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RE: Mitigating Policy Runoff Effects in Japan’s Gender Normative Policies

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**Abstract**

While Japan has seen some progress in gender equality, much of that progress comes from the increased labor demand caused by a declining and aging population. The Japanese government claims to prioritize the inclusion of women but simultaneously maintains numerous laws that encourage traditional gender roles, such as their unusual surname law. These laws have runoff effects that harm sexual minorities, such as barring transgender people from marriage as a requirement to change their legal gender. Japan should eliminate their current surname law and adopt Sweden’s marriage definition to truly prioritize including more people in the labor force.

**Analysis**

*Japanese Women in the Labor Market*

Given the persistent use of traditional gender roles in Japan, labor force participation of Japanese women is surprisingly high. According to the World Bank, women make up 44.26% of the Japanese labor force compared to 46.14% in the US.[[1]](#endnote-1) The percentage of prime-aged women in the labor force is also higher in Japan than the US, which are respectively 76.9% and 71.8%.[[2]](#endnote-2) Also like in the US, Japanese women have a higher rate of tertiary educational attainment than men, with 64% of Japanese women ages 25-34 having such a degree compared to 59% of men.[[3]](#endnote-3) However, share of degrees held by Japanese women decreases with higher educational levels. Women in Japan made up 45.5% of undergraduate students and 32.4% of graduate students in 2019.[[4]](#endnote-4) By comparison, women made up 60.14% of US graduate students in 2017-2018.[[5]](#endnote-5) The high rate of labor force participation is not due to rising education but rather due to Japan’s persistent declining fertility rates and aging population. These trends create a higher demand for labor and encourage women to join the labor market.[[6]](#endnote-6)

The higher labor participation rate of women comes with several setbacks. Roughly 44.2% of employed Japanese women work in part-time or temporary positions compared to 11.7% of men.[[7]](#endnote-7) By contrast, the state with the highest part-time work rate among women is Utah with 40.2% and most states are below 34%.[[8]](#endnote-8) Additionally, this disparity is increasing in Japan while it appears to be slightly declining in the US.[[9]](#endnote-9) Japan also has the third worst gender wage gap among OECD nations at 22.5%, only better than South Korea and Israel.[[10]](#endnote-10) These setbacks usually result in Japanese women having fewer quality work options available and being disproportionately sensitive to economic shocks such as the COVID-19 pandemic, which disproportionately increased the suicide rates of women.[[11]](#endnote-11)

These trends stem from a combination of cultural and legal pressures. Japan’s strong traditional gender roles discourage women’s leadership and encourage women to stay at home while the tax system disproportionately benefits households conforming to a man-as-breadwinner model.[[12]](#endnote-12) Fortunately, Japan’s unique economic pressures have pushed Japan to advance policies designed to benefit women and improve their ability to participate in the labor market and politics. For example, Japan has successfully increased their paid family leave policy from 50% to 67% of wages for six months and is currently working to expand childcare services for 140,000 children by 2024.[[13]](#endnote-13)

*Japanese Women in Government*

Women are severely underrepresented in Japan’s national government and rank second lowest of all OECD nations after Turkey.[[14]](#endnote-14) Of the 475 seats in Japan’s prefectural assembly, only 9.4% belonged to women in 2016. Rates are slightly better in the House of Councillors, the government’s upper house, at 20.7% representation.[[15]](#endnote-15) Among all elected national lawmakers in Japan, only 12.6% are women.[[16]](#endnote-16) Most scholarship suggests that even in particularly conservative nations, voters do not meaningfully resent female politicians. Rather, the lack of female politicians in Japanese governance seems to be “that women are less likely to run for office in the first place – precisely because time is money.”[[17]](#endnote-17) Japanese women are broadly assigned to the task of homecare and child rearing and this means many women do not have the time to pursue politics. The factors that prevent women from running for office also drive them to vote at higher rates than men, as Japanese society pushes women away from many opportunities at self-expression and this encourages women to examine and question these influences.[[18]](#endnote-18)

The Japanese government has demonstrated an awareness of the lack of female representation and modest attempts to address the problem. Japan does not currently have a political gender quota but attempted to implement one in 2015 when the Cabinet approved a gender equality plan, though partisan conflict and conservative opposition prevented its implementation.[[19]](#endnote-19) Japan has successfully passed legislation in 2018 which requests that individuals, groups, and parties in the government increase the representation of women in national and local government.[[20]](#endnote-20) This resembles the gender quota policy passed in Indonesia in 2004, which encouraged parties to nominate women but did not penalize non-compliance.[[21]](#endnote-21) Like in Indonesia’s case, Japan’s voluntary quota policy has had very modest success, with the prefectural assembly’s female representation rising to 10.4% in 2019 and the House of Councillors’ rising to 22.5%.[[22]](#endnote-22)

*The Impact of Implicit Gender-Normative Policies in Japan*

Despite ostensibly desiring greater labor representation of women, Japan has numerous laws and policies that reinforce binary gender roles. Among the most infamous of these is Japan’s current surname law requiring married couples to have the same surname. As stated by Human Rights Watch, “The single-surname system is a legacy of Japan’s traditional patriarchal family system, which placed men at the top of the family hierarchy and viewed women as entering the man’s family upon marriage.”[[23]](#endnote-23) The law has been defended by a split Supreme Court multiple times with particularly thin justification, with the most recent ruling citing that the law is “well established in society” and that no specific gender is explicitly targeted by the law.[[24]](#endnote-24) This argument rings hollow as 96% of marriages use the husband’s name and not the wife’s. In truth, the law is maintained by conservative pressure to preserve “family values.”[[25]](#endnote-25) The law persists despite 60% of Japanese people supporting a law change, a recommendation by the UN Committee for the Elimination of Discrimination against Women to change the law, and the fact that no other nation has an explicit surname law of this nature.[[26]](#endnote-26)

*Same-Sex and Trans Marriage in Japan*

Spillover effects from Japanese heteronormative social policy are particularly apparent regarding LGBTQ+ marriage. While homosexual sexual intercourse has been legal in Japan since the 1880s, same-sex marriage remains unrecognized by the national government.[[27]](#endnote-27) Like the surname law, most Japanese people (88%) believe the law should be amended and many prefectures and municipal governments have passed ordinances to recognize same-sex marriages.[[28]](#endnote-28) One district judge recently declared the law “discriminatory treatment without a rational basis,” so it appears pressure to change the law will only mount over time.

The heteronormative basis on which the Japanese government has refused to recognize same-sex marriage has greatly harmed transgender rights in the nation. Japan currently only recognizes Gender Identity Disorder (GID), enshrined under the Gender Identity Disorder Special Cases Act.[[29]](#endnote-29) The law allows transgender people to change their legal gender from the one assigned at birth to the gender they belong to, but only after an arduous, harmful, and degrading legal process. As Human Rights Watch explains, the law has five requirements for changing one’s legal gender. They are: 1) Be 20 years or older. 2) Be presently unmarried. 3) Not presently have any underage children (under 20). 4) Not have gonads or permanently lack functioning gonads. 5) Have a physical form that is “endowed with genetalia that closely resemble the physical form of an alternative gender.”[[30]](#endnote-30)

The negative impact of these requirements on transgender people is harrowing and beyond the scope of this writing. However, the law resembles the surname law in several ways. First, the law is supported by extremely thin rationale, in this case not wanting to “cause confusion in society” as stated by the Supreme Court.[[31]](#endnote-31) The law is also not supported by most Japanese people. Only 13% support surgery requirements for transgender people, 56% support transgender rights to change their legal gender, and 54% disagree with the notion that transgender people have a mental illness.[[32]](#endnote-32) Finally, there is some a level of precedent for change, as some level of legal right to change one’s official gender currently exists in the law and multiple nations which have had similar requirements in the past have reversed them and implemented financial compensation to those who have been harmed by these policies.[[33]](#endnote-33)

**Recommendations**

Japan holds numerous policies that implicitly reinforce traditional gender roles and have negative runoff effects throughout society. These policies reduce women’s economic and political engagement and marginalize sexual minorities. If Japan wishes to realize its goal of including more people in the labor market and politics in the wake of declining birth rates and an aging work force, the nation should implement the following policy decisions.

* Article 750 of the Civil Code should be eliminated entirely.
* The Japanese legal definition of marriage should be replaced with the definition used by the Swedish government.

*Elimination of Article 750*

Article 750 of the Civil Code states that “a husband and wife shall adopt the surname of the husband or wife in accordance with that which is decided at the time of marriage.”[[34]](#endnote-34) The law has no functional purpose beyond the reinforcement of the traditional family model that assigns the man as the breadwinner and the woman as home caretaker. This law contributes to a gender paradigm that is repeated numerous times in Japan’s economic policy. For example, Japanese housing policy strongly reinforces the male-breadwinner model by limiting the public loan ceiling for single people and assigning home ownership based on income.[[35]](#endnote-35) In addition to most Japanese people opposing the law, there is an astounding precedent set by the fact no other nation has a formal law like this. Japan should eliminate Article 750 entirely, weakening the legal justification numerous other socioeconomic policies are based on.

*Adoption of the Swedish Definition of Marriage*

Just as Article 750 has helped inform other gender normative policies, so has Japan’s current definition of marriage informed the GID Special Cases Act. The legal requirement that transgender people be unmarried in order to change their legal gender is based on Japan’s (lack of) recognition of same-sex marriages.[[36]](#endnote-36) As pressure mounts to recognize same-sex marriages, a unique risk exists for the Japanese government to adjust their definition of marriage in a manner that recognizes same-sex marriages but still excludes transgender people. Because same-sex and transgender marriage are linked in Japanese law, the legal definition of marriage should be updated to include all people instead of exclusively cisgendered heterosexual and homosexual people. The Japanese government should update their definition of gender to the Swedish definition implemented in 2009, which defines it as a union between two persons of age 18 or older who are not directly related to one another.[[37]](#endnote-37) This would simultaneously require the Japanese government to recognize same-sex marriages and undermine Japan’s discriminatory requirements for legal gender changes.

**Conclusion**

Japan’s surprisingly high rate of prime-aged female worker participation in the labor market should not be mistaken for exceptional progress. In reality, a combination of persistent gender roles and their validation by socioeconomic policy suppress the participation of women and sexual minorities in numerous levels of society. These policies are repeatedly maintained by the government due to weak political will and conservative political pressure despite abolishment being supported by the majority of Japanese people. By amending their surname law and legal definition of marriage, the Japanese government can set a stronger legal precedent to reform numerous other socioeconomic policies and create a more inclusive society.

**Notes**

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3. “Women in the Workforce: Japan (Quick Take).” 2020. *Catalyst*. [↑](#endnote-ref-3)
4. Ibid. [↑](#endnote-ref-4)
5. “Master's degrees conferred by postsecondary institutions, by race/ethnicity and sex of student: Selected years, 1976-77 through 2017-18.” 2019. *National Center for Education Statistics.* Accessed 6 December 2021. https://nces.ed.gov/programs/digest/d19/tables/dt19\_323.20.asp [↑](#endnote-ref-5)
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9. Shambaugh, pg. 8. [↑](#endnote-ref-9)
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15. Ibid. [↑](#endnote-ref-15)
16. Ibid. [↑](#endnote-ref-16)
17. Ibid, pg. 290. [↑](#endnote-ref-17)
18. Sherry, M. “Popular Democracy in Japan: How Gender and Community Are Changing Modern Electoral Politics.” 2011. *Cornell University Press.* [↑](#endnote-ref-18)
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20. Ibid. [↑](#endnote-ref-20)
21. Perdana, A. and Hillman, B. 2020. “Quotas and Ballots: The Impact of Positive Action Policies on Women’s Representation in Indonesia.” Asia & The Pacific Policy Studies. Vol. 7(158). 158-170. Pg. 160. [↑](#endnote-ref-21)
22. Johnston, E. [↑](#endnote-ref-22)
23. “Japan's top court says forcing couples to share surname is constitutional.” 2021. *Japan Times.* Accessed 7 December 2021. https://www.japantimes.co.jp/news/2021/06/23/national/crime-legal/top-court-surname-ruling/ [↑](#endnote-ref-23)
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25. Ibid. [↑](#endnote-ref-25)
26. Ibid. [↑](#endnote-ref-26)
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30. Ibid. [↑](#endnote-ref-30)
31. Ibid. [↑](#endnote-ref-31)
32. Ibid. [↑](#endnote-ref-32)
33. Ibid. [↑](#endnote-ref-33)
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