We would rather pay a small price, if such a price rounds off the sharp edges and lets bygones be bygones. This explains why a large majority of cases that are brought to court are settled through compromise. This is very indicative of the peculiar character of the Japanese.

Elsewhere Noda (1976a, 160-74), who as a former teacher at Tokyo University's prestigious faculty of law cannot be dismissed as a marginal eccentric, further deploys *nihonjinron*, or theories of Japanese uniqueness, to more fully explain Japanese aversion to law. Essentially, according to Noda, the Japanese are an emotional, intuitive and subjective people characterised by a preference for non-rational patterns of thought. This 'Oriental spirit' is the antithesis of the dry, analytical reasoning, which Noda sees as characterising European law. Because of this "even after the reception of European law, the logical conception of law did not take root easily in their mentality" (ibid, 165).

Rather than looking to law for the adjudication of conflicts, *nihonjinron*, or Japanese culturalist interpretations, see conciliation, rooted in traditional social values and customs, as being the main engine of resolving such disputes. In particular, a preference for harmony (*wa*) and a reluctance to jeopardise existing social-relations, encourages a spirit of compromise in which the enforcement of one's own individual rights is seen as a selfish lack of consideration of the other disputant's position (Tanaka 1988, 195; Noda 1976a, 181).

However, as John Owen Haley argues in his superb 1991 work “Authority Without Power: Law and the Japanese Paradox”, the idea that the Japanese are not by nature litigious is not upheld by the empirical evidence. Historically the Japanese have not been at all reluctant to exercise their legal rights and during the 1920s there was a sharp rise in the number of lawsuits under the Civil Code (Haley 1991, 96). This process was not, however, universally welcomed. In particular the suits launched by both rural tenants and industrial workers, to secure the rights that these new codes provided them, caused unease among the framers of the Meiji Constitution, who saw this phenomenon as endangering social stability:

The primacy of private law in nineteenth-century Western legal systems and the consequent emphasis on justiciable rights meant that intrinsic to the new Japanese legal order were a set of premises quite antithetical to fundamental precepts shared by Japan’s social and political elites. As lifeless abstractions, legal rights would have perhaps caused little concern, but their exercise in court could only be perceived as a threat to Japan’s social and political order. (ibid, 84)

Increasing unease following the rice riots of 1918, the Russian revolution and anxiety concerning the social consequences of rapid industrialisation, combined with this sense of threat as well as the growing power of traditionalist political forces, led to a gradual process of forcing the public away from litigation. This was effected by the introduction of laws forcing potential litigants to resolve conflicts by formal conciliation rather than through the courts.

This process first became apparent in 1919 with the instigation of the Ad Hoc Commission for the Study of Legal Institutions (*Rinji Hōsei Shingikai*), which was specifically tasked with finding means by which the Civil Code could be reformed in ways that brought it more in line with traditional morality. Three years later this commission recommended that disputes concerning family matters be settled by conciliation under separate Family Courts. Although this measure was not passed by the Diet, in the same year the Land Lease and House Lease Conciliation Law was passed. This was followed by the Farm Tenancy Conciliation Law in 1924 and the Labour Disputes Conciliation Law in 1926. Finally, in 1942, the Special Wartime Civil Affairs Law made all settlements reached by this conciliation binding. As a consequence of this process, by the late 1930s nearly all civil disputes were settled by conciliation (ibid. 90-1).

It is clear therefore that, as far as the civil law goes, Japan's aversion to law is one that has been imposed from above rather than being a feature of some Japanese or Oriental cultural characteristic. This process of squeezing litigation out of Japan's justice system was reinforced by a change brought about during the occupation period. At the instigation of the Federation of Japanese Bar Associations the occupation authorities responsible for legal reform supported the 1949 Lawyers law (*bengoshi hō*). Although this law is to be commended for its provision of independence from the Ministry of Justice for the legal profession, the 1949 *bengoshi hō* also ensured that entry into the profession was severely limited. This was achieved by making entry dependent on graduation from the Legal Research and Training Institute (*shihō kenshū sho* or LRTI).



Graduation from this institution is a prerequisite not only for lawyers but also for judges and prosecutors. Because the LRTI comes within the budget of the Ministry of Justice (which is famously weak in extracting funds from the Ministry of Finance), there is little incentive for the Ministry of Justice to expand the numbers attending this institute. Currently around five hundred trainees are admitted to the LRTI each year although many thousands apply (with a success rate of around two percent) (van Wolferen 1989, 214). The effect of the 1949 *bengoshi hō* was therefore to dramatically limit the supply of these professionals, the results of which can be seen in the figures given above showing the very low per capita population of judges in Japan vis-à-vis Europe and America.

The result of this has been to severely clog Japan's courts with a massive backlog of suits leading to a judicial system which is both extremely slow and expensive to use. In 1990 the average civil case in a district court took 11.9 months for completion; a typical first appeal in the appellate court took a further 13.2 months. Appeals to the Supreme Court take even longer; 211 cases out of the 1,376 under consideration by the Supreme Court had been first docketed more than ten years ago. In one exceptional case judgement was finally given twenty-five years after the initial docketing (Oda 1992, 79-81).

This chronic delay presents a significant deterrent to a potential litigant. Further obstacles are presented by the financial costs of bringing a case to court. Given the strictly controlled supply of lawyers, their services do not come cheap. Moreover, when awarding legal costs to the victor, judges include only witness costs and the

costs of the various legal stamps, not lawyers' fees. Since lawyers' fees usually account for 80% of the total costs even if a case is won, the burden of legal fees may offset any benefit gained (Yamaguchi and Soejima 1997, 72-3). Access to a lawyer becomes even harder in outlying rural areas because the overwhelming majority of practising lawyers are registered in Tokyo and Osaka.

Even for those individuals who do try to launch a suit, Japanese judges pressure litigants to resolve disputes via out-of-court settlement (*wakai*). According to van Wolferen this pressure may be enforced by veiled threats that their lack of co-operation may jeopardise their chances of a favourable outcome should they persist with the case (1989, 215). The reason for this is that judges are themselves judged by the administrative office of the Supreme Court as to the number of cases they get through in a year. It is said that those judges with the best clearance rates advance most quickly within the profession (Yamaguchi and Soejima 1997, 28).

As a consequence of these barriers, there is a marked tendency for disputes in Japan to be settled by conciliation. Although this had been imposed initially by the authorities in pre-war Japan fearful of the social effects of newly-granted legal rights being exercised, it has persisted due to the massive congestion caused by limited numbers of legal professionals. Van Wolferen, in characteristically polemical style, argues that the severe restriction on the supply of judges was a conscious decision by the authorities as a control strategy to uphold what he calls 'the System' of existing power relations (1989, 213). However, as mentioned above, this state of affairs stems from the 1949 *Bengoshi hō*. This law appeared

during the occupation period at the instigation of the Japanese Bar, who were working purely in their own professional self-interest by imposing barriers to entry.

However, it is also clear that there is little pressure from within the MOJ for a change to the existing system, and Japan's low rate of litigation is a phenomenon which the government is in no hurry to alter. The official reasons given for this are that the Supreme Court does not want to reduce the quality of judges and the limitations imposed by the size of the LRTI (Oda 1992, 80). In addition cultural arguments are deployed with the circular reasoning that more judges are not required because Japan is a highly non-litigious society! An Ad Hoc Commission (*shingikai*) is currently being proposed to consider legal reform, but, as one senior officer of the National Research Institute for Police Science commented with a cynical laugh, whilst a court case might take a couple of years, legal reform "will take a hundred years" (interview Tokyo, 1998).

The absence of an efficiently functioning system for legal redress in Japan is of enormous importance to a study of the *bōryokudan* for two main reasons. Firstly, this deficiency encourages injured parties to seek alternative means for solving their problems. This has led to a market for extra-legal dispute resolution which has been partially met by criminal groups. We therefore see how the *bōryokudan* have managed to make money out of such techniques as intervening in traffic accident-related, and other civil, disputes. No equivalent exists in the more highly litigious United States. We can also see here empirical corroboration for our theoretical observation that the state and OC can be competing providers of protection.



Secondly, the lack of effective legal remedy in civil disputes also enables the *yakuza* to operate more freely than would otherwise be the case; quite simply it may be cheaper to pay gang members to go away than to embark on a lengthy and expensive civil case. Japan's legal system can be identified therefore as playing a significant contributory role in the development of *minbō* as a significant source of *bōryokudan* income.

The reliance on the *yakuza* for out-of-court settlements and a resigned acceptance of *yakuza* predation due to the lack of judicial remedies is not, however, the only way in which Japan's preference for informal, extra-legal strategies is of relevance to this thesis. To see how this difference between the formal letter of the law, and how the law is actually used, impacts on the *yakuza*, we must transfer our attention from the civil to the criminal law.

Just as in the civil law there is a preference for extra-judicial processes for resolving cases, within the criminal law there is a clear tendency to dispense with formal institutional mechanisms in dealing with criminal-law violations (Johnson 1997, 17). Here again we can find institutional factors encouraging this phenomenon. As is the situation for civil law, criminal cases suffer from a shortage of judges, and also of prosecutors.

Although delay in criminal prosecution is ostensibly much shorter than is the case for civil cases, in international terms Japanese criminal justice is slow. In 1990, the average length of a case in district courts was 2.6 months, whilst that of the summary courts (dealing with lesser offences) was 3.5 months. First appeals lasted,

on average, for 13.2 months, and second appeals to the Supreme Court took a further 23.3 months (Oda 1992, 79). Under the 1947 Constitution, criminal suspects are guaranteed a quick trial. However, as will be seen, in practice suspects may be incarcerated before trial for considerable periods whilst the case is still being investigated.

The delay is not entirely due to excessive caseloads on prosecutors and judges. Japanese criminal procedure usually requires that even simple, uncontested cases require several hearings, which tend to be separated by an interval of up to a month. Unlike in English or Scots law, under Japanese law even when guilt is admitted, the judge must evaluate all the evidence presented before convicting the defendant. In the minority of cases when the defendant maintains his or her innocence (for 90% of cases dealt with by the district courts the defendant has admitted guilt), it may take more than a year for a verdict to be given.

Attempts have been made to reduce this delay by a number of different strategies. One way of speeding up the procedure is for the prosecution and defence to agree, before the trial begins, as to what prosecution evidence will not be challenged in court. Under this system an uncontested case can be tried in a single hearing of less than one hour (Haley 1991, 125).

Another means of accelerating the passage of justice is to encourage single, multi-indictment trials for defendants facing more than one charge. As will be shown later, the Japanese police often adopt the strategy of arresting a suspect for one crime on charges relating to another, usually much less significant, crime. This



pretext enables them to hold the suspect whilst gathering evidence on the main crime. As a consequence, a criminal suspect may not infrequently face many different charges. Unfortunately, the backlog of work faced by prosecutors and defence lawyers alike forces much work to be carried out between hearings. Consequently, despite official pressure on prosecutors, the potential benefits of multi-indictment trials are not fully exploited (*ibid.*).

The simpler expedient for reducing legal log-jam is to remove cases from the criminal-justice system altogether. In the late 1960s the traffic-infraction-notice procedure (*kōtsū hansoku tsūkoku seido*) was introduced to deal administratively (that is outside of the courts) with traffic offences. Under this system, fines are charged by the police. Similarly, offences carried out by juveniles (under Japanese law, those under twenty years of age) are referred to the family courts (*katei saiban-sho*). Reform of the juvenile law is proposed periodically, especially with respect to lowering the age of criminal responsibility. It seems plausible that at least one reason for these proposals not to come to fruition is that this would further burden the system with the most criminally active segment of the population.

In order that the authorities may divert individuals from the criminal-justice system, the prosecutors and the police have a wide degree of discretion as to how suspects are to be treated. In the case of minor infractions, the police are able to close a case, releasing suspects without charge. This option, known as *bizai shobun*, is provided for by the 1948 Code of Criminal Procedure. In 1991 22% of all criminal-law violations were cleared by the police in this way (*Keisatsu-chō* 1991b, 160-1) whilst Haley asserts that “it is estimated that the police fail to report 40% of all referable



cases” (1991, 126). This should not necessarily be interpreted as being purely due to police lenience; the police refer cases only where they are confident of obtaining a conviction. In 1997, only 0.9% of cases passed on to the local prosecutors’ offices were dismissed due to lack of evidence.

Even when cases are referred to the prosecutors’ office, alternatives to prosecution remain available. Of the 2,552,748 cases dealt with by the prosecutors’ office in 1997, prosecution was suspended in 24.1% cases, 11.6% were referred to the family court, 17.7% fell into the nebulous category of ‘other decisions’ (for example cases in which the victim dropped charges), 0.9% were rejected on insufficient evidence and 0.5% were subject to ‘other dispositions’. In only 45.2% of the total were cases prosecuted (MOJ).

Although the figures for *bōryokudan* cases suggest that they are treated less leniently than other offenders, it is surprising that this difference is only marginal. Of the 10,916 *bōryokudan*-related cases dealt with by the public prosecutor in 1993, 52.8% were sent to court whilst 25.0% were not prosecuted and in 15.5% of cases prosecution was suspended (Johnson 1997, 255).

Once a case is prosecuted, however, it almost invariably results in a conviction. In recent years, over 99% of prosecutions resulted in a conviction. A public prosecutor presenting a paper at a 1998 OC conference in Kōbe confessed that not only is this a source of pride within the prosecutors’ office, but that prosecutors are constantly under extreme pressure to ensure that this percentage does not drop.

Prosecution in Japan is therefore tantamount to conviction. Whilst this might be taken as evidence that the prosecutors and police are extremely efficient, a number of cases of miscarriage of justice suggest rather a worrying lack of independence of the judiciary. Given that within the Ministry of Justice the prosecutors are accorded more influence than judges, there are certainly grounds for concern with regard to this stage of criminal procedure (van Wolferen 1989, 222).

At the stage of conviction, however, the criminal-justice system has also been characterised as favouring leniency. Haley, for example, points out that for convictions passed by the summary courts in uncontested summary proceedings the fines imposed are usually considerably less than the maximum of 200,000 yen (£1,000). In 1987, “over 70% of all defendants convicted in summary proceedings were fined less than 50,000 yen” (£250) (Haley 1991, 128). As the overwhelming bulk of prosecuted cases (93%) are dealt with by summary proceedings, this is significant.

More serious offences, dealt with by the district court, are often subject to suspended sentence (*shikkō yūyo*). In 1987 just over 50% of those criminals sentenced to imprisonment were granted a suspended sentence (Haley 1991, 128). The most recent figures available show that in 1997, 63% of those sentenced to imprisonment or detention by district courts first instance trials were given suspended sentences. Of those who are actually incarcerated, less than 2% are sentenced to over five years (*Saikō Saiban-sho Jimukyoku* 1998, 218-9).

By contrast, in England and Wales sentences can be suspended only if there are narrowly defined 'exceptional circumstances', and even in these cases the court must consider imposing a fine or demanding compensation so that the offender is not 'let off'. Sentencing patterns are also comparatively harsh; in 1991, fines were imposed in 39% of sentences (Ashworth 1994, 849). Of those who were given prison sentences in 1991, 8% received over four years (Morgan 1994, 904).

However, there has been a clear pattern of increasing severity in Japanese sentencing patterns in the last decade. In 1991, Article 461 of the Code of Criminal Procedure was amended, and the maximum fine that the summary courts can impose in summary procedures was increased to ¥500,000. In 1997, 61% of those convicted by summary court paid a fine of between ¥100,000 and ¥50,000 whilst 26% paid ¥50,000 or less (*Saikō Saiban-sho Jimukyoku* 1998, 248-9).

This tendency can also be seen in the length of sentences imposed in recent years. One of the researcher's Osaka-based defence-lawyer interviewees identifies this process as becoming increasingly apparent from the end of the 1980s, with a media campaign, echoing the sentiments of the police and prosecutors, that sentences were too light. In response to this, judges have delivered progressively heavier sentences. This informant illustrates this with reference to the punishments received by those found in possession of a firearm:

25 years ago, when I first became a lawyer, this would typically receive a fine of about 100,000 yen. Quite soon after that it was increased to imprisonment but this would invariably be a suspended sentence. About ten



to fifteen years ago the penalty became one year imprisonment and soon after that it was increased to one and a half years. The Sword and Firearms Control Law was changed quite soon after that and the penalty for possession of one handgun became three years (five if found with ammunition). If we look at the cases of Tsukasa and Kuwata<sup>1</sup>, where one of Kuwata's *kobun* was found in possession, the prosecutor is recommending ten years (interview Kōbe, July 1999).

Despite this tendency to greater penal sanctions, by international standards Japan still remains very indulgent of its convicted criminals. Those found guilty of murder are usually sentenced to ten years (which means they are typically out on parole after seven), whilst forcible rape usually carries a sentence of three to four years (*ibid.*).

Partly as a consequence of these light sentencing patterns Japan has one of the lowest prison populations in the industrialised world. In 1994 Japan had 37,425 inmates, which translates to a rate of just 29.9 per 100,000 of the total population. The comparable rates for England and Wales and the USA are 49,393 (96 per 100,000) and 1,004,608 (401 per 100,000) respectively (Johnson 1997, 6; Home

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<sup>1</sup> Top executives of the Yamaguchi-gumi arrested in 1998 for violating the Sword and Firearms Control Law (see chapter five).

Office 1996, 25). Although it must be admitted that the United States is as much an extreme anomaly as Japan, the comparison is worth making because it is the one which the Japanese themselves automatically make. Perhaps Holland's rate of around 40 per 100,000 offers a more balanced comparison (Ashworth 1994, 841).

It should also be recognised that lenience is not the only factor behind Japan's low prison population; *ceteris paribus* a country with lower levels of criminality will necessarily have a lower population of potential inmates to begin with. The low prison population also explains the apparent anomaly that Japanese rates of post-incarceration recidivism tend to be higher than those of comparable countries. This is to be expected, as the minority of offenders who are imprisoned in Japan tend to be hard core-criminals, whilst more punitive systems also incarcerate those who are less likely to repeat their offences.

The leniency of the Japanese criminal-justice system however, involves an implicit bargain. When deciding between a punitive and an indulgent attitude vis-à-vis a particular offender, the authorities consider not only the nature of the offence, the likely effect of criminal conviction and the previous conduct of the offender, but also the attitude of both the offender and the victim and the former's willingness to admit guilt. Most important of these is the degree of contrition shown by the miscreant. Forgiveness of repentant transgressors is therefore a way of encouraging submission before authority (Bayley 1976, 134-59, van Wolferen 1989, 187-8, Haley 1991, 129-31). This provides clues that social controls, rather than formal judicial processes, are the most significant factor contributing to the maintenance of law and order in Japan. This will be discussed in greater depth below.

Bayley (ibid. 139) points out that Japanese fairy stories and Japanese adaptations of Western ones, such as Little Red Riding-Hood and Goldilocks and the three bears, allow for the successful rehabilitation of the repentant transgressor. This he contrasts with the grisly fate which befalls the big bad wolf and other villains in the occidental versions of these tales. Although Bayley clearly identifies cultural values as the root cause of Japan's forgiving attitude towards law-breakers, Haley (ibid. 134) suggests that there is no real evidence to support this argument with respect to the period following the introduction of European-based legal codes. Rather, it was not until the introduction of the 1925 Peace Preservation Law (*chian iji hō*) that a systematic pattern of forgiveness and rehabilitation can be seen. Under this law it became deliberate policy that communists, anarchists and liberals who had been arrested under the provisions of this thought-control law were able to achieve favourable treatment in return for renunciation (*tenkō*).

Initially the vaguely-worded Peace Preservation Law had been concerned with the punishment of those who had committed ideologically-inspired acts. By 1934, however, the emphasis had shifted to the conversion of those holding subversive ideas. This switch in approach was largely due to the successes the authorities had following the public recantation by senior members of the Japan Communist Party. Another significant factor was the attempt to ease the pressure on the judicial and penal systems imposed by the mass-arrests of radicals. The law was primarily used in an administrative, rather than a judicial, manner, in which the police held the threat of full implementation over radicals to encourage renunciation of subversive ideology (Mitchell 1976, 97-147).



Haley (1991, 135) argues that contemporary Japan's preference for judicial lenience is a "natural response" to an overloaded criminal justice system in the postwar period and a continuation of the approach that had been so successful in dealing with thought-crime during the 1930s:

Thus, like the myth of the reluctant litigant, the origins of Japan's postwar emphasis on confession, repentance and absolution in criminal justice may lie in the redefinition of traditionalist values of the 1930s.

The above discussion suggests an explanation for Japan's idiosyncratic choice of the *bōtaihō* over more robust alternatives on the lines of the RICO statutes of the United States. As we have seen, the Japanese legal system goes out of its way to divert as many cases as possible from formal legal procedure: traffic offences are dealt with administratively by the police; those under twenty are dealt with by the juvenile justice system administered by the family courts; many minor criminal-law violations are dealt with by releasing the perpetrator without charge. The *bōtaihō* is another example of a means by which the authorities can deal with wrong-doers without burdening an already-overloaded criminal-justice system with new cases.

However, in order to gain a more profound appreciation of the way in which the *bōtaihō* fits into the rubric of Japanese law and crime-control patterns, we must examine the way in which the Japanese police operate.

## POLICING IN JAPAN

Just as had been the case for Japan's legal evolution, when, at the beginning of the Meiji period, it had been seen necessary to form a police force, the Japanese modernisers were presented with a choice between Anglo-Saxon and European models. The British model of policing was rooted in liberal conceptions of the state and, hence, police powers were circumscribed by legal restrictions. To reduce the risk of an over-mighty police, forces were organised on a decentralised, regional basis and had limited areas of responsibility.

The European alternative to this was based on a fundamentally different interpretation of the state, in which the police were seen as an essential component in control of the masses and the exercise of state power in an authoritarian political system. Consequently the police in this system were highly centralised and in possession of powers far superior to those of the ordinary citizenry. Moreover, their area of jurisdiction was not confined to the maintenance of law and order and the apprehension of criminals but included a wide range of administrative responsibilities.

Given that the imperatives for the engineers behind the Meiji restoration were the creation of a modern, authoritarian state under the autocratic rule of the emperor, it is hardly surprising that they opted for the continental European model of policing (just as their early flirtation with English law had quickly been discarded in preference for French and Prussian law). In particular the creation of internal

control in the face of a rapid catching-up with the great powers made the establishment of a strong, centralised police force a matter of great importance.

Consequently, in 1871, a force of 3,000 men was created to police the capital. This was the birth of the modern Japanese police. In 1874 this force was transferred from the Ministry of Justice (*Shihō-shō*) to the newly-created Interior Ministry (*Naimu-shō*) and placed under the leadership of Kawaji Toshiyoshi, the “father of the Japanese police” who had just returned from a study of European policing systems. Kawaji’s ideas were set out in his “*Kengisho*” (proposal document). In this document he argued that the people were not to be allowed freedom. Within the national family the people were the children, the government was the parent. Regardless of the children’s preferences, it was the duty of the parent to teach the child. Extending this analogy, Kawaji identified the role of the police as nursing the children on behalf of the parents.

On a more concrete level Kawaji’s proposals were also strongly represented in the Administrative Police Regulations (*gyōsei keisatsu kisoku*) of 1875 which, with minor alterations, remained in force until 1945. Under these regulations, the police not only held power for the prevention of crime and the arrest of offenders but also held administrative jurisdiction over nearly every aspect of economic and social life. The police were responsible for the licensing of bars, restaurants and brothels, ensuring that regulations concerning health, sanitation, religion, agriculture, construction and forestry were adhered to, regulating trade union organisations and labour disputes and keeping the population under surveillance through a process of



regular surveys. Later, due to the demands of total war on Japan's industrial base, the police also acquired responsibility for administering the allocation of economic resources and rationing food.

Although the Administrative Police Regulations formally separated the police from the judiciary, they kept the power to promulgate ordinances as well as a number of quasi-judicial powers. The 1885 Law of Summary Procedure for Police Offences (*ikeizai sokketsu rei*) empowered police station chiefs to act as prosecutor and judge for minor offences carrying penalties of up to thirty days' imprisonment or a twenty yen fine (*Nichibenren* 1995, 2-3; Aldous 1997, 22-7; Ames 1981, 9-10).

Not only did the police in Meiji Japan have the ability to operate in a semi-judicial capacity; they were also able to make law. Under Article 9 of the 1889 Meiji Constitution, the police were empowered to issue "ordinances necessary for the carrying out of the laws, or for the maintenance of the public peace and order, and for the promotion of the welfare of the subjects" (Bayley 1976, 36). This was supposedly circumscribed by the provision that executive-derived administrative law could not contravene statute law (produced by the Diet). However, this did not in fact present an obstacle to the expansion of administrative law as statute law tended to be vaguely-worded (Aldous 1997, 27).

The surveillance aspect of Japanese police work was enhanced by the introduction in 1886 of the famous, and much admired, system of neighbourhood and residential police boxes (*kōban* and *chūzaisho* respectively). Although this is now seen as a peculiarly Japanese aspect of the modern police system it was first introduced at the

suggestion of a German police officer, Captain Willhelm Höhn, and was indicative of the shift in influence from the French to German policing systems (Aldous 1997, 24). Whilst the *kōban* came to be widely praised for their role in community policing, their main role as surveillance organs is clearly identified by the 1888 General Rules on Police Administration Placement and Duties. This document justified the creation of roughly 10,000 residential boxes on the grounds that “there is no place where the eyes of the police are not watching, no place where the ears of the police are not listening, police observation extends in all directions” (cited in *Nichibenren* 1995, 3).

At around the same time the police started the procedure of neighbourhood surveys in which each household would be visited on a regular basis and the names, ages, occupations and status of all inhabitants recorded (as well as any other points of interest such as signs of subversive activity). Those of high social standing would be visited once a year, those of lower status twice, whilst the unemployed and those with criminal records would receive three police visits each year. Through both the *kōban* system and their regular home-visits, the police therefore maintained a high degree of surveillance over the population. Both these systems remain in place in modern Japan.

In the intellectual ferment of Meiji Japan, with the rapid importation of foreign political doctrines, surveillance was particularly important in the field of political unorthodoxy. As early as 1875 the Police Bureau of the Interior Ministry was empowered to censor newspapers and books. Under the Public Peace Police Law



(*chian keisatsu hō*) of 1900 it became mandatory for political organisations to register with the police, and they required police permission to meet. Furthermore, the police were empowered to dissolve meetings and force the dissolution of political associations. As Mitchell (1976, 24) points out, it is important to note that the exercise of political-control laws in Japan was essentially carried out by administrative rather than judicial means. Whilst Mitchell sees this as significant to later thought-control practices, it also has clear relevance to explaining developments in Japanese organised-crime control measures.

Political control and surveillance by the police was strengthened by the creation of the Higher Police (*kōtō keisatsu*) and the establishment of the Special Higher Police (*tokubetsu kōtō keisatsu* or *tokkō*) in 1911. This latter group was to play the central role in enforcing thought control under the 1925 Peace Preservation Law (*chian iji hō*). The distinct dichotomy between political and criminal-investigation police continues today in the shape of the security police (*kōan keisastu*), and their significance to post-war policing vis-à-vis the *yakuza* will become apparent below.

The personnel of the early Meiji police force were largely drawn from the ranks of former samurai. Whilst this encouraged a police culture in which corruption was perceived to be rare, it also engendered a police contempt for the common people and a closed, exclusive police identity far removed from the idealised picture of community policing that characterises much of the post-war literature on the Japanese police. This attitude manifested itself in poor treatment of suspects. Although torture as a means of extracting a confession had been abolished as part of



the legal reforms inspired by Boissonade, in practice its use remained an acceptable police practice perceived as contributing to the efficient clearance of criminal cases. Similarly the law placed limits on the length of an arrestee's detention prior to formal charges' being made, only for these limits to be exceeded by officers' issuing successive detention orders (Aldous 1997, 31-2).

In summary then, the pre-war police were the powerful, centralised pillar of the *naimu-shō*, a super-ministry with a vast area of jurisdiction. The police therefore had a correspondingly wide range of responsibilities and held considerable administrative powers in addition to their law-enforcement function. Even when exercising this law-enforcement role, the police showed a distinct preference for using the law in an administrative fashion. This can be seen from the way in which they made use of the 1925 Peace Preservation Law. Moreover, the police held considerable powers to prosecute, and adjudicate on offenders independently of the Ministry of Justice. Under the Meiji Constitution there were no provisions for accountability, democratic or otherwise, for the police, and this was reflected in police attitudes towards the people that can best be summarised by the oft-used expression *kanson-minpi* (respect the authorities and despise the people).

Consequently, with the defeat of Japan in 1945, the police, alongside the military and the *zaibatsu* (industrial conglomerates), were seen by the SCAP authorities as one of the main targets of reform necessary for the democratisation of Japan. There was however an inherent strain within the occupation authority's policies towards Japan in that SCAP administration was to be conducted indirectly, that is via the existing governmental apparatus including the police force. This presented SCAP

with a problem; “by administering change through the prewar governmental structure, the Americans, whether they liked it or not, were legitimising that very structure” (Aldous 1997, 46). There was the additional problem of combining the demands of democratic reform with efficient administration and social stability in conditions of near total economic collapse and political dislocation.

The American ideal of democratic policing, based on liberal conceptions similar to those of the British model, were very different from the continental European patterns on which the Japanese police had been based. Central to this ideal were a decentralised structure, the limitation of police responsibilities to crime-prevention and law-enforcement, safeguards against police abuse of power by the requirement to adhere to due process, democratic accountability and political neutrality. Consequently, the *naimu-shō* was disbanded and split up into a number of separate ministries, and the Police Bureau was replaced with a separate organisation, the National Police Agency (*keisatsu-chō*). In 1947, the Police Law was passed. Under this law the police were decentralised, and towns of over 5,000 people were required to set up their own police force, whilst the NPA provided a small national force to police the remaining rural areas. To provide oversight and accountability over the police, a system of Public Safety Commissions (*kōan iinkai*) was set up at national, prefectural and local levels.

At the time, this measure was opposed not just by members of the Japanese government itself, but by members of the SCAP administration who saw political instability, rather than a democratic deficit, as the greatest threat to Japan’s post-war



reconstruction. Even those, like Oppler, who supported the ethos on which police decentralisation rested, questioned whether it would be realistic. Given the extreme economic scarcity of this period, “the financial resources of local entities (were) too inadequate to allow every small town to have its own police administration” (Oppler 1976, 171).

As Oppler predicted, small towns were unable to adequately fund their local forces. A lack of equipment, training and resources, not to mention pay, led to poor standards of law-enforcement and low morale in these areas. This situation was exacerbated by a rampant black-market which had been engendered by widespread economic scarcity. Corruption of the police in these circumstances was almost inevitable, and there were not only cases of straightforward bribery for personal gain, but also of the police relying on black-marketeers for funding essential police facilities. The *Nippon Times* in March 1949 identified the “danger of the police being made tools of local bosses” and “men of questionable character on the (Public Safety Commissions)”. Similarly, in the same month, the *Jiji Shinpō* identified a “conspiracy between local bosses and police officials since the police must depend on local citizens for funds” (Aldous and Leishman 1997, 138). As mentioned in chapter three, at the extreme was the case of the boss of the Hakuryūsha who also held the position of chief of police in Nagahama city in Shiga prefecture.

In addition, the clear division between adjacent local forces resulted in poor communications and co-operation. At the other extreme, it was practically impossible to clearly separate Municipal Police personnel from National Rural Police force officers operating in the same area. This was due to the fact that a lack



of funds ensured that these formally distinct organisations were obliged to share the same facilities. Sometimes only a red line, painted on the floor, dividing a room in two, separated rural from local police officers (Aldous 1997, 182-3). Aldous and Leishman (1997, 139) suggest that failure had been purposely engineered into the system by the Japanese government through inadequate funding provisions; taxes on theatre admissions and alcohol sales were to be the source of local police finance when many of the towns in question lacked theatres and non-black-market alcohol sales!

Due to these failures, it was very quickly realised that such radical decentralisation had been a mistake, and, within eighteen months of introducing these changes, the authorities had started planning a return to a national service. Police recentralisation was given greater priority in 1950 with the combination of communist victory in China followed by the outbreak of the Korean War. It was the threat of political radicalism, rather than the symbiotic relationship between criminal gangs and the police or chronic police inefficiency, that finally stimulated police reorganisation.

The need for a centralised security apparatus was first recognised with the creation of a military force, the National Police Reserve (later to be renamed the Japan Self-Defence Force), in 1950. The following year towns and villages were allowed to surrender their municipal forces to the National Rural Police. Re-centralisation was not however completed until 1954 with the new Police Law, which laid out the structure of the Japanese police today. Under the 1954 Police Law, a system of prefectural police forces was instituted. Each of these prefectural forces was to be under the supervision of a prefectural Public Safety Commission. Central co-

ordination was to be conducted by the National Police Agency (NPA or *Keisatsuchō*), which was itself under the supervision of the National Public Safety Commission.

Although the letter of the 1954 law suggests a reasonably high degree of decentralisation, Ames (1981, 216-7) points out that, in reality, the NPA retains control over the prefectural police; senior personnel within the regional forces are appointed, paid and controlled by the NPA and key areas of police financing are covered by the NPA. The Security Police (*kōan keisatsu*), who are responsible for counter-intelligence, the surveillance of political extremists, the riot police (more politely known as rapid mobilisation troop or *kidōtai*) and all other matters concerning internal national security, are also controlled directly from Tokyo.

It could therefore be argued that the Japanese police reverted to their pre-war centralised structure. Indeed one could say that, because they are no longer under external bureaucratic control, as a bureau of the *naimu-shō*, but an independent agency in their own right, they have acquired even greater levels of autonomy. The 1954 Police Law provides for democratic accountability for the police through the system of Public Safety Commissions, but this will be shown to be a largely illusory safeguard. To what extent have the police matched re-centralisation with a return to the pre-war policing norms of crime-clearing practices, a wide area of responsibility and an administrative, quasi-judicial role in addition to their more conventional law-enforcement one?



As was mentioned in chapter one, a significant section of the literature which attempts to explain Japan's low crime rates has credited this success to Japan's policing practices. Typical of these are Bayley (1976) and Parker (1984), both of whom are unstinting in their admiration for the Japanese police. Essentially these authors see good police-community relations, rooted in the *kōban* system of neighbourhood police boxes, as the key to low crime rates. In addition, they adopt uncritically statistics showing a high rate of crime clearance and an astonishingly high proportion of criminal prosecutions yielding a guilty verdict. This emphasis on successful community policing would suggest that the contemporary Japanese police have a totally different relationship with the people than that of their predecessors.

These hagiographies must however be seen in their historical context. Aldous and Leishman (1999) "periodise" the literature dealing with Japan's police. The celebratory literature, characterised by Parker and Bayley, belongs within what Aldous and Leishman call the period of "reinvention" which spanned the two decades of the 1970s and 1980s. This period is sandwiched between two periods in which the literature is characteristically less flattering of the Japanese police. The first of these – "reversion" – extends over the 1950s and 1960s, during which the general perception of the police was steeped in memories of pre-war policing norms and forged in the experience of forcible police reaction to left-wing protestors. If the period of reinvention can be characterised by the friendly neighbourhood *kōban* policeman lending money to a salaryman for his train fare home, then the reversion



period would be represented by the granite-faced riot police of the *kidōtai*. The modern portrayal of the police is more ambiguous.

In part the process of reinvention reflects a conscious attempt by the police to rebrand themselves in the face of an unfavourable public perception. From a nadir of public confidence in 1960, the police have worked hard to improve their public-image through an emphasis on their community role. By 1983, public opinion surveys showed that the police enjoyed greater popular support than, not only other state agencies, but also business and the media (Katzenstein 1996, 80-1).

Aldous and Leishman's periodisation of the literature is not entirely applicable; within Japan itself civil-rights-oriented lawyers such as Igarashi Futaba and academics such as Miyazawa Setsuo and Watanabe Osamu, provided critical accounts of police practice during the 1980s. Writing in English, Ames (1981) presents a more balanced analysis than Bayley or Parker, identifying various areas of concern, though he too is broadly supportive of the idea of Japan as a community-policing exemplar. As a benchmark of the broad trends in the English language literature, Aldous and Leishman's periodisation is, however, a useful guide.

The late 1980s and 1990s have seen a great deal of critical questioning of the celebratory depiction of the police of the previous two decades and attention has been focused on policing norms that seem a direct throwback to pre-war patterns of policing. In particular police treatment of suspects has come under heavy criticism. As has been mentioned above, the Japanese police have been characterised as highly

lenient towards offenders. This leniency is, however, conditional on the suspect's confessing, showing contrition and offering submission before authority. For suspects who do not do these things, the story is very different.

Igarashi Futaba, a Japanese lawyer, prepared a report on the treatment of suspects for the three Bar Associations in Tokyo. In this report she clearly catalogues incidents of mistreatment of suspects in which the police put increasing pressure on arrestees to confess. The police have considerable scope to accomplish this due to a system of substitute prisons (*daiyō kangoku*). Under the Code of Criminal Procedure, a police cell may be substituted for a jail for the detention of a suspect pending investigation. Although this system was initially introduced in 1908 due to a lack of space in jails, it has been retained by the police as an expedient device for keeping the suspect for up to 23 days after arrest. During that time suspects report being subject to round-the-clock interrogations, deprived access to food, sleep and toilet facilities and allowed only highly restricted access to legal advice. Particularly intransigent suspects may also be subject to physical abuse; of the thirty detainees in Igarashi's survey, twenty answered the question 'did you experience physical violence' in the affirmative (Igarashi 1986, 201-2; Herbert 1996, 232-4; Amnesty International 1998, 1). Although the law limits the period of detention before charges are issued to 23 days, a system of repeat arrests enables the police to hold suspects for much longer. In one case cited by Igarashi the suspect was held for 327 days, whilst two others were held for over 100 (Igarashi 1986, 211).

The primary purpose behind these practices is to extract a confession. As pointed out by Chalmers Johnson in his excellent description of Japanese criminal



procedure (1972), confession is seen by police, prosecutors and judges alike as the “king of evidence” (*shōko no ō*) and, because of this, the police “are much more attuned to obtaining them than to building ‘objective’ cases” (Johnson 1972, 149). More recent work, such as Miyazawa’s research on the police in Hokkaidō and Kaplan and Marshall’s description (1997) of the Aum Shinri-kyō investigation, suggest that little has changed since Johnson’s observations: Eighty-six percent of all criminal convictions in Japan are based on confessions, whilst before the war the figure was as high as ninety-nine percent (McCormack 1986, 187). Not infrequently the police arrest a suspect on a lesser charge as a pretext for investigating a more serious one (*bekken taihō*) (Miyazawa 1992, 71; Oda 1992, 400).

These interrogation practices have led to a number of cases of successful convictions based on forced confessions which have later been retracted. In the case of Menda Sakae, under sentence of death and in prison for thirty-one years on the basis of a forced confession, a retrial found him innocent (McCormack 1986, 186).

The police are not insensitive to criticism of these practices and their English language website contains many pages explaining the operation of the substitute prison system. It stresses that suspects are well looked after and provides photographs of smart modern facilities and nutritious meals. One Osaka-based defence lawyer interviewee insists that his clients are still regularly subject to mistreatment during police interrogation. He does, however, suggest that such



practices are much rarer in Tokyo than in Osaka and that conditions in police detention centres have improved since Igarashi's report. For example, the police running the detention centres now ensure that police interrogators do not continue questioning round-the-clock (interviews Kōbe, July 1998 & July 1999).

We can see that the police emphasis on confession still persists from a look at the investigation of the sarin gas attacks conducted by the Aum Shinri-kyō religious cult in 1994 and 1995. After the first attack in Matsumoto, the police identified a machinery salesman, Kono Yoshiyuki, who had himself suffered in the attack alongside his wife and children, as the prime suspect. Despite the fact that the chemicals kept in his house (for photographic purposes) were not capable of sarin's synthesis, he was subject to police pressure to confess, whilst his son was told that his father had confessed and that he had better do the same (Kaplan and Marshall 1997, 180-1).

After the second attack on the Tokyo subway in March 1995, and particularly after the attempted assassination of Chief of Police Kunimatsu in the following year, when the police finally decided to act against the cult, it arrested members not for crimes directly related to the gas attack, but such minor misdemeanours as trespassing, adapting a greenhouse without permission, riding an unregistered bicycle and performing a massage in contravention of the Massage and Shiatsu Practitioners Law. Once arrested these suspects were of course interrogated with respect to the cult's more serious crimes (*ibid.* 336).

We can see therefore from contemporary police practice that in terms of an emphasis on confessions over police investigation, pretext arrest, police custody and sub-optimal treatment of suspects, there are clear signs of continuity with the past. “Furthermore, since the early 1970s judicial statistics show a steady decline in the proportion of those found innocent in court. Using a broad array of data, former High Court Judge Watanabe Yasuo concludes that the number of trumped-up charges has probably increased” (Katzenstein 1996, 84-5).

The Aum Shinri-kyō incident has finally destroyed the idea that Japan’s police are the model of efficiency and competence that the celebratory literature of the 1970s and 1980 asserted. In their defence it could be maintained that the Japanese Police are hamstrung by their pre-war past. Although we can see a number of ways in which they have reverted to pre-war norms, a number of safeguards, both formal, legal constraints and normative factors such as public-opinion, exist to obstruct the Japanese police should they wish to abuse their powers.

On purely legal grounds, until now, the Japanese police have theoretically been prevented from conducting wire-tapping surveillance (*tōchō*) and sting operations (*otori sōsa*) that are taken for granted by other states. Article 21 of the constitution guarantees that “the secrecy of any means of communication (shall not) be violated”. The police might therefore be forgiven for a less than efficient operation concerning Aum Shinri-kyō. However, it seems the legal status of wiretapping is not quite so clear-cut. According to a retired elite police bureaucrat interviewee, police wiretaps can, subject to a court order, be conducted in extraordinary



circumstances in which there are no other means to gain evidence. It was stressed in the course of the interview that this has only happened in drugs-related cases (interview Tokyo, June 1998).

There is evidence to suggest that the police do not, however, confine electronic surveillance to drugs cases. One communist activist interviewee from San'ya claimed proudly that his telephone was bugged, whilst a more plausible and restrained Christian volunteer, also active in San'ya, gently remarked on the speed with which the police reacted to telephone calls made by another left-wing group with which he was associated. It is not necessary, however, to build a case on such shaky evidence; the police have been found to conduct electronic surveillance. In 1986, the telephone line of the head of the international section of the Japan Communist Party was found to be tapped by a serving officer of Kanagawa prefecture's branch of the Security Police. The police, however, denied systematic participation (*Nichibenren* 1995, 203-4). Despite the clear illegality of this act, the prosecutors' office did not pursue the case following an apology from senior police officers (van Wolferen 1989, 199).

Another formal constraint on the police is provided by the 1954 Police Law, in which both the prefectural forces and the NPA are subject to democratic accountability through oversight by the prefectural Public Safety Commissions and the National Public Safety Commission respectively. Here also, however, we find a distinction must be made between *tatemae* (surface appearance) and *honne* (reality). Bayley (1976, 192) identifies the *tatemae*, stating that the Public Safety Commissions "have exclusive authority over the discipline and authority and



dismissal of all police officers.” Ames (1981, 218) takes a more cynical view of the commissions:

In many ways, however, the Public Safety Commission system serves to mask the total independence of the police and the almost complete lack of formal checks on the power and operation of the police establishment (the *honno*). The prefectural and national Public Safety Commissions ostensibly function as buffers between police and politicians to prevent undue bias and untoward influence, yet they do not insure public control over the police organisation.

Part of the problem for this concerns a degree of ambiguity over the wording of the 1954 Police Law. The English translation of the law states that “the Prefectural Public Safety Commission shall supervise the Prefectural Police” (Article 38, paragraph 3). The Japanese version uses the term *kanri*, which can be translated variously as “administration; management; control; supervision; superintendence” (Kenkyusha’s New Japanese English Dictionary). This is interpreted by both the police themselves and most academics as no more than setting broad policy:

The supervision carried out by the commission does not extend to concretely impinging on the powers of the police, but, through setting the basic policy of management, (the commission) conducts prior and post facto oversight....The direction of police officers is carried out by the chief of metropolitan or regional police (Tanoue in *Nichibenren* 1995, 240).

However, even within the parameters of this restricted interpretation, the commissions fail to carry out their duties. Various laws (such as the traffic laws, the sword and firearms control law and the public morals law) empower the prefectural Public Safety Commissions to issue and withdraw licences, order business closure and, in the case of the *bōtaihō*, designate *bōryokudan*. However, the commissions have no offices or powers of investigation, and their members lack the expertise to carry out these functions. Consequently the various duties of these commissions are delegated to the relevant police department.

The membership of the commissions is essentially an honorary role for pillars of the community. The *Nichibenren*'s 1995 book on the police reveals that commission members (excluding Tokyo) are overwhelmingly recruited from the local financial and business elites (68%), the second most significant group being medical practitioners (14%). Amongst the other members there were two religious figures and the head of a tea-ceremony school. Their average age is 67.7, whilst the eldest member was 85 (*Nichibenren* 1995, 243-4). Although political neutrality is supposedly maintained by ensuring that no two members of any commission belong to the same political party, in reality these individuals tend to share a conservative world view (Ames 1981, 219).

Perhaps of greater significance than strictly legal limitations on police powers (which we see they are quite capable of ignoring or side-stepping anyway) are the post-war policing norms by which the police have avoided involving themselves in civil disputes and intervening in religious affairs. Although the way in which the Public Safety Commissions actually operate means that there are no formal checks

on police powers, the police are highly sensitive to media criticism (Miyazawa 1992, 227). Consequently the police take pains to avoid intervening in these areas unless they are confident that they have media and popular support behind them.

This, in part, explains why the police showed such extreme reluctance to deal with the Aum Shinri Kyō, which was quite clearly a highly suspect organisation (a reluctance the cult skilfully exploited). It also explains why, when the police finally did feel confident of popular support, they mobilised a disproportionately massive force, including water cannon and armoured personnel carriers, and behaved sufficiently heavy-handedly to incur the criticism of civil-rights groups (Kaplan and Marshall 1997, 337, 350). This pattern, of initial police forbearance followed by overwhelming force once general acceptance has been gained, can also be seen in earlier police reactions to student demonstrations, the Narita airport protest and the 1972 Red Army siege in Karuizawa (Katzenstein 1996, 80).

The formal legal checks on the police can therefore be said to be of far less significance than the intangible constraints of public-opinion.

With respect to an expanded administrative role for the police, here too we can see a trend towards a return to Meiji policing patterns. A number of laws, notably the Law on the Proprietisation and Regulation of Business Affecting Public Morals (*fūzoku eigyō nado no kisei oyobi gyōmu tekiseika nado ni kan suru hōritsu*, more usually known as *fūeihō* or, in English, Public Morals Law) of 1948, provide the Public Safety Commissions with authority to issue, and withdraw, licences to a



number of businesses. Because the commissions are effectively rubber stamps for the various prefectural police forces, this means that effectively the police have regulatory power over various areas of the social and economic fabric of Japan. For example, the *pachinko* industry, (which accounts for roughly 4% of Japan's GNP) bars, restaurants and massage parlours, come under the provisions of this law. In order to reduce congestion in the court system, the police also have administrative powers for punishing minor traffic offences.

Seen within the context of a tradition of wide-ranging administrative powers and a desire to recreate them, the rationale behind the structure of the *bōtaihō* makes sense. Miyazawa Setsuo, author of the most penetrating study of police investigative practices, sees this expansion of administrative police powers as part of a conscious policy on the part of the NPA. The “Japanese police have always tried to re-establish it(self) as a ‘*seisaku kanchō*’ or a governmental agency with substantive policy mandates like the pre-war ‘*Naimu-shō*’ or the Ministry of Interior. *Bōryokudan Taisaku Hō* can be understood as a step in its continuing effort” (private correspondence 15/11/1998).

The choice of administrative law over criminal law provides the police with total control over the exercise of the *bōtaihō*. Although nominally operated “at the discretion of” the prefectural Public Safety Commissions, we have seen that this effectively means that the law operates totally within the ambit of the police and independently of the judiciary. Seen in this way, it becomes immediately apparent why the prefectural Centres for the Eradication of *Bōryokudan* have ended up as

organisations operating within the existing police structure. The task of designating regional centres is at the discretion of the Public Safety Commissions and, consequently, the centres have ended up as part of an expanding police empire.

As was shown in chapter four, there are a number of laws which pre-exist the introduction of the *bōtaihō*, including provisions for sequestration of the proceeds from crime and the punishment of *minbō* type offences, that could be employed more proactively to mount an effective anti-*bōryokudan* campaign. The debate on OC countermeasures was also informed by other legal models, in particular the potent RICO statutes. However these strategies were rejected. This was not because they showed less promise than administrative measures in controlling the *bōryokudan* but because the *bōtaihō* provided for greater police autonomy and extended their sphere of administrative control.

The trend of expanding police power can also be seen in its relationship with other state agencies. “By virtually all measures police power inside the government has been increasing greatly” (Katzenstein 1996, 62). Senior NPA bureaucrats have attained powerful positions within the Defence Agency (*Bōei-chō*) and the Imperial Household Agency (*Kunai-chō*), and the NPA also successfully posts junior bureaucrats to other agencies and ministries whilst remaining relatively closed to postings from outside. Within the Cabinet Secretariat (*Naikaku Kanbō*) the power of the police vis-à-vis other agencies has also grown. More than a quarter of the posts within the secretariat were held by NPA personnel by the early 1970s



including control over two of the most important posts. Over half of the Cabinet Information Research Office posts are held by NPA personnel. Perhaps the most striking illustration of the increasing status of the police is the ranking amongst Tokyo University graduates applying for elite bureaucratic careers. Since 1965, the NPA has risen from bottom of the list to the top alongside the Ministry of Finance and the Ministry of International Trade and Industry (ibid.).

In many ways therefore we can see that the modern Japanese police shows many traits of its predecessors. This is succinctly put by Ames:

The present police establishment in Japan is an imperfectly blended amalgam of the authoritarian, powerful and highly centralised prewar police system and the 'democratic' and decentralised postwar system. The prewar system was based on a Franco-German model of a national police force on a level above the people, and the postwar system was patterned after an American or British model of small-scale police forces on the same level with the people. The former is closer to the *honne* (reality) of the police system, and the latter is ultimately a mere *tatemae* (façade) (1981, 215).

The *bōtaihō* should be seen as part of this process towards police-reclamation of their prewar administrative role. Given that the existing system of Public Safety Commissions fails to provide adequate control and democratic accountability over the police, this trend presents cause for concern. Given that various other police practices, such as the continued use of *bekken taihō* and substitute prisons as well as the primacy of confessions in building cases, are at odds with the ideal of policing



in a liberal democracy, any move which expands the ability of the Japanese police to exercise administrative control independent of judicial oversight is to be regretted.

### CRIME-CONTROL IN JAPAN

In the introductory chapter to this thesis it was observed that Japan was widely considered to be a criminological oddity due to its ability to combine a low crime rate with increasing urbanisation. It was also remarked that the apparent paradox of this low crime rate's coexistence with Japan's numerous and highly visible *bōryokudan* groups was one of the factors initially firing the researcher's interest in this field. In this concluding chapter then, how can we make sense of crime in Japan, and can the paradox of *bōryokudan* in a low-crime society be resolved?

It has been shown above, with reference to policing norms and some highly visible blunders, that the portrayal of the Japanese police as a highly efficient organisation is not entirely merited. If the police cannot be credited with Japan's low crime rate and the criminal justice system shows a reluctance to use its formal machinery, what then is the reason for Japan's low criminality? Whilst most criminologists today accept that crime is too complex a phenomenon to succumb to any single monocausal explanation, some of the factors cited by Park's survey of the literature concerning Japan's crime rates (discussed in the first chapter) must be considered with scepticism.

In particular, the arguments based on ethnic homogeneity, high literacy, prosperity and high social equality must be questioned on the grounds that they are all factors which Japan shares with Sweden, which has not successfully controlled crime (Haley 1991, 137). Similarly, natural barriers or tightly controlled borders do not, in themselves, prevent crime, as can be seen by the fact that Japanese criminals manage to import large quantities of amphetamines but not heroin or cocaine. Perhaps the easiest strand of the literature to deflate is, however, that based on notions of some nebulous, uniquely Japanese cultural characteristic. As with the arguments that the Japanese have an aversion to the formal use of law, this idea that there is something intrinsically different in the Japanese psyche is highly functional to the authorities as Richardson and Flanagan (1984, 160), in perhaps excessively conspiratorial terms, point out:

Japanese elites have found it advantageous to push the image of Japan's uniqueness abroad to ward off Western criticism. The more Japan is viewed as different, the less it will have to abide by Western rules of negotiation and fair play. At home, the advantages of selling the view that Japanese society is an integrated, harmonious whole are obvious for a ruling class bent on maintaining its domination.

Much of the culturalist literature is grounded either on tautological arguments running on the lines that the Japanese have a low crime rate because they are an unusually law-abiding people or mystification designed to prevent rather than facilitate scientific criminological analysis. This is unfortunate because one of the

points implicit in the culturalist literature is worthy of more serious attention. This is that in some way Japanese society “policing itself” (Ames 1981, 228).

In his influential book “Crime, Shame and Integration”, Braithwaite argued that Japan succeeds in controlling crime through a process of ‘reintegrative shaming’. Braithwaite makes the distinction between shaming which is “followed by efforts to reintegrate the offender back into the community of law-abiding or respectable citizens through words or gestures of forgiveness or ceremonies to decertify the offender as deviant” (reintegrative shaming) and that which “makes no effort to reconcile the offender with the community” (stigmatisation) (Braithwaite 1989, 100-1). Braithwaite’s theory would explain why the Japanese criminal-justice system makes so little use of the formal sanctions at its disposal. However, the rather benevolent image he holds of Japan’s law-enforcement agencies seems at odds with the more critical findings from research carried out by Miyazawa and Igarashi.

Miyazawa (1997) in particular has criticised Braithwaite’s theory. Whilst they agree that informal social processes, rather than formal judicial mechanisms or legal sanctions are the key to understanding low Japanese criminality, Miyazawa differs in that he proposes a much less cosy view of the way in which society treats deviants. Miyazawa argues that social control is exerted in Japan through groups such as schools and companies. He characterises these organisations by “their extremely harsh treatment of members who defy the existing power structure and social arrangements” and asserts that “Japanese people conform because they know that conformity will be highly rewarded while non-conformity costs enormously”



(Miyazawa 1997, 7-8). Having seen, during two years working in a junior high school in Iwate prefecture, the treatment meted out to children showing such dangerous signs of deviancy as the wrong coloured shoe-laces, this researcher feels compelled to agree.

These informal controls are reinforced by peer pressure due to the fact that responsibility, and consequent sanctions, are often held at a group, rather than an individual level. This shows a clear similarity to the extra-legal controls exercised within the *mura* of Tokugawa Japan.

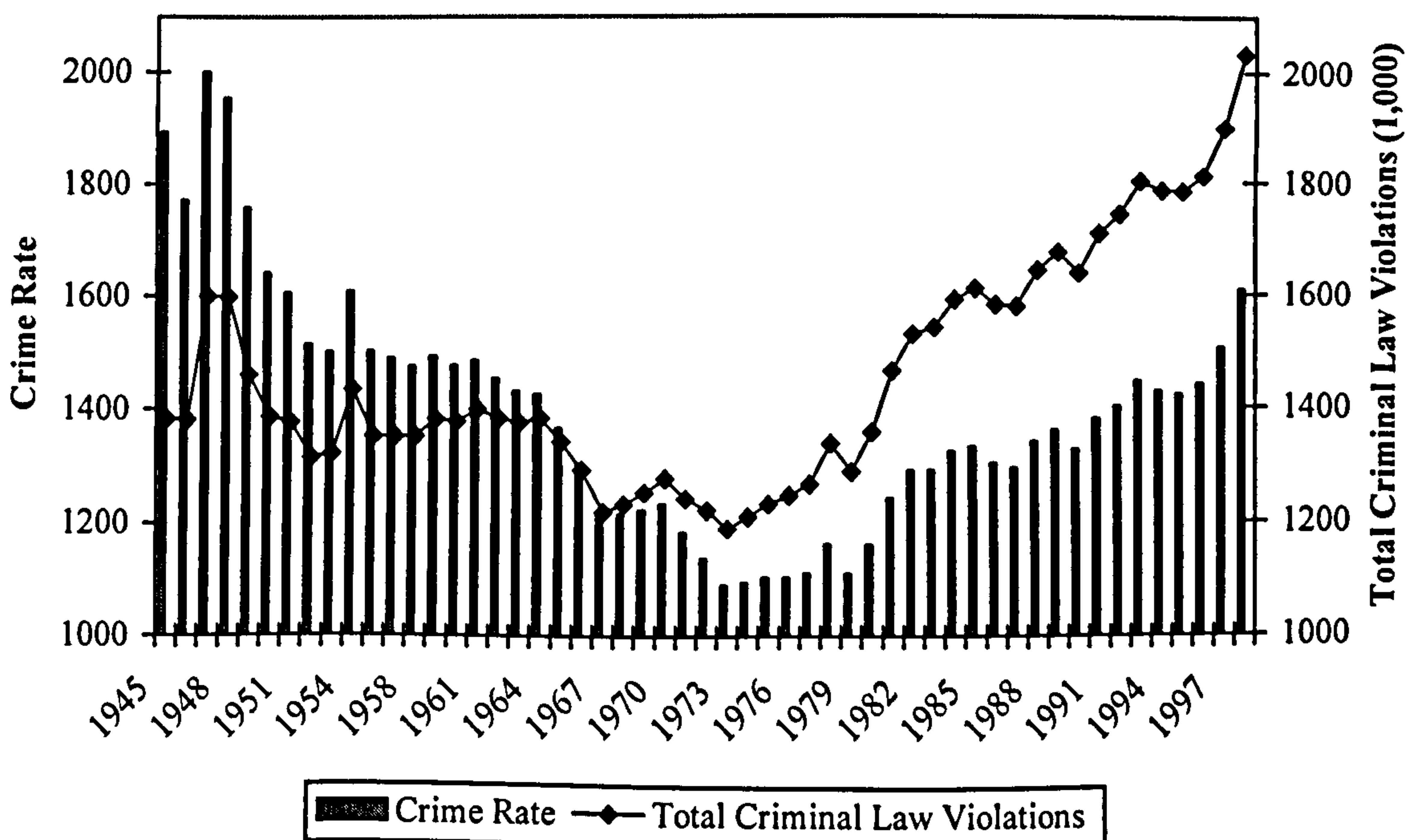
Tanioka Ichirō (1997) has attempted to test whether control theory is applicable to Japan by adapting American tests of this theory. Tanioka investigates the relationship between criminality amongst Osaka juveniles and the attachment of these juveniles to normative patterns of social behaviour and role models. Whilst his results suggest that control factors are indeed significant, a lack of comparative research prevents us from identifying whether these factors are of greater significance in Japan than in other countries.

It is, nevertheless, tempting to see factors of informal social control as explaining not only Japan's low criminality over the last four decades, but also the apparent paradox of the coexistence of low criminality with a large and conspicuous *Bōryokudan* fraternity. Braithwaite argues that Japan controls deviancy by a process of reintegrative shaming. He later admits, however, that the prospect of reintegration is backed up by enormous informal sanctions against those who do not conform (1989, 158). In this he comes closer to Miyazawa's less benign view of

social control in Japan. It is suggested here that these very pressures making social exclusion so expensive to the individual outcast are those that encourage such individuals to associate themselves into organised-crime groups. This suggests that the factors which have contributed to Japan's low rate of general criminality have also encouraged the development of its large organised-crime community.

There is, however, considerable evidence that this model of social control is breaking down, and this is reflected in Japan's rapidly rising crime rate (offences per 100,000 population). As mentioned in the first chapter, Japan's crime figures have been increasing steadily for the last two decades and in 1998, for the first time in Japan's post-war history, the total annual number of known criminal-law violations exceeded two million. This trend is illustrated graphically below.

Figure 6.1 Crime rate and total known criminal-law violations 1945-98  
(excluding traffic offences)



## DECLINING SOCIAL CONTROL AND THE *BŌRYOKUDAN*

What evidence is there for a decline in social control factors within Japan? An attempt to rigorously prove that the declining efficiency of informal social control processes is responsible for Japan's increasing criminality is far outside the scope of this thesis. Nevertheless, the reader's indulgence is craved whilst hypotheses are presented. These half-developed ideas suggest areas for future research rather than definitive answers.

Over recent decades a process of increased tolerance of diversity and individualism has slowly appeared in Japan. This can be seen in such phenomena as the 'new people' (*shinjinrui*) and their 'my home-ism' (*mai homushugi*). Weakening of traditional social bonds can also be seen in the increasing rate of divorce (by a factor of 2.32 between 1970 and 1997) and the massive jump in international marriages (by a factor of 5.11) over the same period. At the same time, the declining importance of the lifetime employment system and greater opportunities for foreign travel and study have, respectively, lowered the costs of nonconformity and increased exposure to alternative lifestyles.

Whilst it is argued here that this development is a key factor in explaining Japan's growing crime rate, Wolfgang Herbert notes that it also exerts a significant effect on *bōryokudan* recruitment. The social pressure on those rebels and misfits, who would formerly have ended up in the ranks of the *bōryokudan* "in order to survive in a very rigid society, has become considerably lower". Such individuals can now



“drift around at society’s margin with less problems” (private correspondence 08/02/2000).

Growing tolerance of alternative behaviour is not the only factor impacting on *bōryokudan* recruitment. As mentioned in chapter three, due to Japan’s enormous material wealth, Japanese youths now show an aversion to employment in industries seen as difficult, dirty and dangerous (known as *3-ki – kitsui, kitanai, kiken*). *Bōryokudan* employment fits into this category. Looking at police photographs of Yamaguchi-gumi gang members of the 1950s one is struck by the universally sunken sockets and prominent cheek bones of a malnourished and desperate group of men for whom gang activity is quite simply a means of survival. The faces of young *bōryokudan* members today lack this lean and hungry look.

It seems probable that due to this withering away of a supply of suitable labour for the *bōryokudan*, Japanese organised crime is facing a wave of ethnic progression as described, with reference to the United States, in chapter two. Certainly since the end of the 1980s there has been a gradual increase in the number of criminal groups from other Asian countries operating in Japan. The precise relationship between these groups and the *bōryokudan* remains unclear. In some cases it is one of contractor and subcontractor. In others they are involved in different activities and represent no threat to each other. The possibility of rivalry between these groups and the *bōryokudan* cannot be discounted.

Stories surface occasionally in the weekly *shūkanshi* and *jitsuwashū* suggesting that *bōryokudan* groups make use of foreign hit-men. This suggestion of a lack of suitable personnel amongst Japan's incumbent organised-crime groups implies that they are vulnerable to attack by groups composed of men reared in countries where life is harder and cheaper than it has become in Japan. Moreover in many of Japan's neighbours there are systems of national military conscription providing a ready pool of men with a comparative advantage in the use of, and greater propensity to, violence. It is therefore seen as plausible that ethnic succession within Japanese organised crime will occur over the next two to three decades.

*Bōryokudan* groups will either have to co-opt foreign rivals or engage in outright competition with them. Either way, these groups will encounter more aggressive countermeasures from the law-enforcement authorities. As we have seen, public toleration of OC is adversely affected by high-profile inter-gang conflicts, especially when members of the public are caught up in them. Even if the process of ethnic succession is a peaceful process of sub-contracting and recruitment, foreign OC groups are likely to attract greater public antipathy than native ones, as we have seen from the widespread 1960s perception of American OC as an 'alien-conspiracy'.

The likely consequences of this are that the *bōryokudan* will be forced to go further underground and to adopt increasingly antisocial money-making activities. As we have seen historically, when business opportunities are blocked, the *bōryokudan* quickly develop new ones. There is however another, theoretical, explanation for



the tendency of increased law-enforcement to encourage less socially acceptable behaviour by organised crime groups.

Gambetta (1993, 33) argues that a crucial variable governing the behaviour of a mafia-type organisation is its time horizon. If a firm providing protection expects to enjoy a continued long-term relationship with its customers, that firm is more likely to provide a genuine service to them. It also has an interest in maintaining a harmonious relationship with the wider society, including the law-enforcement community. As a group's time horizon diminishes, it is more likely to accord greater priority to short-term profit-maximisation, and 'protection' is more likely to degenerate into extortion. It will similarly be less concerned with maintaining good community relations. "The overall degree of stability of the protection industry.....is, therefore, a crucial variable in predicting mafioso behaviour"<sup>2</sup> (ibid.). As we have seen in preceding chapters, the level of law-enforcement is one of the key variables affecting the stability of organised crime/the protection industry. Increased competition from foreign groups must also be seen as a potentially destabilising factor in the organised crime industry in Japan.

## ***BŌRYOKUDAN* AND LAW-ENFORCEMENT**

In the introductory chapter, the oft-mentioned assertion of *yakuza*-police symbiosis

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<sup>2</sup> Gambetta's discussion on time horizons adds an extra dimension to the theoretical model of OC-authority interaction developed by Celantini, Marrelli and Martina explored in chapter two. In the repeated fixed-stage game of this model, OC groups aim to maximise *discounted* profits (i.e. taking into account future, as well as current, profits) and consequently avoid antagonising the law-enforcement authorities. If the risk of extermination in the next game-cycle becomes greater, a rational profit-maximisation strategy might be to make as much money as possible in the current stage.



was cited as one of the factors initially arousing the researcher's curiosity in Japanese organised crime. As the theoretical exposition in chapter two, and the above discussion of time horizons, shows, there are good reasons why such symbiosis might exist. However, from the evidence presented in the preceding chapters, can we ascertain the validity or otherwise of this assertion?

If we look at the relationship between the *bōryokudan* and the police over the last five decades, a number of conclusions can be drawn. The first of these is that this relationship has been dynamic rather than static. Secondly, the *bōryokudan* is not a monolithic organisation but is a collective term for a number of different groups, and these have developed different strategies vis-à-vis their relationship with the upper world. Thirdly, it is perhaps also a mistake to view the police as a monolithic organisation. There are two main dividing lines within the police organisation, one vertical, the other, horizontal. The vertical cleavage lies between the security (*kōan*) and the criminal-investigation (*keiji*) police. The horizontal line separates the elite bureaucratic 'career' police from the rank-and-file police officers responsible for carrying out the actual tasks of policing. Let us look at each of these considerations in greater detail.

The *yakuza*-police relationship prior to the first summit strategy of 1964 most closely approximates to an unambiguously symbiotic pattern suggested in much of the literature. Lest the reader form too rosy a view of this period, it should also be noted that this era was also characterised by intense inter-gang conflict. However, within areas of stability, gangs tended to adopt a co-operative attitude towards the

police, doing such things as surrendering suspects to the police (*migawari*), providing information to the police and keeping non-gang trouble-makers off the street. It should be remembered that these last two 'services' were more to remove any potential rivals, show their effectiveness as suppliers of protection and keep the police from actively policing the group's territory, than a desire to be good citizens.

After the first summit strategy, the picture becomes much less clear. From the empirical observation that the main factor driving the evolution and business diversification of the *bōryokudan* has been police action, it must be concluded that a simple thesis of symbiosis is untenable. Therefore, it must also be concluded that police intervention has been one of the two main destabilising factors in Japan's OC. As has been mentioned above, stability and time horizons are a crucial consideration affecting gang behaviour.

As a broad generalisation, since the first summit strategy the relationship between the *bōryokudan* and the police has gradually worsened. Not only have police countermeasures become stricter but the *bōryokudan* have also diversified into progressively less tolerable business activities. Following the introduction of the *bōtaihō*, the flows of information and limited co-operation that most *bōryokudan* groups had extended to the police essentially dried-up. Over time, therefore, the symbiotic thesis has become decreasingly applicable to the general *bōryokudan*-police relationship.

Within the various *bōryokudan* groups, there has been a wide degree of diversity in their relations with the authorities. The commonly accepted wisdom is that the groups in western Japan are more combative in their police relations than the groups in Tokyo and the rest of eastern Japan. In particular the distinction is made between the behaviour of the Yamaguchi-gumi in the Kōbe-Osaka area and that of the Tokyo syndicates. The most notable exception to this generalisation is the old, Osaka-based Sakaume-gumi which has long been seen as having good diplomatic links with the police<sup>3</sup>.

This difference in behaviour is perhaps best illustrated by contrasting the aggressive military expansion of the Yamaguchi-gumi with the Tokyo gangs' creation of the conflict-minimising mechanism the Kantō Hatsuka-kai. Whilst the Inagawa-kai and Sumiyoshi-kai have also expanded throughout Japan, the Yamaguchi-gumi has been far more active in this field. Within Iwate prefecture, many groups joined a Tokyo-based syndicate (mostly Sumiyoshi-kai) as a defence against the Yamaguchi-gumi, and it is probable that this pattern has occurred elsewhere. Apart from police intervention, the expansion of the Yamaguchi-gumi has been the most significant destabilising factor within Japanese organised crime over the last fifty years.

As might be expected, this east-west divide can also be seen in the way that the police treat *bōryokudan* arrestees. In the Osaka area this has long been robustly

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<sup>3</sup> Despite these amicable relations, this group has been in decline for several decades. Unable to compete with the vastly superior brand-recognition of the Yamaguchi-gumi, the Sakaume-gumi has failed to attract new recruits. In Autumn of 1999, the sixth-generation leader of this group disappeared with debts in excess of ¥1 billion (*Shūkan Jitsuwa* 14/10/1999).



physical, making use of *jūdō* strangulation techniques, punching and kicking. This is apparently much rarer in Tokyo (*Shūkan Jitsuwa* 16/4/1998; interviews Osaka June 1998).

Just as it is not always appropriate to treat the *bōryokudan* as a single entity, it is important to recognise that the Japanese police force is not a monolithic organisation but composed of various constituencies. The first cleavage line we should consider is that between the security bureau (*kōan-kyoku*) and the criminal-investigation bureau (*keiji-kyoku*). The security police are primarily concerned with counterintelligence, terrorism and political subversion whilst, as their name suggests, the *criminal-investigation* bureau is concerned with more conventional policing.

These different responsibilities are reflected in the different attitudes these two bureaux have had to the *bōryokudan*:

The *criminal-investigation* bureau of the NPA has long had the desire to destroy the *bōryokudan*. The security bureau has felt that it was more important to deal with the communists and for that reason there was the view that they should make use of the *bōryokudan* (interview Yamada, Tokyo June 1998).

Anti-*bōryokudan* specialist lawyer Yamada Hitoshi, who first alerted the researcher to the importance of this bifurcation, also notes that, following the end of the cold war, the consciousness of the senior personnel at the security bureau has changed. Yamada notes, however, that the same can not be said to apply universally to security bureau officers working at prefectural police headquarters (ibid.)

This mirrors the conflicting perspectives and priorities held by the elite NPA bureaucrats within the criminal-investigation bureau, and by the operational prefectural police officers actually conducting the business of street-level law-enforcement and crime detection. Discussions with members of Iwate prefecture's *bōryokudan*-countermeasures squad (*bōtai-shitsu*) suggested a nostalgia for the days before the *bōtaihō*'s introduction when they would enter gang offices and sit down for a cup of coffee, a cigarette and the chance to find out what was going on. It is easy to see how this flow of information would encourage a *quid pro quo* attitude at the grass-roots level, with officers rewarding co-operative or well-behaved groups with less rigorous law-enforcement.

As has been mentioned in the theoretical chapter, this relationship need not necessarily be reinforced by bribery; it is rather a pragmatic realisation that such a relationship yields results. Whilst this pragmatism has undoubtedly declined in recent years (especially following the severance of diplomatic links with the introduction of the *bōtaihō*), it is probably at street-level that the vestiges of *bōryokudan*-police symbiosis are most enduring. In discussions with communist

activists in the slum-areas of San'ya and Kotobuki-chō, these individuals were firmly convinced that mutually beneficial police-*bōryokudan* links continue:

When we are fighting the fascists (*bōryokudan*), the police shields are facing towards us! (activist interview San'ya, July 1998).

In these areas, and in Osaka's Kamagasaki, policing is a highly sensitive affair and the possibility of the homeless day-labourers' rioting is ever present<sup>4</sup>. In such conditions it is easy to see how the various resident *bōryokudan* groups may be seen as a secondary consideration, or even a useful bulwark against an unpredictable and volatile group of men with nothing left to lose. In October 1990, a riot broke out in Kamagasaki (Airin) when it was discovered that police were taking money from local gangs to provide advance warning of raids on gambling operations. The shiny marble and steel fortress, that was built to replace the police station damaged during this riot, speaks volumes about the relationship between the police and inhabitants of the day-labourers' markets.

### INCREASED USE OF LAW AND THE *BŌRYOKUDAN*

As social links come to play a decreasing part in maintaining law and order, a correspondingly growing burden is taken up by formal use of the law. We can see this in the gradually increasing severity of sentencing patterns discussed earlier.

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<sup>4</sup> Fowler (1996, 41-2) reports that over a dozen riots occurred during the 1960s in San'ya alone.



Evidence for this tendency can also be identified with reference to the *bōryokudan*, both in more combative judicial interpretation of the law and in the introduction of new laws dealing with Japanese organised crime. The best example of recent judicial flexibility is the prosecution of Tsukasa for violation of the Sword and Firearms Control Law as mentioned in the previous chapter. At the time of writing, April 2000, Kuwata and Takizawa, Tsukasa's fellow top Yamaguchi-gumi executives, face a similar fate.

In addition to the *bōtaihō*, the last decade has seen the introduction of new laws which specifically target organised crime activity. The first of these is the 1991 Law Controlling the Encouragement of Illegal Acts Relating to Controlled Drugs with International Co-operation (*kokusai-teki na kyōryoku no moto ni kisei-yakubutsu ni kakawaru fusei kōi o enchō suru kōi nado no bōshi o hakaru tame no mayaku oyobi kō-seishinyaku torishimari hō nado no tokurei nado ni kan suru hōritsu*). This law provides for the sequestration of drug-related assets and also obliges financial institutions to report transactions they suspect to be drug-related. These reporting requirements are still “extremely limited” by international standards (Friman 1994, 260).

The remaining new laws were passed in August 1999 (and are due to come into effect on 1<sup>st</sup> August 2000) as a portfolio of three bills. The Three Organised Crime Countermeasures Laws (*soshiki-teki hanzai taisaku sanpō*) consisted of the Interception of Communications Law (*tsūshin bōju hō*), the Organised Crime

Punishment and Income from Crime Control Law (*soshiki-teki hanzai shobatsu – hanzai shūeki kisei hō*) and reform of the Code of Criminal Procedure (*keiji soshō hō*).

Of these three laws, the wiretapping law has attracted the most attraction due to the apparent conflict with Article 21 of the constitution (though many legal academic interviewees see no problem with this law). Because of this, its passage through the Diet met with resistance from both opposition parties and the Japan Bar Association. However, in international terms this law is highly limited in scope, in terms both of the circumstances in which it may be applied and the maximum length of wire-tapping (a period of ten days which may be extended no more than twice).

There are three main provisions of the Organised Crime Punishment and Income from Crime Control Law. The first of these is to increase the penalties for serious crimes committed as part of a criminal conspiracy. Secondly, the scope for seizure of crime-related assets and the income from crime is expanded. Thirdly, limited anti-money-laundering provisions are introduced. The reform of the Code of Criminal Procedure allows for greater protection of witnesses.

Although, as mentioned in chapter four, there is a strong case to be made that the introduction of these laws was encouraged by foreign pressure<sup>5</sup>, they can also be seen as part of a process of movement to an increased dependence on formal law.

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<sup>5</sup> In 1998, Japan was due to chair the Financial Action Task Force meeting where progress on anti-organised-crime and money-laundering measures was to be reported. Japan therefore had to be seen to be doing something (*Asahi Shinbun* 19/7/1997).

Many of the legal academics interviewed by the researcher maintained that Japanese law lags behind that of other advanced industrial economies, and the introduction of these laws can be seen as part of a process of legal ‘catch-up’.

Perhaps a stronger illustration of Japan’s increased reliance on formal law can be seen by the growth in the use of civil law in recent years (see chart below). For example, company shareholders have launched an increasing number of lawsuits against company managers for incompetence and failing to act in the best interests of shareholders. *The Economist* newspaper’s survey of business in Japan (27/11/1999) notes that since 1993 there have been more than 1,000 such cases “and the numbers are still rising”. Of particular relevance here are lawsuits against failed *jūsen* and companies which have paid out money to *sōkaiya* racketeers.

Table 6.1 Civil Litigation 1975-1997

Year	Newly Received Civil Litigation Cases (,000)
1975	164
1980	220
1985	379
1990	228
1995	421
1996	441
1997	453

*Tōkei Kyoku* 2000

As mentioned above, problems with Japanese civil law have been highly beneficial to the *bōryokudan*; the lack of a cheap effective system of civil law provides a niche market for alternative sources of protection as well as depriving victims of effective



legal remedies. In this respect, an increased willingness to make use of the civil law is a highly promising development in terms of squeezing the *bōryokudan* out of *minbō* activities.

Even more significant is the way in which members of the public are now launching civil suits against the *bōryokudan* themselves. Although there had been incidents of such lawsuits before the introduction of the *bōtaihō*, the new law has made such cases easier. The prefectural *bōryokudan*-eradication centres, set up under the *bōtaihō*, can advise potential litigants, introduce them to lawyers and lend them money with which to launch a suit.

Civil suits against *bōryokudan* generally take two broad types: firstly, those demanding that a *bōryokudan* group vacate a building or stop using premises as a gang-office, and secondly, those seeking compensation for an injury suffered at the hands of a *bōryokudan* member or group. This second category is especially potent in that it can be used to sue a gang boss for acts committed by one of his subordinates. This is made possible by Articles 715 and 719 of the civil law which cover employer's responsibility (*shiyōsha sekinin*) and collective-illegal-acts responsibility (*kyōdo fuhō kōi sekinin*) respectively (Yamaguchi 1997b, 92).

One example of this type of suit is the case in which the parents of the high-school student killed mistakenly during the Okinawa war (mentioned in chapter four) sued

the boss of the Okinawa Kyokuryū-kai, as well as the boss of the sub-group responsible, under Article 715 of the civil law. In October 1996, after a five year legal battle, the parents were successful and the judge ordered that the gang bosses pay compensation of ¥58m (£340,000) (*Keisatsu Hakusho* 1997, 197). The Yamaguchi-gumi top leadership is currently fighting a civil case along similar lines due to the murder of a police officer mistakenly identified as an Aizu-kotetsu member.

In another case, in Saga, a married couple involved in the *unten daikō*<sup>6</sup> business sued a *bōryokudan* group boss and his brother for compensation totalling ¥3,575,000 with respect to a succession of incidents, including a slashing attack on the woman's face and chest, the death of their cat and intimidation of their drivers. The reason for these attacks had been that the couple had opposed moves by the gang to organise an association of all the local *unten daikō* businesses from which it planned to extract a managerial fee. Although they were ultimately successful, it took ten years from the attacks to the judge's final verdict (Yamaguchi 1997b, 81-4).

Perhaps the most significant *bōryokudan*-related civil case was the Ichiriki-ikka incident in Hamamatsu-chō. The Ichiriki-ikka was a sub-group of the Kokuryō-ya, an old gambling organisation dating back to the Edo period but which had more recently joined the Yamaguchi-gumi. In 1983, this Ichiriki-ikka set up an office in

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<sup>6</sup> *Unten daikō* is the Japanese term for businesses providing a taxi and spare driver to take the customer and his/her car home after an evening's drinking.

Ebizuka-chō, a residential area of Hamamatsu city in Shizuoka prefecture. This office was a black five-storey building equipped with steel plates over the windows, observation cameras and the inevitable gang-affiliation plaque featuring the gold diamond of the Yamaguchi-gumi. This building loomed menacingly over the surrounding area and quickly became known as 'the black-building'.

From August 1985 the local residents launched a movement to drive out this office. Frequently gang offices are rented property and it is possible to use legal measures to close them for either breach of contract or non-payment of rent. In the case of the Ichiriki-ikka, however, the office was owned by the gang boss. Due to the lack of effective legal machinery by which they could expel this *bōryokudan* group, the movement staged demonstrations and sit-ins outside the gang office and ran a campaign of stickers and posters.

In November the following year the Ichiriki-ikka took the unusual step of initiating a suit against nine of the leaders of this movement demanding ¥10m compensation<sup>7</sup>. A locally recruited team of lawyers, bolstered by help from the *Nichibenren*'s anti-*minbō* committee, decided that it would be possible to launch a counter-suit on the grounds that the existence of the gang office infringed the human rights of the local residents. In response to this counter-suit, in July 1987, the head of the local residents' legal team was seriously injured in a knife attack. Other prominent

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<sup>7</sup> Suggesting, perhaps, that even the *bōryokudan* are not immune to this increased propensity to litigation.



members of the movement were subject to intimidation and attacks.

The main legal arguments deployed by the gang in court were highly similar to those that were later to be used by various *bōryokudan* in their doomed legal fight against designation under the *bōtaihō*. These were that the Ichiriki-ikka was not a criminal organisation but a 'chivalrous group' (*ninkyō dantai*) and that the local residents' movement was perpetrating an infringement of the gang's constitutionally guaranteed rights of freedom of association, property rights and equality before the law. They also argued that the residents' rights were an abstract thing and not a recognisable legal right.

Despite these arguments, on 9<sup>th</sup> October 1987 the district court found for the litigants of the counter-suit and issued a provisional injunction demanding that the gang refrain from using the black building as a gang office. However, use of the office continued as before, and on 20<sup>th</sup> October, the residents' committee appealed to the court demanding ¥5m for each day that the Ichiriki-ikka continued to use the premises as an office. The defendants argued that gang members were not assembling at the building but merely spontaneously coming and going. This being the case, the injunction did not apply.

One month later, the court provided a more precise definition of action covered by the earlier injunction, which effectively prevented continued use of the office. The defendants appealed to the Tokyo High Court and then, when this appeal was rejected, to the Supreme Court. Finally on 19<sup>th</sup> February 1989 the Ichiriki-ikka

abandoned its case, reached a peaceful settlement agreeing to all of the resident's demands and left the area.

This incident is significant for a number of reasons. Firstly, it was the first time in which a *bōryokudan*-owned, rather than rented, office had been driven-out (*Nichibenren* 1998b, 53). Secondly, this was a citizen-initiated movement (though it later came to garner large-scale police support with several thousand police mobilised throughout Ebizuka-chō). The *Nichibenren*'s account of this incident (from which the above is largely derived) claims that the resolve of the residents was only increased by the gang's attempts to intimidate them. This public solidarity in the face of a hostile *bōryokudan* group shows what can be done by a motivated and united public. Raz (1996, 228-9) suggests, however, that behind this solidarity was enormous social pressure on uncommitted residents to join the movement and this pressure was backed up by the potent sanction of ostracising non-participants.

Thirdly, it shows that, even where no criminal laws were being violated, the law extant prior to the introduction of the *bōtaihō* could be successfully applied to restrict the use of gang offices. This should not be taken, however, as evidence that the *bōtaihō* was merely a public-relations exercise rather than a law with a genuine role to play. It should be remembered that the new law's provisions were wider than just the imposition of limitations on the use of gang offices. Furthermore, the fact that the local residents' fight lasted three long years contrasts with the much quicker application of administrative orders to restrict usage of gang offices. It is perhaps more plausible to suggest that the eventual success of restricting usage of

the Ichiriki-ikka's gang office led to the introduction of similar measures in the provisions of the *bōtaihō*.

Fourthly, due to the unusual spectacle of a *bōryokudan* group launching a legal suit against a citizens' movement, this incident attracted enormous media and public interest (Raz argues that it was actually inflamed by the media (1996, 230)). This incident therefore was also influential in changing the public consciousness of *bōryokudan* groups. The fact that the local residents successfully forced the Ichiriki-ikka to give in, showed the Japanese public that there was nothing inevitable about local *bōryokudan* gang offices. This factor is immensely important. As has been argued in earlier chapters, *bōryokudan* groups are highly reliant on their reputation. Once the Ichiriki-ikka had been driven out of Ebizuka-chō, it was seen by rivals, customers and intended prey alike, as weak and unable to provide credible protection. Because of this fatal loss of reputation, the Ichiriki-ikka disbanded soon after this incident (Hoshino interview Yokohama, 1998).

It is probable that this damage to the gang's credibility was, to a certain extent, also translated to *bōryokudan* at large in the public consciousness. It was observed in the previous chapter that the general public is becoming less afraid of the *bōryokudan*. Whilst it is obviously a positive development, this change in consciousness may actually encourage greater levels of violence. Because the threat of violence is no longer sufficient to achieve acquiescence, *bōryokudan* groups may



feel compelled to deploy actual violence to achieve their immediate aims as well as *pour encourager les autres*.

It should be apparent from the three cases described above that proactive use of the civil law presents an extremely powerful device against the *bōryokudan*. For gang bosses to be held accountable for the actions of their subordinates and liable for compensation vis-à-vis predatory actions, is of potentially far greater usefulness than the *bōtaihō*. Given that the criminal law may not allow for the successful prosecution of gang superiors (though, as the cases of Tsukasa, Kuwata and Takizawa show, even here we see greater flexibility of interpretation), the use of civil law is evaluated here as a most positive development.

However, as should be apparent from the three cases outlined above, the use of the civil law is still a highly lengthy process. No reform of Japan's legal system has occurred to encourage this growth in litigiousity. Access to cheap, efficient justice, through, inter alia, reform of the 1949 Lawyers Law to provide for a greater number of lawyers, judges and prosecutors, would be a useful step in facilitating members of the public to seek redress for *bōryokudan* victimisation.

## CHAPTER SEVEN

### CONCLUSION

The arguments presented in chapter six go somewhat beyond the initial objectives of this dissertation and, in many ways, lay the groundwork for future research. In particular current developments in Japanese policing and the consequent pressure to reform the existing system of police regulation under the Public Safety Commissions are areas which demand greater scrutiny. Interesting though these may be, let us now return to the main focus of this thesis.

In chapter two a theoretical structure of organised crime was developed to inform our subsequent analysis of the *bōryokudan*. This approach, identifying organised crime as “structures which exercise rule-making, tax-collecting and protective functions over primarily, but not exclusively, illegal markets in a given geographical sector”, has, it is hoped, been shown to be a powerful analytical tool providing important insights into this necessarily obscure phenomenon. Chapter three’s empirical description of the *bōryokudan*’s development up to the introduction of the *bōtaihō* illustrates the relevance of this, American-European-derived, theoretical model to the Japanese context. Chapter four discusses the *bōtaihō* with reference both to the problems of framing effective countermeasures and the two main legal prototypes which informed the academic debate preceding the new law’s formation.

Whilst much of the material in chapters three and four is unavailable elsewhere in English, it is not the main contribution to existing scholarship that this thesis endeavours to provide. It is rather establishing the essential background information against which the core research question identified in chapter one may be answered. This is: **what effects has the *bōryokudan* countermeasures law had on the *bōryokudan*?**

In attempting to evaluate the effectiveness of crime control measures, we always face the problem of disentangling the impact of extraneous factors. In the case of the *bōtaihō* this problem is particularly acute in that the collapse of Japan's economic bubble in 1990 and the subsequent recession have dealt an enormous blow to the *bōryokudan*. Many *bōryokudan*-watchers in the Japanese weekly press avoid attempting to separate these two factors by simply referring to them as a combined 'double-punch'.

Despite this, there are certain perceptible changes in *bōryokudan* behaviour that can be attributed to the *bōtaihō*. The first of these is the way in which *bōryokudan* groups have removed plaques, emblems and other gang-related paraphernalia from the outside of gang offices. Similarly gang members became less prone to flaunt membership in their dealings with the outside world; for example, name-cards generally now show some legitimate commercial front whilst cards identifying the bearer's gang membership and rank are now generally restricted to use within Japan's underworld.



Whilst this seems at first glance to be a highly superficial effect, it is significant in that it undermines the *bōryokudan*'s claim to legitimacy (and difference from the American mafia) in that it operates openly from clearly identifiable offices. The lower profile that the *bōtaihō* has forced the *bōryokudan* to adopt has also had an important impact on how they are perceived by ordinary members of the public. Many have commented favourably that, since this law's introduction, they no longer see *yakuza* 'cutting the air with their shoulders' when they strut down the streets.

The flip-side of this tendency is that *bōryokudan* groups are now going underground. Many of the gang-members whom the police report to have left their organisations have actually formally seceded only to carry on their activities as before under the guise of 'business brothers' (*kigyō shatei*) or newly-formed spurious political organisations. Whether this development is socially beneficial or not is unclear.

The second development that can be unambiguously attributed to the *bōtaihō* is the greater efforts that the *bōryokudan* community has made over the last decade to reduce inter-gang conflicts. This can be seen in the two '*gokudō* summits' around the time of the *bōtaihō*'s introduction and the subsequent diplomatic ties forged through *sakazuke* between the main syndicates. Although these have not succeeded in totally eliminating conflict, there now exists the mechanism and will to facilitate the rapid resolution of conflict when it arises. In this respect the Yamaguchi-gumi is being forced to adopt the norms of the gangs comprising the Kantō Hatsuka-kai.

There is, of course, an inherent strain in this shift to peaceful coexistence within the *bōryokudan* community. The life-blood of any industry is revenue, and the *bōryokudan* economy is no exception to this. The changing economic opportunities caused by the 'double punch' of the *bōtaihō* and the bubble's collapse have increased the, already significant, pressure on gang members to develop new sources of income. This almost inevitably brings them into conflict with other *yakuza*.

This need to develop new sources of revenue has also generated strain within *bōryokudan* organisations in another way. A significant proportion of *bōryokudan* diversification has been into areas that carry a high degree of opprobrium within both the traditional *yakuza* world and that of the general public. Most notable of these are the increase in amphetamine peddling (most significantly to minors) and organised theft rings. Whilst the leadership cadres of large syndicates constantly exhort sub-group members to refrain from participation in such activities, they try to square the circle by continuing to demand payments of monthly *jōnōkin* dues. The succession of directives issued by the Yamaguchi-gumi leadership demanding that sub-group members avoid those businesses subject to major social condemnation is a nice illustration of Schelling's theoretical observation that organised crime may collectively attempt to limit externalities generated by individual criminals by moderating their behaviour. It also illustrates that such attempts may not be successful and that the rule-making function, identified in our definition of organised crime, is not always satisfactorily enforced.

Whilst it is impossible to attribute the development in *bōryokudan* economic activity exclusively to the introduction of the *bōtaihō*, it is clear that the new law has played a significant contributory role. If we look at the post-war history of the *yakuza*, this should come as no surprise; one of the most important factors driving the evolution of these groups has been the law-enforcement climate in which they have survived. The first summit strategy of 1964, which made use of a change in the law lowering the criteria for prosecution of gambling offences, and the reform of the commercial code in 1982 to combat *sōkaiya*, are two clear examples of this.

Whilst the *bōtaihō* has provided a legal remedy for the formerly 'grey zone' of *minbō* it has by no means eradicated this type of *bōryokudan* activity. Part of the reason for this is elucidated by our observation that the various protective services that *bōryokudan* groups provide actually meet a demand. Whilst much of this demand is created by the existence of the *bōryokudan* themselves, as well as the various spurious political organisations, social movements and poison-pen journalists, it is not exclusively so. Whilst the necessity for protection is strongest in those illegal markets where legitimate alternatives do not exist, it is also to be found in legal ones where official protective services are, at best, partial. In this light it is interesting to note Ujihara's observation that the bar/club/restaurant industry in his area of central Japan only significantly stopped making payments to the *bōryokudan* in 1998-9 after concentrated pressure from the local police.



The existence of a demand for the goods and services provided by organised crime was identified in chapter one as the phenomenon's major aetiological factor. Attempts to eradicate organised crime without addressing this consideration are not likely to achieve their objective. Szymkowiak (1996, 148-9), talking with reference to the 1982 reform of the commercial code (which had the aim of tackling the *sōkaiya*), clearly identifies this problem:

Lawmakers seldom if ever attempt to reconcile the basic considerations causing the dilemmas that legal reform is expected to solve. The dilemmas are symptoms of the problem, not the problem itself. Given this, the expectation is that new conflicts and dilemmas, changed in some fashion by new constraints, will emerge out of the still existing contradictions.

Whilst the *bōtaihō* does not address these underlying problems, if we see this law as having more limited aspirations than those mooted here by Szymkowiak, then perhaps we should not judge it too harshly. In so far as it closes a particularly problematic legal loophole, the *bōtaihō* has been successful. Ordinary members of the public now have a largely effective means for dealing with bogus protection or other types of *minbō*.

Perhaps of greater significance than this concrete achievement of the *bōtaihō* is the unquantifiable psychological impact of this law. For the first time a law explicitly identifies the *bōryokudan* as a social evil. This has undoubtedly had an effect not

only on the *bōryokudan* members themselves, but also on the police and ordinary members of the public. Whilst this effect is intangible, it has had concrete spin-offs. Perhaps most important of these is that, since the introduction of the *bōtaihō*, *bōryokudan* groups no longer extend lines of communication to the police. The pre-existing system, whereby officers from the relevant police departments would wander into gang offices to discuss over coffee and cigarettes what was happening on the streets, has come to an end. Though this obviously entails a loss in information to the police (a fact clearly lamented by many of the older detectives involved in *bōryokudan* investigations), it is illustrative of the breakdown in the 'remarkable cordiality' (superficial though it may have been) noted by Ames in the police-*bōryokudan* relationship.

In chapter four it was suggested that the *bōtaihō* may have been introduced for reasons of political symbolism. Regardless of the sincerity, or otherwise, of this move, even a symbolic law of limited scope can have significant effects beyond its concrete provisions. The *bōtaihō* has clearly increased the *bōryokudan*'s sense of isolation from the wider society. At the same time it has reduced public fear of *bōryokudan*. In chapter two it was argued that it is the *reputation* for violence, rather than the actual use of violence, that is the main resource of organised crime groups. In the light of this, the psychological impact of the *bōtaihō* may be of even greater significance than the more tangible effects discussed above.

Organised crime is a complex and dynamic phenomenon enjoying an ambiguous relationship with the wider society in which it exists. Because of this, our expectations of the effectiveness of organised crime countermeasures should never be raised too high. Given the extent to which Japanese *bōryokudan* syndicates have entrenched themselves in the economic and political fabric of Japan in the last half-century, the goal of *bōryokudan* eradication remains, at best, a long-term aspiration. Such realism should not suggest defeatism; insoluble though a problem may be, its worst effects may be ameliorated. Within the limited scope of providing a legal remedy, to *bōryokudan* predation, for ordinary members of the public, the *bōtaihō* has effected such an amelioration.



**PAGE**  
**NUMBERING**  
**AS ORIGINAL**

**APPENDIX 1**

**PROPORTION OF *BŌRYOKUDAN* MEMBERS WITH  
CRIMINAL RECORD NECESSARY TO SATISFY CRITERIA FOR  
DESIGNATION UNDER THE PROVISIONS OF THE *BŌTAIHŌ***

Number of members	Percentage with criminal record	Number of members	Percentage with criminal record
3-4	66.6	170-179	5.89
5-6	60.01	180-189	5.65
7-9	42.86	190-199	5.65
10-14	30.77	200-209	5.51
15-19	26.67	210-219	5.24
20-24	25.01	220-229	5.16
25-29	24.01	230-239	5.16
30-34	20.01	240-249	5.01
35-39	17.15	250-259	4.81
40-44	15.01	260-269	4.78
45-49	13.34	270-279	4.78
50-54	12.01	280-289	4.65
55-59	11.00	290-299	4.49
60-64	10.01	300-349	4.45
65-69	10.01	350-399	4.29
70-74	10.01	400-449	4.26
75-79	9.34	450-499	4.23
80-84	8.76	500-549	4.21
85-89	8.34	550-599	4.19
90-94	8.34	600-649	4.17
95-99	8.34	650-699	4.16
100-109	8.01	700-749	4.15
110-119	7.28	750-799	4.14
120-129	7.09	800-849	4.13
130-139	6.93	850-899	4.12
140-149	6.43	900-949	4.12
150-159	6.29	950-999	4.11
160-169	6.26	1,000 and over	4.11

APPENDIX 2 DESIGNATED BORYOKUDAN 1998

GROUP NAME	HEAD-QUARTERS	LEADER	GEOGRAPHICAL EXTENT	STRENGTH 1992	STRENGTH 1998	DATE FIRST DESIGNATED
Godaiame Yamaguchi-gumi	Kobe	Watanabe Yoshinori	T, H, 2 F, 39 P	23,100	17,500	23/6/1992
Inagawa-kai	Tokyo	Inagawa Kakuji*	T, H, 20 P	7,400	5,100	23/6/1992
Sumiyoshi-kai	Tokyo	Nishiguchi Shigeo	T, H, 1 F, 16 P	8,000	6,200	23/6/1992
Nidaiame Kudorengo Kusano-ikka	Fukuoka	Mizoshita Hideo	3 P	600	520	26/6/1992
Sandaiame Kyokuryū-kai	Okinawa	Onaga Yoshihiro	1 P	430	270	26/6/1992
Okinawa Kyokuryū-kai	Okinawa	Tominaga Kiyoshi	1 P	570	370	26/6/1992
Godaiame Aizu Kotetsu	Kyoto	Zugoshi Toshitsugu	4 P	1,600	1,200	27/7/1992
Yondaime Kyōsei-kai	Hiroshima	Okimoto Tsutomu	1 P	330	280	27/7/1995
Rokudaiame Goda-ikka	Yamaguchi	Nukui Kanji	4 P	370	190	27/7/1995
Yondaime Kozakura-ikka	Kagoshima	Hiraoka Kiei	1 P	190	120	27/7/1995
Sandaiame Asano-gumi	Okayama	Kushida Yoshiaki	2 P	150	120	14/12/1995
Nidaiame Dōjin-kai	Fukuoka	Matsuo Seijirō	4 P	510	530	14/12/1995
Shinwa-kai	Takamatsu	Hosoya Kunihiko	2 P	80	70	16/12/1995
Sōai-kai	Chiba	Shin Meiu	3 P	430	460	24/12/1995
Sandaiame Yamanō-kai	Kumamoto	Ikeda Tetsuo	1 P	100	70	24/12/1995
Nidaiame Kyōdō-kai	Hiroshima	Morita Kazuo	6 P	(230)	200	4/3/1996
Sandaiame Taishū-kai	Fukuoka	Ōma Raitarō	1 P	(150)	120	4/3/1996
Rokudaiame Sakaume-gumi	Osaka	Shin Keiretsu	2 F, 4 P	(450)	340	26/5/1996
Kyokutō Sakurai Sōke Rengo-kai	Shizuoka	Serizawa Yasuyuki	7 P	(500)	370	8/7/1996
Kyokutō-kai	Tokyo	Sō Keika	T, H, 15 P	(2,300)	2,000	21/7/1996
Azuma-gumi	Osaka	Kishida Kiyoshi	2 F	(210)	180	29/7/1996
Matsuba-kai	Tokyo	Ri Shyunsei	T, H, 8 P	{1,800}	1,700	10/2/1997
Kokusui-kai	Tokyo	Kudō Kazuyoshi	T, 7 P	{580}	540	13/5/1997

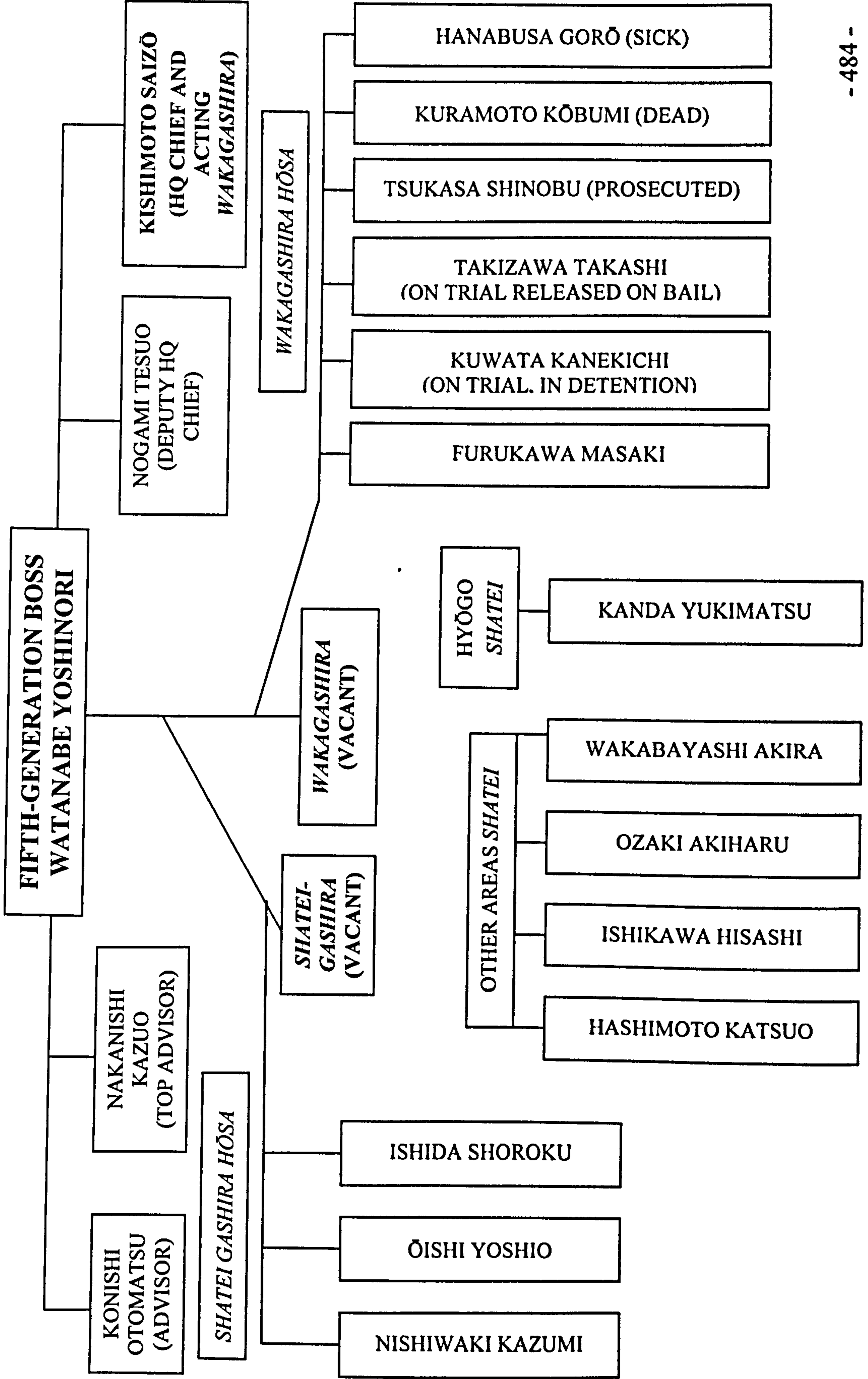
\* Although the 1998 *Keisatsu Hakusho* gives Inagawa Kakuji as the leader of the Inagawa Kai, he has officially retired and his son, Chihiro, is third-generation boss of the syndicate.

( ) 1993 figures. { } 1994 figures.



APPENDIX 3

YAMAGUCHI-GUMI TOP EXECUTIVES POST-TAKUMI

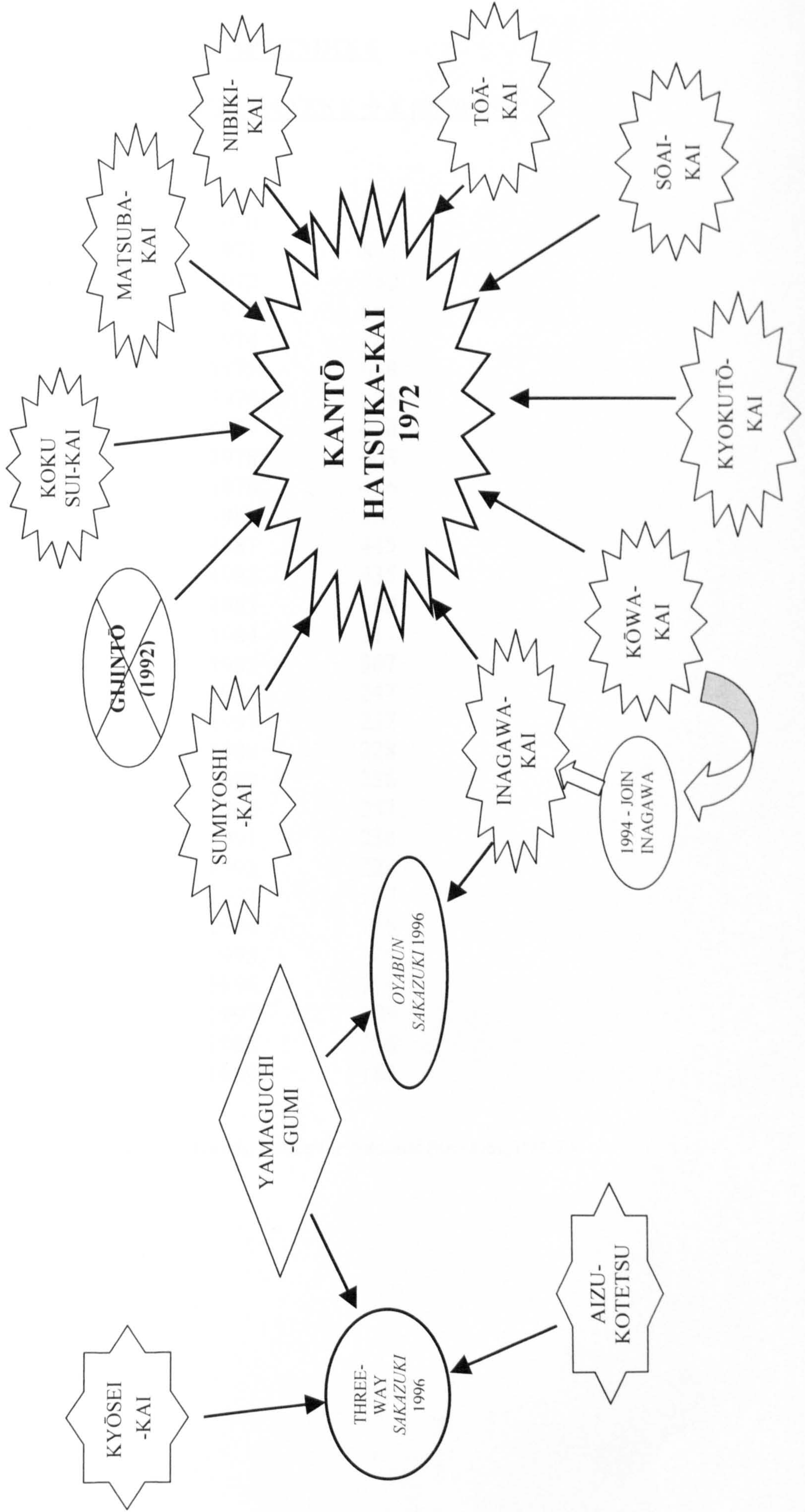




APPENDIX 4 - MAIN SYNDICATE SAKAZUKI RELATIONS

WEST JAPAN

EAST JAPAN





APPENDIX 5 CHRONOLOGY OF SIGNIFICANT BŌRYOKUDAN EVENTS

1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
HACHIŌJI WAR BUBBLE ECONOMY BURSTS ISHII ENTERS HOSPITAL AND RETIRES INAGAWA CHIHIRO BECOMES THIRD-GEN BOSS OF INAGAWA-KAI	BŌTAIHŌ PASSED BY DIET IN MAY ISHII DIES	BŌTAIHŌ COMES INTO EFFECT SAGAWA KYŪBIN SCANDAL EMERGES	BŌTAIHŌ REVISED KANEMARU ARRESTED SUMITOMO BANK BRANCHES ATTACKED HANWA BANK EXECUTIVE SHOT	FUJI FILM EXECUTIVE KILLED SUMITOMOBANK NAGAYA BRANCH MANAGER KILLED YAMA-GUCHI-GUMI JŌNŌKIN DECLINES	KŌBE EARTH-QUAKE AUM-SHINRI-KYŌ SUBWAY GAS ATTACK JŪSEN PROBLEM	KUWATA-ZUGOSHI-OKIMOTO THREE-WAY SAKAZUKI WATANABE-INAGAWA SAKAZUKI START OF THIRD PERIOD OF EPIDEMIC AMPHETAMINE ABUSE NAKANO SHOT	SECOND REVISION OF BŌTAIHŌ TAKUMI KILLED YAMA-GUCHI-GUMI LEADERSHIP PARALYSIS BEGINS ZUGOSHI BECOMES FIFTH-GEN BOSS OF AIZU-KOTETSU		ORGANISED-CRIME COUNTER-MEASURES LAW PASSED



APPENDIX 5 CHRONOLOGY OF SIGNIFICANT BÖRYOKUDAN EVENTS

1980									
1981	TAOKA DIES								
1982	REFORM COMMER- CIAL CODE  YAMAKEN DIES	SARAKIN LAW							
1983		TAKENAKA MASAHISA BECOMES FOURTH-GEN YAMAGUCHI- GUMI BOSS  START OF YAMA-ICHI WAR  PEAK OF SECOND AMPHET- AMINE EPIDEMIC  ISHII RELEASED FROM PRISON  KODAMA DIES							
1984	TAKENAKA DIES  PLAZA ACCORD START OF STRONG YEN PERIOD  YAMA-ICHI WAR								
1985	G7 SUMMIT TOKYO CO- OPERATION ON ANTI- DRUGS MEASURES  YAMA-ICHI WAR								
1986	UN DRUGS CONFERENCE  YAMA-ICHI WAR								
1987	UN ANTI- DRUGS CONVENTION  RECRUIT SCANDAL  YAMA-ICHI WAR  DECLINE IN AMPHET- AMINE ABUSE								
1988	KAIFU-US "GLOBAL ANTI- DRUGS PARTNER- SHIP"  ICHIWA- KAI DISBANDS END OF YAMA-ICHI WAR  WATANABE YOSHINORI BECOMES FIFTH-GEN YAMA- GUCHI- GUMI BOSS ISHII BUYS TÖKYŪ- DENTETSU								
1989									

APPENDIX 5 CHRONOLOGY OF SIGNIFICANT BORYOKUDAN EVENTS

1970	1971	1972	1973	1974	1975	1976	1977	1978	1979
<p>SECOND SUMMIT STRATEGY</p> <p>START SECOND AMPHET-AMINE EPEDEMIC</p>	<p>YAKUZA-SOKAIYA START TO LINK-UP</p>	<p>ISHII &amp; YAMAKEN BROTHERHOOD SAKAZUKI</p> <p>KANTO-HATSUKA-KAI SET UP</p>			<p>THIRD SUMMIT STRATEGY</p>				

APPENDIX 5 CHRONOLOGY OF SIGNIFICANT BŌRYOKUDAN EVENTS

1960	1961	1962	1963	1964	1965	1966	1967	1968	1969
<p>AMPŌ RIOTS</p> <p>EISEN- HOWER VISIT CANCELLED</p>			<p>KANTŌ-KAI SET UP</p> <p>YAKUZA LETTER TO POLITICAL LEADERS</p>	<p>FIRST SUMMIT STRATEGY</p> <p>TOKYO OLYMPICS</p>	<p>KANTŌ-KAI DISBANDS</p>				



**APPENDIX 6**

**EXCHANGE RATES ¥ → £ (1970-99)**

1970	858
1971	845
1972	752
1973	665
1974	683
1975	658
1976	535
1977	468
1978	403
1979	466
1980	526
1981	445
1982	435
1983	360
1984	317
1985	307
1986	247
1987	237
1988	228
1989	226
1990	257
1991	238
1992	224
1993	167
1994	156
1995	148
1996	170
1997	198
1998	216
1999	184

Source: Economic Trends, Office for National Statistics, HMSO

APPENDIX 7

NAMED INTERVIEWEES

- Fujimoto, Takashi:** Assistant Chief, First *Bōryokudan* Countermeasures Section, NPA
- Herbert, Wolf:** Lecturer, Tokushima University
- Hoshino, Kanehiro:** Criminology Professor, Teikyō University. Formerly Director, Division of Prevention of Crime and Delinquency, NRIPS
- Inagaki, Hiroshi:** Community Leader, Kamagasaki
- Ino, Kenji:** Writer and journalist on *bōryokudan* matters
- Iwai, Hiroaki:** Retired Professor – *Dai-sensei* of *bōryokudan* studies
- Katō, Naotaka:** Lecturer of Criminal Law, Kokushikan University
- Kühne, Hans-Heine:** Professor of Criminology and Law, University of Trier
- Miyazawa, Setsuo:** Professor of Law, Kobe University
- Mizoguchi, Atsushi:** Writer and journalist on *bōryokudan* matters
- Mugishima, Fumio:** Professor of Criminology, Teikyo University. Formerly Director, Division of Prevention of Crime and Delinquency, NRIPS
- Nishimura, Haruo:** Professor of Criminology, Kokushikan University. Formerly Director, Division of Prevention of Crime and Delinquency, NRIPS
- Shiibashi, Takayuki:** Professor of Law, Director of Institute of Comparative Law in Japan, Chūō University
- Shimamura, Tadayoshi:** Criminal Defence Lawyer specialising in *bōryokudan*
- Tamura, Masayuki:** Director, Division of Prevention of Crime and Delinquency, NRIPS
- Tudor, Geoffrey:** Spokesman, JAL

- Uchiyama, Ayako:** Chief of Juvenile Guidance Section, NRIPS
- Yamada, Hitoshi:** Lawyer, Head of Nichibenren's Anti-*Minbō* Committee
- Yamanouchi, Yukio:** Lawyer, writer and former legal advisor to Yamaguchi-gumi
- Yonezato, Seiji:** Research Sociologist, Social Environment Section, NRIPS

Pseudonyms have been used for all other interviewees mentioned by name in this thesis.



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