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Table of Contents

Notes on Contributors	1
Introduction Jason Bainbridge	3
LGBT Rights in Southeast Asia: One Step Forward, Two Steps Back? Cai Wilkinson, Paula Gerber, Baden Offord and Anthony J. Langlois	5
Mary Braddon and the English Heroine in Meiji-Era Japan Ian McArthur	19
The Aftermath of Japan's Ratification of the Hague Convention on Child Abduction: An Investigation into the State Apparatus of the Modern Japanese Family Takeshi Hamano	35
Author Guidelines	51

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Introduction

***IAFOR Journal of Asian Studies* Volume 3 Issue 1: Articulating Identity**

Identity is that most complex of categorisations, always in a state of becoming, always being shaped and reshaped at the intersection of personal expression, legal protection and political definition. Thanks to the rapid expansion and proliferation of digital media over the last decade, particularly via social media platforms, identity politics has become an even more contested space, revelling in the opportunity for fluidity and reformation. Mediation means that while such articulations remain intensely personal and local, drawing on personal stories and images, they can also have a global reach that can galvanise vast numbers of people to action, to advocate for change and place identity politics firmly at the centre of government agendas.

In this issue we explore the articulation of identities across Asia – and more specifically LGBT, feminine and familial identities as articulated across law, politics and popular fiction in Japan and Southeast Asia. Cai Wilkinson, Paula Gerber, Baden Offord and Anthony J. Langlois interrogate the trajectory of LGBT rights in Southeast Asia from legal, cultural, human rights and political perspectives to measure not only the current state of LGBT rights in the region but also how LGBT rights can be protected and advanced in the future. Ian McArthur reminds us of the long history and personal agendas informing identity politics by taking us back to late 1800s Japan and the adaptive translations of English sensation fiction author Mary Braddon that were variously mobilised to debate femininity, theatre codes and legal reform. Finally, Takeshi Hamano analyses the family ideology of modern Japan following the Japanese government's ratification of the Hague Convention on child abduction, an international convention designed to resolve disputes around international parental child abduction.

Together, these papers provide a snapshot of how identity is debated, contested and articulated across Asia, in the past, in the present and how it may look tomorrow. They too will become part of the dialogue around LGBT, feminine and familial identities and we are so proud to present them to you in this issue.

Professor Jason Bainbridge
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LGBT Rights in Southeast Asia: One Step Forward, Two Steps Back?

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Abstract

Although in recent years many leading international actors, including the UN and European Union, have endorsed the idea that “LGBT [lesbian, gay, bisexual and transgender] rights are human rights and human rights are LGBT rights” (Clinton, 2011), at the regional and national levels support is still far from guaranteed. The result is that while globally there has been significant progress in recognising the rights of LGBT people, at times assisted by and resulting in cultural transformation, there has also been an accompanying rise in both popular, religious and political homophobia in many states. These conflicting and frequently highly contradictory dynamics are particularly evident in Southeast Asia, where some great leaps forward in protecting the rights of LGBT people have occurred in parallel with substantial setbacks. For example, in late 2014, a Malaysian Appeals Court ruled that a ban on cross-dressing was unconstitutional, while a Singapore Court held that a law criminalising consensual same-sex conduct between men was constitutional. This paper explores the debates and trajectories of LGBT rights in Southeast Asia from four different perspectives in order to assess not only the overall state of LGBT rights in the region, but also to consider how further progress towards meaningful protection of LGBT rights can be achieved.

Keywords: LGBT rights, human rights, SOGI rights, Southeast Asia

Introduction: Steps, Slips and Slides

In recent years it has become axiomatic in international human rights discourse that, in Hillary Clinton's (2011) words, "LGBT [lesbian, gay, bisexual and transgender] rights are human rights and human rights are LGBT rights". At the global level, the veracity of this statement would seem indubitable: the United Nations has firmly aligned itself with calls for LGBT equality via its Free & Equal campaign (www.unfe.org) and the UN Human Rights Council's "landmark" September 2014 resolution condemning anti-gay bias (HRW, 2014a), as well as the appointment of an Independent Expert on Sexual Orientation and Gender Identity in 2016 (HRC 2016), while the EU formally adopted guidelines for supporting LGBT persons' human rights in June 2013.¹ At the national level, meanwhile, there also seems to be growing acceptance of LGBT rights: the US appointed the first-ever Special Envoy for the Human Rights of LGBT Persons in February 2015 (US Department of State, 2015), and sexual orientation and gender identity is explicitly included in anti-discrimination legislation in 70 countries, while same-sex marriage is now legal in approximately 20 countries, with a further 17 countries providing some form of legally recognized union for same-sex couples and 17 countries permitting same-sex couples to jointly adopt (Carroll & Itaborahy, 2015).

The global view, therefore, would seem to confirm Kees Waaldjik's (1994) hypothesis that there is an identifiable sequence of legislative developments that lead to legal recognition of homosexuality. Waaldjik's model is based on the identification of a pattern of incremental and sequential steps observed in many European countries that have led to increasing legal recognition of homosexuality. As he describes:

The law in most countries seems to be moving on a line starting at (0) total ban on homo-sex, then going through the process of (1) the decriminalisation of sex between adults, followed by (2) the equalisation of ages of consent, (3) the introduction of anti-discrimination legislation, and (4) the introduction of legal partnership. A fifth point on the line might be the legal recognition of homosexual parenthood (1994, pp. 51–52).

Waaldjik acknowledges that this pattern is not without its issues, since countries do sometimes "take a step backwards", or steps may be completed in a different order (1994, p. 52). Nonetheless, his conclusion is that "[t]here seems to be a general trend of progress; where there is legal change it is change for the better. Countries are not all moving at the same time and certainly not at the same speed, but they are moving in the same direction — forward" (p. 51).

However, a closer look at the situation for LGBT people in any region of the world suggests that such optimism is premature and naïve at best, and downright misguided at worst. Firstly, the adoption of legislation does not automatically erase societal and political opposition to the recognition of homosexuality, and the assumption that where the law leads, society will follow is at the very least over-simplistic. Even in those countries or states where full legal equality has been achieved, LGBT people remain disproportionately likely than their heterosexual or cisgender² counterparts to encounter prejudice or discrimination, with significant impacts on health and wellbeing (see for example Bauer et al., 2009; Pachankis et al., 2015).

¹ See http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/137584.pdf and http://www.eeas.europa.eu/human_rights/lgbt/index_en.htm.

² Cisgender is an adjective used to describe "a person whose gender identity corresponds with the sex the person had or was identified as having at birth". See <https://www.merriam-webster.com/dictionary/cisgender>.

Second, legal gains have often been accompanied by a corresponding intensification of resistance to the idea of recognizing the right of LGBT persons to be accorded the same rights as everyone else in both the societal and political spheres. This is arguably most clearly evident in the rise of political homophobia (Weiss & Bosia, 2013) and discourses of “traditional values” that seek to counter respect for the human rights of LGBT people (Wilkinson, 2014). This has caused a small but growing number of countries to consider following Russia’s example and adopt “anti-homopropaganda” laws (Carroll & Itaborahy, 2015, p. 32). It is also evident in the efforts of conservative religious groups such as the World Congress for Families and the National Organisation for Marriage to prevent or roll back legal gains (Kincaid, 2015; Nash & Browne, 2014; Zivi, 2014).

Third, as Waaldjik himself has acknowledged (1994, 2009), it should not be assumed that the experience of European countries will be replicated in other parts of the world, given the diversity of factors that shape developments in any country at any time. Indeed, the Eurocentrism of the model has the potential to skew both expectations and interpretations, suggesting that there is a “right” way to achieve legal recognition, rather than developing strategies that are responsive to local contingencies and dynamics – something that in turn risks running afoul of arguments that the push for universal recognition of “gay rights” is a form of neocolonialist Western imperialism (Cheney, 2012; Massad, 2002).

The salience of these criticisms of Waaldjik’s model is especially evident in Southeast Asia, where differences between countries in how the rights of LGBT people are dealt with are increasingly evident. At the regional level, the diversity of stances on LGBT rights is clearly seen in debates between member states over “Asian values” and especially in relation to the content of the ASEAN Human Rights Declaration (Langlois, 2014), while at the national level approaches to LGBT issues have been exceptionally varied and often – on the surface, at least – seemingly contradictory. To take three recent examples: in late 2014, a Malaysian Appeals Court ruled that a ban on cross-dressing was unconstitutional (ABC News, 2014), yet a “morality raid” in Johor by Malaysia’s Islamic police in September 2014 resulted in the arrest of two women for allegedly having same-sex relations (Autostraddle, 2014). In Singapore, meanwhile, the constitutionality of a law criminalising consensual same-sex conduct between men was upheld in 2014 (HRW, 2014b), despite the fact that Pink Dot events in support of the LGBT community have been held annually since 2009 and attract tens of thousands of participants. Finally, India’s Supreme Court recriminalized homosexuality in 2013 (it having been decriminalized in 2009 by the High Court of Delhi), but the following year the Indian Government granted full legal recognition to hijras, creating a “third gender” category for official documents (Khaleeli, 2014).

These examples, as well as extensive reports about the discrimination, marginalisation and violence experienced by LGBT people in the countries of Southeast Asia (UNDP, 2014 & 2015), point to the reality that, in practice, recognition of LGBT people’s human rights is uneven, incomplete and frequently contradictory and arbitrary, reflecting national, regional and international politics, as well as multiple intersecting dynamics of privilege and marginalisation. This in turn means that the utility of any one model for progress is limited, since it cannot account for all aspects of a complex and multifaceted situation. Indeed, any attempt to assess progress against milestones, as Waaldjik proposes, calls to mind the parable of the blind men and the elephant: one’s verdict largely depends on which part of the elephant one examines, as well as one’s preconceptions about how the world is, could and should look. If we are to develop a meaningful understanding of the state of LGBT human rights, and hence identify potentially effective interventions to address violations and shortfalls in their

protection, a more holistic and critically-informed examination of the “LGBT Rights Elephant” is required, as outlined in the following section.

Assessing the LGBT Rights Elephant: Four Perspectives

This section presents four perspectives that collectively aim to lay the foundations for developing a framework for assessing recognition and protection of the rights of LGBT people that is context-specific and context-sensitive. Collectively, these perspectives reveal local societal, political, legal and cultural dynamics and their interactions, thereby enabling the needs and interests of local communities to be foregrounded. In contrast to the idea of there being a series of steps towards recognition, this process can be characterised as more akin to learning how to dance; success is dependent on one’s movements being coherent in their own right, but also on being congruent with the music, other dancers and the occasion. Even the most thorough consideration of all the four perspectives discussed does not, of course, guarantee a positive outcome on the human rights dance floor – this requires extensive practice and experience both individually and collectively. Nonetheless, taken together, these perspectives provide an initial primer for this endeavour, seeking to challenge some assumptions and generate insights in how the human rights of LGBT persons can be more effectively protected and promoted in Southeast Asia.

Legal: From Jurisprudence to Demosprudence

Discussions regarding the protection and promotion of the human rights of LGBT persons often centre on the number of countries that continue to criminalize same-sex sexual conduct between consenting adults. As the table below illustrates, there is only one geographic region, Europe, that has no countries that criminalize homosexual conduct. However, as this section demonstrates, the extent to which conclusions can be drawn from this data about the “gay friendliness” of a country is limited.

Region	Number of countries that criminalise consensual same-sex sexual conduct
Africa	33
Americas	11
Asia	12
Europe	0
Middle East	13
Pacific	8

Table 1: Countries that criminalise same-sex sexual conduct by region.

The European Court of Human Rights judgment in *Dudgeon v UK* (1981) and the United Nations Human Rights Committee case of *Toonen v Australia* (1994) were landmark decisions that held that laws criminalising homosexual conduct were discriminatory and violated the human right to privacy, even if they were rarely or never enforced. As a result of these decisions, many countries repealed their criminal law provisions relating to “offences” such as sodomy, buggery and unnatural acts.

However, looking at the legal framework of a country does not necessarily provide an accurate picture of the extent to which a country protects and promotes the rights of LGBT persons. For example, since North Cyprus decriminalised homosexual acts in February 2014, Europe is a region free from any laws criminalizing same-sex sexual conduct. However, there remain significant pockets of homophobia and transphobia, including Russia and much of the Balkans (Miglierina 2014; Wilkinson 2014a).

Hungary provides a useful illustration of this phenomenon. It has very good anti-discrimination laws, but is a very homophobic society with significant levels of violence directed at LGBT communities and individuals. For example, at the 2007 Gay Pride March in Budapest, Renkin (2009, p. 20) describes how

[a]pproximately 2,000 marchers were ceaselessly pelted with eggs, bottles, bags of sand, and at least two incendiary flares. Besides missiles, right-wing attackers, from youths to elderly women, hurled epithets such as “Filthy queers!” and “[Throw the] faggots into the Danube!” ... The violence did not end with the March; later that night gays and lesbians were assaulted as they returned home following the after-March celebrations. Eleven participants were beaten, at least two so badly that they were hospitalized.

This situation can be contrasted with Singapore, which continues to criminalize homosexual conduct and has no anti-discrimination laws prohibiting discrimination on the basis of sexual orientation or gender identity. Notwithstanding this, 28,000 people came together at Hong Lim Park to participate in the 7th annual Pink Dot in June 2015, which event attracted significant corporate sponsorship and proceeded without any violence or counter protests.³

Thus, we see that the extent to which the law reflects or impacts upon societal attitudes may be minimal. This echoes the conclusion reached by Tom Stoddard, a legal academic and gay activist from New York, who went to New Zealand in 1996 expecting to find a gay utopia. At that time only nine of the 50 states in America had specifically outlawed discrimination on the basis of sexual orientation, and statute books were still filled with anti-gay legislation. In contrast, New Zealand’s anti-discrimination laws included a category of sexual orientation, and the eradication of discrimination against same-sex couples was very much on the government’s legislative agenda. Stoddard concluded that “New Zealand, on paper, seemed like the Promised Land” (1997, p. 968).

However, when he arrived there, he found that New Zealand looked and felt like an average American city 20 years earlier. New Zealand’s laws were more progressive, but its society was more conservative. In contrast, New York had a much more open and obvious gay culture resulting from “a quarter of a century of a visible ‘gay liberation’ movement” (Stoddard 1997, p. 969). Reflecting on his experience, Stoddard reached the conclusion that, contrary to what might be assumed, changing the laws that govern a society do not automatically lead to larger cultural transformation.

Guinier and Torres, two American academics, concurred with Stoddard that a rule change will have limited effect without a shifting of societal attitudes, and coined the term “demosprudence” to describe the relationship between law-making and the democracy-

³ For a description of this event, see: <http://www.straitstimes.com/singapore/record-28000-gather-at-hong-lim-park-for-annual-pink-dot-rally>.

enhancing effects of social movements (Guinier & Torres, 2013). Applying the principle of demosprudence to LGBT rights in Southeast Asia, we can conclude that law reform is essential, but is only one piece of the jigsaw puzzle. It will be of limited impact unless accompanied by societal/cultural change, of the kind already being seen in Singapore in the Pink Dot celebrations.

Cultural: Decolonising and Queering LGBT Rights Activism

As the previous section demonstrates, the cultural dynamic is therefore pivotal to any substantive change that may occur through law and society. It is important to understand that there are other means for societal change available to LGBT people, which are not simply enacted through law or through traditional Western style activism. In Southeast Asian countries such as in Singapore, Malaysia and Indonesia, for example, the kind of LGBT activism that has developed may appear to be completely distinctive from that found in most Western polities.

For scholars interested in understanding the way that LGBT human rights activism has emerged in Southeast Asia, therefore, there are a number of salient considerations that need to be taken into account. Assumptions, for instance, about LGBT activism and its global evolution need to be questioned when investigating non-Western contexts. There has been a strong emphasis on political, social and legal activism perpetuated in the globalising West, which has been predicated upon explicit visibility, “coming out” narratives, universalist and essentialist regard to sexual orientation and gender identity, and powerful identity politics (Offord, 2011, p. 136). These features of Western style LGBT activism do not characterise the kind of activism that has emerged in Southeast Asia. These differences highlight how LGBT activism functions across cultures in a range of ways. LGBT movements are characterised by their geo-political context, history, social, religious and economic conditions, as well as their approach to expression and degree of visibility which are tempered by the broader and specific social, political and cultural expectations and domains available. Understanding how LGBT rights activism operates in non-Western contexts thus depends on a “decolonising global queer studies approach” (Offord, 2011, p. 136), which is mindful not to replicate the Western template of LGBT liberalisation.

For the purposes of this article, Singapore, as flagged in the previous section, is a case in point. This small but economic giant of Southeast Asia is a nation where the LGBT movement has developed in specific ways that are not due to legal or political recognition or political liberalisation, but through the “cultural liberalisation” of its “creative economy” (Yue, 2012, p. 199). Homosexuality may be tolerated in Singapore, but it remains illegal under Section 377A of the Penal Code (Macauley’s Indian Penal Code – a legacy of British colonisation). In addition, the city-state has also developed a highly regulated heteronormative social policy, within which sexuality is managed through discourses of the family.

Despite this, queer culture and queer space in Singapore has emerged through reforms that have occurred in the culture and under the purview of the state. As stated by Prime Minister Lee:

De facto, gays have a lot of space in Singapore. Gay groups hold public discussions. They publish websites ... There are films and plays on gay themes ... There are gay bars and clubs. They exist. We know where they are ... We do not harass gays ... And we do not proactively enforce section 377A on them. (Lee, 2007)

What is of interest about Singapore is that in terms of human rights activism, LGBT rights claims have been reconceptualised within the Singaporean political and legal context and culturally translated by the queer social movement in ways that are innovative but also aware of the difficulties faced by the legal situation.

In this sense, queer claims for human rights in Singapore do not travel down a “normalising and assimilationist” trajectory in terms of legal reform (Yue, 2012, p. 7). Rather, when considered as a language, human rights can be translated into innovative approaches to claims of social recognition. The annual Pink Dot event, for example, which has occurred since 2008 in a prominent public space, and which is explicitly a Singaporean LGBT event, has gained greater and greater participation with enormous corporate backing. In 2015, there were over 28,000 participants. The Pink Dot annual celebration of LGBT Singaporean citizens and their families has become a key cultural event in the public sphere.

The Pink Dot celebration has become a strategic, contextual and pragmatic adaptation by the LGBT community to the socio-political and legal conditions of Singapore. As Offord has noted elsewhere:

It is not a demonstration against the State, nor does it promote or incite any sense of confrontation. But it is clearly, as a communal event with thousands of people, a means of mobilisation and commitment towards social recognition of LGBT people. This is an example of Singaporean style (human rights) activism. What is not clear yet is whether cultural expressions such as the Pink Dot will ultimately affect any social change or legal change. (2014, p. 316)

Whether this occurs or not, what we can suggest is that LGBT activism and claims for human rights when understood through this cultural framework is asymmetrical and unpredictable. As such, investigating the cultural dynamics at work is also pivotal as a way of understanding how LGBT human rights activism operates in Southeast Asia.

Human Rights Regimes: The Politics and Practices of Rights Claims

With the clear identification of LGBT rights as human rights at the United Nations, and with the embrace of human rights regimes at the regional and state levels in Southeast Asia, it may be supposed that LGBT populations would be able to get some traction against these regimes for the advancement of their rights. However, as has been argued earlier, matters are rarely so straightforward. A critical evaluation of the region’s ostensible commitment to human rights helps to illustrate why.

Human rights have recently changed status in the Southeast Asian region. They have moved from being an unacceptable artifact of Western meddling and interference, the antitheses of “Asian values”, to being a formally recognised element of the ASEAN Charter (Tan, 2011; On “Asian values” see Langlois, 2001). The last half-decade has seen the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the promulgation in 2012 of the ASEAN Human Rights Declaration. The AICHR has also been busy with specific human rights issue developments, such as Declarations on the elimination of violence against women and children (both in 2013). Human rights have been deliberately brought into the ASEAN political and economic project; they are a critical component of the ASEAN’s attempts to establish a more “people oriented” ASEAN and a part of the broader project of making ASEAN a more rule-bound governmental association (Collins, 2008).

What might this mean for LGBTQ people in the region? What difference does it make (cf. Langlois, 2014)? One way to consider this question is to think about human rights not just as elements of a legal regime – declarations made by governing bodies (states or regions) to establish their bona fides with respect to global governmental regimes – but as moral and ethical ideas that human persons use as they struggle to be free, to be protected against harm and wrong doing, and to be the masters of their own social, political and economic destinies. By beginning to think about the making of rights claims by ordinary people on the ground, and thus considering the political imaginary that is required for this process of rights claiming, any analysis of the appearance and performance of the new ASEAN regional human rights regime is complicated (cf. Zivi, 2011).

Most fundamentally, the introduction of what might be called “the human rights imaginary”, as an apparently newly legitimate form of political discourse, enables people to examine how they are being treated, and how they are allowed to live, against a normative standard built around freedom and protection. Moreover, it *authorizes* them *normatively* to make claims against maltreatment. It should come as no surprise then, that when the ASEAN Human Rights Declaration is promulgated in a form that *excludes* protections for sexual orientation and gender identity, there was significant dissent:

We, the ASEAN LGBTIQ Caucus are outraged and disappointed by the decision of the ASEAN Head of States to adopt the AHRD that intentionally excludes sexual orientation and gender identity (SOGI). Despite countless attempts and demands by the members of civil society, including LGBTIQ groups, to push for its inclusion, ASEAN have remained reticent to the attempts. This AHRD not only shows a lack of respect to LGBTIQ people but also makes a mockery of the international human rights values and principles that all nations and citizens abide by and are held accountable to. (ASEAN LGBTIQ Caucus 2012)

The ASEAN Human Rights Declaration has been criticized widely for not meeting the standards of international best practice – and not just with respect to SOGI rights (Renshaw, 2013). As well as being part of the AICHR, many individual states within ASEAN have National Human Rights Institutions (Croydon, 2013). These are governmental bodies which are charged with a human rights brief: Komnas HAM in Indonesia, SUHAKAM in Malaysia, the National Human Rights Commission in Thailand, and so on.⁴ When these institutions or the states they serve do not accord with international best practice, they fail against an established standard – one that includes the protection of LGBTQ populations.

As the recent “Being LGBT in Asia” conference in Bangkok established through extensive reporting from LGBTQ civil society, many LGBT groups are turning to the recent uptake by state and regional governmental institutions of human rights language (UNDP, 2015). Even when – or perhaps *particularly* when – human rights regime instruments *fail* to protect SOGI human rights, they have nonetheless contributed to authorizing a political language and imaginary in which the making of human rights claims, and the performance of rights claiming, becomes a legitimate activity (cf. Mackie, 2013). Nothing sure flows from this. But while the new regional human rights regime disappoints on LGBT rights, it nonetheless provides a politically-sanctioned stage for the further performance of human rights claims, and, for LGBT people among others, that stage is both one to watch, and one on which to perform.

⁴ See <http://www.asiapacificforum.net/establishment-of-nrhis/what-is-an-nhri> for further information about National Human Rights Institutions.

Political Homophobia: The State as Hindrance or Help

In contrast to the preceding three perspectives, which deal with structures and their effects, the final one focuses on the state's role in relation to the protection of LGBT people's human rights. Conventionally, the state has been understood as the guarantor of its citizens' security. Yet the potential for the state to be a source of insecurity has been increasingly recognised, especially in instances where the state's interests clash with those of individuals or particular societal groups (Bilgin, 2003). The lack of protection, not to mention marginalisation and persecution, experienced by LGBT people in many countries highlights the importance of recognising that while states can be a key actor in institutionalising the protection of the rights of LGBT people, the potential for states to harm LGBT people must equally be recognised and interrogated with a view to understanding why, how and when the state is likely to hinder rather than help.

Bosia and Weiss' (2013, p. 5) conceptualisation of political homophobia as a “specifically *political* and *modular* force” that is used to make “overt claims to political legitimacy through homophobia” provides the starting point for analysis of the state's impact on the lives of LGBTQ individuals. Careful to distinguish political homophobia from “private, religious and interpersonal sentiments that have not been taken up as political tools”, Bosia and Weiss define political homophobia as “a state strategy, social movement, and transnational phenomenon [that is] powerful enough to structure the experiences of sexual minorities and expressions of sexuality” (2013, pp. 2, 5).

Uganda's “Kill the Gays” bill and Russia's anti-homopropaganda law are arguably the most extreme and highest profile instances of political homophobia in recent years. However, examples can be found in a considerable number of countries including the Balkans (Miglierina, 2014), Kyrgyzstan (Wilkinson, 2014b), Egypt (A Paper Bird, 2014) and Iran (Korycki & Nasirzadeh, 2013). In Southeast Asia, Malaysia is perhaps the clearest case due to the conviction of Anwar Ibrahim on sodomy charges in 1998 and 2014 and the Ministry of Education's publication of a “gay symptoms” guide in 2012 (Mosbergen, 2012), although, as Weiss (2013) observes, homophobic “anticipatory counter-movements” have also been seen in Singapore, Indonesia, the Philippines.

The reasons behind a state's utilisation of political homophobia are inevitably context-specific. Nonetheless, it is possible to identify a range of common political motivations. First, political homophobia can function as a display of state-building, facilitating the demonstration of external sovereignty and state power by challenging international norms. Second, it can serve as a basis for nation-building and a vehicle for nationalism by providing a gendered other against which to determine national identity. Third, it can be used as a form of populist regime maintenance by amplifying moral panic over deviant and immoral sexualities and genders. Finally, political homophobia can be a policy response to a perceived threat to local values and identities.

There is considerable overlap and interconnection between these motivations. However, it is when political homophobia is framed as being about the protection of “traditional values” that it is arguably most pernicious for the protection of the human rights of LGBT people. Proponents of “traditional values” argue that, rather than reflecting application of the principle of non-discrimination on the basis of identity, recognition of LGBT human rights is the legitimisation of behaviour that is immoral, unnatural and harmful to society. In order to prevent this, and maintain human dignity, countries such as Russia have argued with some success at the UN Human Rights Council (UNHRC) as well as domestically that the

“traditional values of mankind” should be the basis for human rights promotion (Wilkinson, 2014a).

The sticking point in this argument is what exactly is meant by “traditional values”. Explicit definitions remain notably absent, but certain common characteristics in “traditional values” discourses are evident: the centrality of religion for maintaining morality in society; the need to preserve the family and protect children; and the imperative of upholding “natural” gender roles. In conjunction with the explicitly homophobic, transphobic and anti-feminist stance of many “traditional values” advocates, it is evident that the underpinning vision is strongly patriarchal, heteronormative, pronatalist and theocratic, and involves a shift from notions of the universality of human rights and social justice to the right of discriminate on the basis of moral judgements about others’ behaviour. Interpreted in this way “traditional values” act as de facto legitimization of discrimination not just against LGBT people, but anyone whose sexuality and/or gender is – or is perceived to be – non-normative.

While “traditional values” discourses provide a particularly strong challenge to achieving recognition of LGBT people’s human rights, regardless of the motivation the consequences of political homophobia are far reaching. For LGBT people and the gender non-normative, it means the perpetuation of a “chilly” socio-political climate in which there is little or no protection from scapegoating, exclusion, marginalisation, discrimination and violence, even in the absence of criminalisation. More widely, political homophobia changes the state from being a guarantor of its inhabitants’ security to being a moral arbiter and agent of sexual and gender regulation – a role that turns it from help to powerful hindrance in efforts to protect the human rights of LGBT people as politics and power are prioritised over people.

Conclusion: Examining the LGBT Rights Elephant in Context

As the perspectives discussed in the preceding section demonstrate, the effective promotion and protection of the human rights of LGBT people in Southeast Asia begins with careful holistic examination of the LGBT Rights Elephant. In addition to taking account of its vital statistics, such examination needs to include consideration of its history, its character and its interactions with the local habitat. If legislation provides a theoretical benchmark for the state of LGBT human rights, then as has been shown, it is only via concepts such as demosprudence, queering culture, the performance of rights claims, and political homophobia that we begin to develop a nuanced and contextualized picture of the elephant’s health and the issues affecting it. To return to the analogy used in the opening section, it is only when this has been done that is it possible to dance together successfully in order to achieve the aim of furthering recognition and protection of LGBT people’s human rights in Southeast Asia, or indeed any other region of the world.

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Mary Braddon and the English Heroine in Meiji-Era Japan

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Abstract

In the 1880s and 1890s, a large number of adaptive translations of European and American mystery novels were published in Japan in book form and as serialized newspaper novels. One of the more prominent of the sources of these works was English sensation fiction author Mary Braddon. Her works are associated with strong-willed heroines and villainesses. She is possibly the first, and certainly one of the earliest, European sensation fiction female authors adapted in this manner in Japan. Braddon's works proved popular among a coterie of translators and publishers who saw in them opportunities to pursue their own agendas. These agendas included: participation in debates over the nature of femininity; theatre reform; and the introduction of new legal codes. Her works were targeted for adaptation by playwrights, professional storytellers (*rakugoka*), and newspaper editors. Two of the more prominent adaptors of Braddon works were editor and translator Kuroiwa Ruikō (1862–1920), and Australian-born professional storyteller Henry Kairakutei Black (1858–1923). By examining such adaptations of Braddon's works, this paper sheds light on how European sensation fiction served the interests of reformists in Meiji-era (1868–1912) Japan.

Keywords: *kabuki*, *rakugo*, Meiji era, Mary Braddon, sensation fiction

Introduction

By the 1880s and 1890s, Japanese readers had access to a growing array of mystery novels from Europe and North America. Such novels were released in quick succession as books and serialized translations in newspapers. In the early years, they took the form of adaptive translations (*hon'an mono*), described by J. Scott Miller as “adapted tales of foreign origin” (2001, p. 3). Adaptors altered plots, settings and names of characters in a process which Miller characterizes as “transmutation”, frequently involving “wholesale appropriation of literature in the service of some other agenda – literary, political, social” (2001, p. 4).

These were not literal translations. Adaptive translations were produced quickly to meet steady demand from newspaper and book editors. Attempts to maintain the faithfulness of the translations were not necessary, but translators nevertheless adhered to the spirit of the originals, while playing an important role in introducing new ideas to Japan in the Meiji era (1868–1912). To this end, adaptor-translators tweaked details and added interpolations to make foreign ideas palatable. A study of the alterations offers insights into the transmission of new ideas, particularly nineteenth-century European and North American notions of modernity, to Japan in the years before mass production, and wide reader reception, of more literal translations of Western novels.

One of the earliest of authors to reach Japan in this manner was English sensation fiction writer Mary Braddon. Sensation fiction examined and reflected new psychological states and ways of relating to others associated with the dislocations of the Industrial Revolution. Its proponents also included Wilkie Collins, Charles Dickens, and Arthur Conan Doyle. Ian Ousby’s description of the genre as showing “a preference for the striking and unusual situation or series of events and for characters in the grip of strong or extreme emotion” ... “combined with an interest in fact and topicality, creating an air of contemporary verisimilitude” (1976, p. 80) is one of the most comprehensive. Ousby identifies common themes as “a world of missing wills, long-lost heirs, mistaken identities, relatives who disappear to be reunited with their families in the final volume or installment, and illegitimate children who live in ignorance of their true parentage” (1976, pp. 81–82). Braddon was the quintessential sensation fiction writer. Her heroines were often determined, strong and not always conventionally good women. She is perhaps the first female Western novelist whose works were translated or adapted into Japanese. Other novels featuring heroines or female villains had been translated or adapted for Japanese readers before the introduction of Braddon’s works, but they had male authors.

Braddon achieved popularity in the English-speaking world in the 1860s and 1870s. George Bernard Shaw, who reviewed one of her books for the *Pall Mall Gazette*, complained that her work did not befit his intellect.

Why condemn me to read things that I can’t review – that no artistic conscience could long survive the reviewing of! Why don’t you begin notices of boots, hats, dogcarts and so on? They would be fifty times as useful and interesting as reviews of the last novel by Miss Braddon, who is a princess among novel manufacturers. (Holroyd, 1988, p. 214)

Like Shaw, many Japanese proponents of pure literature also turned their noses up at sensation fiction, of which detective novels were a subgenre, but enough people read them to ensure a market. Writers and translators in Japan took to the genre to cater to this demand.

The genre shared features with theatre, which used what Lyn Pykett lists as “stylized dramatic tableaux, heightened emotions and extraordinary incidents of melodrama”, including “spectacular ‘special effects’, involving dioramas, panoramas, elaborate lighting systems and machinery of all kinds” (Pykett, 1994, p. 2). In Braddon’s works, these synergies between theatre and fiction assume added significance, given that she was an actress before taking up writing.

A history of adaptations of Braddon works in Japan shows that they were targeted by editors, storytellers and playwrights engaged in debates over women’s rights, reform of criminal codes, and the theatre. Women’s rights and law reform were planks in the pro-democracy Freedom and People’s Rights Movement (*jiyū minken undō*). Theatre reform was also a topic of debate among storytellers and reformist newspaper editors during the Meiji era. By examining these adaptations, this paper contributes to a more nuanced understanding of the Meiji reform debate.

Chronology of Braddon’s entry to Japan

1882–1883: The first known adaptation of a Braddon novel in Japan dates to 1882 (Meiji 15), when the newspaper *Doyō shimbun* in Kōchi, Shikoku, embarked on a serialization of *Lady Audley’s Secret*, as *Eikoku kidan – dokufu Ōdoroku koden* [“A strange tale from England – The wicked woman, Ōdoroku”] (Yanagida, 1966, p. 33). Publication of the newspaper was suspended before the episodes were completed, but the novel was published in full in the *Kokkai shimbun* in 1883. (Yanagida, 1966, pp. 33–34).

1886: In 1886, the Australian-born professional oral storyteller (*rakugoka*) Henry Kairakutei Black adapted Braddon’s *Flower and Weed* as *Kusaba no tsuyu* [“Dew by the Graveside”] (Buradon, 1886).

1891: In 1891, Black also adapted Braddon’s *Her Last Appearance* as *Eikoku Rondon – gekijō miyage* [“Tale from a London theatre”] (Eikokujin, 1891).

1894: In October 1894, Kuroiwa Ruikō (1862–1920) completed a serialisation of *Hito no un* [“People’s Luck”] in his newspaper *Yorozu chōhō*. Evidence suggests this was an adaptive translation of *Lady Audley’s Secret* (Silver, 2003, p. 853).

1894–1895: Kuroiwa followed this with a similar novel, this time Braddon’s *Diavola; or, The Woman’s Battle* as *Sute obune* [“Abandoned small boat”] in 156 episodes in *Yorozu chōhō* between October 1894 and July 1895 (McArthur, 2013; Bryce & McArthur, 2007).

1898: Attesting to the popularity of *Sute obune*, it was commissioned as a kabuki play *Sute obune yorozu no ōjime*, at the Kabukiza in Tokyo in January 1898. This version was written by Kawatake Shinshichi III (1842–1901).

1906: A further, revised *shingeki* [lit. new theatre] version played at Tokyo’s Hongōza in 1906 (McArthur, 2007).

This list suggests that at least four of Braddon’s works were brought to Japan in the Meiji era between 1882 and 1906.

Lady Audley's Secret (in *Doyō shimbun* and *Kokkai shimbun*) – 1882–1883

The *Doyō shimbun* began in August 1877 as a vehicle for Risshisha,¹ a pro-democracy organ established by Itagaki Taisuke (1837–1919), who was a participant in the Freedom and People's Rights Movement (*jiyūminken undō*). Ueki Emori (1857–92) was the paper's founding editor. In an interview with Nishūbashi Sei, Henry Black confirmed that his father, the newspaper editor John Reddie Black had been “on familiar terms with” Itagaki (Nishūbashi, 1905, p. 294). Black told his interviewer that the friendship had been during his father's editorship of the Japanese language newspaper *Nisshin shinji shi*. John Black was editor of the newspaper between 1872 and 1876 (McArthur, 2013). Itagaki was a former samurai who joined the post-Restoration government, but resigned over the government's refusal to become embroiled in Korea (Jansen, 1995, pp. 243–244). He was a founding member of Aikoku Kōtō (Public Party of Patriots) (*Illustrated*, 1993, p. 635) and an advocate of women's rights. The Freedom and People's Rights Movement was a struggle for power and control over definitions of modernity. Many of its leaders were as much interested in wresting power from the ruling oligarchy as in enlightening the masses about democratic rights (Jansen, 1995, pp. 243–244). From the late 1870s, the movement's adherents were seeking novel ways of reaching a wider audience via the press and oratory. The government frequently struck back by suppressing and closing newspapers and restricting freedom of assembly.

On 24 August, 1882, for example, the government ordered *Doyō shimbun* to stop publication, putting an end to serialization of *Lady Audley's Secret*, but in 1883 the paper resumed publication and merged with *Tosa shimbun*. It remained an organ of the Freedom and People's Rights Movement as *Kōchi shimbun*. Proof of continued links to the movement was the return in 1884 of the “political leader and thinker”,² Ueki, who had edited the *Doyō shimbun* (Matsuyama, 2008) for four years, during which it “ran stories every day taking up issues related to matters such as the household, women and education, having a big influence on women in Kochi” (*Nihon Kirisuto*, 2008). This adds to its credentials as a publication with an interest in women's rights and raises the possibility that Ueki had earlier penned the prologue to *Lady Audley's Secret*.

A reading of it will much delight with the ingenuity of the plot and the charm of its language, and incapable as I am of translating it, I will certainly, by conveying through the lines in each episode, merely guide a broad section of fellow aficionados among the general public through all its sensibilities, so that luckily its ideas will not be readily overlooked or lost in the fog because of their difference with the novels of Japan and China. (*Doyō*, Aug 1, 1882)

In keeping with the spirit of the Freedom and People's Rights Movement, the prologue avows to a self-appointed role as a transmitter of different “ideas” and “sensibilities” via the plot of a Western novel.

The Japanese version spreads Braddon's first chapter over three days between August 1 and August 3 in 1882. The first episode of the Japanese version adheres to Braddon's scene-setting, duplicating her description of the grounds of Audley Court and introducing Lucy Graham, the

¹ The Risshisha also set up the *Kainan shimbun* in August, 1877 (Meiji 10). Both papers merged as the *Doyō shimbun* in January, 1878 (*Kōchi*, 2008).

² Kodansha's *Japan – An illustrated encyclopedia* (p. 1642) describes Ueki as “a political leader and thinker associated with the Freedom and People's Rights movement” and as influenced by Itagaki Taisuke, “helping him to organize the political group, Risshisha”.

governess, who by the end of the chapter becomes Lady Audley after marrying the widower Sir Michael Audley. A reference to wildflowers and the absence of oversight by the lord of the estate attests to the unkempt condition of Audley Court. We also learn that the beautiful “willow-waisted” (*Doyō*, Aug 1, 1882) Lucy appears to be extremely pious and attends church three times every Sunday and that she has been urged by her employer to consider a match with Sir Michael. By the third episode, Sir Michael has proposed marriage, with a kiss to the forehead of an apparently shy and reserved Lucy.

As mentioned above, publication of the *Doyō shimbun* was suspended after this episode, but the full version of the novel was published in the *Kokkai shimbun* in 1883 (Yanagida, 1966, pp. 33–34).

Lady Audley’s Secret (in Yorozu chōhō) – 1894

There is evidence that in 1894, *Lady Audley’s Secret* was serialized as an adaptive translation in a leading Tokyo newspaper. According to Mark Silver, this may have been *Hito no un* [People’s luck] by Kuroiwa Ruikō in his newspaper *Yorozu chōhō*. Silver notes that the novel may have been chosen for participation in the contemporary debate over law reform and as a means by which Kuroiwa could criticize what many considered a miscarriage of justice (2003, p. 853).

Publication coincided with Kuroiwa’s campaign against a court ruling in the Sōma Affair, an inheritance scandal which had entertained the public for a decade. Silver documents how *Hito no un* was “nearly made to order” for Kuroiwa “as a match for the plot of the most sensational and closely-followed murder trial of the mid-Meiji period”. *Hito no un* and the Sōma Affair featured “murder, money, bastardry, insanity, forensic medicine, and the reputation of an aristocratic family, all focused into the drama of a courtroom confrontation” (Silver, 2003, p. 853). While the court exonerated those accused of poisoning Viscount Sōma Tomotane, Kuroiwa maintained that the court had been bought and justice had not been done. The timing also fitted with Kuroiwa’s campaign against capital punishment. Kuroiwa was keen to show that in spite of Japan’s recent borrowing of the Western, and in particular, French, legal code, it was still possible to have a miscarriage of justice.³ The serialization of *Hito no un* was completed in October 1894.⁴

Diavola (Yorozu chōhō) – 1894-1895

Kuroiwa followed this serialization with another Braddon mystery novel, *Diavola*, under the title, *Sute obune* [Abandoned small boat]. *Diavola* had been published in *The London Journal* between October 27, 1866, and July 20, 1867.⁵ The *Yorozu chōhō* version just over three decades later spanned 156 episodes between October 1894 and July 1895. Featuring an attempt

³ Silver claims that Kuroiwa’s use of *Hito no un* indicates a degree of creative “resistance” within Japanese popular culture sufficient to question the notion that Western versions of modernity were all-encompassing and dominant.

⁴ According to Silver (2003, p.853), Kuroiwa wrote in the inaugural edition of *Yorozu chōhō* that his aim was to give “the mass of ordinary citizens” a “convenient way of knowing at a glance what is going on in the world”. To achieve this, he would “do everything possible to keep the price low, the page size small, and the writing simple”.

⁵ *Diavola* was published in the *London Journal*, Vol. 44, No. 1133 (Oct. 27, 1866) to Vol. 46, No. 1171 (July 20, 1867). Wolff (1979, pp. 122–126) notes that it was shortly afterwards published in the *New York Sunday Mercury* under the title *Nobody’s Daughter; or, the Ballad-Singer of Wapping*, and reissued in three volumes under the title *Run to Earth* in 1868. Wolff claims that this work dates from the years when Braddon wrote for “penny-dreadfuls” and that its subsequent appearance as a novel was a violation by Braddon and her publisher and lover Maxwell of “contemporary publishing practices”.

to poison a baron and a wrongly accused lead character, *Sute obune* duplicated themes in *Hito no un*. *Sute obune* was published two years after Kuroiwa established his paper, indicating that he considered such stories as a means of attracting readers to what was to become Tokyo's then largest-selling newspaper.⁶

In *Diavola*, the heroine is Jenny Milson, a pub singer who metamorphoses into the opera singer, Honoria Milford. Of Jenny/Honoria, Braddon wrote that “from her childhood she had been gifted with a power of intellect – a strength of will – that lifted her high above the common ranks of womanhood”. In *Sute obune*, she becomes Sonoe, a wandering *samisen* minstrel, inspired by the contemporary fad for female ballad singers (*naniwabushi*). As *Diavola*, Honoria marries the baronet, Sir Oswald Eversleigh. After his nephew and an accomplice scheme to turn Sir Oswald against her, the baronet dies from poisoning. Wrongly accused of the killing, Honoria flees, until with the aid of a detective, she brings the nephew and his accomplice to justice. In substance, *Sute obune* duplicates this plot, making it Kuroiwa's second attempt to show that even under Britain's laws there could be a miscarriage of justice. As was the practice with many adaptive translations, Kuroiwa naturalized the story by creating a liminal world in which characters live in England, but have Japanese names. Sonoe's surname is Furumatsu but after her marriage she becomes Baroness Tokiwa.

This formula enabled Kuroiwa to become one of the foremost users of the sensation fiction genre for ideological purposes in Japan. Kuroiwa's use of these two Braddon works is consistent with his editorial policy of combining serialized Western novels with “sensational reportage on social issues” (*Japan*, 1993, p. 847) to boost circulation. Other well-known European works which he adapted include Alexandre Dumas' *Le Comte de Monte Cristo* (1901–1902) and Victor Hugo's *Les Misérables* (1902–1903) (*Japan*, 1993, p. 847).

***Diavola* (Kabuki Theatre) – 1898**

Sute obune was later commissioned as a kabuki play written by Kawatake Shinshichi III.⁷ It premiered in New Year performances at the Kabukiza in Tokyo in 1898. Kawatake took greater liberties with plot and scenes. An early scene set in a run-down pub in Wapping, London, becomes a pub in Kobe, with waitresses in kimono. Gatherings depict characters drinking sake or Japanese tea. Whereas Braddon has the scheming nephew incarcerate Honoria in Yarborough Tower, Kawatake puts Sonoe in Nison-In Temple in Kyoto. These days, Nison-In is part of the tourist trail in Kyoto's north-western outer fringe, but at the time of the play it was relatively isolated and well beyond the city's limits, although it had a degree of fame as it had been patronised by the imperial family prior to the emperor's post-Meiji Restoration relocation to Tokyo. Kawatake further heightens the pathos surrounding the injustices meted out to Sonoe by setting her age at “15 or 16 years” compared to Honoria's 18 at the start of the story.

⁶ The success of these initial attempts at serialized adaptive translations encouraged Kuroiwa to translate 75 Western novels throughout his publishing career, including works by Victor Hugo, Alexandre Dumas and Fortune du Boisgobey. Many appeared as serialized works in his newspaper.

⁷ According to Leiter (1997, p. 308), Kawatake Shinshichi III was “the foremost Meiji dramatist” and a leading pupil of Kawatake Mokuami. He wrote about 80 dramas throughout his career. That the majority of his plays were based on *kōdan* (a style of traditional oral storytelling) testifies to the appeal at this time of the material in the storytelling repertoire. Kawatake Shinshichi III adapted Henry Black's mentor, San'yūtei Enchō's story, *The peony lantern*, for the kabuki stage.

The critics' negative reaction to the Kabukiza version of *Sute obune* suggests that contemporary debate over theatre reform was by no means resolved. Critic Tamura Shigeyoshi wrote that the actors Ichizō as the naval captain Kobuishi, and Hidechō as the woman Konami had turned in "quite excellent" performances, but that the drawcard, Kikugorō, in dual roles as Baron Tokiwa and scheming scientist Kawabayashi Ikudō, were lacklustre and failed to provoke interest, with the play "ending in failure" (*shippai ni owaritari*) (Tamura, 1922, p. 73). The *Waseda bungaku* critic said it did not epitomize kabuki. The unnamed critic said a major factor in the play's lack of success was Kikugorō's lack of sensitivity and technique required for "this sort of realistic play". Another critic, probably Nomura Mumyōan,⁸ claimed complications in the original story had been so simplified that it was "prosaic" (*bosshumi*) and "devoid of high points" (*miseba naku*).

Sute obune was one of many attempts at intertextual transmutation of Western material via the kabuki stage at this time. The criticisms illustrate problems which playwrights had in adapting Western templates to kabuki.

Diavola (Hongō Theatre) – 1906

Eight years later, in 1906, a *shingeki* version of *Sute obune* was staged at Tokyo's Hongōza (McArthur, 2007). It used seven scenes instead of Kawatake's nine and endorsed Kawatake's attempts at setting the action in Japan, although it altered some of the venues. The bar in Kobe becomes Sonoe's father's home on the Kashiwazaki coast and the incarceration scene is shifted from a Kyoto temple to an isolated boar hunter's hide. Contemporary illustrations and *banzuke* (program notes/listing) for the stage versions indicate major stylistic differences. Stylized kabuki *mie* (poses) are not apparent in the *shingeki* version and male and female costumes are almost entirely Western.

The Hongōza *banzuke* states that the earlier kabuki version was not sufficiently researched and that the passing of almost a decade had enabled a new version to suit the demands of "advanced society", with a revised plot and actors "wholeheartedly adapted to their various roles". According to the *Yomiuri shimbun*, the verisimilitude of the sets ensured that "it will be a full house with good takings". *Yorozu chōhō*, which had published the adaptive translation in 1894, praised the "excellent" sets, including the boar hunter's hide, a rooftop platform for drying clothing, Reikichi's living room, and the tea room. "All were so close to reality, especially in the final scene with the grandness of the Western style drawing room (*ōsetsuma*)". An illustration of this final scene shows an elaborately coiffed Sonoe in an expensive kimono, amid a large group of men in formal, black morning coats, attending to an ailing Baron Tokiwa. The set is ornately lit and features a grand central staircase.

Flower and Weed (Henry Black) – 1886

Australian-born Henry Black (1858–1923) was also associated with the Freedom and People's Rights Movement. Black was British, by virtue of birth in Adelaide in December 1858, in the British colony of South Australia to a Scottish father and English mother. In the 1880s, he and his newspaper editor father, John Reddie Black, made speeches to gatherings organized by prominent adherents of the movement. In 1890, Henry Black leveraged his ability to speak fluent Japanese by joining San'yūha, a major guild of *rakugoka*, taking the stage name of

⁸ The name in *Zokuzoku nendaiki* is given only as Mumyōan, but Nomura Mumyōan is known to have been a contemporary theatre critic (Tamura, 1922, p. 74).

Kairakutei Burakku. In 1893 he gained Japanese citizenship. After becoming a storyteller, Black incorporated themes associated with women's rights and law reform in his adaptations of Western novels. The earliest known case of Black using a Braddon work is her novella, *Flower and Weed*, as *Kusaba no tsuyu* ["Dew by the Graveside"]. A printed version of *Kusaba no tsuyu* was published in 1886.

In the 1880s, editors developed an interest in stenographically recorded stories for publication or serialization. The first newspaper with a serialized story from a *rakugoka* was *Yamato shimbun*, with *Matsu no misao bijin no ikiume* ["A Chaste Beauty Buried Alive"] by Henry's mentor, San'yūtei Enchō, to mark the paper's 1886 founding edition (Yoshizawa, 1981, p. 315). Unlike Enchō, Black had the advantage of being able to adapt directly from foreign sources. *Kusaba no tsuyu* followed an invitation to affiliate with the San'yūha to modernize the repertoire, a move which resulted in Black becoming the pre-eminent adaptor of foreign material for the *yose* stage.⁹ By 1901, Black claimed to have "translated no fewer than 14 English novels into Japanese" (Kobe, 1901, p. 63). *Kusaba no tsuyu* was published "as a Braddon work". The stenographer was Shitō Kenkichi, while "the Briton, Black", was credited in the preface for "dictation" (*kōjutsu*).

Having lived a long time in Japan, and being fluent in Japanese and familiar with the customs of Japan, [Mr Black] has for many years now wanted to venture into the field of novels, but till now has not had the chance to do so.¹⁰

The preface noted that the adaptation contained parenthetical commentary from Black.

By way of explanation or wherever the writer feared it might be difficult to comprehend differences in customs and sentiment (*ninjō*) between Japan and Britain, which are thousands of miles apart, he [Shitō] has each time queried Mr. Black and had him clarify the situation in his own country.¹¹

Kusaba no tsuyu adheres to Braddon's *Pygmalion*-like tale about Bess, who escapes London's slums and displays a talent for acquiring the ways of the upper class. The 1886 publication of the *sokkibon* (stenographic book) came only four years after Braddon's story was published in 1882 in the Christmas magazine *Mistletoe Bough* which she founded in 1878. With its didactic digressions and exotic setting, *Kusaba no tsuyu* was an early response to audience demand. Unlike Black's subsequent adaptations, where characters bear Japanese names, Black retained the original names. Digressions from the original plot are few compared to the liberties Black took in later adaptations of Western novels. But the tale was a prototype for a formula which in coming years satisfied what Black perceived as a demand for enlightenment and entertainment.

A feature which sets the *sokkibon* version of *Kusaba no tsuyu* apart from later adaptations is its lack of vernacular. It has much in common with the experimental *wa-kan-yō-setchū* (mixed Japanese, Chinese and Western) and *gabun* (decorous elegant) styles commonly found in early Meiji literature (Morioka & Sasaki, 1984, p. 155). By contrast, Black's subsequent works demonstrate a transition toward more colloquial speech in the lines delivered by the characters portrayed and in Black's narrative.

⁹ *Yose* are theatres where *rakugoka* perform.

¹⁰ Buradon, (Burakku, dictation) (1886). The comment is on the unpaginated seventh and eighth pages of the preface.

¹¹ Ibid.

Dew by the Graveside is notable for its arcadian setting – the manor house and estate of Lord Ingleshaw. The nostalgia for the countryside portrayed in the story had parallels in the many expressions of regret from foreign visitors and diary writers in the 1860s and 1870s over the passing of what was often referred to as “Old Japan” thanks to an influx of modern technology and reformist ideas imported from the North America and Western Europe. This contrasts with later adaptations by Black, which actively engage in the discourse on modernity by illustrating the problems of urban life in the industrializing city with its slums and income inequalities, and portraying faster modes of transport, such as trains, and the use of more efficient, scientific methods of detecting crime.

Despite the setting in an idealized countryside, Black manages to use *Dew by the Graveside* as a vehicle to highlight the new and different. There is, for example, reference to Lucille’s cousin Bruno, who has entered parliament and has already toured Europe and Africa, both exotic destinations for any Japanese in those days. European notions of love are also dealt with. On p40, Lucille’s lady-in-waiting, Miss Marjoram, confesses to Lucille that she had agreed to delay marriage to give her prospective husband time for his studies, only to find that he decided to become a missionary and marry a woman of “lower birth” (*iyashii fujin*). And in a clear indication that Black had not abandoned the aims of the Freedom and People’s Rights Movement, his adaptation retains a scene where Braddon has Lucille admonish Miss Marjoram over her disdain toward Bess and her clumsy, but conscientious attempts to acquire decorum in her speech. “People are people,” Black’s Lucille says, “irrespective of whether they are rich or poor or of high or low rank”. Black’s message is that even a woman who is born in the slums should be able to aspire to greater things. In the end, however, Bess is killed by her estranged husband. In *Kusaba no tsuyu*, the malevolent impact of the slum has extended into the countryside.

***Her Last Appearance* (Henry Black) – 1891**

Black’s other Braddon adaptation was her short story, *Her Last Appearance*, as *Eikoku Rondon – gekijō miyage* [“Story from a London Theatre”].¹² It demonstrates how Braddon’s melodramatic works lent themselves to adaptation by an adept storyteller keen to impress with cliff-hanger endings. Black also used the adaptation to include many informative and amusing digressions. Among these, Black uses Braddon’s references to her actress heroine as an excuse to include descriptions of the theatre and the lifestyle of actors in Britain as well as comparisons between acting styles in Britain and Japan. These references reflect Black’s active participation in debate over theatre reform. Black’s broader motivation for using his tales to enlighten as well as entertain is also apparent in the preamble, in which he told audiences that compared to when he had arrived in Japan at least 24 years before, “things had so completely changed that you wouldn’t think it was the same place” (Eikokujin 1981, p. 1).

The frequency and number of the diversions make it one of Black’s more culturally instructive narrations and ensured that it was considerably longer than Braddon’s original. Braddon had published the story in *Belgravia Annual* in 1876. It was reprinted in *Weavers and Weft and Other Tales* in 1877 (Edwards 1988, p. 327). In its brevity and overly melodramatic plot, it is not one of her better works. In Black’s hands, however, the material becomes a 15-part work copiously interspersed with references to topical social reform issues, such as the movement to end prostitution, and cultural comparisons such as references to British and Japanese

¹² I have chosen the English-language version of the title used by Sasaki Miyoko and Morioka Heinz in their pioneering *Monumenta Nipponica* work on Black (Sasaki & Morioka, 1983, pp. 133–162). A more literal translation of the title is “London, England: Story from the Theatre”.

marriage customs and descriptions of theatre performances in London compared to Japan's kabuki. The story's setting in the world of the theatre also assumes importance in the light of Black's appearances in kabuki extracts in 1892.

In the Braddon original, the actress Barbara Stowell is ill-treated by her actor husband Jack Stowell. Upon learning that she is married, Sir Philip Hazlemere urges her to divorce and remarry. When the actress refuses his entreaties, Sir Philip murders her husband. The actress rebuffs Sir Philip and later dies backstage of an unexplained malady. Braddon takes one sentence to deal with Barbara's marriage, stating merely that she was a "country parson's daughter leading the peaceablest, happiest, obscurest life in a Hertfordshire village" who married in a ceremony "solemnized before she had time to repent that weak moment of concession" (Braddon 1876, p. 326). Black, however, invents considerable detail about her origins as Gātsurudo (Gertrude), the naïve daughter of a farmer named Beniyūeru, taking four episodes to get to the marriage. Elsewhere, he adds detail regarding the treatment of criminals in Britain and laws pertaining to gambling and prostitution. Whereas the Braddon work ends with the death of the actress, Black's version has Gātsurudo and her admirer Jon Buraun marrying and leaving for Paris to avoid the police in episode 13. The resolution does not occur until episode 16 in a gory scene in which Buraun blows his brains out with a revolver at an exclusive Paris men's club when confronted by a detective.

The issue of abolition of prostitution was a preoccupation of reformers and Christian activists throughout the Meiji years. As early as July 1879, Black spoke about it at a meeting sponsored by a pro-democracy organization in Tokyo. Later, in *Eikoku Rondon – gekijō miyage*, he used the opportunity provided by Jon Buraun luring Gātsurudo's husband into a gambling den to join the contemporary discourse over prostitution and other vices.

In Japan there is a debate about eliminating prostitution (*haishō ron*). Many take the view that if prostitutes harm society, they ought to be immediately banned. In fact if one listens to their opinions, they would say that not a day should be left, rather that without waiting an hour or even a minute, they should be banned and brothels should be burned. But if you listen to opinion on the other side, you cannot deny there is reason in it. (Eikokujin, 1891, p. 132)

Black noted that in Japan, when police investigate prostitution, they usually withdraw without fining offenders.

There is the argument that if people openly trade [in women] it will harm society, so it cannot be tolerated. However, in London, there are many who secretly operate gambling dens or brothels. If any are reported, the police enter the premise and it is immediately closed down. (Eikokujin 1891, p. 133)

He then addressed the issue of red light districts in Japan.

Take the case in Tokyo. You'll see what I mean. Yoshiwara and Susaki are famous. Their streets are wide and the buildings are fine and beautifully decorated. If someone from the country comes to see the sights of Tokyo and doesn't go there to take a look, then he hasn't seen Tokyo and will get laughed at when he returns to his hometown. (Eikokujin 1891, p. 133)

Black ends by warning his audience that such places are full of smooth-talking pimps who fleece customers (Eikokujin 1891, pp. 131–134).

Black also discussed marriage customs. In episode three, when Gātsurudo marries, he describes a Christian wedding ceremony and explains that Britain has laws mandating the registration of a marriage to ensure that legitimate offspring can inherit. He compares such ceremonies in “my Britain” with what he claims is the ease with which Japanese men take concubines and mistresses, adding that the Christian ceremony represents a stronger commitment than that implied in the Japanese ritual of exchanging cups of sake.

Even if citizens (*jinmin*) are upper, middle or lower class, no distinction is made, and when one takes a wife, one has to do so through this ceremony. So if people don't do it, for example if they live together and even call each other husband and wife, they are not a married couple in the eyes of the law. And a child born between them is illegitimate (*shisei no ko*) and has no right to inheritance. Even with people who have, or have not, a belief in religion, generally, when they take a wife, they go to the church and solemnly exchange vows in the presence of a minister. (Eikokujin, 1891, p. 57)

Later, in episode five, after Gātsurudo and her first husband, Sumerurii, marry and experience marital problems, Black cites the British saying, “Marry in haste, regret it for the rest of your life”. He explains that whereas in Japan divorce is relatively easy, in Britain the marriage vow implies that the union is for life. (Eikokujin, 1891, pp. 60–61)¹³

Eikoku Rondon – gekijō miyage was also a vehicle for participation in the debate over theatre reform. In an unprecedented development in the history of Japanese theatre, Black had already performed in extracts from kabuki plays, a practice designed to boost the popularity of *rakugoka*. Such performances also capitalized on the long-established tradition of plagiarizing story material between kabuki and *rakugo*. Black appeared in 1890 in the female roles of Omiwa in *Imoseyama* (Mt. Imo and Mt. Se)¹⁴ and Osato in *Senbon zakura* (The thousand cherry trees) (Morioka & Sasaki 1984, p. 142).¹⁵ Both involve thwarted love and mistaken identity. In 1891, he played Kumagai in *Heike Monogatari*, Roshishin in *Suikoden*, and Omura in *Ibaraki dōji*, *Sōzaburo no imōto Omura*.¹⁶ Then in September 1892, at the Haruki Theatre in Tokyo, Black took on the challenging role of the blustering hero, Banzuiin Chōbee, after receiving tuition from the great kabuki actor Ichikawa Danjūrō IX, who had made it his signature role. This cooperation was a meeting of two reformist minds. From as early as the second decade of the Meiji period, Danjūrō had begun exploring more realistic acting techniques to reflect the psychological states portrayed on stage with greater verisimilitude. He was inspired by the formation in 1886 of the Society for the Reform of Drama, at the urging of

¹³ Black also cites a Japanese morality tale, *Shitakiri suzume*, about a grateful sparrow and a spiteful wife to illustrate the theme of marital fidelity.

¹⁴ *Imoseyama* dates from 1771. The tale relates to Fujiwara Kamatari's defeat of Soga no Iruka in the seventh century. The character of Omiwa is a daughter of a *sake* shop proprietress. Omiwa is in love with her neighbor Motome, whom she believes is a maker of ceremonial headgear. Motome is really Tankai, the brother of the emperor's concubine. In one of the play, a love triangle leads to a confrontation between Omiwa and Princess Tachibana. The scene is “superficially comic”, but “drenched in pathos” (Leiter, 1997, pp. 217–219).

¹⁵ Also called *Yoshitsune senbon zakura* (Yoshitsune and the thousand cherry trees). *Senbon zakura* relates to the legendary general Yoshitsune. Osato appears in a scene set in a *sushi* shop. Osato is in love with Yasuke, whom she believes is the shop's apprentice, but Yasuke is really Koremori, a married novice priest on the run. (Leiter, 1997, pp. 708–711).

¹⁶ Listed in Shogei Konwakai (ed.), p. 4, and attributed to *Asahi shimbun*, March 24, 1891.

the oligarchs Itō Hirobumi and Foreign Minister Inoue Kaoru. The society's leadership considered that kabuki had become decadent and were determined to refashion it as an art form deserving of presentation to international audiences. Itō and Inoue saw this as a key factor in the creation of a modern institutional infrastructure. As part of the society's attempt to raise the status of kabuki, Danjūrō had been one of three major actors who in 1887 performed in the first presentation of kabuki to the emperor (Leiter 1997, p. 187). Newspaper reports of Danjūrō's tuition of Black for the role of Banzuiin Chōbei demonstrate the significance of the performances by the foreign-born Black and his role in the debate over reform in the theatre.

Black continued the focus on theatre reform in *Eikoku Rondon – gekijō miyage* when he praised former Finance Ministry bureaucrat-turned newspaper proprietor Fukuchi Gen'ichirō for his promotion of the subject via his newspaper editorials. In this context, Black noted that "one of the issues is whether it is better to reform by adopting the Western style, or whether the Japanese theatre is better reformed while retaining its unique aspects entirely" (Eikokujin, 1891, p. 12). He then offered an amusing aside to explain a major difference between Western theatre and kabuki.

In the old days in Japan, since the curtain rose as soon as the day dawned, the housemaid would be in a flap from the previous evening. What with having to put on *oshiroi* (white face powder), do up the hair, choose the kimono, and tighten the *obi*, dressing up took so much effort that there was no sleep the night before and you stayed up the entire time. People had to leave for the theatre at first light, so when they relaxed in their spectator's cubicle the fatigue of the previous night got to them and they often ended up nodding off, just when they'd been looking forward to it, and not even seeing the actors' faces. These days, we have become fairly well civilized (*kaika*), and the Shintomi Theatre and Kabuki Theatre don't raise their curtains until 12 o'clock tolls, but from the point of view of English theatre, the timing is still dreadfully early. (Eikokujin, 1891, p. 12)

Black also explained that whereas in Japan audiences show their appreciation by shouting an actor's *yagō* (shop name) (Leiter 1997, p. 692), Western audiences clap or throw flowers (Eikokujin, 1891, p. 18). Elsewhere in *Eikoku Rondon – gekijō miyage*, he lamented the discrimination Japanese actors suffered as "river bed beggars" (*kawara kojiki*), and noted that even though Danjūrō had achieved recognition for his talents (Eikokujin, 1891, p. 98), "the old barriers have not been withdrawn" (Eikokujin, 1891, p. 87). Black illustrated the respect in which British actors were held with an anecdote about a famous British actor at a banquet hosted by Prime Minister William Gladstone. When Gladstone suggested the actor deliver some lines from his latest play, the actor placed a coin on his plate and left, telling Gladstone that he had come to enjoy a meal and not to perform. "If you wish to see me perform, buy a ticket and come to the theatre. Here is the cost of my meal" (Eikokujin, 1891, p. 94).

Braddon and Japan

What gave Braddon's works wide appeal in Japan? Throughout her life, she produced more than 80 novels and nine plays. By the 1880s when *Doyō shimbun* and others in Japan were adapting her works, Braddon was at the peak of her 55-year career. Braddon's plots featured headstrong women and mistaken identity. Of her works, Haycroft and Kunitz have written that

Virtue always triumphs, and her heroes and villains are pure white and unredeemed black. Her work was ephemeral, but at its weakest was never contemptible. (1964, p. 69)

In spite of these failings in the eyes of her critics, scholarship on the nature of adaptive translations suggests that Braddon's works formed part of a respected tradition of adaptation of original works in Japan predating the Meiji era. Japanese lists of Meiji-era books which were adapted or translated from foreign sources into Japanese show that Braddon's entry to Japan coincided with a time of great interest in women's roles, as well as debate over reform in the theatre and reform of the country's legal codes. The adaptability of Braddon's works as practical, "cultural objects in their own right",¹⁷ enabled them to serve as vehicles for the introduction of new ideas which were at the heart of the struggle of adherents of the Freedom and People's Rights Movement as well as reformist members of the government.

Those who used Braddon's works consciously applied them as blueprints for a redefinition of identity for readers and theatre audiences, as well as to participate in the reform debate. The introduction of her works as serialized adaptive translations via newspapers, or as *sokkibon* and theatre performances, shows that despite government restrictions on the press and assembly in the early 1880s, Braddon's tales continued to provide inspiration to reformists throughout the 1880s and well into the 1890s. Many adherents and sympathizers of the Freedom and People's Rights Movement, including Black and Itagaki, found outlets for their reformist ideas via *rakugo* and the stage or through editorship or ownership of newspapers. It would be difficult to establish clear causal links between the publication or staging of the adaptations of Braddon works between the 1880s and the early twentieth century and specific examples of social action. Nevertheless, aside from their entertainment value, the selectively adaptive nature of the translations suggests that they were seen by their adaptors as elements in the ongoing reform debate, enabling others to carry on the campaign, as exemplified by the publication in 1899 of Yokoyama Gennosuke's *Nihon no Kasō Shakai* [The Lower Strata of Japan]. Yokoyama's revelations about the hardships endured by factory workers contributed to the 1903 publication by the Ministry of Agriculture and Commerce of *Shokkō Jijō* [Conditions of factory workers] and ultimately to an overhaul of labor and health laws.

A study of the adaptive translation of Braddon's works, therefore, affords a more nuanced understanding of Japan's literary history, its quest to define a path to modernity through cultural borrowing, and the epistemology and hermeneutics of ideas during the Meiji era. Such adaptations need not be marginalized as mere imitation or inadequate interpretations of the original texts. Rather, they should be privileged as useful tools in furthering our understanding of the social history of Meiji Japan.

¹⁷ Lawrence Venuti uses this phrase (2007).

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The Aftermath of Japan's Ratification of the Hague Convention on Child Abduction: An Investigation into the State Apparatus of the Modern Japanese Family

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Abstract

The aim of this paper is to discuss the ways in which a recent international dispute has evoked an inquiry about the family ideology of modern Japan. Initially, it explains a recent issue on Japan's ratification to the Hague Convention on child abduction. In April 2014, the Japanese government finally ratified the Hague Convention on child abduction, an international Convention to resolve disputes on international parental child abduction. However, skepticism toward Japan still remains, because, in order to put the international Convention into practice, Japan has not proceed to radical family law reform at this stage. To recognize this incongruent situation, this paper explains that the present Japanese family law is incompatible with the principle of this international Convention. Although the Convention premises shared parenting in the grant of joint child custody even after divorce, Japanese family law keeps the solo-custody approach, which is necessarily preserved in order to maintain Japan's unique family registration system: the *koseki* system. Arguing that the *koseki* system, registering all nationals by family unit, is an ideological state apparatus of Japan as a modern nation state since the nineteenth century, this paper concludes that recent international disputes regarding parental child abduction in Japan inquires about a radical question on the national family norm of Japan.

Keywords: Japan, family, the Hague Convention on the Civil Aspects of International Child Abduction, child custody, *koseki*

Introduction

The number of cross-national marriages between Japanese nationals and foreign citizens (aka international marriages or *kokusai kekkon*) has been on the rise (Hamano, 2011). There is a striking gender imbalance in the composition of these marriages. While male Japanese tend to marry women of Asian origin and remain in Japan, the foreign partners of Japanese women are more diverse (not only of Western origin) and in most cases immigrate to the partner's country of residence (*ibid.*). The growth of cross-national marriages in Japan is of course related to the growth of cross-national divorces. The Ministry of Health, Labor and Welfare has reported (2009) that the divorce rate tends to be higher for cross-national couples than for their Japanese counterparts. It may be that cultural differences and other social factors such as international migration, isolation, lack of social support for settlement and integration lead to this outcome. Recently, the share of cross-national marriage among all married couples reached 4 percent (25,934 cases) in 2011, while the proportion of cross-national couples in the divorce figures rose to 7 percent (17,832 cases) (Yoshiike, 2013). This situation has led to an increase in child custody disputes between Japanese and non-Japanese nationals. One primary concern is parental child abduction beyond national boundaries; in particular, relocation of the child by the migrant Japanese parent from the country of residence without the consent of the other parent.

The issue has been the subject of significant media coverage in recent years, in particular the debate over whether Japan should become a party to the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention on child abduction) which regulates the resolution of such abductions among member countries. The Hague Convention on child abduction is an international convention concluded in October 25, 1980, after the first proposal for dealing with this issue since January 1976 (Lowe, Everoll, & Nicholls, 2004; Beaumont & McEleavy, 1999). As of March 2017, it has been ratified by 97 countries in the world. Basically, the Convention emphasizes its aim “to protect children internationally from the harmful effects of their wrongful removal or retention and establish procedures to ensure their prompt return to the state of their habitual residence, as well as to source protection for rights of access.” Indeed, it is a jurisdictional Convention that achieves the return of the abducted child to his/her habitual residence promptly between two Central Authorities of the respective countries,¹ while Article 13b amends that a court of child's habitual residence may rule for a non-return of a child, in the consideration of a “grave risk” to the child by return or his/her maturity to express its view. This convention means the difficulty of dealing with child custody issues between two different nationals, as each Civil Code (or family law) evolves different ideas and regulations as to the right of parents and the interests of children in the family.²

Against these circumstances, several governments have started championing the cause of their nationals who were formerly married to Japanese women and whose children were abducted to Japan before visitation or joint custody orders could be made. In practice, in the past few years, the United States frequently mentioned its concern about American citizens (children of Japanese nationals and American citizens) abducted to Japan by Japanese mothers (US Embassy of Japan, 2007). On October 16, 2009, John Roos and seven ambassadors of the

¹ A Central Authority is an office or institution that makes and receives applications, and Central Authorities jointly work with one another to achieve the Convention (Lowe, Everoll, & Nicholls, 2004, p. 225). In Japan, the Ministry of Foreign Affairs (MOFA) is appointed as the Central Authority.

² For further details of the Hague Convention, see the website of the Hague Conference on Private International Law (Hague Conference on Private International Law, 2013).

signatories to the Hague Convention visited the Japanese Ministry of Justice and pressured Japan's ratification (*The Asahi Shinbun*, 2009).

The United States has played a leadership on this issue. For example, *American View*, a bilingual seasonal magazine issued by the US Embassy of Japan, discusses increasing parental child abduction by Japanese spouses.³ Citing demographic data (Figure 1), they show that the reported cases nearly doubled in the United States and other respective countries (e.g. Australia, Canada, France and the United Kingdom) in the past two years. They stress that this is unlawful according to US law. The article also concludes that Japan acceding to the Hague Convention is the only way to solve this international problem between two countries (US Embassy of Japan, 2010). As a result, cases of parental child abduction by Japanese mothers have become diplomatic cases and media in the United States, United Kingdom, Canada, France and Australia have also reported this issue as a social problem.⁴

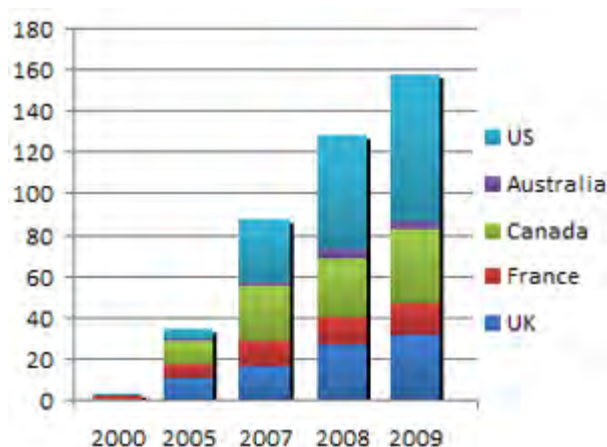


Figure 1: Children abducted by Japanese spouses between 2000 and 2009 (US Embassy of Japan, 2010).

According to my media frame analysis of Japanese national newspapers on the child abduction issue (Hamano, 2013), there are four media frames which form an interdependent structure. Frame 1) emphasizing the issue is a product of external pressure on Japan; 2) arguing for government's quick action to resolve the issue; 3) criticizing Japan's family law system and government policies; 4) suggesting the international abduction problem has commonalities with domestic child custody disputes. Each frame relies upon the others rather than being separate. For example, after arguing the significance of international child custody disputes (e.g. Frame 3), an article would depict a similar case in domestic society. (e.g. Frame 4). In turn, domestic cases are linked with the concerns of a cross-national family.

This type of coverage explains why an issue among the relatively small number of cross-national couples has gained wide public concern in Japan. It is a process in which "unspoken" stories of social minorities are gradually authorized as being of general public interest (Plummer, 1995). This issue initially expressed itself as a niche problem of cross-national families, and then over time developed in the media into a central issue for Japanese society in

³ *American View* is a bilingual magazine by the American Embassy of Tokyo. It is generally issued seasonally online in both English and Japanese. In this article, I refer to the English edition. Since 2007, they have occasionally focused on parental child abduction from the United States by a Japanese parent.

⁴ It is, however, important to note that there are Japanese parents whose children were taken from Japan by their ex-partner. Even though they are taken to a signatory to the Hague Convention on child abduction, both the Japanese authority and that of the respective country have been reluctant to deal with it, pointing out Japan's non-signatory to the Convention.

a global age (*Mainichi Shinbun*, 2011).

As particular child abduction disputes have arisen, various national governments have championed the cause of their nationals, and laid the blame on Japan, accusing the Japanese legal system of aiding in international parental child abduction, contravening the basic human rights of both children and parents. Additionally, a large number of lobby groups in several countries, those of so-called left behind parents (LBP) (including Japanese parents), have blamed Japan for failing to recognize basic human rights, especially in regards to not allowing joint custody. This accusation of not only failure to adhere to basic human rights standards, but also the principle of “the best interests of the child” has succeeded in changing the image of this issue from a private one to public issue in civil society. Through an analysis of media representation by both abducted mothers and LBP fathers, I reveal there are clashing normative family and parental values that sit behind much of the “rights talk”.

In this paper, I attempt a cultural analysis of gender and family norms questioned in the aftermath of Japan’s ratification of the Hague Convention on child abduction. In particular, I examine the ways in which normative gender and family images are institutionally embedded in the legal frameworks of Japan. When Japan decided to become a signatory to the Hague Convention on child abduction, it has fueled further debates on the condition of family, as well as the family law reform in Japan. Even though this international Convention can juridically function regardless of the domestic legal scheme new derivative questions about the family in Japan of this international Convention. My point is that, beyond an issue of international legal implementation, the Hague Convention is calling for further socio-cultural inquiries about contemporary Japanese family. Given that the family today is hardly conceivable within a single culture and society, a conflict between the idea of global human rights and domestic cultural ideas would become at stake. To understand such a tension occurred in a process of Japan’s ratification to the Hague Convention, I will examine a case of the Japanese family registration system – the *koseki* system – prevents Japanese family law from being reformed to allow for joint custody after divorce. Additionally, by pointing out the normative function of this family registration system, as part of the ideological state apparatus (Althusser, 1971) constituting modern Japan since the late nineteenth century, I will conclude by showing the ways in which the latest international controversy throws up questions around the entire national ideology of modern Japan.

Japan’s Steps to Accede to the Hague Convention on Child Abduction

Media outlets both in Japan and elsewhere have recently devoted considerable coverage to parental abduction by Japanese nationals that has on occasion resembled campaigning. For example, a newspaper article refers to Japanese women who have removed their children to Japan as “outlaws” (*Mainichi Daily News*, 2008), stressing that the children have been deprived of having access to both their parents after divorce, and that the rights of the other parent to have access to their children has been violated. A large number of lobby groups in several countries, including non-custodial parents in Japan, have expressed their concern about child abduction or have suggested that Japan fails to recognize it as a human rights issue. One American father, whose Japanese wife took their two children back to Japan in December 2008 in breach of a US court order granting him full custody, was quoted as saying, “As long as your government allows Japan to continue to disregard our children, the number of parental kidnapping will continue to rise” (Oberman, 2011).

It is illustrative to examine a typical case of parental child abduction involving Japan and the United States. In February 2008, a Japanese woman went back to Japan with her nine-year-old

daughter after the breakdown of her relationship with her then husband in the United States. In April 2011, she went to the United States to renew her permanent visa and was arrested. The reason for the arrest was that she had returned to Japan with her daughter before the divorce was legally finalized and the Wisconsin authorities determined that she had violated her ex-husband's custody rights (*Mainichi Daily News*, 2011). However, the Japanese mother argued that she had been granted custody in March 2011 by the Kobe District Court in Japan. Clearly, the woman had violated her husband's custody rights (as well as the interests of her daughter) in the American context, and simultaneously was legally granted custody of her daughter in Japan. Eventually, the Japanese mother plea bargained and was granted a stay of exception to return to Japan and the daughter was returned to her father. While this news was reported widely across the United States as "the Father's Miracle" (Oberman, 2011), the mother's point of view was reported in Japanese media including emotional interviews in which the mother expressed her shock at being arrested.

There are Japanese whose children were taken to another country by an ex-partner (Nishikawa, 2006). Outgoing international parental abduction by foreign parents has been the case in Japan, although it has seldom gained wide concern in public. Contrary to this, incoming cases have been highlighted in recent media coverage, with the perpetrator of the incoming abduction being most often the Japanese mother coming back to Japan from another country. This is because, as noted above, for most women including Japanese, cross-national marriage tends to lead to migration to the partner's country of origin. Child abduction by Japanese women has not been an issue until recently. In fact, the issue came to public prominence due to the international controversy over Japan not being a signatory the Hague Convention on child abduction.

The American Embassy of Japan, in its seasonal magazine *American View*, published an article about the Hague Convention on child abduction by Shinichiro Hayakawa, a Professor of Law at the University of Tokyo. In the article, Hayakawa writes:

To be sure, only one parent is allowed to have parental authority following a divorce in Japan, whereas in the U.S. and Europe divorced couples are allowed to have joint custody. So-called visitation rights hold less weight in Japan than they do in the U.S. and Europe. In addition, some people question whether the government should strongly criticize parental child abduction, citing that it is a reflection of parents' affection for their children. Also in Japan, however, an increasing number of people have begun to think recently that both parents even after divorce should continue to be involved in child-rearing in their respective ways and that the noncustodial parent also should be permitted to see his or her children through visitation rights for the sake of the children's healthy development. (Hayakawa, 2010)

To explain Japan's reluctance to accede to the Hague Convention, he notes that in contrast to Western countries, the Japanese family law system allows only for a solo-custody grant. Not only does this custody system account for Japan's socio-cultural attitude (or ignorance) toward parental child abduction, but, he argues, it is also inadequate because increasing numbers of divorced couples in Japan actually want to jointly engage in child-rearing even after the breakdown of a relationship. It is therefore possible that ratification of the Hague Convention on child abduction could assist in triggering reform of domestic Japanese family law.

On the recent changes to family and gender division of labor, White (2002) observes that young Japanese couples tend to be more enthusiastic about sharing household duties, including child rearing (see also Ochiai, 1996). Accordingly, acceding to the Hague Convention on child

abduction could benefit domestic families. As I describe below, Japan becoming a signatory to the Hague Convention on child abduction is strongly supported by domestic groups campaigning for fair parenting of the separated family in the achievement of joint custody rights in Japanese family law. Regardless of socio-cultural differences regarding gender, family and parenthood, this *glocal* (global-local) concern can be seen as a part of the common process of individualization in late modernity, as Beck and Beck-Gernsheim (2002) have argued.

While commonly held ideas of the family are changing, gender inequity is still dominant in Japan. A recent survey by the Cabinet of Japan (Figure 2) shows that perceptions of gender equity are higher among the younger generation. Among those in their 20s, more than 50 percent of the respondents answered that gender equity is achieved at home. However, regardless of generations, the respondents feel that men are still treated better than women by the family member at home. This perception of being treated unfairly according to one's gender may derive from the fact that a sharp division of labor at home is still common. Naturally, this perception of gender inequity in the domestic space also affects ideas of child rearing within the couple. In order to deal with this gender inequality at home, Muta (2006) argues that re-defining the family in the light of gender equity through reforming family law is necessary to call for wider social debates.⁵

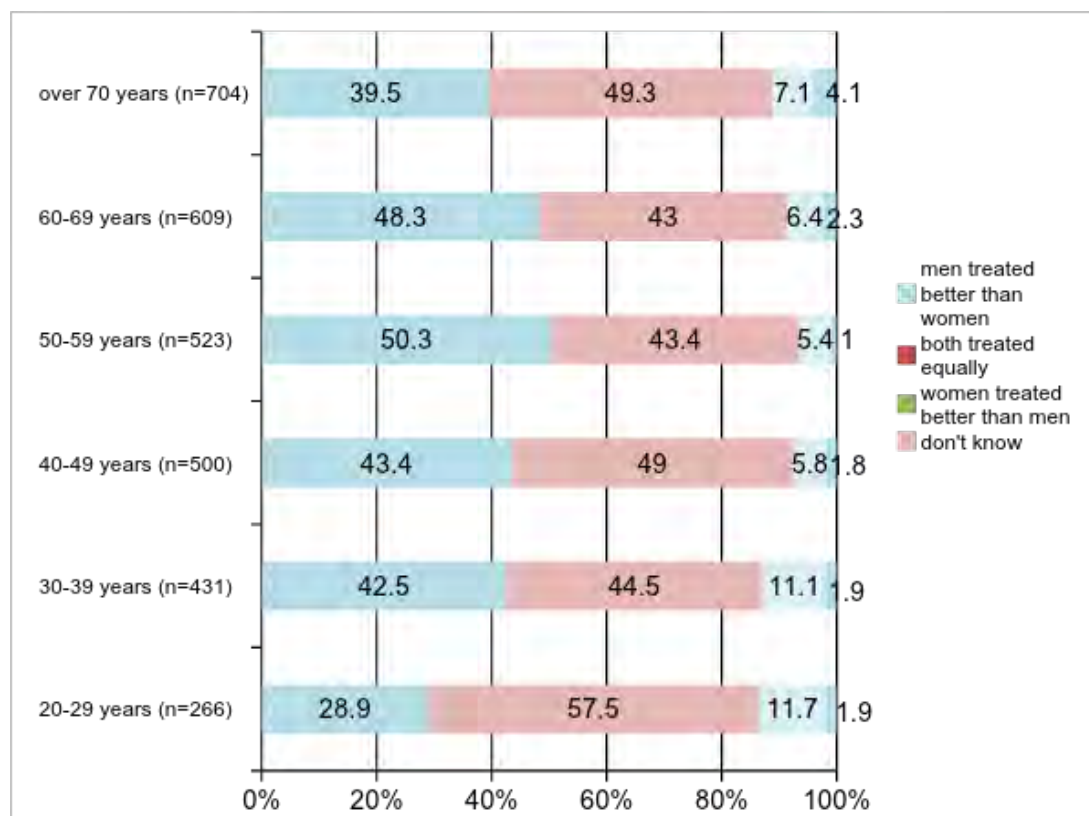


Figure 2. Perception of gender equity at home by age (Gender Equality Bureau Cabinet Office of Japan, 2012).

⁵ For instance, de-facto marriage is not recognized in Japan, socially or legally. Also, same-sex marriage is hardly discussed. In her critical studies of family law in the United States, Fineman criticizes the normative family image of heterosexual couples implemented in the law, by calling it “sexual family” (Fineman, 1995). In this vein, I hope my analysis in this article will lead to further debate on these questions the content of globalized family in the late modernity.

Perceptions of the Hague Convention on Child Abduction in Japan

The Japanese government has not treated international child abduction as a high-priority issue until recently, and for a long time Japan had not ratified the Hague Convention on child abduction, which obliges the signatory to return abducted children to their country of habitual residence, while Japan was one of the initial member States of the Hague Convention at the Fourteenth Session, and voted for the Convention in October 1980 (Pérez-Vera, 1982). This is because Japanese officials, such as the police, are less likely to intervene in private matters, on the principle of nonintervention in civil affairs (*minji fukainyu no gensoku*), although this principle is being reconsidered in many areas (Shipper, 2006).

Dating back to May 2005, the Japanese government declared its support for the Hague Convention on child abduction.⁶ Since then, both the Japanese Parliament and respective ministries (Ministry of Foreign Affairs and Ministry of Justice, in particular) have held regular hearings and round tables with legal scholars and lawmakers on the issue. In particular, the government consulted with several countries such as the Netherlands about particular cases and family law reform. Nevertheless, the government did not take concrete steps to ratify the Convention.

In May 2011, the Kan government finally announced it intended to assent to the Hague Convention on child abduction and domestically implementing laws. The Ministry of Foreign Affairs (MOFA) was nominated to become the Central Authority in Japan. Subsequently, both MOFA and Ministry of Justice began a panel to discuss the law reforms. In November 2012, the submitted bill for accession to the Convention was finally approved on May 21, 2013, after the new Abe government resubmitted the bill in the Diet. The following month, the bill was officially approved. In the meantime, legal reform as to the Part IV of the Civil Code (the Japanese family law) is necessary to implement the convention domestically. Finally, the government ratified the Hague Convention on child abduction in April 2014.

The Ministry of Justice regularly organized a panel for domestic law reform after the government announced its intention to ratify the Hague Convention on child abduction. The panel debated whether domestic family law reform is preferable as to Japan's ratification to the Hague Convention on child abduction, although uniform interpretation of the Convention is compulsory beyond domestic legal differences (Lowe, Everoll, & Nicholls, 2004, p. 247). Meanwhile, ratification of the Hague Convention on child abduction has attracted wide-ranging support. Basically, the Hague Convention on child abduction is aimed to work with adequate family law in domestic society. In this sense, a sense of shared parenting (e.g. joint custody grant) is crucial to achieve the best result resolving parental child abduction across borders. Even though the child stays with one parent, the other parent may have the right to rear the child in some way. But, it would be arguable that there are arguments that single custody grant, such as Japanese family law, would interfere with recognizing a sense of joint-parenting after the dispute.

Some groups and individuals in Japan are opposed to Japan becoming a signatory to the Hague Convention on child abduction, claiming that it would threaten Japanese women (and their children) living overseas, who flee from abuse at the hands of foreign partners. For example, Kazuko Itō, a Japanese lawyer, is an opponent of Japan becoming a signatory to the Hague Convention on child abduction, saying that the Convention is not established enough to

⁶ See Torisawa (2012) and Kaji (2012) for an overview of the Japanese government's actions related to becoming a signatory to the Hague Convention on Child Abduction.

guarantee the best interest of the child (and mother) who suffer from abuse by a father (Itō, 2011). She points out that the Convention only undertakes to send the child back to a country of habitual residence, without concerning itself with more fundamental issues. In reply to such critics, after the bill of the Implementation Act of the Convention was submitted, the Japanese government amended to highly consider those Japanese who fled from the abusive partner or parent. While most abductors were male (father) when the Convention was implemented in 1980 (e.g. Pérez-Vera, 1982), recent statistical analysis indicates almost 69 percent of abductors were mothers in 2008 (Hague Conference on International Private Law, 2011). In the United States, while a report demonstrates that the Hague Convention on child abduction does work to aid these children and mothers at risk (Edleson et al., 2010), there are critics that say the Convention must be scrutinized in the consideration of gender imbalance of parental abductors, as well as protecting the best interest of the child (Silberman, 2000).

Meanwhile, the controversy over the Hague Convention on child abduction has spilled over to those who are dealing with similar cases domestically in Japan. According to my research, in Japan several activist groups have been lobbying for legal reform to allow for joint custody. Some of the advocates for reform are parents suffering from lack of visitation rights post-divorce. In the most extreme cases, there are those who are arrested by the police after they attempt to abduct their child from school or on the street. The domestic movement to reform family law is starting to grow independently from the recent Hague Convention on child abduction campaigns at the international level, but the movement was, rather, welcome to the *gaiatsu* (external pressure in Japanese) of the signatories to the Hague Convention on child abduction.

Even so, inside and outside Japan there is wide skepticism about whether the Japanese government supports the Hague Convention on child abduction, even after the Abe Japanese government quickly agreed with it. An American LBP comments, “the fact that they are not even addressing current cases does not give me much confidence in Japan’s sincerity on this issue” (*The Japan Times*, 2013). Also, Chris Smith, a Republican Member of Congress, one of the American politicians who has been involved with the issue, still argues that more needs to be done against Japan (and other non-signatories to the Hague Convention on child abduction) to get abducted children back and to ensure proper ratification of the Convention (Rulon Herman, 2013).⁷ Colin P. A. Jones (2011), an American professor of law in Japan, argues that the Japanese family law system has not improved any legal amendment that would share common principles with this international Convention about family disputes. A series of voices as such can explain their suspicion against Japan as to how much the Hague Convention on child abduction comes into practice, even though the Convention is doing nothing more than ordering a return of the abducted child. Even after the bill of the Implementing Act passed the Diet in May 2013, Jones still questions whether the Japanese jurisdiction is able to put the Convention into practice. He criticizes that the proposed Japanese Implementing Act is too complex and detailed to resolve the case quickly (it is particularly the case for foreign parents); and Japanese courts could use their own idea of what is best for children (children remaining in Japan), rather than a widely accepted view of what is in the best interests of children (Jones, 2013).

⁷ It is important to note that not all signatories put the Hague Convention on child abduction into force bilaterally. For example, while the United States acknowledges the Philippines (ratified in 2016) as a party to the Convention, it does not recognize the Philippines’ accession (alternatively, it is not a “US Treaty Partner” under the Convention) (Bureau of Consular Affairs, US Department of State, 2017). The American Central Authority, technically, could not request the return of an abducted child from the Philippines, and vice versa. In another case, Australia does not yet admit bilateral enforcement of the Hague Convention on child abduction with several signatories of it, such as Morocco (ratified in 2010) (Attorney-General’s Department, 2017).

Gender and Family in Japanese Family Law

Critics of the Japanese attitude toward international parental child abduction point to Japanese family law, which recognizes only sole (single) parent custody after divorce. According to Japanese family law, Article 819 (1): If parents divorce by agreement, they may agree upon which parent shall have parental authority in relation to a child; and (2) In the case of judicial divorce, the court shall determine which parent shall have parental authority. While many Western countries reformed their laws to allow joint custody in the 1970s and 1980s, Japan remains unreformed in this regard.

Even though, in the Hague Convention, both Central Authorities must deal with a dispute beyond different domestic legal framework. Douglass Berg, an American father whose child was taken to Japan by his ex-wife claims, “[A]t the heart of the Japanese international child abduction problem is Japan’s solo custody law. (...) The sole custody law simply is Cruel and Unusual Punishment to the innocent children caught up in Japan’s archaic legal system” (Berg, 2011). Not only does he emphasize a different Japanese domestic law, which would not be, in reality, concerned about the return of the child to its habitual residence, but he also suspects whether the Japanese authority still may engage with this issue with this different perception of the family idea. The Japanese Central Authority (MOFA) still neglects a uniform interpretation of the Hague Convention in dealing with disputes. Similar feeling to MOFA as the Japanese Central Authority were clear among American LPB fathers who I interviewed in California in 2013, from their personal experiences with MOFA’s reluctance to the dispute before. Among the present signatories of the Hague Convention on child abduction, Japan would be an exceptional country in this regard. Many LBPs insist that the solo custody system may in fact conflict with the Convention ideologically, because it operates on the assumption of shared parenting, embodied joint custody rights after divorce. As a result, overseas LBPs say the Convention may be ineffective until domestic family law reform occurs. It seems to call for a transformation of normative values of Japanese family in parenting, beyond legal reform. In Japan, child custody is granted to the mother in 80 percent of cases (National Institute of Population and Social Security Research, 2005). Under the lack of the concept of visitation rights of the parent, separated parents often suffer from a lack of adequate visitation to the child in distance (Jones, 2007, pp. 228–245). Considering this fact, LBPs living both in Japan and elsewhere do not see it as significant progress (Munakata, 2013).

Recently, Japanese family law has undergone some reform. In the amendments legislated in April 2012, “the interests of the child” was added as a primary matter to be discussed in custody considerations. The amendments also mentioned that both parents should agree with a visitation program. It has been argued that “most of the factors which prevent the return of children taken from other countries also affect cases arising entirely within Japan [...] and even the occasional case where both parents are foreign residents of Japan” (Jones, 2012). Now in a more global society, the discrepancy between international and domestic legal concepts affects families of various citizenships living inside and outside Japan.

Tanase, a family law scholar, has written of “the curse of solo custody” and criticizes the system on a number of grounds (Tanase, 2011, pp. 576–577). The solo custody principle affects how the courts decide cases, resulting in poor visitation rights for non-custodial parents. Judicial practice is a reflection of Japanese society and the way society conceptualizes what divorce is. Tanase (ibid.) emphasizes that it derives from the cultural concept of *enkiri* or the *severing of a relationship* after divorce. By cutting *en* (relationship), members of the couple are supposed to shut out any correspondence permanently. A child of the couple tends to lose the chance of meeting both parents as a result. Tanase recognizes that this concept has been challenged by

feminist critics, but this cultural convention remains strong, even if unconsciously. The normative idea of the separation of the house after divorce has overshadowed concerns about “the best interest of the child”, and has dominated judicial reasoning. Tanase’s analysis of law as a social-cultural construct may well explain the reason why solo custody is still sustained by Japanese family law. Clearly there is a cultural issue, not merely a legal problem. How can one develop a more critical cultural analysis as to the basis of Japanese perception of the family (and gender)?

The *Koseki* System: The Ideological State Apparatus of the Modern Japanese Family

To recognize why Japanese family law has maintained its solo custody-only approach, it is necessary to examine the modern Japanese family identity ideologically endorsed by family law. The modern family system in Japan is patriarchal, and is known as the *ie* system. It was a significant ideological construction of the modern Japanese state in the late nineteenth century, and it sees the Emperor as the chief of the nation, conceived as a single large family unit (Ninomiya, 1996, p. 153). In her historical studies of the Japanese family and the modern nation state, Muta (2006, pp. 166–177) argues that, since the Meiji era, Japan as a state was ideologically constituted as if it was the national family. This family image of the state was authorized by the new Emperor system. In this context, the Emperor was symbolized as the father of the nation.

Apparently, this very strong national ideology was abandoned after 1945, yet Muta (2006) argues that its cultural ideology still remains in contemporary Japanese society. She argues that it is an ideology of gendered family involving certain normative images of family and values in everyday life. In many aspects of society, from conventional perceptions of gender, family and parenthood to political and legal frameworks, basic family norms lie beneath the ongoing process of constituting Japan as a modern nation state.

Institutionally, Japan has a unique national personal registration system, called *koseki*. The earliest *koseki* system was imported from China in the eighth century, but the new Meiji government re-introduced it in 1871 as the basic method of registering the population. By registering the population, the new government aimed to introduce a rational system of taxation and military conscription (Ninomiya, 1996, pp. 146–147). Importantly, the basic unit of *koseki* is not the individual, but the family. The system, regardless of actual residential code, records individual birthplace, gender, date of birth, name, position among siblings, marriage and divorce status.⁸ The Japanese image of family lineage is built on the *koseki* system (Ninomiya, 1996, pp. 148–149; Sugimoto, 2011, p. 156). The essence of the *koseki* system is that no Japanese national can belong to more than one family on the registration system. Generally, an individual leaves the present *koseki* when making a new family through marriage. Also significantly, non-Japanese nationals are not allowed to become the head of a family. Japanese nationals are able to remove themselves from one household and create a new one through marriage.

In Japan, there are arguments that the *koseki* system conflicts with liberal ideas of the family, such as gender equity, family components (e.g. one-parent family), extramarital children, and *de facto* marriage (Sakakibara, Fukushima, & Yoshioka, 1993). From a different viewpoint, Chapman (2011) argues there are problems of *koseki* relating to two general categories. First, access to the *koseki* means disclosure of too much sensitive information about one’s personal

⁸ An actual household by residence is called *setai* in Japanese. Residential code is registered and managed on the *setai* basis.

history such as family relations and marital records. Second, it is about a history of family as the foundational personal registration unit, which prevents an individual from retaining his/her maiden name after marriage. This *koseki* system also leads to difficulties for foreigners in obtaining citizenship in Japan.

Nevertheless, the old ideology of the family still remains strong in Japanese family law today. This *koseki* system can be depicted as a type of ideological state apparatus (ISA) (Althusser, 1971) in contemporary Japan. ISA is a non-repressive apparatus which works to reproduce a national ideology in the interests of the state. In this vein, one can consider that the *koseki* is a legal ISA (Althusser, 1970, p. 143) that supplies the people a normative image of the national family. As Althusser explains, “the State, which is the State of the ruling class, is neither public nor private; on the contrary, *it is the precondition for any distinction between public and private*. The same thing can be said from the starting-point of our State Ideological Apparatuses” (Althusser, 1971, p. 144 – my italics). Given that ISA produces the distinction between the public and private, the *koseki* system is more than a mere registration system; it is a legal ISA that creates the basic conditions of the family (the private) for the sake of the state.

This *koseki* system explains the reason why solo child custody-only remains, no matter how much Japanese society and cultural ideas of family and gender have shifted, and no matter how much international pressure has been exerted on Japan. The *koseki* system is the only national registration system. It is also ideologically linked with Japan’s Emperor System. In this family registration system, no one, including the child, is able to simultaneously belong to plural families. When a Japanese national constitutes a new family through marriage, he or she will be the head of the family, or a member of the family. When a couple divorces, each member of the couple must join a new family unit (or return to his/her household of origin as a member). Insofar as the system sustains contemporary Japan, the child, both legally and normatively, has no choice, but to belong to either one or the other of the parents’ families. Through clashing with the *koseki* system, beyond individual rights or interests, reform of child custody in Japan causes an ideological conflict within the national ideology of Japan as a modern nation-state.⁹

In addition to these problems, solo custody is a primary example of the ways in which gender and family are disciplined in modern Japan. Certainly, it is obvious that the legislating of a series of new family laws with the present Constitution after WWII smashed the pre-war patriarchal family structure. Partly, the new post-war Constitution has played a role in achieving gender equity in the family. Initially, not only did the *koseki* system function as the national registration system in modern Japan, but it also contributed to reproducing a certain image of the family through, stressing the strong ideological linkage with the Emperor system. Even after WWII and the new constitution, as Ninomiya (1996, p. 154) and Muta (2006, p. 167) suggest, it is arguable that the post-war *koseki* system is still the carrier of the old ideology of the normative family.

Conclusion

Even though the Japanese government has agreed to ratify the Hague Convention on child abduction in 2013, skepticism toward Japan’s commitment on resolving the international parental abduction issue continues. Actors such as LBPs and governments recognize that

⁹ General Head Quarters (GHQ), the institutional body of the Allies that controlled post-war Japan, attempted to abolish the *koseki* system because it was seen as being based upon the *ie* ideology that legitimized pre-war Imperialism. But the attempts faced strong opposition from the bureaucracy that was aware of tremendous cost of reforming all past records. They also insisted that the old *ie* ideology was not contained in the new *koseki* system (Ninomiya, 1996, p. 155). But I strongly disagree with the notion of such a value-free *koseki* system.

Japanese family law has a structural problem that conflicts with the idea of joint custody, thought to be as a principle of shared parenting, after marriage breakdown. Facing the normative contradiction about the family between the accession to the Hague Convention on child abduction and domestic family law premised on the *koseki* system has created doubt over whether real progress will be made.

The normative image of family embodied in the *koseki* system has been a part of a national ideology of the “imagined community” (Anderson, 1991) of Japan as a modern nation-state since the nineteenth century. Not only is the *koseki* system a culturally unique family registration system, but also it is a basic element of the legal ideological state apparatus of Japan. Accordingly, I argue that in sum, the present international issue related to human rights, global justice and fairness is leading to a radical reconsideration of some of the basic structures of modern nation state in Japan. Above all, this paper explored the way in which these international legal disputes necessarily have called for a radical re-thinking of the normative ideology of the family in Japan. This approach is crucial in revealing the reasons why one particular idea of parenthood and child rearing (aka solo custody) is preserved in Japanese family law. Instead of conducting a simple comparative cultural analysis of different images of the family between Japan and other (mostly Western) countries, my argument is that this cultural difference represented in the normative mode of family in Japan has been constructed and maintained both institutionally and normatively.

This ideological family identity has been preserved by the Meiji Civil Code since 1898. Meanwhile, family law has experienced major reforms as Japanese society has transformed after WWII. According to Ueno (2009), the history of the post-war Japanese family can be described as the shift from traditional family to non-traditional family. Feudalistic aspects of the traditional family have been dismantled and the nuclear family has become the dominant pattern. In her anthropological analysis, White accounts for recent change of the image of family in Japan (White, 2002). In Japan one can now find literatures that observe how Japanese families became more diverse and flexible, contesting the idealized notion of family linked with the national family norms. Beyond an international legal scheme for the prevention of parental child abduction, Japan’s ratification to the Hague Convention on child abductions will continue to raise further social debates about the family in Japan, considering growing ideas of individuality, achievement of equity, and unity in diversity within it.

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