

## **Honors Thesis Proposal**

### **A Comparative Analysis of the Japanese Criminal Justice System**

#### **I. Project Purpose**

The purpose of this project is to better understand the Japanese criminal justice system, especially in comparison to the American model of criminal justice. In this thesis I will analyze Japanese law enforcement and criminal law systems and contrast them with those of America. Several questions will be explored: What factors within the legal structure have influenced Japan's current system, as well as its outcomes (low crime rate and high conviction rate)? Are the allegations that Japan is too harsh on criminal suspects—that is, too dismissive of their human rights—correct, or are they unfounded? Above all, what conclusions can we draw from Japan's success in keeping crime low, and what implications do they have for other countries (such as America) that hope to reduce their own crime rates?

#### **II. Project Significance**

National security, civil liberties, and constitutional rights are all matters of great concern in the modern international community. The American justice system is well known for putting emphasis on upholding the rights of the accused. Japan, in contrast, has a much stricter system of criminal justice. It boasts a conviction rate of over 99 percent. (Ramseyer and Rasmusen 2001) Some view this number not as a success, but as evidence of a problem. Japan has been accused of employing inappropriate methods in order to achieve enviable levels of public safety: allegations of forced confessions and lack of regard

for constitutional rights have become increasingly common. (Wachi et al. 2015)

Nevertheless, it seems that there is some justification for the hardline approach that Japan takes to criminal justice. Its cities, including even large urban areas such as Tokyo, often rank as being among the world's safest. Furthermore, Japan has endeavored to reform its justice system in recent years with new advances like the lay judge system. (Soldwedel 2008) Have these changes improved the Japanese system? Is it really in need of change, or do its results support the stricter methods that Japan has so far employed?

The study I propose not only seeks to answer these questions; it also seeks to add to the debate over the role of law enforcement and criminal justice in society. Every year, the American justice system is questioned and scrutinized more closely. Although recent events (such as the Ferguson riots) have demonstrated distrust for the police in America, lack of confidence in the courts and correctional facilities (prisons) is also increasing. Japan, despite its very high conviction rate, enjoys popular support for its police and justice systems. Is this a cause of Japan's strict criminal policy, or a result of it? A rigorous study of the Japanese justice system will yield a greater understanding not only of how justice is viewed in Japan, but how it is viewed in America – and a clearer picture of the ways in which the justice systems of both countries should be reconsidered.

### **III. Project Overview**

#### *Background*

Japan has a reputation for being one of the safest countries in the world, a place where human decency remains much more common than criminal activity. This confidence in Japan is well founded; while news headlines seem to outline increasing violence in major

cities across the world, Tokyo topped the 2015 Safe Cities Index, and Osaka followed closely at number three. (Neild 2015) One foundational argument for Japan's safety is that as a country, Japan has successfully deterred violent crime through its criminal justice system. Criminologists claim that for a criminal justice system to successfully deter criminals, it must be severe, certain, and swift, and "though the severity of criminal punishment has not been especially high in Japan, the certainty of it has been." (Roberts and LaFree 2004, 184) By ensuring that as few criminals escape justice as possible, Japan has become a model for efficient crime fighting.

For decades, Japan has prided itself on its excellent statistics in the field of criminal justice. Japan has generally enjoyed a very high clearance rate (the rate at which police are able to solve crimes). In 1996, for example, the clearance rate was 40.6 percent, nearly double the rate that the United States reported for that same year. (Roberts and LaFree 2004, 184) In more recent years, Japan's clearance rate has declined somewhat, but the country still makes it clear that stopping crime is a top priority. For example, in 2002, the clearance rate dropped to around 20 percent, most likely because of increased reporting percentages of petty crime (which are often difficult for police to solve). This smaller rate is close to the rates of other developed countries, such as the United States, and did not cause significant social problems for Japan; nevertheless, the Japanese National Police Agency publicly lamented the "deterioration of the public order" and recommended stricter anti-crime measures and increased public participation in stopping crime. ("Put a stop to rising crime," 2002)

Conviction rates are also very high in Japan: district court judges convict 99.9% of the defendants brought before them, including 99.7% of defendants on trial for murder.

(Ramseyer and Rasmusen 2001, 55) While countries criticized for human rights abuses such as China and Russia also have rates over 99 percent, most developed countries have lower rates (the United States, for example, has around an 85% conviction rate). (Ramseyer and Rasmusen 2001, 55; Schreck 2010; Jacobs 2015)

Such glowing statistics support the sociologists who praise the “certainty” of Japanese justice. In Japan, the numbers seem to say, the guilty do not go unpunished. Would-be criminals who might feel confident in their ability to commit crimes with impunity in the United States may think twice when they consider the very high number of criminals who are caught by the police and the very low number of suspects who escape conviction. Most countries prefer to stop crimes before they actually occur, and if deterrence is the goal, then Japan is achieving it by aggressively pursuing crime and touting its successes in doing so.

Nevertheless, while the certainty that criminals in Japan will be punished has led to lower crime rates, it has also led to criticism, both foreign and domestic, that the Japanese justice system is *too* efficient—that it values securing convictions over actual justice. (Soldwedel 2008, 1419-1420) Human rights groups, outside observers, and even many within Japan itself have raised concerns over several aspects of the Japanese way of administering criminal justice. Groups such as the Japan Federation of Bar Associations and the United Nations (along with several human rights organizations) have expressed unease about the unusually high conviction rates and the treatment of suspects, defendants, and prisoners. (Soldwedel 2008, 1420) The argument made by these groups is that Japan consistently commits “violations of [the] right to humane conditions of detention, freedom from torture and other cruel, inhuman or degrading treatment or punishment, and the

right to a fair trial conforming to international laws and standards.” (Amnesty International 2006)

Japan, in contrast, regards its criminal justice system as one of the best in the world, and Japanese officials generally see little reason to change or reform it. (Wilson 2006, 836-837) In 2001, when the Japanese Judicial Reform Council (JRC) reported on its “description of an ideal system for the administration of justice in the 21<sup>st</sup> century,” it did not recommend any radical reforms. (McKenna 2001, 135) Nevertheless, Japan has recently begun to make some changes its criminal justice system, most notably by allowing citizens to participate in the process as *saiban'in* (lay judges) in some trials. (Foote 2014, 755) While the *saiban'in* system represents some progress in criminal justice reform, it has not completely addressed some of Japan’s major judicial problems, including human rights violations of Japanese suspects, defendants, and convicts.

The *saiban'in* reform, and others like it, may make Japanese trials more transparent and participatory, but that will not change some of the most important practices that lead to accusations of human rights violations—practices that prioritize securing confessions at all costs before suspects even go to trial. For example, the famous “right to remain silent” that every American knows by heart does exist in Japan, but several aspects of the Japanese justice system make it difficult to exercise. One of these is the section of the Penal Code that requires the police to “immediately explain the crime of which [a person] is suspected *and provide the suspect with the opportunity to give an explanation*” upon arrest. (Foote 1991, 434). When the police offer the chance for an explanation, many suspects who are afraid of appearing guilty by maintaining silence start talking. While the police cannot demand an explanation, they can certainly imply that silence leads to presumption of guilt and suggest

that the suspect start talking. Treating suspects this way immediately after telling them that they may remain silent creates a contradiction of sorts, and so in 1952, the Japanese Supreme Court ruled that the police do not have to inform the accused of their right to silence at all. (Foote 1991, 434) Furthermore, the court ruled that any statements they receive are valid as evidence. (435) This practice is very different from the United States, where suspects must be informed that they have a right to silence before questioning can even begin.

Another obstacle to suspects maintaining their silence is the common practice of detention in *daiyo kangoku*, or “substitute prisons.” Investigators are legally allowed to keep suspects detained for up to 23 days in these substitute prisons before charges are even filed. (Soldwedel 2008, 1436) Although prosecutors must apply for an extension to keep suspects detained after the first ten days, they do so for over one third of the suspects they handle, and such extensions are nearly always granted. (Foote 1991, 430-431) During this time, the police may interrogate the suspect at will. In most cases, the “substitute prisons” in which suspects are detained are no more than police cells. (Soldwedel 2008, 1436)

This arrangement is very convenient for police interrogations; it also allows the police to easily cut off the suspect from the outside world. Even attorney visits are curtailed to short meetings—on average, one fifteen-minute meeting every four or five days. (1436) The law does not limit the suspect’s contact with an attorney, but many defense attorneys still find it difficult to access their clients because the police make it hard for them to visit and may claim that they need to continue their questioning. (1436) Furthermore, there are several reports of objectionable practices in Japanese interrogations. These include

isolation, physical beating (including slapping, kicking, and punching), and verbal and physical humiliation. (Soldwedel 2008, 1433) Other scholars have found evidence of finger binding, threats, promises to allow suspects to see their families, and sleep deprivation. (Vize 2003, 334)

One other accusation made against Japan is the mistreatment of its convicted criminals. While Japan has clean, functional prisons, convicts claim that the rules and practices enforced by prison guards take an unnecessary psychological toll. (“Silent Screams” 2015) The Japanese penal system has “an obsessive focus on rules” that leads to a very different environment than is present in American prisons; Japanese prisons are each allowed to make their own rules, and these rules often allow inmates to be punished for frivolous things such as standing or sitting incorrectly in one’s cell, failing to smile at prison wardens, or making eye contact with other inmates. (Vize 2003, 336-337) Compulsory prison work can be “mind-numbing” tasks such as simply folding pieces of paper into eight and then unfolding them repeatedly. (Silent Screams 2015) In some cases, such as in Fuchu Prison near Tokyo, living conditions are so uncomfortable that the cells are “too short to lay a futon lengthwise.” (Vize 2003, 335) One recent study on prison management cited Japan as an example in which “the modern prison administration maintain[s] discipline by brute force and solitary confinement.” (Taylor and Rynne 2015, 8) Visitors are all but prohibited, and the press is not allowed on the grounds that too much publicity about the prisoners could cause their family members to feel ostracized or shamed. (Lane 2004) Amnesty International reports:

Prisoners awaiting execution live under rules set out in a 1908 prison law (reinforced by a 1963 directive). They are banned from talking to other prisoners. Contact with the outside world is limited to infrequent and supervised visits from family or lawyers. They are not allowed to watch television or engage in personal

interests or hobbies. A radio is permitted but prisoners have no say over the station to which it is tuned. Some prisons are reportedly allowed videos but this is at the discretion of the prison warden. Prisoners are reportedly allowed three books – although more may be borrowed with the express permission of the prison warden who checks that the content does not preach "subversion of authority". Exercise is limited to two short sessions per week outside their cells. (Amnesty International 2006)

The position of Japan's critics is clear: the police, working together with prosecutors, violate the constitutional rights of suspects in order to obtain confessions; once this is done, it is difficult for judges (and citizens acting as *saiban'in*) to hand down any verdict other than "guilty," even if the confession was false or given under duress. For this reason, former High Court justice Takeo Ishimatsu expressed his opinion that "the prosecutors and not the courts [conduct] the real trials of Japanese criminal defendants." (Foote 1992, 319) Meanwhile, the Ministry of Justice and prison administrators also commit human rights violations as they punish convicts. Japan's justice system is efficient but heartless, and it tramples on constitutional rights to create a public peace that may not be worth it.

Yet just as the problems with Japan's system cannot be ignored, neither can its strengths. The Japanese criminal justice system is, at its core, a well-run institution based on constitutional principles. It serves an advanced nation with strong educational, professional, and economic institutions, and it does it well; criminal activity in Japan is very low, and satisfaction with the system is high. The Japanese people see the judges that convict over 99% of the defendants who enter their courtrooms as "generally honest, esteemed, politically independent, and professionally competent, particularly in comparison with other countries." (Wilson 2006, 837) The Japanese public strongly supports its police and judiciary.



This is especially interesting when compared to the increasingly serious public disenchantment with the American police force and law enforcement. While American criminal law has not become less considerate of human rights, the confidence level of American citizens in their police force is at its lowest point in the past twenty years. (Stringham 2016) Why should Japan's stricter system, which on many fronts has become the target of human rights activists, correlate with greater citizen satisfaction? Along with a comparison of the American and Japanese justice systems, this thesis will explore possible explanations for Japanese success – measured in both criminal statistics and local popularity. Though there are some serious issues to be addressed in Japan, it may be that America has something to learn from what Japan has accomplished.

### *Methods*

Research for this project will primarily require reading scholarly works along with governmental and legal records (primary sources in both Japanese and English). While many projects in the field of political science rely on experimentation, data collection, and statistical analysis to draw conclusions, this project requires a different (less quantitative) approach consistent with its scope. While some statistics will be useful in drawing conclusions, they will not need to be collected by me in a new experiment, as so many pertinent data are already published. (Such statistics include, for example, the number of crimes prosecuted in Japan over the past three decades, the number of defendants that were convicted during that period, the number of confessions that led to convictions, and other related data.) Working with such data, along with historical, legal, and political scholarship regarding Japanese criminology and law, I will establish a solid understanding

of the Japanese criminal justice system and evaluate its effects (both positive and negative) and their possible contributing factors.

The thesis will be divided into several areas of focus: first, a brief overview of factors in the development of the modern Japanese criminal justice system; second, an examination of Japanese law enforcement and corrections and an analysis of claims that Japan disregards human rights; third, a study of the Japanese criminal court system and recent attempts at reform within it; and fourth, an analysis of the relationship between Japan's culture and its treatment of criminals.

#### **IV. Prospectus of Finished Thesis**

##### *A. Introduction*

Description of overarching differences between crime in Japan and the United States; overview of Japanese views toward government, law, and crime; proposal of thesis to explain differences.

##### *B. Chapter 1: A Brief History of Japanese Criminal Law*

Explanation of early Japanese penal practices and law; exploration of early attempts to standardize criminal law following the Meiji Restoration; description of major changes in criminal law procedure since World War II and the American occupation; analysis of how these historical changes, along with foreign models, have influenced the Japanese penal system.

##### *C. Chapter 2: Issues in Japanese Law Enforcement and Correction*

Description of Japanese law enforcement systems (police interaction with suspects and criminals); investigation of related issues contrasting to American ideas of the rights of the accused; analysis of the treatment of suspects before trial and of convicts in the correctional system, and comparison to other countries (including the United States).

##### *D. Chapter 3: The Japanese Trial*

Explanation of the role of Japanese prosecutors, defense attorneys, judges, and lay judges contrasted with the American courtroom; description of Japanese trials, focusing on

the rights of the accused; analysis of Japanese attempts at judicial reform and their effectiveness.

#### *E. Chapter 4: Crime and Japanese Culture*

Description of Japanese societal attitudes towards crime and the criminal justice system; comparison with America; proposed explanation of factors that contribute to the difference between American and Japanese perceptions and law regarding criminal justice.

#### *F. Conclusion*

Summary (review of the differences between Japanese and American criminal justice systems; Broad overview of the identified causes for those differences and summary of conclusions drawn).

### **V. Thesis Committee**

For my faculty advisor, I have selected Professor Raymond Christensen. Professor Christensen is a Harvard Law School graduate (and recipient of a Ph.D. in Government, also from Harvard) with years of experience in researching Japanese political affairs. He has written dozens of academic publications on Japanese political issues and has been teaching classes on Japanese politics and government for over twenty years. He is also a member of the Japanese Electoral Studies Association, former secretary of the Japan Political Studies Group, and former editor of the journal *Japan Political Research: An Annual Review*. With his legal training and firsthand experience in the field of Japanese political research, Professor Christensen is an ideal mentor for a research project on the Japanese legal system. This past year I took POLI 354 (Japanese Government and Politics) with Professor Christensen, during which I wrote a research paper based on some of the ideas that later became this thesis proposal.

For my faculty reader, I have chosen Masakazu Watabe of the Japanese department. Although he is not an expert on law, Professor Watabe is familiar with me and my academic

interests, and being Japanese, he can offer insight on my thesis topics that Americans may miss.

The Department Honors Coordinator for this project will be Stephen David Ricks. Professor Ricks is the coordinator for all majors in the Asian and Near Eastern Languages department. As this thesis is related to my Japanese major, he is best qualified to act as the liaison between the Japanese department and the Honors Program.

## **VI. Project Timeline**

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| November 18, 2016 | Research completed                                  |
| December 9, 2016  | First draft submitted to advisor                    |
| January 13, 2017  | Revised draft submitted to advisor                  |
| February 10, 2017 | Final draft submitted to advisor; defense scheduled |

## **VII. Additional Considerations**

No IRB or IACUC approvals are needed for this project. I will not require funds from the Honors Program to complete this project.

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