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TABLE OF CONTENTS
VOLUME 5 – ISSUE 2

INTERNATIONAL CRIMES AND JUSTICE: INSIGHTS ON THE INTERNATIONAL COURTS' DECISIONS ON THE SITUATION IN UKRAINE

Pages 1-24

 XXX

Francesco Focillo

YAKUZA: JAPAN'S UNDERGROUND SOCIETY IN 21ST CENTURY

Pages 25-66

 XXX

Yufei Lin

JUSTICE DELAYED: UNPACKING INEFFICIENCY IN THE INTERNATIONAL CRIMINAL COURT

Pages 67-80

 XXX

Sabba Salebaigi-Tse

THE ARMED CONFLICT IN THE DEMOCRATIC REPUBLIC OF THE CONGO AND THE INTERNATIONAL CRIMINAL COURT

Pages 81-92

 XXX

Nouredine Soudani

UNIFYING THE LEGAL TAPESTRY: NAVIGATING ICC'S JURISPRUDENTIAL DISARRAY

Pages 93-126

 XXX

Lily Zanjani

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JICL'S INSIGHTS

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OVERVIEW

The Journal of International Criminal Law (*JICL*) is a scientific, online, peer-reviewed journal, first edited in 2020 by Prof. Dr. Heybatollah Najandimanesh, mainly focusing on international criminal law issues.

Since 2023 JICL has been co-managed by Prof. Dr. Anna Oriolo as General Editor and published semiannually in collaboration with the International and European Criminal Law Observatory (IECLO) staff.

JICL Boards are powered by academics, scholars and higher education experts from a variety of colleges, universities, and institutions from all over the world, active in the fields of criminal law and criminal justice at the international, regional, and national level.

The aims of the JICL, *inter alia*, are as follow:

- to promote international peace and justice through scientific research and publication;
- to foster study of international criminal law in a spirit of partnership and cooperation with the researchers from different countries;
- to encourage multi-perspectives of international criminal law; and
- to support young researchers to study and disseminate international criminal law.

Due to the serious interdependence among political sciences, philosophy, criminal law, criminology, ethics and human rights, the scopes of JICL are focused on international criminal law, but not limited to it. In particular, the Journal welcomes high-quality submissions of manuscripts, essays, editorial comments, current developments, and book reviews by scholars and practitioners from around the world addressing both traditional and emerging themes, topics such as

- the substantive and procedural aspects of international criminal law;
- the jurisprudence of international criminal courts/tribunals;
- mutual effects of public international law, international relations, and international criminal law;
- relevant case-law from national criminal jurisdictions;
- criminal law and international human rights;
- European Union or EU criminal law (which includes financial violations and transnational crimes);
- domestic policy that affects international criminal law and international criminal justice;
- new technologies and international criminal justice;
- different country-specific approaches toward international criminal law and international criminal justice;
- historical accounts that address the international, regional, and national levels; and



- holistic research that makes use of political science, sociology, criminology, philosophy of law, ethics, and other disciplines that can inform the knowledge basis for scholarly dialogue.

The dynamic evolution of international criminal law, as an area that intersects various branches and levels of law and other disciplines, requires careful examination and interpretation. The need to scrutinize the origins, nature, and purpose of international criminal law is also evident in the light of its interdisciplinary characteristics. International criminal law norms and practices are shaped by various factors that further challenge any claims about the law's distinctiveness. The crime vocabulary too may reflect interdisciplinary synergies that draw on domains that often have been separated from law, according to legal doctrine. Talk about "ecocide" is just one example of such a trend that necessitates a rigorous analysis of law *per se* as well as open-minded assessment informed by other sources, *e.g.*, political science, philosophy, and ethics. Yet other emerging developments concern international criminal justice, especially through innovative contributions to enforcement strategies and restorative justice.

The tensions that arise from a description of preferences and priorities made it appropriate to create, improve and disseminate the JICL as a platform for research and dialogue across different cultures, in particular, as a consequence of the United Nations push for universal imperatives, *e.g.*, the fight against impunity for crimes of global concern (core international crimes, transboundary crimes, and transnational organized crimes).

Yakuza: Japan’s Underground Society in 21st Century

*by Yufei Lin**

ABSTRACT: This article mainly introduces Japan’s organized crime situation in 21st century, based on statistics, it analyzes how Japan’s organized crime function in a special mechanism. It also discusses about the characteristics of crime organization in Japan, and how Japan’s deterrence policy works for this social problem. In the end this article gives a hypothesis of social model of essentiality of organized crime in Japan.

KEYWORDS: Illicit Economics; Japan; Mafia; Sociology; Transnational Organized Crime.

I. Introduction

Since mafia has been declined sharply in the 20th century, people believe that it is an issue of past today. It is true that most of states have wined their battle with mafia in the second past of 20th century, but one will be surprised to find that this organization continue to exist in a considerable scale after 2000 in Japan where a democratic system is constituted completely. And it is even shock that this Japanese mafia, which is named as *Yakuza*¹ below, developing dramatically in a short period of mere fifty years and become one of the most influential organized crimes in the world.

The proliferation of *Yakuza* has been noticed long even crossing the ocean to the English authors. Among them the most significant publication is “*Yakuza: Japan’s Criminal Underworld*” by David E. Kaplan and Alec Dubro. This book edited in 1981 introduces the origin and the history of *Yakuza* before 1980s.² With the enactment of *Boryokudanin niyoru huto na koi no boshi to unikansuru no horitsu* [Act on Prevention of Unjust Acts by Organized Crime Group Members] (as *Botaiho* below), the year of 1992 is considered as a monument of *Yakuza*’s development. Hill in his book talks about some impacts of this act, but 21st century has a more significant change.³ This article is mostly based on the situation of the Japanese mafia after 21st century when not only *Botaiho* has an influence but also a shift of the whole social system has forced *Yakuza* to downsize.

Unfortunately, few English authors keep an eye on *Yakuza* in the latest year, but many Japanese authors pay a long-term attention on these organizations. Author Mizokuchi A. published a series of books since 1970s. These publications involve details of *Yakuza*’s life and evolvment, especially for *Yamakuchi* Group. Suzuki Tomohiko, who used to be editor of a commentary magazine, also engage in research of Japanese mafia after 21st century, and he also carries out interviews directly towards current *Yakuza*’s members, which reflects an authentic attitude of this group today. These publications help this article refined in detail and provide a different view.

DOUBLE BLIND PEER REVIEWED ARTICLE

* Master of University of Geneva (Switzerland).

¹ *Yakuza* is in long-term specially designated Japanese mafia in public context, it is said that this word originated from card game. Japanese police use the word “*Boryokudan*” (Violent Group) officially, members of *Yakuza* call themselves as “*Gokudo*”.

² DAVID E. KAPLAN, ALEC DUBRO, *YAKUZA JAPAN’S CRIMINAL UNDERWORLD* (1981).

³ PETER B.E. HILL, *THE JAPANESE MAFIA: YAKUZA, LAW AND THE STATE* (2003).

This article is also following a series of research on the function of mafia. In this area, one of the most influential authors is Diego Gambetta. Gambetta in his paper creatively initiate the argument that the mafia produce and sell trust.⁴ This argument has totally changed the mind of analysis of the mafia, before that author like Schelling⁵ and Buchanan⁶ used to consider them as total criminal of extortion. Gambetta's paper firstly motivated later authors to analyze this phenomenon in a more neutral aspect, rather than apply simply the traditional theory of other crime.

Beyond that research in the criminology domain, economics authors also recommend a series of results of the mafia. G. Fiorentini and S. Peltzman published the book "*The Economics of Organized Crime*" which introduce a string of economic model of the mafia.⁷ Based on their theoretical model and ample resource of data recorded by the Japan Police, this article examines most of their conclusions. A more concrete understanding of the mechanism of mafia can be established because in many cases, it is not only the tradition and spirit which play a role in the behavior of the mafia member, those actions frequently are also strongly supported by a deep economic motivation.

Further, benefit from the previous research of the Sicilia mafia, this article also make some comparisons of these two different but identical organizations. Henner Hess in his book introduces the origin, spirit, and branch of the Sicilia mafia.⁸ Some phenomena can be discovered in both regions, and some are totally different because of the culture background from their own homeland.

A mix methodology is applied on this research. Firstly, the documentary research method is mainly used on the introduction of the origin, history, and some of the criminal situation in the very early years. This method is used based on a range of official reports, newspapers, social survey, and scholar publications. Secondly, the quantitative method, primarily the analysis of the statistics, is mainly used for research of *Yakuza's* criminal situation on the past two decades. The collection of the data is largely depended on the white paper and other official report of Japanese Police. As a staple method for this article, the analysis of statistics will be carried out in both descriptive and inferential ways. Finally, on a very small scale of the quantitative research, this article also recommends some results from the economic scholars, which constitute an interdisciplinary method which improve the richness of this article.

This article will be unfold dividing in five chapters. The first chapter demonstrates the constitution of *Yakuza* and its scope of business in this century. The second chapter further to detail of the illegal market, representatively the drug-dealing business. This chapter analyzes their business mode and competitive relation, which concludes an interesting discovery that how mafia works as an efficient company in the illegal market. The third chapter introduces the *Yakuza* in legal market, which includes a traditional type of revenue for all mafia: the protection fee. Chapter III talks about what is the essential of the protection fee, concludes it is a kind of extortion rather than service. Then, this part also has a look at how this revenue function today. The fourth chapter talks about the *Yakuza's* future in the clash of new deterrence policy and other crisis. High deterrence level, crush by other organized crimes and other reasons triggered unprecedented crisis for *Yakuza*, this chapter try to assume of how this will evolve in the future.

⁴ Diego Gambetta, *Fragments of an economic theory of the mafia*, (29)1 EUROPEAN JOURNAL OF SOCIOLOGY / ARCHIVES EUROPEENNES DE SOCIOLOGIE (1988), at 127 - 145.

⁵ Thomas C. Schelling, *What Is the Business of Organized Crime?*, 40(4) AUTUMN, THE AMERICAN SCHOLAR (1971), at 643-652.

⁶ James M. Buchanan, *A defense of organized crime?* in THE ECONOMICS OF CRIME (1989), at 395-409.

⁷ GIANLUCA FIORENTINI, SAM PELTZMAN, THE ECONOMICS OF ORGANIZED CRIME (1997).

⁸ HENNER HESS, MAFIA AND MAFIOSI: THE STRUCTURE OF POWER (1973).

Chapter V is a general conclusion of *Yakuza*'s role, the core idea differs from the previous studies which consider mafia as an individual social participator. Rather, motivated by sociology study, this article raises a new perspective to analyze mafia as a field where different capital transfer.

Finally, to clarify definition of different terms used in this article in linguistics, it follows Metropolitan Police Department's translation of "gang" to uniquely refer single designated organization. To shorten and simplify the text, the word *Yakuza* is used to generally refer to all gang members. Other forms of organization like secondary groups in *Yakuza* or other organized crime are referred to as "group" which meaning is dependent on the context.

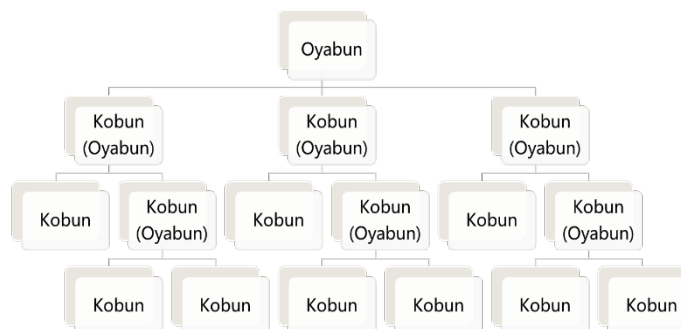
II. Constitution and Deterrence

A. Modernization of Hierarchy

1. Removal of Consanguinity Model

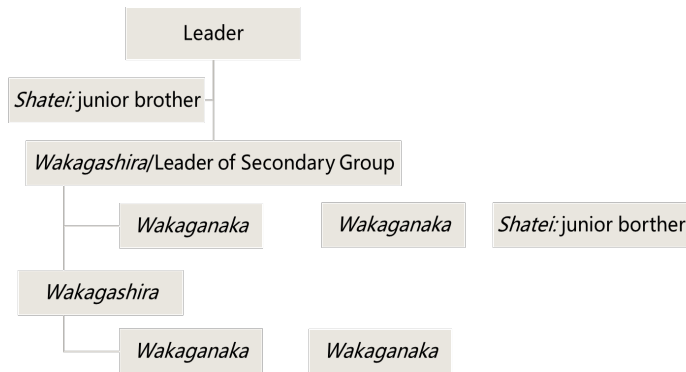
Chapter I mentions *Yakuza* was initiated by traditional consanguinity model of "*Oyabun-Kobun*". The *Oyabun* model has a strong color of ancient Asia's patriarchy, which absolutely prohibit any dissenting of juniors and has a clear rule of succession. A traditional *Oyabun* model manifests as:

Graph 1.1 Traditional *Oyabun* model in *Yakuza*



Graph 1.1 shows how *Yakuza* proliferate in the 20th century. Ideally, as long as an inferior members have capacity to recruit new members as his "*Kobun*", he creates a layer of group for the whole system. In this simple situation the first *Oyabun-Kobun* is considered as the premier group of a single mafia, and the second *Oyabun-Kobun* is the secondary one, similarly for the third-class and fourth-class and so on. All major mafias are similar unions of many secondary groups, but it does not mean they are loose in regulation, for example, an expulsion of member should be respected by any other groups in a single mafia, in other words this person should never be accepted by another group. Therefore, a special role of "*Shatei*", which means junior brother participates more for the purpose of Union. The power scheme demonstrates as:

Graph 1.2 *Oyabun-Kobun* model of late 20th century in *Yakuza*

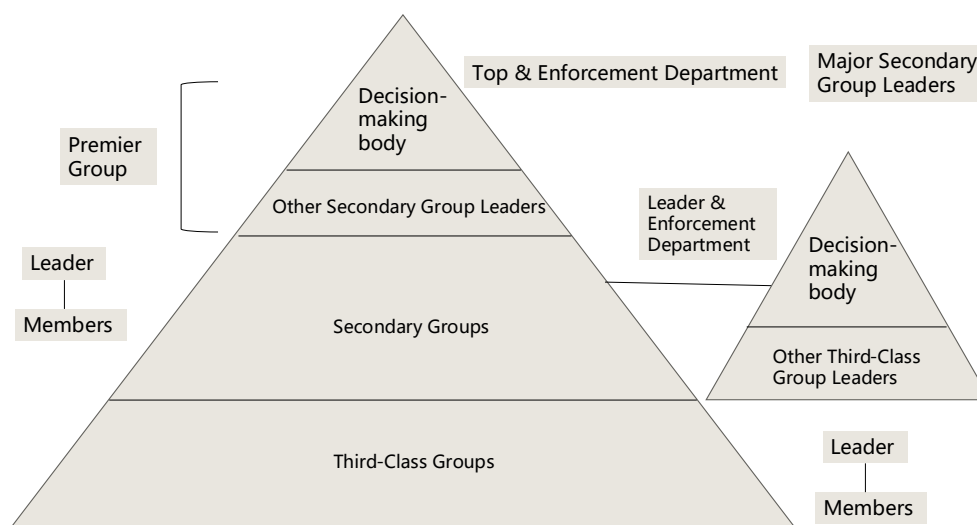


This evolved model accompanied with a collective policy strongly crushed the ancient *Oyabun* model. Firstly, dictatorship of the top was reduced in some extent by the existence of *Shatei*, because latter are all powerful leader of secondary groups. By the end of 20th century, none of the major *Yakuza*'s top has capacity to make decisions only by himself as what Taoka Kazuo used to do in the 3rd generation of *Yamakuchi*.⁹ Secondly, as discussed below, originally a *Wakagashira* should respect *Shatei* as a generation of *Oyabun*, but actually they are competitors of both allocation of power and succession. In the past only members in *Kobun* generation have right to be successor, but this mind has changed totally and a group of *Shatei*, who are usually leaders of powerful secondary groups, become eligible potential successors.¹⁰ In addition, minds of members push a revolution of traditional model. For younger generations, *Yakuza* is more like a business rather than a family, maintaining such a consanguinity model is ridiculous for them. Even in those mafia still designate their positions as “*Wakagashira*” or “*Wakaganaka*”, these terms has differed so far from its original sense.

⁹ By comparison, an authoritarianism control is still possible in those minor mafias.

¹⁰ A typical example is the 5th generation of *Yamakuchi* in 1988. The 5th top of *Yamakuchi*, Watanabe Yoshinori, was in the place of *Oyabun* generation on the point of succession, while his main competitor Nakanishi Kazuo was a *Shatei* of 4th top of *Yamakuchi*. Both competitors were considered as eligible successors on the eye of other *Yamakuchi* members.

Graph 1.3 Modern hierarchy in *Yakuza*



13

As Graph 1.3 shows, modern *Yakuza* scheme manifests a pyramid model. The emergence of enforcement department enforces the collective decision-making mechanism, though the top still represents the supreme power of one single mafia, he cannot spoil this privilege because the enforcement department has ability to prevail his sovereignty. A typical example is in 2005 the enforcement department were not content with the control of the 5th top Watanabe, consequently they united to force him to dismiss the position, and the sovereignty of *Yamakuchi* was in a trusteeship of enforcement department before new mandate of the 6th top.

Here the inner problem of *Yakuza*'s hierarchy is explicit: the abandon of traditional model removes a clear rule of succession, and the powerful enforcement department aggravates this situation. Hitherto succession becomes a war in major mafias, and the next part will discuss how they try to overcome this obstacle.

2. Succession

Although *Yakuza* was developed for only seventy years, the top of each mafia has been changed frequently in its history: as for the three major mafias, *Yamakuchi* has been in 6th generation since 2006, while *Sumiyoshi* and *Inagawa* transferred to 9th and 6th in the recent years. As mentioned above, both *Yamakuchi* and *Inagawa* have endured conflict of succession which trigger separation of some secondary groups, in 21st century this conflict become even more critical.

Last part of this chapter discusses the collapse of traditional model which eradicates thoroughly “succession right” in current *Yakuza* system, but here it does not mean that the power of potential successor is the only factor to determine the top. Hess in his research in assignment of Sicilian mafia suggests that these standards include ability of force and creating fear, battle with state, recognition of other leaders and the subjected.¹¹ This article finds similar criteria in the first one and the third, but it seems like battle with state is replaced by other contribution in *Yakuza*.

¹¹ HESS, *supra* note 8, at 46.

For the first criteria, however, this ability is simplified today for only to create fear. The exercise of force is always not important. For example, a powerful leader was not content with the 4th generation of *Yamakuchi* in 1985, and he separated with 7,000 members to battle with 4th generation *Yamakuchi*, though his troop was considered more powerful, he finally lost this war. Mizokuchi believes that “imagine to force” is the core of capacity in modern *Yakuza*, which is originated from the true violence practice, but also influenced by organization and time.¹² Similar story happens in recent years, the separation of Kobe *Yamakuchi* on the very beginning proves to be more effective in crime,¹³ but in the recent years some secondary groups returned to 6th generation *Yamakuchi* which decrease its scale to less than 800 members today.

When Hess considered battle with state as one of the factors of assignment, he must also take it as a contribution for all mafia members, and this also happens in *Yakuza*. A competitive successor must prove he has made contributions for the whole mafia. Usually, this contribution has to touch the core interest, a mere revenue providing is not enough: for instance, when 5th top of *Yamakuchi* was in conflict, the most powerful leader at that time was Takumi Masaru, who is known as the richest “Economic *Yakuza*” in *Yamakuchi*,¹⁴ but he was not considered as an eligible competitor. One of the reasons is that he and his group made few contributions in the separation battle between 1984-1989.¹⁵ However, traditionally a clash with police or other public organs would not be considered as a contribution, rather, *Yakuza*'s virtue encourage members to surrender themselves if they manslaughter the police.¹⁶

As for the recognition of other leaders, one of the most important is a designation from the former top. But this designation is in a very sensitive meaning, especially when potential competitors consider this is a biased choice. For example, in 2005, *Inagawa* conflicted with succession of two competitors: *Inagawa* Hideki, who is the son of the 3rd top of *Inagawa* and grandson of the creator of *Inagawa*; and his competitor Tsunoda Yoshio, a leader of secondary group. Finally, the creator of *Inagawa* made a judgement to choose the latter instead of his own grandson, one of the reasons is to evade criticism of bias which is easy to trigger separation. Additionally, there are situations where former tops have no chance to make such a designation, both the 4th and 5th generation of *Yamakuchi* was born in the sudden death of the former top.

But designation is still an effective tool to assure a smooth succession, which is considered as one of the most important issues in *Yakuza* because they are more fragile today. An attempt of *Yamakuchi* is to pursue a unipolar control of one core secondary group, which can kill two birds of one stone: on the one hand it assures the power transfer to the person which the top prefers, on the other hand it creates a powerful support for his current sovereignty. Similar solution is also adopted by *Inagawa*, where it goes further for a bilateral-tops system: when a successor come to the place of the top, the former top does not retire and keeps a minimum control to guarantee the succession. However, the side effect of unipolar approach is that it may cause an increasing deterrence because the police will think these core groups are too powerful

¹² ATSUSHI MIZOGUCHI, DOCUMENT GODAIME NO YAMAKUCHI GUMI [DOCUMENT FIFTH GENERATION OF YAMAKUCHI GROUP] (Kodansha Ltd, 2011), at 49.

¹³ By comparison, in the year of 2016, Kobe *Yamakuchi* had a share of 14.1% of all *Yakuza* members while it constituted 18.7% of all crimes, 6th generation *Yamakuchi* had a share of 30.2% while it constituted 30.6% of all crimes.

¹⁴ It is said that Takumi group earned for over 200 billions JPY for *Yamakuchi*.

¹⁵ Some commentators tend to believe that Takumi in 1990s was essential top of *Yamakuchi*., but this proves even more concrete for conclusion here, that even a leader equipped with sufficient power will be challenged of his legitimate of succession right if he does not contribute enough.

¹⁶ In the battle of 1985-1989, a group leader, Anto Miki, was suspected to manslaughter a policeman during the conflict. His boss encouraged him to admit the crime. He finally got an imprisonment of 20 years in 1991.

to be tolerated. In 2009, Japan police raise a slogan of “*Kodo* Clan Desolation Project”,¹⁷ which is the first time that police specially aim on a secondary group in *Yakuza*. Here *Kodo* Clan is the core secondary group of *Yamakuchi* from which both the current 6th top and potential successor originated.

Last but not least, in a multipolar system, recognition of other members is a decisive factor of succession. Certainly, this recognition is based on objective elements like power and contribution as discussed above, but here a more subjective element is how he will exercise his power in the future. A recognition may require from members in the same mafia, for instance, the 5th top of *Yamakuchi*, Watanabe Yoshinori, was able to get his place because of support from the most powerful secondary group leader Takumi Masaru, because Takumi believed that Watanabe would promote policy which favors economic *Yakuza* as himself. Between different mafia, if they keep a friendship in a long-term, this outside support will make a significance to manifest that a mafia admit legitimate of one successor in another mafia. For example, 6th top of *Inagawa* initiated a brother hood with a potential successor of *Yamakuchi* in 2006. Also, a formal succession ritual will invite leaders in other mafias as witnesses.

B. Change of Population Structure: Prepared Members

Part B of this chapter desires to track the constitution of bottom members in 21st century. Although this group is totally anonymous, since they are main participators of crimes, clues are detected from the statistics of criminals. On the official report of Japan, 20 crimes are emphasized as a single column to calculate because they are either highly related to the *Yakuza*'s nature, or they are exercised frequently by *Yakuza* members.¹⁸ To classify these 20 crimes, most of them can be attributed to at least three main categories which manifest an evident characteristic: first is the crime of violence, this includes homicide, arson, forcible sexual intercourse, assault, injury; the second is the crime against property, mainly the theft and the fraud; third is the crime involving both violence and property, usually it happens by using violence to exercise an unlawful act against property, which contains extortion, intimidation and robbery.

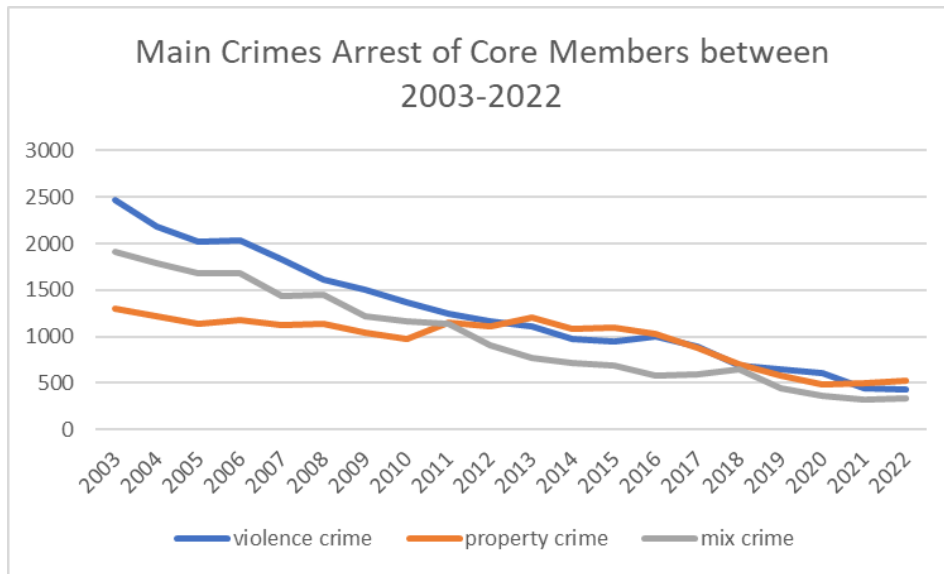
1. General Trend of Traditional Crime

Through the classification above, the trend of these three types of crime shows an obvious variation:

¹⁷ Metropolitan Police Department (MPD), *White book: 2013*, NATIONAL POLICE AGENCY (Nov. 27, 2023), <https://www.npa.go.jp/hakusyo/h25/index.html3>.

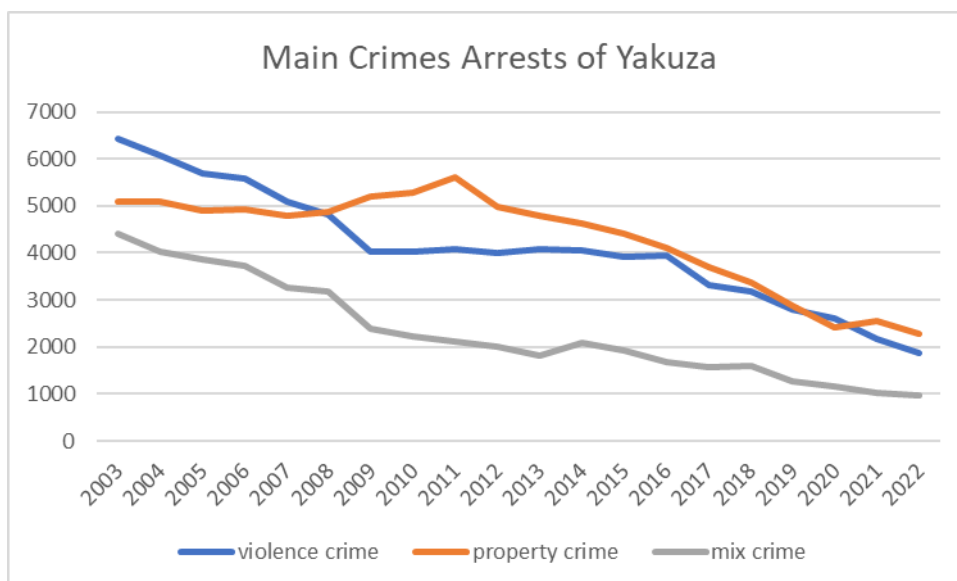
¹⁸ These twenty crimes are: 1. Homicide (Art.99); 2. Robbery (Art.236); 3. Arson (Art.108); 4. Forcible Sexual Intercourse (Art.177); 5. Unlawful Assembly with Weapons (Art.208); 6. Assault (Art.208); 7. Injury (Art.204); 8. Intimidation (Art.222); 9. Extortion (Art.249); 10. Theft (Art.235); 11. Fraud (Art.246); 12. Embezzlement (Art.252); 13. Counterfeit of Imperial or State Documents (Art.154); 14. Gambling (Art.185); 15. Distribution of Obscene Objects (Art.175); 16. Obstructing or Compelling Performance of Public Duty (Art.95); 17. Harboring of Criminals (Art.103); 18. Intimidation of Witnesses (Art.105); 17. Unlawful Capture and Confinement (Art.220); 18. Damage to Credibility; Obstruction of Business (Art.233); 19. Damage to Property (Art.261); 20. Violence behavior. Last one is not a crime in the Penal code but regulated in Law on Punishment of Violent Acts, but it is calculated in the column of Penal Code arrest on the official report.

Graph 1.4 Main Crimes Arrest of all Yakuza Members between 2003-2022¹⁹



Graph 1.4 reveals a salient peak in property crime between 2008-2014, which is abnormal in the situation that the scale of *Yakuza* continuously narrows in the past two decades, while the violence crime and mix crime demonstrate a steady declination which basically reflects the tendency of *Yakuza*. On the other hand, this peak does not appear in the situation of the core *Yakuza* members:

Graph 1.5 Main Crimes Arrest of Core Members between 2003-2022²⁰



Graph 1.5 shows a continuous reduction of arrest of core *Yakuza* members, which highlight the idea that the abnormal peak is mainly contributed to those prepared members of *Yakuza*. A strong convincing explanation for the peak is the financial crisis in 2008, by this year Japan's real GDP fell 1.3% in Q2, 2.3% in Q3, and 4.9% in 2009 Q1.²¹ Although research has found

¹⁹ MPD, *Annual Crime: 2003-2022*, NATIONAL POLICE AGENCY (Nov. 27, 2023), <https://www.npa.go.jp/publications/statistics/sousa/year.html>.

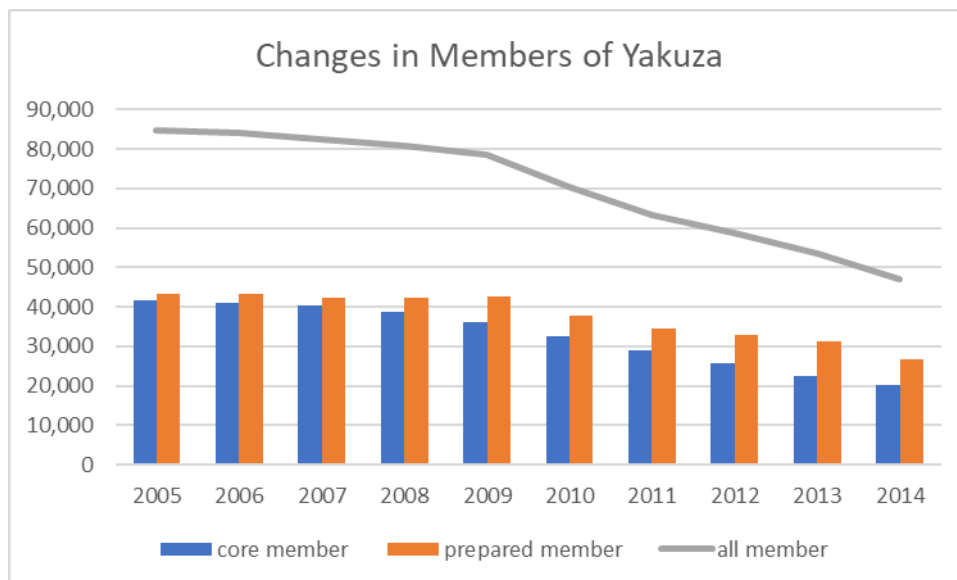
²⁰ *Id.*

²¹ *Quarterly Estimates of GDP – Release Archive – 2008*, CABINET OFFICE OF JAPAN (Nov. 27, 2023), https://www.esri.cao.go.jp/jp/sna/data/data_list/sokuhou/files/2008/toukei_2008.html.

that benefit from the lifelong employment system the unemployment rate is not as influential in Japan as in other countries,²² it should be reminded that those who are motivated joining *Yakuza* is always not provided with a stable career. In research by Japanese police, 60% of the interviewee have more than two jobs before they join *Yakuza*. Interviewer considers this implies that they are not suitable for ordinary work.²³

Therefore, it can be well imagined that many workers in a highly replaceable position endured a tough time after 2008, which create a strong incentive to joining *Yakuza*. Hill also finds this connection is strongly economic determined, because during the recession the seceders have little hope to get an alternative work outside *Yakuza*.²⁴ This also explains why only crime against property has a sharp increase: because these new members have only a limit capacity of exercising crime which enables them to exercise simple crime like fraud and theft. Last question to be identified in this part is why this trend is not reflected in the population of *Yakuza* in certain years. Generally, the number of the *Yakuza* member has a stable decline which is not logical for the fact of such an increase.

Graph 1.6 Changes in Members of *Yakuza* between 2005-2014²⁵



One may conclude that calculation on the official report is not compatible with the reality. Nevertheless, this divergence may not deem to a negligence of Japanese police. On the one hand, as analyzed above these prepared members mainly exercise in simple crime as fraud and theft, which infers that even being arrested, the penalty will be slight as a month imprisonment or an amount of fine. Therefore, in property crime a prepare member can be arrested for more than one times in a single year. On the other hand, Graph 2.6 still indicates a minimum tendency that prepared members gradually occupy an increasing share of all members. But in most situation, it is literally hard to identify a prepared member: they do not have tattoo like core members, participate rarely in internal issue of *Yakuza*, and are less bound with those mafia customs. In addition, there is few grounds left for the support from core *Yakuza* member. It has

²² M. Kawai, S. Takagi, *Why was Japan Hit So Hard by the Global Financial Crisis?*, ADBI WORKING PAPER 153. TOKYO: ASIAN DEVELOPMENT BANK INSTITUTE (Nov. 27, 2023), <http://www.adbi.org/working-paper/2009/10/05/3343.japan.gfc/>.

²³ MPD, *supra* note 19, at 21.

²⁴ HILL, *supra* note 3, at 234.

²⁵ MPD, *White book: 2005-2014*, NATIONAL POLICE AGENCY (Nov. 27, 2023), https://www.npa.go.jp/publications/whitepaper/index_keisatsu.html.

been concluded in the last two chapters that mafia always exercise their power by the use of violence, but this has little effectiveness in crime like theft or fraud. Here this article infers that *Yakuza* only support them in ex post facto by a laundry of the revenue or a temporary protection against police. Hence, the relation between prepared members and core members is hidden, invoking another obstacle for identification.

2. Influence of Prepared Members: Certain Groups Analysis

Conclusion of last paragraph clarifies that a scale including both core members and prepared members is not suitable for estimating the capacity of crime for each group, for the reason that the latter may not be calculated accurately. Following paragraphs tend to examine how these invisible prepared members influence a group's capacity of crime. As analysis in Chapter II, these statistics will be based on the main three major gangs, because their organizations are more stable and more representative.

Graph 1.7 Correlations between crimes and Number of Core Member of *Yamakuchi*²⁶

Correlations of Yamakuchi					
		Violence Crime	Property Crime	Mix Crime	Number of Core Member
Violence Crime	Pearson Correlation	1	.947**	.987**	.946**
Property Crime	Pearson Correlation	.947**	1	.928**	.976**
Mix Crime	Pearson Correlation	.987**	.928**	1	.947**
Number of Core Member	Pearson Correlation	.946**	.976**	.947**	1

** . Correlation is significant at the 0.01 level (2-tailed).

Graph 1.8 Correlations between crimes and Number of Core Member of *Sumiyoshi*²⁷

Correlations of Sumiyoshi					
		Violence Crime	Property Crime	Mix Crime	Number of Core Member
Violence Crime	Pearson Correlation	1	0.436617302	.868**	.714**
Property Crime	Pearson Correlation	0.436617302	1	0.132440284	0.161944633
Mix Crime	Pearson Correlation	.868**	0.132440284	1	.787**
Number of Core Member	Pearson Correlation	.714**	0.161944633	.787**	1

** . Correlation is significant at the 0.01 level (2-tailed).

²⁶ MPD, *supra* note 19.

²⁷ *Id.*

Graph 1.9 Correlations between crimes and Number of Core Member of *Inagawa*²⁸

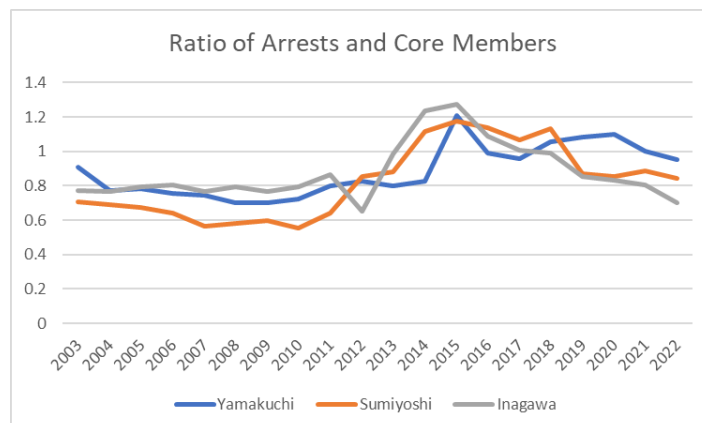
Correlations of Inagawa					
		Violence Crime	Property Crime	Mix Crime	Number of Core Member
Violence Crime	Pearson Correlation	1	.807**	.893**	.870**
Property Crime	Pearson Correlation	.807**	1	.613**	.696**
Mix Crime	Pearson Correlation	.893**	.613**	1	.889**
Number of Core Member	Pearson Correlation	.870**	.696**	.889**	1

** . Correlation is significant at the 0.01 level (2-tailed).

Graph 1.7-1.9 shows a correlation between different crimes and number of Core Member of these three groups. According to this examination shows, all three groups indicate an evident correlation between violence crime, mix crime and the number of core members, and *Yamakuchi* has a significant stronger correlation compared to the other two groups. For the property crime, data from *Sumiyoshi* does not shows a significant correlation, by comparison *Yamakuchi* and *Inagawa* maintains a same level correlation in this area. If conclusion in the former paragraphs was right, it can be inferred that *Sumiyoshi* relies more on those invisible prepared members to exercise crimes against property, while in *Yamakuchi* and *Inagawa* more practice rely on core members.

Another proof for this conclusion is the average number of each member’s participation. If it is assumed that core members of *Yakuza* are capable of practicing all these three crimes, ratio between arrest numbers and core members’ number can represent the effectiveness of all crimes of that group. This ratio exceeds 1.0 in some years, which significantly reflects the participation of the prepared members. Although for some misdemeanors there is possibility for a single member to be arrested more than once in the same year, nevertheless it is rare.

Graph 1.10 Ratio of Arrests and Core Members in the three main gangs²⁹



Graph 1.10 shows a sharp increase in this ratio around 2009 for *Sumiyoshi*. Before that its

²⁸ *Id.*

²⁹ *Id.*

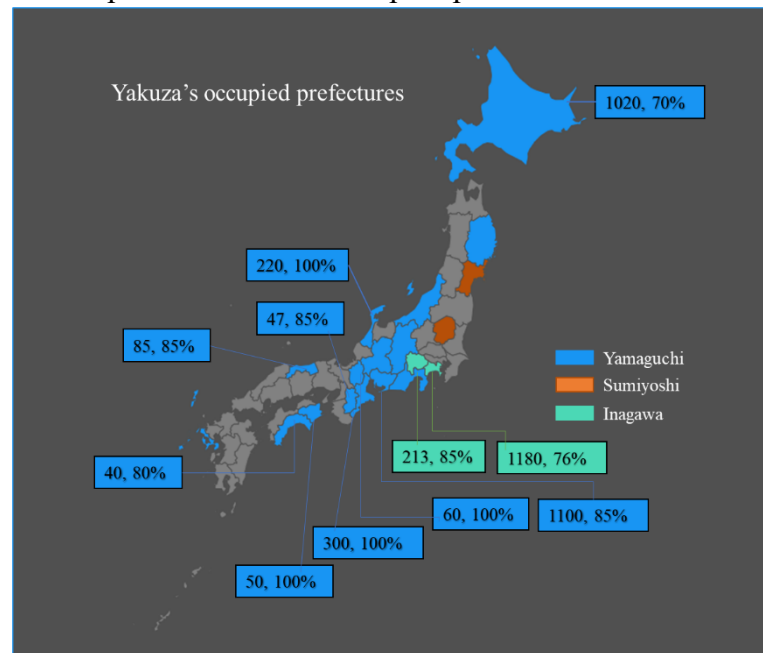
number is in significant inferior compared to both *Yamakuchi* and *Inagawa*. However, in the last decade it has improved to the same level of the other two groups, which strongly proves conclusion here: *Sumiyoshi* has a stronger attractiveness for prepared members especially after the financial crisis. This is a win-win game for both these new members and *Sumiyoshi*: the former are provided with a more appropriate accommodation where they are not required to engage in violent crime as in *Yamakuchi* or *Inagawa*, while *Sumiyoshi* finally compensates for its lack of capacity in crime.

C. Geographical Distribution

1. Recent Geographical Distribution

The scope of business is not fixable for *Yakuza*. Although they have a registration of general headquarters in official report, it does not mean that these groups practice more frequently in the site of registered place. As introduced in part B, scale of business is highly related to where their secondary groups locate, especially those grand ones. Discussion of succession mentioned the tendency of unipolar core secondary group in the recent years, which also manifests in geographical aspects. The centralization of *Yakuza*, especially those major mafias, has been enforced.

Graph 2.11 *Yakuza's* occupied prefectures in 2020³⁰



Graph 2.11 highlights those regions where the three major mafias occupy for over a half local *Yakuza* member and underlines those regions which *Yakuza* members have a powerful control for more than 70% share. Here some information is clearly dispatched: firstly, although influenced severely by the separation of Kobe *Yamakuchi*, the 6th generation *Yamakuchi* still shows breadth in geography. It seems like most influential region is prefectures in west area, where traditionally is sphere of *Yamakuchi*. Nevertheless, some prefectures which account for

³⁰ *Survey of smart flash: Latest survey on the power of Yakuza in 47 prefectures*, SMART FLESH (Nov. 27, 2023), https://smart-flash.jp/sociopolitics/110239/#google_vignette, at that time Kobe *Yamakuchi* also have an effective control of many prefectures, but since many groups have separated today, this graph does not calculate their situations.

less than 100 members are hardly to be considered as influential prefecture of *Yamakuchi*. But at least their revenue is various geographically compared with other groups. Secondly, centralization policy of *Inagawa* is obvious, in Kanagawa and Yamanashi two prefectures it assembles more than 80% of all *Inagawa* members. Finally, *Sumiyoshi* does not have a control for over 70% in any prefectures. But in 2020, its scope of business is still a little wider than *Inagawa*³¹.

2. Centralization or expansion?

Theoretically, centralization helps for a formation of an oligopoly market, which may bring *Yakuza* an exceeding organization benefit for crime. For example, in 2019, only 64% of all arrests of *Yakuza* in Kanagawa allege *Inagawa* members,³² which is nearly 12% lower than their population share. A reasoned explanation is the investment strategy in different situation. Firstly, in most cases these investments are all sunk costs, a single mafia seldom can transfer its reputation of violence to another area because there are other competitors ready to play the role of protector against an outsider. Therefore, a rational mafia tends to invest more in the region on which they believe they have a long-term being alive. Confidence of a predictable revenue makes *Yakuza* more willing to increase their investment of violence, which protect them to exercise those more lucrative crimes like drug dealing. Secondly, an investment in a competitive market will create a positive externality to other competitors, especially for those minor groups to be a free rider, which is not economic for major mafias. It is not clear whether there are other factors motivate *Inagawa* to promote this strategy, but at least it is benefit from economic aspect. In 2020, it is estimated that only 200 members of *Inagawa* are still domiciled in Tokyo where used to be their main offices situate.³³ In addition, their new foothold Kanagawa is still in the circle of Tokyo, it can be well imagined that *Inagawa* is still possible of exercising crimes in their hometown.

However, not all mafias tend to believe centralization is a good choice, a typical example is *Yamakuchi*. Over seventy years the geographical strategy *Yamakuchi* is an infinite expansion, in most of the region they get an impeccable success until they take steps to Tokyo. For a long time, mafias in Tokyo have reached a consensus “not allow *Yamakuchi* cross the *Shima City*”.³⁴ But they succeed in first step in 21st century, by assimilating an individual gang called *Kokusui* Clan in 2006, they announced themselves finally reaching Tokyo, and today *Yamakuchi* is the second largest gangs in the capital. The investment for expansion of *Yamakuchi* is astonishing, it is hard to imagine how much they pay to promote a minor mafia risk to rip up a present agreement which is protected by powerful mafias like *Sumiyoshi* and *Inagawa*. Behind reason is tops of *Yamakuchi* believe expansion will enforce the imagine of violence because it is benefit from propaganda, and this will make easier for *Yamakuchi*'s member to extort.

This article does not want to judge this strategy is wise or not. Polo M. observed two contrary effects: the probability of military success decreases when mafias tend to recruit those members in distant but increases with the scope of the organization.³⁵ The former conclusion indicates that this expansion has brought *Yamakuchi* a heavy burden. *Yamakuchi* is the creator

³¹ By comparison, in Tokyo, Chiba, Saitama *Sumiyoshi* manifest an effective influence for over 40%. But it does not reach to a control.

³² *Security Situation*, KANAGAWA PREFECTURAL POLICE HEADQUARTERS (Nov. 27, 2023), https://www.pref.kanagawa.jp/documents/59373/boukei_chian020228.pdf.

³³ See, *supra* note 65.

³⁴ A city situated in *Mie* prefecture, which is considered a line of *Kanto* and *Kansei* regions.

³⁵ POLO, *supra* note 7, at 87-108.

of “Blog system” in *Yakuza*, which designates some major leaders as a charge person in certain areas, and they oversee a bond bridge between local secondary groups and the headquarter.³⁶ This proves a far distance between headquarter and low-class groups, and a fatal result is the separation of *Kobe Yamakuchi*. Losing places are centralized geographically in western part, indicating that headquarter has lost their control of this region.

It seems like in the 6th generation *Yamakuchi* has realized exaggerated expansion cost them so much, but as long as one day their aim is still to be the “national gang” as what Taoka desired in 1970s, this policy is hard to be abandoned. Instead, remedy for this cost is to enforce the centralization in secondary group, especially in core group, *Kodo* Clan. Most of *Kodo* Clan members only make business in *Nagoya*, today there is no other qualified competitors in the same city for them.

By the end of this part is worth to mention situation in Tokyo, which is perhaps the most profitable but also most dangerous place for *Yakuza* to carry in business, because the deterrence level in capital is always higher than other regions. On the survey of 2020, *Sumiyoshi* constitutes 45% of all *Yakuza* members in Tokyo, which is really closed to a literal control. However, this article believes that even one day *Sumiyoshi* constitutes more than a half or even 60%, it is hard to say it had controlled Tokyo, because Tokyo's *Yakuza* business is exercised in a very complicated way. On the internal aspect, there is a historical arrangement called “*Kanto Fellowship*” which distributes business to seven mafias in Tokyo,³⁷ which means even *Sumiyoshi* is the most powerful mafia in Tokyo, it must respect a collective decision. On the external aspect, there is other organized crime in Tokyo like semi-group. All in all, even in the underground world, *Yakuza* is not the only director in Tokyo.

II. Illegal Market: Empire of *Yakuza*

A. *Yakuza* as Enterprise: Wholesalers or Retailers?

1. Situation in Sale

This article has a research of 137 cases of amphetamine involving participation of *Yakuza* members since 2017, which indicates that these cases are multiple in all procedures of business.³⁸ In the wholesale level, these cases are usually linked with foreigners: Actually, Japanese police observe these two groups have strong connections as early as 2005, and White Book of later years even account situation of foreign criminal as a part of mafia situation. Based on the official record, foreigners constitute about 10 percent of all arrested by drug-dealing, 90% were detected in the procedure of import of amphetamine.

Frequently, an addicted person only required 0.03g-0.1g amphetamine once, so a single retail will not exceed 10g in normal circumstances. Considering there might be requirements in the high-restricted country like Japan, this statistic extend the amount of 20g as a line for retail. For the same reason, an amount plus 500g is usually not possible a retail situation, because it will require a long time to sell all drugs, and during this period the risk of possession increase the cost of crime. However, for those between 20g and 500g, it remains a flexible possibility: some cases have a clear objective for retail, some are revealed during the procedure of resold, and others caught by possession do not show clear aims. And it is possible that in these cases

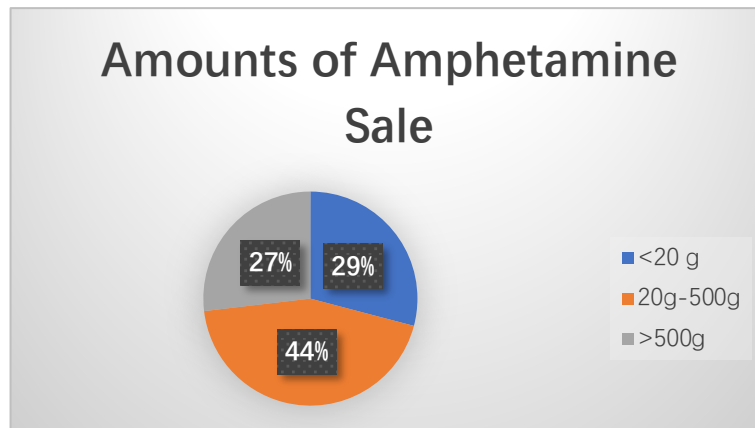
³⁶ S. YAMASHIRA, *NEGOTIATION SKILLS LEARNED FROM THE YAKUZA* (2003) at 228-229.

³⁷ These seven mafias include three major mafias as above, and other four mafias which practice frequently in Tokyo.

³⁸ These cases cover all kinds of amphetamine for business, including possession, sell, import, etc.

the business mode can be easily switched depending on the particular situation of possessors.

Graph 2.1 Amounts of Amphetamine in 137 *Yakuza* related cases³⁹



Among 137 cases, 39 of them are totally retail-based, the tiniest case only involves a retail for 0.3g amphetamine, and 36 of them are in the whole-sale level, on which the biggest amount is a *Yamakuchi* leader related to an import of amphetamine from Hongkong for over 500 kilograms. Graph 3.1 indicates that *Yakuza* involve in amphetamine sale in a multiple way, it sometimes performs as retailer, sometimes as wholesaler.

For a single mafia, it is rare to see that it involves the whole stream of illegal business. Report of NDIC regards that in USA, the famous mafia La Cosa Nostra mostly engage in wholesale and distribution of drugs, but not retail.⁴⁰ On the contrary, Yiu on his research of Hongkong Triad Society think they are not capable of complete business in wholesale, for lack of resource to get in touch with those foreign providers.⁴¹

2. Cost-Benefit Analysis

If this business strategy is considered as rational, most profitable for mafia, it will be possible to do a simple cost-benefit analysis here to compare different strategies.

For the wholesalers of amphetamine, usually if they are not the importer of products (as mentioned above this procedure is usually finished by a cooperative foreigner), interest for the first sale is account to 450% in Japan.⁴² It seems like a lucrative deal, but wholesalers bear a high risk of seizure: firstly, a wholesaler with 1 kg amphetamine have an investment of almost 1,000,000 JPY (about 66000 USD) which was not refundable if it is caught by police. Secondly, conditions of possession and transport requires a much higher demand than retail, on this procedure the wholesalers may have to hire one or two persons to help them.⁴³ In addition, resell should be finished in a more discreet way, because both of the parties may have been the target of police, which is a durable risk compared with a retail.

For a retailer, final price of drug provides a literally attractive profit for them. If there is no other middleman, the minimum interest rate reach to 676%, and in some cases it even

³⁹ *Organized Crime News: Yakuza Case Files*, YAKUZAN NEWS (Nov. 27, 2023), <https://Yakuzanews.jp/blog-entry-10277.html>.

⁴⁰ *National Drug Threat Assessment 2009*, NATIONAL DRUG INTELLIGENCE CENTER (Nov. 27, 2023) <https://www.justice.gov/archive/ndic/pubs31/31379/dtos.htm>.

⁴¹ YIU-KONG CHU, *THE TRIADS AS BUSINESS* (2000), at 113.

⁴² MPD, *supra* note 19.

⁴³ Actually, some of them require their family to help, but this should also be considered as a cost.

extends to 966%.⁴⁴ In United State, at the same time, the interest rate of retailer is only about 300%. Amphetamine retail is a highly profitable business in Japan; even considering Japan's drug deterrence level is much higher than US, the risk is tolerable in such a profit: because amount involved is tiny enough, usually these members will only face to a several month imprisonments, that is why some of them was willing to be arrested repeatedly for several times.

The cost-benefit analysis indicates that despite the pressure of a high-level surveillance, the retail is more lucrative than wholesale in Japan. So why *Yakuza* not choose to only practice retail business as Hongkong Triad Society?

3. Transactional Cost and Internalization

New institutional theory will not take cost-benefit analysis as simple as above: this is a model assumed that the transactional cost in drug-dealing is zero. However, this cannot be true in real world. As an illegal business demanding great confidentiality and anti-detection ability, conclusion is that transactional cost in drug-dealing may be very high. Therefore, *Yakuza* decides to internalize this expensive price by creating a whole procedure as an enterprise.

Williamson suggests three characteristics of transaction which influence price of cost: asset specificity, uncertainty, and frequency of transaction.⁴⁵ Based on this theory, a very high transaction cost is discovered in the illegal market. Firstly, illegal products are with the nature of non-marketability, and this nature should be more emphasized under a legal system which limit the drug-dealing seriously as Japan. When a *Yakuza* member lose their counterparty, these expensive products are not able to bargain in the legal market. Secondly, as mentioned above the surveillance of drug-dealing reduce the success rate of a certain business, transactional cost increase by the reason of possible fail cases. In addition, in the illegal market the information asymmetry is usually more serious than in a legal market, which cause a further distortion of price.

In a retail situation, this transactional cost can be covered by an even higher price of finality from the consumers, but if it comes to the wholesale level, it becomes the investment of mafia itself. When frequency of transaction reaches to some extent, enterprises will consider internalizing this procedure so that it reduces the transaction cost. Schelling also suggests that the organized crimes have an advantage over individual criminal that the former can make use of internalization to reduce the transactional costs.⁴⁶

Rugman's conclusion on internalization is very closed to situation here: although his research is based on those multinational enterprises (MNE), in this circumstance it can be suggested that every single group represents a region. Rugman thinks that incentive from a foreign authority is less than fear of loss of advantage of monopoly knowledge for MNE,⁴⁷ same for *Yakuza*, a group is also precious their knowledge in the illegal market, such as the source of retail and specific information of a certain canton. Also, as to do a single business require some extent of investment of violation, it will be benefit from internalization from not to giving a positive externality to competitors.⁴⁸

⁴⁴ From the report of UNDOC in 2013, the wholesale price of amphetamine in Japan is in the range of 72,486 to 103,551 USD per kilo, while the street price that year is 70,000 Yen (about 700 USD) per gramme.

⁴⁵ Oliver E. Williamson, *The economics of organization: the transaction cost approach*, 87(3) AMERICAN JOURNAL OF SOCIOLOGY (1981), at 548-577.

⁴⁶ Schelling, *supra* note 5.

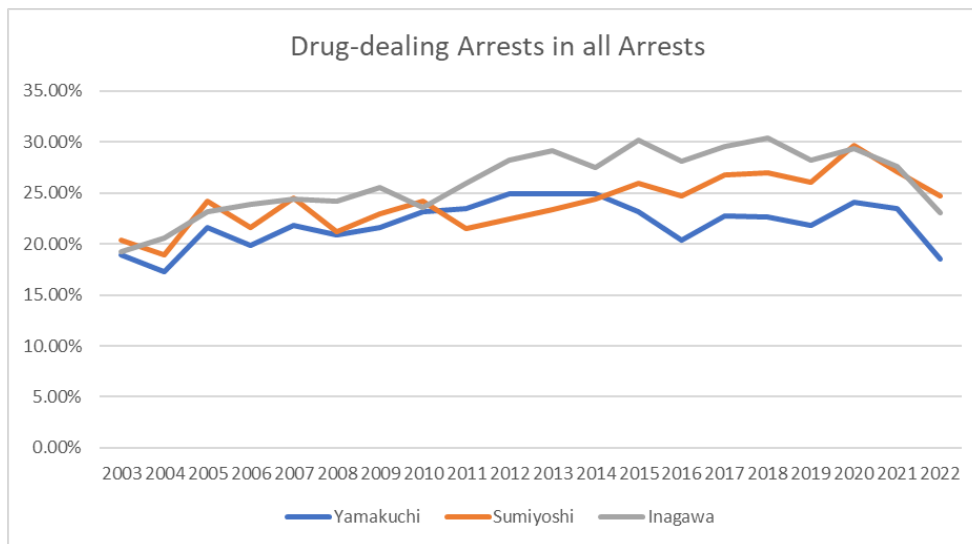
⁴⁷ Alan. M. Rugman, *A Test of Internalization Theory*, 2(4) MANAGERIAL AND DECISION ECONOMICS, MULTINATIONAL BUSINESS (1981), at 211-219.

⁴⁸ This is the assumption of a total competitive market, which may be not true from the situation of the three major groups as the following part talks. However, it may explain behavior of those minor groups.

This article believes that imagination of non-cooperation in drug dealing business is not conclusive. It is a misleading impression distorted by propaganda policy and surface regulation of *Yakuza*, for which they try to separate themselves with drug because this is a highly deterrence level area of police, and an active participation will ruin their credit towards police. A long-term and evidently deliberate negligence of drug dealing in *Yakuza* proves tops of groups do not really oppose this stable revenue.

However, not all groups are capable of internalization because of the limitations in scale or location. Internalization requires firstly sufficient people, for which some minor groups are not prepared. More importantly, as import is the most important part in drug-dealing, those mafias whose location is both import access and main retail scope benefit from their geographical advantages. On this aspect, Tokyo and Kanagawa naturally step forward in a short distance between import and retail, which is proved by the statistics that *Sumiyoshi* and *Inagawa* are superior than *Yamakuchi* in drug-dealing, because the latter locates most in cities which are not equipped with grand airports and harbors.

Graph 2.2 Ratio Drug-dealing Arrests in all Arrests of three gangs⁴⁹



True cases shows that interest in drug-dealing business might differs more than this nuance in statistics. There is a third-class group in *Inagawa* whose leaders are all arrested by amphetamine import,⁵⁰ indicating that drug-dealing is the most important business for this group. Under the level of secondary group, the internalization is also evident: a member who was detected in amphetamine retail in 2020,⁵¹ his source was traced to another import case which alleging another member in the same secondary group in 2019.⁵² However, internalization is not absolute, when profit is acceptable, a re-selling between different mafias still co-exists. For mafias like *Yamakuchi* which is inferior in their location, if they want to share a place in this market, the most economical way might be buying products from these efficient sellers. *Kodo* Clan in 2016 was detected purchasing amphetamine from *Inagawa*, and

⁴⁹ MPD, *supra* note 19. More directly, the average ratio of drug-dealing arrests in all arrests is 22% for *Yamakuchi*, which is 24% and 26% each for *Sumiyoshi* and *Inagawa*.

⁵⁰ Five people arrested by possession of methamphetamine with intent to sell, including the head of the Hiraguri clan, YAKUZAN NEWS (Nov. 27, 2023), <https://Yakuzanews.jp/blog-entry-12478.html>.

⁵¹ *Inagawa-kai* gang member arrested of selling methamphetamine in condominium base, KUMIN NEWS (Nov. 27, 2023), <https://kumin.news/yokohama/minami/articles/15196>.

⁵² Gang member arrested on suspicion of possession of 7.2 million JPY worth of methamphetamine, SANKEI NEWS (Nov. 27, 2023), <https://www.sankei.com/article/20191209-ZYQK622GHJM2NBNZWFSXKHPV2E/>.

coincidentally, their seller is that secondary group mentioned above.⁵³ Here it further proves that *Inagawa's* secondary group are stronger in illegal market by the internalization.

This part concludes that those groups which makes internalization in drug-dealing are more powerful than those not. Thus, an argument will be inferred differently from Gambetta's theory: in the illegal market, *Yakuza* is not a consumer for their protection, rather, this protection is for the group's collective benefits as an investment of an enterprise.

B. Investment of Violence

Previous part conclude that violence is a kind of investment rather than a commodity for a single group as a whole, which will lead a further analysis of the level of violence: if violence is a commodity, it will only be consumed when it is necessary, which is totally random in a certain period; however, things will be different if the violence is an investment. Here it will more be decided based on the strategy of each group, depending on their capacity, profitability, assessment of deterrence et cetera. Leaders of those groups can use their initiative to invest a suitable level of violence so that make themselves as the most competitive participant in the illegal market.

1. Level of Investment of Violence

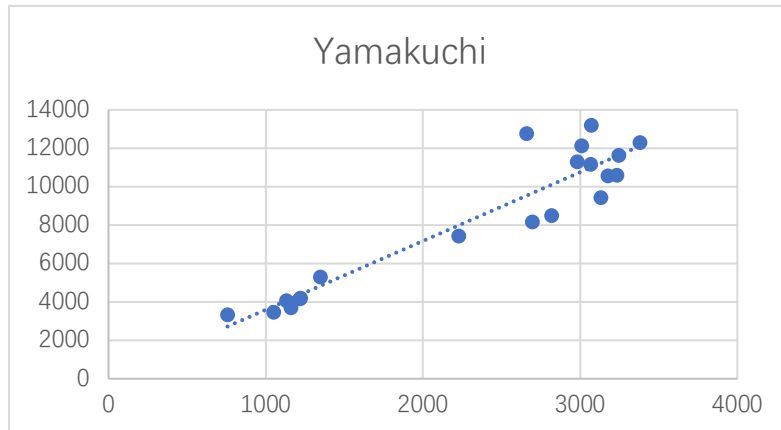
As graph 3.2 indicates, all three mafias have an increase in drug-dealing arrests rate in the past twenty years.⁵⁴ So, what is the motivation for this strategy? Some scholars will resort to the reduction of other crimes. Hill has a similar assumption that *Yakuza* tends to make more business of drug-dealing if other revenue of crime reduce,⁵⁵ because *Yakuza* is not a mafia of single pattern of illegal market, and it is able to make a profit in multiple measures. So the increase of investment may be due to the recession of other crimes. To exam whether this conclusion is convinced, this article makes a correlation analysis with the number of drug-dealing arrests and the number of other arrests between 2003-2023 (X represents other arrests number, Y represents the drug-dealing arrests number):

⁵³ *Raid on Kodo Clan headquarters on suspicion of Kodo Clan members buying stimulants over 40 times*, FUJI NEWS NETWORK (Nov. 27, 2023), <http://www.fnn-news.com/news/headlines/articles/CONN00323074.html>.

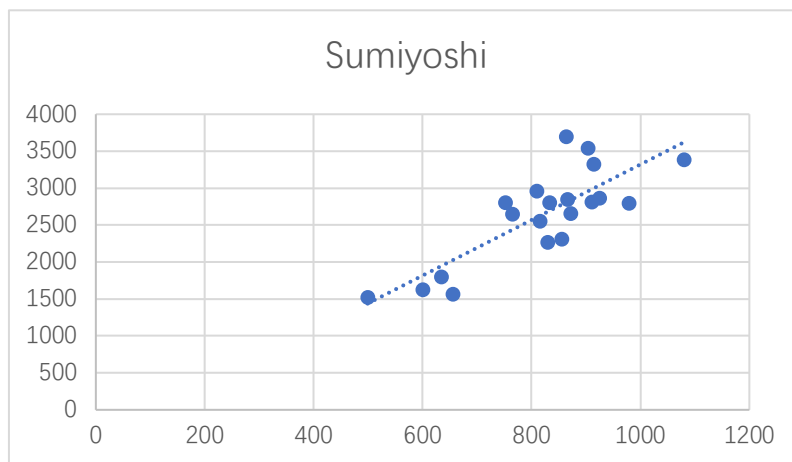
⁵⁴ By comparison in a more direct way, average of these three groups in the first decade is 21.35% (*Yamakuchi*), 22.17% (*Sumiyoshi*), 23.89% (*Inagawa*); and the average of the second decade is 22.65% (*Yamakuchi*), 25.97% (*Sumiyoshi*), 28.31% (*Inagawa*). All three groups have an increase in the last ten years.

⁵⁵ HILL, *supra* note 3, at 228.

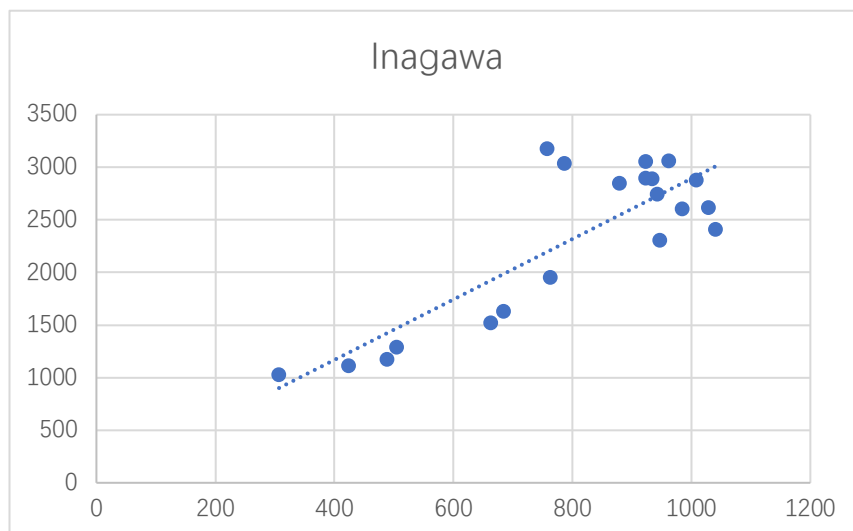
Graph 2.3 Correlations of Drug-dealing and Other Crimes of *Yamakuchi*⁵⁶



Graph 2.4 Correlations of Drug-dealing and Other Crimes of *Sumiyoshi*⁵⁷



Graph 2.5 Correlations of Drug-dealing and Other Crimes of *Inagawa*⁵⁸



⁵⁶ MPD, *supra* note 19.

⁵⁷ *Id.*

⁵⁸ *Id.*

Graph 2.3-Graph 2.5 prove the significant correlation between drug-dealing and other crimes in a single group, however, this is a positive correlation for all the three groups, that when other crime increases, the drug-dealing cases incline simultaneously, which is the contrary of Hill's conclusion. Possible explanation for this might be a change of *Yakuza* in these twenty years: When Hill finished his book, *Yakuza* kept a strong influence in the Japan society, and their control of the illegal market still reached to prostitution business at that time.⁵⁹ By comparison, today it has lost such a multiple source of revenue, as a result the income of drug-dealing is not considered as a compensation, but the main revenue to maintain itself. Thus, a group tends to make more business of amphetamine as possible, there is not much choice for them to adapt their investment.

However, trend in Graph 3.2 is also different from Buchanan's research of criminal cartel, that if the deterrence level continues to remain in a relative degree, the members of this cartel will decide to reduce the investment of violence.⁶⁰ Buchanan's conclusion is based on the fact that, monopolist in a cartel have to consider the potential influence the increasing productivity may create to the marginal price of products. When the output increase, marginal revenue decline in an exceed degree, by this way, it is wiser for monopolist to reduce the productivity in the cartel market than in a competitive market.

Conclusion of this part is that neither Buchanan's conclusion nor Hill's assumption is parallel with the real situation of *Yakuza*. Although it is proved that their behaviors in the illegal market is related to other crimes, it seems like that is merely an objective proof of their capacity for exercising crime, illegal business and other crimes are not compensate for each other.

2. Conspiracy

One factor resulting this consequence is the type of cartel. A cartel has specific arrangements of productivity like OPEC is highly different from a cartel involving in Cournot competition. In the latter situation, monopolists have shortage information from each other which they can only make strategy based on the prediction of productivity from another party. In the former situation, however, members of cartel can reach more objectives by creating a series of arrangements. Additionally, if there exists a long-term coordination, a temporary sacrifice will be considered as acceptable.

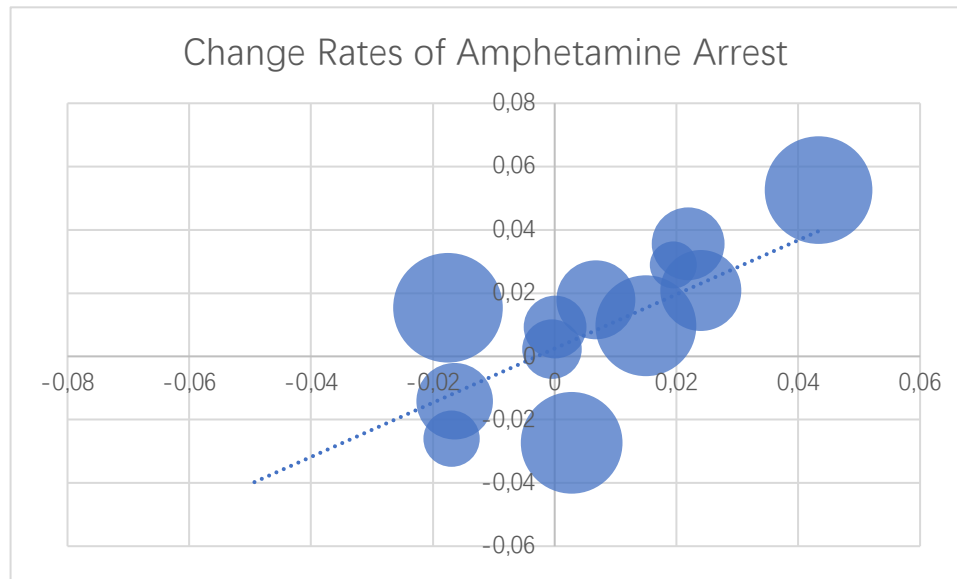
Therefore, the focus of this part is to discover whether there is a conspiracy in the illegal market, at least between these three major gangs. This is not to claim that the minor gangs do not attend in such an arrangement, on the contrary, they have both a strong possibility and motivation to engage in. But the data from these minor gangs is not so typical for using in statistics analysis, so the conclusion will only be made in the scope of the major gangs.

This article estimates the change of investment of violence in drug-dealing market by the annual fluctuation of the percentage of people arrested by amphetamine case in the whole number of arrested members. Assumption for this evaluation is a single gang in huge scale will tend to remain their business strategy in a certain period, so that this change will not be resulted from a diversion of business direction. Also, as the same explanation mentioned above, the deterrence level is be assumed as stable and equal for all these three gangs.

⁵⁹ In the year of 2003, 253 of a total 947 individuals involved violation of prostitution statute is considered as related to *Yakuza*, which shows a great change today.

⁶⁰ BUCHANAN, *supra* note 6.

Graph 2.6 Correlations of Change Rates of Amphetamine Arrests among *Yamakuchi*, *Sumiyoshi* and *Inagawa*⁶¹



Graph 2.6 shows a strong correlation between these three gangs, which infers that these gangs have a similar strategy of adaption in a same pace. These figures insist in a long period of two decades, thus this correlation is not an accidental factor, if it is assumed that this fluctuation is the consequence of positive choice rather than a negative impact, there is strong reason for us to believe that they achieve to some agreement in the cartel.

For the conspiracy situation, Florentini (1996) further refines Buchanan's conclusion by classifying situation in two categories: one is when deterrence is general to all illegal businessmen, another is when deterrence mainly focuses on those grand participators. He found that in the latter situation a cartel will enforce its investment of violence compared with a Cournot competition circumstance, that's because competitive monopolists will be more reluctant to increase investment which may cause a positive externality to their competitors.⁶² Situation here is more like the former one: Japanese police has a long-term practice of designating drug dealing as a part of organized crime, which indicates a policy strategy emphasizing more in larger producers like *Yakuza*. In addition, chapter II discusses of geographical centralization among major gangs, which assures that retail business in drug-dealing will not cause many disputes between different gangs.

There are also examples to further support this conspiracy. Although in the previous part this article concluded that drug-dealing business is mainly carried out in the unit of one single group, it is easy to find a limited cooperation between different gangs, especially when investment is tremendous in some import case. *Sumiyoshi* and *Inagawa* is long-term considered not so friendly with each other because they are competitors in Tokyo market, however, members from these two gangs have been found cooperating in importing amphetamine in 2018.⁶³ If *Yakuza* gangs are monopolists in Cournot competition, there is few motivations for them to corporate together: by doing so each of them increase the output in the illegal market,

⁶¹ MPD, *supra* note 19.

⁶² FIORENTINI, *supra* note 7.

⁶³ 170 kg of methamphetamine inside machine parts import, shipped from one of the largest cartels in Mexico, ASAHI NEWS (Nov. 27, 2023), <https://www.asahi.com/articles/ASQ1T4WB0Q1TUTIL00M.html>.

which reduce the marginal revenue for a unit of the product, which cause the result that the marginal cost is exceed the marginal revenue for both of these two producers. In Cournot competition the wise strategy for each monopolist is to independently control its scale of output to keep the marginal cost is equal to its revenue, thus such a cooperation is considered as non-profitable in business.

Also, a conspiracy evades the potential waste of investment in the illegal market. When deterrence is enforced, all organizations will increase their investment in violence under the fear of loss of power of the monopoly. However, while a conspiracy is achieved, this statute is assured by the framework of cartel, and the cartel can reflect to this increase of deterrence by a collective action which is more economic for each member.

It is convinced that at least between these three gangs some arrangements of investment are achieved in order to better control the total output in the illegal market. In addition, results in the previous part is also well explained by this conspiracy: the increase of the investment is motivated by a conspiracy cartel, this cartel makes efforts to maximize the profit, by reaching an equilibrium between marginal revenue and its cost. In the last twenty years, this strategy reflects an increase of investment. Mutual interest is prior to self-interest, so the possibility of a positive externality is acceptable for each member of the cartel.

C. *Yakuza* as an Efficient Enterprise

Previous research of mafia always emphasize that it is not an integral organization. However, research of this article in the illegal market rather defends a contrary opinion: in the illegal market, *Yakuza* is working as efficient as other enterprises: they smartly evade a high transactional cost by internalization, creating a cartel to control the productivity in order to maximize the profit.

However, this strategy is efficient not based on how intelligent *Yakuza* is, but a subtle interaction between *Yakuza*'s power and their economic interest. Gambetta's conclusion only views one aspect of this procedure, although he realized how mafia exerts their core power of violence to fulfill its interest, he ignored the importance of this interest so much that he describes it as a unilateral process. For other kinds of crimes this conclusion may be true, but it does not demonstrate the real situation of the core illegal market.

Conclusion here is not only the illegal business is supported by the power of *Yakuza*, on the contrary, this power is enforced by the revenue in the illegal market as a reward. On a survey between *Yakuza*'s members, when being questioned of their goals of life, leader's answer is "to make a great management in the future" and "to earn more money"; ordinary core member and pre-member's answer is "to obtain a revenue for life",⁶⁴ which is summarized by the researcher that "Today, accumulating great wealth or succeeding at an enterprise has become their only goal".⁶⁵ Lucrative business of mafia somehow becomes the origin of the power of *Yakuza*, not a consequence of their practice of violence.

The emphasis of the role of enterprise also indicates that there is little motivation for *Yakuza* to create an order in illegal market. In other word, they are not act as a "policy maker". On the one hand, gang as *Yamakuchi* claim itself as opposed to drug-dealing, it is ridiculous for them to reconcile for this issue. On the other hand, it is not acceptable for a leader of *Sumiyoshi* to respect an order from *Yamakuchi* in an arbitration of drug-dealing, even the latter claims a neutrality in the certain issue. In Gambetta's word, that a player's referring is not credible if he

⁶⁴ MPD, *supra* note 19.

⁶⁵ *Id.*

has a vested interest.⁶⁶

The power of *Yakuza* in the drug-dealing should be summarized as it maintains a stable scale of this illegal market and keeps a profitable price by a cartel which have the capacity to control the output of this market by a flexible and deliberate investment of violence. A same basic logic is also suitable for another illegal market, such as the private casino and other gambling career.

III: Legal Market

A. Extortion

This chapter aims to track other business of *Yakuza* outside the crime. As discussed above, this part includes illegal behaviors alleged to crimes, but it also involves some behaviors which do not constitute crime but constitute violation of normal social economic life which are not allowed under *Botaiho*.

1. General Trend of Injunction of *Yakuza*

This part follows the classification of these behaviors by *Botaiho*, Article 8 of *Botaiho* creates a list of 27 behaviors of *Yakuza* being regulated by this regulation. If a group or its members exercise an action on the list, Japanese police is authorized to give an injunction to this group. As an administrative method, to violate this injunction will cause an imprisonment of 1 year and a fine of 1 million JPY on maximum. This list covers majority of the issues *Yakuza* participates positively.⁶⁷ Among them, extortion is the traditional career of mafia, while some of the others do not indicate a significant influence from *Yakuza* today, for example the construction career.

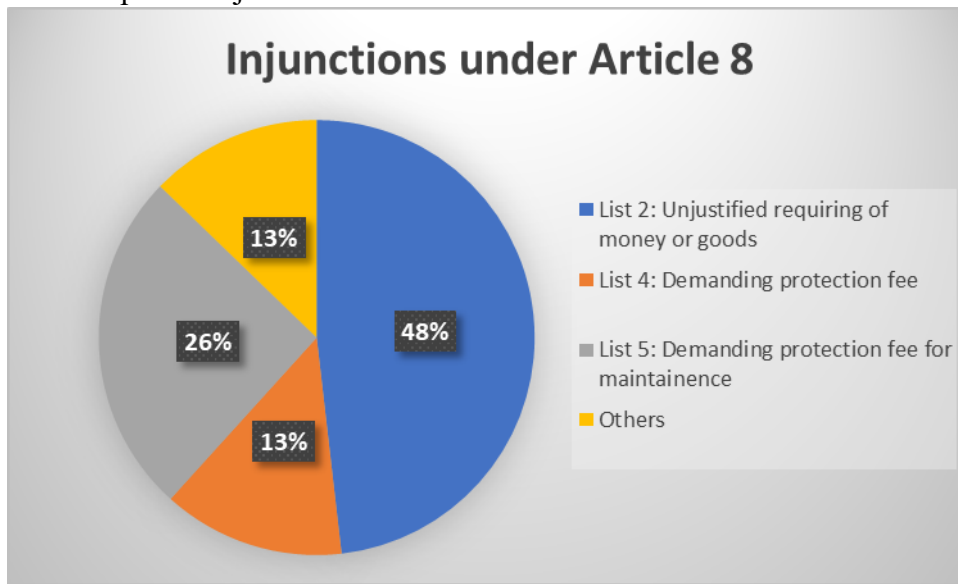
On the list of Article 8, extortion constitutes a major part of the injunction. Among 24,366 injunctions between 2003-2022, 21,254 issues are related with list 2, 4, 5. Following is the loans and refunds area, which constitutes 2324 cases.⁶⁸ It indicates that in the last twenty years *Yakuza*'s influence on other region is not sufficient, only 406 injunctions are related to other terms besides these two subjects.

⁶⁶ DIEGO GAMBETTA, THE SICILIAN MAFIA THE BUSINESS OF PRIVATE PROTECTION (1993), at 143.

⁶⁷ Detail of the composition of this list: 1. Take advantage of a person's weakness demanding money or goods; 2. Unjustified requiring of money or goods; 3. unjustified subcontracting; 4. demanding protection fee; 5. Demanding maintenance money; 6. Usury; 7. Unfair debt collection; 8. Unfair debt waiver demands; 9. Unfair loan demands; 10. Illegal financial instruments transaction; 11. Share buy-backs; 12. Illegal demanding the acceptance of deposits and savings; 13. *Giage*; 14. Obstruction of auction; 15. Illegal house land housing land transactions; 16. Illegal leasing of residential land; 17. Illegal demanding construction work; 18. Illegal demand for use of facilities; Illegal intervention of settlement; 20. Take advantage of a person's illegal behavior demanding money or goods; 12. Illegal demands; 21. Illegal demand for permits and licenses; 22. Illegal demand for removal of permits and licenses; 23. Illegal participation in bidding; 24. Illegal bid exclusion demand; 25. Illegal bid rigging demand; 26. Illegal public contract exclusion demand; 27. Illegal public contract subcontracting or mediation demand.

⁶⁸ This article refers List 6, 7, 8, 9, 14 is highly related with loan and refund area.

Graph 3.1 Injunctions situation under Article 8 between 2003-2022⁶⁹



Demanding money or goods takes a share of 48% of all injunctions, and nearly 40% appears in the name of protection fee.⁷⁰ Last year, despite a reduction in all group members decline to 22,400, there is 568 injunctions involving extortion signified by police.

This data is, nevertheless, incompatible with the result of questionnaire survey. In the survey by Organized crime department of Japan Police and National Center of Elimination of Violence, only 2% of enterprise interviewed admitted that they have been extorted in the last five years,⁷¹ and in those careers which are considered as highly influenced by *Yakuza* this number is even lower in 1.3%.⁷² By comparison, the administrative violence only constitutes a minority part of all injunctions, meanwhile 9.9% of interviewees from administrative institutions admitted that they have received such illegal demands from *Yakuza* members in the last five years.⁷³ This series of data reflects a disproportionate relation between official report and questionnaire survey according to different parties.

This variation shows a reluctance from private business to admit being the victim of *Yakuza*. It is hard to imagine that this is because they are still in the shadow of *Yakuza* today, considering both a reduction in the scale and an increasing aging trend of *Yakuza*. Although this can also be explained that they are facing the menace from *Yakuza*, nevertheless a more convincing data is collected from the administrative officials, which further proves that fear and scare is not the main reason for a denial of this claim.

⁶⁹ MPD, *supra* note 19.

⁷⁰ There is subtle difference between protection fee in List 4 and List 5. Historically, List 4 as *Mekajime Ryo* in Japanese refers to money required when a shop starts to make business for an allowance from *Yakuza*; List 5 as *Yojinbodai* in Japanese refers to money required during management of a shop.

⁷¹ *Questionnaire on cutting off relations with anti-social forces targeting companies, 2020*, NATIONAL CENTER FOR REMOVAL OF CRIMINAL ORGANIZATIONS (Nov. 27, 2023), https://www.zenboutsui.jp/_src/12913156/enq_2021.pdf?v=1519696946831.

⁷² *Questionnaire for companies (in selected industries) on the blocking of relations with anti-social forces, 2021*, NATIONAL CENTER FOR REMOVAL OF CRIMINAL ORGANIZATIONS (Nov. 27, 2023), https://www.zenboutsui.jp/_src/15265011/enq_2022.pdf?v=1519696946831.

⁷³ *Questionnaire on violence targeted by the public administration, 2022*, NATIONAL CENTER FOR REMOVAL OF CRIMINAL ORGANIZATIONS (Nov. 27, 2023), https://www.zenboutsui.jp/_src/17035964/enq_2022_administration.pdf?v=1670470807760.

Here there are two explained reasons for this negative attitude. On the one hand, a lot of enterprise or shop owners are still relied on the service of *Yakuza* to continue their business. A secret business relationship between enterprise and *Yakuza* makes them not be able to admit their experience of extortion, or in another word, some of these enterprises or shop owners may from the heart not recognize this as an extortion, because they are benefit from the service of *Yakuza* in total. On the other hand, it should be reiterated in chapter II this article mentions the centralization management of major mafias, which make their influenced subjects in a smaller scale. If survey above does not reach to these regions, it is hard to consider it as representative.

It can assume that all the enterprises or shops which have amotivation to use violence is a potential individual criminal. Based on cost-benefit analysis, their benefit from crime will not exceed their cost under the circumstance that they exercise a crime on their own. However, because *Yakuza* can make an advantage of internalization of the transaction cost, price for a crime will be cheaper, and in some situation, it is lower than the benefits even plus with the extra cost paid to *Yakuza*, which provides some of the clients a motivation to exercise crime.

2. Protection Fee: Extortion or Not?

Another controversial argument is the essentiality of “protection fee” of mafia. *Botaiho*’s classification is so vague that even drawing a line theoretically between List 2 and List 4 and 5 is impossible. Here is a recent case:

*A group leader of Yamakuchi received an injunction under the Article 8 in 6, September. He was said to engage in an extortion to a young lady in the name of repaying the loan and intimidating that if she did not pay the money, she will be sold to the prostitution.*⁷⁴

This case will fall in List 7 of unfair debt collection if applying *Botaiho*, there is an extortion between the *Yamakuchi* leader and the victim lady of paying money, because he use verbal violence to force her paying an amount of money which is not legally attributed to him. This is evident; however, what is more worth to mention is the relationship between *Yakuza* and that anonymous debtor. It is ignored there must be a concealed procedure, if this *Yamakuchi* leader truly received an invitation from a creditor to intervene in this certain loan procedure, it is logical that he will receive a payment from that creditor.

Here there is a misunderstanding that this is a “service” by mafia and the second procedure does not constitute an extortion. Gambetta strongly supports the idea that this procedure has no difference in economics from a big company to stress a government for certain policies.⁷⁵ To understand this scenario, it should be aware that this client does not need to maintain a long-term partnership with a single *Yakuza*. In a single region there are at least five or six gangs in competition market,⁷⁶ needless to say that even inside one gang there are competitions between different branches. For a long-term requirement client like usury company, ideally, he should be able to select a better one as he wishes. For a temporary demand, things will be even easier: as a rational person, he does not need to pay the protection fee because this relationship is totally illegal under the law. This is the primitive scenario of what should happen if the contract party is not a mafia.

However, he does pay this “unnecessary” fee and even tries to keep a long-term relationship

⁷⁴ *Four gang leaders arrested on suspicion of attempted extortion*, ASAHI TV (Nov. 27, 2023), <https://news.yahoo.co.jp/articles/a7992105a992641a2c0ab92a74461921c1223f32>.

⁷⁵ Gambetta, *supra* note 4, at 133.

⁷⁶ There are few exceptions as mentioned before, Nagoya and Kanagawa today are strongly controlled by each *Yamakuchi* and *Inagawa*, if single *Yakuza* is the monopoly provider in a certain market, this conclusion may be less convincing, but it is strong enough in most of situations.

with a single group. If it is agreed with Gambetta's conclusion, the only explanation will conclude that the service of protection is always best for this businessman, which is impossible. Thus, here it is easily inferred that this client is not voluntary to pay the mafia, what happens is that he is intimidated by the reputation of violence of mafia, even it is ambiguous, to pay the money. Schelling raise a similar comparison between organized crime and tax system,⁷⁷ emphasizes the importance of monopoly power for a systematic extortion. *Yakuza* and mafia in their nature has more characteristic in common with a compulsory state institution rather than a private enterprise in the legal market because this is not an autonomy contract. Back to statements above, it is concluded this absolutely constitutes an extortion because the client is pay under the illegal intimidation.

3. Unipolar and Conspiracy: Two Modes of Monopoly

Although all *Yakuza* are considered as monopolists in protection career, there are two different modes of protection fee business. As discussed in Chapter II, geographical distribution of *Yakuza* manifests that only some gangs are centralized in one certain region, while most of mafias are oligopoly suppliers co-existing in one single city.

These two modes result in different effects of investment and benefits. For the former one, as mentioned above, typical example is *Inagawa* in *Kanagawa* and *Kodo Clan* (*Yamakuchi*'s core secondary group) in *Nagoya*. Since they assure their control of this area, they will be more willing to pay for investment. Both *Kanagawa* and *Nagoya*'s police have scandal of corruption,⁷⁸ and for those just police who are not induced by money, they even dare to intimidate. It is announced that a special group of police which engaged in survey of *Kodo Clan* in 2010, receiving an anonymous letter with all their private information (domicile, phone number, family members, etc.) to menace them stop the investigation.⁷⁹

These investments are compensated by an enormous benefit. Firstly, they are allowed to participate in some careers which in 21st century is strictly excluded with *Yakuza*, for example, the construction career. A construction company which participates in Japan's central international airport establishment is believed to have contact with *Kodo Clan*.⁸⁰ Needless to say in other career, the biggest entertainment company in *Nagoya*, was detected two times of illegal transfer of protection fee for 600 million JPY to *Kodo Clan*.⁸¹ They are too powerful to be repelled, that all careers more or less are under the shadow of *Yakuza*. Secondly, unipolar monopoly even benefits from the deterrence level. In 2021, an *Inagawa* member stabbed a *Yamakuchi* member in a restaurant and the latter soon died. There were several witnesses of ordinary people on the present, and the culprit surrender himself at first, admitted that he did the crime. However, prosecutor in *Kanagawa* decide not to bring a lawsuit to all suspects later.⁸² This article does not want to indicate that judicial system in *Kanagawa* is bribed by *Inagawa*, the reason for this decision may be very complicated, perhaps they think that a lawsuit will

⁷⁷ Schelling, *supra* note 5.

⁷⁸ *Police officers bought with money by Kodo Clan, Betrayal of the Aichi Prefectural Police, deep in the dark 4* SANKEI NEWS (Oct. 2013); *Kanagawa police disciplined for leaking investigative information to gangs*, YOMIURI NEWS (Nov. 27, 2023), <https://www.yomiuri.co.jp/national/20210910-OYT1T50175/>.

⁷⁹ *Police menaced by group*, ASAHI NEWS (August 08, 2013).

⁸⁰ *The lights and shadows of Samix* (Nov. 27, 2023), <https://megalodon.jp/ref/2012-0725-0121-55/www.gendaisangyojoho.co.jp/cgi-bin/backnumber.cgi?NO=661&BODY=12>.

⁸¹ *Nagoya "sex king" re-arrested on suspicion of fraudulent transfer of funds from Australia of 600 million JPY*, ASAHI NEWS (Nov. 27, 2023), <https://www.asahi.com/articles/ASQ735V8WQ71OIQ.html>.

⁸² *Five Inagawa members not prosecuted for the suspected murder of a Yamakuchi leade*, SANKEI NEWS (Nov. 27, 2023), <https://www.sankei.com/article/20210715-OBCPERHSJVMS5BSNRAXPIQP2B4/>.

enforce the tension between two mafias and brings more conflicts. Nonetheless, in a modern society, releasing a murderer without any cause is astonishing, no matter what consideration is here, the effect is that *Kanagawa* government makes a compromise to mafia.

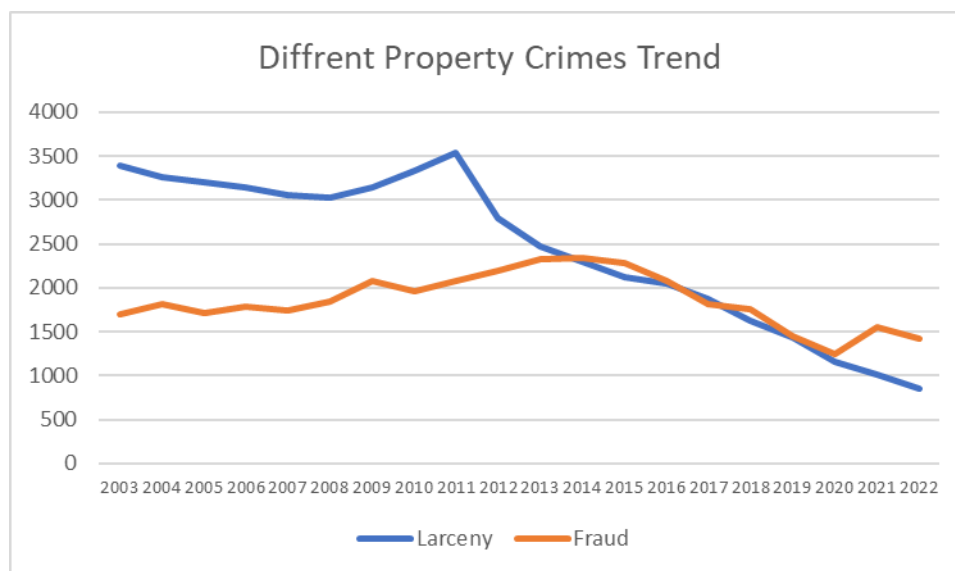
The latter mode of conspiracy monopoly is much smoother. By contrast, since a mafia is not confirmed with his sovereignty, it will balance carefully between cost and benefits. A typical example of conspiracy is Tokyo, as discussed in Chapter II, Tokyo is not attributed to any mafia. Nowadays, the clutch of Tokyo is arranged by *Kanto* friendship, which includes most gangs in Tokyo. Members in this group will sit down and assign each mafia’s domain. Although different mafias are unfair in bargain, generally they will respect agreement of the union. And there even emerge an arrangement of lease, the minor group can lend some careers in their domain to another group, on the circumstance that they are not able to manage all business.⁸³ This creation makes a compromise ensures that those minor gangs will not be embezzled easily by stronger ones. But this arrangement cannot get disputes done once for all, as long as a certain group has a desire to expand, there will be a battle. After the battle, the new power structure will arrive at a new arrangement. Things come full circle.

B. Fraud

1. General Trend and Origin

As discussed in Chapter II, the crime number in these twenty years declined by a reduction of members except in property crimes. Chapter II has analyzed major practitioner of property crimes in *Yakuza*, another question is what kind of property crime increases recently? Here is a trend of two typical property crimes:

Graph 3.2 Different property crimes trend of all *Yakuza* between 2003-2022⁸⁴



Graph 3.2 demonstrates that larceny has a short proliferation in around 2009, climbing to

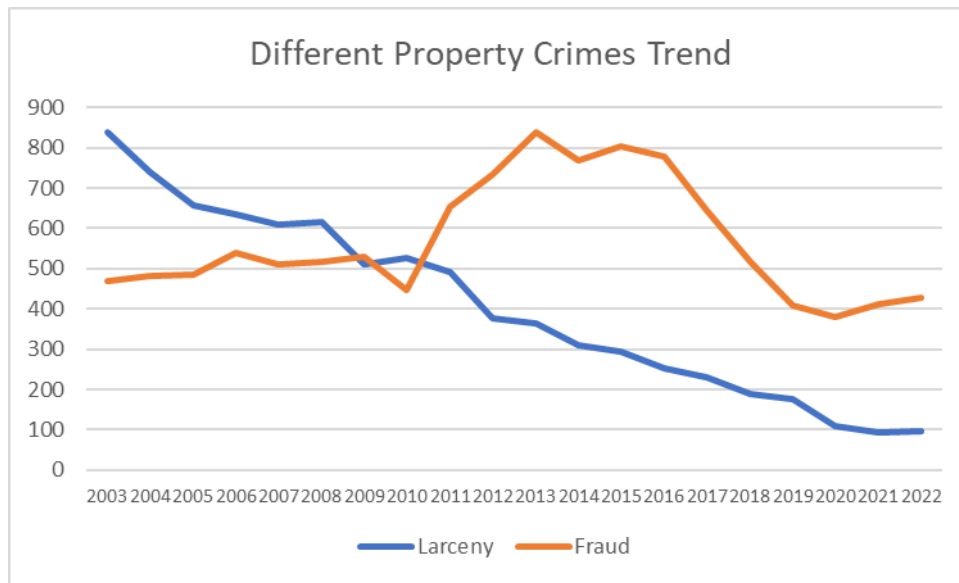
⁸³ For example, *Ginza* in arrangement is the clutch of *Yamakuchi*, but they now rent some of their business to *Sumiyoshi*.

⁸⁴ MPD, *supra* note 19.

the summit in 2010 and then keeps a continuous decline. This trend is compatible with results in Chapter II, that the economic crisis promoted some new members to join *Yakuza* after 2008. By contrast, the fraud crimes are stable and even increase steadily before 2015, and in recent two years it exceeds number of larceny cases.

Regarding to situation of core members, the trend is even more interesting. As discussed in Chapter II, property cases are mostly exercised by prepared members or low-class members because it does not require much expertise of mafia. Statistics shows that in larceny cases this conclusion is true, but it seems core members contribute more in fraud crime, especially in the recent ten years:

Graph 3.3 Different property crimes trend of core *Yakuza* members between 2003-2022⁸⁵



Some may suspect that whether fraud can be attributed to a mafia business because superficially it does not require any violence. In the past, when fraud was still considered as an individual crime, it is hard to say that an individual member practicing fraud is related to his identity of mafia. However, with the development of telegram technology, this view should be updated. Today nearly a half of the fraud cases are so-called “special fraud”,⁸⁶ which refers to those perpetrators counterfeit others in distance (usually by telephone or postcard) to fabricate a situation, force victims to transfer money in their accounts. These crimes usually require a group to operate, because the procedure requires to proceed very fast so that the victims have no sufficient time to realize that they are in a lie and make a remedy. On this aspect, although fraud does not take an advantage of violence of *Yakuza*, *Yakuza* members are at least benefit from their organization strength.

In fact, many Japanese authors believe special fraud is originated from *Yakuza*.⁸⁷ According to this opinion, story begins with a powerful usury system of *Yamakuchi*, which is called “*Goryo* Clan”, this group in summit controlled more than 1,000 usury companies. Kimura Yuuji defines it as “system finance” because “multiple stores in a same group share their client’s information

⁸⁵ *Id.*

⁸⁶ In 2022, 17,570 of 37,928 in all fraud cases are recognized as special fraud.

⁸⁷ See, S. IKEDA, SPECIAL FRAUD BECOME UNDERGROUND BUSINESS, (Modern Theory), at 154; ATSUSHI MIZOGUCHI, GENDAI DAILY: FROM THE YAMAGUCHIGUMI GORYOKAI TO SPECIAL FRAUD SAGI NO TEIO [THE KING OF FRAUD], (Bungeishunju Ltd.), at 21.

to induce them make loans”.⁸⁸ A common strategy is, when a client reaches a deadline for an amount of usury in company A, company B will positively provide him an amount to pay his last loan so that he does not need to scrimp and save in a short period, nevertheless the interest increases. *Goryo* Clan use such strategies, with the assistance of violence, creating a huge amount of revenue.⁸⁹

Frankly speaking, to say *Goryo* Clan is the origin of special fraud is a little bit unfair because none of the case in *Goryo* Clan was detected as relating to special fraud. It is more appropriate to say that *Goryo* Clan’s system finance inspired special fraud rather than an origin. The core of system finance is a cumulative management of plenty client’s private information and thousands of small amounts loans. On the first aspect, this private information, pour in black market after *Goryo* Clan dissolved, which made special fraud group have easier access to select their victim. On another aspects, it provided for its successors a mature procedure of receiving and transferring these small loans in a most economical way. This procedure should be calculated carefully otherwise the cost of crime may easily exceed its benefits, because these loans usually are tiny in order not to create additional risk of non-returning. Same for special fraud, required money cannot be too high to alarm victims or exceed their capacity for payment.

How these usury companies shift to fraud group is still in a mist. However, a statement made by one of the successors of *Goryo* Clan⁹⁰ may get a glimpse of the light. Mizokuchi interviews him, questions on how his usury companies alleging special fraud. He admitted the fact, saying that “some managers hybrid their income from fraud with revenue in usury, to increase their returning rate for a promotion, and because this is a cohesive system you cannot identify each amount”.⁹¹ Like pyramid structure in *Yakuza*, as long as the system is not horizontal, promotion chance will motivate them to exercise in a more lucrative area. There is nothing new under the sun.

2. Mode of Special Fraud in *Yakuza*

It is concluded in last part that *Yakuza* take an advantage of expertise in organization to earn a market share in special fraud. This part aim to discover how they act in these new crimes. Firstly, a typical framework of special group will constitute three characters: caller, receiver, and director. Caller is the main character who contact directly with victim, and once he succeeds, director will announce receiver to revoke currency from ATM. Other ancillary characters may include recruiter, who is responsible to recruit new members (especially for receivers); tool man, who is in charge of buying instruments for fraud.

Statistics shows that *Yakuza* members are most participative in director’s role, nearly half of the directors detected are *Yakuza* members while only 10% of callers and receivers.⁹² This arrangement indicates that *Yakuza* is the biggest winner of special fraud, because usually directors are considered as the least risk. The most dangerous role is receiver, because most of ATMs are equipped with cameras today, which makes them easy to identify. Second is the caller,

⁸⁸ Y. KIMURA, YAMI KINYU- JITSUTAI TO TAISAKU [BLACK FINANCE-FACTS AND SOLUTION] (2010), at 3.

⁸⁹ In 2004, Credit Swiss bank confiscated 57 millions dollars of *Goryo-Kai*’s leader’s account, which was at that time the highest amount in the history of the Zurich prosecution. *Sharing confiscated Yakuza funds* (Nov. 27, 2023), <https://www.swissinfo.ch/eng/sharing-confiscated-Yakuza-funds/6596610>.

⁹⁰ It is said that this person took over a part of *Goryo-Kai*’s usury companies, though he is not a *Yamakuchi* members, in other words, his usury system is out of *Yakuza*’s scope. But he admitted that he maintains a contact with many *Yakuza* members.

⁹¹ MIZOKUCHI, *supra* note 127, at 141.

⁹² MPD, *White book: 2021, NATIONAL POLICE AGENCY* (Nov. 27, 2023), <https://www.npa.go.jp/hakusyo/r03/index2.html>.

it is inevitable to leave some track when they contact victims. The directors and other ancillary workers are safe in most cases. In fact, often after a series of cases police have chance to seize a clue of director in a group.⁹³

Again, *Yakuza* prove their prestige in crime world, but why other members are agreed with this arrangement? Here this article finds two rational reasons for this assignment. Firstly, they are best investors of special fraud group. Although this is a profitable career, preliminary investment for a group is not a cheap price, necessary instrument contains one-off mobile phones, anonymous SIM cards, and especially various bank accounts for transfer. For individual participants, this is an unaffordable cost, while many groups of *Yakuza* are wealthy investors.

Secondly, despite an exercise of special fraud is not required with violence, management of this group otherwise require. Potential risk is members in special fraud groups are much easier to escape because they are not tied with any identities. Especially for receivers, they have great motivation to fled once they get a considerable amount of money. In this situation, *Yakuza's* capacity for violence plays a role, to menace all members following the current assignment and supervise for a negotiable distribution. This menace is not virtual: last year, a *Sumiyoshi* member, who is also a leader of a special fraud group, imprisoned a caller who conspired to leave that group and misappropriated an amount of money.⁹⁴ Without such a powerful leader engaging, it can be imagined that most of the groups will split up after 2 or 3 times of crimes. This is also compatible with trend which Graph 4.3 indicates, that core members are more positive than prepared members in fraud cases, because this is not a simple property crime, but a work required violent competence. On this aspect, *Yakuza's* participation encourages the long being alive of these groups.

C. *Yakuza* as a Powerful Sovereignty

To conclude the role of *Yakuza* in the legal world, it has more characteristics of protector than an enterprise. Previous research of mafia all agrees that mafia in some extent play the role of protector, but controversial opinions appear that how they play this role. Gambetta firstly consider that mafia is earning a reputation by the practice of violence in a sum-zero game,⁹⁵ which indicates that only a competition with other groups will prove a group's ability as protector. While Schelling as discussed above, suggests that what mafia does is to confirm themselves as monopolist protector in a certain region.⁹⁶ In research of Sicilian mafia, Gambetta partially agree with this idea that for a group to be a convincing assurer, it should at least possess the power of final decision to make sure that all other groups in the same region or in the same career will not intervene his monopoly power.⁹⁷ But this is still in an enterprise level which characterizes this relationship as in a monopolist's market. These two opinions deviate from whether mafia is required to prove itself among its competitors, it decides mafia exercise its power in a provider place or a sovereignty place. A state never proves itself of legitimate by comparison with other states, while an enterprise usually makes advertisement of comparative advantage with other enterprises.

⁹³ For example, an *Inagawa* leader was arrested as director by a special fraud of 1.4 m JPY, but before this his group was assumed alleging in a series of special fraud cases which exceed over 390 m JPY. *390 million JPY damage confirmed, man arrested on suspicion of masterminding a special fraud group THE SANKEI SHIMBUN* (Nov. 27, 2023), <https://www.sankei.com/article/20231107-D7O4ASVJJVOANDUX7PFAZZ2XFHE/>.

⁹⁴ *Gang members arrested for illegal imprisonment of special fraud group member*, LIVEDOOR NEWS (Nov. 27, 2023), <https://news.livedoor.com/article/detail/22494997/>.

⁹⁵ Gambetta, *supra* note 4.

⁹⁶ Schelling, *supra* note 5.

⁹⁷ Gambetta, *supra* note 67, at 145.

As analysis above, this article prefers more on Schelling's idea that by this way mafia has already exceed the behavior of monopoly companies. Gambetta's comparison with big companies to exert pressure on the government is not so convincing here, for it is incompatible with the basic logic of the power. In a democratic society, theoretically this pressure by grand enterprises is not exempted from a legitimate examination, by this way there will be a preliminary procedure to assess this pressure will in how much extent deviate from the legal requirements. However, the violence use of mafia is totally out of this scope: it is more like a power from the state, that its power is directly from use of violence, rather than recognition from its clients.

V: Yakuza's Future

Recession of *Yakuza* in this century is evident, from 2003 to 2022, *Yakuza* members reduce from 85,300 to 22,400.⁹⁸ This is contributed to Japan's deterrence policy, which finally takes seriously of proscription of *Yakuza* in this decade. It is also due to shock inside and outside: smash, aging, other organized crime competitors, etc. This chapter tends to analyze all pressures for *Yakuza* currently, part A examines the deterrence policy in Japan, part B discusses inside obstacles of their being-alive, and finally part C talks about potential competitors for *Yakuza*. On the same time, this article finds that *Yakuza* itself also act actively for survival, this is a long battle for all.

A. Deterrence Policy

1. Shift in 21st Century

One of the main problems of *Botaiho* is that it does not designate *Yakuza*'s existence is illegal, in other words, although they are strictly prohibited from unlawful acts like protection fee, they can make their business in the name of the mafia. This is rare in organized crime law, by comparison most of states directly point in their law that designated gangs are illegal in the essential, to prohibit originally the existence of mafia. The latter choice is rational, although it may be criticized on the ground of violation of freedom of violation, it eradicates the possibility that mafia benefit from their reputation, which is the core of their strength.

Regrettably, amendment of *Botaiho* does not textually change for this shortcoming. However, there are some preliminary attempts in this decade, trying to compensate this loophole which allows *Yakuza* continuously maintains reputation. This article finds two significant strategies: one is the employer's duty; another is special conduct of certain group.

According to amendment in 2008, article 31 of *Botaiho* says that if a designated gang member uses the power of his gang to misconduct and constitutes a tort claim, the representative of the gang is also liable for damages. There are several successful litigations requiring the top of gang to take the responsibility.⁹⁹ The aim of this provision, on the beginning might be compensating more for the victims rather than impairing *Yakuza*'s reputation, but it has an additional effect by the potential risk of enormous damage payment. To evade this risk as possible, it is wise for *Yakuza* not to use their name especially when it is unnecessary, for

⁹⁸ MPD, *supra* note 19.

⁹⁹ Nagoya High Court orders compensation of JPY 7.51 million to Yamakuchi leader over protection money, DAILY NEWS (Nov. 27, 2023), <https://news.yahoo.co.jp/articles/98a60c35ca662ae95add869f8f8d237561860ffe>.

instance, in a special fraud case, it is better not to leave any clue of their identity. Therefore, today *Yamakuchi*'s new members are not allowed to print logo of "*Yamakuchi*" in their name card.¹⁰⁰ And if it is possible, some new members are not even registered as *Yamakuchi* members, but under the guise of employee in front enterprise.¹⁰¹

Although by doing so the top of *Yakuza* releases a little pressure, side effect should not be ignored that the reputation of *Yakuza* will be harshly injured, because one of the most effective ways of establishing reputation is by repeatable practice. Without this practice, maintenance of reputation will only be completed in a much more expensive way of physical violence use, and this may cause another employer's duty claim, which is a vicious circle.

Another successful attempt is to a deterrence focus on those most dangerous gangs. Two specific group is typical, one is *Kudo* Clan, which is designated as "special dangerous" for ten years in official records, another is *Kodo* Clan, the core secondary group of *Yamakuchi*, in 2009 the current general director of Japan's police raises a program of "*Kodo* Clan desolation operation", and each year official white book leaves a special place for *Kodo* Clan, which is unprecedented for any other secondary group.

This designation is a compromise but efficient method. For *Kudo* Clan, their violent conducts are severe to the extent that no tolerance for leeway is granted.¹⁰² For *Kodo* Clan, circumstance is more complicated: it is not so violent as to intolerable, but it is too powerful that even police will fear. Although it is considered that *Yakuza* in 21st century is a "control violence", on the view of local police like *Nagoya*, such a giant is still a thorny problem. Here, characteristics of special deterrence group are summarized: either is group which conduct viciously, either is group which is powerful.

2. Regulated Violence

When *Yakuza* is named as "regulated violence", it means that police have capacity to decide whether allowing their being-alive, and to what extent their conduct is tolerable. This indicates that police can have different levels of deterrence to different gangs. The deterrence level is largely dependent on violence contribution of crime.

Police has no legal basis for desolation of all *Yakuza*, and no economic motivation for doing so. If *Yakuza*'s existence is in a foreseeable future, rational strategy is to select the best counter party rather than make an organizational derogation. Current gangs are more predictable and transparent. Celentani et Al. (1996) find an interesting situation of mafia that they are willing to exchange current interest for future profit, especially for future being-alive.¹⁰³ Therefore, government can adopt an optimal commitment strategy, to encourage gangs accept a very low pay-off of crime by declining the level of deterrence, and that is what Japan's police adopt.

Economic model above does not classify different crimes. This article believes that the pay-off here should not be misunderstood as pure economic revenue, but a contribution of violence, by which *Yakuza* can maintain and raise their reputation. Violence contributions are influenced by two factors: the proximity to ordinary people and violence degree itself. Both these two

¹⁰⁰ ATSUSHI MIZOGUCHI, YAMAKUCHI GUMI DORAN!! [YAMAKUCHI GROUP RIOT], (2015), at 103.

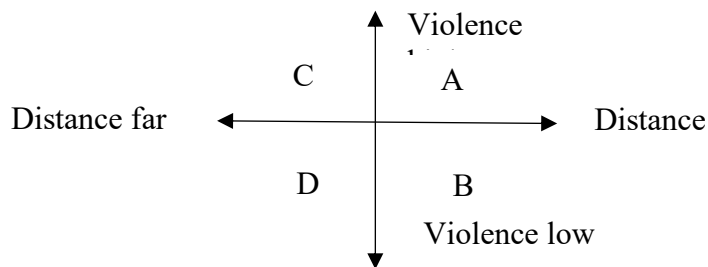
¹⁰¹ *Id.*, at 107.

¹⁰² Typical cases of *Kudo* Clan includes: throwing a Molotov cocktail at the house of Deputy Chief Cabinet Secretary Shinzo Abe in 2000, *Yomiuri News*, *Six gang members arrested for Molotov cocktail incident at the home of Abe's secretary-general*; 03 December 2003; Shooting police on the street in 2013, *West Japan News*, *Former police officer, shot and seriously injured in Kitakyushu, 19 April 2013*; Arson in shops which refuse to give protection fee in 2012, *Daily News*, *Growing momentum for the banning of violence among the government and citizens in Kitakyushu* (Nov. 27, 2023) <https://gendai.media/articles/-/41088>.

¹⁰³ CELENTANI *et al.*, *supra* note 7, at 253-268.

factors are positive related, the closer the conduct to ordinary people, the higher degree of behavior, the more contribution it constitutes.

Graph 5.1 classifies four zones for all crimes by the decisive characteristics of deterrence level



Ideally, if a gang’s behavior centers in zone A, they will face a high level of deterrence as Kudo Clan; instead, if they behave mostly crimes in zone D, as an exchange police will reward them for a loose regulation. On this perspective, the contribution of violence is inversely proportional to the deterrence level. Zone C includes vicious crimes inter-gangs, frequently happens in battles among them. These crimes in the past are in a very low deterrence level, as mentioned in Chapter IV, even in 2021 that prosecutors chose to give up suing murderer of gang battle.¹⁰⁴ However, considering the malicious result of “*Yama-Ichi* Battle”¹⁰⁵ in 1980s, in this century police increase a minimum level of deterrence for inter-gang battles, especially for *Yamakuchi* separation. After 2016, all separation part of *Yamakuchi* is designated as “special inter-gangs battle gang” on the official document,¹⁰⁶ and participants for this separation battle have no excuse to exempt from court. However, other inter-gang battles are still tolerated in a great extent.¹⁰⁷ Zone B contains crimes which touch the interest of ordinary people, typical one is special fraud. Traditionally, *Yakuza* infers little in this area because it is against their virtue, but as Chapter IV shows that today this is changed because of the lack of other revenue. This zone is also absolutely in a quiet high level of deterrence, but as it covers mostly property crime which does not constitute long-term sanctions, the direct impact for *Yakuza* is not so obvious. On the other hand, it also makes few engagements for violence contribution.

3. Plea Bargaining

In the last century, *Yakuza* was more like partner with police, but decline in this century makes them not capable of being fair negotiator with authority. Meanwhile, it is also true that police do not make every effort to prohibit their business, rather, they adopt various level of deterrence to encourage *Yakuza* not to exercise those crimes with high degree of violence and closed to ordinary people. From the aspect of police, it is more like a plea-bargaining model, from which *Yakuza* reduce its damage from arrest and police economizer cost in organized crime. Crimes inside *Yakuza* is usually hard to detect and sue, if both sides decide to solve problems by

¹⁰⁴ See Section B.

¹⁰⁵ *Yama-Ichi* battle happened in 1985-1994, originated from the succession problem of 4th top of *Yamakuchi*. In this battle, directly causes 29 deaths, and 4 injured cases of police and ordinary people. See, K. LIBOSHI, NEO YAMAKUCHI GUMI NO YABO [NEW YAMAKUCHI GROUP’S DREAM] (1994), at 91.

¹⁰⁶ Since 2020, including three ex-*Yamakuchi* gang: 6th generation of *Yamakuchi*, *Kobe Yamakuchi*, *Kizuna* Clan.

¹⁰⁷ For example, *Sumiyoshi* and *Inagawa* are in a battle in Tokyo since 2018, and there were many shooting threats, but none of them is revealed as arrested by police. See *The biggest violent incident broke out in the city center in 2020, Kabukicho scout hunting*, BUNSHUN, (Nov. 27, 2023), <https://bunshun.jp/articles/-/42568?page=2>.

themselves rather than depending on public organs, it will be difficult to cumulate sufficient proof for arrest or litigation. If *Yakuza* is provided with an award of admitting crime, they may change their mind to rely more on judicial system. Similarly, not all defendants can enjoy plea-bargaining, there are certain consideration when police decides whether to modify their deterrence level.

Other influenced factors are organizational ability of violence and cooperation will, which causes *Kodo* Clan as one of the most non-friendly groups on the side of police. Needless to prove the ability of *Kodo* Clan, in summit their population exceeds the number of police in *Nagoya*. Frequently, these grand gangs are positive for cooperation with police. *Inagawa* even invited local police to join their conference.¹⁰⁸ Traditionally, *Yamakuchi*'s cooperation level was a few inferiors compared with gangs in Tokyo, however at least before the 6th generation they were in a peace with the police. But since “*Kodo* Clan desolation operation” in 2009, this coordination has broken, the only choice remained is a state of alert.

Certainly, regional police will benefit from this model. However, police in national level will consider more about their reputation and social demands, when these additional damages are calculated, an original optimal commitment strategy may be imbalanced. Therefore, there is a conflict of interest between national police and regional police. *Nagoya* police is a typical example, in which there are two departments in charge of *Yakuza* issue: the fourth department keeps connection with *Yamakuchi*, even providing them some information as exchange, while the new second department is on the opposite side of *Yakuza*. This divided system is a compromise between region and state, but it does not make any effort, usually these two departments just make obstacles for each other. Another proof is geographical separation of deterrence: in the same year of his succession, the 6th top of *Yamakuchi* was imprisoned, which never happens to any top of gangs before. The whole procedure of arrest was proceeded by *Osaka* police, rather than *Nagoya* police.¹⁰⁹ Here, a reasoned guess is that if there was a choice, *Nagoya* police would be more tolerable to exchange a future cooperation with *Yamakuchi*.

In addition, because decisive element of state level policy is more political essentially, it is hard to estimate which voice will prevail in a certain point. This balance of conflict interest is dynamic and depended unilaterally by political pressure.

B. Other Obstacles

This part discusses other obstacles for *Yakuza* in this century, besides frequent battles and separations, there is two tendency which is thorny for *Yakuza*: one is aging, another is other organized crime.

1. Aging

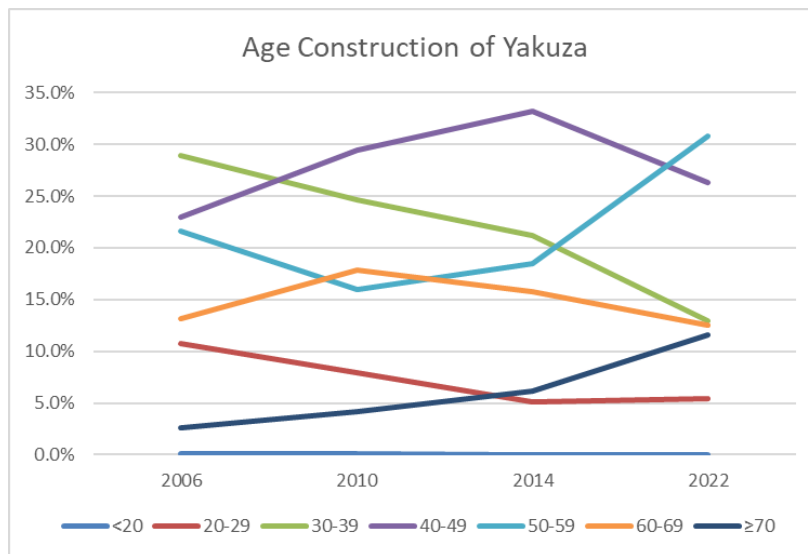
As for this century aging is a social problem according to the whole Japan's society, this tendency seems to be also degraded for *Yakuza*. By the end of 2022, 11.6% of *Yakuza* members are over 70 years old. Although compared to 23.0% of all society¹¹⁰ this number does not indicate a serious problem, an acceleration of aging in the last twenty years is astonishing.

¹⁰⁸ Masahiro Ojima, *Legendary Maruboshi investigator known for all about the Yakuza*, BUNSHUN ONLINE (Nov. 27, 2023), <https://bunshun.jp/articles/-/38937?page=2>.

¹⁰⁹ Similarly, in 2010 when the top of *Yamakuchi* was still imprisoned, the surrogate top of *Yamakuchi* was arrested by Kyoto police. See, Agence France-Presse, *Japan arrests number two crime boss* (18 November 2010).

¹¹⁰ Statistics bureau of Japan (Nov. 27, 2023), <https://www.stat.go.jp/data/jinsui/new.html>.

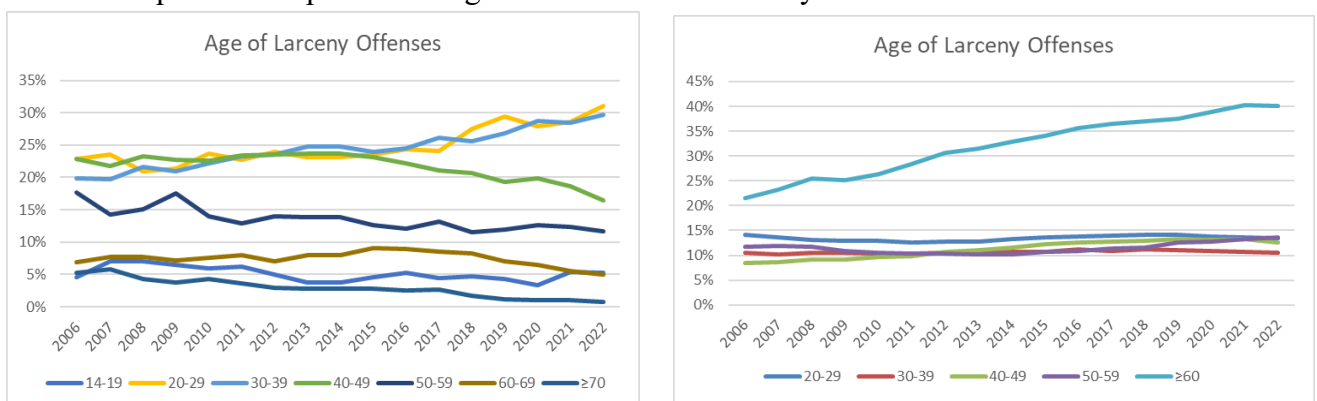
Graph 5.2 Age Construction of *Yakuza* between 2006-2022¹¹¹



Graph 5.2 virtually indicates a change of age construction in the last 20 years. On the beginning of 2006, majority of *Yakuza* member is between 30-39, and last year it is the group of 50-59. Although in a total the definition of the middle class (between 20-59) does not change very much (84.3% to 75.4%), the aging tendency of *Yakuza* is also predictable. Firstly, adjacent generations reveal a highly related indication in different years, in other words, when a generation increases, its adjacent generation reduces. This infers a stable constitution of *Yakuza* where seeders are rare.

The potential impact of aging for *Yakuza* is more destructive than believe. On the one hand, all organized crimes are highly related with physical menace, and a reduction of violence ability accompanied by the age is doubtless. On the other hand, some may argue that this aging group can make use of their expertise for property crime, which this article discovers that is impossible. By comparison the aging construction of larceny in all society and in *Yakuza*, it is found that aging people in *Yakuza* is far inferior with larceny than general practitioners.

Graph 5.3 Comparison of Age Construction of Larceny Offenses between 2006-2022¹¹²



A reasoned explanation for Graph 5.3 is hierarchy of power and privilege of superior

¹¹¹ MPD, *supra* note 19.

¹¹² MPD, *supra* note 19.

requires elder people not to exercise those considered as inferior crimes, such as theft, which will impair their prestige in the hierarchy. It is concluded that this aging group is much less productive in all areas of crimes, which makes situation even worse.

Declination of attractiveness in *Yakuza* area is obvious. On the one hand, younger generation refused to traditional virtue of *Yakuza*, which push them to other organized crimes as discussed below, on the other hand, *Yakuza* is not so lucrative as the end of 20th century anymore. Hardship for new recruitment is true, but is that so cruel as statistics indicates above? This article finds two factors which may result an exaggeration to the truth.

Firstly, as mentioned in analysis of deterrence, a new trend for *Yakuza* is they do not register new members to escape possible employer duty.¹¹³ Mizokuchi (2015 a) believes that a substitution is to arrange new members in their front enterprises as ordinary workers, only after he reach a certain leadership then he will formally be announced as member.¹¹⁴ In other words, there might be a young group of members not calculated on the official document.

Secondly, an insufficient retirement system makes leaders reluctant to retire. Although grand gang like *Yamakuchi* create an arrangement for retired leaders,¹¹⁵ this does not remove their worries. Cruelly when a leader leaves *Yamakuchi*, he is just a vulnerable and wealthy old man who have many secrets from his former members, and the latter will try to squeeze out all his money. That is why most of the leaders, though they are in disease or even in Alzheimer, refused to retire.¹¹⁶

Leaders of *Yamakuchi* do not surrender to overcome this problem. It is noticed that irregular expulsions of 6th generation of *Yamakuchi* increase sharply in the last decades, Mizokuchi (2015 b) believes that top of *Yamakuchi* use this strategy to promote metabolism.¹¹⁷ Nonetheless, these attempts prove no significance: after all, the age of the current top himself is not persuasive to encourage other leaders to retire.¹¹⁸ Aging is estimated to be a continuous problem for *Yakuza* in the future.

2. Other Organized Crimes

In recent years, it is noticed that other organized crimes proliferate and take *Yakuza*'s role in some extents. Besides special fraud group as analyzed in Chapter IV, some organizations appear similar characteristics with *Yakuza*: using violence and continuously make living of crime. These groups in 2013 are designated as quasi-gangs in police report,¹¹⁹ while Mizokuchi calls them as "semi-gang".¹²⁰

These quasi-gangs were considered as evolvement of organized crime in around 2010, among them the most famous is known as *Kanto Unite* and *Chinese Dragon*. The former is originated with so-called "old boys" in Tokyo's high school, while the latter is Chinese immigrant group. At that time, it was widely accepted that they will replace *Yakuza* in the future. Organizational advantages in quasi-gangs are obvious, firstly, nearly all quasi-gangs are flat

¹¹³ See, page 57 of this article.

¹¹⁴ MIZOKUCHI, *supra* note 140, at 107.

¹¹⁵ It is said that *Yamakuchi* require all secondary group leaders to donate 100,000 JPY to retired leader.

¹¹⁶ In this year, a member of *Yamakuchi* beat his leader in public, for the reason that this leader refused to retire even after Alzheimer. See, *A subordinate gang leader was arrested on suspicion of assaulting his leader*, ASAHI NEWS (Nov. 27, 2023), <https://www.asahi.com/articles/ASR8R65P2R8ROIPE00K.html>.

¹¹⁷ ATSUSHI MIZOGUCHI, *YAKUZA HOKAI HANGURE BATSUKO [YAKUZA DESTROYS SEMI-GANG PROLIFERATES]*, (2015).

¹¹⁸ By the year of 2023, he is 82 already.

¹¹⁹ MPD, *supra* note 17.

¹²⁰ *Id.*

structures without hierarchy. This removes burden of the members to donate a membership fee to his leader. That is why all this group are constituted with younger generation: both *Kanto Unite* and *Chinese Dragon* are largely occupied with members in late 20s.¹²¹ Secondly, they are free with virtue's limitation. Although Chapter IV discusses that today's *Yakuza* no longer follows traditional virtue of not injuring ordinary people, these groups seem crazier than *Yakuza*. *Kanto Unite* is considered as most positive participant in special fraud, in 2014 one of their members was arrested in a special fraud group for over 10 billion JPY.¹²² A special fraud group leader in an interview believed that "they are one of the initiators of this career besides *Yakuza*".¹²³

However, these groups do not reach expectations above to replace *Yakuza*. *Kanto Unite* was dissolved in 2013 because of a malicious injury case involving their leaders.¹²⁴ One of the founders of *Chinese Dragon* also admitted recently that this group is de facto disassembled.¹²⁵ Why do these semi-gangs not survive?

Although many commentators believed these groups are more violent than *Yakuza*, describing them as "even *Yakuza* will be afraid" group, this article contrarily believes their ability of violence is much inferior to *Yakuza*. The misunderstanding impression is constituted with the fact that they are more easily to resort to violence, by contrast today's *Yakuza* maintains a prudence before a physical menace. However, the weapons in their cases indicate that they are insufficient in violence: most of their famous cases are finished by knife, bar or even bare hand. Meanwhile in *Yakuza*'s battle even a small dispute causes shooting menace, and in most cases after police doing a survey of *Yakuza*'s office, they always leave with some concealed guns and bullets. As emphasized in Chapter II, an imagination of force is always prior to physical one, because the former is more formidable and more economic.

Consequently, today when tracing back history of these quasi-gangs, it is discovered that they never get rid of impact of *Yakuza* because they are inferior in force. In these series of cases, it is easily to find *Yakuza*'s shadow behind: some quasi-gangs even have to donate a protection fee to local *Yakuza* for a permission of their activity,¹²⁶ indicating that *Yakuza* is still the controller of underground society. When grand player like *Kanto Unite* and *Chinese Dragon* split up, this trend is more clear: small separate quasi-gangs have strong characteristic relation with certain gangs, which infers that they are not competitors against *Yakuza*, but their front representatives. It is reasonably inferred that some quasi-gangs are even supported in establishment by *Yakuza*, especially when their initiator are ex member of a certain gang. This fact combines with *Yakuza*'s new strategy of non-registration of new members, this article believes that some of the quasi-gangs today are essentially "front gangs" just as the role of "front enterprises" for *Yakuza*. Despite police designates some groups as "quasi-gangs", the legislation falls behinds: *Botaiho* does not regulate these quasi-gangs' members, inferring that they will not face additional punishment of organized crime. A new mode of *Yakuza*'s business described as "fluid-group" is in formation, according to police document.¹²⁷ It is convincingly

¹²¹ Noboru Hirose, *The real semi-gangsters are not hard fighting*, PRESIDENT ONLINE (Nov. 27, 2023), <https://president.jp/articles/-/44304?page=3>.

¹²² Kanagawa Shimbun, *Seven people arrested on suspicion of investment fraud of fictitious water source development*, KANALOCO (Nov. 27, 2023), <https://www.kanaloco.jp/news/social/entry-52370.html>.

¹²³ Daily Spa, *Unreported reality of the criminal organization semi-gangsters*, NIKKAN SPA (Nov. 27, 2023), <https://nikkan-spa.jp/336850>.

¹²⁴ *Homicide in a restaurant in a mixed-use building in Roppongi*, SANKEI NEWS (June 5, 2013).

¹²⁵ *Shocking revelation from a founding member: Chinese Dragon is now effectively disbanded*, FRIDAY DIGITAL (Nov. 27, 2023), https://friday.kodansha.co.jp/article/272035?page=1#goog_rewarded.

¹²⁶ Sankei News, *Minami semi-gross rip-off bar in Osaka* (January 3, 2019).

¹²⁷ MPD, *supra* note 19.

believed that quasi-gangs' emergence will make deterrence of *Yakuza* be more complicated in the future.

C. Going Underground

In recent years, more and more people believe that *Yakuza* will be designated as illegal organization in the future. Suzuki T. had a survey in 2016 of 100 *Yakuza* members of their situation and presumption of future, from which the result is surprisingly negative, that 71 of interviewees believed *Yakuza* will be thoroughly illegal in the future.¹²⁸ As a result, the topical issue of illegal organization is whether *Yakuza* will go underground to defend themselves, which is described as “mafia” in social network, indicating that they may conceal their names and organization as Sicilian mafia did.

As discussed above, some organizations as *Yamakuchi* have stepped out first. It is said that *Yamakuchi* regulate a “three not do” discipline: not tell anything to police, not visit with police, not allow police enter the office¹²⁹ (Mizokuchi, 2015 b). This is closer to virtue of Sicilian mafia, where an informer may even be punished to death.¹³⁰ But most of gangs still keep their old fashion, being a model cooperator with police, for example, when *Yamakuchi* was separated in 2016, *Sumiyoshi* was eager to engage in support separated organizations of *Yamakuchi* on the beginning, but they were required to “keep silence for *Yamakuchi* desolation project”¹³¹ by police and respected this advice without hesitation (Mizokuchi, 2015 a).

On the perspective of *Yakuza*, getting rid of plea-bargaining model makes them return to a more profitable interest rate. The point of plea-bargaining model is that they are in the basis of good faith, police judges whether a gang is a good cooperator by essence rather than in superficial aspect. For *Yakuza*, as they do not lack lawyer's support, there remains many legal techniques to evade legal risk. For example, a newest method of *Yamakuchi* is called “false expulsion”: in 2019 a leader of *Yamakuchi*'s separated organization was killed by a former *Yamakuchi* member, later *Yamakuchi* claimed that they had repelled this member in 2018.¹³² These two people had not private dispute before, in other words it is not persuasive that a repelled member will make such a sacrifice for *Yamakuchi*. Therefore, nearly all police believed that this is “false expulsion”, for removal of organizational responsibility in a murder case, but since the proof of expulsion is clear and the murderer insist denial, police have no better way.

From analysis above, another serious problem for police is that they may ignore the incompleteness of current legislation. In the past, the arrest rate is in an acceptable number, and the behavior of *Yakuza* is stable and predictable, all of these are mostly contributed to their plea-bargaining strategy rather than legislation. As we seen above, even for newest amendment as employer's duty, there are many legal loopholes for *Yakuza*. And when they decide to go underground, their good faith will fade into air together.

However, this article does not believe current tolerance for *Yakuza* will continuously exist for a long time. The more the democratic environment improve, the more pressure is pushed for desolation organized crime. The 2009 “*Kodo* Clan desolation project” is just the beginning, in the future this will be more put into schedule, until it finally illegalizes the existence of

¹²⁸ Tomohiko Suzuki, *Summary survey of 100 active yakuza*, NEWS POST SEVEN (Nov. 27, 2023), https://www.news-postseven.com/archives/20161125_462028.html?DETAIL.

¹²⁹ MIZOKUCHI, *supra* note 157, at 161.

¹³⁰ HESS, *supra* note 8, at 102.

¹³¹ MIZOKUCHI, *supra* note 140, at 93.

¹³² *Man in shooting re-arrested on suspicion of murder* (Nov. 27, 2023), <https://www.kobe-np.co.jp/rentoku/yamaguchigumi/201911/0012919525.shtml>.

Yakuza, thus complete to push *Yakuza* to underground. On the perspective of *Yakuza*, if one day output of business is reduced to the extent that under the bottom line of their cost, they may also decide to go to underground. At that time, current mode of plea-bargaining will be replaced by a new higher deterrence strategy.

VI: *Yakuza*: A Disappearing Order

It is very interesting to discover *Yakuza*'s role in Japan's society. The final part of this article extends further than current situation to *Yakuza*'s past and future. In the first period between WWII to 1992, it is more like a semi-state order, which functions as a supplement of authority; in 21st century, its state characteristics disappeared gradually and transfer to a certain field of society; in the future, when the underground comes into truth, it will degrade to a certain role.

A. Past: A Semi-State Order

Max Weber's theory define state as "a polity that maintains a monopoly on the legitimate use of violence",¹³³ the essence of this definition is this power should be oligopoly, and legitimate by institution of law. In a narrow interpretation, *Yakuza* does not reach each of these standards: it never truly replaces government's role as Sicilian mafia, nor its behavior being allowed in democratic society. Nonetheless, it can also be considered that at least in some areas, the government did not maintain a monopoly of control of violence, and it made much compromise for *Yakuza*'s behavior in legal aspects. Therefore, it is better to describe in this period *Yakuza* had constituted a semi-state order.

Yakuza made a supplement of government's role in this period: Chapter I has discussed about post-war's vulnerability of Japanese police and complicated political impact, it is also astonishing that historically *Yakuza* was kind of symbiotic with authority. Although Sicilian mafias also emphasize impact of politics, it only reached to the extent of using violence to influence assignment of political participator (Hess, 1973).¹³⁴ None of mafia had so tight relation as *Yakuza* including a series of monetary and violent support. If we divide political part and police part of government, Siniawer believed that the former may be more willing to resort to outside violence experts as *Yakuza* rather than formal state's violence organs, to evade the criticism of exceeding use of police power.¹³⁵

This twin relationship makes Japan more difficult to get rid of mafia compared to other states. On the one hand a historical cooperation makes politicians more tolerable with *Yakuza*, on the other hand, even government act cruelly to deny the past cooperation, *Yakuza* has extended deeply in every aspect of society. A simple organized crime only practices illegal issues, while powerful mafias reach every corner of society, no matter legal or not, indicating that removal of such an order inevitably influence other's life.

Compared with *Yakuza* and Sicilian mafia, it is concluded that in the summit the latter is more powerful, but the former is more complicated to deal with. Both mafias create a certain order in their sovereignty. Sicilia in a longtime is "weak in formal government machinery and facing hostility and mistrust towards all state organs (from residences)" (Hess, 1973),¹³⁶ while

¹³³ ERIKA CUDWORTH *ET AL.*, *THE MODERN STATE: THEORIES AND IDEOLOGIES* (2007), at 95.

¹³⁴ HESS, *supra* note 8, at 141.

¹³⁵ EIKO M. SINIAWER, *RUFFIANS, YAKUZA, NATIONALISTS: THE VIOLENT POLITICS OF MODERN JAPAN, 1860-1960* (2015).

¹³⁶ HESS, *supra* note 8, at 14.

Japanese state's institution functioned normally in most of the situation. This decides variance of their order: Sicilian mafia established an almost state's control, but *Yakuza* did not. To refresh Sicilia's situation is difficult but the method is straightforward by reconstructing a state order to replace their control. In *Yakuza*'s situation, it is more complicated because the democratic system mostly functions well, in other words it is irrational to change all systems to solve the problem. Measures are taken step by step. Efforts for eradicating *Yakuza*'s impact in the early 21st century are attempts to remove this semi-state order, degrading *Yakuza* in identical provider of social order and assure State's monopoly use of violence.

B. Special Social Field

Removal of *Yakuza*'s semi-state order reached in a first success: as mentioned before, today *Yakuza* is merely a "regulated violence" under police's surveillance. But some elements of semi-state remain until today: although it has lost power to establish order outside, it maintains its order inside, and this order reach in a limited extend to society and be respected by police. This article believes currently *Yakuza* is a special social field in the context of sociology.

Bourdieu defines field as "a configuration of objective relations between positions. These positions are objectively defined",¹³⁷ in which the decision is dependent on the power structure of present situation and its relationship with other fields.¹³⁸ Not all organized crimes constitute a certain field, unless they establish a stable assignment of position, and that is what mafia differs from other organized crimes. As discussed in Chapter II, *Yakuza* has a completed institution of hierarchy, this objective position is respected by both inner members and outsiders: Japanese police's statistics also make classification of arrest according to statute of gangs.

If it is agreed that *Yakuza* is a special field in Japan's society context, it can be analyzed further of how this field influence individual members' practice which performing as organized crime later. Thus, this article abandons traditional thinking of an equation between mafia and organized crime: the former is an existence of field while the latter is the practice. Other two notions frequently discussed in practice forming procedure is habitus and capital. Habitus is defined as a stable system of norms of thought which is universally applicable for individual practice.¹³⁹ For example, when a person face with a dispute of others, the habitus of ordinary people is to negotiate or resort to judicial system; while a *Yakuza* member, especially when the offender is also attributed to gang, thinks that directly physical violence is the best way to solve problems. This system of norms is not totally subjective, by contrast it is highly dependent on the position of the practitioner: it may vary from hierarchical status, for example, a lower-class member's habitus maybe different from a leader's; other influences including gang's virtue, different gangs may maintain different attitudes towards one thing, this virtue is originated from behavior of individuals, but it also influences them later.

Another important notion is capital. Bourdieu classifies three categories of this as economic capital, cultural capital, and social capital.¹⁴⁰ The economic capital in mafia is needless to discuss, all their profitable business has capacity to bring them a continuous revenue. Social capital is also evident in *Yakuza*'s context, Chapter II discusses a lot of institutionalized relationships in *Yakuza*. Bourdieu believes that these networks is an investment for secure

¹³⁷ Pierre Bourdieu, *The Forms of Capital*, in HANDBOOK OF THEORY AND RESEARCH FOR THE SOCIOLOGY OF EDUCATION (1986), at 241-258.

¹³⁸ *Id.*

¹³⁹ PIERRE BOURDIEU, LE SENS PRATIQUE [THE LOGIC OF PRACTICE] (1980), at 53.

¹⁴⁰ BOURDIEU, *supra* note 138, at 248.

material or symbolic profits,¹⁴¹ in our context, it demonstrates on material aspect as a legitimate of membership fee in gangs, and on symbolic aspect, as a prestige from upper class in hierarchical structure. Last cultural capital is perhaps mostly vague, because often *Yakuza* practice in a different way from what they claim they tends to do (for instance, *Yamakuchi* in a long-term claims itself as opposed to drug-dealing). And as analysis in former chapters, today more and more *Yakuza* breach their traditional esprit, indicating that some old cultural capital is gradually desolated in 21st century. Sociologist divides cultural capital in three forms: the embodied state, which is similar to habitus discussed above; the objectified state as cultural goods, and the institutionalized state. The cultural good of *Yakuza* is indicated mostly in linguistics, in Japanese many mots are specially used of *Yakuza*'s issue, just like *Yakuza* this word itself.¹⁴²

The function of field is the conversion of different capitals. For example, an upper-class member converses his social capital of hierarchical prestige to receive membership fee as an economic capital; by contrast, a lower-class member improves his social capital by providing enough membership fee on time. Bourdieu reminds us of that other capital except economic has a high degree of uncertainty of transaction,¹⁴³ because it requires a time lag in addition. When a field has a safer rate of transaction conversion, individuals will tend to transfer more of their economic capital, and vice versa, in an unsafe situation they will keep more in their hand to evade an unpaid debt. That is why *Yakuza* in 21st century is more economic motivated: unforeseeable future of underground promotes individuals to give up those social and cultural capital.

From this path it is possible to hypothesize two situations of *Yakuza* in the future: if they go underground, no matter whether it is positive or compulsory, social and cultural capital will simultaneously decline to a minimum, on the one hand it is denied by official organ, on the other hand, there is no more economic capital being conversed. The situation of economic capital is uncertain: perhaps the police win by a high deterrence, perhaps *Yakuza* wins by their expertise in crime. If they maintain in plea-bargaining model, social and cultural capital will still reduce gradually, because doubt for future prohibit individuals to increase the investment; meanwhile, because they must follow police's advice, the economic revenue is predictably reduced for each year. This is impulse from outsiders. On the other hand, Cattani, Gino, Ferriani and Allison (2014) believes that incumbent of field, who have a vested interest in current situation, usually anticipate maintaining present configuration in order to assure their dominant position, while insurgents want more change. It is reasonably believed that those discriminated by traditional values, like drug-dealers, will be more supportive to go underground for a promotion of their status.

C. Change of Field

The last question of this article is whether in the future this field endure a structural destructive change. Although it is concluded in last paragraph that it has been reshaped in any time under the impact of inner power structure and outer influences, it is hard to predict whether this field will collapse in a specific point one day or it will just be reformed step by step.

Usually, a destructive change requires a radical crisis of the field, the most possible is a new

¹⁴¹ *Id.*, at 251.

¹⁴² It is said that the mot *Yakuza* is originated from a situation in card game that is the worst of result, indicating that gang's members are all worst in the society; other words like *Shinogi*, only used to designate business of *Yakuza*, etc.

¹⁴³ BOURDIEU, *supra* note 138, at 256.

Act which designates *Yakuza*'s existence as illegitimate. This will promote a thorough change of field that *Yakuza* in traditional context may disappear. On the other hand, inner factors like discontent from insurgents are more difficult to make a same effect: to rebel a current distribution, some certain insurgents' grievances are not sufficient. If several drug-dealers want to get rid of *Yakuza*, this does not create crisis for its being alive, because remaining individuals still maintain this field. Only when most drug-dealers stand out together and opposed against *Yakuza*'s control of drug-dealing, this crisis may bring a structural change in this field. Fligstein considers that inner jockeying is highly dependent on unsettled conditions and a flat power structure of individuals.¹⁴⁴ However, the permissibility of drug-dealing is believed in a long-term because it is the most profitable business, and there is no flat power structure between incumbents and insurgents, since groups which only rely on drug-dealing business is still rare. Besides drug-dealing, it is same in other areas, that it is not seen many disputes in structural level of distribution of *Yakuza* right now.

If both a new Act and inner crisis are not foreseeable in a due period, it is estimated that a destructive change will not happen shortly. However, last paragraph of part B discusses different capital situation in the future, and it is concluded that no matter what to choose, the conversion of capital will be largely reduced in the future. This may go to the extent that one day the field will lose its function of conversion, on this aspect, it can be considered that *Yakuza* in a traditional context de facto disappears. *Yakuza* will no longer be recognized as a special field, but a single role in the society as protectors, extortionists, or enterprises. They will no longer be named as themselves, but their behaviors.

¹⁴⁴ Neil Fligstein, *Understanding stability and change in fields*, 30 RESEARCH IN ORGANIZATIONAL BEHAVIOR (2013), at 44.

