

# Simulacra and subversion in the everyday: Akasegawa Genpei's 1000-yen copy, critical art, and the State

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The artist is the secret criminal in our midst. He is the agent of progress against authority.

Tom Stoppard, *The Invention of Love*

In January of 1964 the young avant-garde artist, Akasegawa Genpei, was questioned by police concerning some 3000 single-sided, near-actual-size, monochromatic prints he had made of the 1000-yen note. This was the initial point of contact between Akasegawa and the policing function of the Japanese State; it began a long process which led to his trial and conviction for the crime of money imitation (but not counterfeiting *per se*). The trial, and the subsequent unsuccessful attempts to overturn the conviction on appeal, provided one of the more prominent and dramatic interactions in the 1960s between the State and an active, culturally insurgent, loosely knit group of young artists, dancers, theater troupes, film-makers, photographers, and musicians.

While the specific politics of this group were diverse, they shared a common commitment to a politically charged investigation of everyday life and culture. Artistic contestation in the domain of culture marked an exercise of 'politics by other means' at a time in which conventional political possibilities had been foreclosed—one that has long gone underexamined. The critical turn by these artists to objects and structures of everyday life, moreover, shifted debate from the abstract forms of bureaucratic politics at the very moment that the State was moving to assert control over this everyday world. Ideologically, Prime Minister Ikeda Hayato's focus upon a depoliticized consensus on growth (the 'National Income Doubling' plan) formed the basis for the unstated ugly bargain behind the Japanese 'economic miracle'—the curtailment of democracy in exchange for the promise of consumption and continued economic expansion.

At the moment that the State began championing an everyday defined by forms of consumption as the complement to an administered, closed political realm, an evolving avant-garde artistic production turned to this everyday as a space to rethink a political project. Poised on the brink of a slide into a proliferating mass culture, artists worked throughout the long decade of the 1960s<sup>1</sup> to contest an increasingly hermetic everyday life, critiquing its shape and

assumptions, and at the same time working, through their own practice, to emphasize not consumption, but rather active engagement, making, and producing.

Further explication of the broad contours of this cultural contestation is the work of a longer project, necessarily outside the scope of this essay.<sup>2</sup> As a case study, Akasegawa's project and prosecution demonstrates the boundaries and possibilities of artistic critique itself: the historical examination of the genesis of his project reveals provocative (but not atypical) critical, political impulses within a complex artistic discourse. Since the 1000-yen works also go immediately to the heart of State hegemony through their attack upon the authority of State-printed money, Akasegawa's subsequent prosecution reveals much of the shape and practice of the 1960s Japanese State, its degree of sensitivity to infringement upon its prerogatives, and the means by which it legitimated its extra-constitutional policing of the foundations of its hegemony.

### The artist indicted

Akasegawa Genpei was indicted for violating, and conspiracy to violate, the 1895 Law Controlling the Imitation of Currency and Securities [*tsūka oyobi shōken mozō torishimari hō*].<sup>3</sup> While the facts of the case precluded indictment under the usual criminal code provisions regarding counterfeiting (which required explicit intent to use the bills as money), the prosecutors' recourse to a law enacted a bare six years after the promulgation of the 1889 Meiji Constitution was merely the first deployment of Imperial era forms of State authority in this postwar case (Figure 1).

While the imitation, or *mozō*, of currency and securities carries lighter penalties than the Criminal Code's provisions for counterfeiting, *gizō*, the vague language of the former, prohibiting 'the manufacture or sale of things with an exterior that might be confused for [actual] currency or securities', potentially criminalizes all resemblance short of counterfeiting. No consideration of freedom of expression was provided for: like the later Criminal Code of 1907, the law was written under an Imperial Constitution which allowed the State, acting in the name of the Emperor, to freely abridge rights as it saw fit;<sup>4</sup> neither the Criminal Code nor the separate laws (such as the *mozō* statute) were modified to any significant extent after the war, despite the changed form of constitutional rights purportedly guaranteed under the new Constitution.<sup>5</sup> These and other provisions continued to allow the instantiation of a form of authority founded upon the figure and prerogatives of the Imperial State's Emperor; in the case of *mozō*, this was the basis of the State's right to monopolize the printing of money and define its reality, its genuineness. The *mozō* law's ambiguities provided prosecutors with a weapon to defend not against forgery, but rather against any questioning of this reality. Akasegawa produced simulacra, which, while initially looking like currency, are on second glance obviously not; their power to disrupt the everyday, uncritical perception of the *genuine* article and provoke reflection upon its status amounts therefore to a kind of blasphemy, or better, lese majesty, an affront to the emperor's prerogatives as exercised by the State as his instrument. Hovering behind the 1964 prosecution using the 1895



**Figure 1.** ‘Government of Japan 1000 yen note, and Akasegawa Genpei, *Printed 1000-yen note works*, versions I-IV, 1963’.

All photographs in this article are reproduced from the Nagoya City Art Museum catalog, *Akasegawa Genpei no bouken-nounai rizouto kaihatsu taisakusen*, (Nagoya, Nagoyashi bijutsukan, 1995), with the kind permission of Akasegawa Genpei.

law is the phantom of the prewar state, the Meiji Constitution a *Doppelgänger* of the postwar one, an old order whose expansive authority was fused with the postwar Constitution.

Akasegawa’s project followed a series of notorious counterfeiting incidents: the B-series 1000-yen note, which Akasegawa duplicated, had been the particular subject of a flood of counterfeit notes between 1961 and 1963, most notably from the *chi-37* incident, a major scandal, in which extremely high-quality counterfeit notes were repeatedly discovered throughout the country. The notes were of a quality such that only mint officials and others with particular information as to their defects were able to spot them—revealing that counterfeiters possessed the ability to virtually mint their own money. Tokyo Metropolitan Police’s Third Investigative Section of anti-counterfeiting specialists were deeply involved in the massive, but unsuccessful attempt to identify the perpetrators; it was inspectors from this squad who first approached Akasegawa at his home on 8 January 1964. Their presence was a bit peculiar: while they

purportedly recognized that Akasegawa's notes could not be the work of the *chi-37* forger, they claimed to have investigated 'on the off chance' that some connection might nevertheless exist.<sup>6</sup> Undoubtedly they were particularly sensitive to the issues involved for State authority. Clearly, as early as their first interrogation of Akasegawa on 9 January Akasegawa's offense was being considered in the category of *mozō*.<sup>7</sup>

The discretionary choices to investigate and prosecute Akasegawa entail an element of practice in which a certain sort of State authority is activated, and in which a certain sort of State is instantiated. Each new stage, following upon previous investigations into the nature and circumstances of Akasegawa's act, reflects the State's increasingly detailed appraisal of Akasegawa and the kind of 'artistic activity' that he represented—especially with the trial and appellate court decisions. Ultimately, the State is what it does. In other words, the nature of the postwar State resides in the myriad practices which instantiate it; it cannot be 'defined' by the language of the 1946 revision of the Constitution, but rather is only mediately related to it through practice—particularly in regard to constitutional guarantees and protections, and the exercise of State authority.

The decision to prosecute Akasegawa, and the subsequent court decisions which ratified it as appropriate State action (through convicting Akasegawa and upholding his conviction), demonstrate how the postwar State asserts its extra-constitutional right to define the Real by arrogating to itself the vastly expansive authority typified by the prewar, Imperial State—limiting criticism, and alternately ignoring or defining public opinion and consensus for its own convenience, then legitimating these procedures through the legal process. Yet at the same time that this prosecution highlights the anti-democratic, hybrid nature of the postwar State, it also raises the question of what threat Akasegawa's works actually posed. While the decision to embrace prewar State authority was perhaps the more significant one at a certain level of abstraction (as the instantiated form of the State in the 1960s, the final decade of Fordist expansion), at another level, Akasegawa's work manifests a powerful critique, one to which the State could have no *direct* rebuttal. Such exercise of authority must be seen simultaneously as an assertion of the State's right to defend its Real through extra-constitutional means (or extra-*Postwar*-constitutional means)—its right to extra-legal force—and as a decision to forcibly suppress activities such as Akasegawa's, which were seen as challenging in some manner the univocal nature of that Real. Since the State itself is in no small measure dependent upon the maintenance of its Real, Akasegawa's work at some level posed a direct threat to the State itself.

Akasegawa's art targeted the State at the central point of its hegemonic support—currency, the intersection between capitalism and State authority—at a time in which the government had begun to legitimate itself through an ideology depicting it as the beneficent guarantor of continued growth and consumption, compensating for its abridgement of postwar democratic aspirations. Returning politics and questions of practice and authority to the apparent neutrality of this enforced consensus proved to be an act to which the State was greatly sensitive.

For their part, police and prosecutors expended resources going after Akasegawa; the courts took the matter very seriously, from the Tokyo District

Court trial held in courtroom 701 (venue for the most serious of criminal cases), up to the Second Petty Bench<sup>8</sup> of the Supreme Court. The language with which the courts discussed the crime, as well as their silence on the vast majority of issues raised by Akasegawa and his lawyers, also points to the act's radical political potential. Additionally, State action against Akasegawa simultaneously stigmatized and threatened a whole range of young artists whose work was progressing in a direction potentially troubling to State hegemony.

### Obscenity, Public Welfare, and the Constitutional State

The language by which the courts rendered their verdicts was particularly apt for these purposes. The District Court and higher courts all found that the work in question was both artistic expression *and* criminal activity; this decision-making pattern followed Supreme Court precedent in several obscenity cases involving literary translations, including the 1957 *Lady Chatterley's Lover* case<sup>9</sup> and again in the 1969 case<sup>10</sup> concerning Shibusawa Tatsuhiko's abridged translation of *Histoire de Juliette ou les prospérités du vice* (hereafter referred to as *Chatterley* and *de Sade*, respectively).<sup>11</sup> In these decisions, which seriously limited freedoms articulated in Article 21 of the Constitution,<sup>12</sup> the court held that a work could be found to be both art and obscenity, that is, criminal.<sup>13</sup> The decisions provided no balancing test between obscenity and literary or artistic value; they affirmed the State's right to criminalize expression in the name of 'public welfare', and explicitly denied the presence of any constitutional barrier to this (Figure 2).<sup>14</sup>

These precedents originated, in fact, out of a *prewar* Court of Cassation ruling<sup>15</sup> that defined obscenity under the Meiji Constitution's guarantee of freedom of expression, Article 29, which held that 'Japanese subjects shall, *within the limits of law*, enjoy the liberty of speech, writing, publication, public meetings and associations' [emphasis added]. This article followed the Meiji Constitution's common pattern of providing constitutional protections only under the caveat that the State could limit them by law as it saw fit; the Court of Cassation's decision accordingly did not recognize any right to free expression that might limit the State's authority to criminalize and punish that expression: it merely concerned itself with the specificity of the definition of obscenity.<sup>16</sup> The Court of Cassation was the highest court under the Meiji Constitution; its power, unlike that of the postwar Supreme Court, did not extend to judicial review. There is some debate over the degree of judicial independence at the time; what is clear, however, is that the courts were not entitled to encroach upon imperial privilege. John M. Maki points out that as the Meiji Constitution was presented as the gift of the emperor, '... it would have been illogical and in contravention of the concept of imperial sovereignty for the courts—clearly only the mouthpiece of the sovereign—to have been empowered to rule on the meaning of the Constitution' (see Maki, *Court and Constitution*, pp. xvii–xviii). By following this line of reasoning, in which the mere finding of obscenity obviated the need to consider the material as protected expression, the postwar courts adopted a prewar precedent based on a rather different constitutional standard, conflating Article 21 of the postwar Constitution with Article

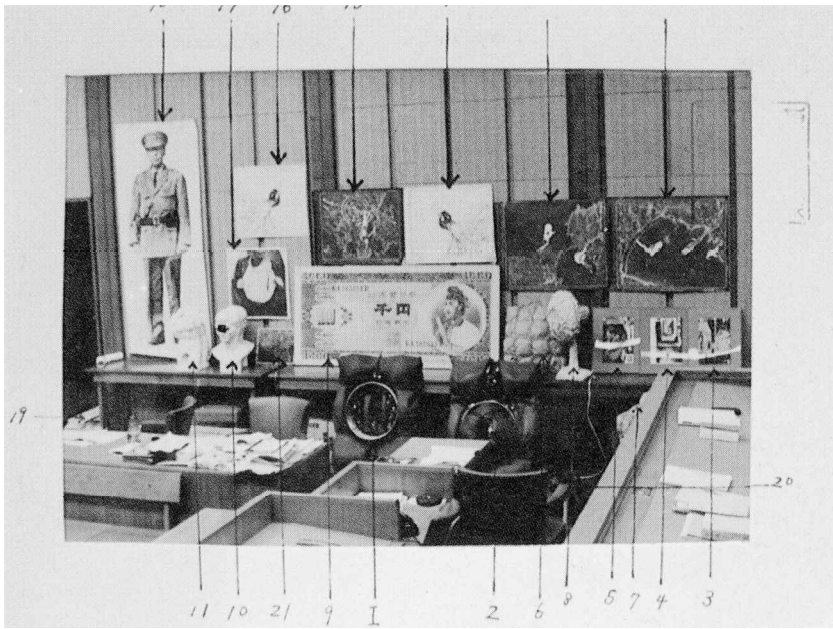


**Figure 2.** Akasegawa Genpei, *Printed 1000-yen works*, 1963, shown here labeled as seized evidence for trial.

29 of the Imperial Constitution of 1889. By further extending this line of reasoning outside of obscenity issues to cases such as Akasegawa's, the State laid claim to its prewar authority to criminalize any sort of expression it wished, unlimited by constitutional 'protections'.<sup>17</sup>

Ultimately, the postwar courts chose to ignore the explicit language of Article 21, finding instead that it and all of the other provisions concerning rights were limited by Articles 12 and 13.<sup>18</sup> These two articles,<sup>19</sup> present in the original GHQ draft of the Constitution, comprised an exhortation to good self-government under popular sovereignty, but provided the Supreme Court with the legal justification to rule as early as 1948 that all of the constitutional rights might be limited 'in the interest of the public welfare, *kōkyōu no fukushi*'.<sup>20</sup>

The 'public welfare' arguments criminalizing 'obscene' expression in *Chatterley* and *de Sade* were both phrased in the language of social hygiene, based upon a State-defined notion of sexual order and propriety. In rejecting the constitutional argument of the defendants in *Chatterley*, the Court held that 'maintaining good sexual order [*seiteki chitsujo o mamori*] and a minimum standard of sexual propriety is integral to public welfare'.<sup>21</sup> Similarly in *De Sade*, the Court held that 'when writings of artistic and intellectual merit are obscene, then to make them the object of penalties in order to uphold order and healthy customs in sexual life is of benefit to the life of the whole nation'.<sup>22</sup> Although both refer to an arbitrary, self-generated standard, the language of health provides an apparent scientism, thus authorizing an allegedly disinterested, apolitical State



**Figure 3.** Scene from Akasegawa's Tokyo District Court trial: the exhibit table, displaying works by Akasegawa and friends

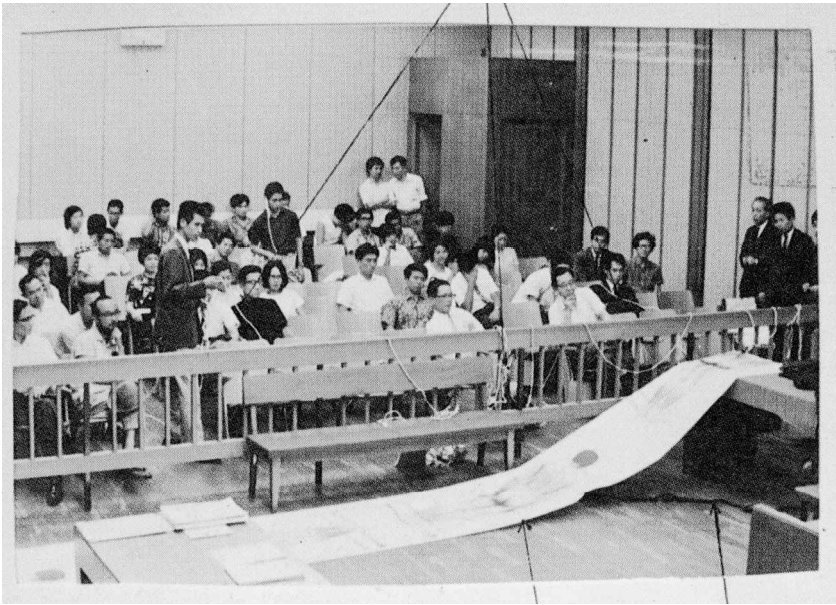
intervention. The State is able to authorize prewar-style interference with expression by grounding it in an appeal to the welfare of the social body that necessitates a State 'clinical role' under the cloak of a 'medica' objectivity.

### Making distinctions

Beyond the fact that the court had adopted a prewar schema for considering questions of free expression lies another important aspect of the holdings in Akasegawa's cases. The freedom of speech and of expression issue was, by necessity, the thrust of Akasegawa's lawyer's *jōkoku* appeal<sup>23</sup> to the Supreme Court; the finding by the courts that the work was art that constituted *mozō* accorded with the decisions noted above. The part of the decision finding Akasegawa's work to be art, however, was no less problematic than that finding it to be criminal. The forcible ascription of Akasegawa's activities into the delineated sphere, 'Art', drastically reduces the radical potential of his actions; in explicating them, I hope to avoid reproducing this double distinction (Figure 3).

William H. Sewell, supplementing Gramsci, notes that the process of hegemony crucially involves the ascription and fixing of distinctions and boundaries over the cultural field:

Even in powerful and would-be totalitarian states, centrally placed actors are never able to establish anything approaching cultural uniformity. In fact, they rarely attempt to do so. The typical cultural strategy of dominant actors and institutions is

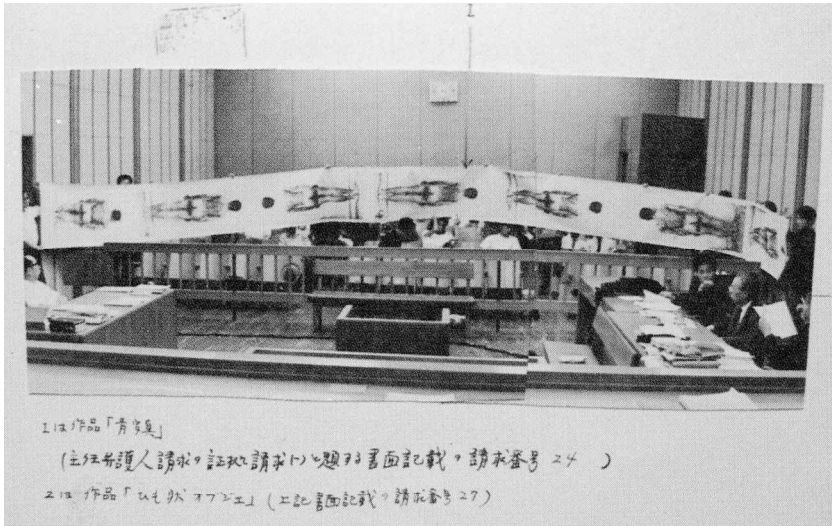


**Figure 4.** Scene from Akasegawa's Tokyo District Court trial: Takamatsu Jirō demonstrates his "Rope."

not so much to establish uniformity as it is to organize difference. They are constantly engaged in efforts not only to normalize or homogenize but also to hierarchize, encapsulate, exclude, criminalize, hegemonize, or marginalize practices and populations that diverge from the sanctioned ideal. By such means, authoritative actors attempt, with varying degrees of success, to impose a certain coherence onto the field of cultural practice.<sup>24</sup>

This 'certain coherence' is what I have been describing as the State's 'Real', the general scheme of conceptual orderings and differences, interpretations and practices that grounds the reproduction of the status quo and the State. Thus, the State through the legal system, attempted not only to punish Akasegawa and to deter others from similar acts, but crucially, to reinscribe his activities within the bounded, unproblematic spheres of 'criminality' and 'Art'. In effect, it tries to keep practices which constitute a different sort of 'belief' or point towards a different sort of social arrangement from perturbing the distinctions within knowledge that mirror, support, and conceal current social systems. By contrast, it is precisely the way that the activities of Akasegawa and the various contemporary artists, dancers, dramatists, musicians, and the like tended to efface these distinctions that is the ground of their radical cultural productivity and ultimately, of their politicality (Figure 4).

In a sense, the trial process itself forced a partial cooperation by Akasegawa, his lawyers and witnesses in this reinscription of his activities as 'Art'. When he was indicted, Akasegawa was advised by his lawyer that he could either plead guilty and accept a token penalty (acceding to the State's redefinitions of his work), or fight the case in court.<sup>25</sup> Akasegawa chose the latter, but in so doing,



**Figure 5.** Scene from Akasegawa's Tokyo District Court trial: the defense displays a long blueprint work by Hi-red Center, showing the naked backsides of members Akasegawa, Nakanishi Natsuyuki, and Izumi Tatsu.

virtually conceded half of the State's assertions almost immediately. By virtue of the legal strictures, the only defense possible was that the work was Art, constitutionally protected speech and expression lacking criminal intent. Thus each time the defense attempted to invoke the familiar arguments about freedom of speech and creativity, it further reinforced the 'Artness' of Akasegawa's work, and hence participated in the hegemonic concepts and practices against which the work was directed (Figure 5).

### *Shakai Tsunen*

The reasoning employed by the courts in finding Akasegawa guilty rested upon the State's own definitions both of art and criminality. Moreover, the language undergirding this reasoning in both the precedent-setting cases on obscenity and the court's holdings in Akasegawa's case was grounded in the same concept: *shakai tsunen*. Literally meaning 'commonly held social ideas', the phrase's flexibility enabled the court to use it in a multitude of ways: primarily, as 'common sense', and as 'community standards' (Figures 6 and 7).

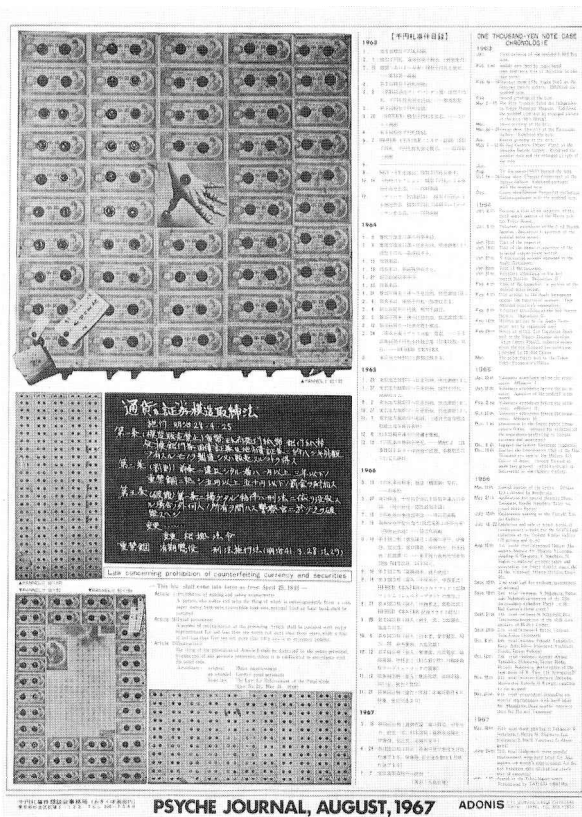
In their brief to the Supreme Court, Akasegawa's counsels argue that the *mozou* statute was vague and unclear, lacking any standards for determining the meaning of the phrase *magirawashiki gaikan wo yūsuru mono*, 'a thing having an exterior confusable with [money]', and that it was therefore in violation of Articles 21 and 31 of the Constitution.<sup>26</sup> In countering this, the majority opinion in Akasegawa's case declares that the wording 'can be rationally interpreted as everyday speech' [*nichijō yōgo to shite kore o gōriteki ni kaishaku suru koto ga kanō*], and 'since one can judge on the basis of common sense [*shakai tsunen*



**Figure 6.** Akasegawa Genpei, *One-thousand-yen note trial: catalog of seized works*, 1967. The poster reproduces images of Akasegawa’s various 1000-yen works, including wrapped works; the attached labels are the Court’s evidence tags.

*ni shitagai*] whether or not something has an exterior confusable with currency, the defense’s premise fails ...’<sup>27</sup> In other words, their response to the assertion of vagueness in the law was that the wording was rationally understandable speech (not nonsensical), and further, that common sense, *shakai tsūnen*, gave it sufficient specificity. The possibility of the phrase’s being rationally interpreted by someone—in fact, the court, as the definer of *shakai tsūnen* —is tautologically used to reject the allegation of vagueness. Understandability is conflated with legal standards of specificity.<sup>28</sup>

In appointing itself the *de facto* interpreter of *shakai tsūnen*, which is then cited to determine criminality, the court again followed its long series of rulings in obscenity cases. In these cases, the court held itself to be not only the proper arbiter of the content of *shakai tsūnen*, but also its proper evaluator and shaper. In *Chatterley*, the court held: “... the standard for the court rendering its above judgment is the good sense [*ryōshiki*] and community standards [*shakai tsūnen*] functioning in general society. These community standards are just as the court of first instance found them to be: ‘it is neither the collection of individual



**Figure 7.** Akasegawa Genpei, *One-thousand-yen note trial: catalog of seized works*, 1967. The poster reproduces images of Akasegawa's various 1000-yen works, including prints and bolted panels; the attached labels are the Court's evidence tags.

consciousnesses, nor their mean value; it is the group consciousness [*shūdan ninshiki*] which transcends them, and cannot be denied by the fact of individuals with understandings at odds with it. *The determination of what these community standards are is under the present system entrusted to the court.*<sup>29</sup> Having arrogated to itself the authority to specify the content of community standards,<sup>30</sup> *shakai tsuunen*, the court in turn defines them *ipso facto* on a level unreachable by any dissenter. In fact, dissenter neither outside nor inside the court can challenge the imputed univocality of these standards:

The fact that it is not always the case that there is unanimity of opinion among individuals in society, or between judges at each level of the courts, or among the judges constituting the same adjudicating body, is the same as in any other instance of legal interpretation. This is not merely the case when determining whether or not something is obscene literature, and cannot be used to deny the court's authority to determine community standards. It is thus unavoidable that the court's judgment whether or not this work is obscene literature will not be in agreement with some part of the citizenry. The fact that in this instance the members of the court must

follow their own good sense [*ryōshiki*] in determining [*kettei suru*] the community standards differs not at all from all other instances of legal interpretation.<sup>31</sup>

‘Good sense’, necessarily undefined, is what guides the court in determining community standards. In fact, this tautological definition is held by the court to be an objective discernment of the already extant and obvious. This in turn becomes the court’s answer to the defense’s constitutional objection, under Article 21, to censorship and prosecution without prior specificity of standards for determining obscenity: ‘However, the basis for the determination in regards to the acceptability or unacceptability of the translation in this case is extant as the community standards and good sense functioning in general society, and so one cannot say that it was unclear prior to the fact’.<sup>32</sup> The purportedly ‘extant’ community standards intuited by the court counter the defense’s direct constitutional challenge to the obscenity law, Article 175 of the Criminal Code, as part of a prewar system of censorship not in accord with the postwar Constitution’s guarantees of free expression: the ‘existence’ of the community standards provides the positive content to the law required by the Constitution.

Despite having precluded opposition to its definition of *shakai tsūnen*, the court in *Chatterley* also proclaims its right to intervene actively in reshaping social reality:

Even if we granted for the sake of argument that the ethical senses of a sufficiently numerous mass of the citizenry had become so inured that they fail to recognize a truly obscene thing [*makoto ni waisetsu na mono*] as obscene, the court must defend against moral degeneration by following the good sense provided by the norms of community standards, the ideals of healthy people [*kenzen na ningen no kan’nen de aru shakai tsūnen no kihan ni shitagai*]. Ultimately, neither law nor the courts need always affirm social reality [*shakaiteki genjitsu*]; rather, *they are to oversee evils and decadence with a critical attitude and must play a clinical role*.<sup>33</sup>

In its *de Sade* decision of 1969, the court implicitly endorsed its commitment to this role when it declared that ‘... while it may be preferable to learn of the response of the average person reading the piece in finding what the community standards are, this in the end has no more meaning than that of a reference’.<sup>34</sup> The court will freely define ‘good sense’ and ‘the ideals of healthy people’ as it sees fit. *Shakai tsūnen*, as ‘community standards’, thus ultimately is the court’s standard; it is its notion of social reality as it ought to be, an articulation and simultaneous legal authorization of the State’s Real.

By using *shakai tsūnen* to refer to some abstract, yet putatively specific, content, the courts bridged the gap between, on the one hand, prewar laws and the exercise of Imperial-style state authority and, on the other, a postwar Constitution encompassing legal positivism which would in theory set limits on that authority. The content of *shakai tsūnen* was, in practice, whatever the court cared to impute to it; this arbitrariness was concealed by the supposition that it was actual, existing thought, properly perceived by the court. Failing this, the court could fall back to further abstractions—‘good sense’ and the ‘ideals of healthy people’—to ‘correct’ social reality, through the power of the State’s

judicial apparatus. In either case the court substituted recourse to popular thought [*shakai tsuunen*], and/or ‘good’ and ‘healthy’ portions of it, for its prewar mandate under the Meiji Constitution to act in the name of the emperor. The social body is substituted for the emperor’s delegated body as the grounds for State action.

### Safe art

What does change in the State’s stance on art and crime during the postwar years, however, is the extent to which the State becomes receptive to the idea of a harmless sort of art. Unlike the *Chatterley* decision, the Supreme Court’s 1969 *de Sade* ruling held that ‘the artistry and intellectual content of a work may diminish and moderate the sexual stimulus caused by its portrayal of sex to a degree less than that which is the object of punishment in the Criminal Code, so as to negate the work’s obscenity; but as long as obscenity is not thus negated, even a work with artistic and intellectual value cannot escape treatment as obscene writing’.<sup>35</sup> In other words, artistry might make a work unstimulating, and therefore not obscene, but if obscene, it is criminal. The majority court in *de Sade* began for the first time to contemplate some sort of assessment of the nature of the artistry involved in a work which might make its content ineffectual, and thus not criminal. In so doing, the court moved towards a long line of concurring and dissenting opinions in the obscenity cases which argued in favor of some sort of balancing between obscenity and ‘social value’ as art.

Justice Irokawa Kōtarō’s dissent in the *de Sade* case recommends weighing the possible negative effects of an artistic or literary work against its ‘social value’, its positive side, in calculating the public welfare concern, rather than viewing any degree of obscenity as necessarily criminalizing the work—an approach explicitly rejected by the majority.<sup>36</sup> ‘Obscenity in form’ in certain passages might be sublimated by the work as a whole: ‘Where the work is earnest and truthful in its subject manner, where the portrayals of sex in its narrative are fit and appropriate, inextricably related to the subject matter, and where its value as art is *high*, it may not be unreasonable to see also the phenomenon of a sublimation of obscenity [*waisetsusei shōka no genshō*] if the work is viewed as a whole’.<sup>37</sup> Justice Irokawa was possibly motivated by the content of *Juliette*, arguably the most violent and shocking of all of *de Sade*’s works. That is, stimulation might be redirected towards appropriate social goals and values, including ‘amusement ... an essential requirement in a mass society’, or promoting the ‘nation’s culture’, in the case of ‘high art’ of self-evident value.<sup>38</sup> Either would promote ‘cultural development’.<sup>39</sup> The Justice thus holds open the possibility of recognizing something as art and *therefore* not criminal if it has social worth.

In his concurring opinion in *Akasegawa*’s case, Justice Irokawa demonstrates that his proposed doctrine was conceived of as extending well beyond obscenity cases. In language that clarifies his notion of proper art, he writes, ‘[I]f the artistic activities of expression were of a high order [*kōji de atte*], and if the social value of the work thus created far and away surpassed its negative value,

in such an exceptional case (and it is clear that this case does not rise to this level) the conclusion would need to distinguish this [from the one rendered here.] This is because in the end, in considering the propriety of restrictions being added to the freedom of expression, social worth must first be comparatively assessed'.<sup>40</sup> What at first reads like a lukewarm endorsement of liberal positions on freedom of expression here must be understood within this context also as a recognition of the ultimately unproblematic and socially salubrious nature of those works which most wholeheartedly embrace the category of 'art'. Both 'social value' and '[art] of a high order' assume a hierarchical, ideal concept of 'art' as a distinct and bounded sphere of activity within everyday life, but one to be defined by the State. In Akasegawa's case, despite the recognition of Akasegawa's work as being squarely within trends in contemporary art by multiple witnesses, and even by the district court opinion in the case, Justice Irokawa is able in a brief parenthetical to dismiss it as lacking counterbalancing social worth or for not being of an artistically 'high order' on the basis of his own notions, as a Justice, of the proper role of art.

Justice Irokawa's arguments (and those of other dissenters in related cases) propose a more flexible approach, whereby the State would recognize an interest in 'cultural development' via art that it found to be of social worth (safe art, functioning either as a distraction, or as 'high art' that proclaims its inutility and its separation from all other social spheres as its very definition and role), anticipating a depoliticized art, as well as a climate of less overt protest and opposition.<sup>41</sup> Lack of dangerousness would be the implicit criterion for such art; art which best embraces the State's definitions of art would *ipso facto* be the art least troubling to the State.

### Intent

The question of dangerousness is posed in both Akasegawa's case and in the obscenity cases. In the latter, the issue is damage to public morals: the State's role is seen as maintaining 'minimum morality ... the morality of vital significance for the maintenance of the social order',<sup>42</sup> and responds to a threat to the social order that it perceives in the materials. In Akasegawa's case, according to the courts, *mozō* threatens 'society's faith and credit in currency' [*tsuuka ni taisuru shakai no shin'yō*], 'society's confidence and trust [*shin'rai*] in the genuineness of currency and the like [*tsūka nado no shinsei*], and the security/safety [*anzen*] of transactions produced through it on the basis [of that trust.]' The district court's explanation for this concern (which is considerably more detailed than that of the brief Petty Bench ruling) is unable to account for the specific threat posed by Akasegawa's obviously imperfect copies (monochrome, single-sided, with some printed on inferior paper), other than by conflating the means by which harm results from *mozō* with that of *gizōhai*, counterfeiting. The linguistic acrobatics engaged in by the court in attempting to suture the difference between *mozō* and *gizō* as mere degrees of dangerousness result from its need to suppress the criticism Akasegawa's works embodied: the questioning of the status of genuine currency itself.<sup>43</sup> While both *revealed*

counterfeits and simulacra might harm ‘faith and credit’ in currency, only the latter does so solely through a direct challenge to State authority, since its visible fraudulence questions the reality of all money, including its own. The courts similarly avoided addressing this distinction by their rulings’ conflation of Akasegawa’s project with using ‘actual’ bank notes as material,<sup>44</sup> simultaneously silencing his arguments about the artistic investigation of money exhaustively set forth in pleadings and court testimony.<sup>45</sup> The District Court comes closest to acknowledging the defendant’s arguments in their astonishing finding that the 1000-yen note ‘possesses the most universal nature of all [things] within everyday life [*nichijōseikatsu no naka de motto mo fuhenteki na seishitu o motsu sen’en no nippon ginkōken*]’. This remarkable comment is significantly left out of the Supreme Court’s paraphrase of this part of their holding.

The final reductive suppression by the courts of the criticism embodied by Akasegawa’s work comes in its understanding of ‘intent’ [*ito*] as ‘criminal intent’ [*han’i*]. Again following obscenity rulings, the court addresses the issue of the defendant’s intent merely as a question of whether or not they were aware that their acts occurred, reducing these intentions to simple criminality, and nothing else: *ito* and *han’i* become congruent. While not necessarily unusual as a legal practice, in this context this reduction functions to aid the State’s redefinition of the activities in question as crime, and crime alone. The impossibility of engaging directly with the defendant’s criticism while still preserving legality is again conveniently removed as a problem.

### **‘Supai keiyaku’/‘Aimai na umi I’ —on simulation and simulacra, or spies and ex-spies**

Akasegawa’s works from the late 1950s into the 1960s, and particularly his ‘model 1000-yen note’ projects, together reveal an evolving concern with everyday life and its ‘systems’ of order, with social reproduction, and with the body. Following the development of his work returns us to issues raised by State actions in prosecuting Akasegawa, but in a form that promotes, rather than forecloses, inquiry. To begin to address the complicated question of why Akasegawa created his ‘model’ 1000-yen notes, we must first look to his remarkable short story, *Aimai na umi*.

In June of 1963, Akasegawa published a short story in issue eight of the art magazine *Keishō*, titled ‘*Supai keiyaku*’, or ‘The Spy Contract’.<sup>46</sup> When republished, the piece was renamed for the title of the poem contained within it—‘*Aimai na umi*’, or ‘The Ambiguous Ocean’.<sup>47</sup> This was Akasegawa’s first serious effort at writing: purportedly, he initially intended to write a critique, but instead found he had composed a rather odd short story.<sup>48</sup> According to Akasegawa’s later, somewhat inchoate recollections, he had been thinking a great deal about the act of expression, and his thoughts had led him to a hatred of ‘originality-based existence’ [*orijinaritei ni yoru sonzai*], of ‘system’ and organization, and of his sense of his own identity as a single particle within that system.<sup>49</sup> When he tried to set these ideas down as critique, he ended up with a spy story.

Though published in June, Akasegawa's writing of '*Aimai na umi*' seems likely to have corresponded to the preparation of the first of his 1000-yen prints, the other side of which was printed with an invitation to his February 1963 one-man show of a similar name, '*Aimai na umi ni tsuite*' [On the Ambiguous Ocean]. The exhibition was of a number of collage works that Akasegawa had created between 1961 and 1963, eerie, montage-like combinations of bizarre landscapes, disarticulated body parts, egg shapes (suggestive of embryos, development, cells), clock faces, and other items, either directly superimposed, or related through lines and/or painted patterns.<sup>50</sup> Taken as a whole, the works reveal Akasegawa's developing interest in issues related to the body, to a 'system' that encompasses the body and its own order, and a search for an adequate critical medium both to express these concerns and to work towards their revolutionizing. This critical impulse is visible in all three of Akasegawa's projects associated with this exhibition: the collages (especially the ones done in 1963), the 1000-yen notes, and the short story; it can also be seen subsequently in the projects associated with the founding in May of 1963 of the art group, Hi-red Center, whose principals were Akasegawa, Nakanishi Natsuyuki, and Takamatsu Jirou.

The 'story', '*Aimai na umi*', concerns a spy who has just received a curious new gun, the *taijin'yō pisutoru*, or 'anti-person pistol'. This weapon turns out to be the exact opposite of what a spy might wish for—it makes a huge noise like a howitzer, but lacks penetrating power: 'The power to penetrate frying pans, destroy combination locks to safes, smash fire engine pumps—in other words power beyond that necessary for killing a person—was completely excluded. Perhaps this pistol came into being so as to be very precisely limited to anti-person firepower, just enough for the bullet to penetrate a shirt and dive inside the flesh.'<sup>51</sup> All quotations from '*Aimai na umi*'/'*Supai keiyaku*' are from my own unpublished translation of Akasegawa's story. The spy reflects upon the utter inappropriateness of the thing—its use would instantly disclose his carefully concealed identity as a spy. Yet he remains strangely fascinated with the gun, and on a certain day when he is unlikely to need to resort to gunplay, straps it on and goes out. As he meets in a restaurant with a person whom he later plans to assassinate, he experiences a long fantasy about suddenly shooting the man and everyone else with the gun, customers running about in panic as it is loudly fired at point-blank range. The fantasy's conclusion is the imagined arrival of the police, who finally shoot the spy. He reflects that playing out such a scenario would fail to achieve his true wish: '[t]he reason he became a spy was really based on a desire for a grand revenge [*yūdainaru fukushū*]', the 'eradication of the entire population of humankind'.

When he imagines trying to shoot all of humankind with the *taijin'yō* pistol, and experiences a sensation of his flesh expanding away to formlessness as his consciousness recedes to nothingness:

... when he holds that anti-person pistol before him, his flesh begins to expand outward. The flesh fills with oxygen, swells, and folds back upon itself just like popcorn.

Or rather, his consciousness within this, his individual flesh, turns towards the interior, heads towards the final, existence-less center, and sinks into the infinitesimal. As this occurs, his flesh expands in precise inverse proportion, and as it swells to enfold the room, it is expelled out to cover the hallways, paint over the trains, and expand outward towards infinity.

Perfect infinity is formless; as long as the limitless is unable to attain existence in this world, this individual flesh, the closest of all things to him, in heading towards the infinite progresses towards nothingness [*mu*]. While growing until all of its details [*saibu*] become visible, it continues towards its own extinguishment.

After these reflections, the spy again takes the *taijin'yō* pistol and heads out to the seashore. There follows a long poetic meditation/fantasy about bodies and flesh, 'The Ambiguous Ocean', the title later used for the entire short story itself:

### The Ambiguous Ocean

As flesh is enclosed by buildings  
And buildings are enclosed by flesh  
The sea is enclosed by the land  
And the land is enclosed by the sea.  
To the extent that the earth is a sphere.

Apply water to the human body and as it is diluted  
It shudders violently,  
And as the body's cells [*saibō*] separate, the cells become independent amoeba  
As they swim about  
Together with the water that filled the gaps between them  
They become seawater and flow away.  
That is why the ocean is viscous.  
It is  
Dead flesh's  
Lifeless horizon  
The ocean is flesh without system  
The tapestry of flesh from which laws have evaporated.

Why did God condense the sea and make a system,  
Give food to the system and make a human?  
Why?  
Not knowing the answer,  
Flesh prefers the ocean to humans.  
The ocean with the measureless body temperature  
Of the flesh that lives even as it dies.  
An unmistakable injection of Ringer's solution.<sup>52</sup>

Since God did not do anything more for me  
I started myself.  
In the depths of night  
So as not to be suspected by anyone  
With a scalpel, one by one

Under the swimming beach's shower  
 Careful not to do them any harm  
 I cut off the cells of my body.  
 My consciousness evaporated bit by bit  
 And the ocean expressionlessly welcomes in  
 The little seawater that runs off.  
 Even with me added to the ocean  
 The ocean neither rises nor falls.  
 And I am in there, but  
 There is no 'me' to speak of.  
 I wonder if you understand.  
 I am in there, but  
 There is no 'me' to speak of.

But I was just a bit mistaken.  
 The error of  
 A too proper  
 Illiterate virgin.  
 With too careful preparation  
 I chose night  
 And so my becoming seawater and joining with the ocean  
 Was suspected by no one.  
 Humans are well disciplined from the time of birth,  
 Are busy growing up, so  
 Only while swimming in the sea, is there an ocean.  
 I mistook the other's flesh.

Flesh prefers the ocean to humans.

This is a kindness towards humans.  
 And yet, although it comes from my kind sympathies  
 I must first  
 Begin from flesh not of my own flesh.  
 One fine noon,  
 I conceal on my person a portable shower, microscope, and scalpel  
 And while strolling the beach swimming area,  
 Take care of them one by one.  
 Perhaps when showered with the saltwater spray  
 All of humanity's flesh  
 Will shudder violently  
 From a great anti-person earthquake.  
 Only at this point is care required so as not to be suspected.

Afterwards, God still does not do anything,  
 So I make an imitation system [*boku wa taikei o mozō suru.*]  
 Only at this point, deep in the night, by the shore  
 Do I drag out a deep-sea diving suit  
 And force in with a gurgle  
 Six thousand drums of seawater.  
 The cells jostle together and cling  
 Packed tightly together with Ringer's solution between,

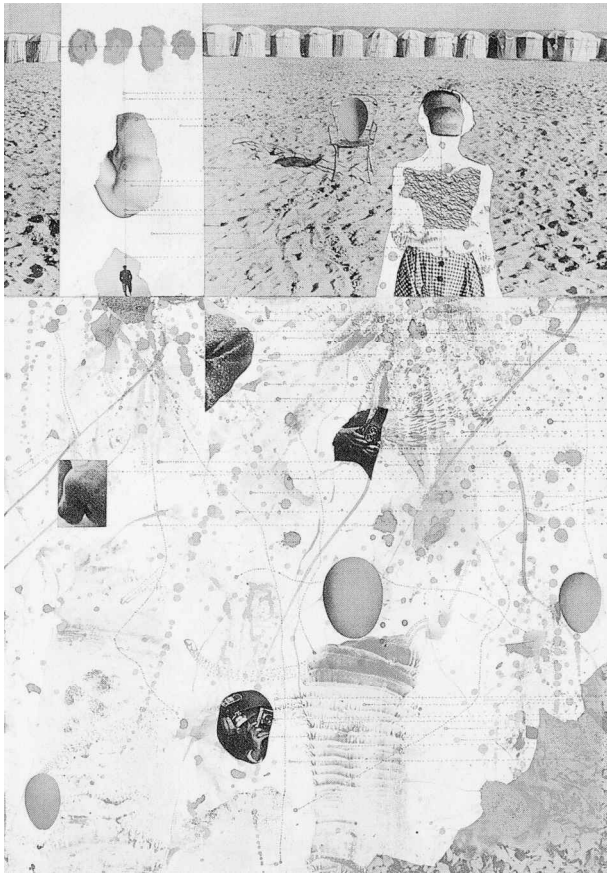
Once it becomes like a human  
Warmed by the light of the moon  
I remove the diving suit.  
Ah, this glorious rebirth!  
This is me.  
It is but  
The least I can do out of kindness  
For the flesh other than my own.

As the ocean is enclosed by the earth  
And the earth is enclosed by buildings  
Flesh is enclosed by buildings  
And the buildings are enclosed by flesh.  
To the extent that the surface of the earth curves  
To the extent that space has curvature.

The poem stages another exploration of bodily boundaries and limits. The mutual, paradoxical enclosure of flesh and buildings, echo the narrator's prior sensation of flesh swelling out of his room 'to cover the hallways, paint over the trains, and expand outward towards infinity'. Both the beginning and the ending of the poem highlight the mutual involvement of flesh and objects on land, the inseparability of body and system, flesh and structure. By contrast, the sea is a zone of chaos, of flesh without system, an anarchic concatenation of cells swimming about independent of any ordered structuring within bodies (hence the analogy between seawater and Ringer's solution). It stands for unstructured potential prior to and beyond the systems upon the land. The poem thus leads from interrelated systems on land to a contrast between land and sea.

Having established the contrast between land and sea as that between the given, the determinate, and the temporal versus the potential, the anarchic, and the atemporal, Akasegawa figures an impossible operation, a restructuring of his/the spy's own body through bodiless agency. First, the narrator describes cutting away his cells one by one under a beach shower, continuing somehow until his body is completely disassembled and the cells flow back into the sea. Yet after the line, 'there is no "me" to speak of', he contradictorily chides his actions for being without effect. This first dissolution fantasy suggests a contemplation of suicide, a fading away in the night 'suspected by no one' and of no consequence: merely an exchange of land for sea.<sup>53</sup> What is required is agency in the midst of dissolution—the ocean only exists as potential to the extent that there is realization of body and structure on the land. Thus the paradoxical line, 'only when swimming in the sea, is there an ocean' can be understood as an ontological statement to the effect that the atemporal ocean only enters into time through interaction with temporal bodies (Figure 8).

With this reflection, the poem returns to re-narrate a bodily disassembly, but this time, with a space for some sort of ghostly, non-corporeal agency: after deconstructing himself, the narrator surrealistically rebuilds his body, his attack on system imagining all bodies under the salt shower, 'shudder[ing] violently from a great anti-person earthquake'. By packing cells and seawater together in a deep-sea diving suit, the narrator reconstitutes himself as a body that has been



**Figure 8.** Akasegawa Genpei, *The Ambiguous Ocean, 2*, 1963. One of Akasegawa's many collage works presented in his February solo exhibition, displaying interests in bodily disassembly and possibility echoed in his later short story.

freed of the present 'system' through reassembly according to a different logic. This human simulacrum would be disruptive to that system, as it would lack those networks of order which ensure the reproduction of the status quo.

The concluding verse paragraph optimistically reverses the order of the items alluded to in the introduction. The introduction leads from land to sea, or from status quo to chaotic potential; the concluding paragraph proceeds from sea to land, from potential to actualization, in terms of Akasegawa's iconography.

Following the poem, Akasegawa's hitherto loosely narrative, allusive writing changes to direct statements about the role of spies, bodies, and money, which serve to clarify the target of his fantastic critique:

Spies reject the entire system of private property [*shiyūzaisaniseido*] which includes the body<sup>54</sup> as well as the consciousness which accompanies the body.

There are among the spies activities related to the rejection of the system of

private ownership: the destruction of the currency system. They possess suitably elaborate counterfeit bill manufacturing techniques to throw it into commotion [*sono kakuran no tame no niseisatsu seizō de wa sōtō seikō na gijutsu o motte iru*]. But manufacturing counterfeit humans? Well, although God's last exertion, woman, seems to be something that can be made from two or three ribs and some other sort of shit mixed together, making a human seems to be not quite so simple a task.

Recently in Italy it seems that they've succeeded in making an embryo in a test tube, and have grown it for a month, but since the raw material was real human sperm and ova, it still seems a ways away from the production of a real counterfeit human. At this point there is no other option but to counterfeit counterfeit humans out of the humans currently in circulation today.

The spies' (Akasegawa's) target is thus identified as capitalism. The sketchiness of Akasegawa's term for it, focusing as it does upon 'private property', contrasts with his understanding that both bodies and consciousness are implicated within this system. Akasegawa's choice of terminology, however, may have derived from the particular history of leftist opposition and critique within Japan, rather than from a reductive, traditional understanding of Marxism.<sup>55</sup> Regardless of its origin, the limitations signaled by a focus on private property are overcome immediately by a sophisticated notion of the mutuality of thought and practice and its connection to systemic reproduction. It is at this level of everyday interaction that Akasegawa was to develop his art and critique most thoroughly.

Within *Aimai na umi* we see evidence that in his critical thought and practice Akasegawa had turned, like so many other of his artist contemporaries, to the problem of the body. The text enacts two of the major dimensions of this turn to be found at the time; in the person of the spy, we have the body as a site of action and infiltration, and in the targets and constructs, the body is examined for the operations of hegemonic systematicity and authority within its very makeup. The former figures a kind of fantastic enablement of possibilities for radical action against what is revealed in the latter.

Thus the 'humankind' that is the target of the spies is the humanity that structures and is structured by a hegemonically ordered everyday life. Akasegawa's desire to radically restructure this reality is figured in the story first as a fantastic wish for total destruction, then as an equally fantastic wish for total self-reconstruction of all people. This targeted reality is understood as extending to the very constitution of humans, from the cells up, as Akasegawa attempts to grasp the interconnected levels of 'system'. The spy's dedication to the destruction of humankind, therefore, is a commitment to this system's overthrow, and to the transformation of human practice and consciousness.

The strange attraction of the *taijin'yō* pistol itself (personified in the work as 'waiting' for the spy) seems to embody paradoxically both the ineffectualness of opposition, and a sense of its utter necessity: the bind faced by 1960s activists. The gun's attractiveness seems particularly linked to its absurd qualities: not only its unsuitability as a spy weapon, but also its capacity to reveal upon its use the spy's identity as a spy. This unmasking operation seems to be at issue here.

Akasegawa's 1000-yen notes relate to counterfeiting as simulacra to simulations, as copies that declare their own falsehood to copies that attempt to pass as the 'original object'. The former challenge the status of the original, while the latter seek to participate in the networks and status associated with that original. This relationship seems personified to a degree in the difference between spy and ex-spy related in '*Aimai na umi*'; specifically, it seems to embody Akasegawa's conundrum as an artist interested in making works questioning the status of money. The loud bang of the gun and the unmasking of the spy as spy strongly parallel the direct challenge to State authority involved in Akasegawa's printing of money simulacra. According to his testimony to the police in the *kyōjutsu chōsho*, Akasegawa had concerns over the legality of the act from the beginning, and was nervous throughout the project.<sup>56</sup> Thus the depictions of the limited range and power of the *taijin'yō* pistol, and the spy's fate in his fantasy shootout at the restaurant, are analogous to the possible results of his own limited production and display/circulation (as artworks) of currency simulacra; in fact the latter in part neatly presages the actual results of his act. The gun's strange attractiveness, and the temptation to reveal oneself as 'spy' parallel Akasegawa's odd attraction to making these works, regardless of the consequences. The compulsion to make the works speaks to the inseparability of Akasegawa's critical and artistic sensibilities. Here we see this played out within a different art form—a short story—and yet here, too, art and criticism are interwoven.

The piece's conclusion with the spy discovering a new sort of pistol seems to show this desire rallying, having identified a new and more auspicious avenue for possible action. The spy has constructed a new *taijin'yō* pistol, to be smuggled throughout the country in mass quantities: 'It's like a small "bazooka"; upon leaving the muzzle the bullet itself acquires rocket propulsion; the pistol is just for ejecting the bullet outward. After that, the bullet enters the body by its own rocket propulsion, and there, its rust-corroded iron gets mixed into the blood. For basically, he really didn't like murder.' The 'story' concludes with a remark that these 'guns' are already circulating. Viewed broadly, this second weapon figures a solution to the actual problem of 'firepower' faced by activists, both literally (their lack of adequate force to combat the State) and figuratively (their impotence in the face of State actions). Its scenario comes very close to metaphorically describing a project for which the 'model' 1000-yen works really might be a model: the rejection of money, either by its overt private printing, or through some sort of general popular refusal of its status. Though admittedly sketchy, it does accord provocatively with Akasegawa's expressed interest in the potential of masses, brought home to him not only through artworks (such as Ai Ō's *Pastoral*), but also by the popular demonstrations and protests culminating in *Anpo* in 1960.<sup>57</sup> For Akasegawa, their fascination seems to have resided not in their ultimate failure, but in the potential that they seemed to embody spectacularly. Akasegawa seems to have viewed these 'political' actions as an artistic object, whose potential might be realized politically through art—a neat reversal of the usual conceptual understandings of art and politics, one that spoke volumes as to the status of both in early 1960s Japan.

### Akasegawa Genpei, ex-spy

Akasegawa's initial explorations into the potentials of his 1000-yen prints reveal a continued broadening of critical concerns and understandings, one that registers through the medium of the artistic works themselves. The slowness with which he incorporated 1000-yen simulacra into his primary work may reflect his continuing uneasiness over the project. According to Akasegawa, his first 1000-yen work was his large-scale, tatami mat-sized drawing of the note.<sup>58</sup> This two hundred times magnification of the 1000-yen note was an exacting color 'imitation' done painstakingly by hand over a number of months. Akasegawa entered it unfinished in the 15th Yomiuri Indépendant in March of 1963, under the title *The Morphology of Revenge: Take a Close Look at the Opponent Before You Kill Him* [*fukushū no keitaigaku (korosu mae ni aite o yoku miru)*]. He displayed it again on May 7–12 as part of Hi-red Center's first group exhibition, the Fifth Mixer Plan [*Daigoji mikisā keikaku*], in what would become the work's final form.<sup>59</sup>

Akasegawa continued to work on this 'Enlarged 1000-Yen Note'<sup>60</sup> throughout the period of printing his 1000-yen simulacra works, from the first set in January almost to the date of the final set of prints in May. Ultimately, as a form of conceptual art, the work raises the question of the artist's intention: why take the time to create such an exacting duplicate of the 1000-yen bill? Akasegawa was concerned to stay just within the boundaries of legality during his 1000-yen project from its very beginning: rendering this imitation by hand at two hundred times actual-size allowed him latitude to execute a reproduction accurately, in full color.<sup>61</sup> The work blurred the distinction between painting, technical drawing, and mechanical reproduction by the exacting precision of what was ostensibly a painting; by the colloquial title of the work as an 'enlargement' (in the sense of a photographic enlargement); and by its very incompleteness, from the gaps in the picture to the pencil-drawn scale grid clearly visible at its margins and within, which marked it both as a hand-painted work (gouache) and yet as a duplication in-progress as well, portending further work to follow.

In a sense, the work represented the limits of a painterly reproduction of the 1000-yen, its mass-printed object, while pushing the legal limits of reproducibility. As part of Akasegawa's artistic production in early 1963, the 'Enlarged 1000-Yen Note' served as a foil to Akasegawa's printed notes, opening up some of the complexities raised by interrogating the form and status of money—an 'original', or 'real thing' which is nonetheless a *reproduction*<sup>62</sup>—to the extent that it could be interrogated by its strange opposite, a painted, and therefore 'original', copy.

Akasegawa's first set of 300 actual-sized prints of the 1000-yen note were made as invitations for his February 1963 'Aimai na umi ni tsuite' exhibition. This fact might suggest that Akasegawa had not yet fully embraced the prints as part of his artistic output: they seem to be only peripherally related to this more conventional solo exhibition of collage works, as much a part of the trappings of the exhibition as part of the exhibit itself. On the other hand, though, these 300 printed 'invitations' and Akasegawa's remarkable method of distributing

them to his list of some 150 invitees—via registered mail in envelopes used for sending cash—arguably reveal Akasegawa moving towards a sort of performance art that would not neatly fit within standard artistic conventions, marking a development that would lead him to co-found the remarkable artistic group, Hi-red Center, in June of the same year.

The invitations were the first set of 1000-yen prints that Akasegawa created; they were the subject of count one of the State's indictment, 'an actual-size obverse of the 1000-yen bill on the face of cream-colored high grade paper in green ink', featuring on the reverse 'information as to a painting exhibition by defendant Akasegawa'.<sup>63</sup> In fact, although the works were notable for their precision, the high-grade, cream-colored paper and, for the 150 or so mailed ones, their method of delivery, the 'information' on their reverse was at least equally provocative. Across the top, labeled '1', was the title of the exhibition, preceded by a curious statement: '1. human body < 8 trillion individual cells combined = seawater < about 6000 drums >. On the Ambiguous Ocean ...'<sup>64</sup> The details of the first line echo Akasegawa's depiction in the then as-yet unpublished '*Aimai na umi*' story of the fantastic creation of a new human. Both the title and the statement about the cellular constitution of the human body closely associate exhibit, invitation, and story.<sup>65</sup> Particularly in the collages from early 1963, ocean, body, and bodily constitution are all closely associated: fragmentary body parts and incomplete body shapes, images of the oceanside, and striated or wavelike washes of blue and green oceanic colors appear in several of the works. Conversely, all of these visual images are textually interrelated within the short story<sup>66</sup> (Figure 9).

On the right, much like a portrait on a bill, is an image of a dark-colored mask or bronze face, largely obscured by a white ellipse at dead center, bearing the label, '2. The Destruction of the System of Private Property'.<sup>67</sup> To the left of this image, in smaller print, is the following paragraph: '<The destruction of the system of private property, that includes the body as well as the consciousness accompanying that body.>The sophistication of the methods and techniques of [the Akasegawa Genpei Co., Ltd.], which is concerned with the destruction of the currency system, are common knowledge. But counterfeit humans are extremely difficult to make, still technically impossible, so for the time being we will be counterfeiting them out of the humans currently in print.'<sup>68</sup> The text closely follows the series of direct statements near the end of Akasegawa's *Aimai na umi*. Again, bodies and consciousness are implicated in the system whose destruction is to be plotted, but here the plotting is not by spies, but explicitly by a 'corporation' bearing the artist's name, the 'Akasegawa Genpei Co., Ltd', whose large-type moniker occupies the bottom center of the invitation, complete with an 'office' address. Such an avowed goal (and purported 'organization') may very well have influenced police, prosecutors, and the courts to take a hard line against this young artist and his otherwise ambiguous project. It represents a declaration against the system as loud as that of the spy in Akasegawa's story firing off the *taijin*' yō pistol.

The detail labeled '3' features a pair of symmetrical oval shapes on the left side of the invitation. The leftmost of these is an image of a sculpted human ear;



**Figure 9.** Akasegawa Genpei, *On the Ambiguous Ocean* exhibition invitation, 1963: Akasegawa's first 1000-yen print, with exhibition invitation printed upon the reverse, shown here with the plate for the invitation portion.

to its right, a black ellipse cut by an internal white oval, such that the whole resembles a large image of a zero. Within the zero is the caption, '3. *Da'en seizou*', an ambiguous term. The '*da*' appears in katakana, for emphasis, with '*en*' in the kanji for circle, or for counting money. It thus permits two readings: *da'en* as 'ellipse', echoing the two shapes of the detail, as well as the shapes of detail #2, and *da'en* as 'useless/insignificant yen'. The second reading accords best with the full caption, which would thus read '3. The Manufacture of Useless/Insignificant Yen', the meaning of which readily explained by the reverse of the invitation itself. The reading, 'ellipse', however, suggests a second level of meaning, which conflates the production of useless yen somehow with the oval bodily images. Within the collages of the exhibition advertised by this 'useless yen', egg-like shapes abound; some take the place of heads on human figures,<sup>69</sup> suggesting bodies in the process of formation (much like the cells of detail #1 and of the short story) or of human minds, incubating. In either case they suggest enigmatic possibility and potential. The mask from detail #2 similarly assumes a rather egg-like form. The oval ear in the invitation further recalls the images of various body fragments within the works.<sup>70</sup>

The last detail on the invitation is the only item departing from the monochrome green ink scheme of both sides of the note: Akasegawa's fingerprint, in ink, placed just to the left of the paragraph discussing the counterfeiting of humans and the destruction of the system of private property. It too assumes a roughly oval shape and adds a third association of ovals with bodies and body parts. Yet as a fingerprint, it adds two dimensions—that of

identity, and an association with crime. The criminological implications of a fingerprint resonate with the conspiracy-like tone of the text of the invitation, and with the near-crime implications of the money simulacrum printed on its obverse.<sup>71</sup> The sort of suggestive play with signs of criminality multiply present in the invitation typifies not only Akasegawa's project, but also a range of artistic activities at the time, such as those of the League of Criminals group [*Hanzaisha Dōmei*]. An aggressively anti-authoritarian stance often characterized artists at the time, attracting police interest.<sup>72</sup>

In this case, much like the textual details of the invitation, it likely acted as one more support to foster and sustain police interest and inquiry, identifying Akasegawa as a promising target for the exercise of State authority against its challengers—or, as I have argued, for the *practice* of the State.

### Acknowledgements

Research for this project in Japan was funded through a grant from the Japan Foundation and an award from the Japan Cultural Arts Foundation. I am greatly indebted to many individuals for advice, help, and access for this project. For the part represented in this essay, I would particularly like to thank Professors Harry D. Harootunian, William Sibley, Tetsuo Najita, Hiroyoshi Noto and Moishe Postone; the members of Chicago's Social Theory Workshop; Christopher T. Nelson; Akasegawa Genpei; Umemori Naoyuki; my father, Arthur F. Marotti, and wife, Judy F. Marotti.

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### Notes

<sup>1</sup> In terms of the cultural battleground I am describing, roughly 1958–1972.

<sup>2</sup> I explore a variety of these artistic experiments through case studies in my doctoral dissertation, 'Politics and Culture in Postwar Japan: Akasegawa Genpei and the Artistic Avant-garde, 1958–1970' (University of Chicago); and examine Akasegawa's artistic development in greater detail.

<sup>3</sup> The conspiracy count fell under Article 60 of the Criminal Code, and involved the indictments of two printers, whom Akasegawa had never met face to face: their shops had fulfilled Akasegawa's printing requests.

<sup>4</sup> 'The fundamental principle of the 1889 Constitution was the idea of imperial sovereignty, as stated in Article 4: "The Emperor is the head of the Empire, combining in himself the rights of sovereignty." In accordance with this provision, the Constitution dealt with the executive, legislative, and judicial branches of government as if they were three aspects of the unitary imperial sovereign power.' John M. Maki, *Court and Constitution in Japan: Selected Supreme Court Decisions, 1948–60*, Seattle: University of Washington Press, 1964, pp. xvi–xvii.

<sup>5</sup> Indeed, one of the few major changes in the criminal law system made after the end of the war was specifically the removal of the lese majesty provisions from the Criminal Code, a revision strongly opposed by Prime Minister Yoshida. See John Owen Haley, *The Spirit of Japanese Law*, Athens, GA: University of Georgia Press, 1998, 71, 221; Koseki Shōichi, in *The Birth of Japan's Postwar Constitution*, Ray A. Moore (ed. and trans.), Boulder: Westview Press, 1997, pp. 228–232. The other major changes to the Criminal Code were the revision of wartime laws, 'those provisions predicated upon the right of the State to fight the enemy, of the provision relating to crimes concerning foreign aggression ...', and the abolishment of the article criminalizing adultery by a wife (but not by a husband). *Outline of Criminal Justice in Japan*, Supreme Court of Japan, 1971, p. 7.

<sup>6</sup> See the statement at trial by Akasegawa's lawyer, Sugimoto Masazumi, for further details, particularly regarding the initial identification of Akasegawa, as well as the provocative delays and resumptions of the process by a new prosecutor, Tobita Kiyohiro. Sugimoto Masazumi, 'Bōtō chinjutsu', *Bijutsu Techo*, November, 1966, p. 156.

<sup>7</sup> The handwritten *kyōjutsu chōsho*, or ‘statements’, shorthand written notes taken by officials to record the suspect’s responses to questioning—really more like ‘confessions’—taken by the inspectors, as well as those later by the prosecutors, are all in accord on this point. See statements taken by Furuishi Kyoshi, 9 January 1964, 31 January 1964, 8 February 1964; Okamura Yasutaka, 25 January 1965, 2 February 1965, Tobita Kiyohiro, 27 October 1965.

<sup>8</sup> ‘Petty Bench’ refers to a partial panel of judges, versus the full Grand Bench of the Supreme Court.

<sup>9</sup> 11 *Keishū* 3, 997 (Sup. Ct. G.B., March 13, 1957); citations hereinafter to *Chatterley* are to page numbers in the publication, ‘Judgment upon Case of Translation and Publication of Lady Chatterley’s Lover and Article 175 of the Penal Code’, *Series of Prominent Judgments of the Supreme Court upon Questions of Constitutionality*, 2, Tokyo, General Secretariat, Supreme Court of Japan, 1958, pp. 1–38, unless otherwise noted.

<sup>10</sup> 23 *Keishū* 10 1239; citations to *de Sade* hereinafter are to the page numbers in its translation in Hiroshi Itoh and Lawrence Ward Beer, *The Constitutional Case Law of Japan: Selected Supreme Court Decisions, 1961–1970*, Seattle, WA: University of Washington Press, 1978, pp. 183–217, unless otherwise noted.

<sup>11</sup> The latter decision was made after the lower court verdicts but before the Supreme Court Petty Bench’s decision, where it was cited.

The case names I have supplied do not strictly follow Japanese legal referential practice, but are rather an adaptation to an American style of legal citation. I would note that the *de Sade* court adds to its *Keishū* volume and page citation of *Chatterley* the parenthetical reference, ‘the so-called Chatterley incident decision’ [*‘iwayuru chiyatarē jikken no hanketsu’*]. 23 *Keishū*, 10, 1239 at 1242.

<sup>12</sup> ‘Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed. (2) No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.’

<sup>13</sup> *Chatterley* held that ‘... art and obscenity are concepts which belong to two separate, distinct dimensions; and it cannot be said that they cannot exist side by side. ... [E]ven the finest piece of artistic product can be evaluated as being obscene from the ethical and legal point of view. Such a conclusion is not impossible because art, law and morality can exist in entirely different dimensions. We cannot give our support to the principle of “art-for-art’s-sake” which places emphasis only upon the artistic quality of production and denies criticism from the moral and legal points of view. No matter how supreme the quality of art, it does not necessarily wipe out the stigma of obscenity. Art, even art, does not have the special privilege of presenting obscene matters to the public.’ See *Chatterley*, 3, pp. 7–9; *de Sade*, pp. 184–186.

<sup>14</sup> See Lawrence Ward Beer, *Freedom of Expression in Japan*, New York: Kodansha International, 1984, pp. 349–350.

<sup>15</sup> Second Criminal Division, 10 June 1918, Case No. 1918 (re) 1465 specified a definition of obscenity later adopted by the postwar Supreme Court, First Petty Bench, 5 *Hanreishū* 6, p. 1026. The Court of Cassation defined obscenity as ‘... a writing, picture, or anything else which tends to stimulate and excite sexual desire or satisfy the same; and consequently, to be an obscene matter, it must be such that it causes man to engender feelings of shame and loathsomeness’ (see *Chatterley*, p. 3).

<sup>16</sup> See, for example, Articles 22, 25, 26, 27, 28, 31, and 32.

<sup>17</sup> Such a move had been anticipated long ago, in a sense, during the negotiations between MacArthur’s General Headquarters (GHQ) and the representatives of the Japanese government over their respective drafts of the Constitution in 4–5 March of 1946. Satō Tatsuo, the chief of the Cabinet Legislative Bureau’s first section and the drafter of Chapter Three (‘Rights and Duties of the People’), was challenged over his rewriting of then-Article 20 on the freedoms of speech, press, and assembly. His version added language akin to that of the Meiji Constitution, qualifying the absolute guarantees in the GHQ draft, providing the right to speech, writing, publication, assembly and association only ‘within limits not prejudicial to peace and order’; the refusal of censorship in the GHQ draft, ‘no censorship shall be maintained’, was rewritten by Satō as the nearly meaningless ‘no censorship shall be maintained except as specifically provided for by law’. Koseki, *Birth*, 112, pp. 114–115. These and similar modifications prompted the GHQ representatives to reject Satō’s Chapter Three draft completely. Satō attempted to justify his qualifications, stating that ‘we think it is necessary to recognize an exception in law for obscene pictures and so forth’; his argument was rejected by SCAP officials specifically out of the concern that ‘[t]here is a danger that it would be abused’. Satō Tatsuo, ‘*Nihon kenpō seiritsushi—‘MacArthur sōan’ kara ‘Nihonkoku kenpō’ made*’, *Jurist* 86, 15 July 1955, pp. 46–7, quoted in Koseki, *Birth*, 120 [emphasis added].

<sup>18</sup> In this, they ignored the distinction between articles such as 22 and 29 which spoke directly of regulation as a possibility, versus those such as Article 21 which pointedly lacked such language. See, for example, the Supreme Court’s opinion in *Chatterley*, quoted below.

<sup>19</sup> Article 12 provides, ‘The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare’. Article 13 states, ‘All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs’. See Maki, *Court and Constitution*, p. 213.

- <sup>20</sup> Murakami v Japan, 1947 (re) No. 19, Supreme Court Grand Bench decision of 18 March 1948, p. 2 *Sai-han Keishū* 191 [hereafter *Murakami*]. This case is cited in *Chatterley*; see Ito Masami, 'The Rule of Law: Constitutional Development', assisted by Nathaniel L. Nathanson, in *Law in Japan: The Legal Order in a Changing Society*, Arthur Taylor von Mehren (ed.), Cambridge, MA: Harvard University Press, 1963, p. 227. This holding was extended specifically to speech issues and protest with the Grand Bench decision of May 18, 1949 in *Takahashi v Japan* [hereafter '*Takahashi*'] in which a farmer was prosecuted for arguing for non-compliance with government rice quota demands. Subsequent rulings strengthened this line of reasoning, and were all cited as precedent in *Chatterley* (see Ito, Rule of Law, pp. 221–222, 227 and 229–230).
- <sup>21</sup> See the *Chatterley* court decision reprinted in Hidaka Rokurō, *Sengoshiryō: Masukomi*, Tokyo: Nihon Hyōronsha, 1970, p. 169, translation mine, emphasis added.
- <sup>22</sup> *de Sade*, 186, emphasis added.
- <sup>23</sup> *Jōkoku* appeals allege that a lower court verdict violates or misinterprets a constitutional provision, or contravenes established Supreme Court precedent. See Maki, *Court and Constitution*, pp. xxvi–xxvii; *Outline*, 43.
- <sup>24</sup> William H. Sewell, 'The Concept(s) of Culture', in *Beyond the Cultural Turn*, Victoria Bonnell & Lynn Hunt (eds.), Berkeley, CA: University of California Press, 1999, p. 56.
- <sup>25</sup> Interview by author, October 18, 1997, Tamagawaen, Tokyo, Japan.
- <sup>26</sup> Article 31 provides that '[n]o person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law'.
- <sup>27</sup> All quotations from the Petty Bench's holdings in Akasegawa's case are from my draft translation of the opinion of 24 April 1970, as reprinted in *Tokyou saibansho saikeishū, Keiji* 176, p. 221.
- <sup>28</sup> As Chin Kim notes, '... few statutes have been overruled [by the courts] for vagueness despite indeterminate meaning. Indeterminateness is taken for granted and thus gives almost limitless scope for widening or narrowing the meaning of statutes'. See Chin Kim, 'Constitution and Obscenity: Japan and the U.S.A.', *Am J Comp Law*, 2, Spring, 1975, pp. 255–283.
- <sup>29</sup> See Hidaka, *Masukomi*, 168; translation mine [emphasis added].
- <sup>30</sup> The court's ruling in some ways resembles an inversion of postwar anti-system rhetoric, declaring that 'the present system' grants them such authority.
- <sup>31</sup> Hidaka, *Masukomi*, 168; translation mine.
- <sup>32</sup> Hidaka, *Masukomi*, 169; translation mine.
- <sup>33</sup> '*Byōheidaraku ni taishite hikakuteki taidō o motte nozomi, rinshōteki yakuwari o enji'nakereba naranu no de aru.*' Hidaka, *Masukomi*, 168; translation mine [emphasis added].
- <sup>34</sup> 23 *Keishū* 10 1239, at 1248; translation mine.
- <sup>35</sup> *de Sade*, p. 184.
- <sup>36</sup> See *Chatterley*, pp. 184–185.
- <sup>37</sup> *Chatterley*, p. 212, emphasis added. In discussing the actual translation in the case, however, the Justice's language reverts to the notion of obscenity nullified by artistry: 'Although there are sexually stimulating elements in places, it may not be too much to say that their effects are completely deadened and erased if one looks at the work as a whole. ... In the final analysis, the translation in the present case does not titillate sexual sensation and does not stimulate and arouse sexual desire.' *Chatterley*, p. 217.
- <sup>38</sup> *Chatterley*, p. 213.
- <sup>39</sup> *Chatterley*, p. 213.
- <sup>40</sup> '*Shakaiteki kachi no hikaku kōryō ga mazu nasarenakereba naranai kara de aru.*'
- <sup>41</sup> When in 1980 the Court adopts similar language, it signals not a boon to free speech, but rather an indication that the State no longer felt any threat coming from this direction. See Beer, *Freedom of Expression*, p. 353, for commentary on the holdings.
- <sup>42</sup> '*Saishō gendo no dōtoku*', and '*shakai chitsujō no iji ni kanshi jūyō na igi o motsu dōtoku*'. Hidaka, *Masukomi*, p. 167.
- <sup>43</sup> This conflation is supported by the repeated assertion by the courts of the possible 'danger' of the one-sided, monochrome notes 'somehow' being used 'as the means of a fraud'—in other words, as counterfeits.
- <sup>44</sup> The trial court even enacts this reduction directly into its name for Akasegawa's project, referring to it as the '1000-yen note'.
- <sup>45</sup> For example, Akasegawa's final submission to the trial court cleverly used a high art vocabulary (forced on the defense by the need to address free speech issues) to frame the State's defense of 'confidence and trust' as extralegal thought policing.
- <sup>46</sup> Akasegawa, '*Supai keiyaku*', *Keishō*, 8, pp. 22–26. Within the context of the piece, *keiyaku* or contract may be understood at several levels of reference—to contracts (on people), to business agreements, to the rules or agreements related to 'spying', and finally to the 'social contract' or some such level of social consensus and agreement.
- <sup>47</sup> Akasegawa, '*Aimai na umi*', *Obuje o motta musansha*, pp. 205–219.
- <sup>48</sup> Akasegawa Genpei & Kikuhata Mokuma, '*Taidan: aimai na umi no ue*', *Kikan*, 14, 3 January 1987, p. 21; Akasegawa, '*Akasegawa Genpei Jihitsu Nenpyō*', *Kikan*, 14, p. 81: 'I intended a discourse on our direct action expressions, but by the time the writing finished, it had become a short story.'

<sup>49</sup> Akasegawa, *Taidan*, pp. 21–22.

<sup>50</sup> See *Akasegawa Genpei no bōken-nōnai rizōto kaiatsu taisakusen*, Nagoya: Nagoyashi bijutsukan, 1995, pp. 55–59, for surviving examples of these collages.

<sup>51</sup> *Nikutai*. I am largely translating this as flesh in this story, although ‘body’ is also possible. I favor the former here due to the emphasis on dissolution, and in contrast with the also possible ‘shintai’, which Akasegawa does not use.

<sup>52</sup> A saline solution including salts of potassium and calcium invented by Sydney Ringer (1834–1910), chiefly used to preserve cells and tissue apart from bodies for laboratory purposes. Akasegawa apparently consulted with a physician over some of the technical details of this story, further evidence of the extent to which he was excited by these notions at the time. Interview by author, 18 October 1997, Tamagawaen, Tokyo, Japan.

<sup>53</sup> There may be a somewhat autobiographical component here, too; Akasegawa speaks elsewhere of a near-drowning experience in 1959 during flooding in a typhoon, when he was stranded with water rising to right below his nose. *Akasegawa Genpei no bōken*, p. 6. We might also see these suicidal figurings as expressive of the critical despair typifying the post-*Anpo* opposition.

<sup>54</sup> *Nikutai*; here rendered as ‘body’ instead of ‘flesh’.

<sup>55</sup> The infamous Peace Preservation Law [*Chian iji hou*] of 1925, which became the government’s chief legal weapon against leftist opposition (and ultimately against all political opposition, or ‘thought criminals’, *shisōhanzaisha*) in its first article prohibited organizing any association disavowing ‘the system of private property’ [*shiyūzaisanseido*] right along with its more famous criminalization of attempting to alter the *kokutai* (the National Body or Essence). The remaining seven articles criminalized discussing, instigating, and/or aiding others in either endeavor, even outside of Japan’s legal jurisdiction. (The law was repealed by the occupation on 15 October 1945.) Thus the descriptive inadequacy of the term might have been well compensated for by its attachment to the rich prewar history of opposition, critique, and State oppression.

<sup>56</sup> The *Kyōjutsu chōsho* present several variants on the exact details. See for example Tobita, 27 October 1965, Furuishi, January 31, 1964.

<sup>57</sup> Interview by author, 18 October 1997, Tamagawaen, Tokyo, Japan.

<sup>58</sup> Akasegawa Genpei & Matsuda Tetsuo, ‘*Kisai Akasegawa Genpei nōnai rizōto tanbō*’, GQ (Japan Edition), 24 February, 1995, p. 33.

<sup>59</sup> Akasegawa, *Tokyo mikisā keikaku: haireddo•sentā chōkusetzu no kiroku*, Tokyo: Chikuma shōbō, 1994, 86, 122. By the time of the latter exhibition, Akasegawa had added Prince Shoutoku’s face and the left half of his robes, as well as some other details, to the work. See *Akasegawa Genpei no bouken*, pp. 62, 69, and 71 for photos of the work as displayed at the above exhibitions, and p. 61 for a color photo of the final version. Akasegawa thus apparently abandoned the work at a point of near completion (as suggested in Sugimoto’s description, Sugimoto, ‘*Bōtō chinjutsu*’, p. 165)—or rather, the work was likely in a ‘completed’ form precisely at this point, where its very incompleteness highlights its status as a process, as a duplication-in-progress.

<sup>60</sup> *Sen’ensatsu kakudaizu*, the colloquial name by which the work is commonly referred to by Akasegawa and others.

<sup>61</sup> The ‘Enlarged 1000-Yen Note’ was never the subject of any part of the *mozō* prosecution.

<sup>62</sup> A reproduction, ultimately, without an original—the printing process of money is authorized by an authenticated machine process, not by any ‘true bill’.

<sup>63</sup> ‘*Kosojō*’, as reprinted in *Kikan*, 10 January 31, 1966, p. 2, translation mine.

<sup>64</sup> “1. *Jintai* < *saibō sōsū yaku 8000000000000 (tyou) ko = kaisui* < *doramukan yaku 6000 hai* > . *Aimai na umi ni tsuite ....*”

<sup>65</sup> All translations from the text of the invitation are my own. A legible reproduction of the invitation face of the bill may be found in Akasegawa, ‘*Taidan*’, *Kikan* 14, 3 January 1987, p. 81, or in color but unreadably small in *Akasegawa Genpei no bōken*, p. 60.

<sup>66</sup> See especially the collages A-9 through A-14, and A-17, in *Akasegawa Genpei no bouken*, pp. 58–59.

<sup>67</sup> ‘2. *Shiyūzaisan seido hakai*.’

<sup>68</sup> Translation mine. ‘System of private property’ is again *shiyūzaisan seido*, which might alternately be rendered as ‘the system of private ownership of property/wealth’. See Note 54.

<sup>69</sup> Among the reprinted samples in *Akasegawa Genpei no bōken*, see Figures A-1, A-4 and A-5 (1961), A-12, A-10, and A-15 (1963), pp. 55–59. The other obvious possible reference is to the egg-shaped works of Akasegawa’s friend, Nakanishi Natsuyuki.

<sup>70</sup> The ear was at the time being focused upon by artist associates of Akasegawa, including Kazakura Sho and the late Miki Tomio, whose ear series became a near obsession. Ovals, conversely, recalled the egg-shaped *objets* of Akasegawa’s friend and associate, Nakanishi Natsuyuki.

<sup>71</sup> When Akasegawa was first interrogated by the police on 9 January 1964, he was shown one of these invitations and apparently asked whether or not the fingerprint on the back was his own. His *kyōjutsu chōsho* identifies it as the print of his right thumb, and adds the wry comment that ‘this unexpected act [of being confronted with this “fingerprint identification” by actual police under these circumstances] is also perhaps a kind of artistic act’. Furuishi, 9 January 1964, translation mine.

<sup>72</sup> As with Akasegawa, it was the political content of their activities, rather than their stances per se, that might then continue to hold that interest.