

Framing Same-sex Marriage in Japan

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Framing Same-sex Marriage in Japan¹

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Abstract

This research note reports the first analysis of how same-sex marriage is framed by stakeholders in Japan, in a larger Japan-Hong Kong comparative project examining how same-sex partnership is advocated or resisted, what the implications are for the heteronormative institution of the marriage and the family, and how same-sex couples negotiate marriage and family norms in their everyday life. The analysis shows that whether arguing for or against same-sex marriage, the state as well as civil society reinforce homonationalistic discourses, albeit in a slightly different manner than observed in the West. Further, there is a tendency for advocates of same-sex marriage to construct marriage as the essence of human existence, leaving little room for a critical examination of a gendered and unequal institution, at least as it is practiced in today's Japan. All this provides some preliminary support for the claim that the legalization of same-sex marriage might indeed reinforce rather than undermine heteronormativity.

Keywords: same-sex partnership, homonationalism, heteronormativity, Asia, queer kinship

Same-sex marriage has gained much visibility in the past few years, especially after its recent legalization in Europe and the Americas in nations with strong anti-homosexuality religious traditions. The ruling of the unconstitutionality of the prohibition of same-sex marriage in Taiwan in 2017 and the subsequent legalization of same-sex marriage in 2019 have opened up the possibility of a similar trend in Asia. Despite that the Japanese government has remained resilient to any changes and has sought even to revive a multi-generation (heterosexual) family model through its proposed constitutional amendment to Article 24 (Liberal Democratic Party, 2008; Sugiura, 2013), the municipal governments have moved ahead with various forms of same-sex partnership registration, and NGOs and legal practitioners in Japan are preparing to battle the issue in the legal realm (Sugihara, 2018).

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All these developments are fast establishing same-sex marriage as a norm and a goal to strive towards for the realization of full sexual citizenship (Richardson, 2017). It is therefore imperative at this juncture to pause and consider not only the progressive but also the possible regressive effects of the legal recognition of same-sex partnership. Indeed, in the gay, lesbian and bisexual academic community, there has always been a critical view on the legalization of same-sex partnership. While some have argued that same-sex marriage would liberalize the institution of marriage and dismantle hegemonic heteronormativity (Hull, 2006), others have voiced concerns that legalization of same-sex partnership would reinforce the institution of marriage and heteronormativity, privileging the heterosexual model of relationship and further delegitimizing others forms of relating (Duggan, 2002; Beam, 2018; Shida, 2009).

The arguments that emerged are intriguing, and the arguments on both sides are compelling. The only way to adjudicate among these arguments is through theoretically informed empirical research. Further, while most of the debates have occurred in the context of the West², they have frequently been taken out of their parochial contexts and universalized. There is however already accumulated a body of theoretically informed empirical research on sexuality in Asia. The significance of anchoring the research on Asia is not only to supplement the knowledge accumulated in the West so far, but also to critically assess and parochialize that knowledge, and eventually come up with alternative concepts and theories to shed more light on the subject.

Through a Japan-Hong Kong comparative project on the legalization of same-sex partnership, we hope to achieve both aims – conducting much needed empirical research on the topic so as to evaluate the arguments on the implications of legalization, and based on the data, rethink current concepts and theories. We aim to contribute to queer kinship studies by exploring how and why the recognition of same-sex partnership and family formation challenges or reinforces the heteronormative foundation of legalized family and kinship in Asian societies, while looking also into the everyday life of same-sex couples and their families/kin networks. We would analyze the framing of same-sex partnership and its legalization through looking at legal/political statements, media discussions, and the platforms of activist organizations. We plan to look at how these frames articulate with individuals' perceptions and practices of gay and lesbian same-sex partnership. In all these analyses, we would adopt an intersectional perspective and pay attention to how

² Following Kong (2019), the West is taken here to refer to “the social and political constructs of the Anglo-American cultures and traditions of North America, Australia and New Zealand, and of Western Europe, countries/regions that are usually referred to collectively as the Global North or as ‘the metropolises’. (notes 2)

gender and social class intersect in these perceptions and practices. By anchoring our study in Hong Kong and Japan, we also hope to contribute to the further development of the burgeoning “Inter-Asia” perspective/method (Chen, 2010; Iwabuchi, 2013; Yue, 2017).

This research note will present the first analysis of the framing of same-sex marriage in Japan, as found in pertinent policy statements of the ruling political party, Liberal Democratic Party, and the major opposition party, Constitutional Democratic of Japan, as well as the Japanese Federation of Bar Associations, two NGOs targeting same-sex marriage (EMA and Marriage for All Japan), and selected newspaper articles digitally published by Asahi Shimbun, one of the three major newspaper companies in Japan.³ This research note will end with reflections on such framings as well as indications of future analyses.

Liberal Democratic Party: Promoting Understanding

The global trend of legalizing same-sex partnership and the domestic movements on different fronts have made visible the lack of state action in Japan with respect to same-sex partnership and LGBT rights, and renders it impossible for the Japanese government and its ruling party to ignore the issue. The LDP opinion is laid out in a downloadable pamphlet (Liberal Democratic Party Policy Research Council, 2016).

The pamphlet marks a clear distinction between Japan and the West, or indeed, between Japan and the rest of the world, claiming that Japan has always been a tolerant society with respect to gender and sexuality issues, drawing conveniently on research that takes a “local essentialist” perspective to focus on traditional sexual traditions (Martin et al. 2008; see Khor, 2010, for a critique). It was the very encounter with the West during the Meiji period that accounted for the current intolerance, the document claims. Further, the anti-discrimination law as implemented in the West is not desirable or expected to be effective for Japan, given the persistence of discrimination in these nations. Instead, LDP proposes a law to promote understanding and reduce the problems faced by sexual minorities, in a larger framework of dynamically engaging *all* citizens (my emphasis). With respect to same-sex marriage, including the partnership certificates issued by Shibuya and other municipal governments, the government and LDP key word is “caution”. The government is not moving forward to legalize same-sex partnership because of “lack of consensus among citizens regarding rights and obligations related to legal marriage (including common law marriage), and therefore, would propose to first promote understanding, and to be very careful in assessing the issue of same-sex marriage/partnership”.

³ The rationale invoked by Shibuya ward in issuing partnership certificates has been analyzed elsewhere (Tang, Khor and Chen, 2020) and will not be repeated in this research note. A more comprehensive analysis of how the municipal governments will be taken up later in the research process.

Rather than following the lead of other nations, with their ineffective policies, the LDP discourse— as articulated by the Association for the Promotion of LGBT Understanding— a non-government organization that essentially implements the LDP initiative on “understanding”- is that Japan would take leadership to offer what would promise to be the most effective way to mitigate the disadvantages of sexual minorities and promote diversity (<https://lgbtrikai.net/zoshinho/index.html>). In other words, in the LDP frame, “a commitment to “diversity” is to be realized with a clear denial of same-sex marriage, and even partnership, and without any prohibition of discrimination” (Khor, Tang & Kamano, 2020).

The Constitutional Party of Japan (CPJ): Criminalize Discrimination and Legalize Same-sex Marriage

The CPJ, together with four other opposition parties, submitted a bill to the Diet which aims at eradicating discrimination against sexual minorities (formally called “bill to eradicate discrimination on the basis of sexual orientation or gender identity”)⁴.

With respect to same-sex partnership, a CPJ politician, Osaka Seiji, raised questions and made arguments at the Diet that are in line with his party position. First, he argued, in civil law, there is no stipulation that marriage has to be between a man and a woman. With respect to article 24 of the constitution, the spirit of the law is not about restricting marriage to male/female pairs, but about individual autonomy. Further, Article 14 of the Constitution is about guaranteeing freedom from discrimination, emphasizing the dignity of people regardless of sex as citizenship rights. In addition, there is a clause that guarantees the right of citizens to freedom and the pursuit of happiness. Therefore, same-sex couples should be treated the same way as heterosexual couples. Article 74 of the family registration law also specifies only that a couple needs to decide on a surname, and article 739 says that a marriage is established on the submission of documents based on the family registration law. Lastly, with respect to the LDP arguments that same-sex marriage/partnership is connected to the fundamental practice of family, that the current Constitution does not envision same-sex marriage/partnership, and therefore it is something that needs to be assessed extremely carefully, Osaka’s counter argument is that all this actually means on the contrary that legal provisions must be established (Osaka, 2019). The official response by the government is that Article 24 of the Constitution does not conceive of same-sex marriage, that whether to recognize same-sex marriage or not relates to the core of how the family should be formed and practiced in the nation. Further, in civil law

⁴ The bill was first submitted by the Democratic Party ((DP) in 2016. The party had since dissolved and was mostly absorbed into the Democratic Party for the People ((DPFP) Kokumin Minshu) in 2018. DPFP was among the parties submitting the bill in 2018.

and family registration law, the term “husband and wife” indicates that the parties in marriage are a man and a woman (Abe, 2019).

The CDP position therefore emphasizes freedom and equal rights, as guaranteed in the Constitution, in its argument for same-sex marriage. It is therefore consistent that they submitted the anti-discrimination bill as they support same-sex marriage, just as it was consistent for LDP not to address discrimination or seek to legalize same-sex marriage in promoting understanding that would render sexual minorities’ coming out “unnecessary”.

The Japanese Federation of Bar Associations (JFBA): Constitutionality of Same-sex Marriage

The argument made by the CDP politician is consistent with that of the Japanese Federation of Bar Associations, the gist of which was contained in the written opinion submitted to the government in July, 2019, based on the human rights relief petition filed by 455 individuals in July, 2015 (The Japanese Federation of Bar Associations, 2019). The demand for the legal recognition of same-sex marriage is based on the disadvantages suffered by non-heterosexuals, which violate their freedom of marriage, the principle of equality of all under the law, and human rights. The JFBA written opinion asserts that sexual orientation is deeply connected to a person’s identity, that there is legal precedence of ruling against sexual orientation and gender identity (SOGI) discrimination, and that public opinion is supportive of same-sex marriage. While it notes historical changes in the meaning of marriage, the written opinion also asserts the significance of legal marriage, which still commands strong respect among Japanese. On top of it, it refers to various international organizations that have urged Japan to take legal measures against SOGI discrimination and affirm same-sex marriage.

The JFBA legal argument for same-sex marriage focuses on the Constitution and family law. With respect to the Constitution, it invokes Article 13, which guarantees the right to life, freedom and the pursuit of happiness, viz. the right to self-determination without the interference of public authorities. Because matters related to family formation and maintenance are bound to such human values as one’s self-realization and self-expression, decisions in these matters are also protected by Article 13. Therefore, the right to marry or not to marry, and whom one marries, is protected by Article 13. As such, same-sex marriage likewise requires the same protection given to heterosexual marriage; there is no difference in the meaning of marriage to same-sex partners or heterosexual partners.

It is further argued that Article 14, which stipulates that all are equal under the law, would be contradicted should same-sex marriage be prohibited. Differential treatment with respect to race, creed, sex, social status and so on, is in principle prohibited. It is further noted that individuals cannot change these characteristics based on their own will, and that there is a long history of discrimination on the bases of these

characteristics. Likewise, citing the American Psychological Association brief for support, the written opinion asserts that sexual orientation is not a matter of individual choice, and therefore there is no ground for supporting differential treatment based on sexual orientation (*Obergefell v. Hodges*, 135 S.Ct.2584, 2015). In addition, the right to marriage is a fundamental right that is deeply connected to human benefits. Therefore, to not allow for same-sex marriage would lead to important differences in rights and benefits.

With regard to Article 24 which defines marriage, and whether it allows for same-sex marriage, the key seems to lie in the reference to “two sexes” in the Article. Similar to the CPJ politician Osaka’s argument, the JFBA written opinion argues that the point is about the respect for individuals, and the idea that marriage should be contracted on the basis of consent of the parties involved. In other words, it is about affirming the equality between the two sexes, as a way to dismantle the patriarchal system from the Meiji period, considering the historical context of the constitution. Further, when the Constitution was drawn up, homosexuality was still classified as an illness, and there was no consideration of same-sex marriage and of course it was not debated either. It would be farfetched to conclude that affirmation of the decision of the two sexes includes the prohibition of same-sex marriage.

Besides the Constitution, the JFBA written opinion also points out that under the current Family Law, the principle of freedom and equality of marriage is to be applied regardless of the sexes of the partners.

EMA Japan: Keeping Pace with the World

EMA stands for Equal Marriage Alliance, and puns with the Japanese word *ima*, meaning “now”. EMA is a major non-profit organization established in 2014 that advocates the legalization of same-sex marriage. Rather than focusing on the Constitution, they draw on a range of arguments.

The Q & A covers a range of questions typically asked about same sex marriage and sexual orientation, including the constitutionality of same-sex marriage, and the benefits of same-sex marriage for the individual as well as for society. With respect to sexual orientation, after issuing a disclaimer that science has not clarified everything, it nonetheless cites Rice, Friberg & Gavrilets, 2012, and states that it is “widely accepted” that homosexuality and gender identity disorders, similar to heterosexuality, are not chosen by one’s free will and are biologically determined before birth. The Q & A ends with a discussion of the benefits of same-sex marriage for society, listing such economic benefits as the revival of the wedding industry, the retainment of the human resources of couples of different nationalities as they can choose to stay in Japan, and the enhanced productivity of households and society. Indeed, EMA argues that “the institution of marriage can be described as a system that improves the stability and productivity of the household and society, and countries that recognize same-sex marriage are further improving the productivity of society as a whole”. Other non-economic benefits listed include facilitating more stable relationships which would

enhance same-sex couples' ability to "take more responsibility towards each other's health and well-being," and "most importantly", attaining a more equal society (EMA Japan, n.d.).

The main arguments are laid out in the only text without an English translation, and are presented as a statement of the director, Terada Kazuhiro (Terada, n.d.). The text carries the heading, "Same-sex marriage: the touchstone for equal and tolerant Japan". In referring to the trend in prohibiting SOGI discrimination in international organizations, Terada notes that sexual minorities make up about 3 – 5% of the population, in any regions in the world and at any time in history. Japan, indeed, was a leader in cultivating a culture of homosexuality as exemplified in *danshoku* and *shudō*, before the imperialist era when the Meiji government adopted European style policies to standardize their management and control of the citizens. As a result, the ancient culture was dismissed and the culture of sexual diversity ignored. This trend was further consolidated through World War II and post-war rapid economic growth to reach the state today. One can therefore infer from the argument that the "original" Japan would have been accepting of same-sex marriage.

The straightforward argument that the prohibition of same-sex marriage violates the principle of equality under the law is made on the basis of the importance of marriage. The exclusion of homosexuals from marriage, the most important legal system for humans and society, is the same as affirming that there is no equality under the law, thereby rendering it theoretically impossible to get rid of any discrimination or prejudice against homosexuals. In making an argument based on the law, Terada also invokes Article 24 in the Constitution and makes the same argument that JFBA has made. In addition, he argues that the form of marriage has changed over the course of time, and parties previously forbidden to marry can now get married, and same-sex marriage is likewise part of such changes.

The last pitch that Terada makes is an economic argument, prefaced by a survey of the long global history of legal recognition of same-sex partnership. Quoting partially from the preamble to the Japanese Constitution about the noble commitment to international cooperation—leaving out references to the peace resolution—Terada cautions that Japan would not be able to take a respectable position among advanced nations if it did not legalize same-sex marriage. Anticipating the increase in married same-sex couples to visit Japan for work or leisure in the occasion of the 2020 Olympic/Paralympic in Tokyo, he identifies the "risks" incurred by not recognizing same-sex marriage. The "risks" are economic risks. The combined GDP of the 47 nations that recognize same-sex partnership in some way totals 60% of the global GDP, while Japan has dropped from the 3rd to the 20th place in GDP per capita among OECD nations. Terada's argument is that nations that recognize diversity of family form enjoy economic prosperity. Recognizing same-sex marriage is part and parcel of building an equal and tolerant society that enjoys the contribution of diverse talents, and is therefore a touchstone as to whether Japan can turn anxiety about recession to hope for prosperity.

Marriage for All Japan: Problems of not being allowed to marry

While it is clearly stated on their website that the freedom to marry is a right to choose to marry or not to marry, the very naming of the organization itself focuses on marriage. It was formed by lawyers who filed a lawsuit for same-sex marriage in 2019, as well as other professionals. While other organizations reviewed above typically note the disadvantages same-sex couples suffer by not being able to marry legally, Marriage for All Japan devotes more of their website text to explaining in detail the actual disadvantages suffered by those excluded from marriage, including issues related to inheritance, medical emergency, hospital visitation, the right of residence (visa issue), and adoption. Evan Wolfson, who is known for his effort in fighting for same-sex marriage in the United States, is also quoted: “the more people share their stories of family, love, harm from discrimination, the more likely it is that people’s hearts will be moved to change the status quo.” (Marriage for All Japan, n.d.)

In the Q and A section, Marriage for All Japan takes up a range of questions and expresses views similar to other organizations concerning same-sex marriage, such as the constitutionality of same-sex marriage, the issue of same-sex couples’ inability to procreate and its implications for the already low birthrate, and so on. In their answers, Marriage for All Japan states that “sexual orientation cannot be changed by one’s will,” again reiterating a position taken by both EMA and JFBA, as noted above.

Asahi Shimbun: Global Trends, Local politics, Individual stories

Searching the digital version of Asahi Shimbun with the keyword “same-sex marriage” yielded a large number of articles 678 articles, with the earliest one dated September 10, 2014.⁵ Excluding the irrelevant articles (where only the term “same-sex marriage” appears or when more general issues about sexual minorities are addressed), the rest of the articles are classified by theme, which include measures adopted in the private sector or municipal government, reports of opinion polls, individual stories, lawsuits, books and films, and opinion pieces. For this research note, I will focus on opinion pieces (n=23).

All the opinion pieces are affirmative about same-sex marriage. Equality under the law and the constitutionality of same-sex marriage are common arguments invoked to support same-sex marriage. That Japan is left behind in the global trend towards legal recognition is also mentioned in more than one article, and some directly reference the legalization of marriage in the United States. At the same time, at least one

⁵ Using the same keyword yielded a much smaller number of articles in Yomiuri Shimbun and Mainichi Shimbun. In a later analysis, I will also cover the articles published in these two newspapers, in addition to the rest of the articles published in Asahi Shimbun.

article refers to how Japan was originally “easy”, and the constraints started being imposed only after the Meiji government started imitating the West, hence repeating the arguments made by JFBA, EMA Japan, Marriage for All Japan, and also LDP. Same-sex partnership certificates issued in Shibuya and a number of other cities in Japan, when referenced, are seen as positive developments that can have larger implications in society beyond the limited benefits and the geographical constraints. That such issues should be seriously discussed and debated in politics is mentioned in a few articles. When marriage is mentioned directly, it is framed as a matter of individual choice, with a couple of articles connecting it to the issue of separate surnames for husband and wife. The diversity of family form is also mentioned either as a fact or as something that merits endorsement. An unusual argument sees same-sex marriage as a solution to the decline in birthrate, as same-sex couples would tend to invest in their own homes and that a better foster and adoption system would prevent abortion and allow same-sex couples and infertile couples to have children.⁶

Framing Same-sex Marriage: Preliminary Reflections

A major aim of this project is to examine whether and how legalization of same-sex marriage reproduces or undermines the heteronormative institution of marriage. Examining how the issue is framed by different stakeholders can provide some clue to the conservative or progressive effects of same-sex marriage, and contribute to the ongoing academic debate.

Jasbir K. Puar coined the concept of homonationalism originally to describe how the United States’ acceptance of sexual minorities bolsters a nationalist ideology that consists not only in showing the US to be progressive and egalitarian, but also in denigrating opposing cultures, such as Islamic cultures, as backward (Puar, 2007). In Diane Richardson’s words, “struggles for sexual citizenship have come to act as a performative of the nation-state; a symbolic marker of in/tolerant countries and constructions of ‘modernity’/‘backwardness’” (Richardson, 2017: 214). The LDP government’s framing of same-sex marriage and the two NPO’s framing of same-sex marriage, despite their different conclusions, both exemplify this concept of homonationalism, but with a twist. The homonationalist discourse invoked in these framings argued that Japan *was* progressive, before it mistakenly copied the West. LDP took this argument further to argue that Japan can lead and show the world a better solution to discrimination against sexual minorities by promoting understanding and creating a society where coming out would be unnecessary. Interestingly, EMA takes the same discourse to an opposite direction, arguing in contrast that since Japanese culture in the past—before it was influenced (=contaminated) by the West—had embraced sexual diversity, it is just “natural” to legalize same-sex partnership in today’s Japan. It also holds Japan to

⁶ Not all the articles are referenced in this paragraph, but they are all listed at the end of the reference list.

its “noble vision” as described in the preamble to the Constitution, while carefully omitting any reference to the (now controversial) commitment to peace and not engage in wars. This last point, as well as the fact that EMA and LDP reach different conclusions while invoking Japan’s progressive past, show how “traditional sexual culture” is invoked as a performative not only of the state but also the civil society. What this also shows is that struggles for sexual citizenship can be manipulated to serve state interests, and as a result, sexual citizenship rights can possibly be limited if they conflict with state interests. The LDP’s vision of a society where it is unnecessary for sexual minorities to come out can be read as a message to sexual minorities that “if you stay quiet and behave, you will not be harmed.”

In advocating same-sex marriage, it is not surprising that no one offers a critical view of the institution of marriage. When anti-discrimination measures are mentioned as well, the right to marry is seen as one area where discrimination occurs. The vision of sexual citizenship embedded in these framings of same-sex marriage is therefore rather limited, reinforcing what Mary Duggan has termed “...the *new homonormativity*—...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.” (Duggan, 2002: 179). Indeed, the discourse on marriage embedded in the same-sex marriage advocates’ arguments, including the sophisticated legal arguments JFBA makes, elevates marriage to the level of the essence of human existence, leaving little room for alternative ways of relating and crowding out any critical consideration of marriage itself. There is no trace of any feminist arguments on marriage as an institution, despite its embedded genderedness and inequality, especially as practiced in Japan. Despite the reference to diverse family forms by all the advocates, including the authors of opinions published in Asahi Shimbun, only one family form is endorsed – monogamous, economically self-sufficient, and responsible for the young, whether biologically connected or not.

Distinct from homonormativity but which is likewise limiting to the pursuit of full sexual citizenship is the argument that sexual orientation is not a choice. Even though at times a disclaimer is issued about the inconclusiveness of evidence, the basic position is that sexual orientation is something one is born with, rather than chosen. Just as this provides a strong rationale for championing equal rights for sexual minorities and same-sex marriage, it can also severely limit individual freedom beyond the realm of sexual citizenship and contradict the argument for the freedom of choice. There is no reason why the freedom of choice does not also include the choice of one’s gender identity, sexual orientation, form of intimacy, and so on. In addition, invoking biological arguments—when research is actually inconclusive, the connection between biology and environment intricate, and sexuality complex—can itself lead to discrimination of sexual minorities based on biology, as has happened in history with respect to race and gender.

The reflection presented here represents only preliminary thoughts about how the issue of same-sex marriage is being framed, which merits a deeper analysis. Arguments presented in the ongoing court cases on same-sex marriage also merit close examination. While the framing of same-sex marriage is taken as an object of analysis in this research note, it should be apparent that any framing not only sends messages about the heteronormative institution of marriage and the family, but also constitutes the larger meaning system—a symbolic framework—within which same-sex couples negotiate their identities and their lives, and the general public work out their positions on these issues. The next step in the project is to conduct in-depth interviews with same-sex couples to look into their everyday life and explore how it connects to these framings of same-sex marriage. It is also hoped that through all these analyses, new insights concerning how concepts and theories in the field can or need to be reworked in the Asian context.

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