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To the memory of Professor Karin Tomala
Whom we lost for ever

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LEON WOLFF

Japanese Law Goes Pop

Abstract

This article explores the extent to which the growth in law-themed popular culture since the turn of the century, especially television shows, signals a shift in popular attitudes towards law. Four decades of research into Japanese legal consciousness has called into question the extent to which there is a Japanese cultural aversion to law, with most scholars expressing doubt over whether culture properly explains the comparatively low litigation rates in Japan compared to other industrialised nations. This article argues that popular culture, although not without its limitations, offers new clues into how legal consciousness is developing and changing in 21st-century Japan. The article concludes that popular culture paints a picture of a greater readiness by Japanese people to engage with law, although scepticism remains about the law's promise to achieve justice and social solidarity.

Introduction

Is Japanese law going "pop"?[1] Since the turn of the century, Japanese prime-time television has dedicated more time to legal themes and characters. Lawyers, overwhelmingly women, are figuring more prominently as heroes in both dramatic and comedic television series;[2] court-room battles are featuring as the setting for plot developments;[3] and practising lawyers are becoming the new celebrities on light-entertainment talk-shows. For example, in 2005–2007, network television screened at least six series about the professional and personal lives of lawyers: "Bengoshi no Kuzu" (Trash Lawyers) (TBS, 2006), "Rikon Bengoshi II" (Divorce Lawyer) (Fuji Television, 2005), "Machiben" (Small Town Lawyer) (NHK, 2006), "Shichinin no Onna Bengoshi" (Seven Female Lawyers) (TV Asahi, 2006), "Watashitachi no Kyoukasho" (My Textbook) (Fuji Television, 2007) and "Shimane no Bengoshi" (The Lawyer in Shimane) (NHK, 2007).[4] Other recent television series, such as

[1] Richard K Sherwin, *When Law Goes Pop*, Chicago and London: University of Chicago Press, 2000. This article borrows from Sherwin's evocative book title, using "pop" to indicate both "popular culture" and "explosion" – that is, the noticeably greater interest in law by Japanese creative industries, especially the television industry. Sherwin himself, however, was more concerned with the opposite trend – the influence of popular culture on American legal practice and its resulting corrosive impact on the legitimacy and authority of law.

[2] Hisao Nakamura, 'Dorama «Shimane no Bengoshi»', *Jiyū to Seigi* [Liberty and Justice], Vol. 58, No. 7, July 2007, pp. 6–7.

[3] Hiroshi Ishikawa, 'Dorama «Shiroi Kyoutou» ni Torikunde', *Jiyū to Seigi* [Liberty and Justice],Vol. 55 No. 9, September 2004, pp. 5–7.

[4] Nakamura, 'Dorama…', p. 6.

the 2004 medical drama "Shiroi Kyouto" (The Tall White Tower) (Fuji Television), although not set in law offices nonetheless deployed courtroom scenes for dramatic effect.[5] Even non-scripted television is invoking law for entertainment value. Consider, for example, the talk shows "Za Jajji" (The Judge) (Fuji Television, 2001–2004) and "Gyouretsu no Dekiru Houristsu Soudansho" (The Law Firm with the Long Queue) (Nihon Television, 2002–present), both featuring lawyers who give legal advice on actual or fictional cases respectively.

All this is not to suggest that law is an entirely new thematic preoccupation in Japanese prime-time television, or that it is saturating the airwaves to the exclusion of more conventional work-place romantic comedies, coming-of-age stories or family sagas. For example, "Shichinin no Onna Bengoshi" (Seven Female Lawyers), which has screened two series this century (Asahi Television, 2006 and 2008), is a remake of a 1990s show which screened three series (winter 1991, autumn 1991 and 1993) and a two-hour special (1997). Similarly, between April and October 1996, the government broadcaster NHK screened "Himawari" (Sunflower), its morning drama serial in the 8:15 am–8:30 am Monday to Saturday time-slot, about a law student who passes the bar examination and enters the Practical Legal Training Institute.[6] Equally, the rise in law-themed television shows in Japan in the last decade is not approximating the levels observable in the United States, where "lawyers and the like are over-represented occupations on prime-time TV".[7]

But a trend towards a greater embrace of law by Japanese popular culture, especially network television, *is* discernible – if not a tsunami, then at least a strong under-current. And this merits analysis. As Carillo has argued, it is not enough to merely identify *that* there is a link between law and popular culture; scholars need to explain *how* that link operates in law and society.[8] Such is the purpose of this article – to explore the socio-legal significance of this newfound fascination with the legal players, institutions and processes by the television industry in Japan. In particular, this article investigates whether the silver screen's burgeoning appetite for law indicates a broader shift towards a more favourable outlook about law and litigation among the general population.

By deploying popular culture to explicate Japanese legal consciousness, this article applies a novel analytical method to a long-standing research question in the socio-legal and comparative law literature on Japan. For over 40 years, scholars have debated the

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[5] Ishikawa, 'Dorama…', pp. 5–7.

[6] Anonymous, 'Heroin-wa Bengoshi no Tamago' [Heroin as an Egg for Lawyers], *Hōgaku Seminā* [Seminar of Law], Vol. 494, 1996, p. 127.

[7] Anthony Chase, 'Lawyers and Popular Culture: A Review of Mass Media Portrayals of American Attorneys', *American Bar Foundation Research Journal*, Vol. 28, 1986, p. 281. For a more recent and comprehensive review of the corpus of law-related film and television series in the United States, see Naomi Mezey and Mark C. Niles, 'Screening the Law: Ideology and Law in American Popular Culture', *Colombia Journal of Law & Arts*, Vol. 28, 1986, pp. 91–186. Even compared to other western nations, the United States has a particularly acute pre-occupation with law in popular culture. For example, in one survey of 190 films featuring courtroom scenes, 135 were American, whereas 34 were English and seven were Australian: see Kathy Laster with Krista Breckweg and John King, *The Drama of the Courtroom*, Sydney: Federation Press, 2000.

[8] Jo Carrillo, 'Links and Choices: Popular Legal Culture in the Work of Lawrence M. Friedman', *Southern California Interdisciplinary Law Journal*, Vol. 17, 2011, p. 3.

extent to which law matters in Japan. Deploying a wide range of empirical approaches and analytical techniques, including institutional history,[9] rational choice theory and regression analysis,[10] ethnography,[11] narrative analysis,[12] communitarianism[13] and neo-institutionalism,[14] successive generations of Japanese and non-Japanese experts, both in law and in other disciplines, have sought to explain whether or not – and, if so, how – legal rules, legal processes, legal professionals and legal actors play important roles in structuring and ordering society. This study is the first in the literature to address – or, more precisely, re-visit – the same question using popular culture as both a source of data (specifically, television shows) and as a research method (namely, a narrative analysis of the themes and concerns in these media texts).

This novelty carries real risks. In both the disciplines of Japanese Studies[15] and Law,[16] popular culture remains on the margins of scholarship. In Japanese Studies, for example, the bulk of scholarly interest, at least until the lost decade of economic stagnation in the 1990s, was on Japan's "hard" power: its economic might in the production and export of cars, electronics and other manufactured products.[17] In Law, "huge portions of legal scholarship… are devoted to the routine tasks of lawyers,"[18] premised on the assumption that law is a closed system of formal rules[19] with an "immanent rationality"[20] and its own "structure, substantive content, procedure and tradition".[21] Where law and popular culture

[9] John Owen Haley, *The Spirit of Japanese Law*, Athens: University of Georgia Press, 1998.

[10] J. Mark Ramseyer and Minoru Nakazato, *Japanese Law: An Economic Approach*, Boston: University of Chicago Press, 1999.

[11] David T Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan*, Oxford and New York: Oxford University Press, 2002.

[12] Catherine Burns, *Sexual Violence and the Law in Japan*, London: Routledge Curzon, 2005.

[13] Takao Tanase (translated by Luke Nottage and Leon Wolff), *Community and the Law: A Critical Reassessment of American Liberalism and Japanese Modernity*, Cheltenham and Northampton: Edward Elgar, 2010.

[14] Mark West, *Law in Everyday Japan: Sex, Sumo, Suicide, and Statute*, Boston: University of Chicago Press, 2005.

[15] Matthew Allen and Rumi Sakamoto, 'Introduction: Inside-out Japan? Popular Culture and Globalization in the Context of Japan', in *Popular Culture, Globalization and Japan*, Matthew Allen and Rumi Sakamoto (eds.), London and New York: Rouledge, 2006, p. 4; Tim Craig, 'Introduction', in *Japan Pop! Inside the World of Japanese Popular Culture*, Timothy J. Craig (ed.), Armonk, New York and London: ME Sharp, 2000, p. 5.

[16] Jo Carrillo, 'Links and Choices: Popular Legal Culture in the Work of Lawrence M. Friedman', *Southern California Interdisciplinary Law Journal*, Vol. 17, 2011, pp. 1–3; Steve Greenfield and Guy Osborn, 'Law, Legal Education and Popular Culture', in *Readings in Law and Popular Culture*, Steve Greenfield and Guy Osborn (eds.), London and New York: Routledge, 2006, pp. 1–12.

[17] Craig, 'Introduction…', p. 5.

[18] Richard A. Epstein, 'Let «The Fundamental Things Apply»: Necessary and Contingent Truths in Legal Scholarship', *Harvard Law Review*, Vol. 115, 2002, p. 1288.

[19] Ian Duncanson, 'Degrees of Law: Interdisciplinarity in the Law Discipline', *Griffith Law Review*, Vol. 5, 1996, pp. 78–79.

[20] W. Bradley Wendell, 'Explanation in Legal Scholarship: The Inferential Structure of Doctrinal Legal Analysis', *Cornell Law Review*, Vol. 96, 2011, p. 1073.

[21] Alan M. Dershowitz, 'The Interdisciplinary Study of Law: A Dedicatory Note on the Founding of the NILR', *Northwestern Interdisciplinary Law Review*, Vol. 1, No. 1, 2008, p. 4.

do collide, at best, popular culture gets the law wrong;[22] at worst, it corrodes the legitimacy of law with its alternative "gratifying-based" logic that undermines the finality of judgement and the ability to pursue justice.[23]

These concerns, however, are relatively easy to address. First, the collapse in Japan's "hard" economic prowess has shifted attention towards Japan's "soft" cultural capital. Karaoke is now enjoyed world-wide; anime, such as the films of Hayao Miyazaki, are screened globally; character brands such as Hello Kitty and Pokemon are universally familiar; video games such as *Street Fighter* are played on Sony Play-Stations or Nintendo devices in living rooms everywhere; Japanese pop-songs and television dramas attract fans from across East Asia; and manga are read in translation the world over.[24] Japanese Studies scholars are beginning to take these trends seriously. Indeed, some are even advocating that the growing appeal of Japan's cultural products should serve a geopolitical purpose, underpinning Japan's regional diplomacy[25] and securing its continued relevance in international affairs.[26] Second, more and more legal scholars are exploring law in its social context. As Dershowitz puts it, "[l]aw without context is rules without meaning:"[27]

> Law, by its very nature, must be interdisciplinary. It is impossible to understand a legal system without recourse to history, psychology, economics, philosophy, and other academic disciplines. Law provides the structure for decision-making, but the structure is dependent on substantive rules that reflect the deeper concerns of a society. It has long been debated whether the structure of law implicitly contains values or whether these values come entirely from the substantive laws. Whichever view one takes on this matter, the importance of disciplines outside of the law cannot be over-stated.[28]

At any rate, even if the wider discipline of law is still engaged in a tug-of-war between advocates of doctrinal and socio-legal research orientations,[29] the Japanese law research community overwhelmingly accepts (and engages in) contextual scholarship. After all, the question of litigiousness – or the "fondness" for law[30] – is a socio-cultural question: it concerns a society's appetite for law; its preparedness to invoke formal law to articulate claims, defend rights and resolve disputes. As such, it is a socio-legal, not a doctrinal, issue.

The potential methodological and theoretical risks of using Japanese popular culture to excavate possible attitudinal changes towards law in Japan, however, present deeper challenges. The methodological problem involves using works of fiction to investigate

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[22] Carrillo, 'Links and Choices…', p. 1.

[23] Sherwin, *When Law Goes Pop*, p. 12.

[24] Allen and Sakamoto, 'Introduction…', p. 2; Craig, 'Introduction…', pp. 4–5.

[25] Kazuo Ogura, 'Kokusai-zai no Shin no Kachi Kousou Sekai ni Hasshin Shoo' [Let's Export the True Value of International Property], *Chuuou Kouron*, Vol. 1261, October 2004, pp. 210–217.

[26] Tamotsu Aoki, "Kuuru Pawaa Kokka Nihon no Souzou o!" [Re-imaging Japan as a Cool Power State], *Chuuou Kouron*, Vol. 1261, October 2004, pp. 198–209.

[27] Dershowitz, 'The Interdisciplinary Study of Law…', p. 4.

[28] Ibid., p. 3.

[29] Michael Salter and Julie Mason, *Writing Law Dissertations: An Introduction to the Conduct of Legal Research*, Harlow: Pearson Education, 2007, pp. 35–37.

[30] Kenneth Hayne, 'Restricting Litigiousness', *Australian Law Journal*, Vol. 78, 2004, p. 381.

socio-legal reality. The theoretical problem revolves around resurrecting culture as an explanatory variable in Japanese law and society when decades of socio-legal research have discounted, or at least expressed reservations over, its explanatory significance. These challenges merit more nuanced responses.

First, this article contends that popular culture is a witness to trends in a society; it is a window, however, not a mirror.[31] Although primarily works of imagination which engage the aesthetic and emotional senses of the audience,[32] they are only consumed if they resonate with the general population. It is this verisimilitude[33] – or truth-like quality – that strongly suggests that popular culture, as sub-art, parallels developments in society[34] and thereby offers clues to mass mentality in a society.[35]

Second, this article shares concerns about rehabilitating cultural arguments about a peculiarly Japanese aversion to law.[36] Proponents of a cultural theory of Japanese litigiousness depict Japanese society as inherently communitarian, privileging the group over the individual and concrete social relations over abstract individual rights. This outlook is attributable to Japan's long history of geographic isolation, its ethnic homogeneity and its religious thought.[37] Some champion this as ensuring a more socially cohesive and humane alternative to the Western-style obsession with aggressive rights-assertion;[38] others censure it for its pre-modernity[39] and illiberalism.[40] Critics, however, dismiss this cultural explanation as perpetuating a "persistent myth".[41] Rightly, they criticise cultural explanations for stereotyping,[42] essentialising[43] and time-locking[44] Japanese culture to its religious, historical and geographical conditions.

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[31] Michael Asimov and Shannon Mader, *Law and Popular Culture: A Course Book*, New York: Peter Lang, 2004, p. 6; Lawrence Friedman, "Law, Lawyers and Popular Culture", *Yale Law Journal*, Vol. 98, 1989, pp. 1587–1588.

[32] Asimov and Mader, *Law and Popular Culture*…, pp. 11–12.

[33] Ibidem.

[34] Friedman, 'Law, Lawyers and Popular Culture', p. 1589.

[35] Allen and Sakamoto, 'Introduction…', p. 4.

[36] Kenneth L. Port, 'The Case for Teaching Japanese Law at American Law Schools', *Depaul Law Review*, Vol. 43, 1994, pp. 659–670.

[37] Chin Kim and Craig M. Lawson, 'The Law of the Subtle Mind: The Traditional Japanese Conception of Law', *International & Comparative Law Quarterly*, Vol. 28, 1979, p. 461.

[38] Tanase, *Community and the Law*…

[39] Takeyoshi Kawashima, 'Dispute Resolution in Contemporary Japan', in *Law in Japan: The Legal Order in a Changing Society*, Arthur von Mehren (ed.), Harvard University Press, 1963, p. 41.

[40] Tatsuo Inoue, 'The Poverty of Rights-Blind Communality: Looking Through the Window of Japan', 1993, *Brigham Young University Law Review*, p. 517.

[41] Veronica L, Taylor, 'Continuing Transactions and Persistent Myths: Contracts in Contemporary Japan', *Melbourne University Law Review*, Vol. 19, 1993, pp. 352, 355, 357–358. See also John O Haley, 'The Myth of the Reluctant Litigant', *Journal of Japanese Studies*, Vol. 4, 1978, p. 359.

[42] James K. Sebenius, 'Caveats for Cross-Border Negotiators', *Negotiation Journal*, Vol. 18, No. 2, 2002, p. 121.

[43] Allen and Sakamoto, 'Introduction…', p. 5.

[44] Robert J. Janosik, 'Rethinking the Culture-Negotiation Link', *Negotiation Journal*, Vol. 3, No. 4, 1987, p. 385.

This article, however, does not seek to re-introduce culture – that is, "the universe of knowledge, behaviors, beliefs, and attitudes that circulate in a particular society"[45] – through the back door. Instead, it seeks to engage with Japanese popular culture to uncover the range of Japanese *emotions*, rather than Japanese *normative perspectives*, about the law. These emotions, this article contends, are complex, contradictory and fluid; yet an analysis of popular culture can discern some patterns among the diversity. And emotions matter. Despite the tendency in Western jurisprudence to dichotomise law and emotion,[46] Alfred North Whitehead had the foresight to question this false divide as far back as 1954: "Intellect is to emotion as our clothes are to our body; we could not very well have a civilised life without clothes, but we would be in a poor way if we had only clothes without bodies".[47] In his work on emotional organisations, Fineman builds on this crucial insight.[48] "There are bland portraits of organizations,"[49] he writes, in what could easily apply to most positivist accounts of law. Just as study of workplaces focus on governance structures, hierarchies, resources and processes, law also focuses on substantive rules, procedures and outcomes. In organisational theory, real people are abstracted ('human resources', 'human capital'); they are boxed and categorised into 'variables'; and they are subsumed under larger categories such as entities, firms, production and profits.[50] So, too, law re-casts people into 'parties' to legal relationships; structures human interactions into 'issues' or 'problems'; and subjugates individuals under larger legal concerns such as 'the rule of law' and 'interests of justice'. This impoverishes understanding. After all, just as the workplace is a site rich with emotions,[51] so too is the law.

Finally, the time is ripe to re-open the debate about litigiousness in Japan. And fresh tools are needed to breathe new life into the scholarly conversation. Commentators note that litigation rates have recently been changing. Government reforms to the civil justice system are investing more legal capacity in the system by introducing post-graduate legal education and more generous pass rates to ensure more lawyers can serve the legal needs of business and the community. Large commercial law firms are taking root in large urban centres. Administrative law statutes have tightened procedural rules; public participation in the criminal justice system is being entrenched with a new system of lay judges; and a new corporate law code has been drafted. The Japanese government proclaims this as the 'legalization' of Japanese society.[52] Scholars nod their agreement. Not only does law "matter",

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[45] Asimov and Mader, *Law and Popular Culture*…, p. 3.

[46] In a literature too voluminous to cite, critical theorists – from feminists and critical race scholars to postmodernists – have sharply rebuked law's claims to neutrality and objectivity. The criticism is that this cloaks the law in a false universality when, in fact, it privileges the interests and world-view of dominant groups in society. See, e.g., Rosemary J Coombe, 'Context, Tradition, and Convention: The Politics of Constructing Legal Cultures', *APLA Newsletter*, Vol. 13, 1990, p. 15.

[47] Lucien Price, *Dalogues with Alfred North Whitehead,* Little Brown and Company, 1954, p. 231.

[48] Stephen Fineman, *Understanding Emotion at Work*, Sage, 1993.

[49] Ibid., p. 1.

[50] Ibidem.

[51] Ibid., pp. 1–2.

[52] Justice System Reform Council, 'Recommendations of the Justice System Reform Council: For a Justice System to Support Japan in the 21st Century' (2001) (available at http://www.kantei.go.jp/foreign/judiciary/2001/0612report.html).

they now write; it matters "even more".[53] But why? Is it because of the 'Americanisation' of Japanese society?[54] Institutional reform to legal institutions as a result of government policy?[55] The collapse of community and the ideological turn to liberal law?[56] There is no consensus.

This article argues that a historical survey of popular culture about law in Japan evinces clear evidence of a growing popular interest in law. From portrayals of lawyers and the legal system that were sharply negative in the late 20th century, the narrative has significantly warmed. In the 21st century, the law is depicted as central, not marginal, to everyday life; a career as a lawyer is depicted as a worthy, even a transformational, career destination; and litigation is seen as an effective way to correct injustice. At the same time, there is a noticeable counter-narrative that expresses reservations about the possibility of law to achieve justice, and re-asserts the power of common sense over formal rights as the preferred means to repair fractured relationships. All this points to a measured embrace of law in Japan – one that welcomes the role of formal law to eradicate social injustice, but also a healthy scepticism that law should not necessarily be the first point of call in a dispute.

The litigiousness debate

The issue of Japanese litigiousness commands a significant corpus of comparative and socio-legal research attention. This is usually alongside the equally voluminous scholarship on legal consciousness in the United States,[57] no doubt because the conventional wisdom is that Japan and the United States represent the opposite extreme ends of the litigiousness scale. Thus, America represents excessive legalism:[58] "too much law, too many lawyers, and too little justice"[59] – a "law-drenched" society[60] where litigation is an "epidemic of bubonic plague proportions;"[61] where citizens are "gorged" on rights;[62] and where the impulse to sue is the new "secular religion". The story on Japan is the opposite: The Japanese are "reluctant" to sue;[63] ambivalent about rights because of their 'Western'

[53] Tom Ginsburg & Glenn Hoetker, 'The Unreluctant Litigant? An Empirical Analysis of Japan's Turn to Litigation', *Journal of Legal Studies*, Vol. 35, 2006, p. 31; R Daniel Keleman and Eric C. Sibbitt, 'The Americanization of Japanese Law', *University of Pennsylvania Journal of International Economic Law*, Vol. 23, 2002, p. 269; Curtis Milhaupt and Mark West, 'Law's Dominion and the Market for Legal Elites in Japan', *Law and Policy in International Business*, Vol. 23, No. 2, 2003, p. 451.

[54] Keleman and Sibbitt, 'The Americanization of Japanese Law', p. 269.

[55] Ginsburg and Hoetker, 'The Unreluctant Litigant?…', p. 31.

[56] Tanase, *Community and the Law…*

[57] Eric Feldman, *The Ritual of Rights in Japan: Law, Society, and Health Policy*, Cambridge: Cambridge University Press, 2000, pp. 1–15.

[58] Deborah L. Rhode, 'Legal Scholarship', *Harvard Law Review*, Vol. 155, pp. 1327, 1350.

[59] Ibid., p. 1348.

[60] Jethro Lieberman, *The Litigious Society*, New York: Basic Books, 1981, p. xi.

[61] Paul W. McCracken, 'The Big Domestic Issues: Slow Growth', *Wall St Journal*, 4 October 1991, p. A14.

[62] Feldman, *The Ritual of Rights in Japan*, p. 2.

[63] Kawashima, 'Dispute Resolution…', p. 41.

roots;[64] prefer informal resolution of their disputes;[65] and, "in a word, do not like law".[66] Despite significant criticism,[67] these impressions endure. (By contrast, research on litigiousness in other countries is relatively slim. The question of Australian litigiousness, for example, despite a surge of attention[68] at the turn of the century, when tort law reform was high on the political agenda across the country, has not endured as a site of scholarly enquiry.[69])

Litigiousness has important policy implications. After all, litigiousness – or a society's willingness[70] to embrace the law to assert rights and resolve disputes[71] – raises important theoretical and policy issues. As a starting point, most agree that a robust civil justice system is a precondition to upholding fundamental values shared by most modern liberal orders. Politically, it is essential to the rule of law: it defends freedom and democracy while, at the same time, it directs optimum behaviour[72] in increasingly complex societies.[73] Socially, the ability to invoke the law for rights assertion is an "important symbol of active citizenship".[74] Economically, it creates stability and predictability in defining and enforcing

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[64] Kim and Lawson, 'The Law of the Subtle Mind…', p. 461.

[65] Port, "The Case for Teaching Japanese Law…", pp. 659–670.

[66] Yoshiyuki Noda, *Introduction to Japanese Law* (trans. Anthony H Angelo), Tokyo: University of Tokyo Press, 1976, p. 160.

[67] For criticisms of excessive legalism in the United States, see Marc Galanter, 'Real World Torts: An Antidote to Anecdote', *Maryland Law Review*, Vol. 55, 1993, pp. 1093, 1104–1106; Robert L Nelson, 'Ideology, Scholarship, and Sociolegal Change: Lessons from Galanter and the 'Litigation Crisis'', *Law and Society Review*, Vol. 21, No. 5, 1998, p. 677. For criticisms of lack of legal consciousness in Japan, see Haley, 'The Myth of the Reluctant Litigant', p. 359; Ramseyer and Nakazato, 'The Rational Litigant…', p. 263; West, *Law in Everyday Japan*...; Frank K. Upham, *Law and Social Change in Postwar Japan*, Boston: Harvard University Press, 1987.

[68] Sharyn Roach Anleu and Wilfred Prest, 'Litigation: Historical and Contemporary Dimensions' in *Litigation: Past and Present*, Sharyn Roach Anleu and Wilfred Prest (eds.), Sydney: UNSW Press, 2004, pp. 2–23; Peter Cane, 'Reforming Tort Law in Australia: A Personal Perspective', *Melbourne University Law Review*, Vol. 27, 2003, p. 649; Caspar Conde, 'The Foresight Saga: Risk, Litigiousness and Negligence Law Reforms', *Policy*, Vol. 20, No. 3, 2004, p. 28; Rob Davies, 'Exploring the Litigation Explosion Myth', *Plaintiff*, Vol. 49, 2002, p. 4; Rob Davies, 'The Tort Law Crisis', *University of New South Wales Law Journal*, Vol. 25, No. 3, p. 865; Richard Refshauge, 'Litigious Society's Effect on the Public Sector', *Canberra Bulletin of Public Administration*, Vol. 105, 2002, p. 1; Ted Wright and Angela Melville, 'Hey, but Who's Counting? The Metrics and Politics of Trends in Civil Litigation' in *Litigation: Past and Present*, Sharyn Roach Anleu and Wilfred Prest (eds.), UNSW Press, 2004, pp. 96–121.

[69] See, for example, Kylie Burns, 'Distorting the Law: Politics, Media and the Litigation Crisis: An Australian Perspective', *Torts Law Journal*, Vol. 15, 2007, p. 195; Bobette Wolski, 'Reform of the Civil Justice System Two Decades Past – Implications for the Legal Profession and for Law Teachers', *Bond Law Review*, Vol. 21, No. 3, 2009. pp. 192–195.

[70] Hayne, 'Restricting Litigiousness', p. 381.

[71] John O. Haley, 'Litigation in Japan: A New Look at Old Problems', *Williamette Journal of International Law & Dispute Resolution*, Vol. 10, 2002, p. 121.

[72] Ibidem.

[73] Anleu and Prest, 'Litigation', p. 2; Kawashima, 'Dispute Resolution…', p. 41.

[74] Margaret Thornton, 'Citizenship, Race and Adjudication', in *Judicial Power, Democracy and Legal Positivism*, Tom Campbell and Jeffrey Goldsworthy (eds.), Dartmouth: Ashgate, 2000, p. 337.

bargains and property rights, imperative for modern-day market-led economies.[75] However, *too much* – or *too little* – litigation can risk the political, social and economic benefits of civil justice.[76] This explains the emphasis in the litigiousness literature on the jurisdictions of the United States and Japan. Thus, in the United States the concern is whether Americans sue *too readily*. In Japan, it is that Japanese people are *too reluctant* to invoke the law to protect their rights.[77]

So what is the basis for concern about the possible under-utilisation of the legal system by the Japanese? Consider the data. Currently, 30,516 lawyers serve a population of 127 million people, about 1 for every 4,000 citizens.[78] Nearly 30% of Japan's court districts have one lawyer (or none) practising in the region. Large commercial law firms have (until recently) been uncommon.[79] With so few lawyers, litigation rates are very low. In the mid-1990s, for example, there were only 9.3 cases per 1000 people in Japan compared to 123.2 cases in Germany, 74.5 in the United States, 64.4 in the United Kingdom and 40.3 in France.[80] Even by Asian standards, this rate is low. Based on statistics for new civil cases filed for trial in district courts in Japan, South Korea and Taiwan in 1995–1996, South Korea had five times as many filings and Taiwan about twice as many.[81] Some commentators are claiming that litigation rates have steadily been increasing, especially since the beginning of the 21st century.[82] However, others explain that most of the increase is attributable to the surge in expedited debt recovery cases following the bursting of the economic bubble; ordinary contested cases – a better barometer of litigiousness – still remain at relatively low levels.[83] Why is litigation so much lower in Japan compared to other modern democratic economies? One of the more popular explanations is the cultural model of Japanese civil justice. This model attributes low levels of litigation to Japanese national traits of harmony and groupism.[84] As far back as the 1960s, the Japanese socio-legal scholar Takeyoshi Kawashima argued that Japanese 'pre-modern' culture meant a low demand for legal professional services. As Japan modernises, Kawashima predicted, more Japanese would eventually accept litigation as a means to resolve their disputes.[85] Several scholars have endorsed Kawashima's thesis, although with different normative conclusions. For example, Chin and

[75] Kanishka Jayasuriya, 'Introduction: A Framework for Analysis of Legal Institutions in East Asia', in *Law, Capitalism and Power in East Asia: The Rule of Law and Legal Institutions*, Kanishka Jayasuriya (ed.), London: Routledge, 1999, pp. 3–7.

[76] Hayne, 'Restricting Litigiousness', p. 381.

[77] Feldman, *The Ritual of Rights in Japan*, pp. 1–15; Haley, 'Litigation in Japan…', p. 121.

[78] 'Too Many Lawyers in Japan, Says Ministry of Internal Affairs', *Majirox News* (online), 23 April 2012 http://www.majiroxnews.com/2012/04/23/too-many-lawyers-in-japan-says-ministry-of-internal-affairs/.

[79] Bruce Aronson, 'The Brave New World of Lawyers in Japan', *Columbia Journal of Asian Law*, Vol. 21, 2007, p. 45.

[80] Iwao Sato, 'Judicial Reform in Japan in the 1990s: Increase of the Legal Profession, Reinforcement of Judicial Functions and Expansion of the Rule of Law', *Social Science Japan Journal*, Vol. 5, No. 1, 2002, p. 71.

[81] Haley, 'Litigation in Japan…', p. 124.

[82] Ginsburg and Hoetker, 'The Unreluctant Litigant?…', p. 31.

[83] Tanase, *Community and the Law*…, p. 158.

[84] Port, 'The Case for Teaching Japanese Law…', pp. 659–670.

[85] Kawashima, 'Dispute Resolution…', p. 41.

Lawson[86]agree that Japanese are culturally averse to law. Japanese attitudes to law have been shaped by geographic isolation, ethnic homogeneity and religious thought. Instead of law, the authors submit, non-legal forces ensure social order. Like Kawashima, the authors suggest that only social change will bring about a change of legal consciousness; but, whether change happens or not, they evaluate Japanese attitudes to law quite positively as "law of the subtle mind". By contrast, Inoue assesses Japanese legal culture more darkly. The communitarian ethic – which carries with it an aversion to the individualism of rights-talk – carries real social costs, Inoue warns.[87] Comparative law researchers have strongly criticised the cultural model and offered alternative explanations. One of the first counter-explanations stresses institutional factors over cultural attributes. Specifically, this model points to a number of institutional disincentives in the legal system which deter litigation.[88] For example Hayley, while acknowledging that Japanese file proportionately fewer civil suits compared to citizens in other industrialised countries, points to evidence that the Japanese are not reticent about asserting their legal rights. Rather, institutional incapacity — few lawyers and judges, the discontinuous nature of trials, and an inadequate range of remedies and enforcement powers — sets up a barrier to bringing suit in Japan.[89] Other institutional barriers include a lack of pre-trial discovery procedures, high contingency fees, prohibitive court costs and the absence of a jury system.[90]

Yet another counter-explanation is that the Japanese civil justice system is politically manipulated. Under this view, political elites – notably, the bureaucracy – manage the pace and direction of social change by channelling disputes away from the courts and into the hands of government-annexed informal dispute resolution facilities. Adherents of this view submit that lower levels of litigation in Japan have nothing to do with a cultural aversion to law; it is more a result of deliberate conservative government policy.[91] Japanese political conservatives prefer informal resolution of disputes because, it is submitted, they view litigation as a threat to the political and social status quo, and therefore take calculated steps to discourage litigation.[92]

A more controversial explanation for low litigation rates in Japan is advanced by economic rationalists. They advance economic rationales for Japanese litigating behaviour. Under this view, Japanese prefer to settle because damages verdicts are predictable and it is cheaper – or economically "rational" – to bargain in the shadow of the law rather than pursue litigation. A cultural aversion to law, argue economic rationalists, is pure myth.[93]

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[86] Kim and Lawson, 'The Law of the Subtle Mind…', p. 461.

[87] Inoue, 'The Poverty of Rights-Blind Communality…', p. 517.

[88] Port, 'The Case for Teaching Japanese Law…', pp. 659–670.

[89] Haley, 'The Myth…', p. 359.

[90] Nobutoshi Yamanouchi and Samuel J. Cohen, 'Understanding the Incidence of Litigation in Japan: A Structural Analysis', *Southern University Law Review*, Vol. 17, 1990, p. 171. Japan introduced a quasi-jury system in 2009; however, this is more accurately described as a 'lay judge' system where citizens join professional judges in deciding questions of fact and law and, at any rate, is restricted to serious criminal matters: see Douglas G Levin, '*Saiban-in Seido* (Judical System): Lost in Translation? How the Source of Power Underlying Japan's Proposed Lay Assessor System May Determine its Fate', *Asia-Pacific Law & Policy Journal*, Vol. 10, No. 1, 2011, p. 199.

[91] Port, 'The Case for Teaching Japanese Law…', pp. 661–662, 669–670.

[92] Upham, *Law and Social Change*…, pp. 16–27, 124–165.

[93] Port, 'The Case for Teaching Japanese Law…', pp. 661–662, 668–669.

Ramseyer and Nakazato, for example, contend that the Japanese preference to settle cases out of court is not culturally pre-determined nor compelled by structural impediments in the legal system.[94] Japanese settle because they can predict what damages they might get if they pursued their dispute in court, and therefore, they simply bargain "in the shadow of the law". Settling is cheaper and quicker than pursuing a court case. This shows that the Japanese are bound by rationality, not culture, because they will maximise – not forsake – their self-interest. And it proves that the Japanese legal system works because, if disputants are settling their disputes in light of the expected litigated outcomes, then clearly law is structuring behaviour.[95] Consider, for example, noise pollution from karaoke machines, a big problem in congested Japan.[96] According to case law databases, only about 40 disputes result in litigation brought before Japanese courts. By contrast, nearly 100,000 cases are heard each year by pollution complaint counsellors, an informal dispute resolution service established by the Dispute Law. Under the law, counsellors have strong, judge-like powers to consult with residents, investigate pollution incidents, and provide guidance and advice. Filing a complaint involves no direct monetary cost, does not preclude filing a concurrent (or subsequent) law suit, and allows complaints to be heard and dealt with relatively swiftly due to the lack of formalities.

Litigiousness in 21st-century Japan

In 21st-century Japan, policy-makers are engineering a new future for the Japanese civil justice system. This signals a new turn in the litigiousness debate, which now revolves less about why litigation rates remain *low*, and more around whether or not Japanese society should embrace *more* litigation. Indeed, this is not so much a debate but a *fait accompli*. The Japanese government has accepted that more lawyers, more litigation – that is, a more robust civil justice system – is key to Japan's economic recovery. This much is clear from the 2001 report by the Justice System Reform Council ("Recommendations of the Justice System Reform Council – For a Justice System to Support Japan in the 21st Century, the Justice System Reform Council"). In the opening chapter, for example, the Report highlights Japan's "difficult conditions", especially in the management of the political economy, and the need to restore "rich creativity and vitality to this country." The Report goes on to suggest that state-based economic planning must give way to a more participatory market economy built on open and transparent rules. "The justice system," the Report submits, "should be positioned as the 'final linchpin' of a series of various reforms concerning the restructuring of the shape of our country".[97]

Lawyer numbers and legal education are strongly positioned within this agenda to kick-start economic growth through law. The objective is obvious: to expand the pool of

[94] Ramseyer and Nakazato, 'The Rational Litigant…', p. 263.

[95] Ibidem.

[96] West, *Law in Everyday Japan*…, pp. 90–91. See also Mark West, 'The Pricing of Shareholder Derivative Actions in Japan and the United States', *Northwestern University Law Review*, Vol. 88, 1994, p. 1436.

[97] For a summary of the Justice System Reform Council report, see Daniel H. Foote, 'Introduction and Overview: Japanese Law at a Turning Point', in *Law in Japan: A Turning Point*, Daniel H. Foote (ed.), Seattle: University of Washington Press, 2007, p. xix.

talent capable of working through the complexities wrought by Japan's integration into a global economic order. Thus, the proposals envision a more rigorous training in law in graduate law schools, as opposed to the current system of undergraduate interdisciplinary education in politics, economics, languages and law. Graduates of law schools would then sit for a revised bar examination, and substantially more – as many as 70–80%, although numbers are currently capped at closer to 30% – would be allowed to pass. The Legal Research and Training Institute, the legal training arm of the Supreme Court of Japan, would grow in institutional capacity to groom those successful in the bar examination for careers in private practice, the judiciary or the procuracy. The end result would be an expanded population of technical experts proficient in the art of complex problem-solving.

This cuts against prevailing orthodoxy. Most economists argue that lawyers *inhibit* economic growth. Indeed, empirical studies have shown an inverse relationship between the number of lawyers and the vibrancy of the economy. Lawyers, many economists conclude, are a drag on the economy. Unlike entrepreneurs and engineers, lawyers do not generate wealth; they are rent-seekers who contribute complexity and other costs to completing transactions.[98]

At any rate, this new government policy is having an effect. There is now empirical evidence of the "unreluctant" Japanese litigant.[99] With a struggling economy and greater political competition, Japanese seem to be more prepared to fight for their slice of a shrinking pie. Government policies aimed at liberalising the economy and the legal system are facilitating access to the judicial system.[100] The modern conception of law, premised on conceptions of party autonomy and universally applicable objective legal standards, is challenging the traditional Japanese orthodoxy of communitarianism.[101]

Why popular culture?

Quantitative data, however, only tells part of the story. For one, reliable statistics on litigation in Japan (or, indeed, elsewhere) are hard to come by and even more difficult to compare meaningfully across time or jurisdictions.[102] For example, it is an open question whether litigiousness is indicated by simply filing legal proceedings, proceeding to trial or concluding a dispute with a final judgment.[103] Further, "variations in institutional conditions, including court and professional structures, procedural and substantive rules, as well as recording practices, make it extremely difficult to compare litigation rates across national boundaries in a valid and meaningful fashion".[104] More fundamentally, quantitative data cannot answer qualitative questions. Litigiousness, after all, is a socio-cultural issue; it interrogates the extent to which people are *conscious* of the law and prepared to engage formal legal processes. Thus, a litigious people are those who frame their disputes in legal, adversarial terms; non-litigious people are those who prefer to resolve their complaints

98 Milhaupt and West, 'Law's Dominion…', p. 451.
99 Ginsburg and Hoetker, 'The Unreluctant Litigant?…', p. 31.
100 Ibidem.
101 Tanase, *Community and the Law*…
102 Anleu and Prest, 'Litigation', pp. 8–10.
103 Ibid., p. 6.
104 Ibid., p. 8.

through informal means, such as negotiations or discussions, because they prefer to preserve rather than rupture relationships.

Enter popular culture. Japanese popular culture is, I submit, a useful – yet under-developed – methodological tool for illuminating law's functions in Japanese society, especially the issue of Japanese litigiousness. Yet despite the growing body of work in the interdisciplinary connections between law and popular culture,[105] popular culture studies in the legal academy have not fully tapped this socio-legal potential. First, popular culture remains marginalised in a legal academy where the "hegemony" of black-letter doctrinal analysis still anchors legal education and research.[106] Second, where legal scholars have engaged with popular culture, they have largely employed humanities-style textual analysis – focusing on the semiotic,[107] ideological[108] or jurisprudential[109] messages embedded in its texts – and largely ignored its socio-cultural potential for capturing citizens' perspectives on the desirability of invoking formal law to frame rights and settle disputes.[110]

At first glance, law and popular culture seem poles apart. As Kamir notes, law is a system of power; popular culture is an industry of pleasure: "Law is an authoritative, normative, centralistic, coercive system; film a world of amusing, escapist, emotionally gratifying popular-cultural artifacts".[111] Yet both share a narrative tradition:[112]

> As societal discourses, law and film both create meaning through storytelling, performance and ritualistic patterning, envisioning, and constructing human subjects, social groups, individuals, and worlds. Indeed, both discourses are extraordinarily powerful. Law and film both discursively constitute 'imagined communities', to use Benedict Anderson's term. Each invites participants – viewers, legal professionals, parties to legal proceedings, and/or members of the public – to share its vision, logic, rhetoric, and values. Law and film both demand adherence to rules and norms in exchange for order, stability, security, and significance. Each facilitates – and requires – concomitant and continuous creation of personal and collective identity, language, memory, history, mythology, social roles, and a shared future. It thus stands to reason that an interdisciplinary approach to these two fields would offer lively and intriguing insights.

The interdisciplinary potential of law and popular culture lies in this nexus of narratives. To be sure, stories are just that – stories. They are not empirical truth. In particular, popular

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[105] For a review of recent literature, see Douglas J Goodman, 'Approaches to Law and Popular Culture', *Law & Social Inquiry*, Vol. 31, No. 7, 2006, p. 757.

[106] Steve Greenfield and Guy Osborn, 'Law, Legal Education and Popular Culture', in *Readings in Law and Popular Culture*, Steve Greenfield and Guy Osborn (eds.), London and New York: Routledge, 2006, pp. 1–3.

[107] Goodman, 'Approaches…', pp. 758–774.

[108] Mezey and Niles, 'Screening the Law…', p. 91.

[109] William P. MacNeil, *Lex Populi: The Jurisprudence of Popular Culture*, Stanford: Stanford University Press, 2007, p. 5.

[110] For an excellent analysis of the socio-legal relevance of popular culture, see Friedman, 'Law, Lawyers, and Popular Culture', p. 1579.

[111] Orit Kamir, 'Honor and Dignity in the Film *Unforgiven*: Implications for Sociolegal Theory', *Law & Society Review*, Vol. 40, No. 1, 2006, p. 207.

[112] Ibid., p. 208.

culture is "entertainment and not social science".[113] American popular culture about the law, for example, exaggerates the extent of crime in the United States, over-represents murders and drug offences compared to more typical street crimes; glorifies lawyers as master advocates in court yet neglects their more mundane tasks (such as contract drafting); and ignores certain pre-trial processes (such as jury selection and interlocutory applications).[114] To achieve certain aesthetic effects, such as drama, comedy or horror, popular culture caricatures legal actors, processes and institutions.[115]

But that misses the point. Stories matter to social scientists because they offer insights into how people understand and experience the world.[116] As Cronon explains:[117]

> Narrators create plots from disordered experience, give reality a unity that neither nature nor the past possess so clearly. In so doing, we move well beyond nature into the intensely human realm of value.

As such, narrative methods are more useful for constructivist research questions (what an experience means to subjects) rather than realist questions (what is the state of reality).[118] Narrators necessarily distort reality because they are making sense of, rather than reporting on, the real world.

At the same time, the power of narrative analysis is said to come from the authenticity of respondents being empowered to tell their own stories in their own words.[119] In the social sciences, data typically comes from oral sources, such as interviews,[120] observations of conversations in self-help groups,[121] oral histories and sermons;[122] but written sources may also reveal narratives, such as diaries,[123] letters,[124] trial transcripts[125] and newspaper

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[113] Stewart Macauley, 'Images of Law in Everyday Life: The Lessons of School, Entertainment and Spectator Sports', *Law and Society Review*, Vol. 21, 1987, p. 197.

[114] Ibid., pp. 197–199.

[115] Michael Asimow, 'Introduction to Papers from UCLA's Law and Popular Culture Seminar', *UCLA Entertainment Law Review*, Vol. 9, No. 1, 2001, p. 87.

[116] Lewis P. Hinchman and Sandra K. Hinchman, 'Introduction', in *Memory, Identity, Community: The Idea of Narrative in the Human Sciences*, Lewis P. Hinchman and Sandra K. Hinchman (eds.), New York: State University of New York, 1997, p. xvi; Catherine Kohler Riessman, *Narrative Analysis*, Thousand Oaks: Sage, 1993, p. 2.

[117] William Cronon, 'A Place for Stories: Nature, History, and Narrative', *Journal of American History*, Vol. 78, No. 4, 1992, p. 1349.

[118] Jane Elliott, *Using Narrative in Social Research: Qualitative and Quantitative Approaches*, London: Sage, 2006, pp. 24–27.

[119] Keith Punch, *Introduction to Social Research: Quantitative and Qualitative Approaches*, London: Sage, 2nd ed., 2005, p. 217.

[120] Elliott, *Using Narrative*…, p. 5.

[121] Phoebe Morgan, 'Risking Relationships: Understanding the Litigation Choices of Sexually Harassed Women', *Law and Society Review*, Vol. 33, 1999, p. 67.

[122] Punch, *Introduction to Social Research*…, p. 217.

[123] Patricia Williams, *The Alchemy of Race and Rights: Diary of a Law Professor*, Boston: Harvard University Press, 1991.

[124] Riessman, *Narrative Analaysis*, p. 69.

[125] Catherine Burns, 'Constructing Rape: Judicial Narratives on Trial', *Japanese Studies*, Vol. 24, No. 1, 2004, pp. 81–96; Burns, *Sexual Violence and the Law in Japan*; Richard Delgado, 'Storytelling

accounts. Is this authenticity lost when the narrator is not an ordinary person but the mass media industry, and their stories are audio-visual materials? Put differently, is law-themed popular culture more indicative of the *mass media's* view of the law than that of the general population?[126] A significant body of work in popular culture theory is concerned with the power of the mass media industry to transmit certain ideological messages to society.[127] According to this scholarship, the mass media does more than portray actual or idealised social conditions; it also contributes to acceptance of new social roles[128] or an understanding of social processes.[129]

Asimov and Mader[130] provide an answer. The authenticity of popular culture lies in its verisimilitude – its ability to emotionally resonate with the audience to allow for the suspension of disbelief and to generate the desired affective response. The characters must be credible; the plots must replicate real, lived experience; and the settings must be immediately familiar. Further, as reader response theory acknowledges, audiences are not passive recipients but active "readers" in the interpretation of popular culture.[131] An analysis of popular culture, therefore, must allow for multiple potential readings, given the heterogeneity of the interpretative community, and not simply privilege authorial intent.

Popular culture, in short, is not a "mirror" of the actual operation of the law (a realist question) but a "window" into how people feel about it (a constructivist question).[132] It taps into "a reservoir of mass mentality".[133] Yet, equally, since it is also a swirl of multiple

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for Oppositionists and Others: A Plea for Narrative', *Michigan Law Review*, Vol. 87, 1987, p. 2411; Richard Delgado, 'Beyond Critique: Law, Culture, and the Politics of Form', *Texas Law Review*, Vol. 69, 1991, p. 1929; Richard Delgado, 'Campus Antiracism Rules: Constitutional Narratives in Collision', *Northwestern University Law Review*, Vol. 85, 1991, p. 343; Richard Delgado, 'Rodrigo's Final Chronicle: Cultural Power, the Law Reviews, and the Attack on Narrative Jurisprudence', *Southern California Law Review*, Vol. 68, 1995, p. 545; Richard Delgado, 'Making Pets: Social Workers, «Problem Groups», and the Role of the SPACA – Getting a Little More Precise about Racialized Narratives', *Texas Law Review*, Vol. 77, 1995, p. 1571; Kim Lane Scheppele, 'The Re-vision of Rape Law', *University of Chicago Law Review*, Vol. 54, 1987, p. 1095; Kim Lane Scheppele, 'Foreword: Telling Stories', *Michigan Law Review*, Vol. 87, 1988, p. 2073; Kim Lane Scheppele, '«Just the Facts, Ma'am»: Sexualized Violence, Evidentiary Habits, and the Revision of Truth', *New York Law School Law Review*, Vol. 37, 1992, p. 123.

[126] Sarah Welker, 'Law and Popular Culture', *Alternative Law Journal*, Vol. 22, 1997, p. 110; Peter Robson and Jessica Silbey, 'Introduction', in *Law and Justice on the Small Screen*, Peter Robson and Jessica Silbey (eds.), Oxford and Portland: Hart, 2012, p. 1; Chase, 'Lawyers and Popular Culture', p. 281.

[127] For a comprehensive literature review, see Mezey and Niles, 'Screening the Law…', p. 91.

[128] Hilaria M. Gossmann, 'New Role Models for Men and Women? Gender in Japanese TV Dramas', in *Japan Pop! Inside the World of Japanese Popular Culture*, Timothy J. Craig (ed.), Armonk and London: ME Sharp, 2000, p. 207.

[129] Welker, 'Law and Popular Culture', p. 10; Macauley, 'Images of Law…', p. 197.

[130] Asimov and Mader, *Law and Popular Culture*…, pp. 11–12.

[131] John Fiske, *Television Culture*, London and New York: Routledge, 1987, p. 16; Henry Jenkins, *Textual Poachers: Television Fans and Participatory Culture*, London and New York: Routledge, 1992.

[132] Friedman, 'Law, Lawyers and Popular Culture', p. 1588; Craig, 'Introduction…', p. 17.

[133] Allen and Sakamoto, 'Introduction…', p. 5.

and mixed interpretative possibilities, popular culture presents a range of possible affective states in a society; as such, its analysis does not lead us into the trap of essentialising or unifying a single national culture.[134]

Japanese popular culture about the law

So what does Japanese popular culture about the law reveal about ordinary people's feelings about the legal system? The data set here is a random selection of network television shows featuring lawyers, prosecutors, law students or legal processes, focusing in particular on those that have screened since the turn of the century. The analysis of the texts borrows from the narrative method, involving interpreting the messages embedded in the character portrayals, plot developments, settings, filming techniques and even background music. Necessarily, the data set is selective and the analytical approach is broad-brushed. But as an initial foray into the interdisciplinary and socio-legal possibilities of law-and-popular culture, the purpose here is to sketch out thematic trends rather than paint a precise portrait.

Prior to the 2000s, Japanese network television rarely resorted to lawyers as characters or court-rooms as dramatic settings. The popular dramas of the 1980s and 1990s, such as "3-Nen B-Gumi Kinpachi-Sensei" (Mr Kinpachi of Class 3B) (TBS, seven series and 15 made-for-TV movies, 1979–2011), "Oshin" (NHK, 1983–84), "Mama wa Aidoru" (My Mother the Celebrity) (TBS, 1987), "Tokyo Rabu Sutoorii" (Tokyo Love Story) (Fuji Television, 1991) and "Rongu Bakeeshon" (Long Vacation) (Fuji Television 1996), were family sagas, coming-of-age stories or office-based romantic comedies. Law simply did not register in the popular imagination prior to the much-touted civil justice reforms in 2001.

However, Law was not completely absent. But in the few television shows that did portray lawyers or the courts, the representations were overwhelmingly unflattering. In the popular family drama "Kita no Kuni-kara" (From a Northern Country) (Fuji Television 1981–1982, with made-for-TV specials in 1983, 1984, 1987, 1989, 1992, 1995, 1998 and 2002), the hero, unhappy with his life in Tokyo, takes his two young children, an eight-year old daughter and a ten-year old son, to his birthplace in the northern island of Hokkaido after his marriage breaks down. In episode four of the original series, the character of a lawyer makes a brief appearance. As the hero works happily on a farm, reminiscing happily with his co-workers about the "good old days", the farm owner's wife calls for the hero. With a look of noticeable concern on her face, she informs the hero that a guest has come for him. "A lawyer," she whispers, and then adds hesitantly: "from Tokyo; a woman." She hands him the lawyer's business card. The camera takes a close-up shot of the business card with "lawyer" marked prominently. The next scene is a lingering establishment shot of the female lawyer. She is wearing a heavy fur coat, the urban wear of a successful professional, which is juxtaposed ironically with her standing among the lumber and dilapidated buildings of a small-town farm. As the camera moves to a close-up, her face is stern and heavily made-up; her hair is pulled tightly into a bun. The lawyer is thus painted as an interloper, an alien, an urbanite who stands uncomfortably among the more natural surroundings of the farm. This is reinforced in a conversation between the farm owner and his wife. "A lawyer form Tokyo?" the owner asks. "A woman," replies his wife. "What does she want?"

[134] Ibidem.

the husband muses. A shot of their faces show them wearing expressions of clear concern. Interestingly, the farmer's wife seems to make much of the fact that the lawyer is a woman. In a telling contrast, the farmer's wife plays a traditional nurturing role of wife and mother, a kind and gentle figure also beloved by the rest of the small-town community; the lawyer – incredulously, judging by the quizzical look on the farmer's wife as she talks about her – plays against established gender expectations by appearing fierce and unpleasant. The message here is clear: law is a threat; law is not a nurturer; law runs contrary to traditional community norms.

"Shichinin no Onna Bengoshi" (Seven Female Lawyers), a show about an all-female law firm which ran for three seasons in the early 1990s before being remade for two additional seasons in the mid-2000s, makes slightly different, but equally negative, claims about Japanese law. In one episode in the first season, for example, one of the younger lawyers represents an accused rapist. The judge presiding over the trial is in his mid-fifties and with a short temper. To the defence lawyer's increasing frustration, the judge seems to side with the prosecution, overruling all the defence's objections to the admissibility of prosecution evidence. When the defence lawyer, barely able to control her rage, is about to stand and make another objection, she is controlled by her more senior colleague with a touch of her arm and a firm shake of her head. In the next scene, which takes place back at the law firm, the senior colleague explains that the judge had recently served a term in the procuracy. This was a relatively common practice, she added. Rather than reflect on the policy objectives of rotating judges to the prosecutors' office, private law firms or government departments, namely to expose them to other fields of legal practice, the characters in the story focus on the negative impact this has on the impartiality of the criminal justice system. As such, the show offers a withering criticism of the quality of Japanese justice.

Fast-forward now to the 2000s. Legal dramas, once invisible, have gained in sufficient number to constitute a new genre in Japanese television. The heroes are lawyers (eg, "Riigaru Hai" (Legal High), (2012–13, Fuji Television), prosecutors ("Hero", 2001, Fuji Television), legal trainees ("Beginaa" (Beginners), 2003, Fuji Television) or judges ("Jajji" (The Judge), 2007, NHK); the settings are law firms ("Legal High"), prosecutor offices ("Hero") or the Japan Legal Training and Research Institute ("Beginners"). Even light entertainment talk shows draw on law-themed skits and cast lawyers as celebrities ("Za Jajji" (The Judge), Fuji Television, 2001–2004) and "Gyouretsu no Dekiru Houristsu Soudansho" (The Law Firm with the Long Queue), Nihon Television, 2002–present.)

Not only has there been a quantitative increase in law-themed shows; there has been a noticeable qualitative difference in their narratives about the law. Law has become hip. Consider, for example, the titles of many law-themed shows. Either they use English ("Hero") or Anglicised loan words ("Jajji", "Beginaa", "Riigaru Hai"), connoting something modern, trendy and *kuuru* ("cool").[135] The title sequence of "Hero" (2001, Fuji Television) makes this point abundantly clear. The hero is played by Takuya Kimura, a pop star and sex symbol. To amplify his status as trend-setter, the title sequence sees him dressed in a fashionable leather jacket and jeans where his cast-mates, his colleagues in a Tokyo prosecutor's office, wear dark suits and have serious expressions. He appears in colour; his colleagues, in black-and-white. The theme music is up-tempo and the sequence is

[135] See Aoki, 'Kuuru…'.

captured in a series of stop-start takes. The preferred, cutting-edge career destination for young people, the show seems to suggest, is no longer the public service but the law.[136]

The same idea is conveyed in "Beginaa" (Beginners, 2003, Fuji Television). The opening scene shows the young heroine making her way hesitantly into a large lecture theatre. A sub-title appears making it clear that she is entering the Legal Research and Training Institute, an educational arm of the Supreme Court which prepares successful takers of the bar exam for a future career either in private practice, the judiciary or the procuracy. As she takes her seat while dreamy music plays in the background, there is a flashback to her days working as a pink-collar secretary in a busy work-office. The message is that her legal training is about to transform her life from the drudgery of office administration to a more exciting career in the law. To reinforce this message, the other key characters in the drama are identified in the opening few minutes of the first episode, all with their own flashback stories: a violent thug, a high-profile bureaucrat ruined by a scandal, a spoilt rich girl, a bored housewife, a retrenched worker in his mid-fifties, a hapless casual worker, a mobster's mistress – all who have successfully sat for, and passed, the bar examination with the promise of beginning a new chapter in their lives. Law, in short, brings hope.

Both "Hero" and "Beginaa" feature weekly episodes in which the law is championed as a tool to correct a social injustice. But in other television shows, the law is depicted as balancing competing, often immensurable, interests. In an episode from the second season of the comedy "Riigaru Hai" (Legal High, 2013, Fuji Television), for example, a law firm is retained by a cartoonist and a blogger to defend them from defamation suits brought by a litigious business entrepreneur. The court room is the main theatre of action, with competing narratives about the right of privacy in the information age and the primacy of freedom of speech.

In other shows, the law is openly mocked. A good example of this is the talk-show "Gyouretsu no Dekiru Houristsu Soudansho" (The Law Firm with the Long Queue, Nihon Television, 2002–present.) The show is skit-based light entertainment. Hosted by a comedian, a panel of celebrities (actors, singers, comedians and sports stars) discuss the various skits before the host turns to the four lawyers for their legal analysis. The skits are intended to be humorous, mostly because the scenarios are unlikely if not outright ridiculous. Examples include: a wife who, in her petition for divorce, seeks damages for the costs of a personal detective to uncover her soon-to-be-ex-husband's acts of infidelity; a young woman whose broken-down car is fixed by a kindly stranger who later presents her with a mechanic's repair bill; and an office worker who wants to stop her colleague, who claims to see ghosts, foretelling the failure of her future marriage. If one message from the entertainment industry is that law is a powerful and attractive tool to correct a social injustice, there is a counter-narrative that law is not the answer when there is personal conflict in every-day life.

Conclusion

This brief survey of Japanese law-related popular culture offers some intriguing insights into Japanese feelings about the legal system. Certainly, based on the emergence of law as a new genre in television, interest in the law is growing; equally, with strong narratives

[136] Milhaupt and West, 'Law's Dominion…', p. 451.

about the desirability of law as a career and its promise as a tool to protect the vulnerable, attitudes to the law are warming. This suggest a shift from an ambivalence about law and lawyers, most noticeable in the farmer wife's reaction to the visiting lawyer from Tokyo in "Kita no Kuni-kara", to one that is open to engaging with lawyers, legal careers and legal processes. This attitudinal shift might go some way to explaining the upswing in litigation rates since the turn of the century.

At the same time, the embrace is a cautious one. As much as popular culture valorises the law as a tool to protect the weak, it criticises it if is allowed to infiltrate too deeply into everyday life and become the first point of call in inter-personal conflict. "Riigaru Hai", for example, demonstrates that law cannot provide simple answers to life's contentious political issues; and "Gyouretsu no Dekiru Houristsu Soudansho" illustrates that those who resort too readily to the law expose themselves to ridicule.

The implications for the debate about Japanese litigiousness are mixed. The varied messages about law from popular culture, for example, do reinforce the criticism of cultural explanations of Japanese litigiousness insofar as socio-cultural attitudes are not fixed and universal but fluid, diverse and unfolding. At the same time, to the extent that counter-explanations of Japanese litigiousness emphasise that litigation patterns are simply a rational response to the institutional environment, government policy or simply personal self-maximising behaviour, they fail to capture how Japanese subjective perceptions about the law also seem to be changing.

This suggests, albeit tentatively, some new possible directions for future research into Japanese law and popular culture. As a matter of data and method, future research efforts could fruitfully expand the corpus of works subject to analysis, not only to other television shows not covered in this article but also to other media texts such as film, manga and anime. Second, as a matter of theory, litigiousness scholars need to explore a theoretical framework that marries the material and the culture (or, more precisely, the rational and the emotional) to develop a more convincing multi-factor analysis of Japanese litigiousness and legal consciousness.

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