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**Losers:
Recovering Lost Property in
Japan and the United States**

by

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Losers: Recovering Lost Property in Japan and the United States

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INTRODUCTION

This Article examines finders law and recovery of lost property in Japan and the United States. Using a variety of tools –, statutory exposition, interviews, new institutional economics analysis, statistics, surveys, and “lost wallet” experiments in which I purposely lost property in Tokyo and New York – I attempt to determine whether and to what extent lost property recovery rates differ, and to disentangle the causal factors that underlie those differences.

To be sure, finders law is relatively low-stakes; it may be a trivial matter in the grand institutional scheme. Yet it is in part this very rationale that underlies this study. While much legal scholarship examines high-stakes issues, little focuses on lower-stakes, everyday concerns, and that which does is largely anecdotal. I attempt to analyze the relation between law and the ordinary, with an aim toward a richer understanding of the role of formal and informal institutions in society. By using finders law to do so, and by situating the analysis in a comparative and historical context, I hope to understand better the interaction and hierarchy of legal and economic incentives, norms, and altruism in a system of social control.

Although several prominent scholars (Helmholz 1983; Levmore 1986; Posner 2000: 556) have recently explored the topic directly, and related good-samaritan issues have received thoughtful attention (Dagan 1999; Stout 2001), finders law is not exactly at the forefront of modern property law theory, much less practice. Several reasons may explain why; as important as the legal allocation of rights to lost property may be, enacting a finders law is unlikely to be seen as a cornerstone of property rights in a developing system. But one reason why finders law

has the status in property law that it does may be that nobody knows how -- or indeed whether -- the law works. As far as I can tell, there has been no serious empirical finders law research since two studies appeared nearly simultaneously more than sixty years ago. In the first (Riesman 1939), published in 1939 the *Harvard Law Review*, the author listed the results of a questionnaire sent to railroad companies (none of which currently exist), department stores (Woolworths, Macy's, and Sears, each of which kept no figures), and other large gathering places, and found that practice did not coincide with common law doctrine; establishments seemed to make up their own rules. In the second (Donner 1940), published in 1940, an education scholar polled high school students about their knowledge of finders' law, and found that they didn't know much about the law or what to do with found property.

The focus of this study is one of the world's more successful finders law systems -- that of Japan. The Japanese system is said to be especially efficient. A recent survey of 500 Tokyo and Osaka "businessmen" found that 41.4% had lost something in the last year, and on average lost 2.7 items per year. Of the persons surveyed who recovered their lost items, only 22.5% found the item on their own; the remaining four-fifths received calls from strangers or found the item at lost-and-found stations (Shohisha Ishiki Chosha). All in all, in 2000, Japanese police received 9,140,000 items and cash totaling ¥13.1 billion (\$131 million) in voluntary finds from ordinary citizens. Find rates are highly correlated to loss rates, and more than 71% of the cash, and 32% of non-cash items, is recovered by the original owner (Keisatsucho 2000).

For readers familiar with Japan, these figures may not be all that surprising. I have heard many a tale of cash, CDs, keys, cameras, briefcases, confidential legal memoranda, and books that reappeared after having been presumed lost forever, as well as a few stories of items that stayed lost (mentioning "lost property," I have learned, is an invitation for anecdotes). "Just

think,” a well-traveled Japanese friend said to me after recovering his computer in Tokyo, “what would have happened if I had left my laptop on the subway in New York.”

Among other tasks, this Article presents the results of experiments conducted to determine whether my friend actually had a better chance of recovery in Tokyo or New York (relatively unsurprising answer: Tokyo), and to uncover the reasons why. As for the “why,” the focus of this Article, most accounts attribute Japan’s apparent success at lost-and-found to social factors or Japanese ethics. As the *Los Angeles Times* (Magnier 1999) puts it, “Drop something in a public restroom or in a subway corridor in Tokyo and there’s a good chance you’ll get it back, here in one of the most honest nations on Earth.”

Perhaps people in Japan *are* honest and altruistic. I do not argue that they are not; and happily acknowledge that some of the communitarian factors that support honesty appear to be in abundance in Japan (Miller & Kanazawa 2000). In this Article, though, my central claim is that the Japanese lost property system works well primarily because of well-designed formal institutions that efficiently allocate and enforce possessory rights. Those formal institutions at least coincide with, perhaps are caused by, and may additionally foster informal institutions such as altruistic norms that coerce outliers who might not otherwise do the right thing.

The Japanese approach to found property is not wholly unique; as this Article will show, similar regimes appear in the United States. But at least four important potential differences will emerge from the details of Japanese property rights allocation and enforcement:¹

First, compared to the legal regime of the United States (and most other systems in the world), Japanese finders’ law is simple and uniform.

Second, the system has a long and relatively unwavering history, and appears to be well known.

Third, the reporting of lost objects is made more efficient by koban (police boxes) and the establishment of a legal duty on police to search for owners. The ubiquity of the koban helps engrain law-supporting norms in everyday Japanese life from childhood.

Finally, Japanese finders' law creates well-defined incentives to encourage finders to report their finds and disincentives to misappropriation. To use Saul Levmore's (1986) finders law terms, Japanese finders law provides a simple system of carrots and sticks. Japanese civil law provides that a person who finds a lost article shall deposit it with the police, or with the security office of the building in which it is found, if such an office exists. The law then provides two carrots. First, if the owner claims the object, she is required to pay the finder a fee of five to twenty percent of the object's value. Second, if no one claims the object in a specified period of time, the object is returned to the finder (Civil Code art. 240; Ishitubutsuho).

Japanese criminal law also provides a stick. Although Japanese law contains no penalties for non-rescue (a finder is free to look the other way from lost property²), a finder who misappropriates the property for his own has committed embezzlement, and is subject to fine of up to 100,000 yen and imprisonment of up to one year. I find that while prosecution of adult offenders for the ordinary appropriation of lost property is rare, embezzlement of lost property is the second only to larceny in the number of juvenile cases brought by police to prosecutors (Tamiya & Hirose 1998: 155), and adults are often prosecuted in particular situations, such as when the acquisition is connected with a more serious crime, or when intent is particularly obvious. Even when prosecution is not initiated, the process of investigation in Japan often is a punishment in itself.

Because the above four factors are interrelated, it is difficult to create a precise hierarchy of importance in explaining Japanese success. The koban system and carrot-and-stick incentives

may be the most important in influencing individual behavior, and in the absence of either the system would surely be much less effective. But both may be reinforced by simple rules and an educated citizenry, and social norms, in turn, may be both cause and effect for each factor.³

The Article proceeds as follows. Part I first presents quantitative evidence on Japanese lost and found that suggest a relatively efficient regime. Still, the data are equivocal. To better understand comparative lost-and-found, following Stanley Milgram's (1965; see also Stern & Farber 1997) famous lost-letter technique and subsequent "lost dollar" studies (Penner et al 1976), I conducted an experiment involving the intentional loss of property. In short, I dropped wallets and cell phones in Tokyo and New York, and waited to how much I recovered. The results of those drops are presented here.

Parts II and III attempt to explain the findings of Part I through an investigation of lost-and-found institutions. Part II discusses the Japanese finders' law, outlines its historical origins, and compares it with that of other legal systems, particularly those of the United States. Part III analyzes how those legal rules are applied in practice.

Part IV attempts to unpack the knotty relation among social norms, honesty, altruism, and the formal institutions discussed in Parts II and III. I first examine the psychological and sociological evidence on honesty and altruism in Japan in general, and on the return of lost property in particular. In part because of the dearth of such studies, I then attempt to build on that database with two empirical studies of my own. First, I conduct a survey of issues relating to finders in Japan and compare it with existing U.S. survey data. Second, I follow up on the lost-wallet experiments presented in Part I by interviewing those who returned the property and police officers who handled the returns.

PART I. HOW MUCH LOST AND FOUND?

Japan maintains some of the best data on lost and found property in the world. In this Part, I examine those data to attempt to determine how much property is lost and found in Japan. I look at national statistics, and then compare those data with the available data from the United States. Finally, I present the results of a unique experiment designed to compare lost-and-found rates in Japan and the United States.

A. Official Japanese Data

Compare Tokyo, obviously an urban area, with Aomori, a rural area. Table 1 compares items lost and recovery rates for the two areas in 2001:

Table 1: Lost Property in Tokyo and Aomori, 2001		
	<i>Tokyo</i>	<i>Aomori</i>
Population	11,830,000	1,478,000
Koban per 100 km ²	96.5	7.9
Found Objects		
Most Popular	1. Umbrellas (324,102) 2. Clothes (207,719) 3. Wallets (175,842)	1. Umbrellas (6,555) 2. Wallets (6,160) 3. Bicycles (2,093)
Total Number	1,657,112 (1 per 7.1 residents)	19,877 (1 per 74.3 residents)
Percent Returned to Owner	18.3%	40.76%
Percent Awarded to Finder	62.7%	22.38%
Found Cash		
Total Value of Found Cash	¥2,491,341,076 (\$25 million)	¥105,073,153 (\$1.05 million)
Percent of Found Cash Returned to Owner	72.8%	70.56%
Percent of Cash Found Awarded to Finder	18.8%	21.40%

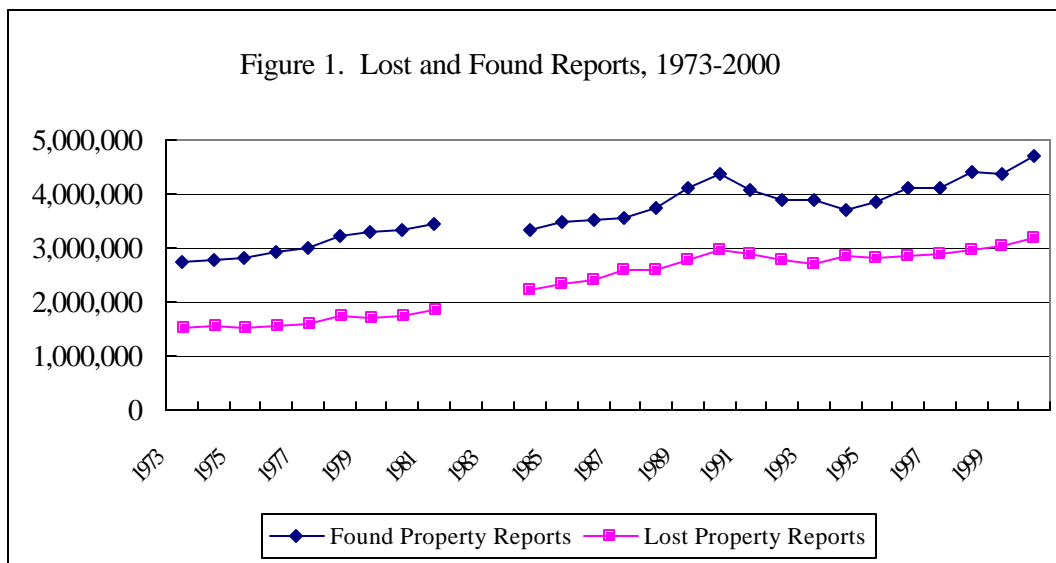
Sources: Koban from Somucho Tokeikyoku 2000:188, Tokyo data from Tokyo Metropolitan Police, <http://www.keishicho.metro.tokyo.jp/toukei/kaikei/kaikei.htm>. Aomori data from Amori Prefectural Police, available at www.police.pref.aomori.jp/keimubu/otoshimono.htm

The urban and rural comparison reveals both interesting similarities and interesting differences. The percentage of objects and cash that are returned to owners are quite high, roughly the same, and near the national average.⁴ In both cases, more than 60% of objects, and more than 90% of cash, is recovered by either the finder or the original owner. But note the disposition of found objects. Tokyo awards a much higher percentage to finders than Aomori,

and Aomori returns a much higher percentage to original owners. Perhaps Tokyo finders are more aggressive in pursuing their claims, or perhaps Tokyo losers give up more easily.

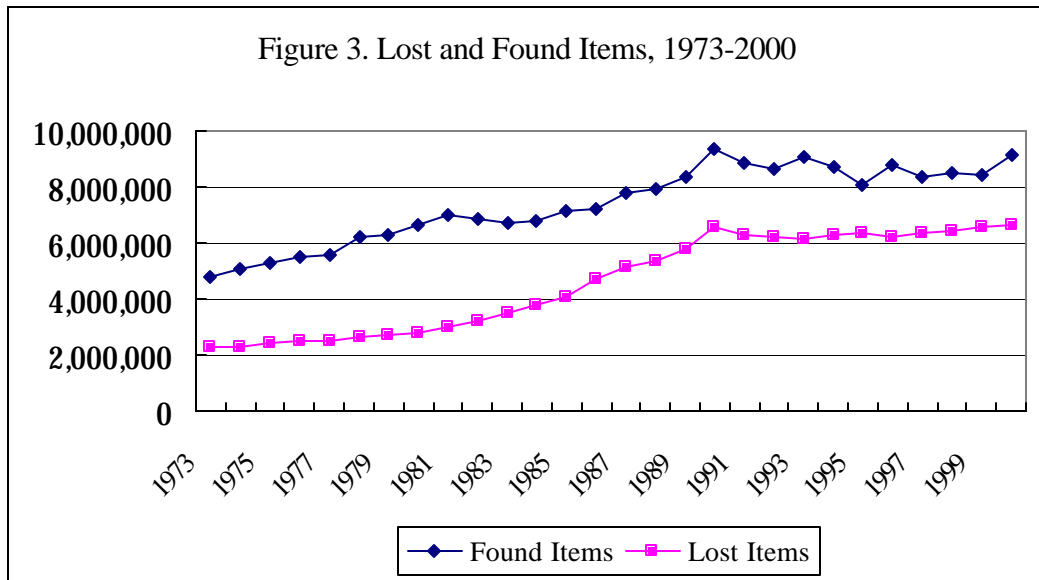
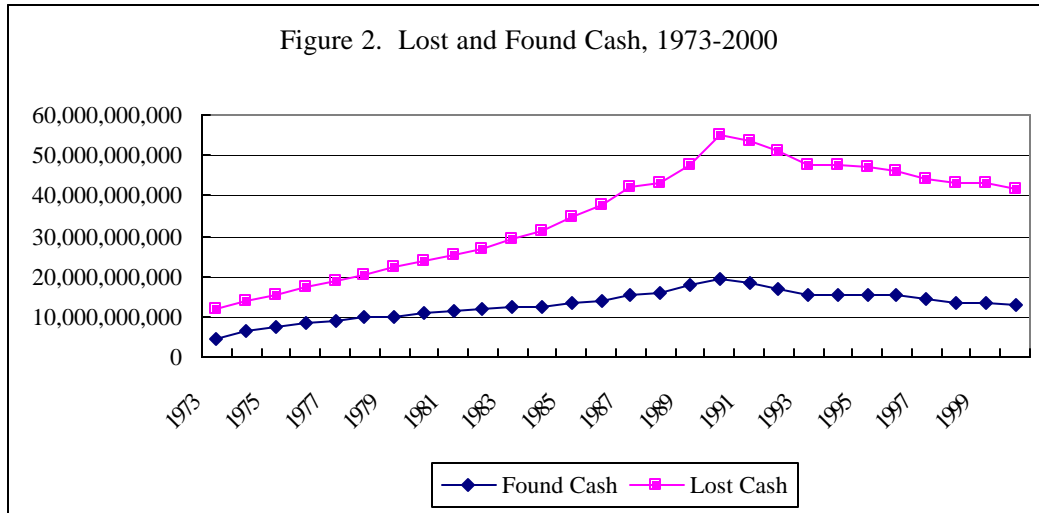
This difference aside, the rest of the figures line up about as expected. The number one found object in both areas is umbrellas, with wallets coming in second and third. Bicycles turn up more often in Aomori, perhaps because of greater distances between public transportation facilities. Most interestingly, the disposition of cash is nearly identical. In roughly three-quarters of the cases of found cash, the owner turns up – and only a very small portion of the cash goes to neither the finder nor the owner.⁵

To get a sense of whether Tokyo and Aomori data accurately represent national lost and found patterns over time, I examined national lost-and-found data for the period 1973-2000. Figure 1 details the number of Loss Reports and Finder’s Reports for the period. Finders’ Reports are filed much more frequently than Loss Reports, resulting in data that appear to show more finds than losses. Most basically, as the figure shows, loss rates and find rates have generally increased over the period (data unavailable 1982-1983), with a “bubble” coinciding with Japan’s economic bubble in the late 1980s and early 1990s.



To get a more complete picture, it is useful to divide the data into objects and cash.

Figures 2 and 3 show the amount of cash and the numbers of items that are listed in the Loss Reports and Finder's Reports.



These two charts suggest some interesting trends. First, note that reported cash finds as a percentage of reported cash losses has decreased significantly over the twenty-five year period (from nearly half in the mid-1970s to less than one-third in 1998). Again, several phenomena

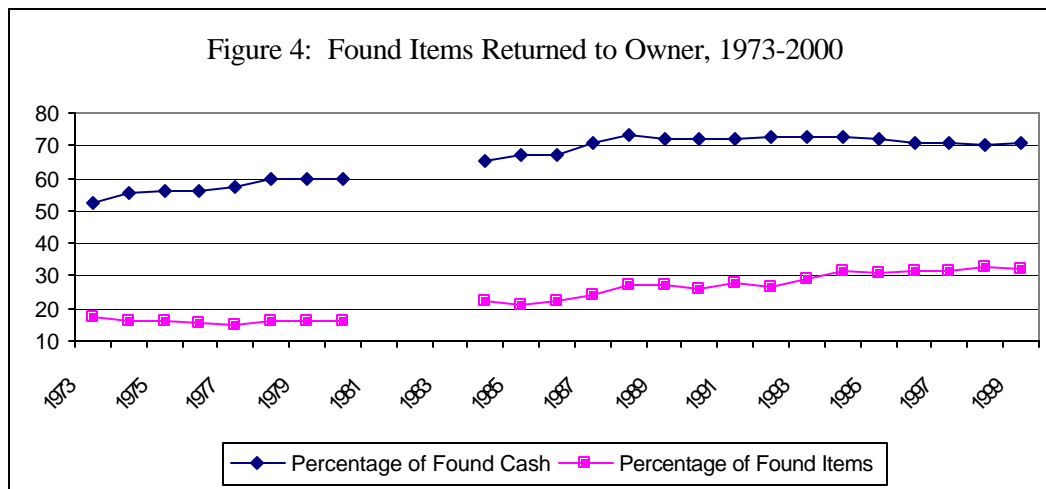
may account for the change. Perhaps finders are less honest than they were in the past, or perhaps more cash losses are being reported.

Second, note that the opposite phenomenon has occurred for object finds. Reported object losses as a percentage of reported object finds have increased significantly (from less than half in the 1970s to over three-fourths in the late 1990s). Perhaps fewer object losses are being reported (perhaps items may be more replaceable), or more object finds are being reported.

Third, note that the loss rate for cash exceeds the find rate, while the find rate for items exceeds the loss rate. In this connection, note also that the find rate and loss rate exhibit roughly the same trends in both charts. Although the report rates have changed over time, the same basic ups and downs appear. To check the relations more precisely, I compared the correlation of the first differences – the annual rates of change – between (a) cash lost reports and cash found reports and (b) object lost reports and object found reports. The correlation for cash was a highly significant .858 ($p=.000$). The correlation for objects was only .283 ($p=.160$), not even marginally significant. While the data may be imperfect, these results may indicate that the system is more effective for cash than for property, as find report rates more closely track loss rates.

To further explore incentives, I examined the data on the disposition of found property, as detailed in Figure 4. As the figure indicates, owners have become more aggressive in retrieving both property *and* cash in the last twenty-five years, but cash has a higher return rate. Again, multiple explanations may be possible, including the easier identification of cash owners (cash is often lost in wallets that contain identification). In any event, the data suggest that while cash finds exceed reported cash losses, cash losses that are reported are more likely to be returned to the owner than object losses. The increase in the percentage of returned items over time may be

indicative of an increase in the value of portable objects such as electronics in the past two decades.



B. Comparison to the United States

Unlike Japan, the United States keeps no national statistics on lost and found property, and I was unable even to locate any state that maintained such data. Accordingly, I turn to city-specific data for insights, but note nevertheless that any unit of comparison is incomplete. In any two systems, and certainly in comparisons between Japan and the United States, there are likely to be differences in objects carried, objects lost, the nature of places frequented, and conceptions of what objects should be turned in to authorities, and the data make no allowance for such factors.

Those caveats stated, the best comparison with Tokyo, at least, is probably New York. New York’s lost-property statute requires police to accept property, give receipts, and give notice of the finding if they “have reason to believe that a person has an interest in found property” (New York Personal Property Law § 253). As Part II will show, the New York statute is also somewhat similar to the Japanese statute in awarding the property to the finder after a

specified period of time. But when I called the precincts specifically designated by the New York City Taxi and Limousine Commission to receive lost property, I was informed that those precincts only keep logs, not statistics. I filed a Freedom of Information Act request with the New York Police Department at the end of 2000. After several rounds of phone calls, I received my answer in spring 2002: my request was denied because (unlike Japan) the data do not exist (Gonzales 2002).⁶

I also tried Los Angeles. Los Angeles, with its low reliance on public transportation, is a difficult comparison to Japan, but the police function could conceivably be the same for lost items found on public property. The Los Angeles Police Department Property Division informed me that it logs all lost property. But it does not keep related statistics, and in fact does not distinguish between property found by citizens and property retrieved by officers in the course of a crime investigation (Goodrum 2000).

I then turned to an alternative: Grand Central Terminal in New York City. According to a spokesperson for Metro-North, the lost-and-found at Grand Central Terminal, which averages about 140,000 passengers per day, receives about 1,000 found items per month (Brucker 2000). In 1995, the return rate was said to be twenty percent or less “at best.” Since that time, thanks at least in part to an enterprising former police officer who attempted to make the office more efficient through better labeling, the return rate for found items in 2000 is said to be “sixty percent or higher” (Id; Lombardi 1996).

The Grand Central figures are not scientific, and the fact that they were formulated by a Metro-North spokesperson accurate may make them suspect. If they are accurate, they are high, approximately equal to the Japanese national rates. But Grand Central is a relatively closed environment, and as such may not be compared easily with the national Japanese figures. For

better comparison, I attempted to obtain figures from Japanese train stations. Although I was unable to receive official figures from Japanese railways, I was told unofficially that at Shinjuku station in Tokyo, at which the average day sees three million passengers according to East Japan Railway, about 80% of *lost* items are recovered by the owner, a figure that would be significantly higher than that of Grand Central despite much higher passenger volume.

In short, Japan appears to do a much better job of gathering data relevant to lost and found property than the United States. The evidence on the efficacy of the system is equivocal, but the available data, combined with the lack of organized U.S. data and anecdotal evidence, suggest that the Japanese lost property system is well-functioning in comparison with the U.S. system.

C. An Experiment

The absence of unequivocal comparative data calls for further investigation. To do so, I conducted an experiment based largely on various “lost” techniques of psychologists to study helping behavior, honesty, cooperation, and a variety of other social and political phenomena. Perhaps the most famous “lost” procedure is the “lost-letter technique” described and developed by Stanley Milgram (1965). To avoid the pitfalls inherent in the survey process, Milgram (1977: 296) devised a method of direct experimental observation:

At the root, the technique is a simple one. An investigator distributes – drops – throughout a city a large number of letters, addressed and stamped but unposted. A person who comes across one of these “lost” letters on the street must decide what to do: mail it? disregard it? destroy it?

In Milgram’s first study, conducted in 1963, he found that while more than seventy percent of finders returned letters addressed to “Medical Research Associates” or to an individual, only twenty-five percent returned letters addressed to Friends of the Communist Party or Friends of

the Nazi Party (Milgram 1977: 296-300). Subsequent studies, as well as modifications such as the “lost e-mail method,” found similar results (Stern & Farber 1997).⁷

Expanding on Milgram’s technique, other researchers began to study human behavior through “lost dollar” and “lost wallet” experiments. In “lost dollar” experiments, psychologists examined reactions to a lost dollar in a wallet, in an envelope belonging to an institution, and without an identifiable owner. Collapsing various situations and owner characteristics, it was found (Penner 1976) that 31.2% returned the dollar, 39.6% ignored it, and 29.2% took it. Similar popular studies replicated these sorts of tests, finding, for instance, that 70 percent of wallets left on the street were taken, despite the fact that the wallets contained the owner’s address (Penner 1976: 294). These results surely are discouraging to losers. Even when surveyed, a situation in which respondents can easily lie, twenty-one percent of 18-to-34-year-olds told Money magazine pollsters (Topolnicki 1994) that they would keep a wallet with complete identification that contained \$1,000.

Finally, in the most recent manifestation of the genre, economists Martin Dufwenberg and Uri Gneezy (2000) conducted an “experimental lost wallet game” in which they attempted use a bargaining game to determine the factors that might lead a finder to return a lost wallet. Not surprisingly, they found that the higher the stakes, the more likely the participants in the experiment were to keep the wallet. They also found some interesting altruistic effects, consistent with the Dictator game in which one player decides how to divide a pot of money. But this experiment – and the discussion -- rests on the assumption that players in the game, as well as wallet-finders in real life, have no economic reasons to report the find. The finder “simply keeps the wallet,” they note, when he realizes that “the owner *does not reimburse* [my emphasis] the finder if she picks her wallet up at the police station” (Id.: 64).

In Japan, as this Article has shown, the dynamics are different. Although the owner does not fully reimburse the finder, leaving some moral hazard, the finders' fee and the possibility of full reimbursement after six months and two weeks encourage many people to turn in wallets.

To find out more about how these incentives operate in the real world and in cross-cultural settings, I conducted a similar test. In two locations in New York and one Tokyo, I dropped objects and cash. New York's lost property statute is relatively simple; objects with a value of more than \$20 are required to be turned in to police (§ 252). The statutory waiting period in New York for a find of less than \$100 is 3 months, and the finder has a right to the property for ten days after the expiration of that period (§ 253).⁸ Before the end of the period, the property goes to the loser if claimed.

My basic methodology (details are in the Appendix) was as follows. For objects, I dropped in each location 100 mobile phones. For cash, I dropped 20 wallets in each location. I obtained 60 wallets from a lost-and-found auction and inserted in each a small amount of cash and an identification card. In Japan, each wallet contained two 1,000 yen bills. In the United States, each wallet contained two ten-dollar bills to reach the New York \$20 statutory minimum. This methodology may tell us little about how people react to valuable finds (such as a briefcase stuffed with cash), but it should provide information about returns of more everyday finds.

I expected to find higher return rates for property than cash. Property is relatively illiquid; an unknown person's mobile phone not connected to a service is not all that useful or valuable. Return of mobile phones may give a good indication of altruism, while return of cash may add an additional element of honesty. Of course, the actual calculation may differ by individual.

I dropped the phones and wallets in three locations. The first two locations were mixed business-shopping districts of Tokyo (Shinjuku) and New York (Midtown Manhattan). The third location was designed to test possible cross-cultural differences: I dropped objects in front of a New York grocery store (with the owner's permission) that caters almost exclusively to a Japanese expatriate clientele. I expected relatively good return rates from this location because of the proximity clear identity of the person to whom the find should be reported. Still, if differences in lost property recovery rates are based primarily on cultural traits, we might expect to see similar return rates among Japanese finders in Tokyo and New York. But if institutions are a large part of the difference, we might expect return rates to differ by country, not ethnicity.⁹

The results of the drops are as reported in Table 2. As the table shows, for both phones and cash, the highest return rates came from Tokyo (95 phones, 17 wallets), and the lowest from New York (77 phones, 8 wallets, including two *empty* wallets).¹⁰ The differences are statistically significant (phones, $\chi^2(2) = 13.1569, p < .01$; wallets, $\chi^2(2) = 12.48, p < .01$). The same distribution is true for the ratio of objects returned via the police; 88 phones and 16 wallets were given to the police in Tokyo despite the fact that the objects contained identifying information that would have allowed that finder to contact me directly. In New York, almost all returns were made by phone calls to the phone mailbox listed on the object despite the fact that a police station was located nearby.

Finders' recovery rates tell a similar story. New York has no procedure by which a finder waives rights to claim unclaimed property, but in Tokyo, the finders of 83 of 88 phones waived such rights (wisely, as they had little value), while the finders of only 1 of 16 wallets waived (wisely, as the contents were worth 2,000 yen). Of the five phones to which rights were not waived, two were recovered by finders after the waiting period, and of the 15 returned

wallets to which rights were not waived, six were recovered by finders.¹¹ In New York, only one of the wallets delivered to police was recovered by the finder after the statutory period (to the surprise of the police).

Table 2. Results of Property Drops						
	Tokyo		New York		New York Japanese	
	Phones	Cash	Phones	Cash	Phones	Cash
(a) “Lost”	100	20 (? 40000 total)	100	20 (\$400 total)	100	20 (\$400 total)
(b) Returned by Finder	95	17	77	6 intact, 2 empty	84	12
(c) Of (b), # Returned to Police by Finder	88	16	6	2	8	2
(d) Of (c), # Rights Not Waived by Finder	5	15	N/A	N/A	N/A	N/A
(e) Of (d), # Recovered by Finder after Waiting Period	2	6	0	1	0	1

The results of the New York Japanese drop are interesting; return rates were higher than New York, but lower than Tokyo. Several explanations seem plausible. First, perhaps the drop location made returns easier than in the general New York case, as the most logical return location was the store clerk. But note that a few finders returned items to the police nonetheless, a response that does not comply with the law even in the Japanese system (which mandates return to the store), but may be an understandable product of a socially engrained system, discussed in Part III, that encourages returns to police. Second, perhaps all Japanese finders are simply more honest or altruistic than non-Japanese counterparts. While this explanation is certainly possible, note that while the New York Japanese return rates are higher than New York, they are lower than Tokyo, suggesting that Japanese altruism is not monolithic. It may be that Japanese who come to New York are somehow “contaminated” by New York, a finding that could be explained by many different factors, including both formal and informal institutions. I return to these causal questions in Part IV.

Also worth noting is the fact that while no location had return rates as high as Tokyo, no location had abysmal return rates. Given that New York devotes virtually no public resources to the recovery of lost property, the return rates there may not be all that bad, suggesting, perhaps, the Japan is spending considerable resources for what may be a relatively small direct payoff. While Japan may be in fact gaining indirect payoffs in the form of greater societal comfort (which may result in greater economic activity), it may have the luxury of devoting its resources to what seems like a relatively insignificant endeavor because of its low violent crime rates. On the other hand, if police attention in Tokyo to such minutia as lost bicycles is *driving* low rates of violent crime there, policymakers in New York and elsewhere would do well to take note. The available data do not unequivocally support either causal story, and some combination of both may be at work.¹²

PART II. LEGAL CONTOURS

The success of the Japanese system is attributable at least in part to the incentives created by legal institutions. In this Part, I examine the modern system, discuss its historical origins, and compare it with that of the United States.

A. *The Modern Japanese System*

Japan's modern legal system has its origins in the late-nineteenth century Meiji Era (1867-1912). The Meiji legal reforms, based largely on French and German models, included the introduction of formal legal education organs and higher courts, and the establishment of the first Constitution, Criminal Code, Code of Criminal Procedure, Code of Criminal Procedure, and Civil Code. Article 240 of the Civil Code, adopted in 1896 and still in force today, provides that lost articles are the property of the finder if the actual owner does not appear within six months

of the date of public notice of the loss, computed as two weeks after the recovery. The Code then provides that the provision is to be administered “in accordance with other special laws.”

The relevant “special law,” the Law Concerning Lost Articles (Ishitsubutsuho), was adopted in 1899 and is still in force. The Law Concerning Lost Articles provides a concrete set of rules from which to administer lost property. A person who finds lost property must to return it to its owner or submit it to the chief of police within seven days of the find (articles 1, 9). Lost property includes articles left behind by other people and domestic animals that have run away (article 12). If a person finds lost property inside a private establishment (such as a department store, a ship, or inside the turnstiles of a railway), he must submit it to the management of the establishment within 24 hours (article 10).

Importantly, the system applies to all property with no minimum value threshold. According to the Law, a penny found on the ground cannot be pocketed, but must be taken to the police.¹³

The Law establishes a reward system. Upon recovery, an owner “shall pay” the finder a sum of between five and twenty percent of the value of the lost property (article 4). A finder has a civil right to the reward (assuming the find was reported within the seven-day period), but non-payment is not a criminal infraction. If the property is found in a private establishment, one-half of the reward goes to the establishment owner, giving the establishment owner incentive to secure lost property (and less incentive for the individual finder in such establishments). If no one claims the property, and the finder waives his rights to it (or forfeits by (a) not turning in within seven days or (b) being convicted in the past of embezzlement of lost property), it escheats to the state (articles 9, 15).¹⁴

The carrots here, possession after six months and the finders fee, can be significant. Japanese courts, normally not known for judicial activism, have attached some guidelines to aid in its administration. The value of the property is to be determined at the time of its return to the owner (*Sugisaki v. Hayakawa Building Brokers Bank*). The exact fee within the five-to-twenty-percent range depends on the type of property and the surrounding facts, but if the parties cannot agree, the court may determine the appropriate fee. The court generally compromises at ten percent of the value (*Nagaoka v. Okuyama*; *Sato v. Shimizu K.K.*; see also *Wagamatsu* 1983: 302; *Shima* 1986). Some special property deserves special treatment; negotiable notes are valued at one-third to one-half of face value, but non-negotiable notes are valued at only two percent of face value (*Kono v. Tokyo Renga*; *Yoneda v. Tokai Bank*; see also *Kikuchi* 1998; cf. *Ghen v. Rich*).

The carrots co-exist with a potential stick. Article 254 of the modern Criminal Code, adopted in 1907 and still in force today, provides for the crime of embezzlement of a lost article: a person may not wrongfully appropriate a lost article. In perhaps the most famous case in Japan (fame is relative), a group of fisherman in northern Akita prefecture, with the governor's permission, stocked a pond with carp. These were not just ordinary carp, but *nishikigoi*, big colorful carp that sell for \$1,000 or so and eat out of your hand at Japanese gardens. The fishermen stocked their lake with about 1,000 of them. About 60 of them escaped their net, and were subsequently "found" by Ono. Ono knows what he's got, and he knows their source, but he nevertheless sells them for 380 yen per pound, for a total of 20,520 yen (they are supposedly worth 54,000 yen). The court had little problem finding embezzlement, and imposed on Ono a suspended sentence of six months' imprisonment (*State v. Ono*).¹⁵

Drafters apparently imported the criminal law category of “embezzlement of lost articles” from the German system, which made a distinction, subsequently adopted in Japan, between two types of embezzlement: lost-property embezzlement and entrusted-property embezzlement (Satakura 1964: 529). Entrusted-party embezzlement, as in the United States, is the misappropriation of property in custody. Unlike lost-property embezzlement, the property is entrusted to the “finder.” In lost-property embezzlement, there is no such entrustment. In 1999, over 98% of all embezzlement arrests (about 70,000) were for lost-property embezzlement.

A third category of property theft, larceny, is more difficult to distinguish from lost-property embezzlement. Larceny occurs when one deprives another of possession of an object; embezzlement occurs when one wrongfully appropriates an object that belongs to another. The key in distinguishing the two is possession (Takahashi 1987; see also Rose 1985). Japanese courts have held that a camera left on a tour bus for five minutes within 20 meters of the owner remains in the owner’s possession, so taking it would be larceny, not embezzlement (*State v. Hosoda*). A bicycle left out at night less than two meters from one’s home is still the owner’s possession (*State v. Yamamoto*), but if a drunken owner misplaces his bicycle, it is merely lost, so a subsequent taker is guilty only of embezzlement (*State v. Masuda*). Found objects, mail mistakenly delivered, and personal effects left on a train have all been held to constitute lost objects (*State v. Sekiguchi*, *State v. Gochi*, *State v. Boku*).

In short, a finder of lost property in Japan has three choices. First, he may ignore it with no consequence. Second, he may turn in the property to the police or a private substitute. If he does so within seven days, he is entitled either to (a) the property, after six months and fourteen days, or (b) if recovered, a finder’s fee of five to twenty percent. Third, he may keep the property for himself, but if he does so, he may be punished by fine or imprisonment.

B. History

The orderly scheme outlined above was adopted as part of the late Meiji reforms, in which German influence was strong (Haley 1991: 72). But closer analysis reveals a different origin, for as it turns out, these Meiji schemes were not novel, either. A nearly identical regime – never discussed in the secondary literature even in Japanese -- functioned in the Edo Period, Japan’s feudal era (1603-1868). In 1742 the shogunate promulgated the *Kujikata Osadamegaki* (1742)(roughly, “Official Collection of Legal Rules), Japan’s first attempt at a national compilation of pre-existing local laws for shogunate-controlled territories. Although the portion of the *Osadamegaki* (a book commonly called the *Osadamegaki Hyakkajo*, or “Hundred Regulations”) that contains the provisions pertaining to lost property was not for public consumption, the rules on which it was based were longstanding.

Article 60 of the *Osadamegaki* contains three provisions pertaining to lost property. First, the *Osadamegaki* incorporates a 1721 edict that required that a finder submit lost property to authorities within three days. If the owner appears and the property is cash, he must halve it with the finder. If other than cash, the owner must pay the finder an unspecified reward. Second, incorporating a 1738 edict, the *Osadamegaki* states that if the owner does not claim the property in six months, possession is awarded to the finder. Finally, incorporating a customary rule of law with no fixed date, the statute provided that a finder who appropriates the property is to be fined.¹⁶

While it is difficult to find the exact origin of the customary rule that fined those who misappropriate lost property, I was able to find criminal prosecutions from the late seventeenth and early eighteenth century that reflect the rule. Consider Kuemon’s case, decided on July 6,

1728. Kuemon's daughter found a sword sheath on the road. She failed to report it. In fact, she sold it. Kuemon was fined three *kan* (very roughly \$500-\$1000 today)(Tokugawa Kinrei Ko Goshu 1931). The earliest case I was able to find on point was Rizaemon's case of November 22, 1683. Although the details are unclear, Rizaemon apparently appropriated 50 *ryo* (very roughly \$50,000 today) that his employer had lost, and hid it. Unfortunately for Rizaemon, his sister found it, and reported the find to the authorities. It is unclear how the employer initially lost possession of the money, but it was done in such a way that the prosecuted crime was not one of larceny, but one of embezzlement of lost property. The shogunate, perhaps noting the close relation to larceny (which was heavily punished) and the large amount of the loss, sentenced Rizaemon to death (Koji Ruien).

After the end of the Edo period, officials struggled to establish longstanding Civil and Criminal Codes. The Edo period criminal system was replaced in 1871 with the *Shinritsu Koryo* ("The Essence of the New Code") Japan's first national criminal law. Importantly, the drafters of the *Shinritsu Koryo* were scholars of Chinese law, not Western law (the lone Western law scholar on the drafting committee was removed early in the process), and the resulting document strongly reflects the influence of the Chinese *Ming Code* (Tezuka 1984). The *Shinritsu Koryo*, along with its supplementary successor, the 1873 *Kaitei Ritsurei* ("Amended Statutes"), states that a found article must be delivered to the authorities. Property not claimed within 30 days goes to the finder, but if the owner appears, owners and finders share the property equally.¹⁷ A finder who fails to submit the property to authorities shall be punished for embezzlement, but the punishment for embezzling private property shall be one grade less than the punishment for embezzling public property, resulting in fewer beatings with a heavy stick (*Shinritsu Koryo* 1870).

The 1871 system was supplemented in 1876 by the 1876 Lost Article Disposition Order, enacted by the Council of State (*dajokan*)(Naikaku Hokyoku 1876). The 1876 order, enacted as Western, and particularly French, influence was beginning to be seen in the legal system,¹⁸ purported to be merely an administrative ordinance detailing the rules of the *Shinritsu Koryo* system (Kiyoura 1899), but in fact the precise regulations may have altered the incentive structure for some finders. The new system required a finder to deliver the property to officials within five days (article 2; or eight days for animals according to Article 9). It further stated that the property becomes the possession of the finder if the true owner does not appear within one year, and requires a reward of five to twenty percent of the value of the article to be paid to the finder by the owner (article 4).

On final modification occurred to bridge the Edo system with the modern, more Western-influenced system. In 1880, the Council of State passed the first law officially dubbed a “penal code.” The 1880 penal code, which stood for 27 years before the government replaced it with the modern version, altered little of the definition of lost-property embezzlement, but changed the penalty. Now instead of blows from a heavy stick, one who embezzled lost property would receive imprisonment for 11 days to three months as well as a fine of two to twenty yen (Kyukeiho art. 385). The reduction of the penalty, enacted as part of a broader copying of French criminal law, was part of a larger movement to relax the severity of punishment (Ishii 1992: 43-52).

Table 3 details these various changes in the past three centuries in the lost property regime.

Table 3. Historical Development of Lost Property Law				
Period	Edo Period	Early Meiji Period	Middle Meiji Period	Modern
Dates	1603-1867	1870-1876	1876-1896	1896-
Controlling legal authority	Shogunate customary law, <i>Osadamegaki</i> (1742)	<i>Shinritsu Koryo</i> (1871), <i>Kaitei Ritsurei</i> (1873)	Lost Article Disposition Order (1876), Old Penal Code (1880)	Civil Code (1896), Law Concerning Lost Articles (1899), Penal Code (1907)
Period to submit find	3 days	Unspecified	5 days	7 days (late submission merely forfeits finder's rights)
Finders' fee	Cash = 50% Object = "reward"	50%	5% to 20%	5% to 20%
Period after which possession to finder	6 months	30 days	1 year	6 months plus 14 days
Punishment for lost-property embezzlement	<i>Osadamegaki</i> specifies fine; case law indicates range from fine to death penalty	Beating with a heavy stick	Imprisonment for 11 days to 3 months, fine of 2 to 20 yen	Up to 1 year imprisonment, fine up to 100,000 yen

In summary, although various foreign influences can be seen in presentation, penalties, and the like, the early Meiji schemes are virtually identical to the 1899 law that is still in force today, and the basic structure is similar to that of the Edo period. Thus, depending on how one counts, the system has been in existence for at least 125 years, and perhaps in excess of 300.

C. Prosecution and Enforcement

Needless to say, few modern cases of embezzlement of lost property are punished by death. But cases are indeed reported, and some are indeed prosecuted.

1. *Trivial cases.* The Code of Criminal Procedure permits police to dispose of criminal cases when prosecutors authorize them to do so (article 246). Prosecutors do so by sending

guidelines to police. Although guidelines differ by district, the standards and operations reported by David Johnson (2002: 55) in his in-depth study of Japanese prosecutors are typical:

In the early 1990s deputy chief prosecutors instructed police to drop theft cases on three conditions: if the value of the stolen goods was less than 10,000 yen (about \$85); if the offender had a fixed residence (this standard disqualifies transients, many of whom are foreigners); and if the offender repented. . . . [P]rosecutors know that police stretch the standards (often by relaxing the 10,000 yen cap in order to fit stolen bicycles and mopeds under the ceiling), though they insist worrisome abuses are rare and deviations from the guidelines seldom depart from their own definition of a “minor” case.

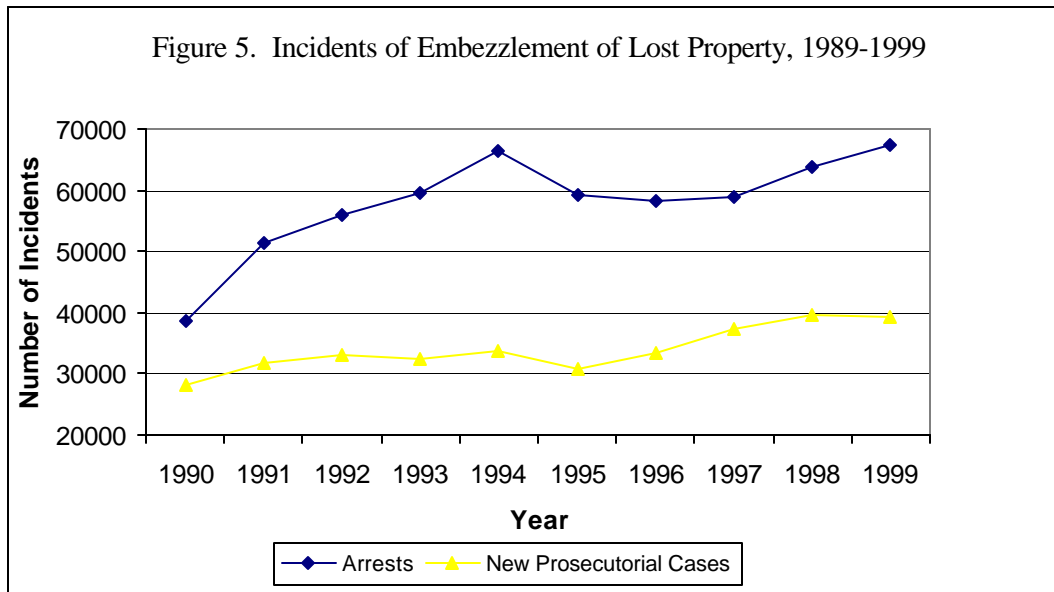
Still, even these “trivial” cases can be time-consuming and distressful for those accused of the crime. In one incident that I found, Tanaka (a pseudonym) had authorized two friends to use two bicycles that apparently had been abandoned for over a year in the lot next to the business that he owned. The lot was owned by Tanaka’s landlord, who had described the bicycles as abandoned. Abandoned or not, Tanaka should have either (a) ignored the bicycles or (b) if he wanted possessory rights, reported the bicycles to the police and collected them after the requisite time periods had passed.

In a later routine check by police, the bicycles, as identified by their registration numbers, turned up stolen. Tanaka was implicated, and the police called him in for questioning. Although he immediately admitted the facts of the incident, he spent a total of 12 hours with police on three separate occasions, and missed two days of work. When he was unable to make an appointment with police on 24 hours’ notice, he was threatened with formal arrest. The police eventually relented, but only after taking mug shots and fingerprinting. “The whole process,” Tanaka explained to me, “didn’t change my morals; it just pissed me off. But it was so much of an ordeal that I’ll never do anything like that again.”

I interviewed a total of fifteen persons accused of lost-property embezzlement but whose cases were disposed of by the police because of low stakes.¹⁹ All fifteen had stories similar to

Tanaka's; the shortest time for questioning was six hours. In one case, the accused was asked to bring in his wife, who took time off from work to hear her husband's apology to the police. In three others, the suspects were asked to sign confessions that painted their actions in what they felt to be a much more sinister light than the circumstances warranted. In still another case, the accused, a Japanese sociology professor who can best be described as "meek" and had spent considerable time in Europe, was "taunted" by police with questions of whether he thought his cosmopolitan experiences placed him "above *Japanese* law." All reported substantial time commitments and a mix of anger and humiliation.

These stories were confirmed by interviews with six police officers from four different police stations. Police told me that they detained even trivial lost-property embezzlement suspects like Tanaka for lengthy periods, and that they did so for two principal reasons. First, they want to get "all the facts" of each case. Police stated that in many cases, trivial lost-property embezzlement is the beginning of a life of property crime. Only by getting all the facts and discussing the incident at length with the suspect can they learn to what extent the suspect represents a continuing threat. Second, police want to let the suspect know the "seriousness" of the crime. "If we can't punish them," one officer stated, "we can at least let them know that what they've done is serious, and that we won't be so nice the next time."

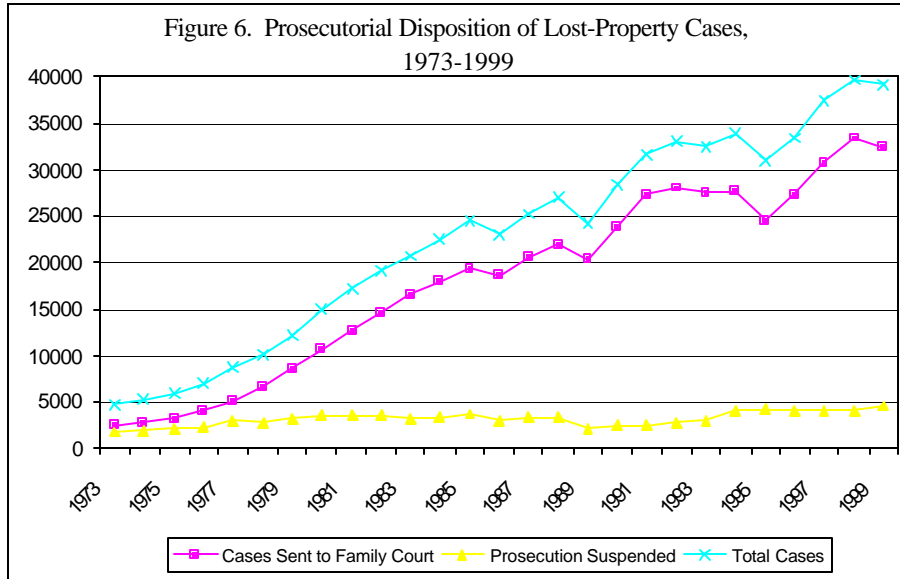


2. *Arrests.* For non-trivial cases, the pipeline begins with arrests. Consider first the annual numbers of arrests and cases sent by police to prosecutors, as shown in Figure 5 (arrests from Homusho, various years; prosecutions from Homusho, Kensatsu, various years).

The figure indicates a not insubstantial number of arrests each year. The number of cases sent to prosecutors post-arrest is approximately equal to the larceny rate, and more than twenty times the murder rate. Of course, this chart only tells us the number of persons who meet thresholds for arrest and forwarding to prosecutors – prosecution itself is another matter.

3. *Prosecution: Juveniles.* Consider next the prosecution figures. Figure 6 details the total number of cases and the two major categories of disposition for lost-property cases during the period 1973-1999 (Homusho, Kensatsu, various years).

The figure shows that more than three-quarters of all cases are sent by prosecutors to family court – in other words, more than three-fourths of the offenders in lost-property embezzlement crimes disposed of by prosecutors are minors under the age of twenty. Teenagers



are most likely to commit the crime; the distribution of juveniles disposed of by family courts in lost-property embezzlement cases in 1990-1999 is roughly 28% for juveniles under 16, 41% for juveniles ages 16-17, and 29% for juveniles ages 18-19 (Saiko Saibansho Jimusokyoku, various years).

The distribution of crime among adults and minors is significant, and implies several possibilities. Perhaps minors are treated more leniently than adults: adults might be charged with larceny (with penalties of up to ten years), while juveniles are merely charged with lost-property embezzlement (with penalties of up to one year), which would distort the statistics. While this explanation is certainly plausible, arrest rates tentatively suggest that it may be incomplete. Although adults do indeed comprise less than 25% of the lost-property embezzlement pool, they only account for 43% of the larceny pool.²⁰ Moreover, larceny is the only crime for which juveniles are arrested more than lost-property embezzlement. Larceny

accounted for 65.8% of all juvenile arrests in 1998 (Homusho 1999), suggesting that larceny remains an option for juveniles as well.

My interviews with police and offenders suggest a different explanation – juveniles actually do commit more lost-property embezzlement than adults. The 1999 White Paper on Crime (Homusho 1999) states that more than half of lost-property embezzlement arrests of juveniles are over misappropriated bicycles. The most common scenario, according to both police and suspect interviews, is the taking of bicycles from train stations. When the ownership of the bicycle is clear, larceny is generally charged; if not, embezzlement. But bicycles are not the only cases that occur. Police, prosecutors, and juveniles to whom I spoke detailed a long list of embezzlement scenarios not listed in any statistical survey: a cornucopia of failures to return or report cash, wallets, shopping bags full of purchases, mobile phones, purses, electronic games, jewelry, skis and other sporting equipment, and so on. Although I have no systematic method of matching loss reports with state enforcement, police whom I interviewed estimated roughly that about half to three-fourths of lost-property embezzlements could be so linked.

A juvenile sent to family court for any crime faces one of five dispositions: no trial (the equivalent of dropping charges for an adult), no decision (equivalent to acquittal), counseling, a decision to protect through probation or institutional reform (equivalent to guilty), and referral back to the prosecutor's office based on the seriousness of the crime or the fact that the offender has legally become an adult subsequent to his arrest (Goto 1997; Shonenho). The last option, potentially the most serious, is used very sparingly in lost-property cases. Of the annual average 27,497 cases decided in the ten-year period beginning 1989, only about 17 annually were sent back to prosecutors, and fewer than two annually because of their "seriousness." Counseling is also rarely used; only five annually fell in this category. The primary disposition, used in over

90% of the cases, is no trial, the equivalent to dropping of charges. About four percent receive no decision, the equivalent of not guilty. About one percent are found guilty, and of those, an annual average of about 232 are given probation, five are sent to reform school, and twenty-one are sent to a juvenile correctional institution.

4. *Prosecution: Adults.* If arrest figures accurately reflect frequency, about 25% of lost-property embezzlement is committed by adults, and 18% of cases are settled by suspension of prosecution, a disposition by which prosecutors release suspects without declaring a lack of guilt or insufficiency of evidence (West 1992). During the period 1973-1998, prosecutors filed charges nationally against an average of 233 adult each year, including a high of 400 in 1985 and a low of 129 in 1993 (Homusho, Kensatsu, various years). From 1989 to 1998, 92 cases of adult lost-property embezzlement were decided in district court, and 342 in summary court, for a total of 434 cases. No cases resulted in not-guilty verdicts (eight summary court verdicts are listed as “other,” including transfer of venue and the like; all other cases are guilty)(Saiko Saibansho Jimusokyoku, various years). Over ninety percent of the cases resulted in jail sentences (90/92 in district court, 303/342 in summary court), and about half of those sentences were suspended. Fines were imposed in two district court cases and 29 summary court cases.

Prosecutors whom I interviewed suggested that many of the cases in which adult defendants are criminally punished involved cases in which the lost-property embezzlement was not the only crime committed. To check, I turned to the *Hanrei Taikei* CD-Rom database, which contains 40,754 criminal cases. A search found 74 unique cases of potential lost-property embezzlement. Of these 74 cases, 18 involved additional serious crimes. Murder is common; the relevant issue in that situation is whether the murder victim retains “possession” of the property after his or her death for purposes of distinguishing between larceny and embezzlement

(Shoda 1959). Courts have found, for instance, that when a defendant immediately takes a victim's watch after killing her, the crime is larceny (*State v. Kawaguchi*), but when a defendant kills his lover and takes her cash and bankbook five to ten days after her death, the crime is lost-property embezzlement (*State v. [no party name given]* 1985).

In the remaining 56 cases, serious crimes were not involved. Thirty-six of the cases required the court to decide between larceny and embezzlement; for instance, when a defendant watched a victim "lose" his wallet for less than 2 minutes at a space of 15 meters at Tokyo Station while purchasing a bullet train ticket, the court found larceny, not embezzlement. About half of this group of potential lost-property embezzlement cases thus are simply larceny cases. The remaining twenty cases are "pure" lost-property embezzlement cases. Of these, only a few involve simple lost-property facts, such as the finding of criminal liability for persons who take lost objects from trains, including rolls of cloth, blankets, and raincoats (*State v. Kato*, *State v. [no party name given]* 1927; *State v. [no party name given]* 1958). The more frequent reported cases do not involve property that is "lost" in the traditional sense of the word, such as the removing of money from an automobile accident victim in one's care four to eight hours after the accident (*State v. Matsuo*).

D. Comparison to the United States

Compared to the Japanese system, the U.S. lost-property legal regime is markedly more complex and less predictable.

1. *Doctrine.* The doctrine of finders' law in the United States is conceptually difficult, making contradictory statements and arbitrary distinctions that are difficult for courts, not to mention laypersons, to follow and apply. When the facts are simple, there is little problem. In

the paradigmatic case of *Armory v. Delamirie* (1722) for instance, a chimney-sweep's boy found a jewel while cleaning a chimney. The court simply found that he was entitled "to keep it against all but the rightful owner." But as R.H. Helmholz (1987: 1231) has noted, "When the facts become more tangled . . ., the limitations of the hornbook rule appear." Helmholz finds that courts disallow possession in cases of wrongdoing on the part of the finder; a hint of dishonesty may cause the property right to transfer to a more honest finder (*Niederlehner v. Weatherly*; *Willsmore v. Township of Osceola*).

Part of the complexity lies in the distinction made in the common law between lost property and property that is merely mislaid. Absent special circumstances, lost property goes to the locus finder, but mislaid property goes to the true owner (Hemholz 1983: 314; *Simmons v. Safir*). Many commentators have found the lost-mislaid distinction artificial (Comment, 1939: 235). Again Helmholz (1983: 316-17) is instructive:

Commentators have pointed out that normally the only objective evidence of the owner's state of mind is the place where the object was found, and it has repeatedly been shown that this is an uncertain guide. One can as easily lose an item on a bench as he can mislay it there. The distinction invites arbitrary decision. Even if it could be consistently applied, the distinction depends upon a largely fictional difference in mental attitude on the part of the true owner The distinction is built on sand.

The Japanese embezzlement law, in its reliance on temporal and physical proximity to determine possession for purposes of distinguishing from larceny, makes a similarly arbitrary distinction. But in the Japanese case, the difference is only between one crime or another, not in criminality, and certainly not in ultimate possession. It is only after one misappropriates in Japan that the distinction appears. By contrast, in the United States, unpredictability and inconsistency plague finders' law from the moment an object is found – the exact moment at which we should be most eager to influence behavior and control moral hazard problems.

To be sure, Japanese law is not unproblematic. As Tanaka's case suggests, not all cases are easy. Differences in Japanese rules for public finds versus private finds, if they are known at all to finders, may also create skewed incentives. But the basic formulation of the rule – lost property may not be misappropriated – is relatively simple.

2. *Non-uniformity.* Ambiguity and arbitrariness aside, finders' law in the United States, unlike the unified Japanese system, is a state-by-state hodgepodge of common law, modern statutes, and haphazard local regulations. In a reaction to the difficulties of the common law doctrine, over one-third of the states have adopted lost property statutes (Moorman 1997: 717 & n. 8). But these statutes differ widely in scope, operation, and remedy. Oregon (Or. Rev. Stat. § 98.025), for instance, compensates finders for costs incurred in finding, giving of notice, and care and custody of the lost object. Wisconsin (Wis. Stat. Ann. §170.09) awards the same plus “a reasonable compensation to the finder for his trouble.” Montana (Mont. Code. Ann. §§ 70-5-203 to -206) requires publication of the find by appearance before the justice of the peace, swearing of an affidavit, appraisal, recordation, notice, and advertisement. New York (Personal Property Law §§ 252-254) requires a finder to deliver any item with a value over \$20 to the police within ten days, and awards the property to the finder after a period of three months to three years, depending on value.²¹ Iowa (Iowa Code Ann. §644.7), which has had a lost-property statute since 1839, requires a finder to report the find to the county auditor within five days. It also awards a ten-percent finders' fee for “the taking up of boats and other vessels, and for finding lost goods, money, bank notes, and other things,” but like Edo Period Japan, provides that vessels, rafts, logs, or lumber become the property of the county (Iowa Code Ann. §§ 644.1, 644.4, 644.13).

As if this patchwork were not sufficiently diverse, courts may apply the state law in ways that make the underlying statute confusing. The Iowa court (4-3) in *Benjamin v. Lindner Aviation, Inc.* (1995), following the common-law distinction between lost and mislaid property, held that the Iowa lost-property statute did not apply to mislaid property, despite the fact that the Iowa statute apparently was enacted “almost a full year before any United States court even recognized the common-law classifications of found property” (Moorman 1997: 730). The Second Circuit Court of Appeals, interpreting the New York lost-property statute, similarly held that the law did not apply to common-law “mislaid” property, a finding that “baffled” the dissent in part because of “the fact that the distinction has been statutorily abolished in New York” (*Saritejdiam v. Excess*; see also *Barr & Katz* 1959: 312).

The point here is not that U.S. law is an unworkable hodgepodge. Diversity is an integral part of the U.S. federal system, and each individual system might be efficiently tailored. I also have little doubt that if Montanans do not know their state’s finders law, their ignorance is not primarily due to the fact that New York’s law differs. The point is merely that in Japan, there in fact is only one law and one system. Uniformity may lead to lower general levels of statutory ignorance.

3. *Enforcement.* It is difficult to determine the enforcement and prosecution patterns of lost property cases in the United States. Misappropriation of lost property is a widely recognized criminal offense. But because misappropriation of lost property is considered a form of larceny and not a separate form of embezzlement (Model Penal Code 223.5), statistics are unavailable. A leading criminal law treatise suggests that under most schemes, prosecution is difficult because at the time of the finding, a finder must (1) intend to steal the property and (2) either know the identity of the owner or have reason to believe that he can learn the identity (LaFave &

Scott 712: 1986). Modern statutory schemes such as that of the Model Penal Code that are adopted in most states release from liability finders who initially steal but later change their minds and attempt to locate owners (LaFave & Scott 1986: 712 & n. 45).

In a Lexis computer search of legal cases, I uncovered about sixty cases of larceny of lost property, about half of which were over fifty years old. None of them concerned minor incidents such as theft of bicycles or cameras; most had much larger stakes (*People v. Colon*). Nor did I find any cases in which the appropriation accompanied a violent crime as is the Japanese pattern. Perhaps these cases are plea-bargained, or perhaps the decisions simply are not reported; I harbor no illusions that Lexis is a representative set of all disputes. My conversations with defense lawyers, police, and prosecutors suggest that arrests, not to mention prosecutions, for misappropriation of lost property is extremely rare. As a New York City Assistant District Attorney to whom I spoke explained succinctly, “The Japanese are [expletive] insane. I’ve never heard of that sort of thing. We don’t have the resources to go after people who find lost [stuff].”

PART III. LOST AND FOUND IN PRACTICE

The legal regime that governs lost property is an integral part of the Japanese lost-and-found system. Equally as important is the everyday process by which police and other officials administer the legal rules.

When one finds lost property in Japan, the first place to visit is often the local police box, or *koban*. Much heralded as an integral part of community policing, *koban*, and their rural equivalent *chuzai*sho, are small police posts manned by as few as one or two officers. In 1999, there were 6,600 *koban* and 8,100 *chuzai*sho (Keisatsucho 1999; see generally Ames 1981: 17-55, which I will discuss collectively as *koban*. In Tokyo, *koban* are widespread; there are over

98 police stations and koban for every 100 square kilometers of space. In outlying areas, the distance between koban is greater, but the average in Japan is still about eighteen for every 100 square kilometers, meaning that on average, one is never more than three or four miles away from a koban. Because many koban are centrally located near areas that attract crowds (train stations, department stores, parks, and so on), in the majority of lost-property cases, a koban is likely to be in walking distance from one's find.

Koban perform a wide variety of tasks, most of which are not directly related to crime control, such as giving directions and counseling local residents (Suzuki & Kobayashi 1998). Accordingly, most residents are familiar with their local system; a recent survey found that 94.6% knew where their koban is, and 13.8% knew the name of someone there (Suzuki et al 1992).

Lost-and-found is an integral function of the koban. A late 1980s survey found that 35 percent of all people who visit a koban do so in connection with lost property (Bayley 1991: 95). When 3,000 people (2,200 responding) were asked in a 1997 survey (Sorifu 1997) what tasks they thought were most important for the koban, 71.8% chose the disposition of lost property, second only to neighborhood "patrol" at 82.6%. Of the 636 polled persons who had visited a koban in the last two to three years, 40.7% stated that they did so in relation to lost property (in second place, with 18.6%, was the asking of directions). In a more recent survey of 2,211 voters conducted in 1998 (Asahi Shinbun 1998), when asked what they would do if they misplaced 10,000 yen (about \$100) on the street, 38% responded that they would report it to the police, while 60% said that they would give up. Although quitters outnumber reporters by a wide margin, it is significant that nearly four of ten persons say that they would report lost cash *even with no identifiable or traceable marks*.

The details of lost-and-found practice – down to the size of the forms – are meticulously laid out in the law and in various companion ordinances and cabinet orders (Ishitsubutsuho Shikorei; Ishitsubutsuho Shiko Kisoku, Sorijurei; Ishitsubutsu Toriatsukai Kisoku). The orders provide, first, that upon delivering the object to the police, the finder completes a Finder’s Report (*shutokutodoke*). The Finder’s Report details the nature of the lost object, the amount of any cash found, the place of the find, and contact information about the finder. The finder is then given a Finder’s Receipt (*shutokumono azukarisho*) that instructs the finder of her rights as a finder and where to claim the property.

In the process of filing a Finder’s Report, finders are also given the option of waiving their rights to the property and to the finder’s fee. Determining exactly how often this waiver occurs is extraordinarily difficult and no formal record of waivers is kept. At one koban that I visited, I examined 542 Finder’s Reports. Ninety-five percent of reports of cash did not waive rights; only in small change cases were rights waived. In sixty percent of the reports of non-cash lost objects, the finder waived rights. My interviews with police stationed at koban further suggest that finders only waive rights for the trivial (small change, umbrellas), the old, the embarrassing (I was often told tales of found items with various sexual connotations), and items that they may already own (mobile phones). Police suggestion may also affect waiver rates. Some officers encourage waiver for trivial objects (“sign here, you don’t need such a thing”), while others discourage waiver by requesting that finders complete the bare minimum of information (“name, address, description, sign here, sign here, we’ll do the rest”).²²

For the next fourteen days, the police must attempt to locate the owner and post brief notice of the find. The semantics here matter – the police *must* attempt to locate the owner. Article 1 of the Law Concerning Lost Property imposes a duty on police to attempt to look for

the owner. If reasonable measures are not taken, the owner has a claim against the prefecture (Kokkai Baishoho; Ishitsubutsuho Kenkyukai 1998: 208-09).²³ Notices must be posted at police stations and koban either through brief bulletin board notices or in a log of lost items, the form of which is dictated by ordinance and lists only the item and the time and place of the find. Particularly valuable items are also listed in newspapers. If police are not successful in locating the owner in two weeks, the property is usually transferred to a central location, such as the Tokyo Metropolitan Lost and Found Center. The property is held at the central location for the shorter of six months or the locating of the owner.

If the owner of the lost property is located and wants his property returned, he may retrieve it at the koban quickly, or later at the central holding facility. If police have incurred any costs in storage, the police submit to the owner a request for reimbursement. When the owner retrieves his property, the finder is called. Within one month, the finder may request the five to twenty percent finders' fee from the owner. My interviews suggest that parties almost always settle at ten percent of the object's value, the percentage often mandated by Japanese courts when disputes arise. I was unable to locate any case in which an owner refused to pay, perhaps because the legal provisions are spelled out clearly both on the finder's receipt and on the receipt received by the owner at the time that his property is returned. If the parties disagreed as to the value or the percentage of the fee, their only remedy is to resort to the courts.

If the owner of the property is not located within six months and fourteen days, the finder may retrieve the object for a period of two months from the central holding facility. Although most high-value items are retrieved, many items of lesser value are not, despite the non-waiver of rights by the finder. Many factors could account for the non-retrieval: finders may simply

forget of their find, might misplace the finder's receipt, or simply may be unable to retrieve the object during the specified time. Items not retrieved are sold at public auction or thrown away.

The procedure that an owner follows if she loses an object is in some ways the mirror image of the finder's process. The owner visits the koban and files a Loss Report (*ishitsubutsutodoke*) detailing the loss. If the item is found, the owner is contacted and pays the finders' fee; if not, he is usually out of luck. If an item is found and the owner contacted before the owner can file a Loss Report, he simply visits the koban after the contact and files a Loss Report on that occasion. Police have various procedures (from notebooks to computers) in place to match owners with property, the details of which are too varied to warrant detailed discussion.

Interestingly, in no official literature have I seen any appeal to altruistic or norm-based considerations in the return of lost property. Many reasons might explain why this might be so; perhaps it is superfluous, perhaps it is ineffective, or perhaps officials predict more compliance with appeal to legal rules rather than moral ones. Whatever the case, koban police and related officials take extra care to advertise the potential economic rewards of submitting lost property. The annual *Keisatsu Hakusho* (White Paper on Police) often lists the year's biggest winners in the lost-and-found lottery, and the popular press follows up on the stories. The Tokyo police issue a brochure that details the lost-and-found process. The cartoon-like story begins with a boy who finds a lost bag in the street and ends with the boy's reward – the bag itself. One implication is that in this case, at least, virtue need not be its own reward.

In his extensive study of Japanese police, David Bayley (1991: 26) observed a similar but perhaps more ambiguous phenomenon:

Around parks [children] often find coins that have dropped out of pockets of people who have sat on the benches. If the children turn them in, as well as other lost items, many koban reward them with a small printed card filled in with the child's name, the date, and the particular deed performed. Officers often make a

show of receiving lost coins and putting them in a lost-and-found box. Then they give the child a reward of equal amount, which in fact comes from their own pockets. The lesson is that lost money belongs to the loser but virtue has a tangible reward.

The printed “reward” cards discussed by Bayley may indicate a sort of moral approval, but the cash, as Bayley notes, may carry a different message. In any event, the ubiquity of koban, and the lack of a statutory minimum value for lost property, allows the inculcation of the norms codified in the statute at an early age. In turn, the law is reinforced by the underlying inculcated norms.

The use of koban is thus closely tied to social norms, and the success of koban may be directly dependent on such norms. But the koban are fundamentally a legal institution, a formally devised unit of the state. Accordingly, in the remainder of this Article, I primarily treat koban as a formal institutional variable in the same class as legal rules.

PART IV. TOWARD A CAUSAL STORY

Part II outlined the law, and Part III showed how it works in practice. In this Part, I use experimental evidence to attempt to unravel the relation of legal and social influences on lost-and-found practice. The question might be phrased as, “Even in the absence of a law that efficiently allocates (through clear rules) and enforces (through the koban system and crime crackdowns) possessory rights to lost property, might Japan nevertheless have a successful lost-and-found practice because of internalized social norms or high levels of altruism?” While this what-if sort of question is essentially unanswerable, various empirical techniques can point toward one set of factors as more likely causes than others. First, I briefly examine the available general literature from a variety of disciplines on altruism and honesty. Next, I report the results

of a survey of found property in Japan and compare it with a similar test conducted in the United States. Finally, I report the results of follow-up interviews to the lost-property experiment discussed in Part I. The evidence, taken in total, suggests that legal incentives play a large role in the efficacy of Japan's lost-and-found system, but are not a complete explanation.

A. *Evidence on Honesty and Altruism*

All other things being equal, we might expect honest, fair, and altruistic people who generally obey the law to report lost property more often than their opposites. If Japanese people are more honest and/or altruistic (two separate concepts that I discuss together here), we would expect more recovery of lost property in Japan. But the available evidence from sociology, psychology, economics, and anthropology is ambiguous at best. Consider the following four studies, the first three of which are comparative:

- From sociology, in his comparative study of trust, Toshio Yamagishi (1998) surveyed 928 university students and nearly 500 randomly sampled persons in Japan and the United States. Yamagishi asked several questions directly related to honesty. In response to the statement "I keep in mind the spirit of fair play in every situation," Yamagishi found statistically significant higher levels of honesty in American men in both the university and random samples, and no statistically significant differences among American and Japanese women. In response to the more direct statement "I do not want to be dishonest in any situation," Americans rated significantly higher in virtually every subsample. From these questions and others, Yamagishi constructed an index of honesty and fairness in which Americans rated significantly higher than Japanese in every category.²⁴
- Psychological studies (Kawakami & Takai-Kawakami 1995) examine honesty and helping behavior in children. Two Japanese researchers attempted to measure deception in Japanese and American 3- to 6-year olds by hiding a toy and telling a child not to peek. Most children peek, and most children lie about peeking. But the experiments revealed no significant differences among U.S. and Japanese children in regards to deception.
- In an economic study of altruism, Charles Yuji Horioka and three co-authors (2000) analyzed the "Comparative Survey of Savings in Japan and the United States," a survey conducted in 1996 by the Japanese government. Using a variety of data on

saving and bequest motives in the two countries, they found the evidence to be “remarkably consistent” with the theory that “the selfish life cycle model,” in which “individuals are selfish and do not care about their children or about anyone else,” is “the dominant model of household behavior in both countries but that it is far more applicable in Japan than it is in the U.S.”²⁵

- From anthropology, in another study on helping behavior in adults and children, Takie Sugiyama Lebra (1976) administered a thematic apperception test in which she asked approximately 200 Japanese adults and high school seniors to finish the phrase “if you are kind to others . . .” The two most popular categories of responses were “autistic satisfaction” such as “You will feel better” or “your feelings will be enriched” (34.3% for adults, 34.1% for high-schoolers) and “reciprocal return in other forms” such as “You will be rewarded” (30.3% for adults, 31.9% for high-schoolers). But among male high-school students, the reward was the most popular answer (35.6%).

I do not mean to suggest here that Japan somehow revels in dishonesty, or that altruistic behavior is any less prevalent in Japan than elsewhere. I also do not find the above evidence particularly convincing in support of the point that honesty is somehow lacking in Japan. Nor do I even claim that the evidence on honesty, altruism, and social norms comprises the entire spectrum of Japanese society and culture; cultural differences, if they exist, may lie elsewhere.²⁶ I merely note here that after searching the literature for data that might shed light on the ethical model that may be most relevant to lost property in Japan, the above studies seem to constitute some of the best available empirical evidence on the topic, and their results are far from conclusive. If they suggest anything in this context, it is that at least in comparison to the United States, the Japanese propensity for returning lost property is not due largely to more widespread or deeply rooted norms of honest behavior.

Still, there may be potential problems in applying these studies directly to the lost-property context. Although honesty and fairness may play a role in some decisions of whether to report lost property, other concerns (the business of one’s schedule, for instance) may be important as well. It is also unclear whether these studies of largely interpersonal honesty

measure the same sort of factors that comprise the sort of societal helping behavior that characterizes lost-and-found. Accordingly, I conduct two new studies to more directly examine the lost-and-found context.

B. Survey

In 1939, Arvin Donner (1940) surveyed 2,188 elementary and secondary school students in Iowa and Texas regarding their knowledge and opinions regarding finders law and their reactions to various lost property hypotheticals. She found, first, that eighty-six percent of the students' judgments on the hypotheticals were roughly in line with existing case law. But she also found (1940: 294):

that students do not possess the statute information regarding what to do in cases of lost and found property. None of the 2188 students tested could give the state statute regarding lost and found property, and seventy-eight percent of their responses to questions dealing with the state statute concerning lost and found property were answered, "Don't Know," or their responses were gross inaccuracies.

Donner's study raises many questions. What does "give the state statute," for instance, mean? But Donner's sample choice, at least, is intriguing. Note that one of the jurisdictions tested, and in fact the source of two-thirds of the students in the sample, was Iowa. As discussed above, Iowa has since 1839 had a statutory scheme that entitles a finder to ten percent of the value of her find. The timing is also interesting; just five years before Donner's survey, in a case that accounts for eleven of the thirteen references in the Iowa Code Annotated, the Iowa Supreme Court (*Flood v. City Nat. Bank*) decided the constitutionality of the provision and declared that it served laudable public policy goals. If there is any U.S. jurisdiction at any point in time in which knowing the law could be particularly advantageous, or perhaps in which we

might expect people to know the law, it might be Iowa in 1939. Yet none of the students in Donner's survey knew the law. I would not expect the results of a more recent survey to differ considerably.

For comparison, with the help of assistants, I conducted a simple survey regarding lost property of 615 ninth-graders in Japan. The written survey contained four open-ended scenario-type questions. The instructions stated that the test was one of legal knowledge. The primary questions and summarized responses were as follows:

1. *A finds a wallet on the sidewalk with 30,000 yen inside, and takes it to the police. B, who lost the wallet the previous day, goes to the police and claims the wallet. The police give B the wallet. Does A have a legal right to collect a reward from B? If so, how much?* 497 students (80%) correctly responded that A has a legal right to a reward. An additional 30 students incorrectly answered that A has no *legal* right to the reward, but still should receive one. Of the 497 who answered correctly, 410 responded with award amounts that fell in the correct range of 5 to 20 percent of 30,000 yen. Most (339) stated that the reward would be 10% or 3,000 yen.

2. *A takes the wallet in question 1 to the police. The person who lost the wallet never recovers it. What happens to the wallet and the money inside?* In one formulation or another, 510 (83%) students correctly stated that the finder has a right to the property. The most common other answer was that the police take the property.

3. *After finding the wallet in question 1, A keeps it. Is this a crime?* 552 students, or about 90%, correctly stated that keeping the wallet is a crime.

4. *A sees the wallet in question 1, and in fact sees money sticking out of the top, but he ignores it and keeps walking. Is this a crime?* 332 students, or 54%, correctly stated that ignoring the wallet is not a crime.

The survey data suggest two primary points. First, Japanese students seem to have a high degree of knowledge of lost property law; or, alternatively, lost property law might coincide with norms,²⁷ and students have knowledge of those norms. The origins of this knowledge appear to be dual; home, as discussed above through koban visits, and school. As for school, lost-property law *per se* is not part of the Japanese classroom curriculum; teachers clearly are not reading the statute in class. But the Japanese elementary education system's holistic focus "on children's long-term internalization of values" (Lewis 1995: 212) may lead to tacit knowledge of the rules, or perhaps to an inculcation of the norms that underlie lost-property institutions, whether or not students can "give the statute."

A second point worth noting from the survey data is that when students erred, they generally erred on the side that would facilitate return of lost items. In response to question 4, nearly half of the students answered incorrectly that ignoring the wallet is a crime. Although the response is incorrect, if such opinions are widespread in the population, they might lead to a high level of recovered lost property.

C. *Interviews*

The above data presented above and in Part I suggest that (a) Japanese people know finders law and (b) measurable differences in lost property recovery can be seen among New Yorkers, Tokyoites, and Japanese expatriates in New York. But the data do not necessarily show a linkage between (a) and (b); Japanese lost property recovery rates might be higher not because

of the law, legal institutions, or enforcement, but because of social norms or altruism. To explore these causal factors, I turn to interviews.

I was able to interview 38 persons from the Tokyo experiment, 22 persons from the New York experiment, and 10 persons from the New York Japanese experiment. These numbers alone say something about the lost-and-found process. The number is relatively high for Tokyo, as finders are requested to fill out a found property report by the police that lists contact information. The number is perhaps higher than one might expect in New York, as most persons who returned the property contacted me by phone instead of using the police or a merchant as an intermediary. The number is relatively low for New York Japanese, as most finders simply returned property to the store clerk and left no additional information. Of course, in all cases, more interviews are better, but I simply was unable to interview any additional persons in the dataset.

Through these interviews, I attempted to ascertain why persons returned lost property. Three primary groups of answers were given in all three locations. The categories have some overlap, but some basic distinctions can nevertheless be made. First, some explanations focused explicitly on formal institution-based rewards. I recorded these answers, such as “If the owner doesn’t claim it, I have a right to it” or “I want the reward money” as institutional explanations. Importantly, for an answer to be coded as “institutional,” a returnee need not be able to recite the statute or know where to find it. A finder need not even be aware that the rule is a creature of the state, though I attempted to determine more precisely finders’ knowledge on this point.

These institutional explanations are relatively easy to distinguish from the second and third categories of answers, which were more difficult to separate. The second category includes explanations that center around social norms and civic duties that may be informally enforced,

but are unregulated by formal institutions. I recorded these answers, such as “it’s what you’re supposed to do” or “everybody does that” as social norms explanations.

Finally, some explanations were based in notions of altruism and similar internal other-regarding preferences that had no obvious link either to formally enforced institutions or informally enforced social norms. While some of these internal factors may in fact be internalized social norms (McAdams 1997; Stout 2001), I simplified the inquiry by categorizing answers like “Honesty is the best policy” as altruistic and other-regarding explanations.

Crucially, very few interviewees gave only one type of explanation. I found that if I listened long enough, interviewees tended to offer two, and sometimes all three, explanations. Human motivation is complex, and while interviews may offer more clues than simple survey questions on such complex matters, and the results are still not unequivocal. But among the three test sites, as Table 4 shows, the mix of responses differed enough to suggest real differences among the locations.

Table 4. Explanations for Returns of Lost Property			
	Tokyo	New York	New York Japanese
Institutions	32 (84%)	1 (.5%)	8 (80%)
Social Norms	20 (53%)	7 (32%)	4 (40%)
Altruism/Other-Regarding	7 (18%)	20 (91%)	4 (40%)
Total Number of Interviews (interviewees gave multiple explanations)	38	22	10

When asked why they returned the property, Tokyo returners typically offered one of two explanations. First, many saw returning lost property as a civic duty, and explained that such values had been inculcated in them since childhood from such events as koban visits.²⁸ While these explanations touch on institutions, and I regard koban themselves as an institutional variable, because of the focus on civic duty and values, I recorded such responses as “social norms” explanations in the absence of more explicit formal institutional mentions.

Second, many Tokyo interviewees, often in addition to the social norms explanations, volunteered more explicit institutional carrot-and-stick explanations. Seven interviewees cited the stick, noting that not turning in the property was a punishable form of theft. All 38 Tokyo finders knew of the reward system, and ten referred explicitly to the reward as “one-tenth” (*ichiwari*). To be sure, most finders did not know the exact fee mandated or other statutory details. But all knew of the system’s existence, and only two finders seemed unsure as to whether the reward system were created by formal institutions (one thought it was a local police custom, another thought it to be merely urban legend).

It was in New York, not Tokyo, than the reasons for returning lost property were more likely to be stated in altruistic terms.²⁹ Interviewees stressed that “I’m an honest person,” that “I couldn’t live with myself if I kept your money,” and “I just thought about how [inconvenienced] I’d be if I lost my phone.” I classified these explanations as “altruistic,” and while I recognize that they might also be “social norms,” they certainly are not “institutional.” One vocal male interviewee put it more succinctly. After he gave me several individual-honesty explanations, I tried leading him by saying “Oh come on. I’m sure a lot of people return stuff just because they want a reward, right?” He responded, “You braniacs might think so, but you don’t know human nature. Not everybody does everything for money. I called you because it’s the right thing to do.” Only a handful of New York interviewees focused on social norms, and only one mentioned the possibility of reward – and he knew of no legal basis for it (none exists).

The results of the New York Japanese experiment interviewees, like those of the experiment itself, fell somewhere in between those of Tokyo and New York, though the small sample size yields less-than-conclusive results. Interviewees focused largely on institutions, but seemed to give greater weight to altruistic factors than the Tokyo interviewees. Few spoke of

social norms, perhaps because they did not feel familiar with New York norms. Interestingly, however, while these interviewees seemed confident in their institutional assessments, their knowledge of New York institutions often was simply incorrect. Many New York Japanese interviewees incorrectly assumed an institutional reward structure similar to that of Japan. Some were surprised to hear that New York has no koban system (almost all New York Japanese made returns to the store clerk).

From this finder interview evidence, I conclude that formal institutions are a central, but certainly not the only, factor in the recovery of lost property. In Tokyo, where finders law and related institutions are good and recovery rates are high, interviewees focused on institutions. Among New York Japanese, where recovery rates were good but not as good as Tokyo, interviewees continued to focus on institutions despite the fact that they got the institutions wrong. And in the general New York setting, in which finders law institutions are poor and recovery rates are low, the few New Yorkers who returned the property did so for reasons largely independent of institutions. The New York setting in the comparative context further suggests that while altruism gets results, altruism alone may not provide the same benefits as altruism plus institutions.³⁰

To get an additional reference point, I supplemented these post-experiment interviews with police interviews in Japan. In the course of researching this Article, I spoke to forty police officers at thirty koban. Each of these officers is engaged in lost-property “practice” of some sort on a daily basis. Again officers gave multiple explanations. Like the post-experiment interviewees, most of these officers – 37 – suggested that people return lost property because of institutional concerns. Thirty-two suggested social norms, and twenty suggested altruistic explanations.

The data in this section warrant at least two caveats. First, as with all cross-cultural surveys, there is always the possibility that seemingly similar questions were understood differently by different people in different societies. Though I attempted to mitigate this by vetting the survey with experts and amateurs in both countries, differences may arise nonetheless.

Second, although I categorized explanations for analytical clarity, I make no claim that law can be separated conceptually from underlying societal and other informal institutions. The relation between law and society is unmistakably complex. In the lost property context, a primary reason for the Japanese regime's consistency over time may be that it reflects established informal practices that might function effectively even in the absence of formal institutions. On the other hand, the causation may run the other way; as the law became more embedded in society (Aoki 2001, Granovetter 1985), it standardized nascent norms, or perhaps even created them from scratch. Or perhaps the relation is better described as one of mutual reinforcement, as suggested in the koban discussion above.

While the issue is complex, the data presented above may at least offer insights into individual perceptions and conceptualizations of their behavior on this issue at a static point in time. The individuals in my interviews appear to have had little problem categorizing "law" separately from other explanations. In Tokyo, everyone knew the rules, almost everyone knew those rules were formal, and most said that they relied on them. In New York, virtually no one knew the rules, and almost no one said that they relied on them.

With these caveats in mind, the evidence presented above thus suggests that finders are motivated by a complex interaction of altruistic and legal factors. The available evidence also suggests that conceptions of correct behavior are strongly intertwined with the legal environment into which one is socialized. Whether the specific lost property institutions that comprise

Japanese legal environment are a product of such conceptions, a cause, or both, they play a central role in explaining the efficiency of the Japanese system.

CONCLUSION

In this Article, I have attempted to show that much of the strength of the Japanese lost-and-found system lies in the civil and criminal legal system that creates clear and longstanding carrots and sticks for the return and non-return of lost property, as well as in the corresponding legal institutions that dictate police duties and create the koban enforcement system. The enforcement of nascent juvenile crime may also be an important variable. Other factors, including altruistic factors and social norms, are both important and interrelated, but through various methods – statutory exposition, data analysis, surveys, experiments, and interviews – I have suggested that legal institutions, and socialization of those institutions over time, play a dominant role in explaining both the system’s success and differences between Japan and the United States.

Still, the Japanese system has drawbacks. First and perhaps foremost, it may be expensive. If Japan is able to justify such administrative expense because it has very low violent crime rates, it is unlikely that many other countries can copy the Japanese model. But if Japan has very low crime rates in part *because* it devotes administrative resources to such factors as the koban system and zero-tolerance enforcement of low-level crime, further investigation may be in order.

Second, even if one wanted to mimic the Japanese system, it may not easily be exported. The Japanese experience suggests that for the system to work, it must rely not only on the correct tweaking of civil and criminal incentives, but also on well-oiled administration systems and an

educated populace. Modification of institutions in a different historical and social context may not achieve as efficient a model as that which has apparently functioned efficiently for many generations.

Although we cannot sort out with absolute precision the relative causal impact of various variables or even be certain that some variables are causes, it is reasonable to postulate that the behavior of finders in Japan provides in microcosm a good and clear example of the many factors that working together make for social control in society and illustrate how law, norms, institutional structures, and economic incentives can mutually reinforce the message that each sends. In Japan, the law commands the return of lost property, it punishes those who fail to return it, and it guarantees rewards to those who do. Police are close by to accept lost objects. Recognized, centuries-old routines exist for turning in lost property and protecting finders' interests, children are taught in visits to koban the norm of returning lost objects, and they are socialized by praise and rewards when, as youngsters, they turn in small sums. Adults are rewarded twice; once for turning in lost property, and once when their lost property is found, perhaps thereby creating greater allegiance to formal and informal lost-property institutions. The result is that many people return valuable property, even in situations in which the chance they would be found out if they kept it is relatively low. If only the mix of law and social control norms meshed as well when more significant matters were at stake.

APPENDIX: EXPERIMENT DETAILS

For objects, I dropped in each location 100 mobile phones. I bought the phones at a lost-and-found auction for a mere pittance, and while they did not connect to a service, they did have working batteries and could be turned on. On each phone I placed a sticker that listed a name and phone mail number.

For cash, I dropped 20 wallets in each location. I obtained 60 wallets from a lost-and-found auction and inserted in each a small amount of cash and an identification card. In Japan,

each wallet contained two 1,000 yen bills. At current exchange rates, 2,000 yen is equal to \$16, but arguably feels like less to many people in Japan; 2,000 yen at the time of this writing buys admission to the movies and a small soda but no popcorn. In the United States, each wallet contained two ten-dollar bills to reach the New York \$20 statutory minimum.³¹

For both phones and cash, I left little extraneous information other than an identifying number (1 to 100 for phones, 1 to 20 for wallets), a name, and a phone number. For drops directed at Japanese finders, I adopted a Japanese pseudonym; for American finders, an English one. As in Milgram's tests, it would have been interesting to have determined how finders might react to additional information (such as communist party membership cards, pictures of children, evidence of wealth, and so on), but I attempted to keep the tests relatively simple. All objects contained only a name and a phone number answered by a pre-recorded phonemail message in the relevant language.

I dropped phones and wallets at three locations. The first two locations were mixed business-shopping districts of Tokyo (Shinjuku) and New York (Midtown Manhattan). With less than perfect results to be sure, I attempted to pick locations that were as similar as possible. Each location contained upscale shopping and office buildings. Each location was approximately 100 meters from a police station. Both locations had approximately the same amount of traffic flow (both cars and people). Both locations were within a short walk from subway stations, movie theaters, McDonald's restaurants, and sports gyms. In both places, with the help of assistants, I left 25 phones and 5 wallets per day for four days.³²

The third location was designed to test possible cross-cultural differences. In New York, I dropped objects in front of a grocery store (with the owner's permission) that caters almost exclusively to a Japanese clientele. Although non-Japanese shoppers frequent the area as well, about ninety percent of the shoppers that I observed at midday were Japanese. Most of the store's employees, and all of the cashiers (to whom a person would like return a lost object) are Japanese, which should diminish any language or potential cross-cultural barriers to return.

I adopted a relatively comprehensive experimental approach. In Tokyo, after dropping the objects, I first waited to be contacted by finders. When contacted directly by the finder, I thanked the finder, told her to keep the find as her reward, and interviewed her. When contacted by the police, if the finder waived rights, I contacted the finder, thanked her, and interviewed her. If the finder did not waive rights, I allowed the property to sit for the requisite six months and two weeks after the find (after which period the finder has a right to the property), and then for the statutory two months to allow the finder to recover the property. While waiting this length of time meant that I forfeited my rights to the property, it also meant that I could see how often finders actually recovered their finds, and interview them about their recovery.

In New York, when contacted by the finder, I told the finder to keep the property, and interviewed her. When contacted by someone other than the finder, I attempted to locate the finder. I waited four months after the find to determine how many finders would recover the property.

I also attempted to locate the phones and wallets proactively. For the general New York and Tokyo locations, I called ten local merchants and police (if not contacted that week) and inquired about the wallets and phones twice a month for six months. In Tokyo, I received full cooperation from the merchants. In New York, the degree of cooperation was usually dependent on who answered the phone. Some people were helpful; others were not terribly so. Still, I have no reason to believe that any person attempted to hide information from me. For the New York Japanese location, I called two neighboring merchants twice in the six-month period.

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¹ This Article is the first discussion of Japanese finders' law in English, and is the first historical discussion of the scheme in any language. Even in Japan, there is little on the subject other than a handful of case commentaries and practical guides for police who administer the scheme; the only article remotely on point that I was able to uncover is a three-page essay (Otsuka: 1993) comparing Japanese and U.S. newspaper clippings and court cases on lost property. While the lack of scholarship is unsurprising, it is unfortunate. An examination of the legal rules governing the treatment of lost property can aid in understanding both the organizational structure of society and what values that society considers important.

² Perhaps a logical provision considering potential search costs, but see Quint 1997: 6 ("The Torah requires every Jew, man or woman, who sees an object lost by a fellow Jew in a public place, to stop, to pick up the object, to care for it until it is restored to the owner, and to restore it to its rightful owner.")

³ This elaborate regime does not come without cost. Although there are no comprehensive data on the cost of running Japan's lost-and-found regime, it is certainly is not a trivial amount. Therein may lie a causal puzzle: it may be that only countries with low violent crime rates like Japan can afford to devote police resources to activities like lost-and-found, or alternatively, police control of such minutia and the accompanying good will that it builds help explain *why* Japan has low violent crime rates. While I suspect that the causation in fact works both ways, this Article does not attempt to answer the question definitively; I raise the point here only to note that even if the Japanese system is successful, its success may not necessarily warrant universal adoption.

⁴ The percentages do not add up to 100; remaining items are sold at auction or thrown away.

⁵ The Tokyo Metropolitan Police also keep data on twelve categories of found objects for the period 1989-2001. The top three finds are in the above table, but the time-series data show some interesting trends. First, electronics finds have grown astronomically in the past few years, largely due to the increase in portable communications. Although electronics accounted for only about 10,000 finds annually during before 1995, in 1995 the number was 22,000, and by 1998, 77,248 finds were reported annually. Second, losses of big-finders'-fee items, such as stock certificates are not rare, averaging about 10,000 finds per year. See <http://www.keishicho.metro.tokyo.jp/toukei/kaikei/kaikei.htm>

⁶ Special thanks to Cathy Brooks for her assistance in handling the NYPD.

⁷ Like Milgram, investigators in this study sent intentionally misdirected emails to see if they were forwarded to the appropriate party.

⁸ Technically, the finder's three-month period begins at the time notice is delivered to the loser of the property. In practice, the period is three months from the find.

⁹ This attempt at a cross-cultural test is by no means perfect. For instance, the results might be affected by the relative wealth and education of Japanese expatriates, many of whom work in highly paid jobs in the financial industry.

¹⁰ Although details are not available, these results are comparable to those of a previous popular survey that found a 70% take rate. See *supra* TAN.

¹¹ Presumably the other nine non-waived wallets were not recovered because the finders forgot about them or decided that the trip to pick them up cost more than 2,000 yen.

¹² While New York and Tokyo are similar, the national data may be more significantly affected by geography. Japan is a relatively small, densely populated country, with a more or less centrally administrated law enforcement agency, and with resources devoted to koban for many purposes, among which is lost property management. As such, the system would appear to be able to operate at lower cost than a similar system might in the U.S., with its automobile culture, wide-open spaces, and patchwork law enforcement system.

¹³ One commentator (Orth 2001: 395-96) has criticized the New York statutory minimum of \$20 as “too low.”

¹⁴ With the exception of the provisions directly related to property found on private premises, the same provisions apply to treasure trove. *Ishitsubutsuho* art. 13.

¹⁵ Many cases are not so clear-cut. A recent Japanese law-related variety television program (*Gy oretsu* 2002) asked its panel of four attorney experts whether a crime were committed when a hypothetical suspect found a large quantity of cash, attempted to report it but changed his mind at the last minute in front of the police station, took it home, and eventually returned it ten days after the find. The panel split 2-2; the suspect’s two supporters argued that he lacked *mens rea* to keep the find, and should be rewarded for doing the right thing, while the other two argued that his change of heart at the police station evidenced *mens rea*.

¹⁶ A 1784 official handbill reprinted in the *Koji Ruiien*, or *Encyclopedia of Ancient Matters* (Hanigamirui 1896-1914) seemingly modifies the law (though perhaps for a limited time; the evidence is unclear) by specifying that ships and bamboo lumber that float into harbors are property of the state to be sold at public auction, no matter who finds them.

¹⁷ For a similar provision in Chinese law, see Staunton 1810: 161-62. The Roman law was also similar, at least on the point of equitable division. See Helmholz 1983: 315.

¹⁸ Work on the Civil Code began in 1870. The first draft of the Civil Code was presented in 1878, and contained a basic version of the current Article 240, providing only that a separate law would cover lost property. See Hoshino 1943: 26, 36; Mukai & Toshitani 1967. Debates about the use of Western sources, particularly a Napoleonic Code based on the French, had begun by 1869. See Tezuka 1944: 1.

¹⁹ These fifteen interviews were by no means random. I was referred to eight suspects directly by police; two such suspects were in the police station when I was making an inquiry. Two other suspects were persons with whom I was already acquainted before this project. I learned of an additional five, including two juveniles, from other acquaintances.

²⁰ 85,473 of 152,379 cases were sent by prosecutors to family court. See Homusho, *Kensatsu* 1999: 78-79.

²¹ Before the passage of the law, New York courts held that a finder of lost property did not even have the right to a posted reward. *Rheinbauer v. DeKrieges*.

²² Police in the Tokyo koban in the Part I experiment tended to fall into the former category, which may have resulted in a high number of waivers. They may have been especially encouraging (subconsciously or otherwise) if they suspected that the objects were part of my experiment, in which case the experiment may not accurately reflect everyday practice.

²³ I know of no such cases, but Japanese police tell me that they are aware of the potential threat. On the increase in lost property returned based on information access, see Goldstein et al., 1978.

²⁴ Yamagishi (1998: 106) is careful to note that the difference does not necessarily imply an “immoral” Japan so much as it simply shows that honesty does not necessarily characterize a moral person in Japan.

²⁵ Another economic study (Roth et al. 1991) found differences in bargaining behavior among experiment participants in Israel, Japan, the United States, and Yugoslavia. One of the biggest differences was in the amount of the bargaining proposal; Japanese and Israeli bargainers offered less than bargainers in other countries, an outcome

that might be evidence of a lack of altruism and that is explained by the authors as the product of “cultural differences.”

²⁶ In their study of Japanese justice, for instance, Hamilton and Sanders (1992) find differences in the actor’s concept of self and individual responsibility.

²⁷ Tentatively suggesting that Japanese law may not differ from the rewards that might be negotiated in a competitive lost and found market. See Landes & Posner 1978.

²⁸ I was lectured many times about how “we Japanese” are taught at an early age to return lost objects to the koban. I initially thought that such lectures might be a result of my foreignness, but when I had a Japanese assistant make some interview calls, the results were invariably the same; the context of the lecture merely changed to “as you know, we Japanese . . .”

²⁹ These findings arguably differ from those of a recent Japanese study of altruism in junior and senior high school students. Hiroshi Matsui, Yoshimasa Nakasato, and Takayuki Ishii (1998) surveyed 6,134 students in the U.S., China, South Korea, Turkey, and Japan. They gave students fact patterns such as “On your way to school, a person falls down in front of you,” “When you are sitting on a crowded bus, an older person stands next to you,” and “While mountain climbing, you are asked to share your water.” With the exception of Chinese subjects (Chinese males tended to help only acquaintances), the researchers found no statistically significant differences in altruistic behavior. But they found that Japanese respondents differed in their *motivation* for altruistic behavior; while Japanese students helped because of “emotional” reasons (“It’s sad to see a person fall down,” “A person who falls is in pain”), the rest of the world helped because of “duty” reasons (“I have a duty to help people in trouble,” “Helping others is good”).

By contrast, the Japanese interviewees in my study were more likely to give “duty” reasons (“it’s the right thing to do”), while Americans gave reasons that might be described, using the Japanese researchers’ terminology, as a mix of “emotional” (“I thought how much trouble you’d be in if you couldn’t get to your phone”) and “duty” (“it’s just the right thing to do”). The difference in Japanese responses may lie in the nature of the test (multiple choice survey versus open-ended interview) or the subjects (students versus mostly adults), but I suspect that a likely explanation lies in the particular nature of the lost-property situation for Japanese test subjects. The Japanese interviewees’ tendency to offer duty-based explanations in lost property cases may simply be a result of the endogeneity of the reward system, the koban, and related institutions. Those institutions thus lead to duty-based explanations, while the lack of institutionally created duties in the survey’s fact patterns (people falling down, older persons standing on the bus, people asking for water) lead to more emotional responses.

³⁰ Margaret Blair and Lynn Stout (2001: 1764-75) summarize the social dilemma literature as suggesting that other-regarding behavior is influenced by three principal variables: personality, cost, and social context. In the lost-property context, the Japanese system seems to depend heavily on lowering cost through the reward system, reducing the marginal cost of altruism, which may decrease the importance of personality and social context. In New York, because cost is not reduced, finders may rely more heavily on personality and/or structuring social context. Recent studies further suggest that rewarding behavior may “crowd out” altruism. See Frey & Jegen 2000.

³¹ Finders are unlikely to know the law, and in my experience, neither are New York police officers, but I dropped the statutory minimum to avoid any subsequent legal confusion. Ideally, I would have liked to have dropped a range of amounts, but cash is expensive.

³² In both locations, I informed local merchants and neighborhood police of my project in advance. In Tokyo, the area that I eventually chose for the experiment was my third choice; police at the first location said that they recognized their legal duties to aid in returning lost property, but could not promise full cooperation because my property was not “lost.” In the area that I eventually chose, the police initially resisted the idea, but a senior officer finally supported the project when I announced that this would be a wonderful opportunity to compare the efficiency of the Japanese system with that of New York. Police agreed to cooperate if I did not identify the area specifically and if I filled out the required lost property forms (one each for each drop, or 120).

In New York, police were relatively indifferent. I was told “Hey, do whatever you want,” “You might get some back if you’re lucky,” and “I wouldn’t hold my breath.” With the help of an administrator, I persuaded the precinct to process the paperwork that my project would generate if, again, I would not name the precinct. While the

Japanese reluctance to reveal location was based on a lack of official permission, the New York reluctance appears to have been based in a fear that I would unfairly portray the system as ineffectual.

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