
Losers: Recovering Lost Property in Japan and the United States

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This article examines the lost property regime of Japan, which has one of the most impressive reputations in the world for returning lost property to its rightful owner, and compares it with that of the United States. Folk legend attributes Japanese lost-and-found success to honesty and other-regarding preferences. In this article, I focus on another possible explanation: legal institutions that efficiently and predictably allocate and enforce possessory rights. These recognized, centuries-old rules mesh with norms, institutional structures, and economic incentives to reinforce mutually the message that each sends and yields more lost-property recovery than altruism alone.

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, and it may be a trivial matter in the grand institutional scheme. Yet two factors

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suggest that finders' law warrants further attention. First, it is in part this very rationale of triviality that underlies this study. While much legal scholarship examines high-stakes issues, little focuses on lower-stakes, everyday concerns that resonate with the life experiences of ordinary people. I attempt to analyze the relation between law and the everyday, 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.

Second, while finders' law may be trivial in terms of nation-building, the way that a society deals with lost property can be central to quality of life. Overprotection may lead to excessive state expense to be borne by taxpayers. Underprotection may subject potential losers to daily fear, excessive care and security measures, and underproductive uses of property as they attempt to counteract potential theft and trespassing. For quality of life, it is critical that the state get these "trivial" institutions "right."¹

Although several prominent scholars (Helmholz 1983; Levmore 1986; Posner 2000:556) have recently explored finders' law, and related Good Samaritan issues have received thoughtful attention (Dagan 1999; Stout 2001), these issues are 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 60 years ago. In the first (Riesman 1939), published in 1939 in 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.

¹ Importantly, there may be more than one "right" set of institutions, as (among other possibilities) multiple lost-property practice equilibria may exist. See Basu and Weibull (2002).

The focus of this comparative study is one of the world's more successful lost property markets—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 Chōsa 2000). 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 cash and 32% of noncash items are recovered by the original owner (Keisatsuchō 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* 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” (Magnier 1999:A1).

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 in large part 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 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:²

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 the *kōban* (police box) institution and the establishment of a legal duty on police to search for owners. The ubiquity of the *kōban* helps ingrain 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 Levmore's (1986) finders' law vocabulary, 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, he or she must pay the finder a fee of 5 to 20% 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 [Minpō] 1896, 1898; *Ishitsubutsuhō* 1899).

Japanese criminal law also provides a stick. Although Japanese law contains no penalties for nonrescue (a finder is free to look the other way from lost property³), a finder who misappropriates the property for his or her own has committed embezzlement and is subject to a fine of up to 100,000 yen and imprisonment of up to one year. I have found that while prosecution of adult offenders for the ordinary appropriation of lost property is rare, embezzlement of lost

² 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 (thanks to Norio Higuchi for pointing me to this source). While the lack of scholarship is unsurprising, it is unfortunate, as 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.

³ Perhaps a logical provision considering potential search costs, but not a universal one. The Jewish rule differs, perhaps because of a focus on stray animals. See 22 Deut.:1-3 ("If you see your brother's ox or sheep straying, do not ignore it but be sure to take it back to him . . . Do the same if you find your brother's donkey or his cloak or anything he loses. Do not ignore it.") (New International Version); see also Quint (1997): "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" (6).

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 is often 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 *kōban* system and carrot-and-stick incentives may be the most important in influencing individual behavior, and in the absence of either the system would likely 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.

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 Milgram's famous lost-letter technique (Milgram, Mann, & Harter 1965; see also Stern & Farber 1997) 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 see how much I recovered. I present the results of those drops 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 sparse social science 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.

How Much Lost and Found?

Japan maintains some of the most extensive and detailed data on lost-and-found property in the world. In this part, I examine

Table 1. Lost Property in Tokyo and Aomori, 2001

	Tokyo	Aomori
Population	11,830,000	1,478,000
Kōban 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: Kōban from Sōmucho Tōkeikyoku (2000:188). Tokyo data from Tokyo Metropolitan Police, <http://www.keishicho.metro.tokyo.jp/toukei/kaikei/kaikei.htm> (2002). Aomori data from Aomori Prefectural Police, <http://www.police.pref.aomori.jp/keimubu/otoshimonon.htm> (2001).

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.

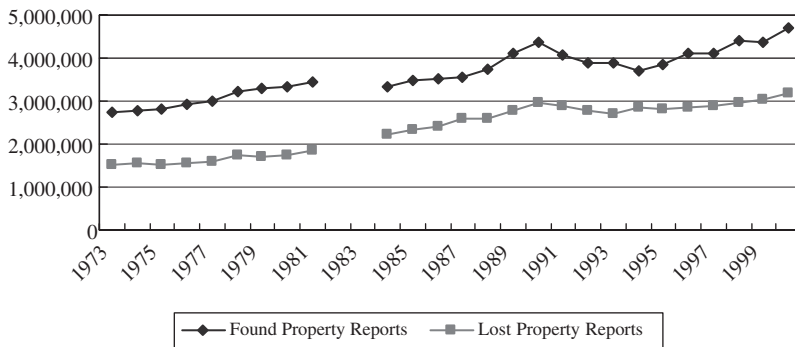
Official Japanese Data

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

The urban/rural comparison reveals both interesting similarities and interesting differences. The percentages 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 are 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

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

Figure 1. Lost and Found Reports, 1973–2000

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 Finders' 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 listed in the Loss Reports and Finders' Reports.

These two charts suggest some interesting trends. First, note that reported cash finds as a percentage of reported cash losses have decreased significantly over the 25-year period (from nearly half in the mid-1970s to less than one-third in 1998). Again, multiple phenomena may account for the change; among other

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 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 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>.

Figure 2. Lost and Found Cash, 1973–2000

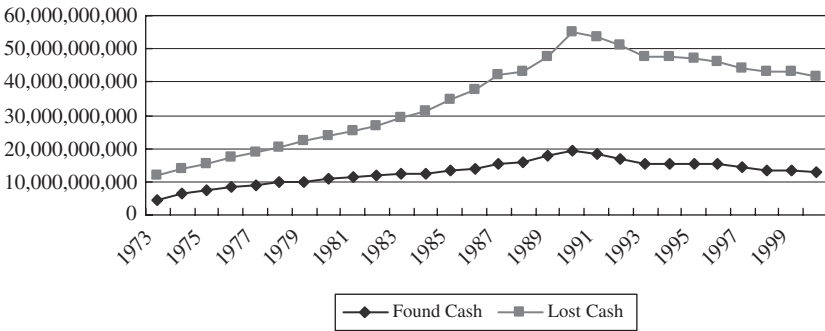
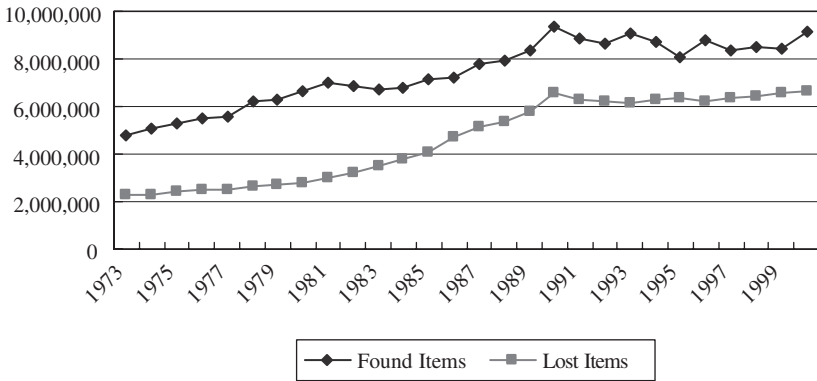


Figure 3. Lost and Found Items, 1973–2000

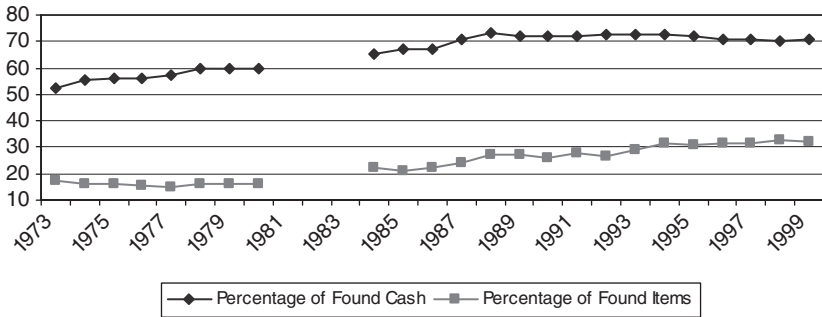


things, finders might be less honest than they were in the past, or losers might be reporting more cash losses.

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 more than 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 (1) cash lost reports and cash found reports and (2) object lost reports and object found reports. The correlation for cash was a highly significant 0.858 ($p = 0.000$). The correlation for objects was only

Figure 4. Found Items Returned to Owner, 1973–2000



0.283 ($p = 0.160$), not even marginally significant. While the data may be imperfect, these results may indicate that the system is more effective in reuniting losers with cash than noncash items, 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 25 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.

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 maintains such data. Accordingly, I turned 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 lost, the nature of places frequented, and conceptions of what objects people should turn in to authorities. Even the nature of objects carried differs—people in Japan tend to use cash, while people in the United States tend to use cards (Mann 2002)—and the data do not compensate for such factors.

Those caveats stated, the best (but imperfect) comparison in the United States 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 2003). 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 (NYPD) 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 (Gonzalez 2002).⁶

I also tried Los Angeles. With its low reliance on public transportation, Los Angeles 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 the regional commuter rail system 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 20% 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 was 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 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 obtain official figures from major Japanese railways, I was told unofficially that at Shinjuku Station in Tokyo, at which the average day sees 3 million passengers, according to East Japan Railway (and unlike Grand Central, it is a station on many lines, and not simply a terminal), the owner recovers about 80% of *lost* items. If that figure is accurate, it

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

is significantly higher than that of Grand Central, despite much higher passenger volume.⁷

In short, Japan generally appears to do a much better job of gathering data relevant to lost-and-found property than does 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 functions well in comparison with the U.S. system.

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 Milgram (Milgram, Mann, & Harter 1965). To avoid the pitfalls inherent in the survey process, Milgram 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? (Milgram 1977:296)

In Milgram’s first study, conducted in 1963, he found that while more than 70% of finders returned letters addressed to “Medical Research Associates” or to an individual, only 25% returned letters addressed to Friends of the Communist Party or Friends of the Nazi Party (Milgram 1977:296–300). Subsequent

⁷ The Shinjuku data, like those of Grand Central, may be suspect. Shinjuku Station sits on the very busy 29-station Yamanote line that encircles central Tokyo in an infinite loop, on which 400,000 objects are lost annually (“Eki Shanai no Wasuremono Soku Kensaku” 2002). A unified computer system for locating objects on that line did not even enter a testing phase until May 2002 (before then, workers phoned and faxed from station to station to find objects), shortly after Shinjuku personnel reported the 80% figure to me. No data are available for the Yamanote line, but for rough comparison, I obtained data for the 38 stations of JR Hokkaido Railway Company on the Hakodate line and in the Sapporo suburbs. In those 38 stations, the lost item return rate rose from 26 to 32% in the week that a computer system was introduced (“Eki Shanai no Wasuremono Soku Kensaku” 2002), a figure much lower than that reported in Shinjuku. Although the Hokkaido figure may be lower than Shinjuku simply because lost-and-found at 38 stations is more difficult to manage than at one station, there is little reason why the 29-station, computer-less Yamanote line on which Shinjuku sits should significantly outperform the computer-aided Hokkaido lines, and little reason why Shinjuku should significantly outperform the rest of the Yamanote line. Accordingly, I suspect that the Shinjuku figure is an anomaly, is exaggerated, or employs a denominator that somehow limits the field to Shinjuku losses, but I was unable to obtain further details.

studies, as well as modifications such as the “lost e-mail method,” found similar results (Stern & Farber 1997).⁸

Expanding on Milgram’s technique, other researchers studied 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, they found that 31.2% returned the dollar, 39.6% ignored it, and 29.2% took it (Penner et al. 1976). Similar popular studies replicated these sorts of tests, finding, for instance, that 70% of wallets left on the street were taken, despite the fact that the wallets contained the owner’s address (Penner et al. 1976:294). These results surely are discouraging to losers. Even when surveyed, a situation in which respondents can easily lie, 21% 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 to 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—rest 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 or she realizes that “the owner *does not reimburse* [emphasis added] 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 in 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 (New York Personal Property Law § 252 2003). The statutory waiting period in New York for a find of less than \$100 is 3 months, and the

⁸ Like Milgram, investigators in this study sent intentionally misdirected e-mails to see if they were forwarded to the appropriate party.

finder has a right to the property for 10 days after the expiration of that period (New York Personal Property Law § 253 2003).⁹ 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 100 mobile phones in each location. 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 2,000-yen bills. In the United States, each wallet contained two \$10 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 also provide information about returns of more everyday finds.

I expected to find higher return rates for property than for 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). I designed the third location 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 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.¹⁰

The results of the drops were 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).¹¹ The differences are statistically significant (phones, $\chi^2(2) = 13.1569$, $p < 0.01$; wallets, $\chi^2(2) = 12.48$, $p < 0.01$). The same distribution was true for the ratio of objects returned via the police; 88 phones and

⁹ 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 often three months from the find.

¹⁰ 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.

¹¹ Although details are not available, these results are comparable to those of a previous popular survey that found a 70% take rate. See Penner et al. 1976:294.

Table 2. Results of Property Drops

	Tokyo		New York		New York Japanese	
	Phones	Cash	Phones	Cash	Phones	Cash
(a) "Lost"	100	20 (¥40,000 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), Number Returned to Police by Finder	88	16	6	2	8	2
(d) Of (c), Number of Rights Not Waived by Finder	5	15	N/A	N/A	N/A	N/A
(e) Of (d), Number Recovered by Finder After Waiting Period	2	6	0	1	0	1

16 wallets were given to the police in Tokyo even though 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 even though 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 each). 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.¹² 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).

The results of the New York Japanese drop were 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 ingrained legal system, discussed in Part III, that encourages returns to police. Second, perhaps all

¹² Presumably, the other nine nonwaived 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.

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 were higher than the New York rates, they were lower than the Tokyo rates, 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, that 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. However, if police attention in Tokyo to such minutiae 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.¹³

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.

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,

¹³ 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 administered law enforcement agency, and with resources devoted to *kōban* 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 United States, with its automobile culture, wide-open spaces, and patchwork law enforcement system.

Code of Criminal Procedure, and Civil Code. Article 240 of the Civil Code, adopted in 1896 and still in force, 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” (Civil Code [Minpō] 1896, 1898).

The relevant “special law,” the Law Concerning Lost Articles (Ishitsubutsuhō 1899), was adopted in 1899 and remains 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 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 or she 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.¹⁴

The law establishes a reward system. Upon recovery, an owner “shall pay” the finder a sum of between 5 and 20% 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 nonpayment 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 or her rights to it (or forfeits by [1] not turning in within seven days, or [2] being convicted in the past of embezzlement of lost property), then it becomes the property of the state (Articles 9, 15).¹⁵

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* 1928). The exact fee within the 5–20% range depends on the type of property and the surrounding facts, but if the parties

¹⁴ One commentator has criticized the New York statutory minimum of \$20 as “too low” (Orth 2001:395–96).

¹⁵ With the exception of the provisions directly related to property found on private premises, the same provisions apply to treasure trove (Article 13).

cannot agree, the court may determine the appropriate fee. The court generally compromises at 10% of the value (*Nagaoka v. Okuyama* 1922; *Satō v. Shimizu K.K.* 1965; 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 2% of face value (*Kōno v. Tokyo Renga* 1991; *Yōneda v. Tōkai Bank* 1982; see also Kikuchi 1998; cf. *Ghen v. Rich* 1881).

The carrots coexist with a potential stick. Article 254 of the modern Japanese Criminal Code, adopted in 1907 and still in force today, creates the crime of embezzlement of a lost article: a person may not wrongfully appropriate a lost article (Keihō [Criminal Code] 1907). In perhaps the best-known case in Japan, a group of fishermen 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 knew what he'd gotten, and he knew their source, but he nevertheless sold them for 380 yen per pound, for a total of 20,520 yen (they were supposedly worth 54,000 yen at the time). The court had little problem finding embezzlement and imposed on Ono a suspended sentence of six months' imprisonment (*State v. Ono* 1981).¹⁶

Drafters of the Criminal Code 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 with lost-property embezzlement, the property is entrusted to the "finder." In lost-property embezzlement, there is no such entrustment. In 1999, more than 98% of all embezzlement arrests in Japan (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; embezzle-

¹⁶ Many cases are not so clear-cut. A recent Japanese law-related variety television program ("Gyōretsu no Dekiru Hōritsu Sōdansho" 2002) asked its panel of four attorney experts whether a crime was 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 10 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.

ment 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* 1957). Bicycles are especially problematic and do not automatically invoke a theft charge. A bicycle left out at night less than two meters from one's home is still the owner's possession, and thus the charge is theft (*State v. Yamamoto* 1955), but if a drunken owner misplaces his bicycle, it is merely lost, so a subsequent taker is guilty only of embezzlement (*State v. Masuda* 1961).¹⁷ Found objects, mail mistakenly delivered, and personal effects left on a train have all been held to constitute lost objects (*State v. Sekiguchi* 1948; *State v. Gochi* 1917; *State v. Boku* 1950).¹⁸

In short, finders of lost property in Japan have three choices. First, they can ignore it with no consequence. Second, finders can turn in the property to the police or a private substitute. If they do so within seven days, they are entitled to either (1) the property, after six months and fourteen days, or (2) if recovered, a finders' fee of 5 to 20%. Third, finders may keep the property, but if they do so, they may be punished by fine or imprisonment.

History

The orderly scheme outlined above was adopted as part of the late Meiji reforms, in which German influence was strong (Haley 1991:72). Some facial similarity to the German scheme exists. But closer analysis reveals a different, earlier 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 Hyakkajō*, or *Hundred Regulations*) that contains the provisions pertaining to

¹⁷ In practice, a “found” bicycle is tagged by police with a notice that if the bicycle is not moved by a certain date it will be removed. If the owner does not move it, police remove it and hold it for the six-month period. If not claimed, it goes to the initial finder who first reported it to police, or, if there is no such person, to auction. Without such a practice and an occasional campaign during which bicycles are removed, many train stations would be deluged with abandoned bicycles.

¹⁸ The greater discretion said to be given to common-law judges (to expand the scope of larceny) may explain why lost-property embezzlement is a highlight of civil systems and not common-law systems: it fills in a gap in theft law.

lost property was not for public consumption, the rules on which it was based were longstanding (Kujikata *Osadamegaki* 1742).

Article 60 of the *Osadamegaki* contains three provisions pertaining to lost property. First, the *Osadamegaki* incorporates a 1721 edict requiring that a finder submit lost property to authorities within three days. If the owner appears and the property is cash, he or she 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 within six months, possession is awarded to the finder. Finally, incorporating a customary rule of law with no fixed date, the *Osadamegaki* provides that a finder who appropriates the property will be fined.¹⁹

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–\$1,000 today) (Tokugawa Kinrei Kō Goshū 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 *ryō* (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 had occurred 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 (Harigamirui 1896–1914).

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 Kōryō* (“The Essence of the New Code”), Japan's first national criminal law. Importantly, the drafters of the *Shinritsu Kōryō* 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 Kōryō*, along with its

¹⁹ A 1784 official handbill reprinted in the *Koji Ruiien*, or *Encyclopedia of Ancient Matters* (Harigamirui 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.

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, then owners and finders share the property equally.²⁰ A finder who fails to submit the property to authorities will be punished for embezzlement, but the punishment for embezzling private property will be one grade less than the punishment for embezzling public property, resulting in fewer beatings with a heavy stick (*Shinritsu Kōryō* 1871).

The 1871 system was supplemented in 1876 by the 1876 Lost Article Disposition Order, enacted by the Council of State (*dajōkan*) (*Naikaku Hōkyoku* 1876). The 1876 order, enacted as Western, and particularly French, influence was beginning to be seen in the legal system,²¹ purported to be merely an administrative ordinance detailing the rules of the *Shinritsu Kōryō* 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 5–20% of the value of the article to be paid to the finder by the owner (Article 4).

One 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 (*Kyūkeihō*), 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 (*Kyūkeihō* 1880, Article 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. In summary, although various foreign influences can be seen in presentation, penalties, and the like, the

²⁰ 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).

²¹ 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).

Table 3. Historical Development of Lost Property Law

Period Dates	Edo Period 1603–1867	Early Meiji Period 1870–1876	Middle Meiji Period 1876–1896	Modern 1896–Present
Controlling Legal Authority	Shogunate customary law, <i>Osadamagaki</i> (1742)	<i>Shinritsu Kōryō</i> (1871), <i>Kaitai Ritsurō</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 finders' 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>Osadamagaki</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

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.

Prosecution and Enforcement

Of course, few modern cases of embezzlement of lost property are punished by death. But cases are indeed reported, and some are indeed prosecuted.

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 there are no national guidelines, the standards and operations reported by Johnson 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. (Johnson 2002:55)

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 adjacent 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 (1) ignored the bicycles, or (2) if he wanted possessory rights, reported the bicycles to the police (who would have recorded them, tagged them, and perhaps hauled them away) and collected them after the requisite time period 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 such an ordeal that I'll never do anything like that again."

I interviewed a total of 15 persons accused of lost-property embezzlement but whose cases were disposed of by the police because of low stakes.²² All 15, who were accused of appropriating a range of objects from wallets to electronics to small appliances, 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.

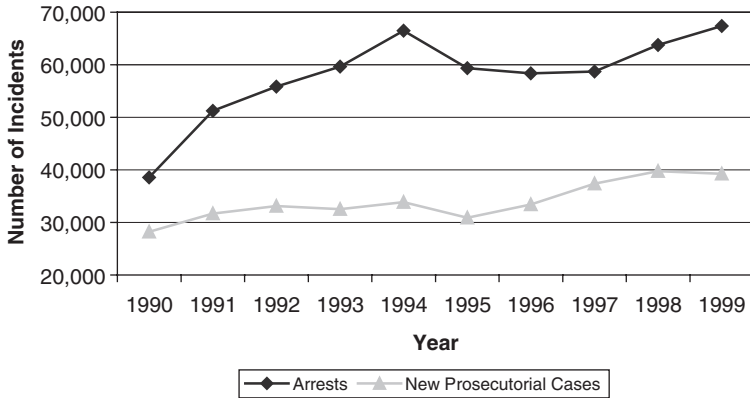
These stories were confirmed by interviews with six police officers from four different police stations. Police told me that they detained even trivial lost-property embezzlement suspects like Tanaka for lengthy periods and that they did so for two principal reasons. First, they want to get "all the 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."

Arrests

For nontrivial 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 and prosecutions from Hōmushō (1974–1999)). The figure indicates a rising and not insubstantial number of arrests each year. The number of cases

²² These 15 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. I was already acquainted with two other suspects before this project. I learned of an additional five, including two juveniles, from other acquaintances.

Figure 5. Incidents of Embezzlement of Lost Property, 1989–1999



sent to prosecutors post-arrest is approximately equal to the larceny rate and more than 20 times the murder rate.²³

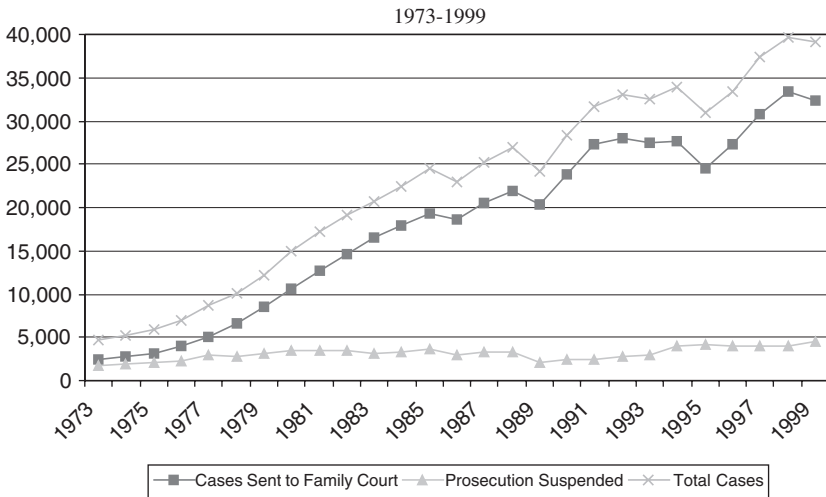
Prosecution: Juveniles

Figure 5 reveals only the number of persons who meet thresholds for arrest and forwarding to prosecutors—prosecution itself is another matter. 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 (Hōmushō 1974–1999).

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 age 20. 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 (Saikō Saibansho Jimusōkyoku 1991–2000).

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 10 years), while juveniles are merely charged with lost-property embezzlement (with penalties of

²³ It is worth noting that virtually every measure of crime has increased over the last decade in Japan; the crime rate rose from 1,324 criminal offenses per 100,000 people in 1990 to 1,926 per 100,000 in 2000 and increased every year but one during this period (Asahi Shinbun 2001). National Police Agency officials inform me that the number of lost-property embezzlement incidents may be much higher in recent years than arrest figures indicate, as police have focused much of their attention on crimes that they believe to be more serious.

Figure 6. Prosecutorial Disposition of Lost-Property Cases, 1973–1999

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.²⁴ 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 (Hōmushō 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 (Hōmushō 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, lost-property embezzlement is charged, suggesting that these arrests are for misdeeds more akin to theft than to the everyday lost-property situation. But bicycle cases are not the object of misappropriation. 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

²⁴ Prosecutors sent 85,473 of 152,379 cases to family court. See Hōmushō (1999:78–79).

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 the arrest (Gotō 1997; Shonenhō [Juvenile Law] 1992). 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 10-year period beginning in 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 more than 90% of the cases, is no trial, the equivalent of dropping charges. About 4% receive no decision, the equivalent of not guilty. About 1% are found guilty, and of those, an annual average of about 232 are given probation, five are sent to reform school, and 21 are sent to a juvenile correctional institution.

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 nationally filed charges against an average of 233 adults each year, including a high of 400 in 1985 and a low of 129 in 1993 (Hōmushō 1974–1999). 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 were listed as "other," including transfer of venue and the like; all other cases were guilty) (Saikō Saibansho Jimusōkyoku 1991–2000). More than 90% 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 (2001). A search found 74 unique cases of potential lost-property embezzle-

ment. 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 (Shōda 1959). Courts have found, for instance, that when a defendant immediately takes a victim’s watch after killing him or her, the crime is larceny (*State v. Kawaguchi* 1956), but when a defendant kills his or her lover and takes his or her cash and bankbook five to ten days after the death, the crime is lost-property embezzlement (*State v. [no party name given]* 1985).

In the remaining 56 cases, serious crimes were not involved. The court had to decide between larceny and embezzlement in 36 cases; for instance, when a defendant watched a victim “lose” his wallet for less than two minutes at a distance of fifteen 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 were simply larceny cases. The remaining 20 cases were “pure” lost-property embezzlement cases; that is, they neither featured another serious crime nor required the court to distinguish larceny. Most of these 20 cases did not involve property that was “lost” in the traditional sense, 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* 1979). Only a few cases 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. Katō* 1921, *State v. [no party name given]* 1927; *State v. [no party name given]* 1958).

Summary

Although many people are arrested for lost-property embezzlement, most are juveniles who are freed without trial, and most adults who are prosecuted have either committed more serious crimes or have committed lost-property embezzlement in such a way that it is more akin to pure theft. Still, the stick exists: serious cases are pursued, and even trivial cases are “punished” by lengthy police interrogation. While a careful lost-property embezzler might succeed in evading the law, it would be unwise to attempt to do so.

Comparison to the United States

Compared to the Japanese system, the U.S. lost-property legal regime is complex and unpredictable.

Doctrine

Finders’ law doctrine in the United States is conceptually difficult, making contradictory statements and arbitrary distinc-

tions 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 even this distilled holding is not entirely accurate,²⁵ and as Helmholz has noted, "When the facts become more tangled . . . , the limitations of the hornbook rule appear" (1987:1231).²⁶

Part of the doctrinal complexity lies in the distinction made in the common law between lost property and property that is merely mislaid. Subject to claims of the true owner, lost property goes to the finder, and mislaid property goes to the owner of the locus. Many commentators have found the lost-mislaid distinction artificial (Comment 1939:235). Again Helmholz 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. (1983: 316–17)

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. Virtually all that is certain at that moment is that the true owner has a legitimate claim; the validity of claims made by others is much less clear.

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 familiar at all to finders, may also create skewed incentives, and the reliance on temporal and physical proximity to determine possession for purposes of distinguishing from larceny requires similarly arbitrary distinctions. But the basic formulation of the rule—lost property may not be misappropriated—is relatively simple.

Nonuniformity

Ambiguity and arbitrariness aside, finders' law in the United States, unlike the unified Japanese system, is a state-by-state

²⁵ The chimney-sweep's boy's claim would be subject to claims of a prior possessor.

²⁶ Helmholz found 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* 1943; *Willmore v. Township of Osceola* 1981).

hodgepodge of common law, modern statutes, and haphazard local regulations.²⁷ In a reaction to the difficulties of the common law doctrine, more than one-third of the states have adopted lost-property statutes (Moorman 1997:717 and note 8), but these statutes differ widely in scope, operation, and remedy. Oregon (Or. Rev. Stat. § 98.025 2003), 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 2003) awards the same plus “a reasonable compensation to the finder for his trouble.” Montana (Mont. Code. Ann. §§ 70-5-203–206 2003) 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 2003) 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 its value.²⁸ Iowa (Iowa Code Ann. § 644.7 2003), 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 10% 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 (see note 19) provides that vessels, rafts, logs, or lumber become the property of the county (Iowa Code Ann. §§ 644.1, 644.4, 644.13 2003).

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

²⁷ A marginally more organized system exists for abandoned property, a category that usually is defined as dormant accounts at financial institutions and unclaimed items from safe deposit boxes. While laws differ by state, banks and similar institutions are usually required to deliver these funds and items to state treasurers’ offices (in California, for instance, funds held by business associations escheat to the state after three years of account inactivity; see Cal. Code §1513, tit. 10, ch. 7 (Unclaimed Property Law) 2003). Many state treasurers publicize unclaimed goods and attempt to find the owner (in California, notice in a major newspaper is required within one year; see Cal. Code §1531), but very few states have even one full-time employee assigned to the task (McCarthy 2002), and fewer than half of states have an online database. State treasurers’ offices are linked through the National Association of Unclaimed Property Administrators (NAUPA), a nonprofit organization affiliated with the National Association of State Treasurers. NAUPA maintains a Web site with links to state unclaimed property Web sites; see <http://www.unclaimed.org>.

²⁸ 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* 1946).

Appeals, interpreting the New York lost-property statute, similarly held that the law did not apply to common-law “misaid” property, a finding that “baffled” the dissent in part because of “the fact that the distinction has been statutorily abolished in New York” (*Saritejdiam, Inc. v. Excess Ins. Co.* 1992; see also Barr & Katz 1959:312).

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

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 1962), statistics are unavailable. A leading criminal law treatise (LaFave & Scott 1986:712) 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 or she can learn the identity. 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 mind and attempt to locate owners (LaFave & Scott 1986:712 and note 45).

In a Lexis database search of legal cases, I uncovered about 60 cases of larceny of lost property, about half of which were more than 50 years old. None of them concerned minor incidents such as theft of bicycles or cameras; most had much larger stakes (*People v. Colon* 1970). 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 are 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].”

Lost and Found in Practice

The legal regime that governs lost property is an integral part of the Japanese lost-and-found system. Equally 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 *kōban*. Much heralded as an integral part of community policing, *kōban*, 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 *kōban* and 8,100 *chuzai*sho (Keisatsuchō 1999; see generally Ames 1981:17–55), which I will discuss collectively as *kōban*. In Tokyo, *kōban* are widespread; there are more than 96 police stations and *kōban* for every one hundred square kilometers of space. In outlying areas, the distance between *kōban* 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 *kōban*. Because many *kōban* are centrally located, near areas that attract crowds (train stations, department stores, parks, and so on), in the majority of lost-property cases, a *kōban* is likely to be in walking distance from one's find.

Kōban 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 *kōban* is, and 13.8% knew the name of someone who worked there (Suzuki, Shishido, & Kobayashi 1992).

Lost-and-found is an integral function of the *kōban*.²⁹ A late 1980s survey found that 35% of all people who visit a *kōban* do so in connection with lost property (Bayley 1991:95). When 3,000 people (2,200 responding) were asked in a 1997 survey (Sōrifu 1997) what tasks they thought were most important for the *kōban*, 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 *kōban* 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 to ask directions). In a more recent survey of 2,211 voters conducted in 1998 (Asahi Shinbun 1998), when asked what they

²⁹ A recent news report ("Okigaru ni 100ban Kyūzō" 2001) suggests that many Japanese have begun to use 110, the Japanese equivalent of emergency phone number 911, for nonemergency inquiries such as lost property; in Tokyo, nonemergency calls outnumber emergency calls. In addition to lost-property inquiries, citizens are said to use 110 to ask such decidedly nonemergency questions as the location of a 24-hour animal hospital and the procedure for driver's license renewal.

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 outnumbered reporters by a wide margin, it is significant that nearly four of ten persons said 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 (Ishitsubutsuhō Shikōrei 1958; Ishitsubutsuhō Shikō Kisoku, Sōrijurei 1958; Ishitsubutsu Toriatsukai Kisoku 1989). The orders provide, first, that upon delivering the object to the police, the finder must complete a Finders' Report (shutokutodoke). The Finders' 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 then receives a Finders' Receipt (shutokumono azukarisho) that instructs the finder of his or her rights as a finder and where to claim the property. Kōban police treat Finders' Reports for even trivial items seriously, which may result in a psychological benefit for the finder that he or she might not receive in another lost-property system.

In the process of filing a Finders' Report, finders also have the option of waiving their rights to the property and to the finders' fee. Determining exactly how often this waiver occurs is extraordinarily difficult, and no formal record of waivers is kept. At one kōban, police permitted me to examine all 542 Finders' Reports on file. Ninety-five percent of reports of cash did not waive rights; only in small-change cases were rights waived. In 60% of the reports of noncash lost objects, the finder waived rights. My interviews with police stationed at kōban 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, right?"), 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").³⁰

³⁰ Police in the Tokyo kōban 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.

Kōban police also informed me of several lost-property ventures and scams that take advantage of the institutional structure. Some entrepreneurs scout for abandoned bicycles, report them to police or turn them in themselves, fill out the forms, collect them after the waiting period, and resell them in used-bicycle shops that they own. Others attempt to file

For the next 14 days, the police must attempt to locate the owner and post a 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 (Kokka Baishōhō 1947 [State Redress Law]; Ishitsubutsuhō Kenkyūkai 1998:208–09).³¹ Notices must be posted at police stations and *kōban* 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 locating the owner.

If the owner of the lost property is located and wants the property, he or she may retrieve it at the *kōban* 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 or her property, the police call the finder. Within one month, the finder may request the 5–20% finders' fee from the owner. My interviews suggest that parties almost always settle at 10% 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 on both the finders' receipt and the receipt received by the owner at the time that the property is returned, perhaps because the police encourage payment, or perhaps because of underlying norms. If the parties disagree as to the value or the percentage of the fee, their only remedy is 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 nonwaiver of rights by the finder. Many factors could account for the nonretrieval: finders may simply forget their find, misplace the finders' receipt, or simply be unable to retrieve the

false loss reports to attempt to recover others' lost property. While police in charge of returns claim to be rigorous in requiring accurate descriptions and to have stopped several fraud scams, it would nevertheless seem easy to claim the loss of a black umbrella on a rainy day if possession of the same were one's goal. Still others attempt to manipulate the system through more elaborate insurance scams.

³¹ 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).

object during the specified time. Items not retrieved are either sold at public auction or thrown away.

The procedure that an owner follows if he or she loses an object is in some ways the mirror image of the finders' process. The owner visits the *kōban* and files a Loss Report (*ishitsubutsutodoke*) detailing the loss.³² If the item is found, the owner is contacted and pays the finders' fee; if not, he or she is usually out of luck. If an item is found and the owner is contacted before the owner can file a Loss Report, the owner simply visits the *kōban* after the contact and files a Loss Report on that occasion. Police have various procedures (from notebook registries to computer databases) in place to match owners with property, the details of which are too varied to warrant detailed discussion other than to note that computerization is increasing.

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, *kōban* 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, Bayley 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 *kōban* 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. (1991:26)

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 *kōban*, and the lack

³² Third-party actors have further institutionalized the process, as credit-card companies and insurers often require the filing of a Loss Report. While such factors may affect the statistics in Part I, they would not affect my experiments in any material way.

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

Toward a Causal Story

Part II outlined the law, and Part III showed how it works in practice. In this part, I analyze 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 *kōban* 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 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 institutional incentives play a large role in explaining the efficacy of Japan’s lost-and-found system but are not a complete explanation.

Evidence on Honesty and Altruism

All other things being equal, we might expect honest, fair, and altruistic people 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—and it is sparse—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, 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.³³

- 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 regard to deception.
- In an economic study of altruism, Horioka and three co-authors (Horioka et al. 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.” (Horioka et al. 2000:2).³⁴
- From anthropology, in another study on helping behavior in adults and children, Lebra (1976) administered a thematic apperception test in which she asked approximately 200 Japanese adults and high school seniors to finish

³³ Yamagishi (1998:106) was 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. Note also that some evidence suggests that Japanese respondents may choose neutrality over strong statements, a trait that Hayashi and Kuroda (1997:100–07) attribute to language.

³⁴ 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 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 the authors explain as the product of “cultural differences.”

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 even that altruistic behavior is any less prevalent in Japan than elsewhere. Nor do I claim that the evidence on honesty, altruism, and social norms constitutes the entire spectrum of Japanese society and culture. Cultural differences may lie elsewhere, such as in concepts of luck and desert, underlying class structure and resource distribution, views regarding the value or nature of ownership,³⁵ or the actor’s concept of self and individual responsibility (Hamilton & Sanders 1992), and this article does not attempt to investigate the entirety of culture.³⁶ 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 certain.

The studies suggest a conclusion and a conjecture. As for the former, at least in comparison to the United States, the Japanese propensity for returning lost property does not appear to be due largely to more widespread or deeply rooted Japanese norms of honest behavior. Some other factor or set of factors is likely at work.

As for the latter, this article has shown a striking correlation between lost-property practice and lost-property institutions in Japan. The correlation can lend itself to two opposing interpretations of historical causality: either lost-property practice spawned institutions, or lost-property institutions encouraged the development of lost-property practice. Although the historical record can

³⁵ My interviews of *kōban* police and others suggest that many people distinguish umbrellas (and sometimes bicycles) from other objects. Umbrellas are often seen as a sort of fungible communal property, especially during downpours in Japan’s spring rainy season. A clear vinyl umbrella, available just about anywhere, usually costs 500 yen (about \$4). Alternatively, at thirty (out of a total of 99) Osaka subway stations, one can borrow an umbrella from a group that charges advertisers for logo placement. On return rates, the group’s chairman states that “if it suddenly starts to rain at 9 a.m., all our umbrellas will be gone. By fewer than 10 out of 100 people will return them.” See “Muryō Kashikasa” (2002).

³⁶ Even the name of the property holding facility may have some cultural connotation. One Japanese commentator (Matsumura 2002), writing in Japanese, described the connotation of the English phrase “lost and found” as “We might find your lost property!” and the connotation of the equivalent Japanese phrase “*ishitsubutsu hokan*” as the less hopeful “We’ll hold on to your lost property for you.”

support either interpretation, there is an analytical way to gain a better—though very tentative, I recognize—understanding of the causal relation. Assume that honesty can be divided into two types, “general” and “specific.” Specific honesty is the practice of honest reporting of lost property; general honesty is the broader phenomenon examined in the studies above. General honesty, as some of the studies above suggest, is arguably similar in Japan and the United States, but lost-property institutions in those two countries differ. Assuming that specific honesty and general honesty are correlated, it seems relatively unlikely that differences in the practice of specific honesty have led to institutional differences (in the form of codification of practice), as similar general honesty structures should have led to similar institutional structures in both countries. The fact that institutional differences have arisen despite similar honesty structures leads to the conjecture that Japanese institutions may have “carved out” specific honesty as separate from general honesty.

Still, general honesty may not necessarily correlate with lost-property specific honesty, and applying these studies directly to the lost-property context may be problematic. Although honesty and fairness may play a role in some decisions of whether to report lost property, other concerns (including not only the potential cultural factors listed above but also 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 constitute 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.

Survey

In 1939, 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 86% of the students’ judgments on the hypotheticals were roughly in line with existing case law. But she also found:

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. (1940:294)

Donner’s study raises many questions. What does “give the state statute,” for instance, mean? Despite the survey’s

eccentricities, it is interesting as a serious effort to examine the phenomenon, and 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 10% of the value of his or her find. The timing is also interesting; just five years before Donner's survey, in a case that accounts for 11 of the 13 references in the Iowa Code Annotated, the Iowa Supreme Court (*Flood v. City Nat. Bank of Clinton* 1935) decided the constitutionality of the provision and declared that it served laudable public policy goals. If there has been any U.S. jurisdiction at any point in time when knowing the law could be particularly advantageous, or perhaps when we might expect people to know the law, it might have been 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% 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?* Five hundred fifty-two 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?* Three hundred thirty-two 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,³⁷ and students have knowledge of those norms. The origins of this knowledge appear to be dual; home, as discussed above through *kōban* 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, regardless of whether 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 the 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.

Interviews

The data presented above and in Part I suggest that (1) Japanese people know finders' law, and (2) 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 (1) and (2); that is, that law accounts for the differences. Japanese lost-property recovery rates might be higher not because of the law, legal institutions, or enforcement, but because of social norms or altruism. The conjecture raised earlier in this part—that institutions may have spawned practice—refers only to the origin and direction of *historical* causality (which came first, institutions or practice?), and not necessarily to the daily thought process that characterizes *motivational* causality (which plays a larger role in explaining actions, institutions or practice?). 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. Even without additional analysis, these numbers say something about the lost-and-found process. The number was relatively high for Tokyo, as finders are

³⁷ This tentatively suggests that Japanese law may not differ from the rewards that might be negotiated in a competitive lost-and-found market. See Landes & Posner (1978).

requested to fill out a found property report by the police that lists contact information. The number was 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 was 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 did not have to be able to recite the statute or know where to find it. A finder did not even need to be aware that the rule was 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 centered on 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 on notions of altruism and similar internal other-regarding preferences that had no obvious link to either 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 such as “Honesty is the best policy” as other-regarding.

Cross-cultural surveys are of course imperfect; it is possible that observed differences in result are based on differences in the way that a question is understood or in interviewees’ response styles. As for perception of the question, although I attempted to mitigate the problem by vetting the survey with experts and amateurs in both countries, differences may arise nonetheless.

As for response styles, in this particular case, social psychology literature (Heine & Renshaw 2002; Kitayama et al. 1997) suggests that Japanese people have low self-esteem and are self-critical (for instance, they are reluctant to conclude that they perform better

than average classmates), while North Americans have high self-esteem and are self-enhancing (and are reluctant to conclude that they perform worse). Given these studies, one might argue that Japanese interviewees would be less likely than New Yorkers to give self-enhancing explanations that boast of their honesty,³⁸ which could result in fewer “other-regarding” responses. While no study can completely avoid such difficulties, in this case, the inclusion of relatively self-neutral responses in the other-regarding category may mitigate the concern. For instance, “I felt sorry for you” or “So sad!” (“Kawaiiiso”) was a common response of Japanese interviewees and is an often-used Japanese phrase. While some scholars (Sally 2002:456–57) formally distinguish sympathy from “pure” altruism, following other empirical studies of altruism in Japan and the United States, (see Matsui, Nakasato, & Ishii 1998), I include them together in the third category of other-regarding responses. If, as Sally (2002) discusses, sympathy is based on social interaction, physical distance, and psychological affinity, it would not be unreasonable to expect a large percentage of Tokyo responses relative to New York responses to fall in the “other-regarding” category, but other interpretations of distance are of course possible.

Crucially, very few interviewees gave only one type of explanation. I found that if I listened carefully and persistently, interviewees tended to offer two, and sometimes all three, explanations. I recorded all explanations. Two primary factors motivated this strategy. First, by not forcing interviewees into a single explanation or a binary choice, I hoped to mitigate further some of the cross-cultural concerns of the previous paragraph, because multiple responses may allow for more self-praise or self-criticism, and because there is no a priori reason for a self-critical person to choose one self-neutral option over another. Second and more basic, human motivation is complex, and while multiple responses may be somewhat imprecise, they may be better able than binary choices, Likert scales, or short-answer surveys to capture some of this complexity. As Table 4 shows, the mix of responses differed enough to suggest real differences among the locations.

When asked why they returned the property, Tokyo finders 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. About half of

³⁸ Heine, Takata, and Lehman (2000) present evidence suggesting that lower self-esteem in Japan is internal and not simply a matter of self-presentation. If so, the modesty in such responses might not be false.

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%)
Other-Regarding	7 (18%)	20 (91%)	4 (40%)
Total number of interviews (interviewees gave multiple explanations)	38	22	10

these social norms explanations also included mentions of *kōban*.³⁹ While these explanations touched on institutions, and I regard *kōban* 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. Had I included these explanations in the institutional category, that response would have accounted for more than 90% of the responses. In any event, *kōban* explanations were not honesty-based, and arguably were not altruistic or otherwise other-regarding.

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 10 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 was created by formal institutions (one thought it was a local police custom, another thought it to be merely urban legend).⁴⁰

At least in the case of the phones, the carrots and sticks may not be explicit. A finder is always free to ignore the phone, eliminating the stick. Neither does the carrot seem large or even certain; 10% of the value of a phone often is a pittance, finders seldom need another’s phone after six months, and a finder’s only remedy against an owner who refuses to pay a reward is a civil suit—all plausible reasons why the waiver rate for phones in Tokyo was relatively high. Still, the Tokyo interview responses suggest that people act as if the carrots and sticks matter, whether because of incomplete familiarity with the law, because of the ingrained nature

³⁹ I was lectured many times about how “we Japanese” are taught at an early age to return lost objects to the *kōban*. 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 . . .”

⁴⁰ This suggests that arguments that Japanese people lack “legal consciousness” (Kawashima 1967) may be misplaced.

of the system, because the thought process does not begin until the object is already in one's possession, or for some other reason or combination of reasons.

Sympathy-based predictions notwithstanding, it was in New York, not Tokyo, that the reasons for returning lost property were more likely to be stated in other-regarding terms.⁴¹ New York interviewees stressed that "I'm an honest person," "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 "other-regarding," 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 brainiacs 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 yielded less-than-conclusive results. Interviewees focused largely on institutions but seemed to give greater weight to altruistic factors than did the Tokyo interviewees. Few spoke of social norms,

⁴¹ These findings arguably differ from those of a recent Japanese study of altruism in junior and senior high school students. Matsui, Nakasato, and Ishii (1998) surveyed 6,134 students in the United States, 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 men 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 *kōban*, 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.

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 *kōban* system (most New York Japanese made returns to the store clerk). In other words, New York Japanese relied heavily (80%) on institutions, but got the institutions wrong.

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 relatively low, the few New Yorkers who returned the property did so for reasons 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. It may be that finders are in a moral "double-bind"; they are "guilty" if they keep the property and "suckers" if they turn it in. Institutions like those in Tokyo may be one factor that encourages people at the margin to solve the double-bind by reducing their "sucker" feelings through rewards. Of course, these marginal calculations are imprecise and muddled. While institutions may result in a net increase in returns, they may in fact do so via a reduction of underlying altruism as the reward incentives "crowd out" internal ones (Frey & Jegen 2000).⁴²

To obtain 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 40 police officers at thirty *kōban*. 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

⁴² Blair and 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.

property because of institutional concerns. Thirty-two suggested social norms, and twenty suggested altruistic explanations.

The data in this section warrant a final caution. Although I have categorized explanations for analytical clarity, I make no claim that law can be separated from underlying societal and other informal institutions. The relation between law and society is undeniably complex, and the lost-property context is no exception. On one hand, a primary reason for the Japanese lost-property regime's consistency over time may be that it reflects established informal practices that might function effectively today even in the absence of formal institutions.⁴³ On the other hand, the general-honesty evidence on historical causality tentatively suggests that as the law has become more embedded in society (Aoki 2001; Granovetter 1985), it standardized nascent norms, or perhaps even created them from scratch, suggesting greater institutional importance. Then again, perhaps the relation is better described as one of mutual reinforcement, as suggested in the *kōban* discussion above.

The issue is complex, and I see little analytical value in imposing a total dichotomy here. But 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 cautions 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 the 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

Japan is in many ways a loser's paradise. 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 nonreturn of lost property, as well as in the corresponding legal institutions

⁴³ I suspect that dismantling one particular institution, the *kōban*, would lead to substantially less compliance, but note that Tokyoites in the Edo and Meiji Periods returned objects to the police well before *kōban* were established as institutions for that purpose.

that dictate police duties and create the *kōban* enforcement system. The enforcement of nascent juvenile crime may also be an important variable. While it is difficult precisely to place the importance of these variables in a hierarchy, each appears to play an important role, and together they appear to have synergistic effects. Other factors, including altruistic factors and social norms, are both important and interrelated with these institutions, but through various methods—statutory exposition, data analysis, surveys, experiments, and interviews—I have suggested that legal institutions, and the socialization of those institutions over time, may play a more central 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 can 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 Japan may have very low crime rates in part precisely because it devotes administrative resources to such factors as the *kōban* system and zero-tolerance enforcement of low-level crime. As Wilson and Kelling put it in their famous “Broken Windows” essay on community enforcement, “[u]ntended property becomes fair game for people out for fun or plunder who ordinarily would not dream of doing such things and who probably consider themselves law-abiding” (1982:38). If Japan’s low crime rates are a result of broken-windows-based community enforcement that creates incentives for property not to become “untended,” further investigation may be in order.⁴⁴

Second, even if one wanted to mimic the Japanese system, it might not be exported easily. 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 engender as efficient a lost-property market 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

⁴⁴ Some expense may be efficient. Although lost property is about distribution of wealth and not its creation, distribution may matter, particularly if redistribution involves significant transaction costs. Property owners should exercise reasonable care over their property, and finders should be encouraged to give it back if owners lose it anyway. The state may wish to devote resources to the finders’ side to ensure that owners do not exercise undue care over their property, but devoting excessive resources may result in a lack of care and an externalization of costs to the state.

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 *kōban* the norm of returning lost objects and 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.

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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, each had a working battery for power. 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 the 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 10-dollar bills to reach the New York \$20 statutory minimum.⁴⁵

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 (Milgram, Mann, &

⁴⁵ Finders are unlikely to know the law, and in my experience, so 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.

Harter 1965), 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 prerecorded phone mail 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 clubs. In both places, with the help of assistants, I left 25 phones and 5 wallets per day for four days.⁴⁶

The third location was designed to test for 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 90% of the shoppers that I observed at midday were Japanese, and ultimately every finder whom I interviewed, and in fact every finder whose ethnicity I was able to determine, was Japanese. Most of the store's employees, and all of the cashiers (to whom a person would like return a lost object) were Japanese, which should have diminished 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

⁴⁶ 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, if I filled out the required lost-property forms (one each for each drop, or 120), and if I agreed to inform them if I intended to compare their area with another Japanese area.

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. The Japanese reluctance to reveal location seemed to be based on a lack of official permission and a fear that I would compare their area with another in Japan. The New York reluctance appeared to have been based on a need to devote resources to more serious crimes and a fear that I would unfairly portray the system as ineffectual.

by finders. When contacted directly by the finder, I thanked the finder, told him or her to keep the find as a reward, and interviewed him or her. When contacted by the police, if the finder waived rights, I contacted the finder, thanked him or her, and interviewed him or 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 him or 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 10 local merchants and police (if I was 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.

