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THEA 316: Performance Studies

18 May 2017

The People in the Place

A month prior to Japan's formal surrender in World War II, Joseph C. Grew stated, "From the long range point of view the best that we can hope for in Japan is the development of a constitutional monarchy, experience having shown that democracy in Japan would never work."¹ Grew was the former United States Ambassador to Tokyo, and his proclamation in 1945 presumes that Japanese citizens could not democratize in spite of Douglas MacArthur's, the Supreme Commander of the Allied Powers, forthcoming democratic constitution for the nation. Grew's statement supposes that Japanese state institutions, citizen values, and civil society were so enveloped in undemocratic governances that the new constitution could not disentangle the social and political cultures. In practice, Grew was correct. Modern Japan deviates from the Euro-American democratic model through factors such as the nation's overstressed civil culture, powerful central bureaucracy, unopposed political party, and civil law judicial system. Yet, scholars such as Mary Alice Haddad, who is an Associate Professor of Government at Wesleyan University, continue to insist that Japan's government upholds democracy as defined by Abraham Lincoln, that is "government of the people, by the people, for the people."² Thus, democracy becomes a semantic discussion rather than an ideological one, and we should instead ask how Japan's contemporary state institutions, citizen values, and civil society reflect a cohesive, just society.

To concretely address this question, we should define "state institutions," "citizen values," and "civil society." Haddad bases her research on these terms, although she applies them to Lincoln's bilateral definition of democracy as an equal relationship between a nation's government

and its people. In doing so, she conflates democracy with justness stating, “one of the fundamental projects of this book [*Building Democracy in Japan*] is to demonstrate that the idea of democracy and its practice are highly specific to local context.”³ Haddad’s research reveals that Japan has a holistically different society than those in Euro-American nations, which seems to obviate the need to classify Japan as a democracy. “Democracy” here is a formality Haddad uses to mask a largely performative study of Japanese society as a more conventional analysis of governmental structures. This is clear in Haddad’s research, since she focuses on how individuals interact within society and with their government through “state society-civil society political interactions.”⁴ In doing so, “state institutions” transcends its typical definition as the concrete establishments that govern society, the most prominent of which is the Constitution. Haddad’s analytical framework redefines the term as the methods of communication between citizens and government officials. “Citizen values” designates the tacit understandings and agreements of individuals in “civil society,” which in turn designates the minutia of social relationships. Hence, Haddad’s “state society-civil society” refers to the similarities of political and civil cultures, and how state and civil societies justly interact.

Haddad’s research explores aspects of Japanese society and government that seem idiosyncratic to the Euro-American lens, perhaps the most jarring of which is Japan’s judicial system. Although Haddad does not discuss the judicial system in her book, *Building Democracy in Japan*, her emphasis on Japanese values and contextual definitions of “justness” necessitate that we explore the system upholding said values in society. Furthermore, Haddad’s analytical framework encourages us to view government as a “state society,” that is an amalgamation of people akin to civil society, which implies that government workers adhere to equivalent social standards as in civil society. Thus, individuals’ routine actions operate under performative guidelines synonymous to political correctness, which Janelle Reinelt describes as “not conceived exclusively as an external exertion of control or as the deprivation of liberties.”⁵ Reinelt, a Professor of Theatre and Performance at the

University of Warwick, provides us a definition that cleverly adheres to alarming details of Japan's judicial system, such as the greater-than-99% conviction rate, the lack of juries, and the severe punishments for crimes. "Political correctness" describes a "productive" understanding of citizen values that encourages civil peace without limiting personal expression. This concept is ubiquitous in Japan, where even politicians adhere to the same social-political guidelines, and thus the judicial system serves a punitive rather than evaluative purpose for individuals who stray from acceptable behavior.

To compensate for the judicial system's punitive function, Japanese society heavily incorporates practices that encourage homogeneity in behavior. This is apparent in Japan's executive branch, which the Liberal Democratic Party (LDP) has dominated almost entirely uncontested for over fifty years. Japan's legislative structure consists of numerous opposing political parties, but the LDP retains power by swapping out prime ministers whenever one performs unsatisfactorily. Thus, Japanese prime ministers are relatively obscure, since many serve for less than a year.⁶ Furthermore, Japanese citizens are encouraged to work in the politically neutral central bureaucracy, since government service is considered the "career of greatest prestige."⁷ J. Mark Ramseyer, who is the Mitsubishi Professor of Japanese Legal Studies at Harvard Law School, explains that Japan's central bureaucracy is especially symbolic of the nation's weight on collectivism over individualism, since "colorful figures tend to not do well in bureaucracies." Court justices therefore tend to be just as "nameless" as prime ministers, though Ramseyer details two judges who are exceptions to the rule. The second justice, Ryuichi Furukawa, faced a very unique conflict "when his wife's lover dumped her for another woman," which caused Furukawa's wife to turn "torridly obsessive" and harass her replacement. The resulting case ended with two years of imprisonment for the "obsessive wife" and nearly led to Furukawa's impeachment.⁸ Even though Furukawa did not directly act out, his association with disruptive behavior is symbolic of Japan's negative associations with individualism.

Japan's state society-civil society political interactions give way for a civil law judicial system that arrests people on clear violations of citizen values. Ramseyer writes, "Japanese often find it easier than Americans to predict what a judge would say... Once they agree what he would likely do, they have little reason actually to ask him."⁹ Ramseyer's observation reveals several crucial details about Japanese criminal justice: (1) laws are non-negotiable; (2) the system's predictability allows individuals to avoid stigmas associated with arrest; and, (3) Japanese citizens respect the law even in cases when the government is not explicitly enforcing it. These observations contextualize Japan's near-100% conviction rate, lack of juries in court, and the severe punishments for crimes because civil society dictates that an innocent person should not end up in the criminal justice system. David T. Johnson, a professor at the College of Social Sciences at the University of Hawai'i, reaffirms this notion, stating that "police arrest fewer than 20 percent of all Penal Code violators" and "the infrequency of arrest derives in large part from officials' desire to protect suspects from the stigma of arrest."¹⁰ Hence, Japanese state society (in this case, the police) and civil society political interactions reflect a communal understanding of Japanese criminal justice.

Regardless, Ramseyer still frames his writing on the supposition that Japan's judicial system is necessarily "second-best." He concludes his analysis with the statement, "[Japan's judicial system] is an efficient bureaucracy. But it is a bureaucracy nonetheless."¹¹ His research attempts to objectively quantify the effectiveness of Japan's judicial system, exploring the universities that produce the highest number of prominent justices, the productivity of said justices, and the systems that reward justices based on their performance. Although his writing reveals key details about the system and corroborates its arguments with statistical evidence, such the ability to observe the exact "pace at which each Japanese judge climbs the career hierarchy" based on public records,¹² his tone insinuates a condescending cultural bias against Japanese society. This is most apparent in Ramseyer's dialectic practice of presenting a common hypothesis on Japanese criminal justice and

then dismissing it entirely. For instance, he presents another scholar's criticism of gender bias for employment in Japan's judicial system, but Ramseyer concludes that women no longer face pay or employment discrimination based on data from 1978 to 1981.¹³ Therefore, Ramseyer's paper dissects state institutions without considering the actual current civil society that Japanese institutions seek to uphold, and instead he mocks the prominence of Japan's collective bureaucracy and therefore the nation's collectivist social culture.

Other American scholars proceed in their research by directly interacting with Japanese bureaucrats and citizens, since Japan's focus on social guidelines demands research beyond statistical analysis. Haddad's book stems from over two-hundred interviews she conducted over several years (1999 to 2006),¹⁴ while David T. Johnson's research utilizes direct inquiry in American and Japanese prosecutorial offices.¹⁵ Thus, even when Johnson and Ramseyer reach similar conclusions, Ramseyer lacks a vital intimate correspondence with the subject. In effect, Ramseyer enacts the same cultural condescension against Japanese social performance that Euro-American scholars enact on "Eastern" performance. By holding Japanese justices to American statistical guidelines, Ramseyer asserts American superiority over Japanese state institutions and consequently Japanese culture. Steve Tillis describes the same phenomenon for theater, wherein Europeans "were looking to distinguish themselves *from* the world" and thus divided performance into East and West subdivisions,¹⁶ such that scholars viewed "Eastern" theater in an arbitrary dichotomy with European, or "Western" theater.¹⁷ Ramseyer exhibits dichotomous cultural appropriation most clearly in his final criticisms of Japan's central bureaucracy, which he ultimately dismisses as problematic simply because it is a bureaucracy.

To avoid creating a false dichotomy, we can observe the specific performative elements of Japanese trials and see how each attribute serves Japanese society. Japanese criminal justice operates on several levels, ranging from initial arrest, to pre-trial detention and interrogation, to the

prosecutor's charge decision, and finally to a one-phase trial usually without a jury.¹⁸ Hirano Ryūichi, who was the dean of Japanese criminal justice studies at Tokyo University, describes the final trial as “ceremonial,”¹⁹ which invites further investigation into the performance of justice during trials. We can interpret this performance as a compulsory liminal transition between freedom and imprisonment due to Japan's near-100% conviction rate. Symbolic anthropologist Victor Turner defines the liminal as a “threshold” or “transition between” two exclusive spaces.²⁰ Thus, incarceration in Japan imposes an accentuated individualism on the arrested individual, since the liminal transition separates the individual from society and thus nullifies any semblance of collective identity.



Fig. 1 On the left, a Three-Judge Courtroom (Criminal Case) & on the right, a One-Judge Courtroom (Civil Case)²¹

Japanese criminal justice utilizes the courtroom as a ritual space, in which the judge and prosecutor objectify the defendant. Ronald Grimes, co-editor of the Oxford Ritual Studies Series, provides us with guidelines for mapping rituals, and we can apply his categories for ritual qualities of space, objects, time, sound and language, and action to this courtroom setting. Japanese trials incorporate a triangle with the judge at an elevated center (“1” position in fig. 1, both sides) and the prosecutor and defense at opposition. Notice that in criminal cases, the accused (“7” position, left side) is physically distinct and isolated from the public prosecutor (“5” position, left side). The opposition between the accuser and the accused seems adversarial, but pre-trial actions impart a different relationship. In particular, the accused is often subjected to several weeks of solitary detention and interrogation that predictably result in confession.²² Prosecutors then use these

confessions as primary evidence during trials. Thus, pre-trial activities establish the courtroom as a ritual space since long detention periods remove the accused from traditional time and space. We can also see how detention strips the accused of their identity, relationships, routines, and role in collective society, which begins the liminal transition into imprisonment. These factors work in conjunction to punish and objectify the arrested individual.

Since the verdict almost always declares the accused guilty, Japanese trials take on a theatrical function dissimilar from European and American trials. In particular, Japanese trials almost never utilize juries. Japan uses the liminal as a unidirectional tunnel, so while juries have the potential to reverse an erroneous trial, they have no place within a ceremonial court. Furthermore, Grimes' description of ritual actions necessitates a type of certainty to the outcome of events.²³ In Euro-American judicial systems, the prosecutor attempts to convince the jury of a guilty verdict, while the defendant fights against this action. The resulting performance heavily utilizes the autopoietic feedback loop, which is an oscillatory call-and-response between actors and observers. Erika Fischer-Lichte, a Professor of Theatre Studies at the Freie Universitaet Berlin, explains that this feedback loop is the "defining principle of theatrical work,"²⁴ and its presence in common law judicial systems imposes an unpredictable adversarial trial. Since Japanese trials primarily utilize confessions as concrete evidence of guilt, juries would most often still deem the accused guilty, sustaining Japan's high conviction rate. Japanese trials therefore avoid unnecessary juries and instead enforce the notion that laws determine who is guilty rather than lawyers.

The outcomes for trials are unsurprising, but the process serves to symbolically exacerbate the punitive function of Japan's criminal justice system. Otherwise, trials would seem unnecessary altogether. The ritual space in courtrooms serves as a sort of replicable theatrical setting akin to a stage, since trials carry out in a very similar manner regardless of one's geographic location in Japan.²⁵ This transformation of space into theater is not exactly an example of site-specific theater.

Bertie Ferdman, a Theatre Arts Professor at the Borough of Manhattan Community College, explains that site-specific performance is less concerned with location and more concerned with interaction between performers and observers.²⁶ Thus, the spatial relationships between the jury, prosecutor, defendant, and judge in Euro-American courtrooms seem to adhere to Ferdman's guidelines, while Japanese courtrooms exist primarily for the accused and the accuser. In the Japanese case, the judge has less prosecutorial power and instead the prosecutor plays an augmented role. David Johnson explains that Japanese prosecutors control the pace at which cases proceed, make recommendations for "a proper judgment," and oversee that officials carry out sentences and fines.²⁷ Therefore, trials are essentially a ceremony celebrating the prosecutor's decision, and the judge, or three judges in criminal cases (see fig. 1, left side), assert physically towering authority over the accused due to their elevated position in the courtroom.

These practices are not without their shortcomings. Ishimatsu Takeo, a former High Court judge, states that Japanese trials are "empty shells," and the entire process "tends to lead to egregious trampling of human rights."²⁸ Additionally, Ryūichi, who previously described the criminal justice procedure as "ceremonial," also described it as "abnormal," "diseased," and "really quite hopeless."²⁹ We may then wonder if westernized government institutions could benefit Japanese society. Certain laws in pre-World War II Japan served to suppress political expression such as the Peace Preservation Law, which ended with the advent of Japan's new democratic government in 1945. Thus, Japanese citizens have more legal ground on which to institutionalize and challenge government authorities. Nevertheless, Patricia G. Steinhoff, another Professor in the College of Social Sciences at the University of Hawai'i, observes that Douglas MacArthur's democratic constitution did not eliminate all boundaries for political expression. Steinhoff states, "...ordinary social expectations of compliance with authority have discouraged individuals from claiming their new rights or making direct challenges to authority."³⁰ Therefore, the ideals supporting Japanese

justness are ingrained in civil and political society, such that new political institutions alone cannot alter citizen values.

Japan's judicial system upholds the nation's contextual definition of justness, but this observation does not nullify any opposition to the system. In Bertolt Brecht's "Prologue" to *The Exception and The Rule* he writes:

For to say that something is natural
 In such times of bloody confusion
 Or ordained disorder, or systematic arbitrariness
 Of inhuman humanity is to
 Regard it as unchangeable.³¹

Brecht, a playwright and theatrical theorist who specialized in social and ideological commentary, remarks that if we are comfortable with a system and deem it "natural," then we perpetuate it and consent to its flaws. Indeed, many Japanese citizens struggle against government institutions, and acts of rebellion against immoral practices occur even in morally ambiguous cases. For instance, the Hannichi Bombers were a group of individuals that performed several domestic terror attacks, the worst of which resulted in eight deaths and over two hundred injuries.³² Despite the bombers' malicious cause, Kyūen Renraku Sentā, which is an organization "willing to support anyone who was being 'oppressed by the state' without regard to ideology or affiliation,"³³ supported the arrested terrorists to serve their own agenda and resist against state oppression. Kyūen used the case to protest solitary confinement, mistreatment of prisoners, and unfair trials, and these efforts elicited sympathy for the prisoners and worked to set precedence for future cases.³⁴ Following the advice of Brecht's "Prologue", Kyūen used the case to attack the judicial system for its general wrongdoings, even when observers may have seen the particular circumstance as deserving severe punishment, or as "natural."

Although Japanese support groups like Kyūen fight against judicial oppression, their actions still reflect citizen values. This is most apparent through the ways in which these groups support prisoners. For example, citizens awaiting the death penalty face a “formidable wall of isolation,” to the extent where trials are even held at prison such that prisoners do not get any exposure to free society.³⁵ Support groups’ efforts to mollify the severity of solitary confinement thus focus on social support through visitations. Unfortunately, Japanese solitary confinement imposes strict limitations visitation rights wherein only family members of prisoners can visit. Nevertheless, Steinhoff reveals that marriage and adoption are fairly simple in Japan, and individuals can marry and adopt through simple alterations of family registers. Support groups will therefore marry or adopt prisoners into families just to provide visitation rights for people who are usually unassociated with the prisoner in every other way.³⁶ These actions demonstrate general dissatisfaction with the severity of Japanese criminal punishment, particularly since imprisonment strips an arrested individual of their place in collective Japanese society.

All considered, Japan’s judicial system upholds its nation’s citizen values and employs suitable state society-civil society political interactions. It is still worrying that even though many scholars seek intimate knowledge on the subject and converse with Japanese citizens, these scholars still operate under a Euro-American critical lens. I am not immune to this degeneracy, since my study of social and judicial performance poses the risk of appropriating Japanese behavior under analytical guidelines I am familiar with. I also stress the importance of collectivism in Japanese culture, but this assertion generalizes Japanese behavior in perhaps an insensitive manner. Instead, I view the function of my paper as a broadening of government research into the minutia of social institutions, where performative analysis allows us to observe social behavior without establishing a false dichotomy with other cultures.

Notes

¹ Official quote from history.state.gov.

² Haddad, 3.

³ Haddad, 4.

⁴ Haddad, 10.

⁵ Reinelt, 135.

⁶ From 1947 to 2017, Japan has had twenty-nine unique prime ministers. If we divide the number of years by the number of prime ministers during that time range, we get an average term of 2.4 years per prime minister, which is considerably less than the obligatory four-year term of United States presidents.

⁷ C. Johnson, 125.

⁸ Ramseyer, 3.

⁹ Ramseyer, 1.

¹⁰ D. Johnson, 13-4.

¹¹ Ramseyer, 19.

¹² Ramseyer, 11.

¹³ Ramseyer, 9.

¹⁴ Haddad, 207.

¹⁵ D. Johnson, 8-9.

¹⁶ Tillis, 74.

¹⁷ Tillis, 72.

¹⁸ D. Johnson, 15.

¹⁹ D. Johnson, 7.

²⁰ Turner, 41.

²¹ From the official site for Japan's courts and Supreme Court, courts.go.jp.

²² Steinhoff, 22.

²³ Grimes, 36.

²⁴ Fischer-Lichte, 39.

²⁵ The exception is in Tokyo, which *The Guardian* reports historically introduced juries in 2009. For more information, see the article "Trial by jury returns to Japan" by Justin McCurry on 3 August 2009.

²⁶ Ferdman, 8.

²⁷ D. Johnson, 15.

²⁸ D. Johnson, 6-7.

²⁹ D. Johnson, 7.

³⁰ Steinhoff, 19.

³¹ Drain, 110.

³² Steinhoff, 28.

³³ Steinhoff, 21.

³⁴ Steinhoff, 31.

³⁵ Steinhoff, 36.

³⁶ Steinhoff, 33.

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