

Love Judges: The Crisis of Intimacy in Japanese Law and Society

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Japanese society, the story goes, is based on harmony, cohesion, and conflict avoidance. Every citizen plays a well-defined role in society and follows equally well-defined social norms. Confucian rules of hierarchy and filial piety strengthen and support Japan's families. The structure of the family is in turn replicated in social groups such as schools, corporations, clubs, and teams, all of which inspire an extraordinarily strong sense of belonging and offer robust social support networks. This orderly system is often associated with several of Japan's most impressive achievements: it is the world's third largest economy (behind the U.S. and the E.U., but ahead of China); it is a modern democracy with an advanced legal system; it has high-quality educational institutions, a first-rate technological infrastructure, and low crime rates. It has even become an important exporter of popular culture in the form of comics, television shows, and baseball players.

But underneath Japan's famously strong social fabric lurk widespread emotional pain, loneliness, and isolation. A partial list of Japan's social problems would include:

- *Relationships.* Men and women in Japan have relatively few opportunities for meaningful interaction. A 2006 government survey of unmarried people found that 52.2 percent of men and 47.7 percent of women between the ages of 18 and 34 had no relationship *of any sort* with any member of the opposite sex, not even friendship. In the 30-34 age group (the oldest surveyed), 24.3% of the men and 26.7% of the women said they were virgins – and 11% of the men and 18% of the women declined to answer the question, suggesting that the actual numbers might be higher.¹ Another

¹ National Institute of Population and Social Security Research, Dai13kai Shusshō Dōkō Kihon Chōsa : Kekkon to Shussan ni Kansuru Zenkoku Chōsa, Dokushinsha Chōsa no Kekka Gaiyō 8-9 [13th Survey on Demographic Trends: National Survey on Marriage and Birth, An Outline of the Results of the Survey of Single Persons] (2006), available at http://www.ipss.go.jp/ps-doukou/j/doukou13_s/Nfs13doukou_s.pdf.

study found that thirty percent of Japanese men have never been in love, a percentage far higher than Russia (12 percent) and the U.S. (13 percent).²

- *Suicide*. Japan's suicide rate is one of the highest in the world. A study at one Japanese hospital of patients who had attempted or completed suicide found the most common precipitants to be loss of love, divorce, loneliness from living alone, and family conflicts.³ National government data are consistent with that finding. Japanese police are required to categorize and record the causes of each suicide for which a note is left. In 2007, police determined – somehow -- the cause of suicide in 23,209 of 33,093 cases, or about seventy percent. 305 people killed themselves over “lost love,” and 165 did so over “adultery.” In total, 949 people killed themselves over “male-female problems” such as these. 3,751 people committed suicide over “family problems,” the largest category of which, with 981 deaths, was “marital discord.” Another 549 people killed themselves over loneliness. Combined, these problems and family problems are the number two reason for suicide for women (after health problems) and number three for men (after economics and health).⁴ The government has set an official goal of a twenty percent reduction in the suicide rate from 2007 to 2016.⁵
- *Divorce*. In immediate postwar Japan, only one of ten marriages ended in divorce. By the 2000s, roughly four out of ten marriages were expected to end in divorce. Per-capita Japanese divorce rates are higher than those of

² Susan Sprecher et al., Love: American style, Russian style, and Japanese style, 1 *Personal Relationships* 349 (1994). See also Stella Ting-Toomey, Intimacy Expressions in Three Cultures: France, Japan, and the United States, 15 *Int'l J. Intercultural Relations* 29 (1991) (finding more “love commitment in France and the U.S. than in Japan).

³ Takao Hattori, Kazuo Taketani, and Yumi Ogasawara, Suicide and Suicide Attempts in General Hospital Psychiatry: Clinical and Statistical Study, 49 *Psychiatry & Clinical Neurosciences* 43 (1995).

⁴ Keisatsuchō Seikatsu Anzenkyoku Chiikika, Heisei 19nen ni okeru Jisatsu no Gaiyō Shiryō [2006 Outline of Suicide Records] (June 2008), available at www.npa.go.jp/toukei/chiiki10/h19_zisatsu.pdf.

⁵ Jisatsu Sōgō Taisaku Kaigi, Jisatsu Sōgō Taisaku Taikō [Fundamental Principles of the Comprehensive Anti-Suicide Plan] http://www8.cao.go.jp/jisatsutaisaku/sougou/taisaku/kaigi_2/data/s2.pdf, at 19 (April 27, 2007).

Italy or France (but about half that of the United States).⁶ The recent phenomenon of late-life divorce (*jukunen rikon*), in which women divorce their husbands after the husbands retire and begin to spend time at home, is mourned by many people in Japan as a rip in the country's social fabric. The suicide rate for divorced women is twice the national suicide rate, the rate for divorced men is five times as high, and the divorce rate for men in their fifties is more than six times as high.⁷

- *Sex*. In a 2005 survey, Japan ranked dead last -- 41st out of 41 countries -- in frequency of sex, with a self-reported frequency of 45 times per year (up from 36 times per year in 2001). The second lowest country, Singapore, was far ahead (73 times per year), and the global average was 103.⁸ The percentage of Japanese respondents in another survey who had sex once a week, 34 percent, was also last in the world.⁹ More than a third of married couples *under* the age of 50 do not have sex.¹⁰ The first sexual partner for more than half of men over 30 is a prostitute.¹¹

⁶ Ministry of Health, *Rikon ni Kansuru Tōkei* [Statistics Regarding Divorce]; see also Harald Fuess, *Divorce in Japan: Family, Gender, and the State 1600 - 2000* (2004); James M. Rayno, Miho Iwasawa, & Larry Bumpass, *Marital Dissolution in Japan: Recent Trends and Pictures*, 11 *Demographic Research* 395 (2004).

⁷ Naikakufu, *Heisei 19nen Wa ga Kuni ni Okeru Jisatsu no Gaiyō Oyobi Jisatsu Taisaki no Jisshi Jōkyō* [2007 Outline of Suicide in Japan and Implementation of Anti-Suicide Plans], 33, available at http://www8.cao.go.jp/jisatsutaisaku/whitepaper/w-2007/pdf/pdf_honpen/h030.pdf.

⁸ Durex Global Sex Survey (2005), available at <http://www.durex.com/cm/gss2005results.asp>.

⁹ Durex Sexual Wellbeing Global Survey (2007/08), available at http://www.durex.com/cm/sexual_wellbeing_globeflash.asp (poll conducted by Harris Interactive).

¹⁰ See Sekusuresu Fūfu, *Sanbun no Ichi Koeru, Kōrōshō Shirabe* [Ministry of Health Survey Finds More Than One Third of Married Couples Sexless], *Yomiuri Shinbun*, Apr. 9, 2007, available at http://www.yomiuri.co.jp/ryou/news/kyousei_news/20070409ik05.htm.

¹¹ 1984 More Report on Male Sexuality, cited in Yoshiro Hatano & Tsuguo Shimazaki, *Japan*, in *The International Encyclopedia of Sexuality* (Robert T. Francoeur ed. 1997), online edition, available at <http://www2.hu-berlin.de/sexology/IES/index.html>; see also Sakurako Ogata, *Moa Ripo-to no 20nen: Onnatachi no Sei ni Mitsumete* [20 Years of the More Report: Looking at Women's Sexuality] (2001).

- *Birthrate.* Japan's 2007 birthrate of 8.1 births per 1,000 persons is the second lowest in the world (only Hong Kong is lower).¹² In 1979, the average Japanese woman had 2.13 children; in 2006, she had 1.32.¹³ The low birthrate might be the result of increased opportunities for women; it might have been “artificially” low in the past, when women’s only option was marriage.¹⁴ But it is widely seen in Japan as problematic; as one government commission put it: “Just as in the last days of the Roman empire, the decrease in the number of children is a sign of the decline of civilization.”¹⁵
- *Abortion.* In the 1950s, about two-thirds of pregnancies ended in abortions, according to official statistics (actual rates are probably higher).¹⁶ Rates today are lower, but remain roughly twice the rate of the United States. About half of all Japanese pregnancies now are estimated to end in abortion.¹⁷ Psychologists have shown that abortion in Japan is traumatic for women.¹⁸ Yet abortion and birth control are not major political or legal issues in Japan.
- *Shut-ins.* *Hikikomori*, or acute social withdrawal, is a term applied to people, mostly young men, who sequester themselves in their rooms and have no social life. Population estimates vary widely, from 80,000 to one

¹² Central Intelligence Agency, The World Factbook, Rank Order – Birth Rate, last updated Sept. 4, 2008, at <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2054rank.html>.

¹³ Kōsei Rōdōsho, Heisei 18nen Jinkō Dōtai Tōkei no Gaikyō [Summary of Vital Statistics], available at <http://www.mhlw.go.jp/toukei/saikin/hw/jinkou/kakutei06/index.html>.

¹⁴ See Chizuko Ueno, The Declining Birthrate: Whose Problem?, 7 Rev. Pop. & Soc. Pol’y 103 (1998) (arguing that a declining birthrate is not problematic if it is the result of voluntary decisions to have fewer children).

¹⁵ Leonard J. Schoppa, Race For the Exits: The Unraveling of Japan’s System of Social Protection 153 (2006). Causes include women’s employment options and daycare availability. Frances McCall Rosenbluth ed., The Political Economy of Japan’s Low Fertility (2007).

¹⁶ Chizuko Ueno, The Declining Birthrate: Whose Problem?, 7 Rev. Pop. & Soc. Pol’y 103, 104, 105 (1998).

¹⁷ See Sabine Frühstück, Colonizing Sex: Sexology and Social Control in Modern Japan 190 (2003).

¹⁸ See, e.g., Saori Katsumata, Megumi Matsuoka, and Kenji Sekine, Jinkō Ninshin Chūzetsu wo Uketa Josei no Naiteki Sekai [The Inner World of Women Who Receive Abortions], 12 (1-2) Nihon Josei Shinshin Igakukai Zasshi 317 (April 2007).

million.¹⁹ One popular method for “curing” *hikikomori* is to purchase the emotional intimacy that the shut-in seems unable to obtain otherwise: the family can hire a “rental sister” to coax him out of his room.²⁰

These statistics show the extent of the problems, but they minimize the human suffering that accompanies them. Simply put, Japan is in the midst of a crisis in which an unusually large number of people are sad, lonely, and isolated.

Despite the persistent image of Japan as a remarkably stable and orderly society, these social problems are now well known. They have been widely discussed in the media and in the academy by Japanese and non-Japanese commentators alike. But articulating what precisely is wrong in Japanese society, and to what extent the problems are particularly Japanese, has been elusive. Much of the evidence of Japan’s social woes comes from yeastless statistics, sensational media stories, personal anecdotes, or the detritus of popular culture, none of which offers a cohesive or reliable foundation for thinking about the issues.

In *Love Judges*, I use a comprehensive body of evidence-- 2,700 publicly available court opinions written by Japanese judges-- to flesh out and place Japan’s intimacy-related problems in context. I searched for, selected, and read these cases, which come from a database of nearly 100,000 opinions, over a three-year period, finding them in such diverse areas as family law, criminal law, torts, contracts, immigration, and trusts and estates. Sometimes weird and sometimes fascinating, the judges’ words reveal how real individuals in Japan confront the messy, emotional, and painfully human problems of love, sex, and marriage that plague Japanese society.

¹⁹ See, e.g., Tamaki Saitō, *Hikikomori Kyūshutsu Manyuaru* 28-9 (2002); Maggie Jones, *Shutting Themselves In*, *N.Y. Times Magazine* 47 (Jan. 15, 2006).

²⁰ See, e.g., Yoshimi Kawakami, *Watashi ha Rentaru Oneesan [I Am A Rental Sister]* (2007); Tamaki Saitō, *Hikikomori Kyūshutsu Manyuaru [Manual for Helping Hikikomori Sufferers]* (2002, 11th prtg. 2007).

In a previous book, *Law in Everyday Japan*, I showed the extensive role that law plays in such everyday scenarios as employee working hours, lost-and-found, and karaoke noise complaints. Those findings contrasted sharply with the traditional view of Japan as a place where law is relatively unimportant. In this book I show that law in Japan goes even further: Japanese judges play a surprisingly direct role as arbiters of emotions in intimate relationships – what I refer to here as *love judges*. In case after case, they opine on, and are sometimes required by statute to determine, whether a person is in love, what other emotions a person is feeling, and whether those emotions are appropriate for the situation.

What makes Japan's judges' opinions especially striking is the fundamental crisis they reveal: contemporary Japan emerges from these official documents as a society that not only suffers from a crisis of intimacy, but that does not expect intimacy to occur in the context of romantic relationships. When love does figure in judges' opinions it is almost invariably associated with, jealousy, suffering, tragedy, and death. But intimacy is *not* expected in marriage, even though surveys in Japan suggest that couples suffer depression when it is absent. Sex too has no connection with emotional intimacy in the context of the cases-- though it might provide physical intimacy, known in Japan by the made-up English loanword "skinship" (*sukinshippu*, which refers also to parent-child physical contact). In the absence of emotional intimacy in romantic relationships, the love judges' words indicate, men turn to hostesses and work; women turn to religion and occasionally to hosts, or simply try to make do.

This view of Japanese intimacy emerges not only from the subjective views expressed by the love judges: it is also confirmed also by the objective facts presented in the court opinions. Among the recurring elements in the caselaw are: work-induced commuter marriages, abortions prompted by men, compensated dating (prostitution or paid dates by underage girls), awkwardly

arranged marriages, late-life divorces, termination fees to end affairs, sexless couples, formal confessions of love as a method for beginning a romantic relationship, tales of heartbreak on Valentine's Day, menstruation taboos, and various forms of legally purchased physical and emotional intimacy, including host clubs, hostess bars, and "soapland" bath-brothels. Each of these objective elements is consistent with the intimacy-barren vision of Japan presented by the judges' rulings.

Of course, these court cases do not reflect the normal life of an average person in Japan. A dispute (or crime) becomes a court case only when it cannot be settled otherwise. Lawsuits in any country are a parade of oddities, and outliers, and Japan is no exception. But it is precisely because the cases do not perfectly represent everyday life that themes and patterns in both the facts and the rulings become particularly visible. Unlike real life, which is full of meaningless, irrelevant, and random events, court opinions compress life experiences into a few ordered paragraphs. A court opinion tells a purposive factual narrative: a pared-down story with a beginning, a middle, and an end from which any bits of information the court deems irrelevant have been trimmed away. Consciously or otherwise, subtly or otherwise, judges choose, eliminate, emphasize, and downplay facts as a way of justifying their decisions or perhaps simply to tell a dramatic, convincing, or familiar story filled with socially salient elements.²¹ The reality-skewing purposiveness of these court opinions, well-stocked with dramatic and literary devices such as Chekhovian guns that appear early and fire later, reveals a rich, fascinating, and ultimately highly discomfiting picture of romantic intimacy in contemporary Japan.

²¹ See, e.g., Robert A. Ferguson, *The Judicial Opinion as Literary Genre*, 2 *Yale J. L. & Human.* 201, 211, 213 (1990) ("rhetoric of inevitability").