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A Minamata Verdict and an Administrative Travesty

by Kamata Satoshi

The Necessity to Reorganize the Security in a large conference room on the twenty-second floor of the Environment Ministry, Minister Koike Yuriko bowed deeply to the plaintiffs and supporters of the Kansai Minamata Disease Suit. "I am very sorry," she said and left the room.

Left to bear the burden of the negotiations were six ministry officials, including Takizawa Hidejiro, chief of the environmental health department. Though the purpose of the discussion was ostensibly to give substance to the minister's apology, the officials argued that the Supreme Court decision was unrelated to the ministry's criteria for certifying victims of Minamata Disease and that they had no intention of revising the ministry's standing policies.

It was not surprising to hear the plaintiffs taunt the officials, "What good is the Ministry of the Environment?" After all, the Supreme Court decision handed down that day (October 15; see the Japan Focus article by Yoshinaga Fusako and Gavan McCormack, "Minamata: The Irresponsibility of the Japanese State") had found that negligence on the part of the Japanese government and Kumamoto Prefecture had resulted in the spread of mercury poisoning in the area of the Shiranui Sea in western Japan, which has affected more than twenty thousand victims (the number of those who have applied for certification as Minamata Disease victims; only 2,265 have been officially certified).

Knowing of the suffering of the Minamata victims, the national and prefectural authorities had joined with Chisso Corporation (the chemical company responsible for the mercury pollution) and failed to regulate the discharge of mercury-laden effluent from the Chisso factory, while dismissing those who claimed to suffer from the pollution as "fake victims." A half century after the emergence of the first victim of the poisoning, the Supreme Court had finally found the authorities guilty of this shameful cruelty.

The decision read in part, "It is proper to find that, at the end of December 1959, the minister of international trade and industry (who we determine to be the competent minister) had the potential to exercise his regulatory authority and order Chisso to adopt various necessary measures, including improvement of the treatment of factory effluent from the acetaldehyde production facility at the Minamata plant and the temporary cessation of use of the said facility; furthermore, considering the serious health consequences of Minamata Disease, it was a situation in which this authority should have been exercised immediately.

"It is also clear," the decision continued, "that, had this regulatory authority been exercised at that time, it would have prevented the subsequent spread of Minamata Disease, and that, since in actual fact it was not exercised, the result was the spread of the damage. . . . To not exercise this regulatory authority . . . was remarkably lacking in rationality and . . . should be termed illegal."

This ruling provides the basis for future investigations of official negligence and responsibility. Regarding the responsibility of Kumamoto Prefecture, the ruling affirmed that Osaka High Court's finding that the prefectural governor had a duty to exercise his regulatory authority over the fishing industry and, again, "to not exercise this regulatory authority after January 1960 was remarkably lacking in rationality." These rulings could not have been clearer.

National Standards Set to Minimize the Corporate Burden

In 1995, during the administration of Murayama Tomiichi, a "political settlement" was accepted by five groups of unrecognized victims, providing lump-sum payments and medical coverage in exchange for abandoning all legal claims. But the Kansai group, a small minority of just 59 victims, refused this settlement and continued to press their case for the responsibility of the national and prefectural governments. (The plaintiffs had moved from Minamata and settled in the Kansai region of western Honshu after the outbreak of the disease.)

Twenty-two years after the suit was first filed in 1982, with 23 of the original plaintiffs already having passed away, the governments' responsibility had finally been established. It was a dramatic victory.

The Murayama political settlement was based on a report of the Central Pollution Control Council, which read in part, "In the region where Minamata Disease has occurred, there is not a small number of people who, while not being diagnosed as Minamata Disease victims, suffer from the numbness of extremities that is also seen in sufferers of Minamata Disease, and given these symptoms wonder if they may have Minamata Disease and suffer deep anxiety as a result. . . . There are reasonable grounds for these people to decide on their own that they have Minamata Disease or to think that might be a possibility." The settlement was a scheme that appeared to compassionately give compensation to those who suffered the anxiety that they might be victims of Minamata Disease, though in fact it did not recognize them as victims, leaving the matter ambiguous while offering 2.6 million yen (approx. $25,000) in consolation money in exchange for dropping all legal proceedings.

Many of the victims were already aged, and it was difficult for them to endure lengthy court battles. Taking advantage of this weakness, the government forced a capitulation. With the patronizing pretense of kindness--"relief while you're still living"-- the government caused the issue of its responsibility to vanish. It was a stopgap measure, surely unbefitting a government.

At the first meeting of the pollution control council in February 1991, Iwao Soichiro, an official of what was then the Environment Agency, made the following statement: "If the government's criteria [for recognizing Minamata Disease] are rejected, there would be a major increase in applicants and the increased burden could lead to the bankruptcy of Chisso, resulting in the collapse of the foundation of the government's current Minamata Disease countermeasures."

In stating that undermining the criteria would lead to increased burden on Chisso, the official effectively exposed the fact that the government's criteria had been set so as to minimize that burden. The criteria referred to here were revised in 1977 to require not only sensory impairment but the presence of other symptoms of the disease, including impaired mobility and constricted field of vision, for a victim to be certified. Until that time the criteria, set by an agency directive in 1971, had been as follows: "Minamata Disease will be recognized if even one symptom of the disease [typically sensory impairment of the extremities] that cannot be attributed to another cause is present and if it is not possible to deny that the symptom is the result of consumption of methylmercury." But the Environment Agency, fearing the emergence of large numbers of victims, raised the hurdles to recognition in order to keep down the cost of compensation payments. Recklessly defending the new criteria, Iwao joked before the pollution control council, "While I am fully aware that the doctors on the council are neutral, and I would never think that you are stabbing me in the back, I'd ask for your cooperation on this matter."

The head of the council's specialist committee on Minamata Disease was Igata Akihiro, then president of Kagoshima University. He later stated, "I feel a certain shame, as a doctor, about the claim that those who were rejected by the examination board were absolutely not victims of Minamata Disease."

Serving the administration, even if it means chipping away at one's conscience as a physician, is undoubtedly done with a view to the "national interest." But

the idea that the state is more important than the individual is the thinking of those in power, certainly not that of a physician who is responsible for people's lives.

Medical Minamata Disease vs. Institutional Minamata Disease?

After Environment Minister Koike left the room, department chief Takizawa and the other ministry officials, facing the plaintiffs and their supporters, stubbornly insisted that the court's decision and the recognition criteria under the environmental disease compensation law were two separate matters. The recognition criteria were none other than the pollution council's "shameful" criteria that had cut off so many Minamata victims. Hearing this, the head of the plaintiff's group, Kawakami Toshiyuki, exploded: "We won the decision today, but you're trying to overturn it. I just don't understand why you have to do that. Chief, sir, please answer me that. I submitted my diagnosis, filed the paperwork, and was left hanging for thirty years."

"I'm afraid I just have to repeat what I said before," the department chief responded, "that the court's judgment regarding methylmercury poisoning is unrelated to Minamata Disease that meets the recognition criteria under the environmental disease compensation law."

"That's what makes no sense," Kawakami countered in exasperation, and a doctor who was part of the group stood up and declared, "I've been seeing patients with Minamata Disease for forty years, and I find it impossible to distinguish between Minamata Disease under the compensation law, Minamata Disease the [1971] agency guidelines, and the plaintiffs in the Kansai suit."

The well-built, rather imposing department chief was attempting to hide behind the smoke screen of multiple definitions of Minamata Disease, the medical and the institutional, like some game of hide-and-seek. Watching this unfold, I thought about a man who hadn't been able to completely transform himself into a bureaucrat: Yamanouchi Toyonori. He had been the chief of the policy and coordination division of the Environmental Agency during the period before the "political settlement." I never met him. Quite a long time after he committed suicide, I met his wife and heard his story.

In 1987, the district court in Kumamoto (where Minamata is located) had recognized the administrative responsibility of both the national government and the prefecture. In the fall of 1990, the Tokyo district court had recommended a settlement, which the prefecture had agreed to, but the Environmental Agency was resisting. During this process, Yamanouchi was the public face of the agency. Born in Kyushu not far from Minamata, and suffering a slight disability in his own legs, he had taken a considerable interest in Minamata Disease throughout his career in government.

It was Yamanouchi's role to represent the Environmental Agency and provide statements to the press. During the fall, the director general of the agency, Kitagawa Ishimatsu, had told the victims' group that it was his intention to settle, and he had promised to come to Minamata. Even if this was largely grandstanding, his visit would be an empty one if a budget for compensation payments was not in place. But the administrative vice-minister of the agency, a bureaucrat from the Ministry of Finance, had refused to approve such a budget.

Just before Kitagawa left for Minamata, Yamanouchi submitted his resignation and committed suicide. Within ten months Kitagawa had resigned, and he lost his Diet seat in the next election.

Unable to give himself totally to the bureaucracy, Yamanouchi had taken his own life. If he had been a bureaucrat through and through, he wouldn't have killed himself. But that would amount to killing any number of sufferers of Minamata Disease. Perhaps with feelings of "a certain shame."

No one noticed in the 1950s when methylmercury poisoned the stunningly beautiful sea around Minamata. In time, the fish and small animals showed the effects, which then spread to humans. The problem was accelerated by bureaucrats who believed that expansion of industry was in the national interest. To them, a small number of human lives was of little consequence. It is the same reasoning that underlies war.

Raising the criteria for recognizing Minamata Disease is one way of concealing pollution. Refusing to recognize victims even when they've been poisoned is not simply a matter of limiting the cost of compensation. The reality of the pollution strikes them with terror. If the agency had taken measures to deal with the source of the pollution, it would have prevented the spread of the disease. More than an environmental disease, this was a bureaucratic calamity.

If government functioned as it should, the spread of Hansen's disease and AIDS could likewise have been minimized. The Supreme Court found that restricting the recognition of Minamata Disease victims was a violation of justice. If the bureaucracy resists that finding, then the bureaucratic system is an obstruction to the execution of justice.

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