March 30, 2021

Mark Ramseyer

ramseyer@law.harvard.edu

Eric Rasmusen

erasmuse@indiana.edu

**Suing over Ostracism in Japan:**

**The Informational Logic**

By J. Mark Ramseyer & Eric B. Rasmusen\*

*Abstract:* Group ostracize members. Sometimes they do it to enforce welfare-maximizing norms, but other times ostracism reduces welfare. Japanese villages have long used ostracism as a tool for conformity, and the targets have sometimes sued in response. The cases that have reached the courts disproportionately involve welfare-reducing behavior by the community; for example, ostracism against targets who report corruption. The targets usually win the civil cases against ostracizers and prosecutors usually win the criminal cases. Yet the targets seem not to have sued for financial or injunctive relief, and the prosecutors seem not to have pushed for prison terms. Instead, they have used the courts for an informational end: to certify and publicize innocence. This end is of minor importance in normal litigation, but crucial for ostracism, as we explain using a formal model. We use case examples and the model to explore the factors that cause disputes to lead to ostracism and ostracisms to lead to litigation.

\* Mitsubishi Professor of Japanese Legal Studies, Harvard Law School; Professor, Kelley School of Business, Indiana University.

It happened in 1952 in a small village at the base of Mt. Fuji **(Case 1)**. For years, a village leader had gone house to house asking residents whether they planned to use their election ticket, the form that enabled them to vote. If not, he asked if they could give it to him so that it would not go to waste.

Teenager Satsuki **Ishikawa** thought this outrageous. Still in middle school, she wrote an article about the leader’s electoral fraud for her school newspaper. School administrators collected every copy of the issue and destroyed it. Two years later, she decided to try again. She could not complain to city hall, since the man collecting the tickets worked there. She thought of complaining to the electoral commission, but worried that they might be part of the scheme. She considered the police, but she did not trust them either. Instead, she wrote to the national **Asahi newspaper.** The paper sent reporters to the village, and electoral fraud hit the national news. The police arrested the village leaders, and **the community responded by ostracizing the Ishikawa family.**

Readers of the Asahi wrote in from around the country in support of Satsuki Ishikawa. Her teachers and classmates encouraged her. But the Ishikawa family raised rice. In the pre-mechanized 1950s, transplanting rice required community assistance. When the time arrived to transplant the Ishikawa fields, no one came to help.

Apparently, the Ishikawa family never filed suit.

Does ostracism complement courts as a mechanism of social control, or substitute for them? Either, depending on context, we will conclude.

**Institutions:**

The Japanese term for village ostracism is "murahachibu" (村八分).

The Japanese government began appointing judges to handle civil and criminal cases soon after the 1868 Meiji Restoration. It adopted a Prussian-based constitution in 1889, a German-based Civil Code in 1896, and a Criminal Code in 1907.

Section 222 of the Criminal Code made intimidation --- conduct that would "threaten the life, body, freedom, reputation, or property of another" --- a crime.

Section 709 of the Civil Code made intentional harm a tort: the "intentional or negligent invasion of another person's rights or legally protected interests."

B. Conventional Cases:

Supreme Court 1921. A rural hamlet received subsidies from larger governments to build a road **(Case 2)**. Sadaji Kodama owned land over which the road would pass. He refused to convey it. Three times, the county head visited Kodama to plead with him. After years passed and the hamlet had still to finish the road, the county withdrew its subsidy. Hamlet members **voted to cut all ties with Kodama and with anyone -- "whether or not related by blood" -- who might continue to have contact with him**. Kodama sued and the court called the ostracism **a tort.**

Supreme Court 1939 **(Case 3)**. A hamlet planned to expand a road, and needed to remove a hedge, but the owner refused. After negotiations, workers started to clear the hedge. The owner called the police, and the community imposed ostracism. Prosecutors brought charges. The Supreme Court concluded the ostracism was **criminal** "without a reason deemed appropriate by social convention." As "judged by social convention, their ostracism had lacked a recognizably proper reason." It violated "public order and good morals."

1952 Tokyo High Court. **(Case 4)**. In the early post-war years, the government requisitioned rice from farming hamlets. Community leaders allocated the amount among the hamlet members. One resident in the 45-household hamlet **thought his allocation unfair and refused** to provide the full amount. The community responded with ostracism. The farmer sued, and the court held the ostracism **a tort.**

One of the earliest criminal cases reached the Supreme Court in **1911** **(Case 5)**. The case involved a man who had failed in business. He had largely brought it upon himself, and had caused his neighbors considerable harm in the process. The community imposed ostracism. Lest his friends decide to ignore the sanction, some members of the community contacted his likely sympathizers. **Should the sympathizers ignore the decree, they warned, they would meet the same fate**.

The court declared this threat to the sympathizers **a crime.** No one has a right to social interchange. If anyone finds that a neighbor no longer speaks to him, he has not necessarily suffered a legal wrong. But should his neighbors stop contact **collectively,** they do commit a crime. "When the residents in an area decide collectively to punish a member, and then declare that they will cease all contact with him, they have excluded the member from their society. They have degraded his personhood, and harmed his good name." They have, in violation of Section 222 of the Criminal Code, committed **criminal intimidation.**

Government skepticism toward ostracism did not start in 1911. Even during the **Tokugawa shogunate** the government was skeptical. In **1822**, 26 villagers in Mie prefecture sued in the local (domainal) court to expel neighbor Kishichi. He was not, they complained, "conforming to the customs of the village" **(Case 6)**. Kishichi had moved to the hamlet from a nearby village. He farmed land which his family had already owned, but the villages wanted him evicted anyway.

The court dismissed the petition and punished the village leaders. The principal leader, it banished. It ordered three other leaders to house arrest and forced labor, and nine to forced labor:

[The men] have ignored their agricultural work, and by plotting this insistent litigation have wrecked the [social] order. The village population was so low that the residents could not even till all the paddies and fields they have. Yet here they are trying to expel a man who has moved there. This is outrageous.

3. Tort cases. -- Return to the 1921 Supreme Court case where Kodama refused to provide land for a road **(Case 2)**. The case did not stem from a criminal prosecution. Instead, Kodama had brought it in tort against the hamlet members who engineered the ostracism against him. Through the case, the Court made clear the tort equivalent of Criminal Code Section 222: to ostracize collectively a member of a community is an intentional tort. "Leave aside doctors and innkeepers for whom special rules exist," the court explained --- its reasoning tracked the principles it would apply in 1939 to criminal prosecutions **(Case 3**)

If someone wants to take part in social interchange, he does not have a right to demand it. Instead, others are free to accept his invitation or to refuse. The same goes for times when he wants to sit next to someone, talk with the person, trade, or take part in other actions or inactions.

But that each person may refuse to interact with another individually does not mean that a group can refuse to do so collectively. It is somewhat like anti-monopoly law, which in most countries allows an individual firm to charge a high price or to refuse to sell to a particular customer but is mercilessly rigorous (“per se”, not “rule of reason”) when firms try to agree among themselves to do the same thing.

The Kodama defendants argued that they were merely exercising their right of "self-defense." After all, both criminal and civil law in Japan do allow people to defend themselves under appropriate circumstances (Civil Code, Sec. 720; Criminal Code, Secs. 36, 37). Kodama had "damaged the collective interest" of their community, the defendants claimed. They were trying to "preserve its good customs and order." The court would have none of it, no more than if all but one firm in the steel industry had gotten together and agreed to punish the excluded firm for ruining business by driving down prices. Should community members collectively decide to terminate contact with an offending member, they commit a tort under Section 709 of the Civil Code.[[1]](#footnote-1)

And return to the 1952 Tokyo High Court decision about the government's rice requisition program **(Case 4)**. The offending farmer refused to supply the share of the collective rice burden assigned to him by the hamlet, and the community responded with ostracism. The court declared the retaliation a tort:

This local association constitutes the base for all social activity among the residents. To participate as an individual in this activity is a right that cannot be taken away, or severely limited. ... Absent special considerations, the ostracism constitutes a tort.

4. Extortion. If neighbors vote to ostracize someone in their community, they do indeed commit criminal intimidation under Section 222 of the Criminal Code. But if they demand money in return for canceling that sanction, they commit the more serious crime of extortion under Section 249. In 1923, a man named Kurosawa in a small Akita community made charcoal with material he had stolen from the hamlet and from a local contractor **(Case 7)**. Upon discovering his theft, hamlet leaders called a general meeting and voted to terminate all contact with him.

In time, Kurosawa sought reconciliation. He asked his older brother to act as intermediary. The hamlet called a second meeting. Kurosawa apologized, and most of the members seemed inclined to end the sanction. The defendant (unnamed), however, intervened. Rather than forthrightly forgive Kurosawa, he urged the others to require that Kurosawa first pay a penalty. He demanded 200 to 300 yen. Kurosawa eventually paid 100 yen, still a massive amount for a poor farmer. Announcing the decision in 1927, the court called this extortion under Section 249.

Syndicates. Organized crime syndicates in Japan (the yakuza) routinely ostracize insubordinate members. Lest rival syndicates attribute to them any misconduct by a deviant member, they send a notice (typically **a printed post-card**) announcing his ostracism to their local rivals. One 2011 case, for example, involved fratricidal battles within the massive Yamaguchi gumi crime syndicate **(Case 9)**. The leader of one faction shot the boss of the Yamaguchi gumi in a hotel lounge; t**he syndicate expelled (hamon) the faction**; war ensued.

A curious 2018 variation on this practice occurred in Shizuoka City **(Case 10)**. The unnamed plaintiff was a long-time member of the local mob. Now in his 60s with liver cancer, he was no longer of much use to the organization. Anticipating heavy medical expenses, he applied for public welfare. The welfare office turned him down. He was still in the syndicate, and the office did not pay welfare benefits to members of the mob.

The aging gangster called a police officer he knew. He explained that he needed cancer surgery and planned to leave the mob. How, he asked, could he prove to the welfare office that he was no longer a member in good standing? The officer suggested he produce the usual expulsion postcard (hamonjo). Unfortunately, the gangster replied, although his boss would sign a certificate saying he had left the organization, he was too scrupulous to circulate an ostracism notice: "You haven't done anything wrong. How can I circulate an expulsion notice?" The plaintiff pleaded with the welfare office to approve him anyway. The office refused; he sued, and the district judge told the welfare office to proceed with the application.

1. Introduction. -- In most of the reported ostracism cases, the community did not ostracize a member in order to enforce welfare-enhancing norms; instead, it ostracized a member to enforce seriously anti-social norms.

There are exceptions, to be sure. In one case, it punished a man who imposed costs on his neighbors by repeatedly making bad bets in business **(Case 5)**; in two others, it punished a man who refused to contribute toward infrastructure improvements **(Cases 2 and 3)**; in still another, it punished a man who reneged on his share of the community tax burden **(Case 4)**.

2. Policy disagreements. In one 1935 Supreme Court case, for instance, a firm had planned to build a synthetic textile factory near the mouth of the Yagyu river in Toyohashi city **(Case 11)**. Most residents opposed the factory on the grounds that the effluents would slash the amount and quality of the fish, shellfish, and seaweed harvested.

When three members announced their support for the factory, the rest of the community retaliated by ostracizing the three. Absent more detail, one cannot tell what was at stake. Perhaps the three dissenters had invested in the factory. Perhaps, the factory had bribed them. The court does not say. Instead, it treats the dispute as an honest disagreement about village policy, and held the ostracism to be criminal intimidation.

A second 1935 Supreme Court case involved a small island off the southern coast of Kyushu **(Case 12)**. Part of the Amami oshima chain, it lay a 17- to 18-hour ferry ride from the city of Kagoshima. In 1935 the island became the site of what historians would call the great **"Lily Bulb War."** The residents primarily grew lily bulbs for export. In 1932, a Yokohama nursery owner formed the Japan Lily Export Association and obtained exclusive control over the government-required export inspections. Now able to block rival exporters, he planned to dominate the market. Roughly contemporaneously, however, Mitsubishi Trading decided to challenge his control. Mitsubishi offered the farmers an exclusive trading contract.

The local farming association held a meeting. The farmers debated the two options; about 2,000 members voted in favor of the Mitsubishi contract; and 138 voted against. The majority worried that the 138 opponents jeopardized the deal with Mitsubishi. The 138 were risking the community welfare for private gain, they argued, and hit the 138 with ostracism. Japan did not have an antitrust statute in 1935, so the court simply held the ostracism to be criminal intimidation.

3. **The village bully.** -- A 2007 Niigata District Court case involved a village bully **(Case 13)**. Taro Kono (a pseudonym) dominated his village through wild and unpredictable violence. He picked fights. He beat people. His neighbors had called the police on him multiple times: when he started to strangle someone; when he swung a metal bar at someone; when he attacked a man with a sake bottle.

Kono also ran the annual village festival. According to the other residents, he ran it autocratically and stole community funds. Several members tried to distance themselves from the event. When they did, Kono retaliated by intimidating the other village members into ostracizing them. The Niigata District Court declared the ostracism **a tort.**

4. **The snitch.** -- Akimitsu Fujii ran a general store in Kumamoto with his wife and three daughters **(Case 14)**. One January afternoon, he watched the local firemen train. After practice, the firemen shared drinks. Several of them started a fight with a firefighter who had missed practice. When the police interviewed Fujii several days later, he detailed what he had seen. The firefighters retaliated by organizing a boycott of Fujii's store, and drove him and his family out of town. He sued, and the court held the firefighters liable to Fujii.

Another ostracism victim had worried that the local residents' association was cheating the community **(Case 15)**. The association was constructing a new building, and he suspected that the contractor was shaving costs. He began to circulate a complaint. Steadily, he seemed to ramp up the tension. The association leaders were (in the court's words) "crazy in the head," he asserted. They were evil. They were "liars," they were perpetrating a fraud. The community sued him for slander, and won. They **also expelled him** from the association. When the victim sued in response, the Tokyo District Court (**2008)** reasoned that expulsion from the neighborhood association would have a major impact on his life, and **vacated the sanction** (slander or no slander).

In 1954, the Fukuoka High Court faced a case of ostracism by an 18-household hamlet against four members **(Case 16)**. The precipitating event seems to have been something one of the victims told the village government. The national government was still requisitioning rice from farming villages. Apparently, **one of the four victims told the government how much rice it could safely demand of the hamlet.** The other members were outraged, and expelled all four. The court convicted the hamlet leaders of **criminal intimidation**.

5. Theft. -- Tomoyuki Arakawa was a nationally prominent potter in the town of Yagusa **(Case 17**) Arakawa made pots with clay he dug from the communal mountain. He built his kiln on the mountain. He fired his pots with wood he collected on the mountain. Sometimes he left his home for days on end to work at the kiln. His neighbors considered him an odd fellow, but no one much minded how he made his pots.

The mountain covered roughly 40 percent of the “town.” Gardens and paddies occupied most of the rest. The national government had conveyed the mountain to the village in 1913. **Title had lain with the descendants of the 75 families who were resident in 1913**, including the Arakawa family.

To manage the mountain, the constituent 1913 families used a management company. In time, a mining company discovered it contained **valuable deposits of silica**. Near as it was to the Nagoya metropolis, the mountain had development potential.

The constituent 1913 families exploited its potential shrewdly enough that by 2008 they had amassed 2 billion yen (about **$20 million**).

When the management company decided to distribute the 2 billion yen to the constituent owners, it refused to pay Arakawa his share. **Arakawa sued for the money, but he also sued to stop the development.**  At root, he seems to have cared less about the money than about stopping the mining, the construction, and the roads. The other villagers invented one reason after another not to pay him his share, but they mostly wanted him gone. Ostracism came naturally in this case. "Just leave Yagusa," one village official begged. As of 2020, the litigation was apparently still in progress.

6. Forced redistribution.

In 1946, the Miyamoto family on the island of Shikoku decided to cancel its leases with several families who had been renting its land **(Case 18)**. Both the Miyamoto family and the lessees had been part of the local Japan Farmers Union (Nihon nomin kumiai), a group with alliances to the Socialist and Communist Parties. Sixty of the eighty households were part of this Union. T**he local Union expelled and ostracized the Miyamotos** . The local court declared the ostracism **a tort,** and the parties settled out of court.

In year he U.S. imposed "land reform" program. The Miyamotos may have cancelled the leases in the hope that they would obtain better terms for land they tilled themselves. The government took land from farmers owning more than 3 hectare (with nominal compensation) and gave it to their former renters (at a nominal price).

One Hyogo town managed its local mountain collectively through a voluntary association **(Case 19)**. The group included 103 households. In 1950, the association decided to require all villagers owning more than 2 hectare to transfer to the association without compensation all rights to sansai and matsutake on their land. The national government had not redistributed the mountain land, so the locals decided to do it on their own. **Five families refused to cooperate in being expropriated**. When the association withheld from them their share of the communal profits, **they sued.** In retaliation for their lawsuit, **the association declared ostracism**. In the criminal case, the **district court acquitted** the association members on the ground that the sanctions did not bind, but the **high court reversed**. In 1958, the **Supreme Court affirmed.**

**VOTING CASES**

1913, **(Case 20)**. Villagers agreed to vote for a given candidate and punish anyone who defected. Two residents reneged. The others imposed ostracism and the prosecutors initiated criminal cases against several of the ostracizing villagers. The Supreme Court **reversed**. Ostracism was not always criminal. When a community punishes someone to force him to do something he has no obligation otherwise to do, its members commit criminal intimidation. Here they simply punished breach of contract.

1920**(Case 21)**. For the national Diet election most voters favored Katsunosuke. Oku favored another. The other villagers severed all ties with Oku. The prosecutor brought charges, the judge convicted, and the Supreme Court affirmed. When members of a community refuse that intercourse collectively, they commit **criminal intimidation.**

1924 **(Case 22)**. Four people were arrested for violations in Miyagi prefectural elections. Mr. Honda, living in the same hamlet, turned them in. The hamlet's mutual aid society voted to expel Honda and his father and to ostracize them. The trial court convicted the villagers of **criminal intimidation**, and the Supreme Court (1924) affirmed.

1924 **(Case 23)**. A Nara village leader told a villager to vote for a particular candidate or he would expel him from the village. The prosecutor brought criminal charges against the leader, who protested he had no authority to expel someone anyway. The Supreme Court observed that the defendant was an influential man, and that a resident could reasonably worry about the threat. It affirmed the conviction.

III. Zones of Judicial Neutrality

B. Political Parties:

**(Case 24)**. Kenji Miyamoto, Satomi Hakamoto, helped lead the Communist Party during the pre-war years. Together, in 1933 they tortured to death Tatsuo Obata, a colleague they suspected of spying for the police. Miyamoto eventually (in 1970) rose to the post of central committee chairman; Hakamada simultaneously served as vice chairman. Decades later, Miyamoto continued to insist that Obata had died a natural death; Hakamada wrote that they had strangled him to death. Late in the 1970s, Hakamada began to write about the way he and Miyamoto had murdered Obata. Miyamoto led the party to expel him.

Since 1963, Hakamada had been living in party housing. For a house with market rental pegged by the court at 132,000 yen per month, Hakamada paid just 22,000. **Having now expelled him, the party administration ordered him to leave.** Hakamada refused, and the party sued. The District Court ordered Hakamada out, and the High and Supreme Courts affirmed. **The courts declared internal party disputes beyond their jurisdiction.**

C. Religious Organizations:

The "Nichiren shoshu" Buddhist denomination had traced its roots to its namesake 13th century priest, Nichiren. In 1930, Nichiren shoshu adherents organized the Soka gakkai as their lay organization. Once the Second World War ended, the gakkai grew explosively. In 1960, gakkai leadership passed to Daisaku Ikeda.

In time, clerical leaders grew suspicious of Ikeda. By 1991, tension reached the point where the denominational leaders **demanded that their priests attack the gakkai leadership and pledge loyalty to the denomination.**

One of the Nichiren shoshu priests refused to attack the Gakkai **(Case 25)**. He lived with his wife in temple housing, but despite enormous pressure refused to sign the proffered statement. In response, the denomination **expelled him** from the priesthood, slashed his pay, and **forced him and his wife out of temple housing.**

**The priest sued for tort** damages, but the Shizuoka District Court refused.

We wish to model a village that might try to deter deviant conduct by a target member using ostracism, and a broader society that establishes a court system which may or may not wish to restrict ostracism.

We want the model to addresses several situations:

(a) a villager whose actions hurt everybody but him;

(b) a villager who hurts the village but helps society;

(c) a villager who helps the village but hurts society;

(d) a villager who is mistakenly believed to have hurt the village;

Motivation: **Can we construct a rational model in which having ostracism makes sense and having costly nonbinding court decisions makes sense?**

**THE ORDER OF PLAY**

The target **villager chooses to comply** with village custom (*x = 0*) or offend (*x = 1*).

The **village sees evidence** indicating that he complied (*y = 0*) or offended.

If the **target offends, he is always detected:** Prob(*y=1|x=1*) = 1.

If the **target complies, evidence sometimes mistaken**ly indicates that he offended: Prob(*y=1|x=0*) = *m*.

The **village can either continue to associate** with the target, **or ostracize** him at cost *Z > 0* to themselves and cost *P > 0* to him.

At cost *L* to himself, the **target can take his case to court.**

At cost *J* to the outside world, the **court can agree to decide the suit.**

The model then moves to a **second period: the long-term.** The village decides if it wants to **keep ostracizing** the target, in which case the costs are incurred a second time: *Z* for the village and *P* for the target.

**PAYOFFS**

**The target** maximizes his own utility.

**The other villagers** maximize the sum of their utilities.

**The court** maximizes the sum of the utilities of everyone.

The payoffs are normalized to zero if nobody does anything.

If the target offends, he obtains personal benefit *B > 0* from that act but imposes cost *C* on the village and cost *D* on the rest of society.

The costs and benefits *B, C*, and *D* are unobserved until much later.

The costs *C* and *D* need not be positive.

If C and D are positive, the target's offending is harmful.

If they are negative, his “offending” is beneficial.

**Incomplete Info: “mistakes of fact” and “mistakes of law”**

Although in the model the village “sees evidence” and “detects” offending, in application the source of the villagers’ error is not always in deciding whether the target took action X or not.

Instead, sometimes the error is in whether it was appropriate for the target to take action X.

Ueno Village had no doubt that Satsuki Ishikawa wrote on corruption for the school newspaper and spilled the story to the national newspaper. What was less clear was whether this was

(a) an offense against the village that hurt it, or

(b) a noble act, that would help the village.

**Three regimes:**

(1) No-Ostracism

(2) Unconstrained Ostracism: **No Courts**

(3) Constrained Ostracism: **Ostracism Plus Courts**

(1) *The No-Ostracism Regime. Villagers Do Not Ostracize.*

The base case. The target will offend. The court has no role.

(2)*The Unconstrained Ostracism Regime: Villagers Ostracize; the Court Refuses to Hear Ostracism Cases*

(a) The villagers ostracize if they see evidence of deviant behavior.

(b) The court refuses to hear any ostracism case brought before it, ruling that ostracism is never illegal.

Proposition 1: The village prefers either kind of ostracism to no ostracism **if it does effectively deter** and if the **cost of mistaken ostracism is small** relative to the cost from the offense.

Proposition 1a: In the absence of courts, villages will adopt a custom of ostracizing people who commit offenses –

**that impose a relatively high cost** on the village (high *C*) but h**ave a relatively low benefit to the target** (low *B*),

but only if the evidence for that kind of offense is reliable enough (low *m*)

and the cost to other villagers of ostracizing someone is not too high (low *Z*)

while the cost to the target is high enough to deter him (high *P*)

*(Note our attempt to imitate statutes/Python coding indentation style.)*

**Case 2** is an example: ostracism for refusing to join fellow villagers in giving up land to construct a road that would benefit them all. Proposition 1 implies ostracism will be used for minor offenses. It is not suitable for dealing with a villager who steals his neighbor’s stash of coins, which is profitable for the target (high *B*), unimportant to everyone except the victim (low *C*), and since false accusations are easy since the deed is secret (high *m*). For such offenses, villages need penalties such as fines or jail.

In sum: if ostracism fails to deter offending, it merely imposes costs and it hurts the village and society. We would not expect it to persist as a social custom unless we introduce something new, not in the model --- **for example, manipulation of the problem of group action for private gain** (e.g., **Case 13**), or the need to have ostracism for either all offenses or none rather than just for the kind of offences it can deter.

Proposition 2: **When a villager has violated custom and obtained enormous benefits for himself at the expense of enormous costs for his village *and* the outside world, the offense is criminalized.**

If the target’s personal benefit *B* is high enough, the target is going to offend no matter what. Ostracism fails to deter, and the courts are unimportant. In that case, the no-ostracism rule is best for the village and for society. This sounds bad, but if *B* is large and *C* and *D* (the costs to village and outsiders) are also large, society can simply turn to criminal law, which lies outside our model.

Proposition 3:

If *C > 0* (the offense harms the village),

and *D > 0* or *D = 0* (the offense harms outsiders or leaves them unaffected), and

if the cost to the public of hearing cases, *J*, is not too high,

then both village and society prefer constrained ostracism to unconstrained: court intervention is valuable.

For seriously harmful offenses, but not offences so useful to the target that ostracism would fail to deter, a society will prefer Constrained Ostracism, with courts active.

A Fourth Possibility: The **No-Ostracism Criminal Law Regime.**

In this regime, villages would not ostracize, but could choose to take an offender to court (at some cost).

At that point, the court would not just determine what was true, but could impose a penalty on the target (something not in the above model).

The potential superiority of the Constrained or Unconstrained Ostracism regimes is that they are **cheap.**

**Village gossip may not be as accurate as court proceedings, but it is quick and low-cost.**

For modest offenses, a cheap and quick process will often dominate more accurate but costly regimes.

**An unintuitive implication of the model.**

If the village is **somewhat inaccurate** in its assessment of deviance but not too inaccurate, the possibility of **court review actually increase the usefulness of ostracism** as a social tool.

Court review will result in MORE ostracism, NOT less.

If courts did not exist, inaccurate village ostracism would lead to so many mistakes that over time we would expect thriving villages to abandon ostracism as a tool for social control.

If, however, there exists the possibility of the target going to court, the **village does not need to worry so much about unjust and village-harming ostracism.** Mistaken ostracism will be costly for one period, but not for two.

**Paul Graham, Twitter, on Writing:**

1. Write an essay.

2. Explain to a friend what you said in it.

3. Go back and rewrite it to say what you just said to your friend.

This is a major purpose of giving a workshop.

7:49 AM · Mar 28, 2021·Paul Graham .<https://twitter.com/paulg/status/1376139287314493447aid>

V. Selection into Ostracism and Litigation

A. Introduction:

The ostracizing v**illages in ostracism cases almost always lose.** In the civil cases, the courts find them liable. In the criminal cases, the courts find them guilty. These outcomes reflect the selection of ostracism **into litigation** and of disputes i**nto ostracism.**

B. Selection into Litigation:

The logic follows the well-known dynamic of litigation and settlement (e.g., W. Landes & R. Posner 1975; Priest & B. Klein 1984). Because litigation costs more than informal settlement, both sides to a dispute will usually prefer to settle out of court in the shadow of what they expect the court to decide.

Suppose a community imposes ostracism on a dissenting resident, and that resident would like to challenge it. Both the dissenter and the community realize that litigation is expensive. If they both agree about what a court will do if they take their dispute to trial, they both gain by avoiding litigation. Rather than going to trial, they both gain by settling their dispute "in the shadow" (again) of the expected litigated outcome.

Note too that plaintiffs and prosecutors will tend to select cases in which the ostracism appears improper. To the extent that plaintiffs sue to have the court publicly endorse their claims of innocence, they will not sue when the court will shame them instead. Prosecutors, too, will select the cases to pursue for the message the suit might convey to the rest of the community. In no country do prosecutors have the resources to pursue all (or even most) of the cases that police forward to them. Instead, they focus on the cases that most forcefully reinforce the norms they want people to follow, the most egregiously anti-social behavior. In the case of disputes over ostracism, they will rarely spend time prosecuting a community decision most of them think reasonable. Instead, they will focus on the outrageous ones. When the village gets ostracism right, the prosecutor will leave it alone.

C. Selection into Ostracism:

The logic of litigation and settlement also applies to costly disputing tactics more generally—such as ostracism.

Ostracism is a cessation of voluntary interaction, a return towards autarky.

It may apply to money trades, a boycott, or to trades in favors, esteem, or company. Given that parties trade only when mutually advantageous, an end to trade necessarily hurts them both, destroying the gains from trade. Because the trade between a dissenter and his community constitutes a larger fraction of the dissenter's total trades th

Crucially, however, a dissenter and his community can reach this mutually beneficial negotiated settlement only if they can agree about what will happen if they push the dispute into ostracism.

When a community is in transition of any kind -- whether economic, social, or political -- the parties are less likely to agree on what might happen if they fight.

In Appendix 1, we summarize the context for each of cases of ostracism detailed above. Crucially, most of the disputes involve communities in flux. Most obviously, many involve agricultural villages located near rapidly expanding municipal centers.

VI. Reflections

People in a community may ostracize a resident to enforce their collective norms, if those norms benefit the members who can mobilize the community. This is different from saying that a community will ostracize a member to enforce welfare-enhancing norms.

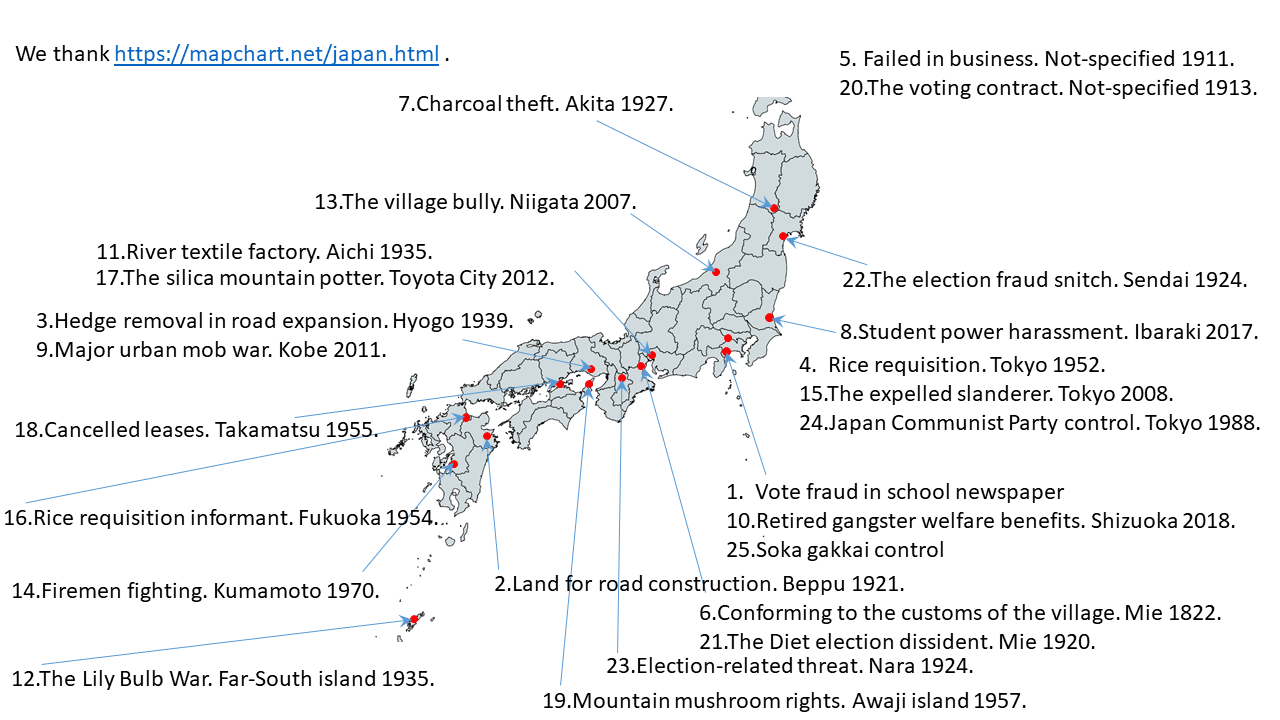
People do not necessarily ostracize their neighbors to enhance the welfare of society at large. They may not even ostracize their neighbors to enhance the welfare of their narrow community itself.

The community in **Case 16** had an interest in paying the least amount of rice to the country; the country may have had an interest in having it pay a larger amount (and the national statute apparently specified a larger amount). The communities in **Cases 1, 20, 21, 22, and 23** had an interest in controlling the voting within the community in order to maximize the impact of the preferences of the majority of its citizens; the country had an interest in knowing the preferences of the various voters within the community.

Sometimes, a criminal may intimidate the others into supporting his choice (**Case 13**). Sometimes, the majority of the community may use the tactic to transfer wealth from the richer but fewer members of the community to themselves (**Cases 18, 19**).

Like vigilantes, like ostracism. Even if a villager seems to have done wrong, and even if local officials fail to punish him, ostracism will sometimes get it wrong. The villager needs a way to appeal -- and for this, the courts are invaluable.

**Figure 1: Location of Cases**



**Table 1: Reports of Ostracism**

Panel A: Ostracism Cases in Published Court Opinions

1951-1960 13

1961-1970 10

1971-1980 20

1981-1990 33

1991-2000 27

2001-2010 27

2011- 25

Panel B: Ostracism Cases Reported to Human Rights Offices

by Year and Region

Total Hokk'do Tohoku Kanto Chubu Kansai Chugoku Shikoku Kyushu

2015 23 0 3 0 11 4 0 1 4

2016 19 0 1 2 6 1 3 3 3

2017 24 1 2 3 7 2 4 4 1

2018 23 0 4 2 5 0 0 8 4

2019 11 1 0 1 6 2 1 0 0

Total 100 2 10 8 35 9 8 16 12

2012

Popn 122.6 5.5 9.2 42.7 21.6 22.7 7.5 3.9 13.2

(millions)

**Appendix 1: The Ostracism Cases**

1. Vote fraud in school newspaper. Shizuoka 1952.

2. Land for road construction. Beppu 1921.

3. Hedge removal in road expansion. Hyogo 1939.

4. Rice requisition. Tokyo 1952.

5. Failed in business. 1911.

6. Conforming to the customs of the village. Mie 1822.

7. Charcoal theft. Akita 1927.

8. Student power harassment. Ibaraki 2017.

9. Major urban mob war. Kobe 2011.

10. Retired gangster welfare benefits. Shizuoka 2018.

11. River textile factory. Aichi 1935.

12. The Lily Bulb War. Far-South island, 1935.

13. The village bully. Niigata 2007.

14. Firemen fighting. Kumamoto 1970.

15. The expelled slanderer. Tokyo 2008.

16. Rice requisition informant. Fukuoka 1954.

17. The silica mountain potter. Toyota City 2012.

18. Cancelled leases. Takamatsu 1955.

19. Mountain mushroom rights. Awaji island 1957.

20. The voting contract. 1913.

21. The Diet election dissident. Mie 1920.

22. The election fraud snitch. Sendai 1924.

23. Election-related threat. Nara 1924.

24. Japan Communist Party control. Tokyo 1988.

25. Soka gakkai control. Shizuoka 1997.

HANDOUT:

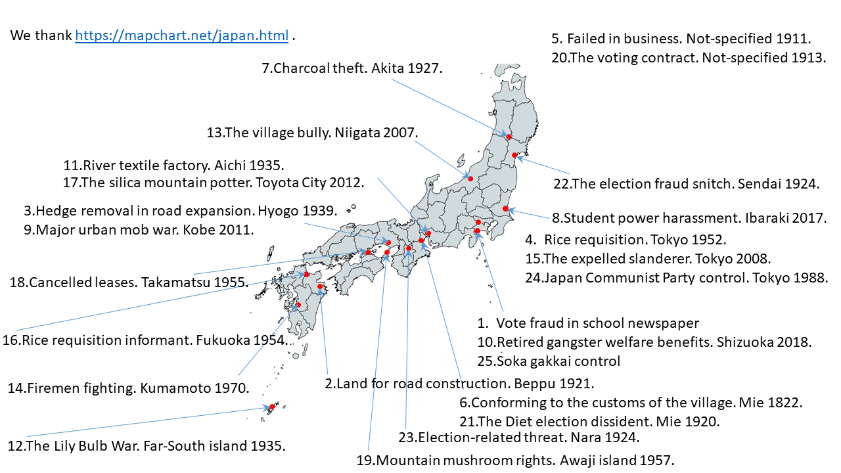
March 29, 2021



J. Mark Ramseyer & Eric B. Rasmusen (ramseyer@law.harvard.edu & erasmuse@indiana.edu)

**Suing over Ostracism in Japan: The Informational Logic**

Villages in Japan sometimes ostracize people, and sometimes the targets of ostracism sue or complain to criminal prosecutors. But how can a court help the target? And why would it want to intervene? We look at 25 cases and use a game theory model to frame the question. Our answer is that courts can solve informational problems even if using the coercive power of the state is impractical. The social norm (ostracism) and the government institution (the court system) are complements, each making the other work more effectively. The norm provides punishment; the court provides information.



We welcome comments, especially new information on Japanese ostracism court cases and village examples that never went to court.

"murahachibu" (村八分) and "hamon" (破門)

*Criminal Code 222:* Intimidation. Conduct that would "threaten the life, body, freedom, reputation, or property of another". *Section 24*9 is Extortion (intimidation for money).

*Civil Code 709:*  Torts. "Intentional or negligent invasion of another person's rights or legally protected interests."

*The Model*.

The target villager chooses to comply with village custom (*x = 0*) or offend (*x = 1*). The village sees evidence indicating that the target complied (*y = 0*) or offended (*y* = 1). If the target offends, he is always detected: Prob(*y=1|x=1*) = 1. If he complies, the evidence sometimes mistakenly indicates that he offended: Prob(*y=1|x=0*) *= m*, where *0 < m < 1*.

If he offends, he obtains personal benefit *B > 0* from that act but imposes cost *C* on the village and *D* on the rest of society. The village can ostracize the target at cost *Z > 0* to itself and cost *P > 0* to him.

At cost *L* to himself, he can go to court. At cost *J* > 0 to the public, the court can agree to hear it, to decide whether or not the target truly offended, and to announce its decision publicly.

Whether or not the target has gone to court, in the second period the village again chooses whether to ostracize at a second cost *Z* to itself and *P* to the target.

(1) No-Penalty Regime: No ostracism, no courts.

(2) Unconstrained Ostracism Regime: Ostracism, courts stay out.

(3) Constrained Ostracism Regime: Ostracism, courts available.

1. *Ogawa v. Kodama,* 27 Daishin'in minroku 1260, 1272 (Sup. Ct. June 28, 1921). [↑](#footnote-ref-1)