

Cultural Considerations in Evidence and Decision-Making

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"Vérité en-deça des Pyrénées, erreur au delà"

"There are truths on this side of the Pyrénées which are falsehoods on the other"

Blaise Pascal, *Pensée*

"Conscience is culturally conditioned"

Robert T. Moran

Our world is becoming more and more pluralistic.

Human migration, particularly, has been a catalyst challenging us to deal with cross-cultural matters. The force of circumstances - economic, social, political and religious - causes groups of people to leave their home culture and to enter into an alien environment.¹

I. SITUATION ONE

On April 25, 1985 Laotian refugee Kong Moua drove to the campus of Fresno City College searching for Xeng Xiong, the woman he had decided to marry. He found her in the student finance office, where she worked part-time. He took her out of the building, put her in his car and drove to his cousin's house. That night he had sex with her.

The next day, much to Kong Moua's surprise, Xeng Xiong called the police and had him arrested. Kong Moua never considered that his reluctant companion would press charges or that the police might become involved. In his mind he had committed no crime. He had simply performed *zij poj niam*, or marriage-by-capture, a legitimate form of matrimony for Hmong tribesmen from the hills of Laos.²

II. SITUATION TWO

January 16 1990

Milwaukee, Wisconsin

As requested in your letter of November 28, 1989 I am writing to state my opinion concerning the situation of the [...] family should they be required to return to Japan.

Concerning the situation of [...] and their mother [...] as you described it to me in your letter of November 28, 1989, it is my opinion that it would be virtually impossible for them to return to Japan and function effectively. I believe this is true at this time, and in the future. If forced to return to Japan, their hardship would be extreme. I am so confident of this that I do not think you will find any person who knows Japan that will challenge it.

I make this statement for several reasons. The Japanese educational system is extremely complicated. To quote from a book which I wrote on Japan,³

A fundamental objective of Japanese education is to prepare the student to become an exemplary citizen and a model worker in the company. This education begins in the home, where the child learns the essence of the Japanese culture. At an early age, he learns the importance of courteousness, consideration, and self-discipline. These attributes carry over into all aspects of his life from family life to school to the working world.

The top companies in Japan select their employees from the best universities and competition for admittance to these schools is fierce. Students are admitted on the basis of their scores on an entrance examination. These examinations evaluate the student's ability to study and use intelligence rather than simply measure their level of intelligence. Much of the education system at the primary middle, and high school level is geared to preparing students for the college entrance examinations.

Preparation for exams begins with enrolling the child in the best possible elementary school. Students attend supplementary schools (on Saturdays or after school) while they are in elementary or secondary school to better prepare themselves for the entrance examinations to the best and most prestigious high schools.

*Much of a Japanese student's life revolves around the preparation for the examinations. Ezra Vogel in **Japan as Number 1** states: 'These examinations have the advantage of setting a certain standard. The students internalizes attitudes about hard work, and his strong relation to his peer group, to his family, to his teachers and they to him. As a result, the motivation to study is greatly reinforced.'*

Due to its well-developed educational system, Japan has a competent and well-educated work force. Even after completing college the desire to continue to learn is reflected in the Japanese affinity for reading and participation in corresponding courses.

As you can see the Japanese educational system is exceedingly rigorous, difficult to break into, and almost impossible to enter "midstream". This applies to all levels including university. Second, the linguistic ability of the [...] children as you describe them would be varied. Undoubtedly their verbal comprehension in basic family/social situations would be adequate. However, for them to learn at his stage the equivalent number of characters (kanji) to recognize and write would probably take them, assuming they devoted 100% of their energy to this, at least twelve to eighteen months. In order to read the newspaper one must know at least 2000 characters.

Third, assuming the [...] family was required to return to Japan, each of the children would have unique difficulties. As a parent, I think this would put extreme stress on their mother in the process of helping her children cope with the difficulties of re-entry to Japan.

Fourth, all the [...] children and their mother, with the exception of a short visit to Japan, have been out of Japan for approximately thirteen years. I am enclosing an article that appeared in *Fortune* magazine, April 25, 1988. The article outlines the situation of several Japanese families who have lived in the United States for a period of time and the "stiff price" they pay when they

return to Japan. The [...] have been away from Japan a considerable period of time and the price they would pay, should they return to Japan, would indeed be stiff.

Fifth, the policy of many Japanese countries is to send their employees abroad to the United States and other countries, but not to allow their families to accompany the employee because the return home is so difficult, even though they are out of Japan for a short period of time. I have met many Japanese businessmen in the United States who have been here two, three and four years who are not here with their families. When asked if they are lonesome, they respond, "yes". When asked why their family is not here, they say it would be too difficult for them to return to Japan. When there are no children involved, a Japanese company allows the spouse to join the employee.

Sixth, Japan is a closed society. Even if one is 100% Japanese but leaves the society for a number of years, it is extremely difficult to be accepted on return. This is true from a societal perspective and often true from a family perspective as well.

Japan is a complex, closed, and highly ritualized society and people work a lifetime to learn how to conform and assimilate. If one does not fit, it is always difficult, and at times impossible, to flourish or even survive.

If the [...] family, and their mother, either as a family, or any member were required to return to Japan, I predict it would be exceedingly difficult if not impossible to survive. I say this with the highest confidence.

Sincerely,

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of the Program in Cross-Cultural Communication⁴

III. SITUATION THREE

An Ethiopian student attending the University of Minnesota in 1970 killed, during a fight over a girlfriend, a fellow countryman with a knife. The student was tried, convicted, and sentenced to the Hate Penitentiary in Minnesota.

This student was released to return to Ethiopia when proof of an arranged marriage between the sister of the victim and the convicted murderer was provided.⁵

IV. SITUATION FOUR

In what some Japanese-Americans have called an example of *oyako-shinju*, or ritual parent suicide, Fumiko Kimura drowned her two children and attempted to drown herself because of the humiliation she felt after learning her husband had been unfaithful.⁶ In Japan, the tragedy would have been repeated as involuntary manslaughter and Kimura would have been given special therapy. In Los Angeles she was charged with the first-degree murder, although a plea bargain allowed her to plead guilty to voluntary manslaughter.⁷

1. How does one identify the cultural factors?
2. What are the relevant variables?
3. Is there a framework? a paradigm?
4. Example of negotiating variables

V. POINTS

1. We must be aware attorneys/judges could be **blinded** by cultural filters.
2. The situation **must** involve people of different cultures.

3. Does the individual(s) have English/French as first language.
4. If a similar event would take place in the person's culture, what would the consequences be?
5. Other

VI. SUMMARY

Cultural factors **must** be taken into account in Evidence and Decision-Making.

FOOTNOTES

1. P. R. Harris and R. T. Moran *Managing Cultural Differences*, 3rd Edition, 1991, Gulf Publishing Company.
2. *When Cultures Collide*, Six California Lawyers 32 (January 1986).
3. *Getting Your Yen's Worth How to Negotiate with Japan, Inc.*
4. *From a deposition January 16, 1990.*
5. R. T. Moran - who participated in the resolution of this situation.
6. *People v. Kimura*, LA Superior Ct, No. A-091133.
7. *Supra* note 1.