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State, Sterilization, and Reproductive Rights: Japan as Occupier and Occupied

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May 11, 2001 marked an important step toward protecting individual reproductive rights in Japan. On that day, after a legal struggle that began in 1998, the Kumamoto District Court ruled that the segregation of Hansen's disease patients in state-run sanatoriums, which had gone on for over half a century, was unconstitutional. The lawsuit was in large part due to the need for a clear statement of state responsibility in a serious infringement of human rights – the violation of individuals' reproductive rights through sterilization and abortion, mostly forced upon them in state sanatoriums.¹ In one example, the head of a plaintiff's group in western Japan, aged 82, acted to hold the state responsible for his forced sterilization. Hospitalized at 23 years of age in 1941, he married a woman at the facility and she became pregnant in 1943. When the pregnancy was discovered, she was forced to have an abortion and he was sterilized.²

The legal basis for these operations was established for the first time by the Eugenic Protection Law (*Yūsei hogo hō*) of 1948. However, the example above took place before the 1948 law was enacted. In fact, its wartime predecessor, the National Eugenic Law (*Kokumin yūsei hō*) of 1940, which was modeled after the Nazi sterilization law of 1933, did not include Hansen's disease as sufficient cause for a sterilization operation. Nor did the Leprosy Prevention Law (*Rai yobō hō*) stipulate sterilization or abortion for such patients. But both surgeries were widely practiced from 1915 in state sanatoriums in Japan and in colonized Korea, Taiwan and other locations, as evidenced by numerous clinical reports at medical conferences.

How were these operations justified? This chapter first looks at how Japan as an occupier/colonizer responded to the issue of Hansen's disease across its empire. It was argued that the Empire of Japan, as a modern civilized nation, should control and eradicate communicable diseases. For this purpose, certain patients were forcibly segregated in national sanatoriums and forced to undergo sterilization. The chapter then shows how the reproductive rights of Hansen's disease patients were handled by Japan, with its increased focus on eugenics, which at the time was believed to offer the promise of a brilliant future for the country.

In the postwar era when Japan became occupied, Hansen's disease, along with other non-hereditary diseases and disabilities, was included among criteria for sterilization and abortion under the new 1948 law. While this law was sponsored by lawmakers and enacted by the Japanese Diet, it was reported to and approved by the occupier of Japan via the General Headquarters of the Supreme Commander for the Allied Powers (GHQ/SCAP). When it was submitted for review, one of the GHQ/SCAP staffers called it 'essentially a revival of Nazi race theories and practices'.³ However, GHQ/SCAP officially kept quiet and let the Japanese government enact the law without calling for any major changes to its eugenic nature. How did GHQ/SCAP justify this contradictory attitude? This chapter also looks briefly at how GHQ/SCAP reacted to sterilization clauses in the law, and its population policy in general, and then shows one of several known examples of compulsory sterilization operations performed without the patient's consent in occupied Japan.

Many studies on the reproductive rights of Hansen's disease patients have been completed in Japan. Scholars have undertaken detailed research and survivor interviews, and heavy volumes of collected data have been published devoted solely to Hansen's disease issues, to which this chapter owes a great debt. The landmark of these studies may be the *Final Report* published by the special study council on Hansen's disease problems of the Japan Federation of Bar Associations in 2005.⁴ While there seems to be little to add to this enormous collection of knowledge, by examining and comparing the period when Japan became an occupier to when it was subsequently occupied, this chapter highlights the similarities between Japanese and American occupation and/or colonization. This may complicate the hegemonic American narrative of 'liberation' that demonizes the Japanese as vicious and aggressive occupiers.

From disease control to eugenics

The Japanese government was initially slow to react to Hansen's disease. Before it became classified as a chronic infectious disease at the first