

Diana Khor and Saori Kamano

# Same-sex partnerships in Japan: Would legalization mean deradicalization?

In the first judicial ruling on same-sex marriage in Japan, the Sapporo District Court ruled on 17 March 2021 that it is unconstitutional to deny same-sex couples the right to marry. This ruling was based on Article 14 of the Constitution, which guarantees the right to equality under the law. While same-sex marriage advocates celebrated this, they also lamented that the court appeared to affirm the definition of marriage as a heterosexual union in stating that disallowing same-sex marriage does not constitute a violation of Article 24, which defines marriage as being based on the mutual consent of “both sexes” (“Japan Court Rules,” 2021; Kawamura, 2021).<sup>1</sup> Is the ruling to be celebrated or lamented? And for what reasons?

Early efforts to legalize same-sex marriage in the West were accompanied by critical discussions of its potential impact, specifically about whether it would further reinforce the heterosexual, patriarchal institutions of marriage, family, and kinship, or whether it would challenge the foundation of these core social institutions.<sup>2</sup> The surge in the legalization of same-sex partnerships across the world in the past few decades has provided invaluable field data to adjudicate among these claims.<sup>3</sup> It has become apparent that how one argues for it is as, if not more, important, than the actual legalization. Equally important is how same-sex partners negotiate the system and understand their own partnership.

In this paper, we will briefly review recent works on the framing of same-sex partnerships before discussing the situation in Japan. Drawing on our previous analyses of same-sex partnerships in Japan (Khor, 2020; Khor & Kamano, 2021), as well as ethnographic and survey data we have collected in various projects involving same-sex partners (Kamano et al., 2018; Khor & Kamano, 2017, 2019; Tang et al., 2020), we aim to elucidate how same-sex partners make sense of their relationship, particularly in the context of kin relations.<sup>4</sup>

---

1 Unless otherwise indicated, all translations from Japanese in this paper are by the authors.

2 See Sullivan (1997) for an early anthology of the debate and Tang et al. (2020) for a review of the arguments. For arguments criticizing the impact of same-sex marriage in Japan, see Horie (2010) and Shida (2009).

3 As of 2022, over 30 nations and territories have enacted laws legalizing same-sex partnership, over half of which occurred after 2010 (Masci et al., 2019; Neghaiwi & Wiegmann, 2022).

4 This paper was written in the context of a larger project, *Same-Sex Partnership in Hong Kong and Japan: Where Family Studies Meet Queer Studies*, funded by the JSPS Grant-in-aid for Scientific Re-

# 1 The significance of frames

The arguments used to advocate the legalization of same-sex partnerships in court or in society can not only shape the success or failure of legalization, but also have a broader, long-term impact on the very institution of marriage and the (de)legitimation of sexual diversity. Put very simply, depending on the framing, the legalization of same-sex marriage can make society more inclusive of diverse relationships through reaffirming individual rights, or less inclusive by specifying a standard of monogamous coupledness to which one should conform in order to receive the privileges accorded to such unions. In other words, legalization may radicalize and fundamentally change the institution of marriage and kinship, or it may also simply consolidate it. Thus, it is not whether, but how, one argues for the legalization of same-sex unions that matters. Here, we will tease out the relevant arguments in the extant literature to provide an interpretive framework for Japan.

In an analysis of how the framing of political debates can affect policy preferences, political scientist Deva Woodly (2018) found that “all kinds of families” was the most resonant frame in arguments for same-sex marriage in *New York Times* articles from 1994 to 2014. To counter the anti-same-sex marriage arguments that affirm “family values” rooted in religious teachings and traditions, the “all kinds of families” frame affirms the stability of (same-sex) families and relationships and “the social good of family relations” (Woodly, 2018, p. 31), whereas the “equality frame” argument shifts the focus from religious values or morality to the value of “equal access” as the determinant of social policy (p. 30). Woodly (2018) observed that both frames moved the discussion away from sexual and gender norms, which improved its resonance with the public. Centering her analysis on changes in public opinion in response to how the issue was framed, Woodly (2018) did not discuss the implications for the institution of marriage. Focusing on “the public good of family relations” and the stability of same-sex families can result in a lost opportunity to create a truly inclusive society as the mainstream institution of the family remains uninterrogated. Similarly, an emphasis on “all kinds of families” in the mass media, especially with a focus on love and stability, does not necessarily endorse all types of unions, as they reaffirm mainstream family values and only tolerate same-sex unions if they form the same type of “loving and stable” families.

Legal scholar Macarena Saez (2014) argued that if same-sex marriage were legalized without allowing for other forms of emotional associations, a hierarchy of families would result in which some unions would receive more legal protection than others (p. 128). In contrast, Saez (2014) continued, embracing different forms of family while legalizing same-sex marriage has the potential of dissociating citizenship from marriage and allowing for diverse family forms that all enjoy equal protection from the state so long as they remain committed to respecting the rights of each family member. Following the same line of reasoning, other research, as reviewed below, has examined how the very arguments made in court have a direct impact on whether the heteronormative institution of marriage would be strengthened or weakened by the way same-sex partnership is legalized cross-nationally.

Comparisons have been made between legalizing same-sex marriage and decriminalizing (male) homosexual sex in some states in the US. Political philosopher Marino Croce's (2018) close reading of the legal opinions on *Lawrence v. Texas* (2003) showed that homosexual relations become "speakeable" only in coupledness in the private sphere (p. 409). In other words, instead of a liberalizing decision that results in the acceptance of diverse modes of intimacy, the decriminalization of homosexual sex affirms the hegemonic form of monogamous kinship that now admits a mode of same-sex relationship in its image. Croce (2018) cited similar arguments in courts outside the US, including the European Court of Human Rights, which in 2010 affirmed that same-sex couples in a stable relationship should have the right to enjoy a "private and family life"; and the Italian Court of Cassation in 2012, which directly emphasized the "aptness" of some unions to be considered "families" (p. 410). Indeed, citing Pierre Bourdieu (1987), Croce (2018) argued that bringing the issue of same-sex marriage to court appears to have reframed it in a way that conforms to current legal categories – the process of reframing creates a "new homosexual" who meets the standard to claim the rights previously reserved for heterosexuals (p. 418).

Across nations, empirical studies have shown that legal arguments can cut both ways. Arguments affirming the value of marriage can be seen to constitute an assimilationist position that affirms the heteronormative marital institution. Examples include the various cases in the US (e.g., *Geiger v. Kitzhaber*, 2014; *Goodridge v. Department of Public Health*, 2003) that "mandate a particular moral code," prescribing strong, stable marriages that are to be protected above all other emotional associations, to which same-sex couples (must) conform to gain legal recognition (Saez, 2014, p. 137). In contrast, human dignity can be invoked without connecting it to the "goodness" or the importance of marriage. Saez (2014) discussed the case of South Africa, where same-sex unions were legalized with reference to dignity being connected to equality (of worth) and autonomy – the legalization of civil un-

ions that can be entered into by both heterosexual and same-sex couples is indicative of the legal inclusion of diverse family forms, since “it is not marriage *per se* that gives individuals dignity, but instead, dignity is derived from the capacity to choose to marry” (p. 150). Similarly, when same-sex marriage was argued in courts in Mexico, Brazil, Colombia, and Spain, the emphasis was on dignity defined as equality and autonomy (Saez, 2014, pp. 194–196).

In 2019, Taiwan became the first, and is to date the only, nation in Asia to have legalized same-sex marriage. Justice Yuan’s interpretation of the constitution can be examined for arguments supporting legalization (Constitutional Court R.O.C. [Taiwan], 2017). The freedom of marriage, guaranteed by Article 22 of the Constitution, was seen to include “decisional autonomy” with respect to “whether to marry” and “whom to marry.” Such autonomy was argued to be “vital to the sound development of personality and safeguarding of human dignity” and is therefore a “fundamental right” protected by Article 22. As such, while the specific right of freedom of marriage was invoked, the core of the argument was human dignity. Narrowly defining marriage as “permanent unions of [an] intimate and exclusive nature,” however, the argument concluded:

The need, capability, willingness, and longing, in both physical and psychological senses, for creating such permanent unions of intimate and exclusive nature are equally essential to homosexuals and heterosexuals, given the importance of the freedom of marriage to the sound development of personality and safeguarding of human dignity. (Constitutional Court R.O.C. [Taiwan], 2017)

In one breath, “human dignity” was merged with an affirmation of marriage as permanent, intimate, and exclusive, limiting the imagination of alternative unions, even though it was also mentioned that procreation is not part of the definition of marriage and that unions are formed “for the purpose of living a common life” (Constitutional Court R.O.C. [Taiwan], 2017; see also Chen, 2019a, 2019b; Wang & Chen, 2017).

## 2 Japan

Same-sex marriage has not been legalized in Japan. However, beginning with Shibuya Ward in 2015, over 200 local governments, as of 1 July 2022, have allowed for the registration of same-sex partnerships (Niji Bridge, 2022). These registrations are not legally binding and the right to register is restricted to residents of that ward, city, or prefecture. While these registrations are far from an alternative form of legal same-sex partnerships in terms of legal protection, they might have been instrumental in placing the issue of same-sex marriage on the public

agenda. In two recent publications, we examined public arguments for and against same-sex marriage (Khor, 2020; Khor & Kamano, 2021). Suffice it here to point out that activists do invoke the arguments presented by the Japanese state that emphasize the naturalness and importance of the family as an institution (Khor, 2019; Khor & Kamano, 2021), albeit toward a different end. The ruling party's proposed amendment to the Constitution of Japan adds a description of the family as a "natural" and "fundamental" unit of society, in which mutual help is "mandatory" (Sugiura, 2013). Equal Marriage Alliance (EMA) Japan (n.d.), for example, champions same-sex marriage by describing the institution of marriage as a system that "improves the stability of the household and society" and arguing that countries that recognize same-sex marriage are further improving the productivity of society as a whole (Khor, 2020, p. 34; Khor & Kamano, 2021). According to EMA Japan (n.d.), to exclude same-sex couples from "the most important legal system for humans and society" is a dire violation of the principle of equality and, in contrast, legalizing same-sex marriage would make it possible for same-sex couples to "take more responsibility toward each other's health and well-being." Not only does this argument reinforce marriage as a natural institution into which same-sex couples are merely incorporated, it also affirms the heteronormative foundation of the state, that is, the married couple as the contributing members of a stable society.

The construction of marriage and the family as a "natural" institution that is the core of a stable society feeds into what Lisa Duggan (2002) termed "the new homonormativity," which is a "politics that does not contest dominant heteronormative assumptions and institutions but upholds and sustains them while promising the possibility of a demobilized gay constituency and a privatized, depoliticized gay culture anchored in domesticity and consumption" (p. 179). However, putting the arguments by the state aside, it is understandable that activists and same-sex couples themselves would make arguments for same-sex marriage being "publicly acceptable," regardless of their own opinions. It is even conceivable that those who put themselves at the forefront to fight for the legalization of same-sex marriage might be ambivalent about marriage itself but committed to securing the legal rights for others for whom it is paramount due to their residence status, economic needs, or health issues. Therefore, it is important to listen to how same-sex couples themselves talk about same-sex marriage. Here, we draw on three previous studies that we conducted to examine how same-sex couples negotiate legal same-sex partnerships.<sup>5</sup>

---

5 For relevant works developed from these projects, see Khor and Kamano (2017, 2019, 2021), Khor (2020), Tang et al. (2020), and Kamano et al. (2018).

1. “A Qualitative Analysis of Intimacy in Mother-Daughter Relationships: Negotiating Heterosexual, Gender, and Family Norms” – a comparative study of Japan and Hong Kong – funded by JSPS Grant-in-Aid for Scientific Research (B) (JP26285120) (Principal investigator: Diana Khor). The data drawn upon here were based on interviews conducted in 2015 with five non-heterosexual women about their relationships with their mothers in Japan from two age groups (28–39 and 40–50) recruited through personal acquaintances. They are indicated by “(MD)” in the text.
2. A comparative study of the legalization of same-sex partnerships in Hong Kong, Taiwan, and Japan, funded by the Sumitomo Foundation (158038) (Principal investigator: Denise T. S. Tang). The Japanese sample consisted of nine interview participants, including two lesbian activists who were a couple. The participants were recruited through personal acquaintances via social media posts, and all but one participant in his fifties were in their thirties and forties. The interviews with individuals and couples were conducted in 2017 and focused on their views on the legalization of same-sex partnerships. Data from this study are indicated by “(S)” in the text, after the participants’ pseudonyms.
3. A study focusing on the partnership certificate granted by Shibuya Ward in Tokyo, planned by the Shibuya City Office but involving researchers from a JSPS Grant-in-Aid for Scientific Research Project (16H03709) (Principal investigator: Kamano Saori). Sixteen persons were interviewed, 12 of whom (including five couples) were registered as partners in Shibuya and four of whom (including one couple) were interested in doing so. The interviews were conducted in 2017 and focused on their experiences and ideas about their partnership registration. Data from this study are indicated by “(Shibuya)” in the text, after the participants’ pseudonyms.

### 3 Same-sex partners’ negotiation of same-sex partnerships

In our most recent analysis invoking philosopher and queer theorist Jasbir K. Puar’s (2017) concept of homonationalism to explore how the Japanese state portrays itself as “tolerant” without devoting itself to protecting the rights of sexual minorities, we identified ideas expressed by same-sex couples that inadvertently naturalize and affirm the primacy of marriage (Khor & Kamano, 2021). At the same time, we also noted their ambivalence toward marriage as an institution and their critical assessment of heterosexual unions. Here, we would like to look more closely into this ambivalence and derive implications for the institution

of marriage should same-sex unions be legalized. We identified various ideas that affirm the normalcy, legitimacy, and/or significance of the existing institution, but also show a desire for “queer” marriage or an acknowledgment of those queer people who feel left out by the same-sex marriage discourse.

There are various ways of conceiving or talking about same-sex relationships that not only leave the primacy of the marital institution unquestioned, but actually affirm its significance. One common argument is that if heterosexual couples can get married, why not same-sex couples? The equivalence of same-sex partnership to heterosexual marriage is also asserted through invoking symbols of and common practices in the latter.

To some couples, invoking symbols such as the wedding ring, or calling one’s partner “wife” or “husband,” renders one’s same-sex relationship intelligible to others as “marriage.” Chie (S), who had lived with her partner for over 10 years when she filed the registration of partnership in Shibuya, elaborated on the significance of the ring:

We both wear rings now, but we were never really interested in making our relationship public/symbolic like this. At least, I didn’t really care when I was married to a man before. I’m now in my 40s and people ask me about my marriage status a lot if I don’t wear a ring. I’m happy to answer their questions and tell them about my life history and current same-sex relationship status, but it is just too much to do every time they ask me the same question. If I put on a ring, people would assume that I’m married and I can avoid those stressful situations. The rings are very useful.

Chikako (S), Chie’s partner, also in her 40s, concurred:

I just wanted to be honest with people. Also, I wanted to avoid situations where I need to explain my complicated relationship status. If I’m wearing a ring without the certificate,<sup>6</sup> I feel like I’m lying to people. When they ask me if I’m married because of the ring, I can talk about the partnership certificate....

This makes a difference. I can say to others that I have a serious partner. Nevertheless, there aren’t many practical changes. We cannot benefit from the partnership certificate that much.... It is like a weapon to protect ourselves. It gives us some assurance.

---

6 The “certificate” here refers to the Shibuya Partnership Certificate. While not legally binding, it allows the registered partners to apply for joint housing loans, family discount deals for cell phones, and so on. To apply, the partners are required to draw up a notarized partnership contract that proves that they are in a true relationship based on love and trust, and that they are living together, taking responsibility for and supporting each other, and shouldering the obligation to share living expenses (Kamano et al., 2018).

Eri (S), in her late 20s, had started living with her partner just one year before she was interviewed. She explained why she refers to her registered partnership as a “marriage”:

Before we got married, I called her “girlfriend,” even though it’s perfectly fine to call her “partner” too. Personally, I feel that “partner” is most appropriate but, for me, to say that I am married, I do feel a sense of responsibility, and people around too, well, [think] these two are married. They might feel it a little odd at first, but for these people, we’d like to raise their consciousness, and so I do use terms like “married” and “wife” quite deliberately.

Putting on a ring invokes a shared symbol in a heteronormative society and affirms the legitimacy of the marital institution, even though the partnership registration is not equivalent to a legally sanctioned marriage. The same goes for how one calls one’s partner. And, ultimately, it is the legal recognition that authenticates these symbols of marriage and makes them “real.” Without this, a same-sex relationship remains unintelligible to others. In other words, the same-sex relationship is rendered intelligible only within the heteronormative paradigm. At times, the reference to marriage as it is practiced now is explicit, and conformity to its norms becomes an indicator of a “real marital relationship,” as expressed by Keisuke (Shibuya), a gay man in his late 30s who had registered his partnership a year before the interview took place:

In a “real” marital relationship, people share their household income. If not, the one with more money might just go and have fun on their own, etc. So, from the beginning, we said, let’s put our money together.

That some form of legal recognition seals the relationship, making it more “real,” more “important,” is an idea iterated by interview participants who might also be critical of heterosexual unions. Using heteronormative marriage as a standard in some way is not to say that same-sex couples consider their relationship inferior to that of heterosexual couples. Indeed, it is quite the contrary. At the same time, however, the claim of authenticity and importance – as if same-sex couples surpass heterosexual couples at their game – inadvertently affirms the heteronormative marital institution.

Fumi (Shibuya), in her early 40s, was self-employed and had lived with her partner for a year at the time of the interview. Their partnership was registered in Shibuya. Fumi compared same-sex partnership registration with heterosexual marriage as follows:

When heterosexual couples decide to get married, they think about ceremonies, whom to invite, and so on. Not that they don’t find importance in each other’s feelings and relationships, but for them, [getting married] is just submitting a form. I think it is better for heterosexual



couples to make this type of contract too, [so that they would] think seriously about their lives together.

Chie (S), who was quoted above on the significance of the ring, had been married to a man before and described that experience as “just about filling out a form, and with that the contract was sealed.” She felt quite differently about her same-sex partnership, as she and her partner Chikako had gone through the process of making a commitment together.

The authenticity of the same-sex partnership was emphasized by Nao (Shibuya), who identifies as a man and was in his 30s at the time of his interview. He was planning to obtain a notarized partnership contract that would “prove” that he and his partner were committed to supporting and caring for each other. His purpose was to show their children (from his partner’s previous relationship) that they “are in a real relationship” and “to give them an example of a positive relationship” (Nao [Shibuya]).

Hanako (Shibuya), in her 40s, likened her partnership registration to marriage, albeit indirectly, and saw the certificate as a tangible “proof” of their relationship:

Before, proof of our relationship was only our feeling.... People say marriage is “just a piece of paper,” but there is a significant weight to it, and that’s the same for us.

The natal family was also brought in as a witness to the commitment, affirming the significance of both the commitment and their family ties. Rin (Shibuya), in her 30s, who had lived with her partner for a year before the interview, said:

We want to do a ceremony upon obtaining the SPC [Shibuya Partnership Certificate]. We have other ties, including our families, and we want to emphasize the importance of our families. We want to show our family members that we are living seriously.

While Rin and her partner, Ryōko, connected marriage to family ties, Kenta and Keisuke, both in their 30s, seemed to consider marriage as inseparable from having children. Kenta connected the approval of same-sex marriage to that of same-sex couples having children, but Keisuke expressed concern that such children would be bullied, saying that the children’s well-being should be considered as well when considering marriage. Conversely, Takumi (Shibuya), who had been in a steady relationship for over 10 years, explained that he was “not seeking marriage” because he and his partner did not have children who required legal protection for inheritance purposes.

Others emphasized the importance of genetic ties and having children the “natural” way. For example, Kazu (Shibuya), who had been living with his partner

for six years and had registered their partnership in Shibuya, would not have a child unless the child could have both their DNAs. Similarly, Hanako (Shibuya), whose emphasis on the “weight” of the partnership certificate was quoted above, would have children only if she and her partner could become pregnant “naturally,” ruling out the use of artificial reproductive technologies.

The interview participants who had registered their partnership, despite the lack of legal status, seemed to find it easier to feel as though they were in a “marriage,” compared to those who had not registered their partnership or did not live in a city that provides for partnership registration. Indeed, the interviewees above associated marriage with kinship and having children, including the importance of genetic ties, illustrating how same-sex marriage is envisioned within the paradigm of heterosexual marriage.

The practical benefits of legal recognition were quite frequently mentioned by the participants as a reason why same-sex couples should have access to marriage. However, such a focus precludes thinking about alternatives that can provide security and rights outside of marriage. While the participants problematized the lack of access to marriage and its benefits, they left unquestioned the fact that it is only through marriage that one can obtain rights and benefits. For example, Akiko (S) was worried that if she bought a house and died before her partner, her partner would not have access to the house. The solution to the problem, in Akiko’s view, was gaining access to the “current marriage system”:

What is necessary is that the current marriage system should be open to homosexual couples too. At least, we need to have the right to choose whether we want to use it or not. That the marriage system can only be used by heterosexual couples creates a gap between heterosexual and homosexual couples, and this gap needs to be reduced. Furthermore, it would be nice if gender becomes insignificant when practicing marriage. Every adult of any gender should be able to marry if they want to. I think this would be desirable.

At the same time, some interviewees also thought that same-sex marriage, even if legalized, would be less socially accepted. For example, Haru (Shibuya) said:

Even if same-sex marriage is approved, I don’t think we can get the [same] level of social acceptance. Also [we do not have] the [same] type of obligations to the other family. So, in that way, the SPC and same-sex marriage won’t make us feel as though we are married [to a man].

Both Akiko and Haru connected the seriousness of their relationship and the need for their parents or family to know about it. In the Asian context, it has been shown that the natal family and the larger kin network are important for many individuals in negotiating their same-sex relationship (see, e.g., Brainer, 2019; Tang et al., 2020). As the natal family in most cases is the bastion of familial het-

eronormativity, how same-sex couples negotiate their relationship in the kin context becomes important in deriving implications for whether their narrative about their relationship serves to reinforce the marital institution or not. To explore this point, we introduce one case below in which an actual wedding ceremony was held with the blessing of the natal family of one partner while the mother of the other partner refused to attend the ceremony. This unusual case gives insight into how the marital institution can be reinforced through a deliberate display of the same-sex union:

The mother suggested a traditional Japanese wedding ceremony for the daughter and her partner, arguing that if they were to be together, then they should do it “properly.” The partner’s mother refused to attend, but two sisters attended. Relatives beyond the immediate families were apparently not invited, but the “wedding” was known to a wider circle of relatives and neighbors. When the daughter went back for a visit, she got comments from neighbors that it was good that she “got married.” She didn’t clarify [and the neighbors didn’t know] that it wasn’t a heterosexual marriage. This lack of openness about the same-sex partnership coupled with actual cordial interactions with the daughter’s partner and her family, despite the partner’s mother’s rejection of the partnership, might suggest that the mother was trying to understand and cope with the daughter’s partnership within a heteronormative framework. (Khor & Kamano, 2019, p. 23) (MD)

This example shows that supportive parents can also affirm the significance of the institution of marriage. Similarly, Mamoru (Shibuya), who had registered his partnership in Shibuya with his partner from overseas, reported how his mother encouraged them to go ahead with the registration as well as to have children, showing how supportive parents can make same-sex relationships resemble heterosexual marriage:

My mom calls me every day, and she said to me, “Oh, you guys, one can get something now in Shibuya Ward,” and she asked us, “Aren’t you going to go for it?” My mom values stability, being in a stable relationship, forming a family, etc. Even about having children, she said, “You know, it seems possible with test tubes these days.”

Despite the decreasing marital rate and delay in marriage among heterosexual people (National Institute for Population and Social Security Research, 2017), marriage continues to be a significant social institution and the paradigm through which same-sex marriage tends to be considered. It is important, however, to point out that the interviewees quoted above also recognized that same-sex marriage does not result in full equality for all, and that some would be left out even if same-sex marriage were to be legalized.

Some of the participants who registered their partnership and argued for same-sex marriage said explicitly that they did see problems in the current mar-

riage system. Further, despite the inadequacy of this right to register their partnership and have it recognized, some deliberately acted upon this right in Shibuya so that it would not be taken away for others who might want to have their relationship legally recognized. Some also noted that legalizing same-sex partnership renders sexual minorities visible. Chie (S), cited above, reflected on her personal experience:

I suffered from my gender identity and sexual orientation for almost 30 years. If I had known that there are people with diverse sexualities and gender identities, not just heterosexual men and women, it would have changed my life. It makes it easier for people to accept themselves for who they are.

Despite her rather strong argument for access to marriage and embrace of the (wedding) ring as an important symbol of commitment, Chie (S) also recognized that marriage was not the only option, citing the French civil solidarity pact (PACS; *pacte civil de solidarité*), heterosexual partnerships without marriage, and so on – indeed, she said, “it’s better to expand the options.”

Eri (S), who had started living with her partner a year before the interview, referred to a case of non-romantic relationships in which the rights of two sisters living together were also not guaranteed, as one sister could be driven away from the house if it were registered under the name of the other when the latter passed away. The conclusion she drew from this case was that “it’s better to have a system that can protect the rights of various people” (Eri [S]). Chikako (S), Chie’s partner, mentioned asexual people and people who remain single throughout their life, suggesting that their needs should be recognized as well.

The ideas our participants expressed indicate not only a recognition of alternative relationships, identities, and lifestyles, but also the exclusion of some people from having their rights protected or recognized even if same-sex marriage were legalized. At the same time, it is also true that in the interviews, these ideas were more an afterthought following an appeal for same-sex partnerships or marriage, about which they were clearer. The idea that people who are not in a same-sex relationship should be recognized and taken care of does not connect to a coherent rethinking of the marriage system or the very idea of partnership, legalized or not. The difficulty of imagining an alternative to marriage, or at least the lack of a coherent discourse of how rights can be guaranteed in an inclusive way outside of the marriage system, may be attributed to the strength of the institution of marriage. To further ponder the impact of same-sex marriage on this institution and kinship, we would like to end with an examination of nationwide survey data on heterosexual and same-sex marriages.

## 4 The desirability of (heterosexual) marriage and support for same-sex marriage

To assess the implications of the ideas about marriage from our ethnographic studies, we need also to examine the desirability of marriage as a way of life and the general public's attitudes toward same-sex relationships and partnerships.

If marriage as an institution or the ideology of marriage as it is practiced today remains strong, it would offer a buffer against changes that might be brought about by the inclusion of same-sex couples. Relevant surveys have shown that despite the decreasing marriage rate and delayed age of first marriages in Japan, the vast majority of respondents expressed an intention to marry. Further, this has remained quite constant through the years (National Institute of Population and Social Security Research, 2017). In another survey, it was shown that remaining single for one's entire life is one of the least preferred ways of living (Kamano, 2018). Japan also had the highest percentage of respondents among four countries (Japan, France, Germany, and Sweden) saying that "it is better to get married," though it also had the highest percentage of respondents saying that "marriage, cohabitation, having a partner" is not necessary (Cabinet Office, Japan, 2020).

These survey findings may reflect the ideological significance of the institution of marriage in Japan, albeit not perfectly so, which suggests two possible scenarios. Conservative politicians and community leaders, as well as those who are currently in a heterosexual marriage or inclined toward it, might want to protect the institution from being "contaminated" by inappropriate members. Alternatively, some of these people who truly believe in the importance of marriage might want to increase membership in such a core institution. The Research Group for the 2019 National Survey on Attitudes Toward Sexual Minorities (2020) found that the majority (64.8%) support same-sex marriage, and an even higher percentage support anti-discrimination laws for sexual minorities. However, the survey also revealed that about a third of those polled find same-sex or bisexual romantic orientation "strange." Slightly less than 50% consider female same-sex sexual behaviors "disgusting," while over 50% consider male same-sex or bisexual sexual behaviors "disgusting." Only a minority (about a quarter) reacted negatively to having a neighbor or colleague who is homosexual, but the majority reacted negatively to having a homosexual sibling (53.1%) or child (61.2%) (Research Group for the 2019 National Survey on Attitudes Toward Sexual Minorities, 2020).

These contradictory findings can be interpreted in different ways. It is possible to see the support for same-sex marriage as support for human rights, no matter how one feels about sexual minorities. The fact that close to 90% of respondents agreed to anti-discrimination legislation might be consistent with this interpreta-

tion. Another possible interpretation is that same-sex marriage is imagined abstractly and dissociated from the facts of emotional and sexual intimacy. The support for marriage is arguably not for the intimate union of two individuals, but for them to have a status and position in society. The dominant arguments that show the effects of exclusion from the marital institution might have had an effect on the general public, as it is an argument that is easy to understand and hard to refute. In other words, the support for same-sex marriage is dissociated from how one thinks about sexual minorities. Similarly, the majority of Japanese people might not disagree with the idea of their child marrying a “foreigner” (Institute of Statistical Mathematics, 2017), but this does not necessarily mean that they are accepting of foreigners (see, e.g., Arudou, 2021; Morita, 2015). How these different attitudes are or are not articulated might indeed deserve a deeper analysis.

## 5 Conclusion

We would like to emphasize that the demand for same-sex marriage does not in itself necessarily reinforce the heteronormative institution of marriage, as the very framing of the demand makes a difference. It is also important to recognize that activists and individuals constructing arguments apparently in support of the naturalness of the marital institution are also aware of how same-sex marriage alone does not address the exclusion of alternative ways of living or, albeit less explicitly, the association of marriage with privileges that disadvantage individuals and partnerships outside of the institution. In other words, the demand for same-sex marriage potentially has a radicalizing effect. At the same time, the public opinion in favor of (heterosexual) marriage, the tendency of the popular media’s emphasis on “love” as a rationale for the legalization of same-sex partnership – captured well in the title of a newspaper article, “I Love You, but I Can’t Choose Marriage...” (Takagi, 2021) – and, indeed, the theme of love and equality in the 2018 Tokyo Rainbow Pride parade all align same-sex marriage with the ideology of romantic love and marriage as it is known and practiced today.

However, in a context where the state is reluctant to pass any anti-discrimination laws or in other ways guarantee the rights of sexual minorities,<sup>7</sup> an apparent “mainstreaming” strategy of same-sex marriage or any form of partnership might allow sexual minorities a voice in the system, which can potentially challenge the heteronormative marital institution from within, so long as those same-sex couples

---

<sup>7</sup> See Khor and Kamano (2021) and Khor (2020) on the ruling party’s stance on anti-discrimination legislation in Japan.

who have registered their partnership remain critical of the system despite having become part of it. A more effective strategy to guarantee the rights of sexual minorities, while also dismantling the heteronormative institution of marriage to achieve freedom of choice for all, might consist of meaningful dialogues among all those affected by changes in the institution – dialogues that recognize and find ways to meet the actual needs of all those excluded from the institution, and which are also critically aware of the limitations of seeking rights from a heteronormative state.

## References

- Arudou, D. (2021). *Embedded racism: Japan's visible minorities and racial discrimination* (2nd ed.). Lexington Books.
- Bourdieu, P. (1987). The force of law: Toward a sociology of the juridical field (R. Terdiman, Trans.). *The Hastings Law Journal*, 38(5), 805–853.
- Brainer, A. (2019). *Queer kinship and family change in Taiwan*. Rutgers University Press.
- Cabinet Office, Japan. (2020). *Reiwa 2-nendo shōshika shakai ni kansuru kokusai ishiki chōsa hōkokusho* [Report on the 2020 international survey on the declining birthrate]. <https://www8.cao.go.jp/shoushi/shoushika/research/r02/kokusai/pdf/zentai/hyoushi-mokuji.pdf>.
- Chen, C. (2019a). Migrating marriage equality without feminism: *Obergefell v. Hodges* and the legalization of same-sex marriage in Taiwan. *Cornell International Law Journal*, 52, 65–107.
- Chen, C. (2019b). A same-sex marriage that is not the same: Taiwan's legal recognition of same-sex unions and affirmation of marriage normativity. *Australian Journal of Asian Law*, 20(1), 59–68.
- Constitutional Court, R.O.C. (Taiwan). (2017). No. 748 (Same-sex marriage case), 24 May 2017 (S.-C. Kuo, Trans.). <https://cons.judicial.gov.tw/en/docdata.aspx?fid=100&id=310929>.
- Croce, M. (2018). Desiring what the law desires: A semiotic view on the normalization of homosexual sexuality. *Law, Culture and the Humanities*, 14(3), 402–419. <https://doi.org/10.1177/1743872114553070>.
- Duggan, L. (2002). The new heteronormativity: The sexual politics of neoliberalism. In R. Castronovo & D. D. Nelson (Eds.), *Materializing democracy: Toward a revitalized cultural politics* (pp. 175–194). Duke University Press.
- Equal Marriage Alliance Japan. (n.d.). *Dōseikon Q&A* [Q&A on same-sex marriage]. Retrieved January 9, 2020, from <http://emajapan.org/promssm/ssmqaa>.
- Geiger v. Kitzhaber*, 994 F. Supp. 2d 1128 (D. Or. 2014).
- Goodridge v. Dept. of Public Health*, 798 N.E.2d 941 (Mass. 2003).
- Horie, Y. (2010). Dōseikan no “kekkon” ni kansuru hihanteki kōsatsu: Nihon no shakaiseido no bunmyaku kara [A critical analysis of same-sex “marriage”: An investigation of the context of the social in Japan]. *Shakai shisutemu kenkyū*, 21, 37–57.
- Institute of Statistical Mathematics. (2017). *The study of the Japanese national character*. [https://www.ism.ac.jp/kokuminsei/en/table/data/html/ss9/9\\_14/9\\_14\\_all.htm](https://www.ism.ac.jp/kokuminsei/en/table/data/html/ss9/9_14/9_14_all.htm).
- Japan court rules failure to recognize same-sex marriage unconstitutional. (2021, March 17). *The Japan Times*. <https://www.japantimes.co.jp/news/2021/03/17/national/crime-legal/same-sex-marriage-landmark-ruling/#>.

- Kamano, S. (2018). Kekkon pātonāshippu no katachi ni taisuru hitobito no kangaekata: Kodomo ni shitehoshikunai ikikata no bunseki o tsūjite [Attitudes toward marriage and partnership: Analysis of the least preferred way of living for one's children]. *Kekkon/rikon/saikon no dōkō to Nihonshakai no henyō ni kansuru hōkatsuteki kenkyū* [Marriage, divorce, and remarriage in Japan: Trends, causes, and social implications]. Grant-in-Aid for Scientific Research (A), JSPS Kakenhi 25245061, PI: M. Iwasawa. Final research report (pp. 583–596).
- Kamano, S., Kamiya, Y., Sugiura, I., & Taniguchi, H. (2018). *Family and partnership: Experiences of and ideas on same-sex partnership certificate in Shibuya*. Paper presented at the XIX ISA World Congress of Sociology, Toronto, Canada.
- Kawamura, S. (2021, December 23). “Kon’in no jiyū” dōseiaisha ni mo tekiyō o: Dōseikon soshō hajimaru D[“Freedom to marry” to be extended to homosexual people. Same-sex marriage lawsuit hearing begins]. *Asahi shinbun (digital)*. <https://digital.asahi.com/articles/ASPD6JY0PDQIIPE02F.html>.
- Khor, D. (2020). Framing same-sex marriage in Japan. *GIS Journal: The Hosei Journal of Global and Interdisciplinary Studies*, 6, 29–41.
- Khor, D., & Kamano, S. (2017). Mother-daughter relationships in Hong Kong and Japan. *GIS Journal: The Hosei Journal of Global and Interdisciplinary Studies*, 3, 1–29.
- Khor, D., & Kamano, S. (2019). Same-sex partners and practices of familial intimacy. *GIS Journal: The Hosei Journal of Global and Interdisciplinary Studies*, 5, 19–38.
- Khor, D., & Kamano, S. (2021). Negotiating same-sex partnership in a “tolerant” state. *Journal of Gender Studies*, 30(5), 512–524.
- Lawrence v. Texas*, 539 U.S. 558 (2003). <https://supreme.justia.com/cases/federal/us/539/558>.
- Maschi, D., Sciupac, E. P., & Lipka, M. (2019). *Same-sex marriage around the world*. <https://pewrsr.ch/3bOqHpO>.
- Morita, L. (2015). Some manifestations of Japanese exclusionism. *SAGE Open*, 5(3). <https://doi.org.10.1177/2158244015600036>.
- National Institute of Population and Social Security Research. (2017). *Gendai Nihon no kekkon to shussan: Dai 15-kai shussō dōkō kihon chōsa (dokushinsha chōsa narabi ni fūfu chōsa) hōkokusho* [Marriage and childbirth in Japan today: The 15th Japanese national fertility survey, 2015 (Results of singles and married couples survey)], [https://www.ipss.go.jp/ps-doukou/j/doukou15/NFS15\\_reportALL.pdf](https://www.ipss.go.jp/ps-doukou/j/doukou15/NFS15_reportALL.pdf).
- Neghaiwi, B. H., & Wiegmann, A. (2022). *In Switzerland, first same-sex couples say “I do.”* Reuters. <https://reut.rs/3bMsFHu>.
- Niji Bridge. (2022). *Shibuya city office: Nijiirō diversity collaborative study of LGBT partnership coverage in Japan*. <https://nijiibridge.jp>.
- Puar, J. K. (2017). *Terrorist assemblages: Homonationalism in queer times*. Duke University Press.
- Research Group for the 2019 National Survey on Attitudes Toward Sexual Minorities. (2020). *Oral presentation on the 2019 national survey on attitudes toward sexual minorities*. Grant-in-Aid for Scientific Research (A), JSPS Kakenhi 18H03652, PI: Kawaguchi K. <http://alpha.shudo-u.ac.jp/~kawaguch>.
- Saez, M. (2014). Transforming family law through same-sex marriage: Lessons from (and to) the Western world. *Duke Journal of Comparative and International Law*, 25, 125–196.
- Sapporo District Court. (2021). Judgment of 17 March 2021. Case no. (Wa) 267 of 2021, Claim for damages case (Lawyers for LGBT and Allies Network, Trans.). <https://bit.ly/3R92LxC>.



- Shida, T. (2009). *Dōseikon hihan* [A critique of same-sex marriage]. In O. Seki & T. Shida (Eds.), *Chōhatsu suru sekushuaritī: Hō/shakai/shisō e no apurōchi* [Shaking up law, society, and philosophy: Provocations from sexuality studies]. Shinsensha.
- Sugiura, H. (2013). *Jimintō kenpō kaisei sōan/genkenpōtaihi* [LDP's constitutional amendment draft: Comparison with current constitution]. <http://www.azusawa.jp/topics/topics-20130413.html>.
- Sullivan, A. (Ed.) (1997). *Same-sex marriage, pro and con: A reader*. Vintage Books.
- Takagi, S. (2021, December 3). *Aishiteiru no ni “kekkon” o erabenai ... “dōseikon” ga motomeru mono to pātonāshipu seido no chigai* [I love you, but I can't choose “marriage” ... what “same-sex marriage” seeks and the difference between same-sex marriage and the partnership system]. <https://www.fnn.jp/articles/-/278487>.
- Tang, D., Khor, D., & Chen, Y. (2020). Legal recognition of same-sex partnership: A comparative study of Hong Kong, Taiwan and Japan. *Sociological Review*, 68(1), 192–208. <https://doi.org/10.1177/0038026119858222>.
- Wang, H., & Chen, M. (2017). Discourses on non-conforming marriages: Love in Taiwan. *International Journal of Japanese Sociology*, 26, 52–66. <https://doi.org/10.1111/ijjs.12063>.
- Woodly, D. (2018). The importance of public meaning for political persuasion. *Perspectives on Politics*, 16(1), 22–35. <https://doi.org/10.1017/S1537592717003127>.

