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Japan's State Secrecy Debate:

A Foucauldian Discourse Analysis

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Abstract

The Japanese government managed to implement the Act on the Protection of Specially Designated Secrets (SDS) in late 2014, making it easier for government agencies to withhold information. The debate that was ignited by the SDS is central to this thesis. Existing research on the SDS can be characterized as a battle for truth, with a focus on the superficial effects of the law. In contrast, this paper approaches the debate as a discourse, with a particular focus on the Japanese government and the Japanese media. Essentially both of them claim to act in the national interest, but their arguments have thus far not been scrutinized. This paper has identified three fundamental arguments in the state secrecy debate: 'safety' (the government's reason for proposing the SDS), the 'right to know' (mass-media criticism of the SDS) and 'transparency' (the counter-argument by the government to the 'right to know' critique). Utilizing Foucault's understanding of discourse, this thesis focuses on statements made by the media and government in which the aforementioned arguments appear, and scrutinizes the unproblematic manner in which they are accepted as arguments to further Japanese public interest.

Keywords: SDS, state secrecy debate, safety, right to know, transparency, national security, Foucauldian discourse analysis

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Introduction

Problem

This section presents an introduction to the Act on the Protection of Specially Designated Secrets (hereafter referred to as 'SDS') and the subsequent debate about the law.

In late 2013, Shinzo Abe, in his second term as Prime Minister, proposed a piece of legislation called the SDS. The law came into force a year after it had been adopted by the Diet (the Japanese parliament), thus being effective from December 2014. The law provides 19 government agencies the capacity to designate secrets regarding defence, diplomacy, counterterrorism and counterespionage (Japan Today 2015). The government claimed that up until the moment of the implementation of the SDS, sensitive government information had not been protected properly. Shortly after the law passed the Diet, the Chief Cabinet Secretary, Yoshihide Suga, elaborated on the necessity of the law, citing the government's rising fear of information leaks within the government (Repeta 2014, 24), which pose a threat to Japan's national security. In addition to the looming threat, Yoshihide Suga emphasized that Japan can only share information with foreign governments on the presumption that Japan protects information by means of having proper laws in place (Repeta 2014, 24).

Importantly, in December 2013 the Abe administration had already established the National Security Council (NSC), similar to the American NSC, to serve as the command centre for Japan's diplomatic and security policies (Jōji, 2013). As such, the SDS is part of a broader policy by the Abe administration to bolster Japan's national security and to have the previously installed NSC function in an ideal way. The introduction of the SDS can also be understood as taking away certain restrictions imposed by the allied occupation authorities after World War Two – namely, its pacifist constitution – and regaining 'greater responsibility for its security and that of allies' (Halperin 2014, 6). Abe's longstanding desire to enable the Japanese military forces to participate in military operations and military combat together with foreign countries 'for a purpose other than directly protecting the Japanese homeland' (Oros 2014, 237) is close to fulfilment, considering the approval of a bill by the Japanese Cabinet on 14 May 2015, which allows for such missions to take place (Sieg 2015).

Although the state secrecy law passed the Diet relatively effortlessly given the majority of Prime Minister Abe's Liberal Democratic Party (LDP) in both the upper and the lower house, it did create controversy in Japan. Media reports agreed that never before had so many people gathered in the streets to protest against a law (Al Jazeera 2014). Considering the time frame from when the SDS was accepted by the Diet until the law came into force, namely 12 months, the new law received extensive media coverage. Media reports were critical towards the legislation and the reports can be characterized by their focus on the restrictions the law would impose on the people's 'right to know', which all media

reports agreed is a necessary right in any democracy (Stiglitz 1999, 1). Subsequently, the law catalysed a debate in which various positions were taken: from highly critical of the bill, as well as supportive. The debate about the SDS as reflected both in academic and media articles, as well as in government statements, illustrated a battle for truth. That is to say, a battle for what the law stands for and who gets to define what the SDS would imply for Japan. Moreover, one can identify a debate on what the state secrecy law constitutes and what the practical implications of the SDS are for journalists, bureaucrats and ordinary citizens. As such, the controversy was rooted in a discourse of state secrecy, where one can identify two important agents: the media and the government.

Aim and Purpose

The purpose of this thesis is not to determine who is right or wrong about the necessity of the SDS, or what the meaning of this law is for Japan as a society in general. Instead, and more narrowly, I analyse how the government and the media justify their position in relation to the SDS. As will be further elaborated in the analysis, both sides claim to act in the public interest. However, previous studies seem to accept some crucial arguments put forward by the respective agents without further scrutiny. In view of this, it becomes necessary to closely analyse three fundamental arguments of the state secrecy discourse, which are centred on the following objects: ‘safety’ (and connected to that ‘national security’), the ‘right to know’ and ‘transparency’. The first object, ‘safety’, functions as the main argument for implementing the SDS. In response to the implementation of the law, media organizations argued that the SDS would infringe on the people’s ‘right to know’, which is the second fundamental object of discourse. In response to the ‘right to know’ critique, the Abe administration stated that the law would not infringe on the ‘right to know’; on the contrary, the SDS would only increase ‘transparency’.

Research Question

The following research question underlies this inquiry:

‘Considering the state secrecy discourse of Japan revolving around the Act on the Protection of Specially Designated Secrets (SDS) – how did “safety”, the “right to know” and “transparency” function as crucial arguments utilized by the Japanese government and media in their claims to defend the national interest of Japan, and why were these arguments not problematized?’

Disposition

After the introduction, Chapter 2 will provide an overview of existing literature on the SDS and a brief explanation of the Japanese media landscape. Chapter 3 introduces the methodology. Chapter 4 will further elaborate the theoretical framework of this thesis, leading up to the analysis of the materials in Chapter 5. Finally, Chapter 6 consists of a conclusion.

Literature Review

This chapter will provide a review of the literature on the SDS, with a particular emphasis on the three objects that are central to this thesis: ‘safety’, ‘right to know’ and ‘transparency’.

SDS Contradicts International Standards of the Tshwane Principles

To start with, it is important to discuss the Tshwane Principles, which ‘codify best practices relating to a state’s authority to withhold information on national security grounds and to punish the disclosure of such information’ (Halperin 2014, 12). These principles were set up under the leadership of the Open Society Justice Initiative, together with a total number of 22 organizations and 500 consultant experts. Since the principles are not legally binding for the Japanese government, Abe referred to them as merely ‘opinions’ (Repeta 2014, 31). Nevertheless, it is useful to compare the SDS with the standards of the Tshwane Principles. For example, Principle 10 dictates that information regarding civilian’s ‘safety’ ‘should prevail to be disclosed’ (Corrales 2014, 11). Contrary to Principle 10 of the Tshwane Principles, the SDS does not explicitly refer to the requirement to disclose information regarding the ‘safety’ of Japanese civilians. Thus, the SDS does not meet the standards of the Tshwane Principles, insofar as the SDS does not stipulate the necessity to disclose information regarding the ‘safety’ of Japan and its citizens.

Furthermore, Halperin (2014) states that the SDS is particularly damaging for journalists, especially if one considers the following Tshwane Principle: ‘journalists are granted special protections (...) and should not be prosecuted for their possessing, receiving, disclosing, or seeking classified information and should not be forced to reveal confidential sources’ (Halperin 2014, 16). Contrary to the former, the SDS compels the penalization of anyone (including journalists) ‘for improperly seeking, holding, or releasing classified information’ (Halperin 2014, 16). Herein one can identify a general concern that speaks of the tension between the freedom of information and the necessity for governments to hold secrets. The Tshwane Principles are meant to ease this tension by demanding that a state secrecy law has to be accessible, unambiguous, and enable individuals to understand what information can be withheld and what information has to be disclosed, and ‘what actions concerning the information are subject to sanction’ (Corrales 2014, 9).

Legal Issues: The Public’s ‘Right to Know’

Existing literature on the SDS is generally concerned with the people’s ‘right to know’. For instance, a general conception is that the ‘right to know’ is a human

right protected under the Public International Law (Corrales 2014, 1). Furthermore, there are certain scholars that argue that the 'right to know' is protected by the Japanese constitution (Repeta 2014, 33). However, the latter conviction is debatable: the actual phrase 'right to know' does not appear once in the constitution of Japan. Despite that, a broadly carried notion is that the 'right to know' is protected under Article 21 of the Japanese constitution, which concerns freedom of the press. For instance, there is the famous court ruling about Japanese journalist Nishiyama. He wrote an article on the reversion of the Southern Okinawa Island (Corrales 2014, 4) and he allegedly acquired the information for his story by violating the National Public Employees Law (NPEL). The specific details of this case are not relevant, however, the notion that the court ruled in Nishiyama's favour by declaring that 'in a democratic society the reports of the mass media serve the people's right to know' (Corrales 2014, 4) confirmed the belief that the 'right to know' is a constitutional right in Japan. In the view of the alleged constitutional protection of the 'right to know', Repeta (2014) points at Article 22 of the SDS:

'When applying this Act, expanding its interpretation to unfairly violate the fundamental human rights of citizens shall be prohibited, and due care shall be paid to freedom of news coverage that contributes to guaranteeing the right of citizens to know' (Act on the Protection of Specially Designated Secrets, Article 22, Paragraph 1).

A shared complaint about the SDS literature is that Article 22 of the SDS implies that the administrative agencies only have to show 'due care' to the freedom of the press. Hence, it is argued that administrative agencies only need to show 'due care' as they 'go about their business' (Repeta 2014, 20) in designating secrets. Furthermore, Paragraph 2 of Article 22 prescribes that protection of news coverage does not include newsgathering activities that 'violate the law' (Repeta 2014, 20):

'News coverage activities performed by persons engaged in publishing or news reporting shall be treated as activities in the pursuit of lawful business as long as they are conducted solely for the purpose of promoting the public interest and they are not found to have been performed through violation of laws or regulations or by extremely unreasonable means' (Act on the Protection of Specially Designated, Article 22, Paragraph 2).

Thus, Repeta argues, the SDS has the potential to strip reporters of constitutional protection (Repeta 2014, 20). Furthermore, Repeta states that since the term 'public interest' is not defined, courts may have different interpretations of what is 'public interest' than journalists (Repeta 2014, 20). Moreover, it remains to be

seen what is meant by ‘publishing or reporting industries’ and ‘extremely unreasonable means’ (Repeta 2014, 20).

Oversight Bodies’ SDS Lack ‘Transparency’

Thirdly, it is useful to discuss how ‘transparency’ comes to the fore in the debate about the SDS in Japan. On one occasion the government is praised in existing literature for inviting the public to provide feedback on a draft of the SDS, since it promotes fairness and improves ‘transparency’ (Halperin 2014, 3). However, one can also distil criticism towards the three oversight bodies that oversee the designation of secrets. Not only are the oversight bodies not independent (Repeta 2014, 28), more worrisome is that it remains unclear whether ‘these bodies will be subject to even minimal transparency rules’ (Repeta 2014, 18). According to Repeta, the lack of such an independent oversight body, however, can mainly be explained because of the overwhelming parliamentary majority enjoyed by the LDP, whereby it was ‘in position to both oversee drafting of the secrecy bill and to control parliamentary proceedings’ (Repeta 2014, 23). Apart from the above aspects in which ‘transparency’ is discussed, existing literature does not discuss the utilization of ‘transparency’ as a counter-argument against the criticism raised by media and scholars of the potential infringing effect the SDS has on the ‘right to know’.

Ambiguous Nature of Secrecy

In addition to the three objects that are at the heart of this thesis, one should not disregard other issues raised by contemporary literature on the SDS. For example, many have spoken out about the fear that reporters, bureaucrats, as well as citizens risk being prosecuted whenever ‘addressing issues regarding the broad range of classified information’ (Hongkarnjanapong 2014, 4). The aforementioned broad definition has led legal and media experts to speak about their worries of what constitutes ‘official secrets’ (Corrales 2014, 7). Additionally, Corrales (2014) warns about the ‘vagueness and ambiguity in conceptualizing the concept of secrecy too broad’, which poses a threat to journalists and whistleblowers (Corrales 2014, 7). Some go further and insinuate that ‘the apparent intention’ of the government is to ensure the administrative agencies have ‘maximum flexibility’ in their responsibility to select certain information that they can ‘designate a secret’ (Repeta 2014, 14). A final point that touches upon the increasing flexibility administrative agencies have obtained in designating secrets, deals with the problem of over-classification. The fact that the government alone will constitute the interpretation of any designation could ultimately lead to ‘overclassification to count any information [that] threatened the government’s security as against public interest and national security’ (Hongkarnjanapong 2014, 3).

A close reading of the available literature reveals that, in general, the tone towards the SDS is critical. Furthermore, all existing literature argued against the law. In general there seems to be a favourable bias towards 'transparency' and the 'right to know' in contemporary studies regarding secrecy legislation, whereas one can detect few attempts to better understand, or explain, the necessity of state secrecy. Nonetheless, the studies do not delve into the manner in which the objects 'safety', 'right to know' and 'transparency' emerge as crucial arguments in the debate.

Media Landscape of Japan

Considering that the media are crucial agents of the state secrecy debate, it is useful to provide a brief overview of the Japanese media landscape.

The Japanese media landscape is peculiar compared to other liberal democracies, partially due to Japan's so-called *kisha* ('reporters') club system. In short, the press club system consists of particular arrangements that have led to self- and group- censorship (Freeman 2000, 49). Importantly, the press clubs were not forced upon the media by the Japanese government; instead, the press clubs provided the institutionalization of newsgathering in Japan on their own initiative (Freeman 2000, 48). Hence, rules were established for member journalists regarding what sort of stories media organizations could publish and at what precise date and time newspapers were allowed to publish (Freeman 2000, 49). One of the consequences of this sort of newsgathering is a practice whereby certain accredited journalists have easy access to government information, which means the government gets its version of the news publicized (Freeman 2000, 49). This means two things: firstly, the government has extensive control over the flow of information and, secondly, although member journalists retrieve government information easily, rival press club members get the same information. The press club system 'locks Japan's most influential journalists into a symbiotic relationship with their sources and discourages them from investigation or independent analysis and criticism' (Gill 2013, 129). More importantly, media organizations agree not to seek additional information (Freeman 2000, 110), which give them a 'reputation for excessive reliance on government news sources and hesitance to criticize senior officials' (Repeta 2014, 32). By no means does this imply that government practices are not investigated, since the Japanese weekly magazines carry out investigative journalism, which often leads to the disclosure of corruption scandals involving politicians and bureaucrats (Freeman 2000). Notably, journalists of the newspapers that form a central part of the source material for this thesis – the *Asahi* and the *Japan News* – are generally members of the press club system and thereby bound and restrained by its rules.

Research Design

In this section I will explain the ontological and epistemological point of departure of this thesis, after which I will elaborate on the qualitative approach, the research method and data collection of this research. Then I will elaborate the generalizability of this thesis, after which I will provide the ethical considerations of doing this type of research. Also, this chapter will present some of the limitations and I will reflect on my own position as researcher. Finally, I will explain how this thesis will contribute to the research area of the SDS.

Epistemology and Ontology

Epistemological considerations deal with existing ideas about how research should be conducted (Bryman 2012, 6). They are mostly concerned with the pivotal question 'whether or not a natural science model of the research process is suitable for the study of the social world' (Bryman 2012, 19). Moreover, an epistemological issue consists of the question of what is (or should be) regarded as acceptable knowledge in a discipline. This study has an interpretivist epistemology; meaning that it denies the positivistic notion that one can transpose the research approach conducted in natural science to social science. Instead of explaining human behaviour, this study is more concerned with understanding ('verstehen') human behaviour (Bryman 2012, 30). However, one should be aware that the observation of a social actor's interpretation is not definite, or the one truth. Instead, the approach of this thesis is an interpretation of an interpretation by social actors. Or to put it differently, 'there is a third level of interpretation going on' (Bryman 2012, 31), that is, my interpretation of the interpretation of media and government.

Ontology is concerned with the question whether the 'social world is regarded as something external to social actors or as something that people are in the process of fashioning' (Bryman 2012, 19). Thus objects, such as 'safety', the 'right to know' and 'transparency', do not have a reality or separate existence outside social interaction. Instead, the point of departure of this research is that these entities are social constructions (Bryman 2012, 32). However, it is important to realize that not all agents play an equal part in constructing the social order. As this thesis will illustrate, not all contributions by social actors are automatically accepted, or recognized, in the SDS discourse. The social order under scrutiny can best be understood as 'an emergent reality in a continuous state of construction and reconstruction' (Bryman 2012, 34). Moreover, this study denies the notion that categories have some sort of inherent essence, but 'instead their meaning is constructed in and through interaction' (Bryman 2012, 34).

Research Strategy

In Bryman (2012), a research strategy entails ‘a general orientation to the conduct of social research’ (Bryman 2012, 35). This master thesis takes a qualitative approach to the SDS and ‘emphasizes words rather than the quantification in the collection and analysis of data’ (Bryman 2012, 36). For instance, what follows is an analysis of source material primarily focused on the objects ‘safety’, the ‘right to know’ and ‘transparency’. The aim is to foster more thorough and critical understanding of how these objects function as crucial arguments in discourse. As such, a qualitative approach to relatively few key statements is preferred over analysing a vast number of sources.

Research Method

As I outlined in the literature review, what previous studies seem to have in common is that they are all opposed to and argue against the SDS. Instead of siding with either standpoint (agreeing with the tendency to criticize the law or, conversely, arguing that the SDS has positive implications), this thesis takes an alternative approach to understanding the SDS by deploying a discourse analytical method. Rather than searching for one universal truth, discourse analysis ‘claims that through language people engage in constructing the social world’ (Sköldbberg 2009, 232). In Sköldbberg, discourse analysis can be generally summed up by three key aspects: firstly, ‘people actively create accounts on a basis of previously existing linguistic resources’; secondly, ‘they are continually and actively involved in selecting some of the infinite number of words and meaning constructions available, and in rejecting others’; and thirdly, ‘the chosen construction has its consequences: the mode of expression has an effect, it influences ideas, generates responses and so on’ (Sköldbberg 2009, 332). Nonetheless, discourse is more than ‘just’ language; it is constitutive of the social world (Bryman 2012, 528). Hence, this thesis goes one step further than describing the use of language; instead, this thesis focuses on how discourse constitutes objects and subjects (Sköldbberg 2009, 250). One could argue that a Foucauldian understanding of discourse goes one layer deeper than traditional discourse analysis, in that one is interested in problematizing the emergence of certain objects of discourse. Thus, Foucauldian discourse analysis brings about new ways to approach and problematize the objects under scrutiny. This perspective will be further elaborated in the theoretical chapter of this thesis.

Selection and Analysis of Materials

The materials that were selected for this study consist of documents published by the official website of the Japanese Prime Minister and his Cabinet: kantei.go.jp. On this website one can find all speeches and public appearances of Prime Minister Shinzo Abe and other Cabinet members, translated into English. The

speeches I have studied were given during a period from November 2013 until the end of 2014 when the law was officially implemented. The choice of this particular timeframe relates to the availability of speeches and other forms of documentation provided by the government in which the SDS appeared. It needs to be emphasized that most of the statements are either press conferences by the Prime Minister, or weekly updates regarding the Cabinet's proceedings by either Chief Cabinet Secretary Yoshihide Suga or Deputy Chief Cabinet Secretary Hiroshige Seko. However, this study does not differentiate between statements made by either of them, as I consider all the statements to be constitutive of the government's contribution to the discourse as a whole. Furthermore, at times a statement was made in response to journalists' questions, whereas other times it was on the Cabinet's own initiative. Nevertheless, I will not distinguish between statements made on the speaker's own behalf or elicited as a response, unless there is an evident reason to do so. Furthermore, the Ministry of Justice made publicly available an unofficial English version of the SDS, via an online database: japaneselawtranslation.go.jp.

The second part of my primary data consists of newspaper editorials produced by the English-language publications *Asahi Shimbun* and *Yomiuri Shimbun*. These newspapers enjoy mammoth circulations – *Yomiuri Shimbun* sells ten million copies daily, making it the most circulated newspaper in the world (Sugimoto 2010, 243). Generally, they are known for being politically neutral – allegedly to maintain their 'large readership and avoid antagonizing subscribers' (Sugimoto 2010, 243). However, *Asahi Shimbun* is known for its more or less critical stance of the government, whereas *Yomiuri Shimbun* tends to be more pro-government (Sugimoto 2010, 243). Nevertheless, in general both newspapers are often characterized for their homogeneity, and 'their tendency to provide excessively detailed accounts of a narrow range of issues, while neglecting to provide explanation of the impact that government policies have on the public at large' (Freeman 2000, 78). This thesis has selected articles from the English-language edition of the *Yomiuri Shimbun*: the *Japan News*. All the articles published in the *Japan Times* are literal translations of articles that appeared in the *Yomiuri Shimbun*. Similarly, the *Asahi Shimbun* has an English-language publication, which is called the *Asahi Shimbun Asia & Japan Watch* (from here on referred to as *Asahi*). Unlike the *Japan Times*, *Asahi* (English edition) is an online publication, but the articles are also translated from the Japanese version. For the analysis this thesis has selected editorials, because these are usually a better reflection of the newspaper's opinion.

Validity

External validity implies whether the findings of a research 'can be generalized beyond the specific research context' (Bryman 2012, 47). Since the findings of this master thesis will primarily describe the conditions of the emergence of

objects in the state secrecy discourse of Japan, one could argue that it would be interesting to deploy a similar approach to other Japanese newspapers and investigate whether the conditions of the emergence of the objects are in place in a different context. This inquiry would be of interest for future research. Internal validity touches upon the ‘question of whether a conclusion that incorporates a causal relationship between two or more variables holds water’ (Bryman 2012, 47). Since this thesis will look at conditions that need to be in place before an object can emerge in a discourse, one could argue that I am describing the causal relationship between the objects ‘safety’, ‘right to know’ and ‘transparency’, and the conditions that need to be in place for these objects to come about.

Ethical Considerations

Considering the method that will be used for this thesis – discourse analysis – and the fact that no interviews were conducted, this study has few ethical issues to take into account. However, one ethical aspect relates to the materials under scrutiny, the editorials of the *Asahi* and the *Japan News* on the one hand and the SDS and speeches by the Japanese Cabinet on the other: it is of utmost importance that the statements are not amended.

Limitations

As with every approach to describe the world that surrounds us, one selects a focus, a certain research method, and source material, which means that one essentially disregards other possibilities to approach the topic in question. Therefore it is of crucial importance to provide some of the delimitations of this research.

Firstly, my focus on the three discursive objects under scrutiny does not mean that other objects did not emerge in arguments raised by the government and media to elaborate their opinions towards the legislation. Certainly, one should not deny the possibility of alternative arguments and objects that can be read as essential to the state secrecy debate, as well. Furthermore, my decision to use discourse analysis with a particular focus on Foucault’s understanding of the discursive object does not imply that I argue that this manner of approaching the research area of state secrecy in Japan is the only suitable one. Indeed, a quantitative approach towards statements in which the objects appear could bring about very interesting new insights. Additionally, my motive to select the *Japan News* and the *Asahi* could lead to findings that might not be applicable to Japanese media in general, or even to newspapers that have different ideological backgrounds. Thus, the findings are especially insightful for professionally edited Japanese national newspapers.

Another issue that played a major role in my approach to the SDS is language: I do not speak Japanese. This fact brings about a few potential risks.

Firstly, especially when it comes to the primary sources under scrutiny, it needs to be mentioned that all these are published translations of documents that originally appeared in Japanese. As a consequence, the materials under scrutiny have gone through a translation phase in which interpretation and language nuances play a great role. Having said that, much of the available literature can be characterized for distinct and precise sentences, with an eye for details. As such, one could argue that translators at work have not tried to simplify the original meaning of the Japanese texts. Secondly, given my lack of Japanese language skills I have not been able to access Japanese secondary sources – especially academic articles – thereby limiting my research to English-language academic research.

Reflexivity

Considering the nature of the topic – a law that allegedly infringes on the rights of the media and journalists – my personal background is relevant: I have a BA in journalism and five years of training as a professional journalist. During that time I have become part of the journalistic environment in the Netherlands. As a researcher, one has to take into account how working in such an environment can influence one's thinking, particularly about a law that is portrayed in existing studies as violating the freedom of the press. My previous experiences in newsrooms and my contact with fellow journalists might have given me an unconscious bias towards the media's call for more 'transparency' and freedom of the press. However, this notion of potential bias forced me to focus even more on approaching this research as objectively as possible. I have done so primarily by attempting to make sure this study is as firmly grounded as possible in theory with as critical a view of journalistic practice as that of the authorities and government.

Contribution to the Research Area

As has been mentioned several times in this thesis, the purpose is to provide understanding of the SDS that goes deeper than the superficial facts that are presented in several studies. That is not to say that these superficial facts are unimportant. However, by analysing the strategic manner in which the objects under scrutiny were used by media and government to make their arguments and claim to defend public interest, new insights can emerge as to how these objects are formed in discourse and what interests and assumptions underlie the manner in which they appear.

Theoretical Framework

This chapter introduces the theoretical framework that will enable a better understanding of the material under scrutiny.

Foucauldian Discourse Analysis

Currently, most of the studies dealing with the SDS, or state secrecy in general in Japan, are concerned with questioning the actual content of the legislation and the potential consequences of the law for society at large. One could even detect a ‘moral discourse that condemns secrecy and rewards transparency’ (Birchall 2011, 6). This moral discourse is particularly evident for the research devoted to the SDS – as this thesis illustrated in the literature review. In order to contribute to the research area regarding the SDS, this study will deploy a Foucauldian discourse analysis by interrogating the ‘discourse of true and false’ (Graham 2005, 4). The French social theorist Michel Foucault outlined his particular understanding of discourse in his book *THE ARCHAEOLOGY OF KNOWLEDGE* (2002). Next, I will elaborate on the concepts developed by Foucault that are of interest for this master thesis

The Discursive Object

Essentially, discourse analysis differs from language analysis in that it seeks to uncover why ‘one statement appeared rather than another’ (Foucault 2002, 30), whereas a language analyst would mostly be concerned with describing what particular rules have formed a statement and, subsequently, what rules could form similar statements (Foucault 2002, 30). In the tradition of Foucauldian discourse analysis one needs to distinguish ‘things’ from ‘objects’. As Foucault put it, one needs to ‘substitute for the enigmatic treasure of “things” anterior to discourse, the regular formation of objects that emerge only in discourse’ (Foucault 2002, 47). Foucault recognized that the discursive object – which is socially constructed through language – exists because of the statements naming and framing it, or, as Graham (2005) pointed out, a statement has a discursive object ‘which does not derive in any sense from a particular state of things, but stems from the statement itself’ (Graham 2005, 8).

Therefore a discursive object is not something in itself, exterior to the statement. Foucault’s theory basically argues that an object is not something that exists in any given static way, therefore ‘it is not enough for us to open our eyes, to pay attention, or to be aware, for new objects suddenly to light up and emerge out of the ground, (...) the object does not await in limbo the order that will free it’ (Foucault 2002, 44–45). Instead it ‘exists under the positive conditions of a complex group of relations’ (Foucault 2002, 45). Hence, this thesis is interested in characterizing the ‘interplay of rules that make possible the appearance of

objects' and describing how they are formed 'by measures of discrimination and oppression' (Foucault 2002, 36).

Objects are based on what Foucault calls 'pre-existing forms of continuities'. Thus, over time the meaning of objects can change. As such, objects do not come about of themselves, but are always the result of a construction the rules of which must be known, and the justification of which must be scrutinized (Foucault 2002, 25). Moreover, it is important to know according to what precise conditions some objects can be deemed legitimate in the discourse, whereas others 'can never be accepted in any circumstances' (Foucault 2002, 25–26). The self-evidence and justification of these discursive objects need to be analysed.

The Statement

Given Foucault's focus on discourse, he is particularly interested in how a statement – which goes beyond our understanding of a simple phrase – functions. It is useful to briefly elaborate on the function a statement fulfils in the Foucauldian sense. According to Foucault, it is not the function of the statement to 'list, classify, and name' already-formed objects (Foucault 2002, 50). Instead, the statement should be understood as a function of certain discursive dividing practices, which in turn ensures the object will manifest itself (Foucault 2002, 50). The statement then, is not some sort of unity that will enable us to measure things. Instead, the statement works as a function that 'cuts across a domain of structures and possible unities, and which reveals them, with concrete contents, in time and space' (Foucault 2002, 98).

This dividing practice is also understood by Hagström, in that what are 'normal get established and become dominant' (Hagström 2014, 3). Or to put it in other words, Hagström argues, 'normal is defined through differentiation' and then formed into something that can be identified, but is also desirable and in some cases coercive – by invoking the *abnormal* (Hagström 2014, 3). Thus, processes of discursive dividing practices define what is conceivable and what is not conceivable, which in turn leads to humans being able to 'fashion themselves and others into subjects' (Hagström 2014, 3).

Analysis

This chapter presents the analysis of statements in the SDS, the press conferences by Japanese government officials regarding the SDS, and editorials published by *Asahi* and the *Japan News* referring to the SDS. Altogether these statements represent the discourse on state secrecy. As I have stated earlier, three discursive objects are fundamental to the state secrecy debate: ‘safety’, ‘right to know’ and ‘transparency’.

Positive Effect of SDS on Japan’s ‘Safety’ and ‘National Security’

This section will discuss the discursive object ‘safety’ and, connected to that, ‘national security’ (often mentioned interchangeably with ‘safety’), since the Abe administration placed these two objects forward as main arguments for the necessity of the SDS. To that end, it is useful to start within the SDS law, since that was the document that catalysed the debate:

‘In view of the fact that, under the situation where increasingly complex international situation has enhanced the importance of information related to securing the safety of Japan and its citizens and where the developments of an advanced information and telecommunications network society has given rise to concerns over the risk of unauthorized disclosure of such information, it is important to establish a system for properly protecting information, among information concerning Japan’s National Security (meaning assuring the safety of the nation and its citizens from any invasion from outside, etc. which might affect the nation’s existence; the same shall apply hereinafter), which is particularly required to be kept secret, and then to gather, sort out and utilize said information, this Act is aimed at preventing unauthorized disclosure of such information by providing for the designation of specially designated secrets, restriction on the persons who handle them, and other necessary matters with regard to the protection of such information, and thereby contribute to securing the safety of Japan and its citizens’ (Act on the Protection of Specially Designated Secrets, Article 1).

What is especially interesting about the above statement is the latter part, in which the justification for the law is articulated, namely that the law will ‘contribute to securing the safety of Japan and its citizens’. Herein lies the assumption that state secrecy is a prerequisite for the ‘safety’ of Japan and its citizens. This assumption is also present in media statements, as the following editorials of the *Asahi* and the *Japan News* reflect:

‘Some pieces of information on national security must certainly be treated as state secrets’ (*Asahi* 2013, ‘Bill on state secrets threatens to undermine civic freedom’).

‘Classified information related to the nation’s security that could affect the survival of this country must certainly be protected’ (*Japan News* 2013, ‘Establish framework to guarantee posterity and verify validity of “secrets”’).

Evidently, any agent making a statement regarding the SDS – whatever the intention behind the statement – needs to take into account the importance of the law for Japan’s ‘national security’. Only then is the statement considered to be meaningful in the discourse and to have a discursive impact. One could argue that the former statements discursively connect state secrecy to ‘national security’ and imply that some degree of state secrecy is good for Japan’s ‘national security’. In addition, the emergence of the discursive objects ‘safety’ and ‘national security’ in the debate can be understood as indicating something that is at risk and therefore in need of protection. Thus, ‘safety’ implies ‘safety’ *from* something, whereas ‘security’ implies an unappealing opposite, which is insecurity. The government utilizes the terms to introduce the SDS as a way to keep that ‘something’ (danger) out and prevent insecurity. This can be illustrated with the following statement made by Abe:

‘It goes without saying that the Act on the Protection of Specially Designated Secrets is an essential law for protecting the security of the Japanese people and of the nation’ (Abe 2014a).

From a strategic point of view, statements in which the discursive objects ‘safety’ and ‘national security’ come to the fore, provide the government with objects that are positively charged, which in turn disables opponents’ arguments against the goal of the SDS to make Japan ‘safer’ or more ‘secure’. Or to put it differently: disagreeing with the aim to make Japan ‘safer’ would never be understood as meaningful speech.

Assuming Japan Can Always Become ‘Safer’

The discourse of state secrecy is not always that straightforward in adhering to the positive influence state secrecy has on ‘safety’, as the following statement in an *Asahi* editorial demonstrates:

‘Will protecting “specific secrets” really make this nation safer? We should re- examine this question thoroughly?’ (*Asahi* 2013, ‘Secrecy supported nuclear safety myth’).

Firstly, this statement functions to question the aforementioned positive effect state secrecy has on the ‘safety’ of the nation. However, the statement simultaneously reveals the difficulty in questioning the self-evident connection between state secrecy and ‘safety’, since the *Asahi* merely questions whether secrets will ‘really make this nation safer?’ One could argue that the discursive object ‘safety’ is formed by ‘measures of discrimination and oppression’ (Foucault 2002, 36), in the sense that straightforwardly arguing that state secrecy is inherently bad for Japan’s ‘safety’ would indeed be unthinkable. One can only carefully question if this self-evident connection is ‘really’ justifiable.

Additionally, the statement by the *Asahi* shows that although it disagrees on the means to create a ‘safer’ Japan, the newspaper does not profoundly question the ambition of the government to make Japan ‘safer’. On the contrary, the *Asahi* statement agrees on the possibility of making Japan ‘safer’. Hence, the discursive object ‘safety’ has the implicit connotation that Japan can always become a little bit more ‘safe’. Consequently, the discursive object ‘safety’ functions as a goal that needs to be pursued; it would be unthinkable for any agent to argue that Japan is sufficiently ‘safe’. Essentially, this is how the government puts forward its claim that the SDS works in the national interest, through the ‘safety’ and ‘national security’ arguments. Thus, on the one hand the discourse discursively produced the connection between state secrecy and ‘safety’/‘national security’, and on the other hand there is general acknowledgement of the possibility to make Japan ‘safer’. This is how the discursive objects ‘safety’ and ‘national security’ emerge in the discourse and function to justify the government’s argument that the SDS in fact is in the interest of Japan.

Interestingly, on one occasion the *Asahi* warns about the possible threat of state secrecy for the ‘safety’ of Japan, as the following editorial illustrates:

‘In 1984, the Foreign Ministry secretly made estimates of casualties that could result from an attack against a nuclear power plant. The simulations showed that the number of acute deaths could reach up to 18,000 unless mass emergency evacuation was carried out. The ministry, however, classified the estimates as “for internal use only” because of concerns about the impact of the information on the anti-nuclear movement. The simulations covered cases of a so-called station blackout – the total loss of power sources for a nuclear plant – due to the destruction of power transmission lines and the electric supply system within a given plant. That’s the situation that developed at the Fukushima No. 1 nuclear power plant after the Great East Japan Earthquake and tsunami hit on March 11, 2011. If the results of the ministry’s estimation had been published, more effective safety measures might have been taken at the Fukushima plant.’

But the information was actually classified as confidential and not shared even within the government. As a result, a serious nuclear security flaw was overlooked. The “safety myth” concerning nuclear power generation was apparently supported by the bureaucratic penchant for secrecy and the inaction of politicians who allowed the problem to remain untouched for so long’ (*Asahi* 2013, ‘Secrecy supported nuclear safety myth’).

The *Asahi* argues that if ‘the results of the ministry’s estimation had been published, more effective safety measures might have been taken at the Fukushima plant’. Thus, the statement challenges the persistent idea that state secrecy is inherently good for ‘safety’ and functions to question this self-evident connection. However, this type of statement is clearly marginalized in the discourse of state secrecy, if we consider the following *Japan News* editorial:

‘To sweep away such an extreme opinion that the bill will threaten citizens’ lives, the government must double its efforts to explain the content of the bill in detail and in an understandable manner’ (Japan News 2013, ‘Surveillance panel on state secrets must have sufficient efficacy’).

It should be noted that the statement was not a response to the Fukushima article published by the *Asahi*. Nevertheless, here one can identify how the notion of a direct connection of the SDS and threat to citizens, is reduced to ‘an extreme opinion’. Although it is perfectly reasonable to argue for the SDS to protect the lives of Japanese citizens, one cannot argue that the SDS will threaten citizens’ lives. As such, the statement discursively produces reality in such a way that it places anybody speaking of the possible danger of the law as ‘extreme’, whereas statements referring to the law as protecting Japan, and its ‘national security’ are recognized and excessively repeated. While the Tshwane Principles, which I elaborated on in the literature review, indeed point out that information regarding civilian’s ‘safety’ ‘should prevail to be disclosed’ (Halperin 2014, 12–13), the statements in the state secrecy discourse are the reverse: information needs to be withheld by the government to preserve ‘safety’.

Depiction of a ‘Spy Heaven’ in Need of ‘Safety’ Measures

In addition, the implementation of the SDS needs to be understood against the background of an on-going historical discourse of Japan’s lack of ‘national security’ conditions, depicted as a ‘spy heaven’ and as a country ‘where foreign agents, domestic collaborators and information leakers have been able to act with seeming impunity’ (Williams 2013, 594). In order to place this depiction of Japan as a ‘spy heaven’ into perspective, it is useful to consider that in the past 15 years there have been five known cases of public officials leaking information – two of which eventually led to criminal prosecution (Repeta, How Serious Were

Japan's Information Leaks? 2014). Nonetheless, the characterization of Japan as in need of measures that safeguard 'national security' is persistent in the state secrecy discourse. This so-called 'need for measures' is more crucial now than ever before, it is argued, considering the changing international, regional and domestic political circumstances placing pressure on the historical antimilitaristic constraints of Japan's secrecy protection system (Williams 2013, 512), as the following *Japan News* editorial shows:

'Military threats from North Korea, which has been pushing ahead with nuclear weapons development programs, and China's rapid arms build-up have become increasingly alarming. To ensure Japan's peace and security under such circumstances, it is of vital significance to beef up the nation's information protection, while boosting exchanges of information with such allies as the United States' (*Japan News* 2013, 'Govt info protection legislation must not hamper media freedom').

In an atmosphere of fear for Japan's 'security', previous Japanese administrations took advantage of these 'loosening strictures to consolidate the national security secrecy system by revising relevant domestic and bilateral laws and adopting other countermeasures over the past decade' (Williams 2013, 512). The SDS can be regarded as one such countermeasure and the SDS, as it is presented in the introductory chapter of the law, simply normalizes Japan when it comes to 'safety' and 'national security'. To illustrate this argument that the government merely closes the gap with other countries, the following statement by Deputy Chief Cabinet Secretary Seko is interesting:

'The Act on the Protection of Specially Designated Secrets entered into effect today. Japan has until now faced the problem of not having the uniform legal rules that a nation is expected to have for managing important classified, security-related information' (Seko 2014).

Herein one can identify the discursive dividing practice of a statement: normal is 'defined through differentiation, and turned into something identifiable and indeed desirable and even coercive, precisely by invoking the "abnormal"' (Hagström 2014, 3). Thus, normal is presented as having 'uniform legal rules that a nation is expected to have for managing important classified, security related information', thereby making Japan 'abnormal'. Or in other words: having rules for the governing of classified information is the norm, whereas its opposite – having no rules – is described as unacceptably abnormal. As such, state secrecy in the context of normalizing Japan is difficult to resist, also for the media, as the following statements in two editorials of the *Japan News* illustrate:

All countries will be understandably reluctant to provide information to another nation where there are fears that classified information will be leaked. In this regard, the special protection law will be of great significance in improving the mutual trust between Japan and allies, such as the United States' (*Japan News* 2013, 'Establish framework to guarantee posterity and verify validity of "secrets"').

'The House of Representatives' passage of a bill to tighten the confidentiality of specified government information can be regarded as a clear indication that many legislators believe this country needs such legislation comparable to what has already been enacted in other advanced nations' (*Japan News* 2014, 'Scope of secrecy must be narrowed; more Diet discussions needed').

The emphasis on 'all countries' in the first statement and the notion that secrecy legislation 'has already been enacted in other countries' in the second statement, not only depicts Japan as a country with no control over its information management, it additionally fits into the normalization discourse. In other countries one can already find these kinds of laws, therefore Japan needs to close the gap. At least, this is an underlying assumption of the normalization discourse.

Summarizing, the interplay of rules that enable the discursive objects 'safety' and 'national security' to emerge are at least threefold. Firstly, notwithstanding the intention behind a statement, inherent to the discursive objects are the connotations of a looming threat and a potential danger. Secondly, the discursive object 'safety' emerges in the discourse as a continuing process rather than an endpoint; thereby one can never be sufficiently 'safe'. Thirdly, the on-going normalization discourse of Japan, depicted as 'spy heaven', without a proper information protection system, only reinforces notions of not 'safe' and 'secure' enough. These conditions give meaning to the discursive objects, which enable them to function as arguments in favour of the SDS and in turn prevent agents arguing against them.

Infringement on the 'Right to Know'

This next section will discuss the emergence of the 'right to know', which can be understood as 'to be informed about what the government is doing and why' (Stiglitz 1999, 1). One of the foremost points of criticism raised against the SDS was the notion that it would have an infringing effect on the 'right to know'. Initially, the SDS did not include a section referring to the people's 'right to know'; only after the LDP's coalition partner Komeito (or Clean Government Party) urged the government to insert 'potentially exculpatory language' (Repeta 2014, 19) did the government decide to include the following stipulation in Article 22:

‘(...) due consideration shall be paid to freedom of news reporting or freedom of news coverage that contributes to guaranteeing the right of citizens to know’ (Act on the Protection of Specially Designated Secrets, Article 22).

The inclusion of alleged safeguards for news reporting that would guarantee ‘the right of citizens to know’ did not prevent the media from increasing their criticism of the law, for its potential to undermine the ‘right to know’. A good example is the following editorial by the *Japan News*:

‘What is feared in connection with the government-proposed legislation is whether the heavy penalties against divulging secrets might lead to restrictions on the freedom of the media. There could be such adverse impacts as making government officials, out of fear of possible punishment, hesitant to extend cooperation to news coverage. (...) Should the freedom of the media fail to be secured, the public’s right to information could not be protected’ (*Japan News* 2013, ‘Govt info protection legislation must not hamper media freedom’).

In order to understand how the media utilized the ‘right to know’ as its main focus of criticism, the latter part of the above statement is useful. It stipulates that if the freedom of the media could not be secured ‘the public’s right to information could not be protected’. As a consequence, without freedom of the media, the public cannot be informed, so the ‘right to know’ could not be safeguarded. Thus, the *Japan News* implies that without freedom of the media, the ‘right to know’ is in danger, making the SDS a public, and not just a media industry-related, concern. In order to contextualize the ‘right to know’ from a legal perspective, one could argue that the right serves two typical democratic values: government accountability and citizen participation (Sullivan 2012, 9). In view of the latter understanding of the ‘right to know’, the above statements do not necessarily refer to the potential of the SDS to either decrease government accountability or citizen participation. Instead, the statements are framed in such a way that it connects the concern about freedom of the media to the ‘right to know’. As I illustrated in the literature review with the court case of Japanese journalist Nishiyama, jurisprudence provided the strongly felt connection in existing studies that the ‘right to know’ is protected by the Japanese constitution, since the constitutionally protected freedoms of the mass media ‘serve the right to know’ (Corrales 2014, 4). However, what seems to be taken for granted is the notion that the media repeatedly claim this ‘right to know’ for the public – this issue is left untouched. At this point it becomes useful to scrutinize what might be the reason for discursively connecting these two objects – freedom of the press and the ‘right to know’.

Mass Media Speaking *for* the Japanese Public

A theory developed by the late sociologist Niklas Luhmann, who was interested in studying social systems, can enable this thesis to better understand the discursively produced connection between the freedom of the media and the 'right to know'. In his book *THE REALITY OF THE MASS MEDIA* (1996) Luhmann elaborated on the mechanisms driving mass media (which is a social system, just like the political or economic system). Firstly, Luhmann argues that the public 'make their presence felt at most in quantitative terms: through sales figures, through listener or viewer ratings, but not as a counteractive influence' (Luhmann 1996, 16). As such, their presence is not fed back into the system via communication (Luhmann 1996, 16). This is why Luhmann regards the mass media as an operationally closed system: it does not have to interact with its environment to perpetuate itself and continue its operations (Luhmann 1996, 74). As a consequence, the media claim the *public's* 'right to know' *for* the public. What is interesting then is to ask *why* the media do so.

One of Luhmann's basic ideas is that the operations of the mass media consist of turning irritation in outside society into information (Luhmann 1996, 12) and that news media in particular are characterized by their continuous hunt for new information (Bechmann 2011, 144). Unsurprisingly then, news media do not like to see their access to government information diminished. However, the media do not communicate this interest directly to its audience, nor is it present in existing literature on the media's approach to the SDS. Instead, both the *Asahi* and the *Japan News* warn about the SDS as a threat to the people's 'right to know'. However, the notion that the media need to have access to government information for their operations (turning irritation in society into information) is left unqualified. Thus, what seem to be matters of general public concern – the 'right to know' – can also be regarded as the media's concern for its own ability to continue to flourish and, if possible, grow. The media are interested in the 'right to know' insofar as it is connected to the freedom of the media. In view of that, it is particularly interesting to note the following editorial from the *Japan News*:

'Fulfilling responsibilities to the people is a natural obligation of the government of a democratic country. Concerns about the bill possibly interfering with the people's right to know were expressed even by ruling party members during a plenary session of the lower house Thursday. (...) There is concern that public servants will not comply with interview requests due to fear of punishment, thereby making it impossible for the media to provide information that the public needs to know' (*Japan News* 2013, 'Establish framework to guarantee posterity and verify validity of "secrets"').

Besides the repetitive claim for the public's 'right to know', this statement by the *Japan News* discursively produces urgency among the public, speaking of a so-

called ‘need to know’. As such, the statement discursively enhances urgency among the public to retrieve information from public servants. Whereas the ‘right to know’ could be interpreted as optional, leaving space for the public to use this right voluntarily, the statement that emphasizes that the media provide ‘information that the public needs to know’ creates a certain degree of urgency, but above all suggests the media as the main provider of that information. The statements produced by the media indicate a concern for the public interest – since the SDS is framed as being a problem for the people’s ‘right to know’ and therefore should be an issue that concerns the Japanese public in general. Thus, the claim for freedom of the press is equated with a claim for the public’s ‘right to know’. One could even argue that this buttresses the constitutional freedom of the press with even more legitimacy, as the citizens of Japan become directly involved this way.

‘Right Not to Know’

On a different note, in a statement published by the *Japan News* one detects a willingness to allow the government the ability to work in secret:

‘A law to protect state secrets, comparable to those in other advanced countries has finally been enacted in Japan’ (*Japan News* 2013, ‘Make use of intelligence protection law to strengthen national security strategy’).

In view of the above quote, it would be unthinkable to consider the notion that the citizens of Japan have a ‘right *not* to know’, meaning, for instance, that the public trusts the government to do what is necessary to ensure Japan’s ‘security’ at its own discretion. Hence, this would be referring to state secrecy as the public exercising its ‘right *not* to know’. Notwithstanding the naïve nature of such a belief, and regardless of the ‘truthfulness’ of such a view, if there was a belief in society that the government should actually have the ability to decide as it sees fit what information is made known to be public and what other information should be kept secret, one could argue this would potentially be called its ‘right to secrecy’, or otherwise the people’s ‘right *not* to know’. In line with Foucault’s understanding of the discursive object – which is not only to provide understanding of how objects appear, but in turn how during that process other objects ‘can never be accepted in any circumstance’ (Foucault 2002, 25–26), one observes that the ‘right *not* to know’ or, indeed, the public’s ‘right to state secrecy’, is entirely absent from this discourse.

Paradoxical Emergence of the ‘Transparency’ Argument

A third discursive object that needs further scrutiny is ‘transparency’. It is very important to first note the fact that ‘transparency’ is not mentioned even once in

the law itself. Therefore it is particularly interesting how it becomes an object of the state secrecy discourse. If we consider the nature of the SDS, providing agencies with the power to designate information as secret, it is not surprising that the object ‘transparency’ does not emerge in the law itself. However, in response to criticism by the media regarding the alleged infringement of the people’s ‘right to know’ the government started referring to their concern for ‘transparency’ as a means to defend the legislation. It should be noted that the government had a number of arguments to justify the SDS, however ‘transparency’ is particularly interesting since it seems to be contradictory to the nature of the law. It first emerged in a response to ‘harsh public opinion regarding’ the SDS during a press conference by Abe:

‘Through this law we have successfully set forth explicit rules concerning the management of classified information. By also ensuring transparency in the operation of the law, I believe that we will be able to gain the public’s understanding of the fact that there will no infringement whatsoever of the people’s “right to know” or of “freedom of speech”’ (Abe 2013b).

The above quote, however, literally says that Abe ‘believes’ that he will gain the understanding of the public by ensuring ‘transparency’ and that freedom of speech will not be in danger. It is not unusual for a government official, when asked about ‘public concerns’ regarding the people’s ‘right to know’ or freedom of the press – which often go hand in hand with the critique of less ‘transparency’ in government practices – to respond that the government is actually *increasing* ‘transparency’ by making the actual process of the SDS transparent. This strategy can be seen in the following statement made by Abe during a press conference:

‘Quite on the contrary, through this law, transparency will increase regarding the handling of specially designated secrets, an area which did not even have rules until now. I would like to make that fact clear. It has always gone without saying that diplomatic and security policies should be advanced by sharing information with the general public as we ensure transparency. I intend to continue to explain this thoroughly as we go forward in order to dispel the concerns of the public’ (Abe 2013a).

The notion that the government has enhanced ‘transparency’ by making it publicly known through the law what are the categories within which secrets may be designated is how the government responds to criticism raised regarding the idea that the law might repress the people’s ‘right to know’. Interestingly, ‘transparency’ emerges in the context of increasing openness concerning a law that by its very nature decreases ‘transparency’. However, none of the agents of discourse questions ‘transparency’ in statements. Interestingly, the government’s defence of the law – or the government’s counter-argument to criticism by the

media aimed at the restrictive nature of the law for freedom of speech and the people's 'right to know' – seems to deter attention to the part of the law which is in fact 'open'. Thus, one is dealing with the paradoxical nature of the discursive object 'transparency' – it appears as a justification of its very opposite. Here it is useful to provide context of the object 'transparency'.

Positive Normative Charge of 'Transparency'

Clare Birchall described 'transparency' as a 'virtue, the secular version of a born-again cleanliness that few can fail to praise' (Birchall 2011, 2). In line with Foucault's understanding of the empty object, 'transparency' 'is not a thing in itself, it's nothing at all, merely the absence of concealment' (Birchall 2011, 2). The emergence of 'transparency' functions as a justification of a policy of secrecy, by emphasizing the part of the law, which is transparent, namely the process by which secrets are designated. This confirms universalistic notions regarding 'transparency', in that the object resonates a 'nicely ambivalent concept with a positive normative charge' (Bersch 2013, 233). However, particularly in Japan, 'transparency' was welcomed after decades of corruption scandals (Kingston 2005, 3). It even led conservative politicians to join their progressive colleagues, as they 'climbed on board the transparency train, recognizing the electoral advantages in an era of growing public scepticism about politicians and bureaucrats' (Kingston 2005, 3).

One way of understanding 'transparency' is by 'two necessary and jointly sufficient conditions that adhere to the original literal and figurative meanings of the word' (Bersch 2013, 234). Those conditions can be found in the concepts of visibility and inferability. The former is best understood as 'light rendering an object entirely visible', whereas the latter refers to 'that which can be inferred with some degree of accuracy' (Bersch 2013, 234) or to conclude something by reasoning. Of course this is just one explanation of 'transparency'; however, the manner in which it emerges in the SDS discourse does not answer to either of these two alleged prerequisites. It does not adhere to the visibility notion since the SDS is not 'entirely visible', nor does the transparency stipulated by Abe provide inferability, in that one cannot make any reasonable conclusions based on the provided information.

In fact, Abe's statement gives the reader the impression that the object emerges in the context of a very flexible interpretation. For Birchall 'transparency' is not much, except the 'opportunity that transparency provides for holding those in power to account. Accountability is the real prize, for it is this that regulates a democracy'. (Birchall 2011, 2). Therefore using 'transparency' can be understood, in the context of the quote above, as a manner to convey to the public that Abe can be held accountable for his policy, notwithstanding whether the 'right to know' will be safeguarded by this measure. The latter understanding of 'transparency' appears in another statement made by Abe:

‘In other words, transparency, accountability, and the rules of governing secrets will all become markedly clearer, and I would like to state that unambiguously’ (Abe 2013a).

Notably, ‘transparency’ is accepted and recognized by the state secrecy discourse, even though it is in fact nothing except openness regarding the application of the law. Interestingly, not even the *Japan News* or the *Asahi* question this understanding of ‘transparency’ in the discourse. Thus, ‘transparency’ emerges as an object of discourse with the presumption that it is automatically linked to a more accountable government and thus functions to serve the public interest. Similarly, one can identify the object emerging in an opinion piece published by the *Japan News*:

‘Some criticism still remains, with some saying the measures are still insufficient. However, under the status quo, government ministries and agencies are individually handling confidential documents at their own discretion. Compared with such a status quo, the state secrecy law will make the handling of confidential documents more transparent, and thus make it difficult for administrative organs to handle the documents subjectively’ (*Japan News* 2014, ‘Reigniting virtuous economic cycle has been top priority of Abe administration’).

Here, the object emerges in a similar way as in the government statement, in that ‘the handling’ becomes more transparent, insofar as the process by which the designation of secrets comes about. One way of approaching ‘transparency’, however, is the notion that ‘transparency’ can have negative side-effects, or even be regarded as a ‘disease’ (Epps 2008, 1570) that can threaten the possibility of an effective and active government, in a sense that ‘transparency’ procedures might have a paralysing effect on the government (Epps 2008, 1570). I should emphasize that these types of statements – the more negative kind – are marginalized and peripheral in the discourse. One preliminary conclusion might then be that arguing against ‘transparency’ is not accepted in the discourse of state secrecy. Agents in the discourse do not counter this particular argument utilized by the government. The ambiguity of the term is left outside of the debate.

State Secrecy – Held Together by an Internal Contradiction

On a final note, it becomes of utmost importance for the purpose of this paper to place the understanding of the discursive objects discussed in this thesis – ‘safety’, ‘right to know’ and ‘transparency’ – next to one other crucial object of the state secrecy discourse: ‘secrecy’. By placing the emergence of these objects against the manner by which ‘secrecy’ has emerged in discourse, one can argue that the opaque and vague nature of ‘secrecy’ is openly questioned, whereas this does not

occur with 'safety', 'right to know' and 'transparency'. As discussed in the literature review, much of the criticism regarding the law consisted of how the notion of 'secrecy' was conceptualized too broadly (Corrales 2014, 7). That argument resonated in media statements too, considering the following editorial published by the *Asahi*:

'When we hear there are 23 items, we may feel the scope is limited, but many of them include the provision "other important information." There is room for broad interpretation. If the bill becomes law, it is believed that tens of thousands of pieces of information will end up being designated as specific secrets by the government' (*Asahi* 2013, 'Bill on state secrets threatens to undermine civic freedom').

Basically, the *Asahi* comments on the number of categories under which secrets might refer to 'other important information', leaving room for 'broad interpretation'. State 'secrecy' is depicted as out of control; in fact 'it is believed that tens of thousands of pieces of information will end up being designated as specific secrets by the government'. Evidently one can identify the conditions under which state 'secrecy' appears throughout the discourse as increasingly characterized by anxiety about the unknown, illustrated by these editorials published by the *Asahi*:

'This is how the bureaucracy will jealously guard its secrecy' (*Asahi* 2013, 'Secrets protection bill must not be allowed to become law').

'But there is fear that the law could undermine this country somewhere deep down without our knowing it. It is important not to forget this point' (*Asahi* 2013, 'Secrecy law could undermine society without our knowing it').

As the above statement highlights, there is 'fear' of being undermined. What is especially telling in that regard is the phrase that 'this country' could be undermined 'somewhere deep down without our knowing it'. This phrase gives the impression of an evil pervasive force secretly making plans to undermine the country. Generally, 'secrecy' appears in the state secrecy discourse as a fragile object, in need of protection, but feared for its unpredictability. Therefore, the speaker is constantly confronted with the ambiguity of the concept. In keeping with my aim to characterize the rules that make possible the appearance of objects and to describe how these are formed (Foucault 2002, 36), I must point out that while 'secrecy' often emerges as a necessity (as I pointed out in the 'safety' section), it perhaps more often appears as something with specifically negative connotations. 'Secrecy' as a discursive object is held together by an internal

contradiction: on the one hand there is a strongly felt desire for 'secrecy' since it will make Japan 'safer', but simultaneously there is a strongly felt fear of not knowing what the government is doing and the potential of state 'secrecy' to infringe on the public's 'right to know'.

Conclusion

In this section I will elaborate on my findings based on my analysis of the source material: the SDS law itself, the government statements referring to the law, and the editorials of the *Asahi* and the *Japan News* addressing the SDS.

The central focus of this master thesis was the strategic manner in which the discursive objects under scrutiny were deployed by both the government and media to make their arguments heard and to claim their defence of the public interest. Drawing on Foucault's concept of the discursive object, I attempted to problematize the three arguments in which the three discursive objects come to the fore, considering especially how the arguments have thus far not been scrutinized in existing research on the SDS. Deploying Foucauldian theory, insights emerge as to how these objects come about in discourse and what interests and assumptions underlie the manner in which they appear.

As 'safety' formed the basis of the government's justification for the SDS, this thesis has tried to provide understanding of how the government utilized 'safety' and 'national security' as arguments for the SDS, while claiming to defend the national interest. This paper pointed at three crucial attributes of the discursive object 'safety' that had to be in place in order for the discursive objects to appear. Firstly, I identified the discursively produced connection between state secrecy and 'safety' and 'national security' (which was often mentioned interchangeably with 'safety'), problematizing the self-evident connection between the two. Secondly, since 'safety' and 'national security' automatically imply 'safety' and 'security' *from* something, the assumption is created that Japan is in acute need of added protection. Herein the SDS fits perfectly as a wall keeping such 'danger' away. Thirdly, I tried to illustrate how the prevalent assumption that Japan is never sufficiently 'safe' – or can always become just a little bit 'safer' – works to the government's advantage. Consider the impossibility of arguing that Japan is already sufficiently 'safe'. Never satisfied about the level of 'safety', the discursive object can always function as an argument to consume ever more 'safety'. As such 'safety' and 'security' are arguments that are hard to ignore, even by a centre-left newspaper such as the *Asahi*. The notion that 'secrecy' can in fact endanger Japan – as the tsunami case illustrated – is not discursively meaningful.

This thesis framed the 'safety' argument in a historical normalization discourse, in which Japan is depicted as a 'spy heaven'. The Japanese government clearly used this framework to argue for the implementation of the SDS. I noticed that time and again newspaper and government statements referred to other countries as an argument in favour of the SDS, the implications being that Japan had to enforce secrecy rules 'as advanced nations are expected to have'. Foucault's understanding of the discursive dividing practice provided the insight that the *Japan News* and the government in particular depicted Japan as abnormal, not having any proper state secrecy legislation.

Next, this thesis provided a better understanding of the mechanisms behind the ‘right to know’ as a main point of criticism by the Japanese media in relation to the SDS. Whatever people may think of this right, and whatever the number of people who actually investigate the government or, indeed, if people are interested at all in how the government conceals its operations, in this discourse agents must frame their discussion of the SDS within a concern for the ‘right to know’ in order to say anything meaningful or to generate impact for their arguments. Moreover, doing so makes the ‘right to know’ a legitimate concern to be raised against the SDS, in that it seems to be related to the public interest, hence the *public’s* ‘right to know’. What is not communicated, nor questioned by existing studies and media and government statements, is that the ‘right to know’ also functions to preserve the media’s operations and interests. I particularly tried to draw attention to the unquestioned self-evident connection between the ‘right to know’ and the freedom of the media, in relation to the SDS. The media often declared that the public’s ‘right to know’ could not be protected without a free press, essentially producing an exclusive connection between the two. In a more direct way, this thesis tried to reveal the persistent argument that without the press the ‘right to know’ could not be protected. From a legal perspective, the ‘right to know’ can serve two democratic values: accountability and citizen participation. However, the manner in which the ‘right to know’ emerges in the state secrecy discourse is not concerned with those two characteristics per se. Instead, this thesis provided examples to show that the media connect the ‘right to know’ to the constitutionally guaranteed freedom of the press, thereby making the potential threat of the SDS to the press also a public concern.

In order to better understand the discursively produced connection between the freedom of the press and the ‘right to know’, this master thesis utilized Niklas Luhmann’s theory on the mass media as a system. Luhmann’s ideas about the mechanisms driving the mass media firstly provided insight into the mass media’s claims about the public’s ‘right to know’ without the actual interference of the public. Considering the nature of the media as an operationally closed system, the media in fact claim the ‘right to know’ *for* the public. Moreover, the typical mechanism driving mass media – the continuous practice of transforming irritation into information and hunting for new information – means that access to information is a crucial resource for the operation of the entire system. Nevertheless, neither the media nor the government communicate this interest directly to the public. This is particularly true if we consider the notion that the ‘right to know’ simultaneously cancels out a possibility for the right *not* to know.

Thirdly, ‘transparency’ emerged in the state secrecy discourse as a counter-argument against the ‘right to know’ argument utilized by the media. This discursive object is particularly interesting, since by its very nature it seems to be contradictory to the SDS: the former stands for openness and the latter for secrecy. Metaphorically speaking, this would correspond to arguing that by turning off the light, I make objects in my room more visible. The notion that

the government has enhanced 'transparency' by making it publicly known through the law what are the categories within which secrets may be designated is how the government responds to criticism raised regarding the idea that the law might repress the people's 'right to know'. Interestingly, 'transparency' emerges in the context of increasing openness concerning a law that in essence decreases 'transparency'. Interestingly, this argument has not been criticized by either side, or by existing studies on the SDS. This thesis tried to provide the background of what 'transparency' can constitute, by utilizing the two characteristics visibility – 'light rendering an object entirely visible' – and inferability – 'that which can be inferred with some degree of accuracy'. Evidently, the SDS meets neither of these standards. However, a Foucauldian understanding of the object 'transparency' provided the insight that the object in itself is empty, but its meaning is discursively produced against the background of Japanese history, in which 'transparency' was welcomed after decades of corruption scandals. It gave politicians an ambivalent concept with a positive normative charge, and politicians and bureaucrats recognized the electoral advantages of the object.

Interestingly, a commonality running through all three discursive objects is this positive normative charge. Regardless of what the objects under scrutiny seem to stand for, or the ambiguous nature of these terms, it appears that because these objects are understood by discourse as objects with a positively charged meaning, they are accepted as arguments. Even though these arguments seem to be characterized by internal contradictions and paradoxes, they are generally accepted in discourse and thus enable both the media and government to argue that they are the ones who defend public interest. Contrary to the aforementioned unquestioned nature of the three central discursive objects, 'secrecy' was surrounded by ambiguity and doubt as it emerged in discourse. This thesis illustrated how the discursive object 'secrecy' is held together by an internal contradiction: on the one hand there is general agreement that a certain degree of 'secrecy' is necessary for Japan's 'safety' and 'national security', while simultaneously there is fear of not knowing what the government is doing in 'secrecy'. Thus, state 'secrecy' appears as a fragile object, in need of protection, but feared for its unpredictability. Interestingly, although by nature all four discursive objects seem to be ambiguous in their own way, this ambiguity is only questioned for the discursive object 'state secrecy'.

On a final note, I want to underwrite the irony of the state secrecy discourse described in this thesis. Although the debate can be characterized as a traditional discourse of true and false, in which one can detect the opponent of the SDS (media) and the proponents of the law (government), this is indeed how the debate was depicted in existing literature. This thesis pointed out that on a more fundamental level, the agents of discourse in fact agree on what the objects 'safety', 'right to know' and 'transparency' mean. This leads to my final conclusion: whereas a superficial approach can provide the notion that the agents of discourse indeed disagree about the SDS, on a deeper level they agree on the

meaning of the objects that emerge in their respective arguments raised throughout discourse.

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