

LAW AND LANGUAGE IN JAPAN AND IN  
THE UNITED STATES

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## LAW AND LANGUAGE IN JAPAN AND IN THE UNITED STATES\*

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Japanese civilization has resisted the introduction of Western law. Legal institutions based on European models have been in place in Japan for more than a century, yet lawyers, and courts, and legal codes in Japan are still curiously peripheral. Japan is impressive as a modern democratic industrial nation which seems to do without the constant everyday use of lawyers to structure society and to coordinate economic and political activity.<sup>1</sup> The Japanese courts lack the authority of American courts.<sup>2</sup> They have neither the will nor the political power to challenge the executive and legislative branches of government.<sup>3</sup> Ordinary Japanese citizens regard a resort to law to settle private disputes as a general disgrace to all concerned. The antipathy of the Japanese to law has been widely noted. The most common explanation given for the phenomenon is that Western legal traditions conflict with the value that the Japanese place on mutual trust, personal

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1. To what degree Japan does without lawyers is itself a matter of dispute. Although the number of fully trained professional litigators licensed to go to court is very small, law is taught in universities as an academic subject and is one of the most popular undergraduate majors. People who have only an undergraduate law degree staff the law departments of large corporations and government ministries; they do much of the work done by lawyers in the United States. Even so, the total number of people doing law work is proportionally much less than in the United States. For a brief useful description of the structure of the Japanese legal profession, see E. J. Hahn, *An Overview of the Japanese Legal System*, 5 NORTHWESTERN JOURNAL OF INTERNATIONAL LAW & BUSINESS 517, 522-533 (1983).

2. See R. B. Parker, *The Authority of Law in the United States and in Japan*, 33 OSAKA UNIVERSITY LAW REVIEW 1 (1986).

3. See, e.g., S. Matsui, *The Reapportionment Cases In Japan: Constitutional Law, Politics, And The Japanese Supreme Court*, 33 OSAKA UNIVERSITY LAW REVIEW 17 (1986).

interdependence, and group harmony.<sup>4</sup> The view seems to me generally correct,<sup>5</sup> and I try to develop it further in this essay.

I also suggest some further very general reasons for the Japanese anti-pathology to law based on very general features of the place of language in Japan. In brief, I argue that a necessary condition of the exalted place of law in America is a peculiarly Western view of language which the Japanese do not share. I point out how, from the point of view of the Japanese, Westerners have reified aspects of language using behavior to give language a curiously central importance in Western cultures. Law is primarily a use of written language to coordinate and control the behavior of people in society. The Japanese have never given language the central position it enjoys in the West and consequently feel it odd to rely heavily on written language to organize society. Furthermore, because of their long isolation during the Edo Period, and their cultural homogeneity, the Japanese have means other than law to structure their society. This essay will expand on these themes.

## I

I said above that, from the point of view of the Japanese, Westerners have *reified* aspects of language using behavior to give written language a curiously central importance in Western cultures. "Reification" has been used by many social philosophers as a technical theoretical term, but I wish to use the word in this essay in only an expanded version of its ordinary dictionary definition. The dictionary definition is, "The mental conversion

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4. See H. Wagatsuma and A. Rosett, *Cultural Attitudes Toward Contract Law: Japan and the United States Compared*, 2 UCLA PACIFIC BASIN LAW JOURNAL 76 (1983) for a clear statement of this view. These authors also review the literature and point out the dearth of empirical research on the attitudes of Japanese and Americans toward law. *Id.* at 78-79. On this point, see also W. Gray, *The Use and Non-Use of Contract Law In Japan: A Preliminary Study*, 17 LAW IN JAPAN 98 (1984).

5. Professor John Haley has forcefully argued that the access of Japanese citizens to lawyers and courts is artificially restricted by consciously chosen policies of limiting the numbers of lawyers and judges, suggesting that the Japanese would resort more to law to settle disputes if they could. J. Haley, *The Myth of the Reluctant Litigant and the Role of the Judiciary in Japan*, 4 JOURNAL OF JAPANESE STUDIES 350 (1978). However, in a later classic article, he describes the remarkably few powers of enforcement Japanese courts have even when a dispute is before them, and argues that an increase in the minimal enforcement powers of Japanese courts might work major changes in the structure of Japanese society. Haley, *Sheathing the Sword of Justice in Japan: An Essay on Law Without Sanctions*, 8:2 JOURNAL OF JAPANESE STUDIES 265 (1982). This suggests that although the aversion to law in Japan may be reinforced by a conscious policy at the top to restrict access to lawyers and courts, that policy is itself an expression of the conflict of Western legal traditions with the value that the Japanese place on mutual trust, personal interdependence, and group harmony.

of a person or abstract conception into a thing.”<sup>6</sup> I will use “reification” and “reify” as follows:

Reification, noun: The mental process by which an unjustified concreteness, impersonality, objectivity or independence is attributed to something.

Reify, verb: To attribute an unjustified concreteness, impersonality, objectivity or independence to something.<sup>7</sup>

The dictionary definition of reification as the mental conversion of an abstract concept (or a person) into a thing is thus, on my definition, just one type of reification. Another example of a type of reification according to my definition might be the belief that some social practice, for example, allowing women to go first through doors, is more “natural” than the contrary practice in which men go first. In an ordinary, non-technical sense, “an unjustified . . . objectivity or independence is attributed” to the social practice of ladies first.

The belief that there exists a human nature shared by all members of our species which can serve as a basis of criticism of social practices may itself be due to reification. I say *may* be due to reification because neither the dictionary definition nor my expanded definition of reification settles any argument over whether some particular element in our experience is not what it seems, but is only the result of reification. According to my definition, reification is an *unjustified* attribution of concreteness, impersonality, objectivity or independence to something. Thus a belief that there really is a universal human nature with which social practices are or are not in accord may be the result of a reification if, in fact, there were no such universal human nature, but accepting my general definition of reification does not commit one to the position that a particular something (such as human nature) is or is not the result of reification.<sup>8</sup>

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6. OXFORD ENGLISH DICTIONARY, VOL. VIII (1933). One of three examples given of a use of “reification” is: “1882 J. B. STALLO *Concepts & Th. Mod. Physics* 269 The existence, or possibility, of transcendental space is another flagrant instance of the reification of concepts.” See also RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE (1983) for the following definition: “Reify: to convert into or regard as a concrete thing: *to reify an abstract concept.*” The implication of these examples, which I make explicit in my definition, is that reification by definition involves unjustified belief.

7. This definition is derived from P. Berger and S. Pullberg, *Reification and the Sociological Critique of Consciousness* 4 HISTORY AND THEORY 196 (1964). In that article, “reification” is part of a larger system of technical terms which I do not wish to use or to defend in this essay.

8. I make this point in order to distance myself from the arguments over the definition of “reification” which are common in philosophical sociology and which are often substantive arguments over which elements in our experience are due to reification. I do not wish in this essay to enter these arguments. For an introduction to them, see Burke C. Thomason, MAKING SENSE OF REIFICATION: ALFRED SCHUTZ AND CONSTRUCTIONIST THEORY (1982).

“Reification” is a useful term because human beings everywhere in all cultures seem generally more likely to make the mistake of reifying rather than the opposite mistake of attributing less concreteness, impersonality, objectivity and independence to things than can be justified (hereafter, “under-reifying”). Why this is so is a large and interesting question. Perhaps human beings tend to reify rather than under-reify because of “the fundamental terrors of human existence, notably the terror of chaos, which is then assuaged by the fabrication of the sort of firm order that only reifications can constitute.”<sup>9</sup> Perhaps the firm order provided by reifications also provides positive pleasure in addition to freedom from fear. Perhaps it has often been to the advantage of powerful groups or individuals in any culture to support the reifications current in that culture, although sometimes reifications are invoked by revolutionaries. (“The Rights of Man” or “The Proletariat” might be examples.) Whatever the answer to the larger question of why people reify, the tendency of human beings everywhere to reify rather than under-reify suggests the value of examining one culture from the point of view of another. Things which culture A takes for granted but which culture B sees as the results of reification should perhaps be examined more closely by members of culture A, and vice versa. Things which two very different cultures can agree on are less likely to be the result of reification, although of course there are no guarantees. Both cultures may be reifying in the same way.<sup>10</sup>

From the American point of view, the Japanese seem to reify social roles and relationships while, from the Japanese point of view, the Americans seem to reify God, morality, law, language, and theory. In what follows, I

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9. P. Berger and S. Pullberg, *supra* note 7, at 207.

10. I intend no endorsement of any sort of cultural relativism. If two cultures disagree on whether something is the result of a reification, one or the other culture may be right, but they cannot both be “right relative to their culture.” I agree with Richard Rorty that this sort of relativism is self-refuting or incoherent. See Rorty, *Solidarity or Objectivity?* 6 *NANZAN REVIEW OF AMERICAN STUDIES* 1 at 4-5 (1984) and Rorty, *Pragmatism, Relativism and Irrationalism* in *CONSEQUENCES OF PRAGMATISM* 160 at 166-169 (1982). See also Rorty, *PHILOSOPHY AND THE MIRROR OF NATURE* at 257-311 (1979) for an extended attack on the idea of alternative “conceptual schemes.” I also agree with Ronald Dworkin in his rejection of what he calls “external scepticism.” Dworkin, *LAW’S EMPIRE* 78-85 (1986). See also Dworkin, *A MATTER OF PRINCIPLE* 167-177 (1985). (Cultural comparisons can of course be strong arguments for “internal scepticism” and do tend to make one less trusting of the fundamental assumptions of one’s own culture and more tolerant of other cultures.) From the point of view of the traditional Western epistemologist, Rorty and Dworkin both seem to be espousing a naive realism. Rorty and, I think, Dworkin both deny that they are espousing any epistemology at all. Neither thinks that an epistemology of any sort is likely to be useful for his purposes. I agree with their arguments for this view in the works cited above.

do not attempt answers to the questions of who is reifying and who is not. That would involve me in arguments unnecessary to my purpose here. I want only to compare Japanese and American perspectives to suggest some general reasons why the Japanese are relatively indifferent to law, and why Americans are so drawn to it.

## II

From the Japanese point of view, Americans tend generally to reify in the realm of thought. Description, judgement, and justification by Americans of themselves and others according to various psychological, economic, political, moral, and religious theories play a central role in American life. For Americans, freely chosen belief in the truth of a religion or the truth of a set of political opinions is often constitutive of what one is as a person. An American might define herself as a politically conservative Roman Catholic who is a staunch believer in the free market and strongly opposed to socialism. Another American might define himself as a politically liberal Jew who believes strongly in human equality. Regardless of their particular religious or political beliefs, Americans tend to think that having freely chosen opinions on such matters is essential to being a fully developed person. A major purpose of American public education is to develop the capacity of American children to choose their religious, moral, and political beliefs. Americans judge and justify their everyday behavior in terms of their religious, moral, and political beliefs. Indeed Americans seem to Japanese comparatively free of restraints on behavior other than those derived from their religious, moral or political beliefs: usually if Americans believe themselves justified in some course of action by those beliefs, they feel free to act. Feelings of uneasiness or compunction which cannot be fit into a moral or religious theory are ignored or brushed aside as irrational emotion. In sum, from the Japanese point of view, social behavior in the West and especially in America is structured by reified verbal formulations—vast theologies and complex moral philosophies—which are seen by Americans not as the imaginative creations of men, but as objectively and independently true accounts, often revealed by God Himself, of the way things are. Religious commandments and moral principles derived from such complex systems of reified images and ideas provide the criteria by which Americans judge and justify their behavior and the behavior of others.

Extensions and refinements of such religious commandments and moral principles are often incorporated into law: thus law seems to Americans a natural means of structuring society.

One reason that Japan is so interesting is that, even from the American point of view, it seems to be a society in which comparatively little reification goes on. Religious and political beliefs are not constitutive of the individual Japanese. For Americans, what seems to be reified in Japan are social practices determining what is appropriate behavior in everyday social situations. Rather than follow principles articulated in abstract terms, Japanese in everyday life situations feel compelled to act in socially appropriate ways with socially appropriate feelings. There is little interest in general moral, religious, or political theory to justify action in accord with these felt compulsions beyond a vague reference to what is natural. The Japanese permit themselves *to think* almost anything, allowing themselves a rich imaginative life so free of constraint that it often seems perverse from the American point of view.<sup>11</sup> However, reified standards of appropriate behavior detailing what to say and to do in all social situations sharply restrict the Japanese from acting out these imaginative thoughts.<sup>12</sup>

There is virtually no tradition of political philosophy in Japan because shared standards for how one should act and how one should feel in all situations in everyday life render unnecessary social coordination and control by means of theory. Because standards for human behavior in everyday situations were and are so deeply ingrained, deviation is comparatively unthinkable and there is little tradition of theoretical justification for such deviation. (Peasants revolted during the Edo Period because they were starving and they had no choice. They did not seek a philosophy to justify rebellion because they were not familiar with the practice of justifying deviant action with a reference to religion or political philosophy, for

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11. See Ian Buruma, *BEHIND THE MASK: ON SEXUAL DEMONS, SACRED MOTHERS, TRANSVESTITES, GANGSTERS AND OTHER JAPANESE CULTURAL HEROES* (1984), originally published as *A JAPANESE MIRROR* (1983).

12. "A strict sense of hierarchy effectively prevents individuals from asserting themselves and thereby unbalancing the harmony of the group. Violent confrontation between individuals is not restrained so much by a universal sense of morality (what the British like to call decency), as by a system of etiquette more rigid than anything seen in the contemporary Western world. But this system is based almost entirely on known human relationships; without a group to relate it to, it tends to break down rather quickly. . . . Outward harmony is preserved in many different ways. While in the West a person is supposed to have opinions, which he or she voices in public, in Japan, opinions, if held at all, are kept to oneself or carefully blended with those held by others. Political discussions are generally avoided altogether." *Id.* at 221.

example, God or human rights.)<sup>13</sup> Just as no theory can justify deviation in Japan, so no theory is necessary to justify adherence to customary daily standards of behavior. General rules or principles (including laws) are comparatively unnecessary for controlling or coordinating Japanese social behavior.

From the Japanese point of view, law is an extraordinarily inefficient means of coordinating human behavior. First, established governmental authorities must lay down rules for everyone to follow. Certain minimum standards of coherence and publication and enforcement of these rules must be met. These necessarily general rules must be interpreted and applied to individual cases. The reifications necessary to support allegiance to the law are massive and difficult to sustain. The divine right of kings, natural rights, and the rest of the Western tradition of political philosophy illustrate how difficult it can be. The extraordinary complexity of law, especially American law, and the social resources its processes consume, also count against law as a means for organizing a society.<sup>14</sup>

I said above that there is comparatively little reification in Japan. My discussion of the extraordinarily high degree of reification of the etiquette of everyday life in Japan suggests otherwise. However, as noted above, the Japanese do not provide a reified world view to support their reification of the etiquette of ordinary life. There is no elaborate cosmology or theology which justifies adherence to everyday roles. Indeed, Japanese seem to be able to detach themselves remarkably easily from their external performances. They do not even reify standards of appropriate behavior in the way that Americans are apt to reify rules of behavior which Americans apply to themselves and others. On the contrary, violation of appropriate standards of behavior is comparatively easily countenanced in Japan when the needs and wishes of the people in the immediate social situation require it. The constant use in daily conversation of the dichotomy between *tatemae* and *honne*, the formal surface of human relations and the

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13. See M. Maruyama, *STUDIES IN THE INTELLECTUAL HISTORY OF TOKUGAWA JAPAN* 249-311 (1952, tr. by M. Hane 1974) for an account of the lives and writings of some intellectuals of the late Edo period and their lack of influence on any of the uprisings of that period. See also H. Borton, *PEASANT UPRISINGS IN JAPAN OF THE TOKUGAWA PERIOD* (2nd ed. 1968) and M. Hane, *PEASANTS, REBELS AND OUTCASTS* (1982).

14. The law of Japan is simpler and less voluminous than the law of a single American state. My Japanese law students were bemused by even a simple case in which a federal court sitting in Massachusetts had to decide, in order to decide the case before it, whether the state courts of Massachusetts, if the case had been in state court, would have applied the law of Massachusetts or of New York.



reality of real human beings in a real situation, indicates the willingness of the Japanese to set aside the formal aspect of social roles whenever the immediate needs and wants of the people in the immediate situation require it.<sup>15</sup> In Japanese society, the sheer fact that someone wants something is usually considered a good reason to give it to him or her. And why not? What better reason could there be? Yet in America, we are strangely reluctant to give our wants as reasons for getting something. Americans must first have their wants approved by God, or a moral theory, or some other reified entitlement such as a legal right before those wants can serve as justifications for getting something.

Americans, much more than Japanese, seem to regard the sheer following of a rule as a good in itself, regardless of the actual consequences involved in following the rule in a given situation. The passion for rule-following shows in the value which Americans attach to acting on principle, no matter what the consequences. For Americans, principles or rules have an independent authority to dictate what should be done by human actors in a given situation. The Japanese are, from the point of view of Americans, remarkably uncaring about whether their actions are "principled" or "justified." They are much more concerned about what action the immediate situation calls for.<sup>16</sup> The American is apt to claim that what the immediate situation calls for cannot be known without an examination of what principles or rules

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15. In contrast, see the description of social roles among the people of Bali in C. Geertz, "From the Native's Point of View": *On The Nature of Anthropological Understanding*, MEANING IN ANTHROPOLOGY 221 (1975). According to Geertz, the people of Bali conceive of the human person as a representative of a generic type rather than as a unique creature with a private fate. The generic types are roles in a cosmic drama. The roles are what really exist; the players are incidental. There is a constant fear "that the public performance to which one's cultural location commits one will be botched and that the personality — as we would call it but the Balinese, of course, not believing in such a thing, would not — of the individual will break through to dissolve his standardized public identity. . . . It is the fear of faux pas, rendered only that much more probable by the extraordinary ritualization of daily life, that keeps social intercourse on its deliberately narrowed rails and protects the dramatisical sense of self against the disruptive threat implicit in the immediacy and spontaneity even the most passionate ceremoniousness cannot fully eradicate from face-to-face encounters." *Id.* at 230.

Social roles are constitutive of the Japanese sense of self. See text at notes 28-31 *infra*. However, the extraordinary denial of the personality and the uncompromisingly demanding quality of social roles which Geertz found among the Balinese is as strange to Japanese as it is to Americans. See Wagatsuma and Rosett, note 4 *supra* at 85 for a discussion of *tatema* and *honne*.

16. ". . . there can be no doubt that the Japanese on the whole do think less in terms of abstract ethical principles than do Westerners and more in terms of concrete situations and complex human feelings. To the Westerner the Japanese may seem weak or even lacking in principles; to the Japanese the Westerner may seem harsh and self-righteous in his judgements and lacking in human feelings." E. Reischauer, THE JAPANESE 140 (1977).

should govern the situation. Americans tend to characterize both morality and law as primarily a matter of following rules. From the Japanese point of view, one needs no rule or principle to justify helping oneself or others to enjoy life or to avoid obvious difficulties. For the Japanese, both morality and law are concerned less with rule following and more with people's attitudes. For example, a Japanese policeman instructing student drivers would stress "traffic morality" rather than "traffic rules." Traffic morality is an attitude of care and concern for other drivers and pedestrians. Good drivers have such an attitude and drive accordingly. After a traffic accident, the Japanese are generally less concerned with fixing responsibility for the accident than are Americans, and more concerned with the personal resolve of everyone involved in the accident never to let it happen again.<sup>17</sup>

### III

A recent seminar discussion I had with graduate law students at Osaka University provides an illustration of the different ways in which Japanese and Americans approach a moral question.<sup>18</sup> The topic was a 1985 American criminal case set in Santa Monica, California in which a Japanese mother, age 32, who had lived in the United States for 14 years, attempted to kill herself and her two children by walking into the sea. All three were pulled from the surf by passing college students, but the woman's six-month-old daughter and four-year-old son did not survive. The woman was charged with first-degree murder. Eventually the charge was reduced to voluntary manslaughter and she was released on probation on the condition that she

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17. It is very unusual for a judge in a tort case in Japan to find any defendant more than 70% liable. There are no punitive damages in Japan and compensatory damages are typically very low by American standards. I am indebted to Professor Takeshi Tsunoda for the example of "traffic rules" and "traffic morality."

In criminal cases in Japan, a truly repentent potential defendant is usually not prosecuted. If the crime is too serious for the police and prosecutor to excuse, then the truly repentant defendant is given a light or a suspended sentence. Contesting a criminal charge is conclusive evidence that one is not repentent. The only defendants who seriously contest criminal charges in Japan are the obviously unrepentant such as professional criminals, or the truly innocent. Fewer than 1% of those who contest criminal charges are found innocent at a court trial; the only real protection for the innocent in Japan is the quality and professionalism of Japanese police and prosecutors. The system works well in ordinary criminal cases, but offers no protection in political cases. For an interesting overview of the criminal process in Japan, see Bayley, *The Individual and Authority*, FORCES OF ORDER: POLICE BEHAVIOR IN JAPAN AND THE UNITED STATES 134 (1976).

18. I am indebted to Professor Mitsukuni Yasaki and to Tōchi Ashida, Yuichi Hashiguchi, LaNel Hegelgans, Nobuyuki Kataoka, Takanori Mikami, Kazuo Nakahara, and Michiyuki Shimoda for their contributions to the discussion described in the text.

undergo psychiatric counseling.<sup>19</sup>

The seminar discussion did not focus on the attempted suicide. The Japanese students made the point that, contrary to the stereotype accepted by some Americans, suicide is not generally condoned in Japan. (Suicide rates are not much higher in Japan than in the United States. Suicide rates for most Northern European countries are higher than for Japan.)<sup>20</sup> We all agreed that the woman was disturbed and needed counseling. The major point at issue was whether, given that the woman made the mistake of attempting to commit suicide, it was even worse that she decided to take her children with her. The Japanese students generally felt that they would have thought less of the mother if she had decided to leave her children behind. They stressed the closeness and strength of the mother-child bond and the duty of the mother always to keep her children with her, even if it meant taking them with her into death.

I argued that for the woman to kill her children because she was herself unhappy and had decided to kill herself was a gross dereliction of her duty as a mother. Her inability to separate her own interests from those of her children, and her failure to imagine her children living on without her, seemed to me self-centered and selfish, excusable perhaps,<sup>21</sup> but never morally justifiable. The mother might be forgiven, but on what possible basis could she be said to have been a better mother by killing her children?

The students insisted on their position which clearly rested on the strength of the mother-child relationship. In Japanese, that relationship is called *isshin dō tai* (一心同体), literally, one heart same body. In trying to translate into English their understanding of 一心同体, the students considered and quickly rejected the idea that a child was the mother's property. An analogy to the American problem with abortion was suggested. Perhaps the child was like a fetus which the mother could kill if she chose. But both the property analogy and the fetus analogy seemed to go in the wrong direction. The right to dispose of property or of a fetus

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19. *Los Angeles Times*, November 21, 1985.

20. STATISTICAL ABSTRACT OF THE UNITED STATES 845 (1985).

21. Murder of children by one of their parents during a suicide attempt (*oyako-shinju*, literally, parent-child dying) accounts for almost twenty-five percent of all homicides in Japan. *Los Angeles Times*, January 31, 1985. The official reason that the woman was not given a more severe sentence by the California court is that court-appointed psychiatrists concluded that she was suffering from psychotic depression and delusions when she walked into the sea with her children. The California judge expressly denied that he gave any weight to cultural differences in determining the woman's sentence. *Los Angeles Times*, November 22, 1985.

depends on their being only a chattel in the case of property, or not a person in the case of a fetus.<sup>22</sup> In this case, the mother's defense rested on the closeness of the mother to her children, not the difference or dissimilarity. But what kind of closeness could justify her in killing her children?

It finally became clear that the students and I were describing the choice the woman made in very different terms. I thought the issue was whether the woman could justify her choice to kill her children. The students saw the issue as whether the woman was going to act like a Japanese mother and make no distinction between her interests and her children's interests. From the students' point of view, it was generally a plus that the emotional attachment of the woman to her children was so strong that she could not bear the thought of her children without her; if the mother had chosen to leave the children behind, it would have been evidence that her attachment to her children was not as strong as it should have been and thus the woman was not a good mother. The students agreed that the woman's initial decision to kill herself was an irresponsible one for a mother of two small children to make, but leaving the children behind would have been *additional* evidence of her unfitness as a mother.

Americans will object that even if the role of mother requires never making a distinction between the mother's interests and her children's interests, the requirements of that role must be subordinate to the more general requirement to be a moral person who does not kill (except under extraordinary circumstances clearly not present in this case). For Americans, the essential self is a person constrained by morality, who then happens to be a woman and a mother: the requirements of the role of "moral person" outweigh the requirements of the role of mother.<sup>23</sup>

For Japanese, the priority is reversed. The general requirements of the role of "moral person" control only if they do not conflict with the more naturally grounded and everyday role of mother. The Japanese do not place

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22. Abortion is not the moral issue in Japan that it is in the United States. Because the Japanese do not generally believe in an omniscient judgmental God who forbids abortion as a mortal sin, and because motherhood is taken so seriously in Japan (few Japanese mothers will hire a baby-sitter and there are almost no day care centers in Japan; women usually stop working when they have small children) the policy of using the threat of criminal prosecution to force women to give birth to children they do not want has little support.

23. An American might want to build the injunction not to kill one's children into the role of mother rather than think of the role of mother as requiring that one always keep one's children with one and then having that requirement overridden by the requirement of the role of "moral person" not to kill. This seems only a semantic difference. Separating the role of mother from that of "moral person" highlights the difference between the Japanese and the American point of view.

much importance on a general morality controlling relations between "persons" abstracted away from their actual social roles. From the Japanese perspective, the Western idea of a moral person abstracted away from actual social roles seems a reification of Western religious ideas of the naked soul subject to judgment by an omniscient God. Much more important for Japanese is the role of mother which requires that a mother make no distinction between her own interests and her children's interests. Conformity to those requirements can sometimes have the unfortunate consequences of the California case, but ninety-nine percent of the time it obviously benefits both mother and children.

From the Japanese point of view, Americans think that everyone in the world has one primary role, "moral person" or "soul before God." The role is so abstract and empty of content that it provides little guidance in daily life. The undue importance given to such an abstract role tends to decrease the importance attached to more concrete roles such as mother or son, with the result that Americans, from the Japanese point of view, do not take seriously enough their everyday roles and relationships.

For Americans however, this detachment from the requirements of the particular social roles of daily life is perhaps the defining characteristic of American freedom. Professor George Kateb, an American political scientist, has eloquently expressed this point of view.

The American self is a loose-fitting self. Americans are characteristically unformed, restless, self-doubting, and constantly putting on some new aspect only to discard it as unfitting. The scene has its own aesthetic but it is not likely to satisfy the sensibility of old Europe. Europe and the whole Old World are built on roles: more roles than American society clearly has and consciously defines; roles that are more sharply differentiated from each other; roles that are more fully or more permanently enacted. . . . [In America] every self is imagined as never finished, never exhausted by its failures and successes, encouraged to think that it has indefinite resources for change in the midst of changing experience.<sup>24</sup>

The extraordinary freedom of Americans from their social roles can also produce its own pathology:

. . . a world-absorbing egoism; a lethally indifferent privatism; terrible confusion and drifting; a calculated spontaneity; an unconscious guile; a compulsive play-acting; an unappeasable wish to 'score'; a merely additive quest for unconnected experience; a search for novelty and sensations; a fickle mobility; and so on.<sup>25</sup>

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24. Kateb, *On the 'Legitimation Crisis,'* LEGITIMACY AND THE STATE 180 at 197-98 (W. Connolly ed. 1984).

25. *Id.* at 199.

Professor Kateb concedes the possible pathology, yet celebrates the American self.

The American characteristically seeks to experiment with himself and with natural reality, and thus touches the polar extremes of savagery and self-consciousness, rapacity and etherealization. Loneliness inevitably fills the adventurous self. Yet the sum of extreme experience added to the human record justifies the pain endured and inflicted. The American self enlarges humanity. . . . [It] includes the voluntary principle and the will to be adventurous, and never loses all connection to the feeling of being besieged and the insistence on imagining oneself self-owned.<sup>26</sup>

Japanese find this American conception of the self almost incomprehensible. When they do understand it, they are usually appalled. The "loose-fitting self" which imagines itself "self-owned" and can try on social roles at will seems to them a conception of the self as bizarre as that of the Balinese.<sup>27</sup>

The American sense of self described above carries with it a certain picture of the self. The self is an abstract quality (the soul or ego) which inhabits the body. Physical space absolutely divides one individual from another. Americans distinguish sharply between (a) the attributes of the individual (his physical and mental characteristics, his abilities, knowledge and skills) which are portable and move around in space with the body and (b) the social situations and roles in which the individual chooses (or is forced) to participate. In Japan, this sharp distinction is not made. One's social roles and social relations are actually constitutive of the self.

A recent analysis by a leading Japanese scholar contrasts the Euro-American "individual" with the Japanese "contextual."<sup>28</sup>

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26. *Id.* at 196.

27. *See supra* note 15.

28. "Let us now redefine individuals as actors who objectify the [Euro-American] self only. These individual actors are the ultimate units of social entities because further division is impossible. These individuals have a high degree of individuality in the sense that they have a firm consciousness of themselves, make free decisions based on their own judgment and sense of responsibility, and exert their best efforts to do their jobs by themselves. At the same time, relationships among people tend to be conceptually severed from the actor. This implies that, for an individual, relationships among people have been derived from the associations of individual actors and are perceived as the objective means for his survival. Therefore, relations among individuals are seen as something that can be manipulated. . . . In contrast, a relational actor is established when relationships with other actors are objectified, emphasizing the co-existentiality (or complementarity) between the relationships and people. The relational actor represents a type of actor which is fundamentally different from the solipsistic individual actor. Both Watsuji's *ningen* (人間; people as "in between") who live in "*jinkan*" (人間; "in between" people) and Kimura's *hito* (人; man) who exists in "*hito to hito to no aida*" (人と人との間; between man and man) corresponds to this type of actor. Let us use the term *kanjin* (間人) or "contextual," to conceptually distinguish the type of man who is a relational

In contrast to an individual, a contextual is neither an extension of an ego nor a connection of egos. For the contextual a sense of identification with others (sometimes including conflict) pre-exists and selfness is confirmed only through interpersonal relationships.<sup>29</sup>

In other words, for the Japanese, one *is* one's share in social relationships, not metaphorically, but literally. A common word for the self in Japanese is *jibun* which denotes in any given social situation "the share that is distributed to oneself derived from the life space which is commonly shared by both oneself and other actors."<sup>30</sup> The extraordinary strength of the mother-child bond in Japan illustrates this contextual definition of the self. For the Japanese, being a mother is as much an attribute of a person as her height, or her temperament, or her eye color. Americans think of a mother and child as two individuals who happen to be related in a certain (important) way. Japanese think of mother and child as indivisible parts of a whole — *isshin dō tai* — one heart same body.

Understanding the Japanese conception of the self as contextual helps us to understand the strength of the mother-child bond in Japan. It is also the beginning of general explanation of the nature of the "mutual trust," "personal interdependence," and "group harmony" which the Japanese value so much. In a society made up of "contextuals" rather than "individuals," terms such as "trust" and "interdependence" and "harmony" do not describe moral goals to be achieved by individuals; they are descriptions of a society of mature human beings.<sup>31</sup>

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actor from the "individual" or *kojin* (個人). . . . The contextual model fits the Japanese." E. Hamaguchi, *A Contextual Model of the Japanese: Toward a Methodological Innovation in Japan Studies*, 11:2 JOURNAL OF JAPANESE STUDIES 289 at 299-300 (1985).

29. *Id.* at 302.

30. *Id.* at 302.

31. "In contrast to the ego, the *jibun* appears to have a relational and relative character. Hence there has been a tendency to regard its holders as being dependent upon other actors and thus immature. In reality, however, among the Japanese one observes not unilateral dependence upon others but interdependence. Furthermore, for this interdependence between actors to be maintained, desires of the *jibun* cannot be selfishly satisfied, and the social system must incessantly demand self-restraint. Thus, self-restraint can be seen as the appropriate behavior of socially mature adults. It is the straight-forward claim of the naked ego that is considered to be childish." *Id.* at 303.

Professor Hamaguchi uses the distinction between the individual and the contextual to criticize the work of scholars such as Reischauer and Nakane who have correctly described the Japanese as group-oriented but have used a Western analytic framework which is limited to the contrast of individual versus group and which leads inevitably to the conclusion that the Japanese "individual" is immersed and subordinated in the group. But Japanese contextuels are in fact fulfilled by participation with others in the social roles which constitute them. Being under the threat of separation from the group is experienced as a potential loss of self, just as being under the threat of not being able to

More important for my purposes in this essay, the account of Japan as a society of contextuials suggests a general explanation for the Japanese indifference to lawyers, courts, and legal codes. If Euro-American legal institutions are essentially tied to a Euro-American conception of the self, then it is no wonder that there is so little enthusiasm for law in Japan.

Interestingly, a conception of the self as besieged, self-owned, and engaged in a continual struggle against others to maintain his or her self-sufficiency and freedom, yet requiring relations with others to live, is the main theme of the American intellectual movement called Critical Legal Studies. One of the central texts of that movement by Professor Duncan Kennedy of the Harvard Law School argues that the very essence of every problem in American law is "that relations with others are both necessary to and incompatible with our freedom."<sup>32</sup>

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leave a group is experienced as a potential loss of self by the Western individual. *Id.* at 296-297. See also Hiroshi Wagatsuma, *Some Cultural Assumptions Among the Japanese*, JAPAN QUARTERLY 371 at 374 (1984).

32. "Here is an initial statement of the fundamental contradiction: Most participants in American legal culture believe that the goal of individual freedom is at the same time dependent on and incompatible with the communal coercive action that is necessary to achieve it. Others (family, friends, bureaucrats, cultural figures, the state) are necessary if we are to become persons at all — they provide us the stuff of our selves and protect us in crucial ways against destruction. . . . But at the same time that it forms and protects us, the universe of others (family, friendship, bureaucracy, culture, the state) threatens us with annihilation and urges upon us forms of fusion that are quite plainly bad rather than good. A friend can reduce me to misery with a single look. Numberless conformities, large and small abandonments of self to others, are the price of what freedom we experience in society. And the price is a high one. Through our existence as members of collectives, we impose on others and have imposed on us hierarchical structures of power, welfare, and access to enlightenment that are illegitimate, whether based on birth into a particular social class or on the accident of genetic endowment. . . . The fundamental contradiction — that relations with others are both necessary to and incompatible with our freedom — is not only intense. It is also pervasive. First, it is an aspect of our experience of every form of social life. It arises in the relations of lovers, spouses, parents and children, neighbors, employers and employees, trading partners, colleagues, and so forth. Second, within law, as law is commonly defined, it is not only an aspect, but the very *essence* of every problem. There simply are no legal issues that do not involve directly the problem of the legitimate content of collective coercion, since there is by definition no legal problem until someone has at least imagined that he might invoke the force of the state. And it is not just a matter of definition. The more sophisticated a person's legal thinking, regardless of her political stance, the more likely she is to believe that all issues within a doctrinal field reduce to a single dilemma of the degree of collective as opposed to individual self-determination that is appropriate."

D. Kennedy, *The Structure of Blackstone's Commentaries* 28 BUFFALO LAW REVIEW 209 at 211-213 (1979).

See also Gabel & Kennedy, *Roll Over Beethoven* 36 STANFORD LAW REVIEW 1 at 15-17 (1984) where Professor Kennedy "renounces and recants" the fundamental contradiction as a "dead abstraction." This article is in the form of a dialogue that, to some extent, deals with reification, especially the reification of language and theory.

See also Hutchinson & Monahan, *Law, Politics, and the Critical Legal Scholars: The Unfolding Drama of American Legal Thought* 36 STANFORD LAW REVIEW 199 (1984).



The usual Japanese reaction to this is that the idea of some fundamental contradiction between the freedom of the self and participation in society is a very Western idea; either the fundamental contradiction does not exist in Japan or, if it does, the basic fear is not of annihilation of the self by others but of isolation of the self from others. What Americans experience, in Professor Kennedy's apt phrase, as "numberless conformities, large and small abandonments of self to others," Japanese experience as reaffirmations of the contextual self. What Japanese fear most is not the oppression or stifling of individuality by the group, but separation from the group which, for Japanese, is equivalent to a loss of self.<sup>33</sup>

If Professor Kennedy<sup>34</sup> is right that the essence of every legal problem is the fundamental contradiction "that relations with others are both necessary to and incompatible with our freedom," and if it is also true that the contextual nature of the Japanese sense of self does not generate the same contradiction, then we have a general explanation for the curious

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This article, by two young Canadian law professors, is a good and fair outside appraisal of the Critical Legal Studies movement. The authors ask whether Professor Kennedy's fundamental contradiction "is not itself an illusion, the inescapable consequence of a false consciousness that provides us with impoverished notions of freedom and community. Any attempt to answer this question must begin with a theory of human personality." *Id.* at 239.

I think that Hutchinson & Monahan are right that the American definition of the self is what generates the fundamental contradiction and also right that the American conception of the self may rest on a reification and be an illusion.

The fundamental contradiction has been a theme of Western philosophy since Hegel. For a recent sophisticated treatment see Kolb, *THE CRITIQUE OF PURE MODERNITY: HEGEL, HEIDEGGER, AND AFTER* (1986). See also Unger, *PASSION: AN ESSAY ON PERSONALITY* (1984).

33. See note 31 *supra*.

34. Americans may find it odd that I refer to *Professor Kennedy* rather than just Kennedy. For Americans, Kennedy is a person who happens to have a job as a professor at the Harvard Law School. His job is not an essential characteristic of him, either for himself or for other Americans. Using his title seems a bit formal. (See Kennedy, *Afterword: Psych-Social CLS: A Comment on the Cardozo Symposium* 6 *CARDOZO L.R.* 1013 (1985) for interesting comments by Kennedy on his own social status.)

In Japan it sounds odd to omit a person's title. Indeed a person's name is more likely to be omitted than his title. For Japanese, the title of professor is much more than a job description or a status achieved by an individual. A Japanese person who is a professor is part of a complex set of relations with colleagues and students which define what he essentially is. At the beginning of each academic year in Japan, there is an elaborate ceremony at which the parents of entering students hand their children over to the care of the faculty. The phrase, *in loco parentis*, is inadequate to describe the complex set of reciprocal duties which tie students and faculty together and which often last a lifetime. When a junior scholar joins a faculty, he is already known to that faculty because he is a former student of a senior faculty member, and when he joins, he joins for life. Although academic life in Japan is generally more contextually defined than business life, the fundamental terms of all social relations in Japan are "contextual" rather than "contractual." The idea of a "career" in the American sense is not easily understood in Japan. The individual in Japan who moves from company to company is seen as being too protean to be trusted. For more detail see C. Nakane, *JAPANESE SOCIETY* (1970) and R. J. Smith, *JAPANESE SOCIETY: TRADITION, SELF AND THE SOCIAL ORDER* (1983).

indifference of the Japanese to Western law. Western law and legal institutions were developed in response to problems of the self which the Japanese do not have.

Among major modern industrial societies, the United States and Japan seem to represent the extremes of individualism and contextualism. Most other societies seem to be located between these extremes with social roles being more important than they are in the United States but less important than they are in Japan.<sup>35</sup> It is also true that the United States and Japan seem to represent the extremes in terms of using law to structure society. In Japan, where social roles are constitutive of the self and thus cannot be changed without a fundamental change of the self, the requirements of those roles provide social order without much need for law. In the United States, where the individual can change social roles like he or she changes clothes, the artificial structure of law may be the only alternative to social chaos.

#### IV

The structure of the Japanese language reflects and reinforces the Japanese sense of the self as contextual.

By the age of three, children in the United States have generally mastered the distinction between "I" and "you," two personal pronouns that will serve them throughout life in all interactions with others. Furthermore, in the daily speech of the American child, these two terms are heavily favored over all other possible personal referents, such as name, kin term, and the like. The Japanese male child, for his part, by the age of six must master the use of at least six terms of self-reference; girls of that age will employ five. (For persons addressed or referred to, the situation is even more complicated, for both boys and girls regularly use a minimum of fourteen such terms.) Japanese children also use names, kin terms, and place names, but the really striking contrast with the American child's speech habits is that none of the possible options is clearly dominant among Japanese children. With overwhelming frequency they use no self-referent of any kind.<sup>36</sup>

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35. From the point of view of the rest of the world, the conception of the self prevalent in the United States may be less familiar than the contextual self of Japan.

"The Western conception of the person as a bounded, unique, more or less integrated motivational and cognitive universe, a dynamic center of awareness, emotion, judgment, and action organized into a distinctive whole and set contrastively both against other such wholes and against its social and natural background, is, however incorrigible it may seem to us, a rather peculiar idea within the context of the world's cultures." Geertz, *supra* note 15 at 225.

36. R. J. Smith *supra* note 32 at 78-79.

Furthermore, the various words which can be used to refer to oneself and others are usually words indicating social or physical place or distance. For example, a polite way to refer to someone standing next to oneself is *kochira*, literally, "in this direction." One generally uses completely different words to describe a given situation depending on the age, sex, and status of the speaker compared to the age, sex, and status of the person to whom one is speaking and/or the person about whom one is speaking. Anything which can be understood from the context of the speaker's act of speaking, including usually the "subject" of the sentence, is omitted. In sum, the use of language is so contextually conditioned that the idea of grammar as applied to spoken Japanese is often perceived by Japanese people as an importation from the West. To make sense of this idea, consider the contrast with English.

We can ask concerning any written or spoken English sentence whether it is grammatical independent of any occasion on which the sentence is actually used. There is in English a fairly clear distinction between the grammatical correctness of an English sentence and the appropriateness of uttering that sentence on a particular occasion. This distinction is much less clear in Japanese. The utility of the idea of grammar is limited for the Japanese because speaking "grammatically" in Japanese is a comparatively small part of speaking Japanese well, while for English, speaking "grammatically" is virtually equivalent to speaking English well.

For the Japanese, acts of speaking are often only component parts of acts of social behavior. For the hundreds of repeated actions in daily life, there is usually some one or a very few verbal formulas it is appropriate to utter on each such occasion. The constant formulaic use of language strongly reinforces the contextual sense of self and converts many acts of speaking into standard moves in social "games."<sup>37</sup>

Americans tend to regard the English language as something there to be learned by anybody, similar to geometry or engineering (English grammar) and similar to typing or skiing (the practice it takes to be able to speak a language). Because speaking Japanese is so inseparable from Japanese social

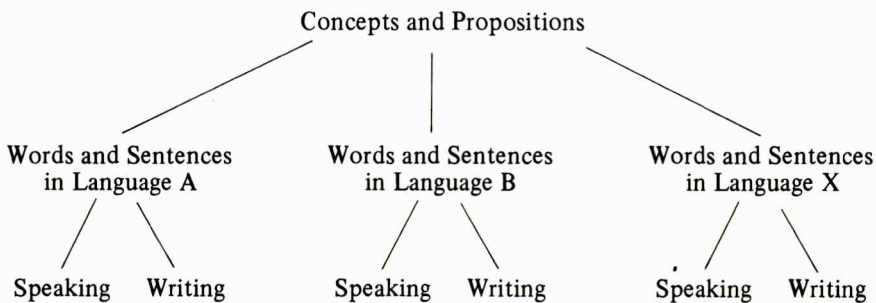
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37. The idea that language is no more than social behavior revolutionized twentieth century Western philosophy, but has always been taken for granted in Japan. The theories of knowledge, meaning, reference, and truth which made the idea of language as social behavior seem so revolutionary in the West never got started in Japan. The best account of the demise of those theories within Western philosophy is Rorty, *PHILOSOPHY AND THE MIRROR OF NATURE* (1979). See also Rorty, *CONSEQUENCES OF PRAGMATISM* (1982).

behavior, the Japanese regard speaking Japanese as Japanese-style behavior, similar to wearing a kimono. Foreigners who learn to speak Japanese fluently are seen by the Japanese as imitating Japanese behavior. Almost invariably the imitation is not a good one. A perfect imitation requires the speaker to have internalized Japanese attitudes, to have a contextual sense of self.

To an extraordinary degree, being Japanese is behaviorally defined. If a child whose parents are Japanese is taken by them out of Japan at age five and does not return to Japan until age fifteen, it is likely that he will always be regarded as not really Japanese by other Japanese. His physical movements, his tone of voice, and his choice of words will reveal foreign influences. Just his ability to speak another language sets him apart. Although others may admit the usefulness of being able to speak another language, that is, to imitate the behavior of foreigners, if he does it too well, he becomes potentially untrustworthy, more likely at any time to ignore the demands of the contextual self.<sup>38</sup>

The English language is seen by Americans as made up of words which can be put together into sentences. The same English sentence can be expressed in speech or in writing. The words and sentences of English, which can be expressed in speech or in writing, refer to concepts and propositions which are the meanings of those English words and sentences. Concepts and propositions can be expressed in English words and sentences or in the words and sentences of another language. Different languages are seen by Americans as different systems of words and sentences for the expression of the same concepts and propositions. In sum, we have the following hierarchy.



38. Even someone such as Prime Minister Nakasone comes under some suspicion just because he speaks English so well. Americans might also look askance at a presidential candidate fluent in French (or Japanese), but the reservations are much greater in Japan.

A sentence within a given language is an abstraction away from various acts of speaking and writing. For Westerners, the French sentence, "Toutes les hommes sont mortels," and the English sentence, "All men are mortal," express the same proposition. These sentences "mean the same thing," that is, express the same proposition, whether they are written or spoken. The major purpose of speaking or writing is the expression of concepts and propositions, that is, the expression of meaning. In the West, propositions were the inventions of Greek philosophers who wrote the first systematic treatises on logic. Logic was thought to be the study of the relationships between propositions, that is, the relationships between the meanings of sentences abstracted away from the sentences of any actual language. Logic seemed to the Greeks and to Westerners until the twentieth century a kind of knowledge superior to all other kinds of knowledge, prior to all experience, and true in all possible worlds. The notion that the study of language abstracted away from the behavior of speakers and writers and from any actual language provided answers to the most fundamental questions reached its zenith in Kant and in philosophical idealism. Philosophical idealism suggested that language in the abstracted form of concepts of time, space, causation, etc. actually determined the shape of the world of everyday experience. In this sense, Westerners saw themselves living *within* language instead of simply using it as a tool for communication as we do non-verbal gestures. The history of twentieth-century Western philosophy has been a history of the dismantling and abandonment of these reifications of acts of speaking and writing. Logic, for example, is no longer thought of as revealing the necessary structure of the world or as "the laws of thought." Instead various interesting logics are invented and used for a wide variety of purposes. Large scale theories of knowledge, meaning, reference, and truth are rapidly being abandoned as uninteresting topics of discussion, in the same way that many scholars in the eighteenth century turned their attention from theology to physics.<sup>39</sup>

From the Japanese point of view, the reification involved in this Western philosophical tradition which put mankind "inside" of his acts of speaking and writing was massive indeed. Why did the Japanese never take the same path? Part of the explanation may be that, for the Japanese, speaking and writing are two very different activities. Thus the first move up the

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39. See *supra* notes 10 and 37.

hierarchy illustrated above in which speaking and writing are seen as two ways of expressing the same "sentence" was never plausible to the Japanese, and so the subsequent move from "sentences" to "concepts and propositions" and "logic" was never made.

As we have seen, speaking Japanese is primarily face-to-face social behavior. Writing Japanese is more like painting. The heart of written Japanese is characters inherited from the Chinese. These characters or *kanji* are often literally pictures of the world rather than written symbols for spoken words. Simple pictures (木 stands for tree, 冬 stands for a winter) are combined into more a complex picture (柊 stands for holly). 家 for house, and 女 for woman, combine to 嫁 for married woman. These single characters can be combined into more complex compounds. 電 for electricity and 話 for conversation combine to 電話 for telephone. Simplify 家 to 宀, combine with 女 and add 全 (perfect) to get 安全 (safety). An important feature of Japanese which prevents the identification of speaking and writing is that when written Japanese is read aloud, any given character may be pronounced in a number of ways. Thus 家主 is read aloud as *yanushi* (house owner) while 家族 is read aloud as *kazoku* (family) and 家 by itself is read as *ie* (house). The reference of 家 to house remains the same, but the sound varies. Virtually all characters in Japanese have at least two pronunciations. In addition, Japanese is a language with relatively few sounds, so a single sound can stand for 20 or more different characters. For example, the sound "ko" can stand for 子 (child) 戸 (door) 古 (ancient) 去 (past) 庫 (warehouse) 固 (solid) 湖 (lake) 個 (individual) 己 (oneself) 故 (reason) 呼 (to send for or invite) 拠 (foundation) 弧 (arc) 枯 (to wither), etc. In sum, there is little clue in a sound of how that sound will look on the page and the character on the page never stands for a single sound.

There is a basic list compiled by the Ministry of Education of more than 1850 characters which children are expected to have learned by the time they finish high school. A very well-educated Japanese is expected to be able to write 5000 and recognize several thousand more. A good Japanese word processor contains 15,000 characters and a complete multi-volume encyclopedia of Japanese includes about 50,000 characters. A mark of a highly educated man or woman in Japan is not only his or her ability to write many characters, but to write them beautifully. Calligraphy is a major art form in Japan and many Japanese take lessons in drawing characters in

the same way that Americans take piano lessons. A poet's calligraphy is as important to his fame as his choice of words. Consider a line such as, for example, "When the strong wind blows, flowers fall." The manner in which the characters for *strong*, *wind*, and *flower* are drawn is very important to the creation of the poem. A Japanese poem exists on the page in the way that a Western poem does not. (Shakespeare's penmanship is not part of his poetry.)

Although there are more characters in Japanese than any person can ever master, the characters are not sufficient to write even the simplest spoken Japanese. Spoken Japanese is a highly inflected language with multiple verb endings and adjectives which conjugate as verbs do. These inflections are sounds which change the meanings of spoken words yet cannot be written in characters. Thus in addition to characters, any single page of written Japanese will use symbols drawn from two separate syllabaries, *katakana* and *hiragana*, each completely adequate to the sounds of spoken Japanese. *Katakana* is used primarily for words of foreign origin and for emphasis, and *hiragana* is used for native Japanese words, verb and adjective endings, etc.. In writing a line of poetry about strong winds and flowers, it is possible to substitute symbols from one of the two phonetic syllabaries for a character. A poet might make choose *hiragana* if he wanted to lengthen and soften a part of the poem (characters are usually more vivid on the page than *hiragana*). Even in a newspaper article, the choice of characters or *hiragana* or *katakana* affects the way the article hits the eye, although the spoken sound does not change if the article is read aloud. A transcription which altered these choices would not be regarded as a true copy of the article.

The separation between writing and speaking is further accentuated by the fact that many common words in spoken Japanese are seldom used in written Japanese and vice versa. Spoken Japanese is also very different from place to place in Japan (similar to dialects in various parts of England one hundred years ago). The written language is so different from spoken Japanese that it lacks the power to freeze the form of the spoken language, which changes rapidly from decade to decade.<sup>40</sup>

In sum, Japanese tend to regard speaking and writing not as two

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40. I am grateful to Professor Shigeki Tanaka and to Keiko Koizumi for suggesting to me how different writing and speaking are for the Japanese. The line of poetry discussed in the text was used by Keiko Koizumi to illustrate that point to me. See Reischauer, *supra* note 16 at 380-400 for a brief description of the Japanese language.

different ways of expressing the same “words and sentences,” but as two very different ways of communicating. The Western merging of these two activities into the activity of “expressing oneself in a language” and then the merging of “expressing oneself in language A” and “expressing oneself in language B” into the idea of “expressing concepts and propositions” seems to the Japanese an extraordinary reification of ordinary acts of speaking and writing.

The central place of theory in the West seems, from the Japanese perspective, to be a consequence of this extraordinary reification of ordinary acts of speaking and writing. A *theory* is a set of *propositions*. A *true* theory is made up of *true* propositions. The distinction between true propositions and false ones is based on some relationship between true propositions and *reality*. (The exact nature of that relationship has been a difficult problem for Western philosophy.) The verbal articulate man who asserts true propositions about reality is the model of an educated Western man. The giants of Western science and philosophy are considered giants because they said what was true. The prophets of the Bible were celebrated because they expressed God’s vision of the world. The scientists whom we esteem are like prophets in that they say what the world is like from God’s point of view, that is, they say what is true. The Western idea of truth is essentially dependent on the Western idea of an omniscient God. The *true* view of the world is the world from God’s point of view. Prophets, scientists, and philosophers are valued to the degree that they have said what was “objectively” true, that is, have described the world from God’s point of view.<sup>41</sup>

From the Japanese point of view, propositions and theories are the results of reifications. Because the Japanese never reified propositions, theories, or the reality about which theories were said to be true, they have been comparatively uninterested in large-scale theorizing. What they have cared about is the appropriateness of the behavior of particular people in particular contexts. Sometimes the behavior involves speaking, but the Japanese do not attach as much importance to saying things as Westerners do to saying things. They believe that men and women think and feel many

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41. From the Japanese point of view, Dworkin is right that the issue of “objectivity” is a non-issue. Dworkin, *A MATTER OF PRINCIPLE* 167-177 (1985). Japanese academics sometimes have trouble understanding Dworkin’s argument because the view that Dworkin is opposing makes no sense to them.



things that cannot be expressed in words. We Westerners, especially educated English speakers, tend to feel that our language is so rich and powerful that if we cannot express ourselves in it, it is our fault. With the examples of Shakespeare and Milton before us, we tend to believe that the English language is adequate to express any thoughts or emotions we might have.

In contrast, the Japanese regard themselves as larger than their language. Every Japanese person believes that his or her deepest thoughts and most powerful emotions are beyond the power of either speaking or writing to express. Often it may be only other behavior, such as a sigh, or the placement of flowers in a vase, which can adequately express his or her thoughts and feelings. In such a case, the meaning of such behavior cannot be expressed in words. We in the West tend to believe that language determines thought. We believe that if the meaning of some human act cannot be put into words, then that act has no meaning or sense; it is literally nonsensical. We seem to believe ourselves to be trapped inside of our language.<sup>42</sup> From the Japanese point of view, it seems obvious that human beings experience much more than they understand and understand much more than they can articulate in speech or in writing. Both speaking and writing are actions no different from running or eating. "The meaning" in the Western sense of what is said or written is only one part and often not the most important part of acts of speaking or writing.

The Japanese do not especially value the truthsayer. They do not value especially the sayer or the speaker at all. There is no bias as there is in the West for valuing the speaker because he might speak the truth. Children are not taught that voluntary speaking is an especially good thing.<sup>43</sup> The articulate verbal personality is thought of by the Japanese as probably a bit shallow, because the deepest emotions cannot be expressed in mere

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42. See, e.g., A. Hutchinson, *From Cultural Construction to Historical Deconstruction*, 94 YALE LAW JOURNAL 209 at 236 (1984). "Language is the silent police of the mind. Moreover, we have only language to rely on to escape language."

For the Japanese, this seems an odd thing to say. A language is not a set of goggles locked around our head through which we *must* look at things; it is more similar to a musical instrument ready at hand that we can choose to play or not to play, although the language we choose to play (English or Japanese or Language X) will limit the sounds we can make, and the thoughts and emotions we can express. Some thoughts and emotions cannot be expressed in any language.

43. Three old Japanese proverbs are, "Silence is golden," "All trouble comes from the mouth," and "Words are the root of all evil." When children in Japan try to justify their behavior with a verbal explanation, they are sometimes reprimanded with the phrase, "Rikutsu-o yuu-na," which translates literally as "Don't talk about logic." Mizutani & Mizutani, *NIHONGO NOTES* 3 at 21 (1980).

words. Words, and speaking, and language are simply not valued the way they are in the West.

From the Japanese point of view, the Western obsession with speech, and with truth and true theory, often seem to get in the way of group harmony; such obsessions are very threatening to the contextual self. One Japanese friend of mine, a philosophy professor, observed that the Japanese have little interest in abstract theory because theories are most useful to people who like to argue. People who do not like to argue have no use for theory.

Given all of the above, it is no wonder that the Japanese do not embrace the elaborate traditions of textual analysis and the complicated linguistic structures of Western law as the primary means of ordering Japanese society. Unlike many non-Western countries, Japan has managed to preserve its traditional means of social ordering, especially the contextual sense of self, and so has not needed to rely as heavily on Western law and legal institutions.

## V

We have seen that from the point of view of the Japanese, Western conceptions of the individual self and Western conceptions of language seem to be the result of the reification of religious ideas and aspects of the activities of speaking and writing. The appeal of Western law and legal institutions seems to rest on conceptions of the self and of language which the Japanese do not share. It is interesting that contemporary Western philosophers are now engaged in the task of dismantling the top-heavy theoretical structures which have characterized Western thought.<sup>44</sup>

The dense network of social relationships which constitute Japanese society and the Japanese person seems a survival from mankind's past preserved by an extraordinary history of isolation into the modern age. Japanese society seems to bracket the history of the West, giving us a window into the past to a period before the extraordinary reifications of self and language that have dominated Western thought since Plato, and also a view of the future to show us what a modern industrial society which does not rely on those reifications might be like.

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Japanese generally prefer non-verbal over verbal communication whenever possible. See Christopher, *THE JAPANESE MIND* (1983) at 41-42.

44. See, e.g., Rorty, *Philosophy as a Kind of Writing: An Essay on Derrida* CONSEQUENCES OF PRAGMATISM 90 (1982). See also *supra* notes 10 and 37.