

Same-Sex Partnerships in Japan: Bypasses and Other Alternatives

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In contemporary Japan, the family remains a strong social and legal entity. The right to make decisions on behalf of another in emergency situations lies with the immediate family. Similarly, immediate family members are legally entitled to claim from deceased family member's estates. One way to ensure that property and inheritance rights are passed on to same-sex partners is for the older partner to adopt the younger, thereby becoming family in the eyes of the law. An alternative that has recently been proposed is for partners to draw up legal agreements and register them with a local notary office. Neither of these options are problem free—the former introduces a parent/child relationship to a domestic partnership; the latter is yet to be tested in a court of law. Both rely on surreptitiously accessing (or appropriating) the existing civil code. This article briefly outlines the current situation in Japan regarding same-sex partnership rights and the alternatives available.

In contemporary Japan, the popularization of romantic love and the increase in “love match” marriages (as opposed to arranged marriages) has not weakened the legal strength or social standing of the family (*ie*). Completing official registration as a family (usually done by creating a new household register [*koseki*] headed by the husband¹) is seen as more than an expression of commitment made by one adult to another. It is an act that is assumed will inevitably lead to the birth of children and the passage into responsible adulthood.

Along with the connotations of adulthood, marriage also brings with it privileges and protections that are not accessible to single adults (regardless of sexuality) in Japan.² Financial benefits such as increases in salary for the husband, joint medical insurance³ for husband and wife, and access to joint bank

accounts (and loans) may come as a result. Furthermore, as the rights of the family override all else, unmarried single adults experience difficulty exercising their own personal decisions regarding the receipt of medical care, hospital visitation, and property distribution upon death. Current law states that legally registered spouse and children are entitled to half of the deceased family member's estate. If neither spouse nor children survive, estates are divided amongst parents and/or siblings.⁴

When the question of partnership rights and privileges is brought up, the positioning of the family as the basic social (and legal) unit becomes clearer. Although recognition of heterosexual *de facto* relationships in areas such as social welfare is increasing, the balance still remains in favor of legally married couples. For same-sex partners, the threat of being unable to access joint property, of being refused visitation rights when a partner is hospitalized, and so on continue to be real concerns.⁵

The precarious positioning of unmarried adults within the legal and social welfare systems has resulted both in the strategic negotiation of existing legal structures and in calls for changes to existing laws.⁶ An understanding of the complex positioning of unmarried singles in contemporary Japan, and recognition of the conflicting discourses that surround notions of marriage and partnership rights, leads to a deeper understanding of the complexity of contemporary same-sex partnership rights in Japan. For whether the discussion focuses on the question of the individual's right to decision-making, or that of marriage, these issues cut across social and cultural ideologies of gender and the family. In short, any discussion of these issues necessarily engages with the system of family registry (*koseki*) and the many areas on which it exercises influence.

In the following, I briefly outline contemporary discussions on same-sex partnerships in Japan. I focus on community (online and in print) discussion of two strategies currently available to those who cannot or do not want to enter into marriage within the Japanese legal system. The first strategy I discuss involves the

adoption of one adult by an older adult (*yōshien-gumi*). The second involves the drawing up of notarized deeds (*kōseishōsho*) to be registered at a local notary office. Both approaches rely on appropriating current laws and have been employed surreptitiously so as not to jeopardize the continuing usefulness of each to protect same-sex partnership rights that are otherwise ignored under current laws. That being said, it must be stressed that both approaches are available to all adults within the Japanese system.

Adoption and notarized deed are strategies employed by some same-sex partners for differing reasons and, while in no way equivalent to same-sex marriage, have the potential to be many things to many people; for some they may be a way of circumventing current laws, for others they offer an opportunity to clearly outline their personal wishes. Both strategies highlight the urgency for further discussion of the family registry system as it stands in Japan, especially in the context of the Basic Law for a Gender-Equal Society⁷ which mobilizes gender equality within discourse of aging populations and low birth rates thereby reinforcing conservative discourses of family.⁸

BYPASSING⁹ VIA ADOPTION

Although comprehensive field work is necessary to establish the extent to which same-sex partners undergo adoption (*yōshien-gumi*), even the most rudimentary of internet searches will lead you to several Japanese language sites that briefly outline this process whereby partners can become legal family. Historically, adoption has been considered the only way to protect same-sex partnerships rights. It has been used surreptitiously by same-sex partners to ensure that they are not shut out of medical decision-making in emergencies and that joint property and assets (including objects of sentimental value, etc.) are not automatically passed on to so-called immediate family upon death. At the risk of uncovering what has for many years been an important strategic option for

some, I will briefly outline the process of forming an adoptive relationship below.

Under current Japanese law, it is possible for an adult to adopt another adult, whereby the two become parent and child registered on the same family register. Registering such an adoption with the municipal office is not an overtly complicated process if both parties are legal adults.¹⁰ All that is required is for completed adoption documents to be stamped with both party's official seals¹¹ in the presence of two adult witnesses.¹² The elder of the two is required to become the parent and the younger the child. From the day the document has been accepted, the two can use the same surname and are legally recognized as family.

Once the adoption is completed, the legal status of parent and child allows for the partners to claim family allowances as parent and dependent. It also allows both parties to claim other rights reserved for family members, such as hospital visitation and inheritance rights. Furthermore, if both parties are in agreement, it is possible to apply (once again through presenting the relevant documentation) for the relationship to be dissolved.¹³

As is clear from this very brief outline of the processes involved, adoption mirrors the steps necessary for a man and woman to be legally married in Japan. Through the presentation of the required documentation to the local municipal office, one party enters the other's family registry to form a new family unit. Similarly, as it is possible for the adoptive relationship to be dissolved, there is also a safeguard in place should the relationship end. However, even though adoption does mirror legal marriage processes, as Otsuka Takashi¹⁴ points out, entering into an adoptive parent/child relationship should be viewed as no more than a bypassing strategy. Adoption is intrinsically linked to continuation of the family household and operates within the family registry system (*koseki seidō*). As Otsuka notes, partners who enter into such a relationship must be aware of the implications it has for other family relationships.

Being registered as an adopted child does not automatically eliminate ties with one's existing parents. This fact has repercussions. In terms of the right to inherit property, although the party registered as child has the sole legal right to inherit property belonging to the parent (as long as they are the only child and there is no surviving spouse), in the absence of a legally recognized will the property of the child will be distributed between both sets of parents and other siblings still alive. This is because, as outlined briefly above, heir-at-law (*hôteisôzoku-nin*) are entitled to receive a fixed percentage of a deceased family member's estates. To at least ensure that individual wishes are clearly spelled out, Otsuka recommends that partners' registering an adoption also register wills as notary deeds. Furthermore, he warns that partners should also be prepared for unforeseen hurdles put out by other family members in times of emergency.

NEGOTIATING CURRENT LAWS WITH NOTARY DEEDS

The other approach to protecting same-sex partners' rights under the current Japanese system relies on the registration of several key documents with a local notary office. Firstly, as in the case of adoption, it is important that partners register their individual will and testament as a notary deed. As noted above, heir-at-law retain the right to inherit property, and it is only by registering a will with a notary that it is given legal clout. The other document to be registered as a notary deed is a joint living agreement (*kyôdô seikatsu sengen*). This is basically a document outlining how partners wish to order their personal affairs in times of emergency or death. A "joint living agreement" differs from adoption because it is situated outside of the family registry system and is often employed by couples who do not wish to enter into the system of marriage and the family. The first known "joint-living agreement" to be registered as a notary deed by a same-sex couple in

Japan was based on a document drawn up by a heterosexual couple.¹⁵ The original document was used as a blueprint because its validity was upheld when contested in a court of law (albeit in a case concerning an agreement formed between a man and woman).

One of the merits of this type of agreement lies in the fact that the format is not fixed and clauses (or provisions) can be set out as seen fit by the parties entering into the agreement. It is also technically possible for one to draw up an agreement with a number of different parties regardless of one's relationship. Joint living agreements registered as notary deeds offer single unmarried persons who would be placed under the care of immediate family in medical and other emergencies, the opportunity to set out their own wishes in these important areas.

The agreement drawn up by Izumo and Maree contains a clause appointing each other to a position of greater importance than that of immediate birth family. This clause is meant to curb the possibility of the family making decisions that would go against the wishes of one or the other. The agreement also clearly states that both parties allocate the right to care and make medical decisions to each other. This clause is included to make sure that in times of medical emergencies neither party is shut out of the decision-making process. The agreement also contains a clause each appointing the other as the head of the funeral (*moshu*¹⁶). Finally, the agreement also includes a clause stipulating that if both parties are in agreement, the document can be dissolved. This ensures that the joint living agreement can be ended if the partnership dissolves.

Joint-living agreements offer a powerful alternative to the rhetoric of marriage. Unfortunately, however, agreements drawn up between same sex partners are yet to be tested in a court of law. It remains to be seen how a Japanese court will judge an agreement drawn up by two women or two men (or one that refers to a wider group of people).

Both of the strategies outlined here are fragile in the sense that they rely on partners surreptitiously protecting their relationships

without acknowledging them as same-sex partnerships. This is very clear in the case of adoption where partners become parent and child in order to protect each other's rights. Although not immediately clear in the second case, community discussion does indicate that some notary officers have refused to register agreements between partners who openly state the agreement as being one between same-sex partners.

BEGINNING THE DEBATE

I have outlined the options currently available for protecting (or attempting to protect) individual decisions that ultimately pertain to same sex partner's rights without linking this to a discussion of same-sex marriage. One reason is because the question of marriage invokes the question of the ceremonial at the same time as it does partnership rights. Although there is very little data on the matter at the current time in Japan, it is not entirely impossible for partners to perform a commitment ceremony of some shape or form. It is extremely difficult, however, for individuals, regardless of sexuality, to exercise their right to make decisions outside the family system.

In terms of continuing the debate on partnership rights, community groups have recently conducted surveys of politicians to ascertain their position regarding the issue.¹⁷ Furthermore, an online survey is currently underway to ascertain the attitudes of lesbian and gay men's attitudes to partnership rights. Community discussion indicates that 2004 may see further debate on partnership rights in Japan.

NOTES

1. It is possible for a husband to take the wife's name and form a new family register. This, however, is not the norm.
2. At the moment, these privileges/rights/protections are in a state of flux as the state struggles to handle the retirement fund crises and honor its commitment

- to the Basic Law for a Gender-Equal Society. For an outline of the Basic Law for a Gender-Equal Society, see the gender information site: <http://www.gender.go.jp>
3. To counteract possible fraud, insurance policies in Japan are heavily regulated. In the instance of life insurance, it would be virtually impossible to register as beneficiary any one other than those legally recognized as heir-at-law (*hôteisōzoku-nin*).
 4. Under the system of heir-at-law (*hôteisōzoku-nin*), there are three major patterns for distributing deceased family member's estates. As mentioned in the main text, where both legal spouse and children survive, the deceased family member's estate will be divided between spouse (half) and children (half). In instances where the spouse is deceased, the estate will be split up between surviving children. If there are no children, and the spouse is still living, the estate will be divided between spouse (two-thirds) and surviving parents (one-third). If there are no surviving children or parents, the estate is to be divided between spouse (three quarters) and siblings (one quarter). Heir-at-law are able to contest a will; however, a will registered as a notary deed has a stronger legal standing.
 5. The issue of immigration is another area of concern. Although marriage to a Japanese national does not automatically ensure entrance into Japan, spouse visas are available for those married to Japanese nationals and for a spouse of foreign nationals living in Japan. Unfortunately, space restrictions prohibit a full discussion of this complicated area.
 6. These debates are not limited to so-called sexual minority groups, but can be seen in other movements such as groups lobbying to legalize the use of separate family names for married couples (*fitfu besset*).
 7. The English translation provided on the government's gender information site explains a "gender-equal society" in the following terms: "A 'gender-equal society' is a 'society in which both men and women, as equal members, have the opportunity to participate in all kinds of social activities at will, equally enjoy political, economical and cultural benefits, and share responsibilities'. In such a society, the human rights of men and women are equally respected. Women who desire an active role in society may participate in activities of their own choosing, while men could enjoy a fulfilling home and community life. A gender-equal society is a society built by men and women as equal partners" (http://www.gender.go.jp/english_contents/index.html).
 8. The preamble to The Basic Law for a Gender-Equal Society (Law No. 78 of 1999) contains the following: Considering respect for individuals and equality under the law expressly stipulated under the Constitution, steady progress has been made in Japan through a number of efforts toward the realization of genuine equality between women and men together with efforts taken by the international community. However, even greater effort is required. At the same time, to respond to the rapid changes occurring in Japan's socioeconomic situation, such as the trend toward fewer children, the aging of the population, and the maturation of domestic economic activities, it has become a matter of urgent importance to realize a Gender-Equal Society in which men and women respect the other's human rights and share their responsibilities, and every citizen is able to fully exercise their individuality and abilities regardless of gender (http://www.gender.go.jp/english_contents/index.html).

9. The idea of adoption as a bypass is taken from Otsuka Takashi (see http://www.asahi-net.or.jp/~km5t-001k/taqo_text/gakucn3_adoption.html).
10. This applies only if the two are of Japanese nationality.
11. Seals, not signatures, are used for official documents in Japan.
12. Both people must provide copies of their family register if submitting the application at a municipal office other than where they are currently registered.
13. It is important to note that any two people who have at any time been registered as adoptive parent and child are unable to be legally married. Therefore, if at any time in the future same-sex marriage becomes a legal possibility in Japan, those partners currently registered as adoptive parent and child will not be able to get married.
14. For a brief outline of the process of adoption (in Japanese) see Otsuka's "Bypass toshite no yōshien-gumi (Adoption as a bypass)" reprinted at http://www.usahi-net.or.jp/~km5t-001k/taqo_text/gakucn3_adoption.html
15. See Marou Izumo and Claire Maree (2000) *Love Upon the Chopping Board*. Melbourne: Spinifex Press for an account of drawing up a "joint-living agreement."
16. The role of *moshu* (chief mourner) at a funeral is usually undertaken by an immediate family member. Relegating this position to the partner listed in the agreement is another way of showing that you place that person on the same level as your immediate family.
17. For example, see <http://www.geocities.co.jp/Milkyway-Sirius/1083/aichil-5.html>

