

ABHANDLUNGEN / ARTICLES

“That may be Japanese law ... but not in my country!” Marriage, Divorce and Private International Law in Giacomo Puccini’s *Madama Butterfly*

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I. INTRODUCTION

As is well-known, *Madama Butterfly* is one of the most famous operas by the Italian composer Giacomo Puccini.¹ Composed in the period between 1901 and 1903, its *libretto* was written by two great *librettisti* of that time, Giuseppe Giacosa and Luigi Illica.

This opera is defined by the authors themselves, both on the score and in the *libretto*, as a “Japanese tragedy” (*una tragedia giapponese*). The work is set in a broader stream of opera and operetta inspired by “exotic” themes.

An earlier stage of this trend failed to differentiate between countries and concepts: as correctly pointed out by Girardi the Indian setting of Massenet (*Le roi de Lahore*, 1877) or Delibes (*Lakmé*, 1883) was not so different from the Egypt of Verdi (*Aida*, 1871) or Bizet (*Djamileh*, 1872).² However, a second phase of this movement tended to

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1 According to the website *Operabase*, *Madama Butterfly* is the 6th most performed opera worldwide (<http://operabase.com/>).

2 M. GIRARDI, *Esotismo e dramma in «Iris» e «Madama Butterfly»* [Exoticism and Drama in “Iris” and “Madame Butterfly”], in Puccini e Mascagni, in: *Atti della giornata di studi (Viareggio, 3 agosto 1995)* (Lucca 1996) 37 (in Italian). Girardi is one of the leading experts of Puccini. Readers interested in his work may refer to M. GIRARDI, *Puccini: his international art* (Chicago 2002).

highlight a more carefully differentiated exoticism, and a specific series of works on Japan started to emerge.³

After this short introduction, a question spontaneously arises: why should a law journal be concerned with the history of opera? The reasons lie in the fact that the *libretto* contains many references to Japanese law, American law and the law applicable to international marriages in Meiji Japan. The legal analysis of *Madama Butterfly* is, admittedly, an intellectual *divertissement*, but it also requires a careful study of late Meiji sources. Moreover, since studies of “Law and literature” (or “Law in literature” as some scholars would prefer to say in this case) on Japan are not so frequently produced, this paper aims to contribute to the creation of some studies in this sense.

II. ORIGIN AND PLOT

As far as the plot is concerned, *Madama Butterfly* is not particularly original. It is inspired by a number of consecutive sources: the first text, on which everybody else henceforth relied, is Pierre Loti's *Madame Chrysanthème* (1887),⁴ a largely autobiographic account of the author's life (and temporary marriage) experience in Nagasaki. This book met with immediate success and ignited a series of other works on the same topic, among which it is necessary to mention the short story *Madame Butterfly* by John Luther Long (1898).⁵ While Loti's book, primarily written to meet the economic needs of the author and aimed at entertaining his public, has a light, exotic flavor, Long's short story introduced a more tragic *allure*, with the topics of abandonment and despair. Loti's wife, Kiku-san, is in fact completely aware of the temporary nature of the marriage: she is totally fine with it, love is out of question and she only seems to care about getting adequate remuneration out of it. Long's fictional Cho-cho-san, instead, tries to commit suicide when she finds out the truth about her beloved (whose name is, of course, Pinkerton).

On Long's work, David Belasco developed a play in one act, called *Madame Butterfly: a Japanese Tragedy* (1900)⁶ which premiered in New York but later was staged in London, where Puccini is said to have watched it.⁷

3 GIRARDI, *Esotismo*, *supra* note 2, at 2, mentions *La Princesse Jaune* (Saint-Saëns 1872), *The Mikado or the Town of Titipu* (Gilbert & Sullivan 1885), *Madame Chrysanthème* (Messager 1893) and *The Geisha* (Jones 1896).

4 P. LOTI, *Madame Chrysanthème* (Paris 1887) (in French).

5 J. L. LONG, *Madame Butterfly*, in: *Century Magazine*, 1898. Oddly enough, Mr. Long was a lawyer.

6 The work is reprinted in D. BELASCO, *Madame Butterfly: a Tragedy of Japan*, in: *Six Plays* (New York 1928) 10.

7 This is not the appropriate venue for a complete debate on the sources behind *Madama Butterfly*. For a thorough description, see J. VAN RIJ, *Madame Butterfly: Japonisme, Puccini & the Search for the Real Cho-Cho-san* (Berkeley 2001).

As mentioned, Puccini worked on the opera (together with Giacosa and Illica writing the *libretto*) for about two years before it was first staged at La Scala in Milan in February 1904. However, the *première* was largely criticized by the public, and this led to a radical revision of the play (which was, for example, changed from two acts to three). The second version, only a few months later (May 1904), was a huge success nationally and internationally, but Puccini kept on working on it, and eventually produced five versions of the opera, the last of which (1907) is the “standard” still performed today.

The plot is as follows: in 1904 B. F. Pinkerton, Lieutenant of the US Navy arrives in Nagasaki, Japan, on board the gunboat “Lincoln”. In Act I, through the services of a matchmaker (Goro), he finds a fifteen-year old Japanese lady, Cio-Cio-san⁸ (nicknamed “Madama Butterfly”⁹, hereinafter “Cio-Cio-san” or “Butterfly”) whom he marries. Pinkerton is not willing to seriously commit to the marriage, as he informs the local American Consul, Mr. Sharpless, of his intention to just abandon Cio-Cio-san and find an American wife (“A real wife ... American!”).¹⁰ Butterfly instead is so taken by the idea of marrying a foreigner that she eventually will be giving up her religious beliefs to become Christian. This latter occurrence is found out by her family: her angry uncle, a bonze¹¹, storms the wedding ceremony, cursing her for the choice, and the entire family abandons her.

Act II opens with Butterfly waiting for Pinkerton to come back. He left soon after the marriage and, three years later, he has not returned. Butterfly’s maid, Suzuki, tries to convince her that Pinkerton would not come back and Goro tries to arrange other marriages for her, in vain. Consul Sharpless comes to Butterfly/Pinkerton’s house with a letter for her, but does not reveal its content as he finds out that Butterfly had given birth to Pinkerton’s son after his departure. Suddenly, the Lincoln is spotted in Nagasaki harbor and Butterfly prepares to receive Pinkerton.

Act III opens with Butterfly asleep, tired from having waited the entire night for Pinkerton to arrive. He eventually shows up in the morning, accompanied by his American wife, Mrs. Kate. He had been informed by the Consul about his baby and the new couple is willing to raise the child in the United States. Cowardly, Pinkerton refuses to meet Butterfly to tell her about his new marriage and the intention to take the child with him, entrusting Sharpless and Suzuki to deliver the message. Butterfly, however, says she is willing to give up the baby only if Pinkerton visits her. Then, taking advantage of being left alone in the house, she prays to the family gods, blindfolds the baby and

8 Of course in Japanese the correct writing should be *Chō-chō*, but *Cio-Cio* follows the Italian pronunciation.

9 The nickname is based on the Japanese word 蝶 (*chō*), which means “butterfly”.

10 Act I. All the references are based on the 1906 edition of the *libretto*. L. ILLICA/G. GIACOSA, *Madama Butterfly. Una tragedia giapponese* [Madame Butterfly. A Japanese tragedy] (Milan 1906).

11 *Bonzo* in the original Italian text.

commits suicide by slicing her throat with her father's sword. Pinkerton then rushes in, but it is too late to save her.

III. LEGAL ISSUES

The *libretto* is quite interesting from the point of view of a lawyer, as it mentions a number of legal issues. Of the two librettists, Giuseppe Giacosa actually had a law degree earned at the prestigious University of Torino, but he did not pursue a legal career. Luigi Illica, instead, had to become familiar with the context of Japan as he had written the *libretto* for another opera in a Japanese setting, the *Iris* by Pietro Mascagni (1898). However, it is a fair assumption to assume that neither of them was familiar with Japanese law.

While of course the central legal issues relate to the marriage between Pinkerton and Butterfly, the *libretto* also briefly mentions other questions of law. For example, Pinkerton had entered into a contract for the "ownership" of the house in which he is going to (shortly) live with Butterfly. Discussing with Consul Sharpless, he says:

- Pinkerton I bought this house for nine hundred and ninety nine years, but with the option, at ev'ry month, to cancel the contract! I must say, in this country, the houses and the contracts are elastic!
- Sharpless The man of bus'ness profits by it.¹²

While the word used in the Italian text refers to a sale and purchase agreement (*comperai*) it seems more appropriate to construe the deal as a lease contract. This interpretation is reinforced by the fact that in Act II, Butterfly mentions that Pinkerton has instructed the Consul to regularly pay the rent (*la pigione*).

The key legal issue in the opera, however, is the marriage. Questions arise about the law applicable to the marriage itself (including the formalities required), that applicable to the matrimonial life, and more importantly, whether Pinkerton was allowed to unilat-

12 Act I. – Pinkerton: La comperai per novecento novantanove anni, con facoltà, ogni mese, di rescindere i patti. Sono in questo paese elastici del par, case e contratti.

Sharpless: E l'uomo esperto ne profitta.

For the purpose of this paper, we availed ourselves of the translation by R.K. ELKIN for the Stanford University *Opera Glass Project*, http://opera.stanford.edu/Puccini/Butterfly/libretto_a.html.

The scholar of Japanese law cannot ignore the reference to the "elastic" (or "flexible") Japanese contracts. It is surprising to find a reference to the (alleged) attitude against formal agreements so common in the literature about Japanese law. On the topic see Z. KITAGAWA, Use and Non-Use of Contracts in Japanese Business Relations: A Comparative Analysis, in: Baum (ed.), *Japan: Economic Success and Legal System* (Berlin 1997) 147. On a broader level, see F. K. UPHAM, Weak Legal Consciousness as Invented Tradition, in: Vlastos (ed.), *Mirror of Modernity: Invented Traditions of Modern Japan* (Berkeley/Los Angeles/London 1998) 48–66.

erally divorce Butterfly by abandoning the conjugal house, an option in his view granted by Japanese law but not allowed under the law of the USA.

First, we will deal with the marriage itself.

It is uncontested that the place where the marriage takes place is Nagasaki, Japan: this is made clear from the beginning. In fact, Goro, while showing the house to Pinkerton, says:

Goro There will come: the official registrar, the relations, your country's Consul, your future wife. Here you'll sign the contract and solemnize the marriage.¹³

The marriage therefore takes place in the Pinkerton(s) private residence, and not on the premises of the American Consulate in Nagasaki. However, Sharpless himself is attending the ceremony as Consul. Goro fails to mention that another figure, an Imperial Commissioner, will attend. Actually, the latter will be officiating the ceremony.

Pinkerton is convinced that the marriage will take place according to Japanese, if not laws, at least rules:

Pinkerton And so I'm marrying in Japanese fashion, tied for nine hundred and ninety nine years! Free, though, to annul the marriage monthly!¹⁴

Of course Pinkerton does not seem to believe that this is the real Japanese legislation on marriage. He just jokingly tries to make a parallel between the ownership (lease) of the house and the matrimonial bond: what he believes indeed, however, is that under Japanese law he is freely allowed to unilaterally dissolve the marriage.

When it comes to the requirements to get married, it is made clear that Pinkerton has the right to enter marriage. As Butterfly is 15 and her father had died, the consent of other family members is necessary. So, when the Imperial Officer attending the ceremony grants the creation of the matrimonial bond, he affirms:

Imperial Commissioner Leave is given to the under sign'd, Mister B. F. Pinkerton, Lieutenant serving on the gunboat Abra'm Lincoln, of the

13 Act. I. – Goro: Qui verranno: l'Ufficiale del registro, i parenti, il vostro console, la fidanzata. Qui si firma l'atto e il matrimonio è fatto.

The registration of the marriage is one of the few legal aspects dealt with by Loti. After the Japanese police apparently harassed his landlords for hosting a foreigner married to a Japanese lady, he has to visit the local authorities to prove that his marriage was validly registered. The dialogue that follows is not really a good example of cultural understanding and kindness, to say the least: "*Certainement, disent-ils enfin, on laissera en paix mon honorable personne; on ne demande pas mieux, même. Seulement, pour me soumettre aux lois du pays, j'aurais dû venir ici déclarer mon nom et celui de la jeune personne que... avec laquelle... – Oh ! c'est trop fort, par exemple ! Mais je suis venu exprès, troupe méprisante, il n'y a pas trois semaines! Alors je prends moi-même le registre de l'état civil : en feuilletant, je retrouve la page, ma signature et, à côté, le petit grimoire qu'a dessiné Chrysanthème:– Tiens, assemblée d'imbéciles, regarde!*" LOTI, *supra* note 4, 100-1 (emphasis added).

14 Act I. – Pinkerton: Così mi sposo all'uso giapponese per novecento novantanove anni. Salvo a prosciogliermi ogni mese.

United States Navy of North America: And to the spinster, known as Butterfly, Inhabitant of Omara Nagasaki, To join in bonds of wedlock. To wit the former, of his free accord and will. The latter with consent of her relations, [hands the bond for signature] Witnesses of the contract.¹⁵

The fact that the Imperial Commissioner says that the marriage is “granted” (*concesso*) suggests that Japanese authorities are officiating the ceremony.

As mentioned, the ceremony is then stormed by the angry bonze uncle of Butterfly: finding out that the young woman has renounced her religious beliefs and embraced Christianity, the whole family repudiates Butterfly and leaves. But that does not seem to matter as the ceremony was already finished and nobody questions that the consent was legitimately expressed, nor was a withdrawal attempted.

At the outset of Act II, Pinkerton has already left Butterfly. In this Act most of the “legal debate” about the law applicable to the marriage takes place.

First of all, when Butterfly welcomes Sharpless, she says:

Butterfly Welcome to an American house¹⁶

It is not clear whether she means to refer to some form of extraterritoriality or if she is just expressing a welcome to a person she recognizes as “her” Consul (*mio console*). However, what Butterfly deeply believes is that the three-year long absence of Pinkerton does not amount to divorce by abandonment. This is clearly expressed in a fiery dialogue between herself, the matchmaker Goro, Yamadori (a Japanese noble who Goro is proposing that Butterfly marry) and Sharpless:

Butterfly But my hand's bestowed already...
 Goro and
 Yamadori She believes she is still married
 Butterfly I don't think it, for I know it..
 Goro But the law says:
 Butterfly I do not know it
 Goro For the wife desertion gives the right of divorce,
 Butterfly That may be Japanese law,...But not in my country.
 Goro Which one?
 Butterfly The United States
 Sharpless (Poor little creature!)

15 Act I. – Imperial Commissioner: È concesso al nominato Benjamin Franklin Pinkerton, luogotenente nella cannoniera Lincoln, marina degli Stati Uniti America del nord: ed alla damigella Butterfly del quartiere di Omara-Nagasaki, di unirsi in matrimonio, per diritto il primo, della propria volontà, ed ella per consenso dei parenti qui testimonii all'atto (porge l'atto per la firma)

16 Act II. – Butterfly: Bevenuto in casa americana.

- Butterfly I know of course, to open the door and to turn out your wife at any moment, here, constitutes divorce. But in America, that cannot be done [to Sharpless] Say so?
- Sharpless Yes, yes... But yet...
- Butterfly There a true, honest and unbiass'd judge says to the husband: "You wish to free yourself? Let us hear why?" "I'm sick and tir'd of conjugal fetters!" Then the good judge says: "Ah, wicked scoundrel, Clap him in prison!"¹⁷

As Butterfly spontaneously decides to give up her baby to the Pinkertons, there are no other significant legal issues until the tragic conclusion of Act III, in which Butterfly commits suicide cutting her throat.

IV. APPLICABLE LAW

As mentioned above, the fictional facts of Madama Butterfly take place in Nagasaki, Empire of Japan, 1904.¹⁸ It is therefore necessary to refer to the applicable laws in force at that time, and in particular, the rules about conflict of laws.

At the time, Japan had already freed itself from the grip of the "Unequal Treaties".¹⁹ With the United States, the Empire of Japan had concluded the Convention of Kanagawa

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- 17 Act II. – Butterfly: Già legata è la mia fede
Goro and Yamadori: Maritata ancor si crede
Goro: Ma la legge...
Butterfly: Io non la so
Goro: ...per la moglie l'abbandono al divorzio equiparò
Butterfly: La legge giapponese, non quella del mio paese
Goro: Quale?
Butterfly: Gli Stati Uniti
Sharpless: (Oh, l'infelice!)
Butterfly: Si sa che aprir la porta e cacciar la moglie per la più corta qui divorziar si dice. Ma in America questo non si può. Vero?
Sharpless: Vero...però...
Butterfly: Là un bravo giudice, serio e impettito, dice al marito "Lei vuole andarsene? Sentiam perché?" ~ "Sono seccato del coniugato!" E il magistrato: "Ah, mascalzone, presto in prigione!"
- 18 This is our interpretation based on the premise in paragraph II, *i.e.* the *première* at La Scala in Milan. However, different readings of the relevant date are offered by R. BAILEY-HARRIS, *Madame Butterfly and the Conflict of Laws*, in: *The American Journal of Comparative Law* 39 (1991), 157. Bailey-Harris thinks that the beginning of the story could have taken place in the latter part of 1898 (at the earliest. *Id.* at 158). She therefore believes that the 1898 legislation is applicable *in toto*. Other scholars claim that, should 1898 be the date, the applicability of the *Hōrei* would be doubtful: contrary to the view of Bailey-Harris see Y. SAKURADA, *Cho-cho-fujin no higeki* [Tragedy of Madame Butterfly], Kyoto University Law and Politics 21 COE Program for the Reconstruction of Legal Ordering in the 21st Century, Occasional Paper Series, No. 28 (February 2008)19.

(1854) and the Treaty of Amity and Commerce (1858, also known as the “Harris Treaty”), which provided for extraterritoriality to the advantage of American citizens in Japan. However, in 1899 the Empire was able to renegotiate the treaty on an equal basis, and therefore the 1858 Treaty is not relevant in the case at hand. It is necessary therefore to mainly focus on two pieces of legislation: the Civil Code of 1898 (*Minpō*)²⁰, the Japanese Code of Private International Law (*Hōrei*)²¹ – amended and entered into force in 2007 with the new name of the Act on the General Rules of the Application of Laws (*Hō no tekiyō ni kansuru tsūsoku-hō*)²² and the Nationality Law (*Kokuseki-hō*)²³.

Although, as we mentioned, there are other “legal” issues (e.g. whether the house was purchased or rented), consistent with the purpose of this paper, we will only analyze the issues relating to marriage and divorce.

According to the *Hōrei*, it seems correct that the marriage was celebrated under Japanese law. Art. 13 in fact states that “requisites of a marriage are governed as to each party by the law of his or her nationality. As to its form, however, the law of the country where it is celebrated governs”²⁴.

And that is the reason why Pinkerton is allowed to marry “by right of his own will”, while Butterfly is entitled to do so “by consent of the relatives”, as she was required to obtain the permission under Japanese law. In this regard, Art. 750 of the 1898 Code states that, in order to marry, a family member must obtain the consent of the family head. In the case of Butterfly, however, the authorization would be required as well by Art. 772 (1), by which women under twenty-five must have obtained the permission of *both* parents to marry.²⁵ Since Butterfly’s father is deceased, the consent of the mother is deemed to be sufficient under Art. 772 (2).²⁶ In the *libretto* it is very difficult to estab-

19 On the issue of the Unequal Treaties in general, see M. R. AUSLIN, *Negotiating with Imperialism: The Unequal Treaties and the Culture of Japanese Diplomacy* (Cambridge Mass. 2006).

20 Law No. 89/1896 and No. 9/1898.

21 Law No. 10/1898.

22 For a complete and detailed analysis of the modernization of Japanese law, see W. RÖHL (ed.), *History of Law in Japan since 1868* (Leiden 2005). See also, Masato DOGAUCHI, *Historical Development of Japanese Private International Law*, in: Basedow/Baum/Nishitani (eds.), *Japanese and European Private International Law in Comparative Perspective* (Tübingen 2008) 26.

23 Law No. 66/1899.

24 For the translation of the 1898 Civil Code and of the *Hōrei* we used L. LÖNHOLM (tr.), *The Civil Code of Japan* (Tōkyō 1898).

25 Incidentally, Butterfly has just reached the legal age for entering into a marriage. She is in fact 15, the minimum age permitted by law to get married. Art. 765 Civil Code.

26 It is worth mentioning that the violation of Art. 750 gave the power to the family head to expel the member from the family, but it did not affect the validity of the marriage itself. On the other hand, a violation of Art. 772 would prevent the valid registration of the act. *Amplius*, J.M. RAMSEYER, *Odd Markets in Japanese History. Law and Economic Growth* (Cambridge Mass. 1996) 92.

lish a clear picture of Butterfly's family tree, so it is impossible to identify who is the head of the household. However, the presence of the *entire* family (explicitly including her mother) at the marriage, recorded by the Imperial Commissioner itself, sweeps away any eventual problem in this regard.

With the notification to the registrar, the marriage is effective. Notification must be made by the parties concerned, and at least two witnesses of full age (Art. 775). Since the Officer Registrar is attending the ceremony and there is plenty of witnesses of full age, although we do not know who actually was the official witness to the act we may as well assume that the marriage is validly registered. We may infer that also from a scene description in Act I:

[...meanwhile the Registrar removes the bond and the other papers, then informs the Commissioner that the ceremony is over]²⁷.

The closing of Act I leaves us therefore with Pinkerton and Butterfly being legally married under Japanese law. We do not know whether the American consul has duly registered the act in the consular registry; however, since he is aware of Pinkerton's plan, he may well not have done so.

In Act II, Sharpless visits Butterfly in the house she formerly shared with her husband Pinkerton, and he is bid welcome to "an American house". Her welcome address is incorrect, as the rule is that "rights in immovables [...] and rights for which registration is required are governed by the law of the place where the things subject to such rights are situated";²⁸ she is, however, right in claiming that the *household* is American: Butterfly in fact, under the effects of Art. 18, Nationality Law, lost her Japanese citizenship and became American.²⁹ Moreover, pursuant to the joint application of Art. 14 and 15, *Hōrei*, the effect of a marriage is governed by the law of the husband and the matrimonial property is also ruled by the law of the husband's nationality at the time when the marriage was contracted: in this case, both are American law.³⁰

The most important question then arises: was Pinkerton allowed to unilaterally divorce by abandonment? Does Butterfly enjoy legal protection? If she does, under which law?

The answers to these questions need to be fairly structured.

First, we are sorry to inform Pinkerton that, contrary to his beliefs and irrespective of the applicable law, unilateral divorce by abandonment was not (anymore?) a feature of Japanese law.

27 Act I: [l'Ufficiale dello stato civile ritira l'atto e avverte il Commissario che tutto è finito].

28 Art. 10, Law No. 10/1898.

29 "A Japanese woman who has married an alien loses Japanese nationality". See also J. TORII, *International Human Rights and the Law Concerning Family Relations*, in: Andō (ed.), *Japan and International Law. Past, Present, Future*, (Den Haag 1999) 257-60 (259).

30 This allows us to disregard Art. 789 of the Civil Code, by which the wife *must* live with the husband and the husband *must permit* the wife to live with him.

The Civil Code provided for a dual way to divorce, consensual divorce (*kyōgi rikon* Art. 808–812) and judicial divorce (*saiban rikon*, Art. 813–819). Since Butterfly is clearly not consenting to the divorce, and Pinkerton did not even try to convince her, we may ignore the *kyōgi rikon* and concentrate on the *saiban rikon*. In this regard, the Civil Code is clear on the causes which may lead to a divorce:

Art. 813

A husband or a wife, as the case may be, can bring an action for divorce only in the following cases:

1. If the other party contracts a second marriage;
2. If the wife commits adultery;
3. If the husband is sentenced to punishment for an offence involving criminal carnal intercourse;
4. If the other party is sentenced to punishment for an offence greater than misdemeanor involving forgery, bribery, sexual immorality, theft, robbery, obtaining property by false pretenses, embezzlement of goods deposited, receiving property obtained criminally, or any of the offences specified in Arts. 175 or 260 of the Criminal Code or is sentenced to a major imprisonment or more;
5. If one party is so ill-treated or grossly insulted by the other that it makes farther living together impracticable;
6. If one party is deserted by the other;
7. If one party is ill-treated or grossly insulted by an ascendant of the other party;
8. If an ascendant of one party is ill-treated or grossly insulted by the other party;
9. If it has been uncertain for three years or more whether the other party was alive or dead;
10. In the case of the adoption of a mukoyoshi, if the adoption is dissolved or in the case of the marriage of an adopted son with a daughter of the house, if the adoption is dissolved or cancelled.

From the provisions of the Code it is clear that unilateral divorce by abandonment is not an option; it is also clear that, although Butterfly could have plenty of grounds for acting to obtain a judicial divorce, Pinkerton has none.

As discussed before, neither Illica nor Giacosa had access to Japanese law and their perception of local rules was largely based on Loti's book and maybe on other European travelers' reports. In those reconstructions, the idea that Japanese husbands could divorce their wives simply by expressing their unilateral intention was quite strong and widespread.³¹ It is true that under the Tokugawa regime there were provisions allowing husbands to divorce simply by expressing their intention and returning the dowry goods

31 H. FÜSS, *Divorce in Japan. Family, Gender and the State 1600–2000* (Stanford 2004) 1–2, refers to a vast literature in this sense, ranging from Valignano to Midford to Chamberlain.

and money,³² but the play is set in 1904, so we do not even need to consider the question whether, and to which extent, this had been possible. Moreover, the whole matter is not important at all if we read Art. 16 of the *Hōrei*, “Divorce is governed by the law of the nationality to which the husband belongs at the time when the facts forming the cause of divorce arise; but the court cannot decree a divorce, unless the cause of divorce is recognized as such by Japanese law”. It is not clear which facts could be considered as a basis for divorce here, as Butterfly is clearly not willing to bring an action to the court and therefore Pinkerton should have done so (with small chances of success).³³ Anyway, the legal proceedings for divorce should have been governed by American law.³⁴

As for the tearful closing scene, in which Butterfly puts a small American flag in the hands of her child before committing suicide, the gesture makes legal sense, as the baby is, in fact, not a Japanese national. The Nationality Law, in fact, clearly stipulates (Art. 1) that “A child is a Japanese subject, if at the time of his birth his father is such”, which is clearly not the case. Her desire of the baby to be raised as an American is therefore grounded also from a legal point of view.

V. CONCLUSIONS

When Japanese context is depicted, a limited accuracy may be reasonably expected by a *libretto d’opera* written at the very beginning of the twentieth century. The Japan described by Illica and Giacosa and wonderfully put into music by Puccini is a stereotypical setting, perfectly fitting in the confused and enthusiastic *Japonisme* movement. The purpose is not to give a fair and accurate depiction of a country but rather that of a fascinating one, conjuring images of distant lands and different people. The *libretto* is full of blurred, inaccurate, careless hints to Japan: Japanese-sounding words are employed for their exotic sound, the local religion is an undistinguished mixture of Buddhism and Shintoism, a wide series of stereotypes (Butterfly’s father’s *seppuku* upon order from the Emperor, the reference to the *geisha*, etc.) are thrown into a text created to evoke feelings of “exoticism”.³⁵ Even when issues of law are dealt with, nobody should legitimately expect legal accuracy in an opera; yet, we find *Madama Butterfly* fascinating for a number of reasons.

32 Id., 29.

33 Japanese courts had a long history of refusing at-fault divorce. See M. D. WEST, *Lovesick Japan. Sex, Marriage, Romance, Law*, (Ithaca and London, 2011), 196–208.

34 For a debate on the “American side” of the issue, see BAILEY-HARRIS, *supra* note 18, 169–177.

35 Actually, Puccini employs – to a limited extent – Japanese instruments both in the orchestral setting and on stage. His access to Japanese musical instruments is believed to be due to the great research work carried out by Mascagni for the *Iris*. *Amplius*, GIRARDI, *supra* note 2, at 2 (also note 10, *ivi*).

One of the tools used to entice the audience is the fact that the play takes place in Nagasaki, *today* (according to the libretto). By employing this technique, the *librettisti* purportedly creates a connection between the play and the setting: they were not aware, however, of the legal consequences of their choice. As mentioned before, the facts are assumed to happen in 1904, as this is the date when the opera premiered in Milan.³⁶ Yet, the opera was inspired by a book published in 1887 describing events of 1885: if we look at the Japanese context, and specifically at the modernization of law, the change between 1885 and 1904 is incredibly sharp. In 1885, the Japanese legal system was still in a tumultuous and rapid evolution, struggling to become a modern system of laws. The only modern codes in force at the time were the Penal Code and the Code of Penal Procedure, while for other fields of law, a plurality of customs, ordinances, decrees and provisional laws were somehow regulating matters.³⁷ Moreover, the situation of inequality created by the Ansei Treaties³⁸ was still in force, relegating Japan to a quasi-colonial status.

It would lead us too far away to inquire about the legal framework of Loti's marriage with his *Madame Chrysanthème*, and so we are not interested in checking whether the law was complied with. However, the fact that both Loti and his spouse agreed that the marriage would have been temporary leads us to believe that they could effectively use the legal tool of consensual divorce (allowed both under pre-Meiji Japanese legislation³⁹ and the French Civil Code). Aside from a strictly legal reasoning, the attitude of Europeans in Japan in 1885 (as we already discussed)⁴⁰ was not exactly respectful of local people, traditions or regulations. Whether in fact (as probably happened) or in law, Loti got away with no problems.

Pinkerton is depicted as in Loti's work, but – without the knowledge of his creators – in a radically different setting.

We believe that narratives like *Madama Butterfly* are fascinating accounts of how Europeans looked at Japan. Irrespective of inaccuracies (to say the least), those works are extremely powerful cultural objects, capable of leaving a strong mark on depictions, (mis)understanding(s) and stereotypes about Japan. From a legal perspective, the Meiji Restoration is a *unicum* in the history of law: no other country could make such a leap

36 For the purpose of this analysis we are not interested in discussing what hypothetical *Madama Butterfly 2.0*, set in Nagasaki *today* (as the *libretto* states) could be, from a legal point of view. Of course applying present laws to the case would be stimulating, but we leave to others this intellectual effort.

37 RÖHL, *supra* note 21, in particular 1–23.

38 The so-called Ansei Treaties are five unequal treaties executed between Japan and the USA, Netherlands, Russia, Great Britain and France in 1858. By virtue of the most favored nation clause, their provisions extended from a treaty to the other to provide a homogenous regime for foreign powers vis-à-vis Japan. In the case of France, the governing treaty was the Treaty of Amity and Commerce between France and Japan of 9 October 1858.

39 FÜSS, *supra* note 30, at 29.

40 *Supra* at 13.

forward in the modernization of its legal system, and Japan has been considered a superb case study by generations of comparative lawyers.⁴¹ So using novels, theater plays and opera to read the intense and controversial period of *Meiji Ishin* through the lenses of writers, composers and travelers allows us to re-discover issues under a different light.

As a concluding remark, we cannot but express our solidarity to the poor, abandoned Butterfly. The young Japanese lady could actually have a pretty strong case in court against the morally disgusting Pinkerton. But ultimately, what Butterfly wanted was not to receive alimony, economic support, to have Pinkerton's marriage with Kate annulled or to have him prosecuted for bigamy: Butterfly just wanted to be loved. And unfortunately no judge, however "*true, honest and unbiass'd*", could issue and enforce an order to love.

SUMMARY

Madama Butterfly is one of the most famous operas by Giacomo Puccini. Set in Japan in 1904, it depicts the tragic love story between B.F. Pinkerton, an officer in the US Navy, and Cio-cio-san (also called *Madama Butterfly*), a young Japanese girl from Nagasaki.

The libretto (written by Giacosa and Illica – one of whom happened to be a lawyer) is quite interesting from a jurist's perspective as it mentions a number of legal issues. The pivotal point in the opera is the marriage between the officer and the young Japanese lady. Questions arise about the law applicable to the marriage itself (including the formalities required), that applicable to the matrimonial life, and, more importantly, whether Pinkerton was allowed to unilaterally divorce by abandoning the conjugal house, an option in his view permitted by Japanese law (but of course not allowed under the law of the USA). In the opera, the validity of this option is taken for granted, but a legal, technical analysis leads to a different conclusion.

This paper investigates in detail the legal aspects of *Madama Butterfly*, in light of the applicable law in Japan in 1904: in particular, the Civil Code of 1898 (*Minpō*), the Japanese Code of Private International Law (*Hōrei*) and the Nationality Law (*Kokusekihō*). The story of Pinkerton and Butterfly will be analyzed through the lens of the law to find answers to the following questions: was their marriage validly concluded? Which law regulated their marital life? And most of all: did the law in 1904 allow the husband to unilaterally divorce through abandonment? In trying to deal with these questions, the

41 Although the Japanese legal system has often been depicted through stereotypes. *Amplius*, F. K. UPHAM, The Place of Japanese Legal Studies in American Comparative Law, in: *Utah Law Review* 1 (1997) 639; G. F. COLOMBO, Japan as a Victim of Comparative Law, in: *Michigan State International Law Review* 22 (2013) 731.

paper relies on the original text in Italian (of course providing an English translation for the international readership).

In addition to the purely legal analysis of the libretto, this paper would also like to propose a different approach to the very well-known subject of the Japanese legal modernization. The reforms during the Meiji period have been studied in depth by generations of comparative lawyers, mostly from a historical or technical perspective. Works like Madama Butterfly are fascinating pieces of evidence of how Europeans looked at Japan. While of course characterized by major inaccuracies, those works are extremely powerful cultural objects, capable of leaving a strong mark on depictions, (mis)understandings and stereotypes about Japan. From a purely legal perspective, the Meiji Restoration is a unicum in the history of law: no other country could make such a leap forward in the modernization of its legal system, and Japan has been considered a superb case study by generations of comparative lawyers. So using novels, theater plays and opera to read the intense and controversial period of the Meiji Ishin through the lenses of writers, composers and travelers allows us to re-discover issues in a different light.

Finally, this paper intends to offer a contribution to the development of studies in Law and Literature (or “Law in literature” as some scholars would prefer to say in this case) on Japan. This approach, very popular and developed in Europe and the US, is still not so frequently encountered with reference to the Japanese context.

ZUSAMMENFASSUNG

Madama Butterfly ist eine der berühmtesten Opern Giacomo Puccinis. Sie spielt im Jahr 1904 in Japan und handelt von einer tragischen Liebesgeschichte zwischen B.F. Pinkerton, einem Offizier der amerikanischen Marine, und Cio-cio-san (auch Madama Butterfly genannt), einer jungen japanischen Frau aus Nagasaki.

Das aus der Feder von Giacosa und Illica stammende Libretto, von denen einer zufällig ein Jurist war, ist aus juristischer Perspektive höchst interessant, denn es spricht eine Reihe von Rechtsfragen an. Das zentrale Thema der Oper ist die Heirat zwischen dem Offizier und der japanischen Frau. Es stellt sich die Frage, welches nationale Recht auf die Eheschließung (einschließlich deren formale Voraussetzungen) und die Ehe selber Anwendung findet, und insbesondere ob Pinkerton das Recht hatte, sich von seiner Ehefrau dadurch im Sinne einer einseitigen Scheidung zu trennen, dass er das gemeinsame Haus verließ. Dies war nach seinem Verständnis nach japanischem Recht zulässig (nicht aber nach dem Recht der USA). Die Oper geht von der rechtlichen Zulässigkeit seiner Handlung aus, die juristische Analyse legt demgegenüber eine andere Schlussfolgerung nahe.

Der Beitrag untersucht die in der Oper angesprochenen rechtlichen Fragen aus der Sicht des im Jahr 1904 anwendbaren japanischen Rechts. Einschlägig sind insbesondere das Zivilgesetz von 1898 (Minpō), das Rechtsanwendungsgesetz (Hōrei) und das Staats-

angehörigkeitsgesetz (Kokuseki-hō). Die Geschichte von Pinkerton und Butterfly wird aus der Perspektive dieser gesetzlichen Regelungen analysiert, um Antworten auf die folgenden Fragen zu finden: War die Eheschließung wirksam? Welches Recht regelte die Ehefolgen? Und, vor allem, gab das im Jahr 1904 geltende Recht dem Ehemann die Möglichkeit einer einseitigen Scheidung durch das Verlassen seiner Ehefrau entgegen deren Willen? Zur Beantwortung dieser Fragen bezieht sich die Untersuchung auf die italienische Originalpartitur (wobei englische Übersetzungen beigelegt werden).

Zusätzlich zu dieser rechtlichen Analyse des Librettos bietet der Beitrag einen eigenständigen Zugang zu dem bekannten Thema der Modernisierung des Rechts in Japan. Generationen von Rechtsvergleichern haben die Reformen der Meiji-Zeit untersucht und sich dabei meist einer historischen oder rechtstechnischen Perspektive bedient. Werke wie Madama Butterfly sind faszinierende Belege dafür, wie Europäer Japan seinerzeit betrachteten. Auch wenn diese Werke naturgemäß unter großen Ungenauigkeiten leiden, so bilden sie doch wirkmächtige kulturelle Instrumente, die das Potential haben, Wahrnehmungen, (Miss)Verständnisse und Stereotypen über Japan maßgeblich zu beeinflussen. Aus rechtlicher Sicht stellt die Meiji-Restauration ein einmaliges Ereignis in der Rechtsgeschichte dar: Kein anderes Land hat es vermocht, sein Rechtssystem derart rasch zu modernisieren. Entsprechend ist Japan von Generationen von Rechtsvergleichern als ein herausragendes Studienobjekt angesehen worden. Die Lektüre von Romanen, Theaterstücken und Operntexten, die sich mit der dramatischen und umstrittenen Periode der Meiji-Erneuerung befassen, erlaubt uns, diese Ereignisse in einem neuen Licht zu sehen.

Die Untersuchung möchte zugleich einen Beitrag zu der Entwicklung von „Studien über Recht und Literatur“ (oder „Recht in der Literatur“, wie es teilweise heißt) über Japan leisten. Dieser methodische Ansatz ist in Europa und den USA bereits verbreitet und entwickelt, aber mit Bezug auf Japan lässt sich dies noch nicht sagen.

(Die Redaktion)

