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devenus grands gardant précieusement dans leur mémoire le souvenir des Sœur Monique, Madame Saumure, Mademoiselle Estelle...

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FUESS, Harald — *Divorce in Japan: Family, Gender, and the State, 1600–2000*. Stanford, CA: Stanford University Press. 2004. Pp. xiv, 226.

In the first extensive work in English documenting the history of divorce practices in Japan, Harald Fuess shows how divorce is interrelated with issues and ideals of gender, family, state, and society. Fuess presents statistical data on divorce in different regions of Japan over four centuries, from 1600 to 2000. He explores personal stories of divorce, insights revealed through popular culture, and diaries mentioning divorce written by foreigners encountering Japan. I welcome this book as one that provides an essential exploration of divorce in Japan, revealing the falsity of steadfastly held myths about traditional Japanese family relations.

Japan is frequently held up, by those lamenting divorce, as a country where traditionally divorce was rare, and it is often contrasted with the United States, considered a country of easy divorce. I have long been aware that, as Fuess documents, the rate of divorce was extremely high in Japan in the late 1800s — much higher than in the United States. So strong is the myth that in Japan divorce was unusual and that Americans divorce readily, however, that students, including Japanese students, express disbelief that the divorce rate in Japan was at any time higher than in the United States.

Fuess shows that traditionally the family was of paramount importance in Japan, but, precisely for this reason, marriage was not. In contrast to countries such as Canada and the United States, where the family is built around the relationship between a married couple, in Japan the family ideal was historically constructed around the household lineage. This presentation shows that divorce is not necessarily a result of breakdown in personal relations between two people. Fuess documents cases in which parents initiated a divorce against the wishes of both husband and wife.

When Japan began to open up to western contact at the beginning of the Meiji Era (1868–1910), westerners were stunned by the prevalence of divorce and saw it as reflecting the low status of women in Japan. Fuess argues this was a one-sided and culturally biased view. A high divorce rate was partly the result of tolerance for trial marriage. Since the relationship was embedded within a larger system of family and neighbourhood alliance networks, if these did not work smoothly, the couple would divorce and each would likely enter some other future marriage. No particular stigma attached to either of them, and there was no particular social emphasis on female virginity, common in North America at the time, to prevent women from remarriage. The book reveals that, contrary to stereotypes, North American society tended much more toward the puritanical in marriage and family relationships, while a sort of pragmatism prevailed in Japan. Ironically, the historic tolerance for

high divorce rates in Japan may have been the trend to emerge later in North American societies precisely to allow more flexibility and the possibility of better working partnerships, while Japan, conscious of external western opinion, was introducing laws limiting divorce. Thus, while North American society was beginning to overcome socially stigmatizing attitudes towards divorce, Japan, where this had been the common approach prior to criticism from North Americans, was shifting the other way to a more strictly regimented system of marital partnerships.

Fuess provides counter arguments to the idea that the high Japanese divorce rate was necessarily negative for women. He documents the Edo Era (1600–1868) practice of “divorce temples” (*kakekomidera*). Women wishing to flee their husbands or husbands’ families could do so by entering such a temple and living there for a designated period, usually three years. Thus there were mechanisms through which wives could initiate divorce. In other cases, a wife who had been “returned” to her natal family as unsatisfactory to her husband’s household was often really a wife who initiated a divorce because of her own dissatisfaction.

Although I applaud Fuess’s work in presenting these alternative views of divorce, he sometimes overstates his case. Fuess points out that women often took charge of initiating a divorce, but in the cases he mentions it was frequently the husband’s mother — not the wife. Thus senior women as mothers gained enough power in the Japanese family system to initiate a divorce, but this power tended to be used at the expense of other women and reveals the low power status of young brides within families, rather than uncontestedly showing female agency.

Other important aspects of marriage, death, divorce, and re-marriage are discussed in relationship to the Japanese family system, as is the prevailing emphasis on maintaining the household lineage or *ie* over the emphasis on individuals who comprised it at any given time or generation. Fuess documents the preferred pattern of re-marriage in some areas for a widower to marry his deceased wife’s sister. Again, I welcomed this material because I have worked in areas of rural Japan in which this was a commonly preferred marriage alliance, and dealt with kin groups in which the adult children of the same man were the offspring of women who were sisters. As with the idea that Japanese had high divorce rates, I have had to deal with the disbelief of students in my classes when explaining these kinship ties. Once this was challenged by a Japanese student in my class who proclaimed to the other students that such things have never happened in Japan.

After tracing the high divorce rates in early industrial Japan, Fuess shows how the Japanese government instituted reforms attempting to deter divorce and lock marriages into place, to appeal to western developed countries. However, some of these legal reforms came up against newly emerging ideas of family based on gender equality and a true sense of partnership between man and woman that also recognized the validity of human sexual compatibility as a basis of marriage. Thus many Japanese intellectuals wrote against the strictness of marriage as a legal institution in the latter half of the twentieth century. Fuess documents the rise of divorce in Japan in the 1980s and 1990s, a trend consistent with other industrialized societies in granting individuals more control over their own lives. However, what is important about Fuess’s documentation of this modern rise in Japanese divorce rates is that,

unlike many others who assume this is “anti-traditional”, Fuess clearly posits it as “The Return of the Divorcing Society” (p. 161) in a country with a high historic divorce rate, not as something new for Japan. Japanese family values did not position divorce as particularly negative until Japan had increasing interface with western countries like the United States, where “traditionally” there was a much lower divorce rate.

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GARNOT, Benoît — *Intime conviction et erreur judiciaire. Un magistrat assassin au XVII<sup>e</sup> siècle?* Dijon, Éditions universitaires de Dijon, 2004, 160 p.

Ce petit livre d’histoire sociale et, surtout, judiciaire est bien plus que la simple relation d’une affaire criminelle qu’a connue la Bourgogne (et marginalement le Comtat-Venaissin) à l’époque de la Fronde.

Certes, cet ouvrage tire d’abord son apparente raison d’être d’un épais dossier constitué à la suite de l’assassinat, au milieu du Grand Siècle (1649), d’un magistrat de la ville de Beaune, au cœur de ce qui est aujourd’hui l’un des vignobles les plus réputés, par une famille rivale également attachée à la magistrature locale.

L’auteur a voulu, en quelque sorte, faire œuvre d’histoire « totale » : connu pour ses précédents travaux d’histoire qualitative à partir des archives judiciaires, Benoît Garnot confirme la possibilité qu’a l’historien de l’ancienne société d’utiliser ce type de documents pour décrire et expliquer les manières de vivre dans la France du XVII<sup>e</sup> siècle. Relations sociales et familiales, professionnelles, univers matériel, « mentalités » comme on disait encore récemment, comportements individuels et collectifs, tout un petit monde, reflet d’une plus large société d’Ancien Régime, est ainsi passé au crible à partir d’archives judiciaires évidemment complétées par d’autres sources « d’époque » et par diverses études plus modernes, notamment des travaux d’étudiants bourguignons ou des synthèses de l’auteur en personne effectuées à partir de telles recherches. On pourra regretter la faiblesse de références en notes sur certains passages.

Surtout, l’intérêt de la présente étude tient dans sa partie proprement judiciaire. Sur ce point, la résolution du crime (ou l’erreur judiciaire) n’est assurément pas l’objectif premier de l’historien, contrairement peut-être à ce que laisse entendre le titre du livre. Nous retiendrons surtout que ce que nous appellerons ici un « exemple révélateur » démontre l’intérêt que peut avoir l’historien de la justice à entreprendre ce genre d’approche, tout en se persuadant des limites inhérentes à ce qui aussi un *unicum*.

Cette « seconde », en fait première, approche du livre, permet à Garnot de rappeler, ou confirmer, les rapports qu’entretient alors la population avec la justice de son temps : y compris chez les élites domine un thème cher à l’auteur, celui de l’infrajudiciaire, et l’une de ses conséquences majeures, l’intervention « décalée » de l’appareil de justice, qui n’intervient ou que l’on ne fait intervenir qu’après