8 The Right to Redress: The Movement to Enact a Product Liability Law

In October 1982, a Tōkyō housewife took a can of spray detergent to a particularly noxious case of mold and mildew on her bathroom walls. Pleased with the results, she remained loyal to the product for about a year. Then, one day, she began coughing and feeling a painful burning sensation in her throat while using the detergent and was eventually rushed to a hospital in severe respiratory arrest. Suffering permanent lung damage and chronic bronchitis, the housewife sued the manufacturer of the "mold killer" (*kabi kiraa*) in 1988 for 13 million yen in damages.

The Tōkyō District Court ruled on the case in March 1991 after tremendous outlays in both time and money by the plaintiff. While accepting the argument that the mold killer had caused her initial respiratory problems, the judges argued that the plaintiff had failed to establish a link between the product and her chronic bronchitis and awarded her a mere 700,000 yen (Hara 1992:34–36).

The mold killer case quickly became a cause célèbre in Japan just as the scandal-ridden LDP government was facing heightened demands from the electorate for more consumer-friendly policies. Consumer organizations and their allies in the legal and scholarly communities rallied behind the Tōkyō housewife in an effort to publicize the case as symbolic of all that was wrong with Japan's system of consumer redress: the failure of many manufacturers to accept responsibility for defective products, the heavy burden of proof placed on plaintiffs in product liability suits, and the inadequate settlements handed down through the country's various redress mechanisms. The sys-

tem, advocates argued, had failed to guarantee the consumer's rights to product safety and redress and was in dire need of reform. And reform, they contended, was best achieved by passing a product liability law based on the concept of strict liability.

In this chapter, I trace the consumer movement's efforts to introduce a product liability (PL) law, starting in the early 1970s, when the concept was first debated in Japan, until its enactment in 1994 and implementation the following year. Although my main objective is to analyze the role and impact of consumer organizations in the consumer protection policymaking process, I also assess the myriad dimensions of the process itself: the influence of business groups over the deliberative process, the effects of a fragmented bureaucratic system on decision making, the role of ideas in the consumer protection policy process and their interaction with power configurations, and the impact of public opinion on policy outputs. The chapter concludes with a discussion of Japan's new strict liability administrative regime—a regime that symbolizes both the modest but significant improvements in national consumer protection policies following the end of one-party dominance and the lingering power of bureaucratic and business interests over Japanese consumer affairs.

Background

The Problem: Japan's Pre-1995 Redress System for the Victims of Defective Products

Consumer advocates interested in product liability during the early 1990s were concerned not so much about the problem of defective products in the marketplace—Japan was, after all, producing some of the world's safest and highest-quality products by the late 1970s—as deficiencies in the country's consumer redress. As the mold killer case so cogently illustrated, most of those deficiencies were rooted in the legal principles and institutional mechanisms making up that system.

Before 1995, a consumer seeking redress for economic or bodily damages suffered as a result of a defective product could do one or more of the following. First, he or she could contact the manufacturer or retailer directly and demand compensation. Although it is impossible to know exactly how many cases were handled through *aitai kōshō* (face-to-face negotiations with

business), given the reluctance of firms to divulge information relating to the procedure, one reliable source estimated the total at roughly 70,000 cases per year.[1] About half of those were settled by the companies concerned (Kitamura 1992:20), usually in the form of product exchanges, free repairs, and/or small amounts of compensation.

Although many corporations went to great lengths during the 1970s and 1980s to improve their in-house claim management systems (Kitamura 1992:23), *aitai kōshō* attracted a great deal of public criticism. In an annual telephone poll organized by Nichibenren (Japan Federation of Lawyers' Associations) and consumer organizations, for example, many consumers complained about companies that had ignored their claims or accused them unfairly of mishandling products or misreading product warnings and directions. Even customers that did receive some form of redress expressed dissatisfaction with its form and amount, referring derogatorily to the often paltry sums awarded as *mimaikin* (money awarded to a sick person as a token of one's sympathy) or *isharyō* (consolation money).

Consumers who had fallen through the cracks of the *aitai kōshō* process and who had not yet "cried themselves to sleep" (*nakineirisuru*) could appeal to the Japan Consumer Information Center or a local consumer center either to intervene on their behalf or launch conciliation procedures (*chōtei*) between themselves and the targeted companies. Consumers could also apply to a number of ministerial programs at the national level designed to compensate the victims of defective products. Approximately 20 percent of cases not directly settled through *aitai kōshō* reached this stage (Kitamura 1992:21).

The ministerial programs received a great deal of attention from foreign scholars as an innovative way to deal with product-related accidents (see, e.g., Forbes 1987:178; Ramseyer 1996). The best-known of these programs was the SG Mark system administered under the Consumer Product Safety Law[2] by the Product Safety Association (Seihin anzen kyōkai), an organization affiliated with MITI. Under this system, an SG ("safety good") label was affixed to products that had been approved by the association, signifying to consumers that they had met certain safety standards. In the event of an accident involving one of the designated products that resulted in economic loss or injury, the user was entitled, on the basis of liability without fault, to compensation of up to 30 million yen (Nakamura, Tajima, and Yonekawa 1992:82), but only if it could be established that the accident had been caused by a product defect. The system was funded by participating manufacturers and importers and, as of 1992, covered a total of ninety-one prod-

ucts, including bicycle helmets, baseball bats, gas lighters, and baby carriages (*Yomiuri shimbun*, June 9, 1992). In addition to the SG Mark system, a number of similar programs were administered by the ministries or semigovernmental organizations to cover such items as fireworks (SF Mark), housing parts (BL [better living] Mark) and children's toys (ST Mark). Finally, the Ministry of Health and Welfare oversaw a program known as the Redress System for Damages Due to Medicinal Side Effects (Iyakuhin fukusayō higai kyūsai seido),[3] which was also funded by the companies concerned. All these programs, as we shall see later, are still in effect today under post-1994 product liability rules.

Although the mark systems were widely acknowledged for their positive contributions to the safety of Japanese products, consumer advocates during the 1980s and early 1990s viewed them as inherently flawed. They noted, for example, that since a very limited number of items had been incorporated into the programs, consumers burdened with defective products that did not carry the safety marks had to seek compensation by other means. Second, the organizations administering the programs were known to deny compensation to consumers on the grounds that the existence of defects had not been clearly established. Many of these decisions were criticized by advocates as arbitrary and unfair (Nakamura et al. 1992:83). The problem of proving the existence of defects may explain why as of October 1991, only 330 out of 705 accidents involving products carrying the SG mark had resulted in compensation (*Yomiuri shimbun*, June 9, 1992), a number that many advocates felt was far too low given the severity of the accidents in question. Finally, consumer advocates and their allies criticized the mark systems in principle for failing to hold companies legally liable for releasing defective products into the marketplace.

When all these avenues of recourse had been exhausted, the victims of defective products could sue the manufacturers for damages. But as proponents of a PL law were quick to point out, this was an almost impossible undertaking, for two sets of reasons. First, plaintiffs confronted the same procedural and financial barriers that functioned as disincentives for all forms of litigation in Japan. Those barriers included the lack of juries,[4] weak discovery provisions, the high cost of bringing suits to completion, the shortage of lawyers in Japan, bottlenecks in the court system, and the lack of a retainer fee system for PL counsel. Second, in order to win suits involving damages caused by defective products, consumers had to abide by article 709 of the Civil Code and prove (1) that manufacturers were negligent in

the planning or manufacturing stages of the targeted products and (2) that the damages incurred were the direct result of product defects. To fulfill these legal obligations, consumers required detailed information about manufacturing processes and the technological composition of the products in question. But neither the Civil Code nor consumer-related statutes provided for consumer access to such information (Miyasaka et al. 1990b:31–42). Not surprisingly, only about 150 lawsuits involving defective products were tried in Japan between the turn of the century and July 1995. The United States, by contrast, had more than 13,000 product liability cases before the federal courts in FY1991 *alone* (Hamada 1996:12).

In some cases, plaintiffs have been exempted from this overwhelming burden of proof. The thalidomide disaster of the early 1960s, the SMON incident[5] involving central nervous system injuries caused by a diarrhea medicine tainted with quinoform, and the case of PCB-tainted Kanemi cooking oil that caused the so-called black pimple rash all were settled by the courts on the *presumption* that the manufacturers had been negligent and that the defective products in question were indeed the cause of death or physical handicaps. In none of these cases were the plaintiffs able to prove negligence. The sheer scope of the damages incurred and the fact that the cases had resulted in such resounding public outcries were what led to a departure from the traditional legal approach to negligence and ultimately to settlements in the plaintiffs' favor.

The victories for the plaintiffs notwithstanding, these cases highlighted a number of problems in Japan's system of product-related redress. First, the suits took as long as a decade or more to resolve and required enormous expenditures by the plaintiffs. Second, since most of the settlements were reached out of court, the question of who was to take legal responsibility for the disasters was never resolved. Finally, while something approaching strict liability had come to be accepted in lawsuits involving large numbers of plaintiffs, the burden of proof remained intact for cases with only one or a few plaintiffs.

It was in response to these perceived problems that Japanese scholars began to push for a law based on the principle of strict liability (*genkaku sekinin*) or liability without fault (*mukashitsu sekinin*), looking to the United States as a model.[6] The principle had first arisen in regard to defective products in the United States during the early to mid-1960s as the cumulative result of several years of case law. Briefly stated, strict liability requires plaintiffs to show that the products resulting in economic or bodily damage are

defective. Plaintiffs are not required to prove that manufacturers were negligent in the planning or manufacturing stages of those products. Some of the burden of proof is thus transferred from consumers to manufacturers, who must prove that products were *not* defective at the time of their release into the marketplace in order to be exempted from liability. Since a similar law would help compensate for the Japanese consumer's lack of access to vital information about the manufacturing process, strict liability came to be defined by consumer advocates and their allies during their "issue definition" (*mondai teigi*) activities as a prerequisite for the consumer's rights to safe products and effective redress.

Ideas Without Broad Constituencies: The Pre-1985 Policy Process

The first decade of activism for strict liability was marked by a series of false starts. Scholars, lawyers, a handful of consumer advocates, and government officials discussed the idea during the early 1970s, but the political and economic conditions were such that a broad-based constituency either for or against enactment never materialized. As businesses strove to improve the quality of their products toward the end of the rapid-growth period and in the wake of the product-related disasters of the 1950s and 1960s, for example, many argued that the "problem" of defective products was not sufficiently serious to warrant a wholesale overhaul of product liability rules. Moreover, the fact that policymakers were far more concerned with sluggish economic growth rates than consumer safety after the 1973 oil shock decreased even further the chances of strict liability advancing to a priority position on the government agenda.[7] That said, pre-1985 discussions gave rise to some important ideas and interest-group alliances that influenced the future legislative process.

Scholars interested in product liability found a willing ally in the Economic Planning Agency (EPA), the agency responsible for the coordination of governmental consumer policy and the overseer of the Japan Consumer Information Center (Kokumin seikatsu sentaa). The Social Policy Council (Kokumin seikatsu shingikai), which is administered by the agency, began low-level discussions on the topic of consumer redress in 1973 and issued a report two years later that mentioned a strict liability law as a possible solution to the legal problems shouldered by the victims of defective products (Kitamura 1992:39). The report was the first formal statement issued by the bureaucracy on product liability reform.

The EPA took up the issue of reform for a number of reasons. The end of rapid economic growth, the rise of progressive local governments and the concomitant decline of LDP supremacy, the movement to strengthen the Antimonopoly Law, and the introduction of environmental and welfare legislation during the late 1960s and early 1970s had created a political environment amenable to the discussion of consumer protection issues like PL. There was, in short, a "policy window" in place that had appeared with little prompting from pressure groups aside from the demonstration effect of ideas generated by academic circles. Furthermore, the EPA, as the government's official consumer watchdog and an agency looking for an issue through which to distinguish itself vis-à-vis the more powerful economic ministries, was the logical agency to orchestrate the debate.

Encouraged by the Social Policy Council's final report on the topic, a study group on PL headed by Wagatsuma Sakae, a prominent civil law specialist from Tōkyō University and a former adviser to the Justice Ministry, released a general or "tentative" draft (*yōkō shian*) of a strict liability law. One of the most influential contributions to the debate and decidedly pro-consumer, the draft formed the basis of many subsequent proposals generated during the next two decades (Nihon keizai shimbunsha 1991:107) in much the same way that the JFTC's 1974 proposal for antitrust reform influenced the debate leading up to the 1977 amendments to the Antimonopoly Law.

Although the issue failed to achieve a higher level of priority on the government agenda, research on product liability continued between 1975 and 1985. The Social Policy Council released additional reports on the topic in 1976 and 1981 (Kitamura 1992:39); the EPA launched a series of surveys and studies on Japanese consumer redress systems and the possible impact of PL on industry (Kitamura 1992:39–40); and the Kōmeitō set up an intraparty "PL Law Study Group" (PL hōritsu no benkyōkai) in 1980 to look into the issue (interview, Hikasa, March 1993). Conspicuously absent from the debate during these early years, however, was participation by the ruling LDP and the major economic ministries. Business, for the most part, appeared uninterested in the debate and contributed virtually nothing to its development.

Consumer organizations observed these early deliberations from the sidelines. Although a small number of leaders recognized the potential impact of a PL law on the quality of consumer protection in Japan, the vast majority were still unfamiliar with the issue during the 1970s and early 1980s (interview, Andō, February 1993) and were preoccupied with antitrust and food safety issues. The debate was, after all, largely confined to academic circles and packaged in a way that was at times incomprehensible to activists with

virtually no training in civil law. The political and economic environments, moreover, were not generating the kinds of opportunities that might encourage activism. The early 1980s were a period of economic retrenchment, resurgent conservatism in the political realm, movements toward administrative reform, and a declining interest in quality-of-life issues. The time was simply not ripe for investing scarce movement resources in a full-scale legislative movement.

The Turning Point: The European Community's Directive on PL and Japanese Domestic Trends

The turning point in the product liability debate in Japan was the July 1985 directive on product liability issued by the European Community's Council of Directors. The purpose of the directive was to eliminate the numerous disparities between the PL systems of the twelve member nations—disparities viewed as barriers to trade[8]—in preparation for union in 1992. Serving as a model for the PL statutes of member nations, the directive not only led to the unification of European Union statutes but also spurred the adoption of strict liability rules in the European Free Trade Association (EFTA), Australia, Brazil, China, and South Korea. By suggesting that liability without fault was an international trend that could no longer be ignored, these trends served as "focusing events" (Kingdon 1984:104) in the Japanese policy process—as powerful symbols, in other words, that helped focus the attention of both policymakers and the attentive public on PL reform.

The EC directive quickly became a reference point for actors in the policy process. Many Japanese found it particularly appealing because it gave member states the option of incorporating the following pro-business concessions into their respective legislation: (1) the exemption of primary agricultural products from the purview of the law, (2) the recognition of the "development risk" plea (*kaihatsu kiken no kōben*),[9] and (3) the imposition of ceilings on the amount of compensation that could be awarded to plaintiffs. One of the more controversial features of the directive that drew the opposition of Japanese consumer advocates was the requirement that plaintiffs prove the existence of product defects and the cause-and-effect relationships between those defects and the damages incurred.

Conditions in Japan during the mid- to late 1980s also stimulated the PL debate. First, the government was issuing a number of high-profile statements on consumer protection. In August 1989, following the Recruit stocks-for-favors scandal and in anticipation of the Structural Impediments Initiative (SII) talks that were to begin the following month, Prime Minister Kaifu Toshiki announced a "consumer declaration" (*shōhisha sengen*) that emphasized the important position of consumers in society (*shōhisha jūshi*). The government later introduced a series of policies, including the loosening of the Large-Scale Retail Store Law[10] and increases in public works spending, that were designed in part to meet the interests of consumers.

Comparable statements and policies continued into the 1990s. In May 1991, MITI recommended that consumption and other quality-of-life issues replace economic expansion as the primary goals of the government's economic policy. This message was seconded the following month in a report issued by the Ad Hoc Council for the Promotion of Administrative Reform (Rinji gyōsei kaikaku suishin shingikai) that called for more attention to "citizen lifestyles" (*kokumin seikatsu*) and the enactment of some kind of product liability law. Not to be outdone, the Miyazawa cabinet adopted that same month a highly publicized resolution to transform Japan into a "lifestyle superpower" (*seikatsu taikoku*).[11] Although many of these policies were often criticized by consumer organizations as little more than halfhearted responses to American demands for the development of a more consumer-friendly society in Japan (interview, Ohta, December 1993), they nevertheless lent an aura of legitimacy to strict liability as an integral part of consumer protection (interview, Kawaguchi, June 1993).

The movement toward deregulation served as an additional impetus behind the heightened deliberations on PL. As in other countries, consumer access to safe products in Japan had been achieved mainly through economic and social regulation. As pressures mounted for regulatory reform during the late 1980s and early 1990s, consumer advocates, their allies in the legal and academic professions, a number of opposition party politicians, and even a few government officials looked to a product liability law based on strict liability as one way to guarantee consumer access to safe products in the midst of the government's partial disengagement from the affairs of business. A PL law, we should note, would do much more than just provide for prompt and efficient compensation to the victims of defective products on those infrequent occasions when product-related accidents did occur; it would also serve a preventive function by presenting businesses with incentives—the

clear demarcation of producer liability and the threat of costly lawsuits—to enhance the safety levels of their products *before* accidents occurred.

In sum, by the late 1980s, PL had become a potential solution to the problem of consumer redress as well as to international pressures for the harmonization of domestic laws and trade standards, to the government's professed commitment to building a more consumer-oriented society, and to the safety concerns of consumers in the wake of deregulation. It was now up to the supporters of PL to persuade their business-oriented opponents that strict liability was in everyone's best interest.

The Formation of the PL Promotion Faction

The development of a pro-PL movement began in the EPA and the academic community, expanded during the 1980s into Nichibenren and some of the opposition parties,[12] and then grew to encompass consumer organizations. This was not, however, a well-developed "policy community" marked by regular exchanges of information and intergroup strategizing. For one thing, the access of nongovernmental groups to the EPA was limited and sporadic. Of the five sets of actors that comprised the pro-PL movement, only the academics in their advisory capacity seemed to enjoy any semblance of regular contact with the agency. As for the opposition parties, the Socialist Party and the Kōmeitō carried out their respective deliberations on PL largely in isolation from both each other and other groups in the movement, although there was some intergroup communication at key junctures of the policy process. In keeping with movement precedent, however, the alliance between lawyers and consumer organizations was characterized by close and regular contact. Despite the fragmentation of the pro-PL movement, there was enough commonality of thinking among the constituent groups to earn them the label PL *suishinha*, or "PL promotion faction."

From 1989, in response to pro-consumer changes in the general political atmosphere, Nichibenren, the Tōkyō bengōshikai (Tōkyō Lawyers' Association), and the Socialist Party and the Kōmeitō floated model PL laws or, in the case of the parties, Diet bills, that defined the early positions of much of the PL promotion faction. Based on Professor Wagatsuma's 1975 recommendations, these proposals omitted the development risk plea and incorporated "presumption clauses" (*suitei kitei*) that released plaintiffs from the responsibility of proving the connection between a product defect and dam-

ages incurred.[13] The presumption clause was an important point of departure from the EC directive, which, according to many in the promotion faction, was not an appropriate model for Japan given the numerous barriers to litigation faced by Japanese plaintiffs (J. Kobayashi 1992:113).[14] Since the PL models produced by the promotion faction were generally deemed pro-consumer (*shōhisha yori*) and much harsher on business than the 1985 EC directive, they were severely criticized by business circles.

Hampered by their relatively meager human and financial resources and reluctant to commit to a full-blown legislative movement until a political window of opportunity had definitely been opened, consumer organizations did not jump onto the PL bandwagon until well after the reform movement had gained a firm footing in the legal and academic communities. By the late 1980s, however, key advocates at the national level were studying the issue, attending academic lectures, conferring with lawyers, and occasionally meeting with PL proponents in the opposition parties. One advocate in her fifties even went so far as to obtain a law degree from a prestigious Tōkyō university in order to master the legal nuances of product liability. For the most part, however, consumer organizations felt handicapped by their lack of legal expertise and formal access to the main policymaking fora and were thus forced to react to the debate and to support proposals generated elsewhere in the pro-PL movement. As during the movement to amend the Antimonopoly Law, the primary role of consumer organizations was to help define the issue and to distribute information produced by experts to an attentive public.

The Thirteenth Social Policy Council

The "signal" (Tarrow 1996:54) that proved pivotal to the full mobilization of consumer organizations in the PL promotion faction was Prime Minister Kaifu's establishment in December 1990 of the Thirteenth Social Policy Council (Kokumin seikatsu shingikai) under the chairmanship of Katō Ichirō.[15] The council was given a mandate to deliberate on the pros and cons of strict liability for two years, a move interpreted by consumer activists as a sign that product liability reform had achieved a significant position on the government agenda. But because of the council's institutional features, advocates failed to assume much more than a symbolic presence in the policymaking process.

The Institutional Context

According to the 1965 directive under which the Social Policy Council was established, its members were to reflect the opinions of "ordinary citizens." In practice, however, members have been drawn not only from consumer and other citizen organizations in which one would expect to find "ordinary citizens" but also from academia, the media, private and semigovernmental research organizations, and, most important, the business community.

Consumer advocates who sat on the Thirteenth Social Policy Council complained about a number of institutional features—many of them informal—which further weakened the council's mandate to incorporate the opinions of "the people" into the policy process. First, as one prominent consumer activist and frequent *shingikai* member put it, only those individuals whose opinions were "convenient" (*tsugō ga ii*) from the bureaucrats' point of view were allowed to serve on the council (interview, consumer activist, February 1993). This custom often discouraged activists from expressing their opinions for fear of losing these coveted positions, positions that, it must be remembered, constituted the movement's most valuable inroad into the national policymaking process. The heavy hand of the bureaucracy was also apparent in the way deliberations were carried out. The EPA, for example, set the council's agenda, banned the public from attending sessions, and prohibited members from discussing reports and reference materials with nonmembers. Finally, reports issued by the Social Policy Council were drafted by officials in the Citizens' Lifestyles Bureau rather than by the council members themselves, a practice that often resulted in documents that failed to reflect the different opinions of the members.

In an unprecedented move in the history of PL reform, the Thirteenth Social Policy Council established a high-profile working group on product liability in its Consumer Policy Subcommittee (Shōhisha seisaku bukai). The move was widely hailed as a sign of the government's enhanced commitment to reform (*Yomiuri shimbun*, February 1991; interview, Hara, February 1993). Chaired by Morishima Akio of Nagoya University, a prominent civil law and product liability expert, the committee consisted of four consumer representatives, nine individuals from the business community, and ten "individuals of learning and experience" (*gakushiki keikensha*) from academia, the media, and semiprivate research organizations, for a total of twenty-three members. The working group's primary task was to determine whether or not Japan actually needed a product liability law. Although the

specific features of different PL regimes were discussed throughout the deliberations, the working group focused on this larger question in the hopes of uncovering a consensus either opposed to or in favor of the notion of strict liability. Accordingly, this stage of the policy process was referred to as the *rippōron* phase, or the "debate on whether or not to enact." In keeping with their long-standing views of the Social Policy Council, consumer advocates and the media[16] were harshly critical of the heavy representation of business interests in the working group, arguing that the makeup of the group would hamper efforts to carry out its mandate.

The Business Community

For all intents and purposes, the business community, as represented by its members on the Social Policy Council, was putting a very negative foot forward in 1991 and early 1992 on the issue of product liability reform. At one extreme were the pharmaceutical, household appliance, and automobile industries, which expressed outright opposition to the very idea of a new PL law based on the concept of strict liability. The products manufactured by these industries represented the leading edge of technological development and were consequently the target of the most complaints from consumers both at home and, more tellingly, in the United States. Industry representatives therefore feared that the enactment of a PL law would lead to an American-style run on the courts (*ranso*)[17] and a subsequent drain on company resources, not to mention a dampening of incentives to delve into new but potentially risky technologies (interview, Kumada, June 1993; see also Nihon keizai shimbunsha 1991:43–91). These and other industries were also worried that costs like higher product liability insurance fees would hurt the economy in the midst of a deepening recession and weaken the competitive edge of Japanese business in international circles (Morishima 1993a:726). During the *rippōron* phase of deliberations, these industries led the pack in extolling the virtues of such uniquely Japanese institutions as *aitai kōshō*, obligatory car testing (*shaken*) and insurance, the mark programs, and other alternatives to strict liability (Nihon keizai shimbunsha 1991:55–66).

Small and medium enterprises also opposed strict liability, although most were still unaware of the concept's legal meaning and economic implications. The Japan Chamber of Commerce and Industry (Nisshō), the political spokesperson for this sector, claimed that small manufacturers would be

crippled by the heavy financial burdens imposed by product liability insurance and lawsuits and that the manufacturers of component parts would be held unfairly responsible for the defects of finished products (interview, Fujimori, June 1993).

These strong pockets of resistance notwithstanding, it appears that more and more firms viewed PL as inevitable at this time and were preparing for its arrival. According to a survey released by the *Nihon keizai shimbun* in March 1991, for example, 80 percent of 230 large companies surveyed stated that they anticipated the introduction of a PL law in the next five years (*Nihon keizai shimbun*, March 4, 1991). Many businesses were also taking steps to prevent future lawsuits by improving the safety of their products and were meeting regularly with competitors to discuss possible industrywide responses to issues related to consumer redress (*Asahi shimbun*, March 17, 1991). If given the choice, businessmen would have preferred to avoid the introduction of a product liability law altogether. But in light of international trends and mounting public support, even some firms that were publicly opposed to enactment were treating it as a foregone conclusion.

These sentiments were neatly illustrated for me during an impromptu conversation with a youngish businessman on a Tōkyō commuter train at the height of PL deliberations. Curious to learn what had brought me to Japan, this well-dressed businessman, who worked for a medium-size manufacturing company, was eager to talk about product liability when I told him the purpose of my research visit. Taking advantage of the situation, I immediately asked him about his company's position on PL reform:

> "Well," he replied, "Although some of our higher-ups in my company and our representatives in Nisshō hope that strict liability will never be enacted, we are preparing for it: investigating product liability insurance, making our products a bit safer—that sort of thing. We certainly don't have the power to influence the decision either way, so we may as well be prepared.
>
> "Personally, I support strict liability, and so does my wife, who reads about it a lot in the newspapers. As a consumer, I think it's only fair. Trouble is, I can't make my opinions known to my superiors because they'll only question my loyalty to the company. This is, after all, one of those issues in which consumers and businesses can't be expected to see eye to eye."

MITI

MITI also sent out some mixed signals on PL reform in 1991 and early 1992. On the one hand, MITI was determined to investigate PL once the issue had gained a foothold elsewhere in the policy process. Its reasons for doing so included, first, ongoing pressure from abroad to contribute more to the international harmonization of trade-related laws and product safety standards. Second, MITI was influenced by the fact that PL had become an international trend of the times. Direct foreign pressure (*gaiatsu*) on the topic was never a large factor,[18] but the force of foreign example, if we can refer to it as such, seemed to have swayed the ministry. Finally, MITI was intent on gaining control of a policy process that was centered elsewhere in the bureaucracy (*Nihon keizai shimbun*, June 12, 1991). A friend of consumers MITI was not; its interest in PL was, for the most part, rooted in image and power considerations.

The fact that MITI did not have the consumer interest at the top of its agenda was underscored by its cautious stance on product liability, which was in turn a reflection of its determination to prevent the introduction of a PL law that would dampen productivity (*Nihon keizai shimbun*, June 6, 1991). The ministry's go-slow approach was heavily conditioned by a close and well-institutionalized relationship with the business community. As governmental deliberations on PL progressed, high-level officials from the Consumer Economics Bureau (Shōhi keizai kyoku)[19] of the Industrial Policy Section (Sangyō seisakuka) frequently made the rounds of business groups to inform them of major decisions and the overall direction of policymaking on PL. Officials from industry-specific sections in the ministry, moreover, went to great lengths to keep the industries in their respective jurisdictions updated on various developments in the policymaking sphere (interview, Tagaya, March 1994). This constant communication between the ministry and business clarified to MITI the trepidations of the business community concerning product liability reform.

Pressure from the business community appeared to have had a major impact on MITI. In August 1991, for example, the ministry refused to publicize the results of a study carried out by its Consumer Economics Bureau on the effectiveness of consumer redress mechanisms in individual companies. Analysts speculated that since the survey had uncovered a number of weaknesses in Japanese consumer redress mechanisms, publicizing the report would have compelled the ministry to take a stronger stand against

business opposition to PL (*Nihon keizai shimbunsha* 1991:97). Clearly, MITI was not about to take a proactive stance on PL until the business community was more firmly on board.

The Liberal Democratic Party (LDP)

The Liberal Democratic Party was also heavily influenced by key business spokespersons and determined to put a brake on outside demands for a consumer-friendly product liability law. Recognizing that the public would hold it to its commitment to promote a more consumer-oriented society, the party established in 1991 the Subcommittee on Product Liability Systems (Seizōbutsusekikinseido ni kansuru shōinkai) under the Research Commission on Economics and Commodity Prices (Keizai bukka mondai chōsakai) of the Policy Affairs Research Council. Headed initially by Hayashi Yoshirō, who later went on to become finance minister, the committee of thirty-one members carried out research on PL and heard from concerned parties throughout the polity. In only one of those early sessions, however, did consumer representatives and lawyers have a chance to voice their positions (Jiyūminshutō 1992b).

Although the party tried to influence policymaking at this early stage, it was not as influential as MITI in defining the course of the debate. Since PL was not a great vote getter, only a few LDP Diet members were actually paying attention to the issue. Of those who were interested in strict liability, moreover, many opposed the concept altogether as a result of their close links to the small- and big-business communities. Finally, the LDP lacked expertise on product liability and thus took a back seat to MITI in terms of defining—or at least reacting to—the debate. On several occasions, the LDP's public position reflected almost verbatim the demands of the business community. In September 1991, for example, Keidanren issued a negative report on PL and appealed (*mōshiire*) to the LDP to exercise restraint on decisions pertaining to the topic (*Chūnichi shimbun*, October 15, 1992). Keidanren's position was later incorporated into the interim report of the party's Subcommittee on Product Liability Systems that was released the following month.

The Mobilization of Consumer Advocates

As it became increasingly apparent that the formal and informal dimensions of the PL policy process would be closed to consistent and effective

participation by representatives of the consumer interest, consumer advocates, lawyers, and a number of influential scholars launched an extrainstitutional offensive against the pro-business camp.

From May 1991, consumer advocates established the PL renrakukai (Shōhisha no tame no seizōbutsusekininhō no settei wo motomeru zenkoku renrakukai, or All-Japan Liaison Committee to Demand the Establishment of a Product Liability Law for Consumers) and nine regional chapters under the auspices of Shōdanren.[20] The primary purpose of the PL renrakukai was to facilitate strategic networking in the organized consumer movement and between the movement and other actors in the PL promotion faction. The organization served, for example, as a conduit for conveying information between members of governmental *shingikai* and other leaders at the national level, as a channel for national leaders to coordinate strategy with grassroots activists, and as a mechanism for grassroots groups to convey their opinions and important information to the center. Based on my observations of past consumer campaigns, I would argue that the PL renrakukai was one of the best-organized consumer networks in the history of the postwar consumer movement.

Strategically, the renrakukai orchestrated a number of activities designed to mobilize public opinion, convey that opinion to policymakers, and, in the process, poke holes in the arguments of the pro-business camp. In order to mobilize and channel public opinion, it coordinated countless petition drives; sponsored symposia, lectures, study groups, and mass rallies; and pressured local assemblies into adopting pro-PL resolutions (PL renrakukai 1997:10). Most of the symposia and lectures were conducted by prominent allies from the legal and academic communities and were carried out in local consumer centers, many of which also supplied renrakukai activists with facilities for their intragroup meetings.[21]

Some of the tactics that were employed by the renrakukai were unique to the PL campaign. The most noteworthy was the defective products hotline (*kekkan shōhin 110 ban*),[22] an annual three-day telephone service launched in 1990 by Nichibenren that in subsequent years included the participation of Shufuren and other organizations from the renrakukai. The hotline, which was at one point available in thirty-three locations around the country, gave average consumers an opportunity to inquire about product liability and, more important, to talk about their own experiences with defective products and consumer redress systems.

The PL hotline was an ingenious program that killed two birds with one stone. First, since the event was well covered by virtually all the major news-

papers, it proved to be an effective mechanism for reaching the citizenry and educating them about product liability and their rights as consumers. To date, "issue definition" in the product liability case had proved to be particularly challenging for consumer representatives and their allies; PL was, after all, a highly technical issue lacking in political urgency and appeal. The problem was compounded by the nature of the term itself. A mouthful in Japanese (*seizōbutsusekinin*), let alone English, "product liability" was the source of considerable confusion even as late as 1993 among local consumer leaders (interview, Tanaka, May 1993). The use of the acronym "PL" helped simplify matters somewhat, although many citizens mistakenly associated it with a high school of the same name that was well known for its baseball team (interview, Tanaka, May 1993).

Second, the PL hotline was one of several tactics that enabled Nichibenren and consumer leaders to gather rough but compelling statistics about the perceived inadequacies of extant systems of consumer redress.[23] The renrakukai then used these statistics to counter pro-business arguments that the problems of defective products and consumer redress were minor and that existing institutions were capable of adequately dealing with them (Nakamura et al. 1992:23–25). Other means used by the pro-consumer camp to discredit their opponents included the dissemination of survey results that exposed the numerous barriers to litigation under the existing PL regime[24] and the distribution of well-researched studies—many of them paralleled by comparable EPA reports—highlighting the distinctive institutional features of the Japanese court system that would prevent the country from succumbing to an American-style "product liability crisis."

Efforts by the PL renrakukai and its allies to mobilize public opinion and expose the weaknesses of the arguments emanating from the pro-business camp were favorably conveyed to the public by Japan's national and regional newspapers. Product liability was being covered by all the major national dailies—albeit not as a headline issue—with the *Mainichi shimbun* taking the most pro-consumer stance. The regional papers, meanwhile, were faithfully charting the activities of consumer advocates in their respective areas and, I would argue, were even more pro-consumer than their national counterparts.[25] All newspapers, to varying degrees, were critical of the business community and MITI and stressed the need for enhanced consumer protection in Japan through the enactment of a product liability law. Over time, a number of editors established close relations with activists in the PL promotion faction. A few of the lawyers, for example, were frequently contacted

by newspapers for input into editorials and their feedback on the accuracy of articles relating to product liability (interview, source withheld).

Stalemate

At the end of the day, the PL renrakukai and its allies proved powerless against the stubborn resistance of the business community to product liability reform. In October 1991, in a move reminiscent of Prime Minister Miki's roundtable on antitrust reform, the Social Policy Council postponed submitting a definitive statement on the issue of reform for another year, citing a lack of consensus (interview, Kawaguchi, June 1993; Keizaikikakuchō 1991a). Despite the fact that two-thirds of the members of the working group had pressed for speedy enactment, the report emphasized the potential of existing consumer redress systems to solve the problems connected to accidents caused by defective products. As might be expected, the interim report met with scathing criticism from consumer organizations and the legal community and approval from Keidanren (Nihon keizai shimbunsha 1991:101: *Asahi shimbun*, October 12, 1991).

The stalemate between the consumer and business camps in the Social Policy Council continued into 1992 and eventually spilled outside the confines of the council. The events that subsequently transpired from the spring of 1992 show the important role played by public opinion in the debate.

Sometime in late 1991 or early 1992, Professors Katō and Morishima—both moderate proponents of a product liability law—privately contacted key politicians in the Kōmeitō and urged them to immediately submit a PL bill to the Lower House in the hopes of attracting public attention to the debate and breaking the impasse in the Social Policy Council. The party, which was in the midst of drafting such a bill, complied in May 1992 (interview, Hikasa, March 1993), and the Socialist Party followed suit in the Upper House in June.[26] Both bills included presumption clauses and did not provide for the risk development plea. But as often happens with private members' bills, both bills failed to reach the deliberation stage.

Neither party expected their bills to pass. They did, however, hope that they would have an indirect impact on the direction of deliberations in the Social Policy Council by strengthening the public's interest in the issue. And this is precisely what happened. From the summer of 1992, newspaper articles on PL were written much more regularly; books on the subject rapidly

appeared in bookstores; and public lectures sponsored by universities and other public and private organizations began to proliferate around the country. Consumer organizations, for their part, rode this wave of heightened interest in PL by intensifying their efforts to mobilize public opinion at the grassroots level in favor of reform. Business representatives, meanwhile, refused to discuss their positions with either journalists or consumer advocates (interviews, *Nihon keizai shimbun* staff writer, November 1992; Hara, February 1993). Keidanren justified its own reticence with the argument that it "had not yet established an official position" on the subject (interview, Keidanren official, May 1993).

In October 1992, the Thirteenth Social Policy Council succumbed to the stalemate by releasing a final report that deferred for another year the decision on whether or not to enact a product liability law. The council was formally disbanded and the task of deliberating on PL was left to the Fourteenth Social Policy Council.

The inability of the Thirteenth Social Policy Council to come to a formal decision on PL struck many onlookers as highly suspicious, particularly in light of the LDP government's professed plans to build a more consumer-oriented society and the fact that a majority of council members supported enactment. How can we explain this? Why did the bureaucratic architects of the Social Policy Council report in the Economic Planning Agency act against the wishes of both the council and public opinion?

The official explanation was that a consensus on PL had not yet been reached (interview, Kawaguchi, June 1993). Given what we know about the various players in this drama, however, "consensus" was simply a euphemism for the support of the business community. But this only begs another question: if, as the survey statistics quoted earlier suggest, the business community was viewing strict liability as an inevitability, why was it so reluctant to publicly endorse reform?

The answer, I believe, had a lot to do with the terms of the PL debate in 1991 and 1992. Consider the various bills and proposals that were circulating at the time. Drafted by actors in the pro-consumer camp, these bills, with their presumption clauses and lack of development risk pleas, were all very tough on business, at least much more so than comparable laws in western Europe. Had the kind of law advanced by the pro-consumer camp been enacted in Japan, businesses would have lost out not only financially—strict liability without built-in protections for business can, as many American firms have found out the hard way, raise costs and drain profits[27]—but also in terms of their overall power relationship with consumers.

Many business representatives still believed during the early 1990s that the task of consumer protection was best left to the initiatives of business and the bureaucracy (interviews, Fujimori, June 1993; Keidanren official, May 1993), a paternalistic approach that had fared well with businesses in the past but could not have survived in a PL system that strengthened the legal powers of individual consumers. And the PL proposals floating about in 1991/92 did precisely that by lessening the burden of proof shouldered by consumers and by virtually eliminating opportunities for firms to exempt themselves from liability. Business, I contend, felt much more threatened by these proposals than by the concept of strict liability per se. Thus, their drag on Social Policy Council deliberations should be interpreted not as a vote against the principle of strict liability but, rather, against the *kind* of strict liability regime advocated by the PL promotion faction. Consequently, business representatives refused to endorse a decision to enact until the details of the law had been settled.

These observations have important implications for the impact of consumer organizations and their allies on the consumer protection policy process. The evidence presented earlier suggests that when the debate was centered in the Thirteenth Social Policy Council, the PL promotion faction—working both inside and outside the council—was able to put business representatives on the defensive by determining many of the terms of that debate. If this is indeed true, then the two-year stalemate should be interpreted as a sign of consumer as well as business influence. Unfortunately for the movement, however, that influence declined during the next leg of deliberations.

Voices from Heaven: The Stalemate Dissolves

One reason that consumer influence waned after the autumn of 1992 was that the institutional configurations of PL policymaking changed in a way that enabled business interests to regain the upper hand. Since businesses refused to support enactment until the details of a new PL law had been settled, the focus of deliberations in the Fourteenth Social Policy Council formally shifted from an emphasis on whether or not to enact a law (*rippōron*) to discussions of what the contents (*nakami*) of such a law should be. In order to carry out those discussions, the policymaking process was decentralized to embrace all the ministries that would have a hand in implementing a strict liability law. Puzzled onlookers looked to these devel-

opments as a "voice from heaven" (*ten no koe*) or water suddenly overflowing a dam (Y. Kitagawa and Z. Kitagawa 1993:7), the implication being that enactment had suddenly become a foregone conclusion. While it is certainly true that Japan appeared closer to enactment than ever before, the subsequent deliberations show that as the policy process was decentralized and the leverage of the PL promotion faction over formal decision making declined, consumers still had a great deal to lose.

Shingikai *Deliberations*

Unlike the Thirteenth Social Policy Council, there was no working group under the Consumer Policy Committee (Shōhisha seisaku bukai) of the Fourteenth Social Policy Council[28] to deliberate exclusively on product liability. PL was, however, the main topic of discussion in the committee, which consisted of three consumer activists, a representative from NHK, eight members from the business community, and four scholars. One consumer advocate on the committee, a prominent leader of the PL renrakukai, had also served on the Thirteenth Social Policy Council.

During the deliberations, the EC directive was promoted by both the EPA and other members of the Hosokawa government as the most viable model for Japan, a move that eventually discredited the feasibility of the various proposals drafted by the PL promotion faction. To add punch to the directive, the EPA invited Hans Claudius Taschner to speak before the council. Dr. Taschner was a specialist in civil and economic law and citizen rights in the Directorate-General of the Commission of the European Communities and a drafter of the 1985 directive. In addition to explaining the directive to the members of the Social Policy Council, Dr. Taschner also spoke to groups of consumers and businessmen and urged them to find a compromise solution to their long-standing impasse. Many in the business community seemed willing to consider the directive, given its built-in protections for business. Consumer organizations, however, were far more critical of the European model on the grounds that it did not make sufficient allowance for Japanese legal and political institutions that put consumers at a disadvantage vis-à-vis business.

As often happens during Social Policy Council deliberations, consumer representatives complained that their voices had been stifled by the nature of the proceedings. In the summer of 1993, for example, the council held

hearings with members of Keidanren, Nichibenren, and the PL renrakukai. The participants were given fifteen minutes each to state their cases, with the Keidanren representative expressing a predictably cautious attitude. Although consumer organizations welcomed the chance to participate in the hearings, they complained about the time restrictions and the rigid structure of the proceedings which, they argued, prevented them from freely expressing their opinions (interview, consumer activist, February 1994).

Compared with many of the other ministries, however, the Social Policy Council was a paragon of openness. Several ministries, including MITI, the Ministry of Health and Welfare, and the Ministry of Agriculture, Forestry and Fisheries pulled out all the stops and established *shingikai* whose makeup was comparable to that of the Social Policy Council. Since all these *shingikai* included consumer representatives, several of whom were sitting on two or three ministerial PL-related *shingikai* simultaneously, the PL promotion faction was able to voice consumer-related demands to the various powers that be. In many instances, however, advocates complained that their demands and suggestions had been all but ignored. This was particularly true in the case of MITI's Industrial Structure Council, whose Committee on General Product Safety (Sōgō seihin anzen bukai) had been deliberating on PL since 1991. The four consumer representatives on this thirty-six member committee viewed their participation largely as an empty formality and frequently criticized the overwhelming influence of business representatives. As for the Ministries of Construction, Transportation, and Justice—none of which had established formal committees to debate the issue—informal deliberations on product liability were held between officials and representatives of the industries in their respective jurisdictions with virtually no opportunities for input from consumer advocates.

In late 1993, the Social Policy Council compiled a final report based on the recommendations of the ministries and submitted it to the prime minister. The report was endorsed in mid-December by the cabinet's Consumer Protection Council (Shōhisha hogo kaigi), thereby marking the government's formal decision to enact a product liability law based on the concept of strict liability.The report attested to the strength of the pro-PL movement by strongly recommending the enactment of a product liability law. With regard to the content of legislation, however, it met all the major demands of the business community, including the omission of a presumption clause, inclusion of the development risk plea, and limits on liability. Critics, including consumer representatives, condemned the document for departing

from the spirit of the EC directive by failing to make allowances for special features in the Japanese legal system that put a heavy burden of proof on plaintiffs in civil lawsuits.

Enactment

Enter the Political Parties

Shortly after the Fourteenth Social Policy Council disbanded, the constituent parties of the new Hosokawa coalition government set up a "PL project team" to look further into the issue and to "forge a political consensus" on product liability in preparation for the drafting stage of the legislative process (interview, H. Itō, February 1994). The twenty-one member team (*Nihon shōhi keizai*, March 7, 1994), which included a number of former lawyers and even the odd citizen activist, met weekly for about three months, with section chiefs from the relevant ministries in regular attendance (interview, Edano, March 1994). From the standpoint of consumer protection policymaking—and in marked contrast to the antitrust and additives cases—it was an unusual show of political party power over a process that was normally centered in the bureaucracy.

The project team was committed to forging a workable compromise between the polarized demands of consumer and business representatives. At one of several meetings between the team and PL renrakukai leaders, for instance, a team representative urged consumer activists to soften their positions toward business. A law that fulfilled "100 percent" of consumer demands would have been ideal, he argued, but it was not politically feasible; legislation that met "60 percent" of those demands should therefore be welcomed as a step forward for consumer protection in Japan. By this point in the policy process, however, it was clear that the PL renrakukai and its allies were no longer speaking with a single voice. While all supported the enactment of a strict liability law, a number of scholars and even a few consumer organizations distanced themselves from the others and expressed their support for an EC-style law.[29]

While more and more businesses were accepting product liability legislation as a logical antidote to deregulation (*Mainichi shimbun*, January 21, 1994), a few business leaders threatened to withdraw their support for enactment altogether if the following conditions were not met: (1) incorporation

of the development risk plea, (2) omission of a presumption clause, (3) establishment of the term of liability to ten years (as opposed to twenty years, as demanded by the consumer camp), and (4) detailed codification of the concept of product "defect" (*Mainichi shimbun*, January 21, 1994). All these conditions had been cited in the Fourteenth Social Policy Council's final report, but business leaders continued to push their demands for fear that ongoing pressures from the pro-consumer camp in a context of political party instability would result in an alteration of the final legislative product.

Consumer activists, meanwhile, shifted their tactics to take advantage of that instability. To date, most of their activities had focused on mobilizing public opinion at the local level. Once the PL project team assumed the initiative in the debate, the PL renrakukai and its allies launched an intensive lobbying campaign. Members of the renrakukai made the rounds of Diet members from both houses, urging them to support a PL law that met the needs of consumers (interview, Ohta, December 1993). They also conducted surveys of the political parties to gauge their positions on the content of the law (*Nikkei ryūtsū*, December 2, 1993). A few of the activists, including one prominent lawyer, even managed to establish informal links with a few key bureaucrats (interview, source withheld), links that provided the renrakukai as a whole with important insider information. Clearly, consumer politics in Japan looked to be in the midst of a change. In contrast to the past when consumer representatives had been granted audiences with conservative politicians only rarely (interview, Miyamoto, February 1994), they now enjoyed a much more meaningful dialogue with policymakers (interviews, Edano, March 1994; H. Itō, February 1994).

Once the ball bounced back into the bureaucracy's court and the drafting stage was set in motion, however, consumer lobbying proved fruitless. Centered in the EPA and with input from section chiefs (*kachō*) from all the major economic ministries, the process, which lasted for about six weeks in the spring of 1994, was completely closed to input from consumer representatives and shrouded in a veil of secrecy.[30] Officials justified their actions at the time on the grounds that opening the process to public input would obstruct the often tricky process of interministerial coordination (interview, Ministry of Transportation official, March 1994). The bill that finally emerged incorporated all the recommendations of the final report of the Fourteenth Social Policy Council mentioned earlier. Not surprisingly, it met with the approval of both the LDP and the business community (interview, Machimura, April 1994).

In June 1994, the bill was passed unanimously by both houses of the Diet. It contained very few surprises.[31] On two important points, however, the consumer interest managed to reassert itself as a result of pressure from within the Diet by members of the PL project team. First, following an intense Upper House battle over the subjection of blood products to the purview of the law,[32] the forces in favor of inclusion eventually won out (Kawaguchi 1994:47). Second, and largely in response to demands emanating from the Justice Ministry, as well as from lawyers, consumer organizations, and many academics, the concept of product defect was defined very loosely in order to give the courts adequate leeway in interpreting product liability cases (Kawaguchi 1994:47). These hard-won victories of the pro-consumer camp were a rare instance in which consumer representatives had a significant, albeit indirect influence over the actual details of public policy. The victories also symbolized the determination of the Hosokawa government to assert its commitment to the consumer. In all other respects, however, the legislation reflected the wishes of politically entrenched business interests.

Why Now?

The question that we must now answer is, if business wanted to stick with the old PL regime, why did it ultimately support the new strict liability law?

One reason was that it had a lot to lose by the end of the deliberative process. The PL renrakukai and its allies had orchestrated such an onslaught of public opinion on the policy process that to say no to PL reform would have made the business community appear anticonsumer, and that would have been bad for business in the context of the recession and increasing governmental attention to the affairs of consumers. By the eve of enactment, the PL renrakukai had overseen more than 320 locality-specific *ikensho* campaigns, each involving literally hundreds—sometimes thousands—of citizens sending waves of postcards to bureaucrats and politicians demanding the early enactment of a product liability law (PL renrakukai 1997:259–62). The renrakukai also orchestrated petition drives by 1,713 consumer organs across the country, and the results—about 3.5 million signatures—were presented by consumer representatives to the various PL-related *shingikai* (PL renrakukai 1997:249–58). In addition, more than 300 localities were pressured by renrakukai chapters to adopt resolutions favoring enactment (PL renrakukai 1997:12); a number of demonstrations were organized in and

around Nagatachō; and countless appeals and "written demands" (*yōbōsho*) were showered on policymakers. Although not as large as the public backlash directed at the government over the deregulation of synthetic additives, it was a well-organized public opinion campaign that should be credited, along with the force of foreign example, for inducing a divided conservative coalition into supporting the law.

Credit must also be given to the Hosokawa government. Shortly after assuming office, Prime Minister Hosokawa Morihiro openly declared his support for a PL law as a fundamental step toward a more consumer-oriented society. His cabinet reflected these priorities. Kumagai Hiroshi, the new minister of international trade and industry, for example, was far more favorably disposed toward enactment than his predecessors had been, and the same can be said for several of his cabinet colleagues. But even though these individuals helped win over pockets of resistance to strict liability rules, the fact remains that most of the agreements among the various actors of the pro-business camp had been reached *before* the LDP fell from power (interview, Machimura, April 1994). The Hosokawa government did not formulate these agreements; it inherited them.

A more persuasive explanation of the business community's capitulation to demands for PL reform is that businesses had been granted many of the same limits on producer liability that had been secured by European businesses, limits that were designed to prevent a U.S.-style "product liability crisis" and that meshed well with the country's bureaucracy- and business-centered approach to consumer protection. In addition to the demands noted earlier, those limits included exemptions for farmers and the manufacturers of component parts; limits of repose;[33] a ban on punitive damage awards; and, in a marked departure from the EC directive, the exemption of unprocessed agricultural products from the law's purview (Marcuse 1996:384).

Welcome though these concessions may have been, they nevertheless beg the most important question of all: if European-style limits on producer liability were all it took to obtain the support of Japanese business for a new strict liability law, why did the business community take so long to agree to these concessions? Based on observations of the post-1994 product liability regime, the most probable answer is that businesses and their allies in the bureaucracy and the LDP were buying time in order to reform or introduce institutions that would both minimize the negative impact of strict liability rules on producers and preserve the long-standing power configurations of Japan's distinctive consumer protection regime.

The New PL Regime: A Half Step Forward for Consumers

These objectives were achieved through the reform and expansion of the nonstatutory governmental, semigovernmental, and business-centered mechanisms for consumer redress that had kept consumers out of the courts in the past and that will continue to do so under strict liability rules.[34] Although these mechanisms were not addressed by the new Product Liability Law, they had been the topic of ministerial *shingikai* deliberations.[35] They were also the subject of supplementary resolutions released by the commerce committees (*shōkō iinkai*) of both Diet chambers in June 1994. As the following overview reveals, these mechanisms help businesses as much as—if not more than—consumers.

Alternative Dispute Resolution Facilities (ADR)

As before, the majority of product liability complaints will be handled privately between consumers and businesses through *aitai kōshō* procedures that will now be carried out in conformity with strict liability rules. In fact, the media have reported noticeable improvements in the responses of individual firms to complaints from their customers since the law's enactment (see, e.g., *Mainichi Daily News*, December 6, 1995; *Japan Times*, March 5, 1996). Business efforts to improve these procedures are no doubt motivated by a desire to avoid the dubious distinction of becoming the target of one of the country's first strict liability lawsuits.

As an alternative to the courts, the government-administered mark programs have been maintained and reformed under the new strict liability regime. Since the law was enacted, ceilings on the amounts of damages awarded to consumers have been raised (*Mainichi Daily News*, March 5, 1996), and more and more products are coming under the aegis of the programs. It remains to be seen, however, whether information pertaining to claims lodged with the ministries will be readily made available to the public.

In the event that *aitai kōshō* or the mark programs fail to resolve product-related disputes, the consumer can submit the case to a third-party or "alternative dispute resolution" (ADR) organization. The neutrality of these organizations is in question, however, given the role of both state and business interests in their proceedings.

Among the most important institutional venues for ADR are the local governmental "complaint-processing committees" (*kujō shori iinkai*) which have been in place for decades but rarely used. Local governments, in accordance with guidelines issued by the Economic Planning Agency, have significantly reformed these organizations and are setting up new ones around the country. The panels normally consist of lawyers or former judges, consumer representatives, "individuals of learning and experience" (*gakushiki keikensha*), and technical experts dispatched on demand by the Economic Planning Agency (Kōmura 1995:3). Like comparable local panels that deal with pollution-related disputes (see, e.g., Upham 1987:ch. 2), these committees appear to operate in a fair and impartial fashion (Yanagi 1995:27–30). In two important respects, however, the committees' procedures could weaken the letter of the law. First, a commitment to compromise solutions, as opposed to the more adversarial "winner-take-all" approach of the courts, may, in some cases, enable the manufacturers of defective products to escape their ultimate legal responsibilities. Second, public access to information pertaining to defective products may be hampered by the committees' commitment to protect not only the personal privacy of plaintiffs but also the right of firms to protect their trade-related secrets.

A much more controversial venue for third-party dispute settlement is the Product Safety Association (Shōhin anzen kyōkai), the organization that administers the SG Mark program. The association recently opened a product liability center to solicit inquiries and complaints from consumers pertaining to a wide range of products and to provide mediation (*assen*) services between consumers and businesses engaged in *aitai kōshō*. As a last resort, consumers can submit their claims to a mediation panel consisting of a former judge or legal specialist, a consumer consultant, and a technical specialist. Consumers must pay a small fee for this service unless the product in question is part of the SG Mark program, and the products covered are restricted to those produced by companies affiliated with the association (Seihin anzen kyōkai 1995). Like the local complaint-processing committees, the procedures are closed to public scrutiny, and information pertaining to specific cases will be publicized only if it is deemed by the association to have a bearing on public safety. Unlike the complaint-processing committees, however, the procedures may not always be carried out in a fair and impartial fashion, given the Product Safety Association's organizational connection to MITI and its long-established reputation for being pro-business.

An even more controversial set of organizations is the dozen or so product liability centers established at the industry level to deal exclusively with specific product types. These centers administer panels consisting of technical, legal, and consumer experts who offer mediation services to consumers and manufacturers, but their ability to work in a fair and neutral manner is somewhat suspect. For starters, many of these centers are part of organizations with clear ministerial connections. The center that oversees electrical home appliances, for example, is part of the Electric Home Appliances Association (Kaden seihin kyōkai), a special corporation (*zaidanhōjin*) connected to MITI. Dispute resolution services for conflicts involving housing parts, moreover, are carried out by a product liability center in the "Better Living" organization, an organ affiliated with the Ministry of Construction. Business interests also permeate the affairs of these purportedly "neutral" centers. The selection of members for the mediation panels, for example, is often vetoed by concerned manufacturers, and many—if not most—of the consultants in the centers are lent temporarily by the very manufacturers targeted by consumer complaints (*Nihon keizai shimbun*, July 19, 1995). Finally, the centers are under no obligation to make the details of product-related claims open to the public, much to the disappointment of both lawyers and consumer representatives (*Japan Times*, January 5, 1996).

The institutionalization of noncourt dispute resolution procedures will provide undeniably useful services to consumers in a legal system that precludes quick and easy access to the courts. At the same time, however, the institutional structure of these organizations gives both the state and business interests the ability to resolve product liability cases away from the public eye and without allocating legal liability. (Although as of this writing fewer than twenty product liability lawsuits have been filed since the law was implemented, consumers do have the option of litigating when they are dissatisfied with the results of mediation.) The fact that mediation is conducted behind closed doors, however, will make it difficult for consumers to judge whether the procedures have been carried out fairly and if the damages awarded are comparable to what would be obtained in the court system.

Product Liability Discovery Services

Another focus of controversy since the law was enacted has been the burden of proof shouldered by consumers in proving the existence of prod-

uct defects and the causal relationship between defects and damages incurred in the absence of a presumption clause and pretrial discovery provisions in the court system. This burden will be particularly onerous for technologically sophisticated products like pharmaceuticals, automobiles, and even consumer electronics. The Japanese government has set up a number of organizations to facilitate citizen access to information that will lessen this burden of proof—organizations that were discussed and recommended along with the third-party dispute resolution bodies in *shingikai* reports and Diet resolutions.

Most of these "discovery organs" (*genin kyūmei kikan*, lit. "facilities for uncovering causes" of product-related accidents), which carry out product testing and other research designed to determine the causes of product-related accidents, are based in the national ministries and special corporations connected to the bureaucracy. According to a publication on the subject released jointly by seven agencies and ministries in June 1995, there are twenty-one governmental or semigovernmental facilities that carry out such functions (Keizaikikakuchō 1995), most of which have branch offices around the country. For example, the Japan Consumer Information Center, which falls under the jurisdiction of the Economic Planning Agency, has well-equipped facilities for product-related research, as do a number of local consumer centers. Most facilities specialize in research pertaining to one or a few product lines, and many of them supply noncourt dispute resolution services upon request.

As with the new ADR facilities, these information-gathering organizations provide invaluable services to consumers who do not have easy access to business-related information and in the absence of a small-claims court system. At the same time, however, the fact that many of these organizations are controlled or influenced by the bureaucracy or business interests renders their alleged neutrality dubious and the possibility for arbitrary decision making quite high.

Conclusion

The movement to enact a product liability law was a rare and remarkable case in which a diverse assortment of both national and local consumer organs was able to mobilize a substantial cross section of public opinion in favor of product liability reform. In the context of uncertainty and conflict

in the pro-business camp, that movement helped persuade policymakers to push strict liability through the policy process. With a few important exceptions, however, the PL promotion faction had very little influence over the kind of strict liability regime that was eventually introduced.

Clause for clause, Japan's product liability law closely resembles western European laws. In the manner in which it is being implemented, however, Japan has parted company from its European counterparts. As critics are quick to point out, many of the noncourt dispute resolution procedures and information services are carried out by the bureaucracy or business organizations—services that in the United States and many European countries are normally performed by lawyers, the courts, or "neutral" private organizations (Urakawa 1995:37). Accordingly, consumer representatives and other critics of the system have branded the new law as "less than the EC" (*EC ika*) directive.

Japan's new product liability system has important implications for the protection of consumer rights. While Japanese consumers are certainly better off under this new system than ever before in terms of access to safe products and more effective redress systems, these benefits are enjoyed not as individual rights but, rather, as benefits bestowed by businesses and bureaucrats. Although consumer organizations are to be credited for the fact that Japan even has a strict liability law, no amount of public pressure could have enticed pro-business interests into instituting a product liability regime that empowers consumers over business in legal or political terms. The best they could do was to improve the overall lot of consumers within preexisting power arrangements that encourage citizen dependence on governmental and business authorities for consumer protection. As such, the story of product liability reform attests to the lingering strength of the bureaucracy and business interests after the era of one-party dominance.