

**LGBTQ+ Rights and Protections:  
Do Existing Theories Explain Japan's Limited Legislation?**

by  
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I dedicate this thesis to those in the LGBTQ+ community who continue to fight for equality, and those who, out of the fear of persecution or the penalty of death, remain hidden within themselves. Furthermore, I dedicate this thesis to those who fought for the equal rights that exist today.

## ABSTRACT

Due to the acceptance and prominence of homosexuality in Japanese history, one could assume that Japan would be accepting of homosexuality, as well as the other facets that constitute the umbrella term LGBTQ+, in the present day. However, currently, legislation in favor of the LGBTQ+ community is quite limited in Japan. In order to explain such limited legislation, an examination of theories regarding the creation of minority rights is conducted. These theories include national factors such as regime type, economic status, religiosity, the health of civil society, the rule of law, and how socialization, policy diffusion, and global queering has and continues to have an influence over attitudes and legislation. After observing Japan's status regarding each of these theories, it is determined that they do not provide an explanation for the limited LGBTQ+ equal legislation. Compared to countries with similar levels as Japan in each of these theories, Japan appears to be much more apathetic towards LGBTQ+ rights and protections. Due to this lack of clarification regarding Japan's limited equal legislation, I call for the refinement of theories and provide a few potential explanations for Japan's apathetic stance including, but certainly not limited to, the difficulty of "Coming Out," the traditional family structure, and heteronormativity in Japan. While these are merely suggestions needing further research to confirm their influence, cultural factors such as these must be considered when theorizing the reasons for the global increase of LGBTQ+ equal legislation creation.

## PREFACE

This thesis has been written in partial fulfillment for the Master of Arts degree in International Affairs at Middle Tennessee State University. Interest in the topic derives from personal experiences I have had as a member of the LGBTQ+ community while living in Japan. Furthermore, interest in theories of inequality was sparked by courses I took throughout my Undergraduate and Graduate careers.

Throughout the formation of this thesis, many changes had to be made due to time constraints and a reduction of resources. While working on the main portion of the thesis, the world was hit with a pandemic, COVID-19, which forced me to reconsider some of the directions I intended to take. Initially, I had planned to interview and conduct surveys with the LGBTQ+ community in Japan; due to the global anxiety generated by the circumstances and the inability to conduct interviews and surveys efficiently, I decided to approach the thesis in a different way so that the interviews and surveys were unnecessary. Additionally, due to the closure of the university, the resources I could have utilized on-campus became unavailable to me. However, with the help of many people, I was able to acclimate and complete this thesis on time.

First, I would like to thank the chair of my thesis committee, Dr. Stephen D. Morris. With his guidance and support, as well as a quick turnaround time, this thesis became less of a monumental task and the deadline became attainable. Next, I would like to thank the other members of my committee, Dr. LaToya E. Eaves and Dr. James P. Chaney, for providing excellent feedback throughout the process and sticking with me

until the end. Lastly, I would like to thank my family and friends for the support and reassurance they have provided to me, not only throughout my thesis, but throughout all of the goals I have attempted and accomplished thus far in my lifetime. Without the help of all these individuals, I would not be where I am today.

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## **CHAPTER I: INTRODUCTION**

Over the last several decades, LGBTQ+ rights have become an increasingly commonplace topic across the globe. It has become one of the most controversial social issues in modern-day world politics, igniting emotions, protests, counter-protests, and social movements.<sup>1</sup> Many countries have shifted legislation in favor of the LGBTQ+ community, while organizations have been established to ensure these laws, as well as other rights, are being implemented (e.g., ILGA<sup>2</sup>, Human Rights Watch, and many others). As of this moment, thirty-one countries have legalized same-sex marriage, and many others are in the process of doing so as well.<sup>3</sup> The first country to legalize same-sex marriage was the Netherlands in 2000.<sup>4</sup> The most recent legalization of same-sex marriage came from Costa Rica, in May 2020, becoming “the first Central American country to legalize same-sex marriage.”<sup>5</sup> In addition to these countries, some jurisdictions in Mexico have legalized same-sex marriage.<sup>6</sup> As evidence of broader social change, there are an increasing number of government officials being democratically elected who are openly LGBTQ+. Within the last decade, there have been five openly LGBTQ+ prime ministers in Iceland, Belgium, Luxembourg, Ireland, and Serbia as well as many

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<sup>1</sup> Ayoub, Phillip M. “Contested Norms in New-Adopter States: International Determinants of LGBT Rights Legislation.” *European Journal of International Relations* 21, no. 2 (2014): 293–322. <https://doi.org/10.1177/1354066114543335>, 294.

<sup>2</sup> The International Lesbian, Gay, Bisexual, Trans and Intersex Association.

<sup>3</sup> Masci, David, Elizabeth Sciupac, and Michael Lipka. “Gay Marriage Around the World.” Pew Research Center's Religion & Public Life Project, October 28, 2019. <https://www.pewforum.org/fact-sheet/gay-marriage-around-the-world/>.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

other government officials elected at national and local levels throughout the world.<sup>7</sup> While LGBTQ+ rights legislation has and continues to be introduced in countries and while openly LGBTQ+ individuals have been elected to leading government positions, Japan has not seen such strides in this area. This thesis explores the theories behind such legal advances and why Japan has shown limited progress towards LGBTQ+ rights and protections.

### **Primary Laws Protecting LGBTQ+ Rights**

The “right to exist” is the most basic right that exists for a minority group, regardless of geographic location. In order for other legislation in favor of minority rights (e.g., same-sex marriage, anti-discrimination laws, adoption, and others listed below) to take place as it has in the United States, the United Kingdom, France, and other nations that have adopted laws for minority protections, what I call “the basic right to exist” expanding upon Risse and Sikkink’s “central core of rights,” has to be established.<sup>8</sup> Risse and Sikkink define “the right to life” as “the right to be free from extrajudicial execution and disappearance.”<sup>9</sup> Additionally, they state that “the freedom from torture and arbitrary arrest and detention” must coincide with the “right to life” in order for additional legislation to be created in favor of other minority rights.<sup>10</sup> However, I would like to expand upon this by stating that any law which is created to imprison or allow harm to an

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<sup>7</sup> “Behind the Growing Number of LGBT World Leaders.” myGwork, March 22, 2019. <https://www.mygwork.com/en/my-g-news/behind-the-growing-number-of-lgbt-world-leaders>.

<sup>8</sup> Risse, Thomas, and Kathryn Sikkink. “The Socialization of International Human Rights Norms into Domestic Practices: Introduction.” *The Power of Human Rights*, 1999, 1–38. <https://doi.org/10.1017/cbo9780511598777.002>, 3.

<sup>9</sup> Ibid, 2.

<sup>10</sup> Ibid.

individual due to their affiliation with a minority group based on their ethnicity, religion, gender, or sexuality is considered an infraction on an individual's right to exist. In regard to the LGBTQ+ community, I also include anti-sodomy laws for the reason that the individuals who are primarily targeted for such "offenses" are within the LGBTQ+ community and continue to be harshly punished.<sup>11</sup> When the right to exist is established in a country, additional legislation in favor of a minority group (including the LGBTQ+ community) has the opportunity to be created.

Other laws which institutionalize equality and which are found to be consistent with the platforms of human rights and LGBTQ+ rights organizations (e.g., ILGA, Human Rights Campaign, Stonewall, Amnesty International, Equaldex), include: anti-discrimination laws in employment; anti-discrimination laws in acquiring goods and services; marriage equality; basic recognition of same-sex couples and family formations (civil unions, cohabitation agreements, etc.); adoption (whether joint adoption or second-parent adoption<sup>12</sup>); the right to change legal gender and obtain identity documents; and the right to serve in the military. In this paper, I address these as primary laws, because they are the laws prominently discussed in regard to contemporary LGBTQ+ rights.

Before proceeding on to the overarching theme of this paper, I would like to briefly describe each of these primary laws in the order listed previously. Anti-discrimination laws in employment prevent businesses from discriminating against certain groups of people when employing or deciding who to dismiss. Anti-discrimination laws in acquiring goods and services prevent business owners from

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<sup>11</sup> Sullivan, Andrew. "Unnatural Law." *The New Republic*, March 24, 2003, 18.

<sup>12</sup> Also known as a co-parent adoption or stepchild adoption.

discriminating against a group of people when providing goods and services. In addition, housing anti-discrimination laws (which I include as a sub-section of the former) are important due to discrimination that can take place when applying for a house or seeking a rental. The recognition of marriage equality (emphasis on marriage) allows consenting adults within the LGBTQ+ community to be legally united and to be provided the same protections and benefits as heterosexual couples. The recognition of same-sex couples typically refers to civil unions, which legally unites two consenting adults within the LGBTQ+ community but rarely grants the same protections or benefits as marriage. Adoption rights can either refer to the adoption of children by couples within the LGBTQ+ community through the same means as heterosexual couples or the adoption of a child by the spouse or partner of the child's biological parent by the same means as heterosexual couples. The right to serve in the military is one that tends to fluctuate (e.g., the "Don't ask, don't tell" policy established in the United States in 1994). In the case of transgender individuals, the right to change legal gender is a law with many layers. In many cases, in order for an individual to legally change their gender, they must have gender affirmation surgery; this is not always the case, though (e.g., the additional procedures needed in Japan, which is discussed later in this thesis/ chapter). In addition to the rights that are listed above, other LGBTQ+ rights protections that have been discussed globally, and are sometimes legislated, include: age of consent, conversion therapy, access to IVF<sup>13</sup> (for lesbians), commercial surrogacy for LGBTQ+ couples (typically male couples), and the right for gay males or MSM<sup>14</sup> to donate blood.

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<sup>13</sup> In vitro fertilization

<sup>14</sup> Men who have sex with men

## **Purpose and Scope**

In this thesis, I discuss the current structural inequalities that exist in Japan, an economically-advanced state that continuously ranks high among its peer nations in terms of human development yet paradoxically appears to deviate in its stance on equal rights regarding the LGBTQ+ community. With a vibrant LGBTQ+ past and the status Japan has in the world today, scholarly interest as to why there is so much inequality for this community has increased over the past decade. The reason for an intellectual inquiry on the subject of LGBTQ+ rights in Japan arises from personal experience. I have conducted research on the history, culture, and pop culture in Japan, as well as into the ways in which LGBTQ+ rights-oriented legislation has been introduced and established globally. And yet, I was surprised to be dissuaded of being open about my sexuality to my coworkers and acquaintances prior to my move to Japan in 2016. I was informed that being an openly gay man could discourage individuals from interacting with me out of fear of accusations of being homosexual by association. This dissuasion could have been due to me being residentially placed in a rural setting; however, I found it disheartening that the stigmatization of homosexuality in Japan could be so great that even being open to acquaintances is discouraged for foreigners planning to live in the country. This experience led me to look deeper into the history of the LGBTQ+ community as well as the current inequalities related to LGBTQ+ rights that exist in Japan. In doing so, I wanted to examine the circumstances that have and are preventing Japan from creating more equal rights legislation. Additionally, this research necessitates an examination into theories that frame why certain countries create LGBTQ+ equal legislation before others

and to see if Japan is not on par with the countries that have established high levels of LGBTQ+ rights.

### **Research Problem and Research Questions**

This study seeks to determine if Japan fits the mold of the frequently discussed aspects theorists refer to when suggesting why countries create legislation in favor of the LGBTQ+ community. In order to determine whether Japan has met the deemed necessary aspects for such legislation to occur or not, this thesis poses four questions. First, what factors are commonly discussed by theorists when referring to the legislation of equal rights for minorities (with a focus on LGBTQ+ rights)? Second, how many of these factors apply to contemporary Japan? Third, after observing Japan's place within each theory, is Japan an outlier according to what theorists present as reasons for minority equality? Fourth, what are some problems proposed for why Japan has not established more equal legislation? These four questions are examined by doing a comparative analysis using quantitative and qualitative data collected by organizations and scholars.

### **Research Significance and Objectives**

The significance of this study is to determine if Japan is an outlier concerning the theories presented as reasons for the creation of minority rights (more specifically LGBTQ+ rights) around the world. There are many factors promoted by theorists as to what leads to more legislation in favor of minority rights. While, in many instances, these factors might accurately assess the reasons certain countries have established more equal rights as opposed to others, there are always outliers that exist when providing definitive

explanations. An exploration of these outliers can help in the construction of theory by identifying other factors not incorporated into current theories. In this thesis, I examine if Japan is, in fact, one of these outliers. I also look at other factors that could be the reason for Japan's seemingly apathetic view towards creating more legislation regarding LGBTQ+ equal rights.

### **Limitations**

First, I would like to express that I am approaching this topic from a Western perspective. Even though I have lived in Japan and have studied Japanese culture for many years, my perspective is partially influenced by my Western background, and, unfortunately, I am unable to approach this subject from the background of a native.

Additionally, the limits of the resources I have access to may affect my perception of the underlying issues that exist as well as my knowledge of other work that has been done on this subject. Many studies (e.g., “Contested Norms in New-Adopter States”<sup>15</sup>, “Gay Rights: Why Democracy Matters”<sup>16</sup>, “Does Economic freedom Foster Tolerance?”<sup>17</sup>)<sup>18</sup> have been conducted regarding the creation of minority rights, LGBTQ+ rights, change of legislation in Japan, as well as the many other factors examined in this study; unfortunately, it is impossible to examine them all due to lack of accessibility. The

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<sup>15</sup> Ayoub, Phillip M. “Contested Norms in New-Adopter States: International Determinants of LGBT Rights Legislation.” *European Journal of International Relations* 21, no. 2 (2014): 293–322. <https://doi.org/10.1177/1354066114543335>.

<sup>16</sup> Encarnación, Omar G. “Gay Rights: Why Democracy Matters.” *Journal of Democracy* 25, no. 3 (July 2014): 90–104. <https://doi.org/10.1353/jod.2014.0044>, 91.

<sup>17</sup> Berggren, Niclas, and Therese Nilsson. “Does Economic Freedom Foster Tolerance?” *Kyklos* 66, no. 2 (May 2013): 177–207. <https://doi.org/10.1111/kykl.12017>

<sup>18</sup> Which are all be explored in the theories chapter.

work that is examined in this thesis has been an incredible asset to each field; however, this thesis uses the theories discussed to observe Japan and potentially highlight the need for theory reformation.

I would also like to state that this paper does not provide a solution to the issues impeding the creation of laws in Japan nor in any other country that has yet to create legislation in favor of the LGBTQ+ community. The purpose of this paper is to determine if Japan does or does not fit into the frequented discourses of theorists regarding minority rights legislation. Additionally, I intend to examine some of the issues that could be impeding the establishment of more equal rights.

## **Methodology**

In order to examine if Japan is an outlier regarding the frequently discussed factors theorists refer to when suggesting why countries have more equal rights opposed to others, I analyze secondary data and information provided by organizations including: Freedom House, World Bank, Equaldex, World Population Review, CIVICUS, and World Justice Project. Given the breadth of resources available to these organizations, examining the data from these organizations will better represent the true nature of Japan in each aspect. For example, I look at the level of democratization Japan has established in comparison with other countries by using data collected by Freedom House. I not only show how Japan fits into each theory, but also compare Japan to other countries with similar statuses regarding each theory and the level of LGBTQ+ rights that exist. Determining that Japan is an outlier poses the need for an investigation into other explanations for Japan's seemingly apathetic view on establishing more equal rights. This

is examined by reviewing themes that have been explored by others interested in the topic.

### **Overview of Chapters**

As stated previously, the purpose of this thesis is to determine if the contemporary theoretical models that outline the creation of minority rights legislation effectively explain the advancement (or lack thereof) of social equality for the LGBTQ+ community in Japan. In order to do so, this thesis reviews the commonly referred theories and then shows where Japan is in comparison to other countries by analyzing secondary data collected by secondary sources. Additionally, this thesis discusses what other factors could be preventing further LGBTQ+ legislation in Japan. First, however, I examine the legislation that has been established in Japan in favor of the LGBTQ+ community. Also, I provide a brief history of the LGBTQ+ community in Japan. This background on the LGBTQ+ community in Japan is provided in Chapter Two. In Chapter Three, I discuss in detail what main aspects theorists claim to be the factors needed within a country in order for more equal rights laws for the LGBTQ+ community to be enacted. Also, in Chapter Three, I examine secondary data collected by organizations to determine where Japan is placed in relation to other countries in each theory. In Chapter Four, I discuss additional factors that have been examined in regard to Japan's seemingly apathetic view towards establishing more legislation in favor of the LGBTQ+ community. Lastly, in the conclusion, I discuss my findings and provide suggestions for future research.

## **CHAPTER II: LGBTQ+ IN JAPAN**

Before proceeding to the main focus of this thesis, it is important to provide a background of the LGBTQ+ community in Japan. In the introduction, a number of primary laws were identified and explained. To set the stage, in this chapter, I discuss the current primary laws that exist in Japan, as well as the aforementioned laws that have yet to be created. This examination of the primary laws should provide an adequate understanding of the lack of LGBTQ+ equal rights protection currently in Japan. After observing the laws, I briefly discuss Japan's vibrant LGBTQ+ past. In several prominent areas of Japanese history, homosexuality was ubiquitous and even held in high regard. The history of homosexuality in Japan does not reflect the attitudes for homosexuality today; therefore, I believe exploring the history is necessary for understanding why there is such interest in this topic.

### **Laws in Japan**

In order to examine what LGBTQ+ legislation exists in Japan, this thesis utilizes data from a website called Equaldex. "Equaldex is a collaborative knowledge base for the LGBT (lesbian, gay, bisexual, transgender) movement."<sup>19</sup> On the website, each country has its own page exploring LGBTQ+ legislation and providing the current status of each type of legislation (along with dates and information for legalized LGBTQ+ rights) in the country of focus. At this time, Equaldex is the best hub for observing regularly updated

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<sup>19</sup> "About Equaldex." Equaldex. Accessed June 7, 2020. <https://www.equaldex.com/about>.

LGBTQ+ legislation around the world. Due to this website being a world-wide collaborative effort using crowdsourcing to retrieve data, it is important to confirm data elsewhere if the information seems unclear; however, with each status, the source of the data is provided along with confirmation from other users. In the next chapter, I continue to use this source in order to observe what legislation exists in other countries.

Other than a brief period (1873 - 1883<sup>20</sup>), Japan has been without anti-sodomy laws throughout its history. The basic right to exist, in regard to the LGBTQ+ community, has not been infringed upon throughout most of Japanese history, which has not been the same in the majority of the world. However, even countries that have had long-lasting laws infringing upon the LGBTQ+ community's right to exist have created more nationwide legislation in favor of the LGBTQ+ community than Japan.

Currently, out of the primary laws listed in the introduction<sup>21</sup>, the right to change legal gender and the right to serve in the military are the only two rights existing nationwide in Japan; however, even these need to be clarified. In regard to the right to change legal gender, an individual must meet certain criteria.<sup>22</sup> Under the "Gender Identity Disorder Special Cases Act," created in 2003, in order for an individual to change their gender, they must be an adult who is not married and does not have any

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<sup>20</sup> Hawkins, Joseph R. "Japan's Journey into Homophobia." *The Gay and Lesbian Review* 7, no. 1 (2000): 36–38.

<sup>21</sup> Anti-discrimination laws in employment; anti-discrimination laws in acquiring goods and services; marriage equality; basic recognition of same-sex couples and family formations; adoption; the right to change legal gender and obtain identity documents; and the right to serve in the military.

<sup>22</sup> "Human Rights Watch: Japan's Transgender Sterilization Law Is 'Regressive.'" *UPI Top World News*, 2019. <http://search.ebscohost.com/login.aspx?direct=true&db=edsggo&AN=edsgcl.579334488&site=eds-live&scope=site>.

underage children.<sup>23</sup> In addition, the individual must be diagnosed with “gender identity disorder” and, if not sterile at birth, must be sterilized before having gender affirmation surgery.<sup>24</sup> After this extensive list of criteria is met, an individual can legally change their gender. While countries have included similar stipulations in the past, many are doing away with them or legalizing the change of one’s gender without including major stipulations. Countries such as the United Kingdom, Spain, Uruguay, Argentina, Pakistan, India, and Bolivia, do not require gender affirmation surgery prior to changing one’s legal gender; furthermore, many additional countries do not require sterilization nor for the adult to be unmarried or without children. In regard to the right to serve in the military, according to several sources, the Self-Defense Force in Japan has claimed that they have no issue with gays or lesbians serving as long as no distractions (e.g., fights) occur due to same-sex relations.<sup>25</sup> However, there is also a claim that LGBTQ+ individuals in the military have been unregulated in Japan, as well as nearby territories, due to a lack of acknowledgment of their existence.<sup>26</sup> In regard to the other primary laws listed in the previous section, anti-discrimination laws in employment, anti-discrimination laws in acquiring goods and services (including housing), the recognition of same-sex marriage, the recognition of same-sex couples in general, adoption rights by

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<sup>23</sup> “‘A Really High Hurdle’: Japan’s Abusive Transgender Legal Recognition Process.” Human Rights Watch, March 21, 2019. <https://www.hrw.org/report/2019/03/19/really-high-hurdle/japans-abusive-transgender-legal-recognition-process>.

<sup>24</sup> Ibid.

<sup>25</sup> Lunsing, Wim. “LGBT Rights in Japan.” *Peace Review* 17, no. 2-3 (2005): 143–48. <https://doi.org/10.1080/14631370500332858>, 147; “JAPAN.” Out Leadership. Accessed January 2, 2020. <https://outleadership.com/countries/japan/>; “LGBT Rights in Japan.” Equaldex. Accessed December 18, 2019. <https://www.equaldex.com/region/japan>.

<sup>26</sup> “Asia’s Silence on Gays in Military Broken by Taiwan.” Palm Center, May 15, 2002. <https://www.palmcenter.org/asias-silence-gays-military-broken-taiwan/>.

a same-sex couple, and adoption rights by a same-sex partner have not yet been established nationwide in Japan.

Even though there are only two nationwide laws protecting the rights of the LGBTQ+ community in Japan, with one containing a rather extreme stipulation (i.e., sterilization) and the other being somewhat ambiguous, certain prefectures and municipalities have established rights within their borders in favor of LGBTQ+ rights hopefully setting a precedent for the nation as a whole to follow. In the prefectures of Tokyo<sup>27</sup> and Ibaraki<sup>28</sup>, anti-discrimination laws have been established. Additionally, Ibaraki became the first prefecture to establish recognition of LGBTQ+ couples through issuing partnership certificates, which will not grant the same rights as marriage but will allow the partner to make medical decisions on the other's behalf.<sup>29</sup> Municipalities that have created similar laws around Japan continue to increase; however, there is no nationwide recognition of LGBTQ+ couples in Japan.<sup>30</sup>

In regard to the primary law of adoption, the adoption of children by same-sex couples has yet to be legalized.<sup>31</sup> I would like to add here, though, that adoption has been cleverly used by same-sex couples in Japan, with the older partner adopting the younger

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<sup>27</sup> “Tokyo: New Law Bars LGBT Discrimination.” Human Rights Watch, October 9, 2018. <https://www.hrw.org/news/2018/10/05/tokyo-new-law-bars-lgbt-discrimination>.

<sup>28</sup> “In First, Ibaraki Prefecture to Issue Partnership Certificates for LGBT Couples from July.” The Japan Times, June 24, 2019. <https://www.japantimes.co.jp/news/2019/06/24/national/first-ibaraki-prefecture-issue-partnership-certificates-lgbt-couples-july/#.Xi32RWhKhEZ>.

<sup>29</sup> Steger, Isabella. “For the First Time, Same-Sex Couples Will Be Recognized by a Japanese Prefecture.” Quartz, June 25, 2019. <https://qz.com/1651298/ibaraki-is-the-first-prefecture-in-japan-to-recognize-same-sex-couples/>.

<sup>30</sup> Boon, Milan. “LGBT Partnership Systems Spread Across Japan.” Tokyo Review, May 9, 2019. <https://www.tokyoreview.net/2019/05/lgbt-partnership-systems-spread-across-japan/>.

<sup>31</sup> “JAPAN.” Out Leadership. Accessed January 2, 2020. <https://outleadership.com/countries/japan/>.

partner, in order to gain rights as similar as possible to those of a married couple.<sup>32</sup> Even though adoption by same-sex couples has not been legalized, in December of 2016, a couple in Osaka became the first same-sex couple allowed to foster a child in Japan.<sup>33</sup> As for the lesser-discussed laws, equal age of consent has been legalized for all relationships since the 1880s.<sup>34</sup> However, lesbians are unable to use IVF services at this time.<sup>35</sup> Additionally, according to Equaldex, there are no laws against conversion therapy<sup>36</sup>, and MSM blood donations have a deferral period of six months.<sup>37</sup>

While the lack of nationwide laws favoring the LGBTQ+ community are typical (or in some ways more progressive) of that portion of Asia<sup>38</sup>, the history of the LGBTQ+ community (or, more specifically, homosexuality) in Japan is quite prominent compared to others. This vibrant past, as well as the sudden mindset transformation, is important when discussing the current LGBTQ+ community as well as the laws (or lack thereof) in favor of the community; therefore, in the subsequent section, I provide a brief history of the community and how it dramatically shifted in 1859.

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<sup>32</sup> Tamagawa, Masami. "Same-Sex Marriage in Japan." *Journal of GLBT Family Studies* 12, no. 2 (April 14, 2015): 160–87. <https://doi.org/10.1080/1550428x.2015.1016252>, 168.

<sup>33</sup> "Osaka the First City in Japan to Certify Same-Sex Couple as Foster Parents." *The Japan Times*, April 6, 2017. <https://www.japantimes.co.jp/news/2017/04/06/national/social-issues/osaka-becomes-first-japanese-city-recognize-sex-couple-foster-parents/#.Xi8TfMhKiUk>.

<sup>34</sup> "JAPAN." *Out Leadership*. Accessed January 2, 2020. <https://outleadership.com/countries/japan/>.

<sup>35</sup> *Ibid.*

<sup>36</sup> "LGBT Rights in Japan." *Equaldex*. Accessed December 18, 2019. <https://www.equaldex.com/region/japan>.

<sup>37</sup> "エイズ、肝炎などのウイルス保有者、またはそれと疑われる方 | 日本赤十字社." *日本赤十字社*. Accessed January 5, 2020. [http://www.jrc.or.jp/donation/about/refrain/detail\\_04/](http://www.jrc.or.jp/donation/about/refrain/detail_04/).

<sup>38</sup> With South Korea having similar LGBTQ+ rights laws, China having even more limited, and North Korea having no equal legislation.

## History of the LGBTQ+ Community in Japan

Even though the Japanese archipelago has existed since prehistoric times<sup>39</sup>, existing historical records of Japan do not go back as far as other Asian states. Nevertheless, documented cases of homosexuality in Japan can be traced back over a millennium.<sup>40</sup> There are three features in Japanese history that I touch on that were associated with homosexuality between men: monastic homosexuality, military homosexuality, and bourgeoisie homosexuality. This research into the history of homosexuality in Japan was made simple thanks to the incredible work of Leupp and others. After discussing the history of male homosexuality, I examine the transition of views on homosexuality and give a brief history of Lesbianism and Transgenderism in Japan.

### *Monastic Homosexuality*

The earliest explicit references to homosexuality were in regard to sex between males within monasteries. Over time, an association between *nanshoku* (male-male sex between monks and acolytes or a similar phenomenon) and the Buddhist establishment grew strong. This association is a “folk explanation” of how homosexuality came to be in Japan.<sup>41</sup>

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<sup>39</sup> Fujita, Masaki, Shinji Yamasaki, Chiaki Katagiri, Itsuro Oshiro, Katsuhiro Sano, Taiji Kurozumi, Hiroshi Sugawara, et al. “Advanced Maritime Adaptation in the Western Pacific Coastal Region Extends Back to 35,000–30,000 Years before Present.” *Proceedings of the National Academy of Sciences* 113, no. 40 (October 4, 2016): 11184–89. <https://doi.org/10.1073/pnas.1607857113>, 11184.

<sup>40</sup> Leupp, Gary P. *Male Colors: The Construction of Homosexuality in Tokugawa Japan*. Berkeley: Univ. of Calif. Press, 1995, 22.

<sup>41</sup> *Ibid*, 28.

Though there are many skeptics who justifiably doubt that the act of *nanshoku* had not existed prior to the frequent visits by Japanese clergymen to China, the notion is worth visiting due to the etymology of the term for the tradition. Throughout the various conditions of Sino-Japanese relations, many figures (i.e., monks) visited Chinese monasteries to learn the teachings of Buddhism. Throughout the visits to the Buddhist monasteries in China, the act of *nanshoku* (derived from the Chinese word *nanse* with *nan* representing man and *se* representing eroticism<sup>42</sup>) had already been established. There are some who say that Kukai, the originator of the Buddhist sect known as Shingon (“mantra”), brought *nanshoku* to Japan after visiting Tang China in 806.<sup>43</sup> This link has never been verified. However, the connection between Kukai and *nanshoku* became so close by the Tokugawa period that even a renowned playwright had introduced “an act of a drama set” based on the notion.<sup>44</sup>

While the folk belief is that the act of *nanshoku* derives from the Chinese tradition of *nanse*, perhaps another explanation of how the act of *nanshoku* became prevalent was due to the strict exclusion of female presence in monasteries.<sup>45</sup> For that reason, there was tolerance shown towards the act of *nanshoku* as an outlet for monks’ feelings.<sup>46</sup> Because of the absence of any rules against the practice, even though vows of chastity were taken, Buddhist priests did not consider the practice a sin.<sup>47</sup> This tolerance could stem from the

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<sup>42</sup> Hinsch, Bret. *Passions of the Cut Sleeve: The Male Homosexual Tradition in China*. Berkeley, Calif: University of California Press, 1992, 57.

<sup>43</sup> Ihara, Saikaku. *The Great Mirror of Male Love*. Translated by Paul Gordon. Schallow. Stanford, CA: Stanford University Press, 1990, 7.

<sup>44</sup> Leupp, Gary P. *Male Colors: The Construction of Homosexuality in Tokugawa Japan*. Berkeley: Univ. of Calif. Press, 1995, 30.

<sup>45</sup> *Ibid*, 46.

<sup>46</sup> *Ibid*, 38.

<sup>47</sup> *Ibid*, 35.

separation of Japanese Buddhism from continental Buddhist texts and, also, the deeply established Shinto tradition that existed long before Buddhism arrived in Japan during the sixth century C.E.<sup>48</sup>

Shintoism is tolerant of many forms of sexual behavior and, over time, even some of the Shinto gods became known as *nanshoku* guardian deities.<sup>49</sup> Buddhism and Shintoism in Japan became interdependent, which solidified the acceptance of *nanshoku*. Correspondingly, Confucian scholars in Japan were indifferent to *nanshoku*, and some even appear to have participated themselves.<sup>50</sup>

### *Military Homosexuality*

With Buddhism firmly established in Japan, the tradition of *nanshoku* leaked out to other aspects of Japanese society. Prior to the Meiji restoration, traditions held by Buddhist monks and acolytes were passed on to the samurai class. The loyalty of apprentices to older samurai and samurai to their lords either led to sacrificing oneself for or giving oneself emotionally and physically to their superior.<sup>51</sup> The relationship between apprentices and the older samurai existed in order for the superior to teach samurai masculinity to the apprentice.<sup>52</sup>

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<sup>48</sup> Hartz, Paula. *Shinto*. 3rd ed. New York, NY: Chelsea House Publishers, 2009, 10.

<sup>49</sup> Leupp, Gary P. *Male Colors: The Construction of Homosexuality in Tokugawa Japan*. Berkeley: Univ. of Calif. Press, 1995, 33.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid, 49.

<sup>52</sup> Saeki, Junko. "FROM 'NANSHOKU' TO HOMOSEXUALITY: A COMPARATIVE STUDY OF MISHIMA YUKIO'S 'CONFESSIONS OF A MASK'." *Japan Review*, no. 8 (1997): 127-42, 129.

As discussed in the previous section, a lack of female presence could have been the foremost reason for the diffusion of *nanshoku*.<sup>53</sup> In the military class, comparable to the monastery life, a profound sexist attitude existed.<sup>54</sup> In some cases, the samurai and apprentices alike were to refrain from interacting with females out of fear of acquiring feminine traits.<sup>55</sup> However, it was often the case that the apprentice in the relationship, as well as acolytes in the monasteries, would take on a feminine appearance; this is considered additional evidence that the lack of female presence encouraged these types of relationships.<sup>56</sup>

### *Bourgeoisie Homosexuality*

After the reunification of the state under a single rule and the establishment of the Tokugawa shogunate (post-1600 CE), Japanese society was radically transformed by a separation of warriors and peasants.<sup>57</sup> The separation policy created, referred to as *heinō bunri* (separation of farmers and samurai) by Japanese historians, was modeled after similar policies created by lords prior to the reunification.<sup>58</sup> Amidst the battles between lords, peasant revolts were emerging frequently sparked by abuse from lower-class samurai or led by the samurai for a common cause.<sup>59</sup> The samurai were ordered to move

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<sup>53</sup> Leupp, Gary P. *Male Colors: The Construction of Homosexuality in Tokugawa Japan*. Berkeley: Univ. of Calif. Press, 1995, 56.

<sup>54</sup> *Ibid.*, 51.

<sup>55</sup> Saeki, Junko. "FROM 'NANSHOKU' TO HOMOSEXUALITY: A COMPARATIVE STUDY OF MISHIMA YUKIO'S 'CONFESSIONS OF A MASK'." *Japan Review*, no. 8 (1997): 127-42, 129.

<sup>56</sup> Leupp, Gary P. *Male Colors: The Construction of Homosexuality in Tokugawa Japan*. Berkeley: Univ. of Calif. Press, 1995, 56.

<sup>57</sup> Hall, John Whitney. "The Castle Town and Japans Modern Urbanization." *The Far Eastern Quarterly* 15, no. 1 (November 1955): 37-56. doi:10.2307/2942101, 45.

<sup>58</sup> Leupp, Gary P. *Male Colors: The Construction of Homosexuality in Tokugawa Japan*. Berkeley: Univ. of Calif. Press, 1995, 59.

<sup>59</sup> *Ibid.*

closer to their lord's castle due to the belief that separating the two classes would allow for greater control over the samurai and less pressure on the peasant class.<sup>60</sup> Hideyoshi, the second in succession of three great warlords who helped achieve reunification (the first being Nobunaga and third being Tokugawa<sup>61</sup>), attempted the policy again on a much greater scale.<sup>62</sup> The majority who belonged to the samurai class had to leave the villages or relinquish their weapons.<sup>63</sup> This policy was pursued, as well, by the next in succession, Tokugawa.<sup>64</sup> After decades of implementation, large castle-towns were established populated by samurai, their families, and commoners who were a necessity in the formation of these castle-towns.<sup>65</sup> In the large castle-towns that were established by the military class, a bourgeoisie class emerged.<sup>66</sup>

In these large castle-towns, the demographics were such that there was a further lack of female presence, which led the samurai and commoners within the towns to turn to each other for companionship.<sup>67</sup> However, there are many examples in Japanese literature that suggest that commoners from rural villages would frequently utilize male prostitutes during their travels.<sup>68</sup>

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<sup>60</sup> Ibid.

<sup>61</sup> Hall, John Whitney. "The Castle Town and Japans Modern Urbanization." *The Far Eastern Quarterly* 15, no. 1 (November 1955): 37–56. doi:10.2307/2942101, 43.

<sup>62</sup> Gay, Suzanne. "The Kawashima: Warrior-Peasants of Medieval Japan." *Harvard Journal of Asiatic Studies* 46, no. 1 (1986): 81–119, 10.2307/2719076, 86.

<sup>63</sup> Ibid.

<sup>64</sup> Leupp, Gary P. *Male Colors: The Construction of Homosexuality in Tokugawa Japan*. Berkeley: Univ. of Calif. Press, 1995, 59.

<sup>65</sup> Ibid.

<sup>66</sup> Hall, John Whitney. "The Castle Town and Japans Modern Urbanization." *The Far Eastern Quarterly* 15, no. 1 (November 1955): 37–56. doi:10.2307/2942101, 54.

<sup>67</sup> Leupp, Gary P. *Male Colors: The Construction of Homosexuality in Tokugawa Japan*. Berkeley: Univ. of Calif. Press, 1995, 62.

<sup>68</sup> Ibid, 63.

With a newly formed bourgeoisie class came various types of entertainment (e.g. theatrical performances and prostitution).<sup>69</sup> While prostitution consisted of both female and male “sex workers,” theatrical performances (e.g. kabuki drama at the time) turned from predominantly consisting of female performers to only young men playing all roles.<sup>70</sup> During both periods of kabuki theater (female and male), the actors would turn to prostitution after the show, and both ended due to the frequent fights that would break out by the audience over “their eternal love” of the performers.<sup>71</sup> Eventually, kabuki roles were played by “adult men,”<sup>72</sup> and the performances were intended to be less sexual; however, this did not dissuade members of the audience from being attracted to the performers.<sup>73</sup> Even the performers who dressed as women on stage would carry their “gender ambiguities of the stage into real life” and would attract “lovers of both sexes.”<sup>74</sup>

Before discussing the transition from the vibrant homosexual history in Japan to the transformation of views on homosexuality, I would like to clarify that in many cases, the individuals in all three features (Monastic, Military, and Bourgeoisie) were not purely homosexual. It has been noted that in many references to homosexual acts, these individuals were involved with women as well.<sup>75</sup> Therefore, while homosexual activity was prevalent in Japanese history, bisexuality should not be overlooked.

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<sup>69</sup> Ibid, 66.

<sup>70</sup> Crompton, Louis. *Homosexuality and Civilization*. Cambridge (Mass.): The Belknap Press of Harvard University Press, 2006, 425.

<sup>71</sup> Ibid.

<sup>72</sup> Males over the age of fifteen.

<sup>73</sup> Crompton, Louis. *Homosexuality and Civilization*. Cambridge (Mass.): The Belknap Press of Harvard University Press, 2006, 425.

<sup>74</sup> Ibid.

<sup>75</sup> Leupp, Gary P. *Male Colors: The Construction of Homosexuality in Tokugawa Japan*. Berkeley: Univ. of Calif. Press, 1995, 95.

*The Transformation of Views*

In the 1540s, Westerners, such as Francis Xavier (a Jesuit Missionary), began visiting Japan.<sup>76</sup> During their visits, the missionaries were shocked by the homosexual activity that seemed to be embedded in Japanese life. “Though emphasizing the Buddhist-homosexual link, however, the Western missionaries seem to have regarded homosexuality as somehow intrinsic to the Japanese character.”<sup>77</sup> This tradition, “one the Japanese thought natural and meritorious,” was condemned by the missionaries who, along with having a translation of the Ten Commandments read to the Buddhist monks, added that “the sin of Sodom” was, in short, foul.<sup>78</sup> Ouchi, the local daimyo, was irritated at their conduct and dismissed them.<sup>79</sup>

Eventually, after many Western encounters and even the removal of these individuals due to the fear of attempts at colonization, Japan entered the world system in 1859.<sup>80</sup> In order to gain more equal treaties and to gain the favor of Western countries, “a consensus developed within the Japanese ruling elite that Japan must absorb Western learning,” and along with the absorption of other Western teaching came “the intolerance of homosexuality.”<sup>81</sup>

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<sup>76</sup> Ibid, 42.

<sup>77</sup> Ibid.

<sup>78</sup> Crompton, Louis. *Homosexuality and Civilization*. Cambridge (Mass.): The Belknap Press of Harvard University Press, 2006, 412.

<sup>79</sup> Ibid.

<sup>80</sup> Leupp, Gary P. *Male Colors: The Construction of Homosexuality in Tokugawa Japan*. Berkeley: Univ. of Calif. Press, 1995, 202.

<sup>81</sup> Ibid.

### *Lesbianism*

Depictions of lesbian practices are rarely found prior to the Meiji period.<sup>82</sup> The primary portrayals of same-sex acts between women were in Tokugawan art, but this was largely created for the enjoyment of men.<sup>83</sup> To further express how concealed same-sex practices between women were, prior to the Meiji period, there was no such word for lesbian practices.<sup>84</sup> The lack of evidence of its existence can be explained by the denial of “women’s sexual agency” in pre-war Japan.<sup>85</sup> Even though much of its history has been concealed, it has been asserted by some scholars that the women who were neglected by the Shogun<sup>86</sup> would take comfort in relationships with the other women of the Ōoku (the Shogun’s harem).<sup>87</sup> It would be irrational to suggest that same-sex practices between women did not occur before the Meiji period; regrettably, with the lack of references to such practices, there is no way to determine how prominent it was at that time.

During the Meiji (1868 – 1912) and Taishō (1912 – 1926) periods, women were incorporated into society more than ever before.<sup>88</sup> In 1872, “education was made compulsory for male and female students,” which led to the creation of “girls’ schools.”<sup>89</sup> In these girls’ schools, same-sex activity and desire became widely reported; though, these instances were typically thought to be temporary anomalies that would be

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<sup>82</sup> Chalmers, Sharon. *Emerging Lesbian Voices from Japan*. Abingdon, Oxfordshire: Routledge, 2014, 19.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> McLelland, Mark J. *Queer Japan from Pacific War to the Internet Age*. Lanham: Rowan and Littlefield, 2005, 84.

<sup>86</sup> Supreme military leaders as well as de facto rulers.

<sup>87</sup> Francoeur, Robert T., Raymond J. Noonan, and Beldina Opiyo-Omolo. *The Continuum Complete International Encyclopedia of Sexuality: Updated, with More Countries*. New York, NY: Continuum, 2004, 660; Leupp, Gary P. *Male Colors: The Construction of Homosexuality in Tokugawa Japan*. Berkeley: Univ. of Calif. Press, 1995, 189.

<sup>88</sup> Chalmers, Sharon. *Emerging Lesbian Voices from Japan*. Abingdon, Oxfordshire: Routledge, 2014, 19.

<sup>89</sup> Ibid.

outgrown.<sup>90</sup> Even so, in order to prevent same-sex activity between the girls, it was prohibited for an even number of girls to be together in one room.<sup>91</sup> “The logic was that there should always be someone on the outside, thus putting a stop to all such relationships.”<sup>92</sup>

In the early 1900s, the words for “homosexuality” and “heterosexuality” entered into Japanese vernacular.<sup>93</sup> The term for homosexuality encompassed same-sex relations for both men and women, which, in essence, placed the original term for same-sex activities between men, *nanshoku*, into only being used for historical references.<sup>94</sup> Thus, female homosexuality became unveiled in Japan, and new terms were created (e.g., *tachi*<sup>95</sup> and *neko*<sup>96</sup>) and borrowed (e.g., *rezubian*), which the Japanese language had no distinguishable terms for prior to the Meiji period.

### *Transgenderism*

Similar to much of the world, there is very little, if any, history of transgender individuals in Japan due to the lack of understanding of the matter in the past. Throughout different texts, the members of the kabuki theater who took on the roles of the opposite sex, as well as the monastic acolytes and the samurai apprentices who dressed or acted in a feminine manner, have been referenced; however, it would be

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<sup>90</sup> McLelland, Mark J. *Queer Japan from Pacific War to the Internet Age*. Lanham: Rowan and Littlefield, 2005, 21.

<sup>91</sup> Chalmers, Sharon. *Emerging Lesbian Voices from Japan*. Abingdon, Oxfordshire: Routledge, 2014, 19.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> Similar to butch.

<sup>96</sup> Similar to femme.

harshly presumptuous of one to determine that any of these individuals might have felt gender dysphoria. However, in the mid-1900s, there was a noticeable increase of transvestitism and transgenderism in Japan.<sup>97</sup> Transvestitism was typically used by women to enter the workforce and by men for prostitution opportunities; however, these practices were detested by the transgender individuals who wished to have the corrective surgery and to live as the gender they feel most comfortable.<sup>98</sup>

### *Conclusion*

With such a rich LGBTQ+ history, one would think that there would not be such an apathetic view toward LGBTQ+ equal rights in Japan; however, the current laws express otherwise. In order to determine what could be causing this apathetic view, there are many routes one could take. In this thesis, the primary route is to explore what theorists consider important in order for more equal rights to be created in a country and attempt to find where Japan falls in each theory. If Japan is lacking in one or more theoretical areas, one could pose that Japan does not complete the theoretical checklist needed for more equal LGBTQ+ rights; however, if Japan is an outlier, other routes must be taken in the future to find the many nuances that could be maintaining this apathetic view.

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<sup>97</sup> McLelland, Mark J. *Queer Japan from Pacific War to the Internet Age*. Lanham: Rowan and Littlefield, 2005, 93.

<sup>98</sup> *Ibid*, 94.

### **CHAPTER III: THEORIES AND JAPAN**

What explains the variation of LGBTQ+ rights and protections across countries? How well do such explanations account for Japan's seeming lack of progress? In this chapter, I examine the theories and explanations, assess Japan in regards to these determinants, and explore Japan in comparison to other countries. This chapter has been simplified by the work of Encarnación<sup>99</sup>, Ayoub<sup>100</sup>, and other theorists who have studied minority rights legislation and have provided their hypotheses, observations, and conclusions for others to reference.

#### **Japan from a Cross-National Perspective**

Unfortunately, there is limited cross-national data on LGBTQ+ rights; however, there are two exceptions of which are used in this chapter. In order to compare the LGBTQ+ rights between countries, I rely on data from Equaldex and a data set created by Chelsea Lea and Robert L. Ostergard Jr. Equaldex, noted earlier in the "Laws in Japan" section, is a regularly updated website that displays the current legislation regarding the LGBTQ+ community in each country. In order to observe LGBTQ+ legislation in other countries and compare it with Japan's, Equaldex is used throughout this chapter.

The second source is a cross-national LGBTQ+ discrimination index, observing levels of LGBTQ+ discrimination across 175 countries, created by Lea and Ostergard.

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<sup>99</sup> Encarnación, Omar G. "Gay Rights: Why Democracy Matters." *Journal of Democracy* 25, no. 3 (July 2014): 90–104. <https://doi.org/10.1353/jod.2014.0044>.

<sup>100</sup> Ayoub, Phillip M. "Contested Norms in New-Adopter States: International Determinants of LGBT Rights Legislation." *European Journal of International Relations* 21, no. 2 (2014): 293–322. <https://doi.org/10.1177/1354066114543335>.

This data set is “one of the first attempts to assess cross-nationally discrimination against LGBTQ people through a discrimination index comprised of three components: criminalization and punishment of homosexuality, rights denied to LGBTQ people, and the level of intolerance that LGBTQ people face.”<sup>101</sup> In each component, several variables are examined, and data is collected from a variety of sources (e.g., human rights organizations, newspaper articles, etc.) to “contend with the uneven data and likely underreporting of discriminatory practices.”<sup>102</sup> In the first component, “the country’s criminalization and punishment of homosexual activity,” the variables include “the criminalization and punishment (prison terms or monetary fines) of same-sex sexual activity, non-typical punishments for same-sex sexual activity (stoning, lashing, etc.), retribution for reporting discrimination, and the use of morality laws (laws against nature, sodomy laws, etc.) to prosecute LGBTQ individuals.”<sup>103</sup> In this component, a scale from zero to six is used with zero “representing little to no criminalization and punishment of LGBTQ people and homosexual relations” and six “representing severe criminalization and harsh punishment.”<sup>104</sup> In the second component, “rights denied to LGBTQ people,” the variables include “the presence of anti-discrimination laws and the willingness of the state to punish discrimination against LGBTQ people, the absence or presence of national civil union and gay marriage laws, whether LGBTQ individuals in civil unions or marriages have equal rights and benefits, LGBTQ adoption, the presence of LGBTQ non-

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<sup>101</sup> Lee, Chelsea, and Robert L. Ostergard. “Measuring Discrimination Against LGBTQ People: A Cross-National Analysis.” *Human Rights Quarterly* 39, no. 1 (February 2017): 37–72. <https://doi.org/10.1353/hrq.2017.0001>, 38.

<sup>102</sup> *Ibid.*, 49.

<sup>103</sup> *Ibid.*, 52.

<sup>104</sup> *Ibid.*, 55.

governmental organizations (NGOs), and whether LGBTQ people can serve openly in the military.”<sup>105</sup> In this component, a scale from zero to thirteen is used with zero representing “the least discriminatory states” and thirteen representing “the most discriminatory.”<sup>106</sup> In the last component, “level of intolerance that LGBTQ people face,” the variables include “whether there have been hostile remarks made by public officials against LGBTQ people, reports of societal intolerance or discrimination, whether LGBTQ people have been subject to harassment by the police or authorities, and whether LGBTQ people have been subject to discrimination, intimidation, or harassment from the general population.”<sup>107</sup> In this component, a scale of zero to four is used with zero “representing the least intolerant states” and four “representing the most intolerant.”<sup>108</sup> According to Lea and Ostergard Jr., this component is the most difficult to collect due to the data relying on “known reported public pronouncements and acts against LGBTQ people,” which may go unreported or unnoticed often.<sup>109</sup> Additionally, Lea and Ostergard Jr. combined the scores in what they call the “discrimination index” with a scale of zero to twenty-three, with Iceland being the only country to have a combined score of zero.<sup>110</sup> However, before examining where countries fall in this index, it needs to be noted that the country scoring using this index was created in 2017, and some countries have made changes in LGBTQ+ legislation within the last three years (e.g., Taiwan).

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<sup>105</sup> Ibid, 53.

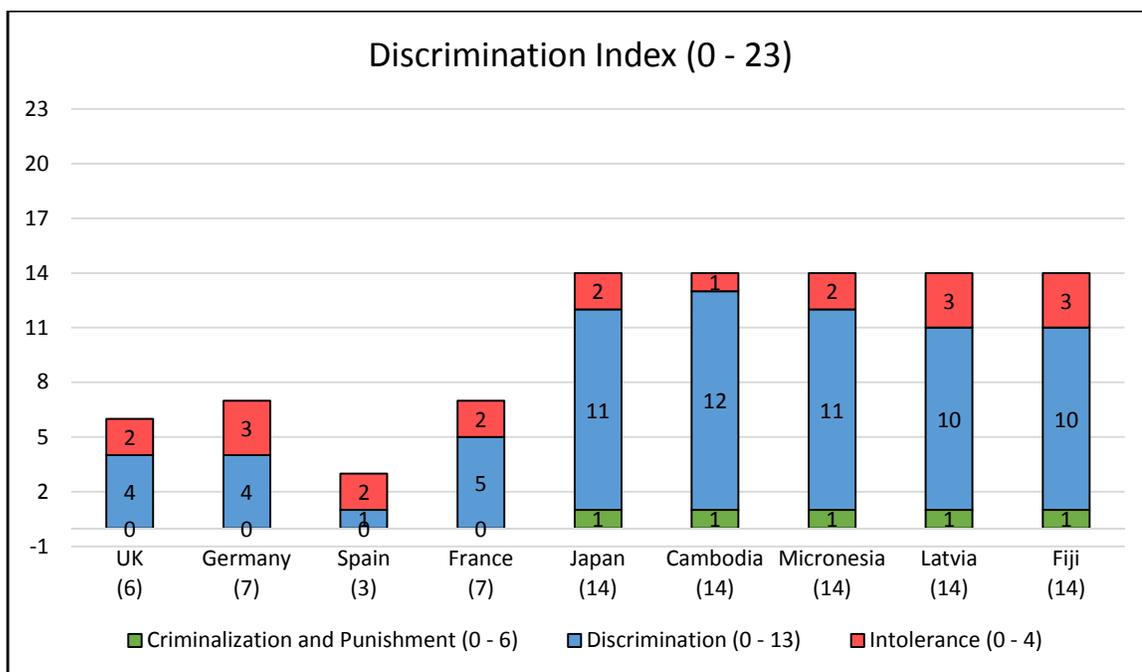
<sup>106</sup> Ibid, 56.

<sup>107</sup> Ibid, 53.

<sup>108</sup> Ibid, 56.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid, 57.



In the table above, using Lea and Ostergard’s index, a comparison between Japan, similarly developed countries (to the left of Japan), and countries with similar total discrimination index scores as Japan (to the right of Japan) is displayed. Below the name of each country is the total discrimination index score, and on the chart, with each color representing a component, is the score each country received in regard to the components. This chart is merely provided as an example of where Japan fits in regard to the discrimination index.

In the case of Japan, Japan scored a one (out of six) in “criminalization and punishment,” an eleven (out of thirteen) in “discrimination,” and a two (out of four) in “intolerance.”<sup>111</sup> Though Japan is not a zero in “criminalization and punishment,” it still

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<sup>111</sup> Ibid, 58.

scored rather low in this dimension. As discussed in the background chapter, the basic right to exist has not been infringed upon throughout most of Japan's history; there was only for a brief period that homosexuality was criminalized. In "intolerance," Japan's score of two could be improved greatly; however, even countries with higher levels of LGBTQ+ legislation have threes and fours in this component. In "discrimination," Japan's score of eleven out of thirteen is rather high, even when compared to some countries with higher levels of "criminalization and punishment" and "intolerance." As discussed in the "Laws in Japan" section, according to Equaldex, the right to change legal gender (post-surgery, unmarried, sterilized, and without underaged children) and the right to serve in the military are the only two rights existing nationwide in Japan; therefore, the reason for Japan's high score in "discrimination" is clear.<sup>112</sup>

### **Country Determinants of Progress in LGBTQ+ Rights and Protections**

Since minority inequalities have become a focus of theorists and organizations, factors that lead to more legislation in favor of these groups have become a focal point. Whether one specific factor or multiple factors, theorists attempt to explain why these factors are more important than others in creating equality for these minority groups. The main factors typically discussed are a country's regime type, economic status, religiosity, the strength of civil society, and the rule of law. Some writings also focus on the impact of socialization and policy diffusion, as well as the role of the LGBTQ+ community and global queering. Discussion of the main factors is followed by an examination of Japan's

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<sup>112</sup> "LGBT Rights in Japan." Equaldex. Accessed December 18, 2019. <https://www.equaldex.com/region/japan>.

position relative to the specific factor. Looking behind the measures, I also explore aspects of the many indices to identify areas of relevance to LGBTQ+ rights and protections. Throughout, I seek to compare Japan to other countries.

### *Regime Type*

Throughout history, regime types have transformed and spread depending on its success. Today, when examining the regime type of a country, scholars have placed countries on a spectrum of democratization. On one side of the spectrum is a pure-authoritarian regime, and on the other is a pure-democratic regime. The more democratic the regime, the more the citizens of that country have influence over the decisions made by the governing bodies. Due to the necessary characteristics of a regime for the proliferation of equal rights for a minority group, I begin this chapter by discussing why democratization is important for LGBTQ+ rights to exist. Additionally, many of the other factors listed in this chapter have been discussed as being contingent on the level of democracy of a country.

Even though equal rights for the LGBTQ+ community do not exist in all democracies, these rights are practically absent in non-democratic regimes.<sup>113</sup> It should be noted that democracy can be used just as easily by people against LGBTQ+ rights as can be used by people for equal legislation.<sup>114</sup> Therefore, a strong democracy does not necessarily mean more equal rights for a minority. However, it does seem to be necessary for acquiring equal rights.

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<sup>113</sup> Encarnación, Omar G. "Gay Rights: Why Democracy Matters." *Journal of Democracy* 25, no. 3 (July 2014): 90–104. <https://doi.org/10.1353/jod.2014.0044>, 91.

<sup>114</sup> *Ibid.*, 97.

Studies have been conducted showing a correlation between democracy and LGBTQ+ equal rights. According to the “Gay-Friendliness Index”<sup>115</sup> created by Corrales and colleagues, the ranking of this index shows practically no correlation between per capita income (a factor discussed in the next theory section) and LGBTQ+ friendliness; however, an examination of the regime type of a country (using the “Freedom in the World” index<sup>116</sup>) shows a correlation between the more democratized countries displaying higher levels of gay-friendliness.<sup>117</sup> Another example of a study showing a correlation between the freedoms provided by democratization and LGBTQ+ rights (as well as human rights) was conducted by Hammond of the SOAS University of London. In order to examine how democracy affects LGBTQ+ rights and human rights, data from three sources<sup>118</sup> were collected and compared. In a comparison of democracy and human rights protection, Hammond determined that “the data shows a string positive correlation between higher levels of democracy and a higher amount of human rights protection meaning that on average a higher level of democracy in a country equates to better human rights protection.”<sup>119</sup> Additionally, in a comparison of democracy and the equality index, Hammond determined that “the data indicates a positive correlation between a higher Democracy Score and a higher score on the Equality Index meaning that on

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<sup>115</sup> An index that examines the openness of LGBTQ+ organizations in world cities.

<sup>116</sup> The “Freedom of the World” index examines the political and civil liberties of a country to determine a country’s place on a scale from countries with the most freedom to the least.

<sup>117</sup> Corrales, Javier, and Mario Pecheny. *The Politics of Sexuality in Latin America: A Reader on Lesbian, Gay, Bisexual, and Transgender Rights*. Pittsburgh, PA: University of Pittsburgh Press, 2010, 375.

<sup>118</sup> Democracy scores from the Economist Intelligence Unit, human rights protection scores from the CIRI database, and an Equality Index issued by Equaldex.

<sup>119</sup> Hammond, Rich. “Ever Wondered How Democracy Levels Correlate with LGBT and Human Rights? Let Us Show You...” SOAS Blog, June 5, 2018. <https://www.soas.ac.uk/blogs/study/how-democracy-levels-correlate-with-lgbt-and-human-rights/>.

average a higher level of democracy in a country equates to more rights for LGBT people.”<sup>120</sup>

According to Encarnación, democratization facilitates equal rights for the LGBTQ+ community “with the evolution of ‘citizenship’” and the increase in the probability of a “vibrant and robust civil society” (which is discussed later in this chapter) to form.<sup>121</sup> In regard to “the evolution of ‘citizenship,’” Encarnación clarifies by adding “membership in the polity” and references the work of T.H. Marshall by stating, “citizenship protections for repressed or marginalized groups (such as the working poor, women, racial and ethnic minorities, and homosexuals) seem to be predicated on the consolidation of political and economic rights.”<sup>122</sup> In other words, the incorporation of members of minority groups into society (allowing them the ability to interact in political and economic discourses) allow these members to more easily fight for the protection and rights they deserve; this incorporation into society is facilitated by democratization.

Democracy in Japan. Freedom House, which I utilize in this section, is considered the oldest organization in America that promotes global democratization.<sup>123</sup> According to the Freedom House site, “freedom flourishes in democratic nations where governments are accountable to their people.”<sup>124</sup> This organization, using methods of analysis typically utilized by the social science community, has established a ranking system examining the

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<sup>120</sup> Ibid.

<sup>121</sup> Encarnación, Omar G. “Gay Rights: Why Democracy Matters.” *Journal of Democracy* 25, no. 3 (July 2014): 90–104. <https://doi.org/10.1353/jod.2014.0044>, 99.

<sup>122</sup> Ibid.

<sup>123</sup> “Our History.” Freedom House. Accessed April 27, 2020. <https://freedomhouse.org/about-us/our-history>.

<sup>124</sup> “About Us.” Freedom House. Accessed April 27, 2020. <https://freedomhouse.org/about-us>.

level of freedom of each country and attempts to do so impartially and with the intent to facilitate more freedom globally. The ranking report, known as “Freedom in the World,” continues to be used by countless organizations to examine the global development of democracy; therefore, I intend to use this system to observe Japan’s level of democracy in comparison to the rest of the world.

In the “Freedom of the World” report, there are three sections consisting of “Political Rights,” “Civil Liberties,” and then the total score, which combines the two. The “Political Rights” section has a maximum score of 40 points, and the “Civil Liberties” section, which is referenced throughout this chapter due to it containing LGBTQ+ measures, has a maximum score of 60 points with a combined score of 100 points. According to this report (scored in 2019), Japan has a combined score of 96 points with a perfect score of 40 points in “Political Rights” (tied in first place with nine other countries) and a score of 56 points in “Civil Liberties” (tied in twentieth place with seven other countries)<sup>125</sup> This ranking places Japan, along with three others, as the twelfth highest ranked country in freedom (using the total score) out of the 210 countries and territories ranked in this report. When examining the overview under “Civil Liberties,” Japan lost one point (out of four) in regard to free and independent media due to the “Act on the Protection of Specially Designated Secrets,” which “allows journalists to be prosecuted for revealing state secrets, even if that information was unknowingly obtained,” as well as Article 4 of the “Broadcast Act” which grants the government power over determining if the news is fair enough to be broadcasted.<sup>126</sup> Japan lost another

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<sup>125</sup> “Japan.” Freedom House. Accessed April 27, 2020. <https://freedomhouse.org/country/japan/freedom-world/2020>.

<sup>126</sup> Ibid.

point concerning equal rights practices, laws, and policies due to the lack of penalization concerning discrimination towards ethnic minorities and the LGBTQ+ community.<sup>127</sup> Japan lost an additional point regarding the enjoyment of “personal social freedoms”<sup>128</sup> due to the country’s family registration system (*koseki*), which considers individuals a part of a “family unit” and requires married couples to use the same surname, as well as the lack of nationwide recognition of same-sex marriage.<sup>129</sup> Lastly, in reference to citizens enjoying “equality of opportunity and freedom from economic exploitation,” due to the long workdays, lack of job security, benefits, and lower wages for the many citizens who are only “temporary or contract employees,” as well as the issues of “commercial sexual exploitation,” Japan lost another point.<sup>130</sup> While the reasons for the four-point deduction may seem deserving of more; in comparison, these infractions on democratic processes are quite minor. However, two out of the four infractions were partially due to discrimination in regard to the LGBTQ+ community.

In comparison to other countries, Finland, Norway, and Sweden have a perfect combined score of 100 points.<sup>131</sup> The top 11 countries, with total scores from 100 to 97, all have high levels of equality in regard to the LGBTQ+ community (including same-sex marriage).<sup>132</sup> In regard to the three other countries with the same combined

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<sup>127</sup> Ibid.

<sup>128</sup> The enjoyment of “personal social freedoms” includes choice of marriage partner, family size, domestic violence protection, and control over appearance.

<sup>129</sup> “Japan.” Freedom House. Accessed April 27, 2020. <https://freedomhouse.org/country/japan/freedom-world/2020>.

<sup>130</sup> Ibid.

<sup>131</sup> “Countries and Territories.” Freedom House. Accessed April 27, 2020. <https://freedomhouse.org/countries/freedom-world/scores>.

<sup>132</sup> Ibid.

score as Japan (Switzerland, Belgium, and Portugal), a comparison of LGBTQ+ equality will show if other countries, with similar scores, fit the theory.

Switzerland, with 39 points in “Political Rights” and 57 points in “Civil Liberties,” does not have same-sex marriage nor adoption rights; however, it has nationwide civil unions, the legal changing of gender (post-surgery), it has made discrimination in employment, housing, military, and in general illegal, and it has also banned conversion therapy.<sup>133</sup> According to Lee and Ostergard Jr.’s 2017 discrimination index, Switzerland has a score of one (out of six) in “Criminalization and Punishment,” a score of six (out of thirteen) in “Discrimination,” and a score of two (out of four) in “Intolerance.”<sup>134</sup> Compared to Japan, Switzerland has the same score in both the first and third categories; however, Switzerland’s score in “Discrimination” is much better than Japan’s.

Belgium, with 39 points in “Political Rights” and 57 points in “Civil Liberties,” has legalized same-sex marriage, changing gender (post-surgery), adoption, military service, and has made discrimination in all forms illegal.<sup>135</sup> However, it has banned donating blood (indefinitely), and the laws on conversion therapy are ambiguous.<sup>136</sup> According to Lee and Ostergard Jr.’s 2017 discrimination index, Belgium has a score of one (out of six) in “Criminalization and Punishment,” zero (out of thirteen) in

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<sup>133</sup> “LGBT Rights in Switzerland.” Equaldex. Accessed April 27, 2020.

<https://www.equaldex.com/region/switzerland>.

<sup>134</sup> Lee, Chelsea, and Robert L. Ostergard. “Measuring Discrimination Against LGBTQ People: A Cross-National Analysis.” *Human Rights Quarterly* 39, no. 1 (February 2017): 37–72.

<https://doi.org/10.1353/hrq.2017.0001>, 58.

<sup>135</sup> “Countries and Territories.” Freedom House. Accessed April 27, 2020.

<https://freedomhouse.org/countries/freedom-world/scores>; “LGBT Rights in Belgium.” Equaldex. Accessed April 27, 2020. <https://www.equaldex.com/region/belgium>.

<sup>136</sup> “LGBT Rights in Belgium.” Equaldex. Accessed April 27, 2020.

<https://www.equaldex.com/region/belgium>.

“Discrimination,” and two (out of four) in “Intolerance.”<sup>137</sup> In comparison to Japan, Belgium has the same score in both the first and third categories; however, it is a zero in “Discrimination,” which is the best score a country could have in this category.

Portugal, with 39 points in “Political Rights” and 57 points in “Civil Liberties,” has, according to Equaldex, legalized same-sex marriage, changing gender (without surgery), adoption, military service, donating blood, and has made discrimination in all forms illegal; however, conversion therapy is not banned.<sup>138</sup> According to Lee and Ostergard Jr.’s 2017 discrimination index, Portugal has a score of zero (out of six) in “Criminalization and Punishment,” five (out of thirteen) in “Discrimination,” and two (out of four) in “Intolerance.”<sup>139</sup> Compared to Japan, Portugal has the same score in “Intolerance,” but has the best score a country can receive in “Criminalization and Punishment” and a much better score than Japan in “Discrimination.” However, there seems to be a dissonance between the amount of equal legislation Equaldex states Portugal has and the score Lee and Ostergard Jr. gave Portugal in “Discrimination.” This could be due to the year the ranking was published or a lack of information on one or the other’s part; however, the information still shows a much higher regard for the equality of the LGBTQ+ community in Portugal than in Japan.

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<sup>137</sup> Lee, Chelsea, and Robert L. Ostergard. “Measuring Discrimination Against LGBTQ People: A Cross-National Analysis.” *Human Rights Quarterly* 39, no. 1 (February 2017): 37–72. <https://doi.org/10.1353/hrq.2017.0001>, 57.

<sup>138</sup> “Countries and Territories.” Freedom House. Accessed April 27, 2020. <https://freedomhouse.org/countries/freedom-world/scores>; “LGBT Rights in Portugal.” Equaldex. Accessed April 27, 2020. <https://www.equaldex.com/region/portugal>.

<sup>139</sup> Lee, Chelsea, and Robert L. Ostergard. “Measuring Discrimination Against LGBTQ People: A Cross-National Analysis.” *Human Rights Quarterly* 39, no. 1 (February 2017): 37–72. <https://doi.org/10.1353/hrq.2017.0001>, 57.

Below Japan in Freedom House's ranking, the United States, Iceland, Germany, the United Kingdom, Austria, Spain, France, Malta, Argentina, South Africa, Brazil, Columbia, and Ecuador all have legalized same-sex marriage (as well as many other LGBTQ+ rights).<sup>140</sup> Additionally, in Asia, Taiwan has legalized same-sex marriage.<sup>141</sup>

Whether or not you consider Taiwan a sovereign country independent from China, it has become a leading figure in LGBTQ+ rights in Asia. Taiwan, in 2019, became the first country in Asia to legalize same-sex marriage nationwide. Additionally, Taiwan has legalized adoption, changing gender (post-surgery), has created nationwide protection against discrimination in some contexts (in employment, but not in housing), has banned conversion therapy, and has legalized the participation of LGBTQ+ individuals in the military.<sup>142</sup> Taiwan is ranked 25 on the "Freedom of the World" report with a score of 37 in "Political Rights" and 56 in "Civil Liberties" with a combined score of 93.<sup>143</sup> Since LGBTQ+ rights primarily pertain to the "Civil Liberties" category, observing the points lost, in this case, will be a better focal point. In this category, Taiwan lost one point (out of four) in "freedom for trade unions and similar professional or labor organizations," one point (out of four) in regard to "laws, policies, and practices guaranteeing equal treatment of various segments of the population," one point (out of four) in regard to whether or not individuals are "able to exercise the right to own

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<sup>140</sup> "Countries and Territories." Freedom House. Accessed April 27, 2020.

<https://freedomhouse.org/countries/freedom-world/scores>; "Gay Marriage Around the World." Pew Research Center's Religion & Public Life Project, October 28, 2019. <https://www.pewforum.org/fact-sheet/gay-marriage-around-the-world/>.

<sup>141</sup> "Gay Marriage Around the World." Pew Research Center's Religion & Public Life Project, October 28, 2019. <https://www.pewforum.org/fact-sheet/gay-marriage-around-the-world/>.

<sup>142</sup> "LGBT Rights in Taiwan." Equaldex. Accessed May 01, 2020.

<https://www.equaldex.com/region/taiwan>.

<sup>143</sup> "Countries and Territories." Freedom House. Accessed April 27, 2020.

<https://freedomhouse.org/countries/freedom-world/scores>.

property and establish private businesses without undue interference from state or nonstate actors,” and one point (out of four) regarding whether or not “individuals enjoy equality of opportunity and freedom from economic exploitation.”<sup>144</sup> In the descriptions for the reasons why Taiwan lost four points, there was not a single implication that the points lost were due to discrimination against the LGBTQ+ community; in fact, in regard to whether or not the “laws, policies, and practices guarantee equal treatment...” the description states “Taiwanese law prohibits discrimination in employment based on sexual orientation, and violence against LGBT+ people is adequately addressed by police.”<sup>145</sup> In regard to Lee and Ostergard Jr.’s discrimination index, Taiwan had a score of one (out of six) in “Criminalization and Punishment,” eleven (out of thirteen) in “Discrimination,” and three (out of four) in “Intolerance”<sup>146</sup>; however, as stated previously, this index and country ranking was established in 2017, and much of the progress made in regard to LGBTQ+ legislation in Taiwan came after this time. Unfortunately, a ranking using this same index with more current data has yet to be produced.

After observing Japan’s ranking in Freedom House’s index and comparing countries with similar total scores to Japan, Japan does seem to be a lot more apathetic to legislation regarding the LGBTQ+ community. Countries with similar and even lower scores than Japan have more equal rights legislation. A country that is in the same area of

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<sup>144</sup> “Taiwan.” Freedom House. Accessed April 27, 2020. <https://freedomhouse.org/country/taiwan/freedom-world/2020>.

<sup>145</sup> Ibid.

<sup>146</sup> Lee, Chelsea, and Robert L. Ostergard. “Measuring Discrimination Against LGBTQ People: A Cross-National Analysis.” *Human Rights Quarterly* 39, no. 1 (February 2017): 37–72. <https://doi.org/10.1353/hrq.2017.0001>, 58.

the world as Japan and placed further down in Freedom House's ranking, Taiwan, has substantially more equal rights legislation for the LGBTQ+ community than Japan.

Whether or not Japan is an outlier has yet to be determined, but observing Japan in this regard does produce many questions as to why there is not more LGBTQ+ equal legislation in a country that once had high regard towards homosexuality.

As stated previously, it can be said that highly democratized countries have a much higher probability of facilitating minority rights and that no non-democratic regimes have equal LGBTQ+ rights; therefore, for the rest of this chapter, I take democratization into consideration when referring to the other theories. For example, if a country is high on the economic scale but low on the democratization scale, it will most likely not have many equal rights for minorities due to their level of democratization. Since Japan is high on the democratization scale, I would like to compare it to other countries around the same level in both democratization and the theory being discussed in the section.

### *Economic*

When discussing the economic status of a country, there are several implications due to the multifaceted nature of the economy. For example, there is a difference between a country's Real GDP<sup>147</sup> and its GDP per capita<sup>148</sup>. Additionally, there is a difference between GDP per capita and GDP (PPP<sup>149</sup>) per capita. The PPP in the latter "is an exchange rate at which the currency of one country is converted into that

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<sup>147</sup> The Gross Domestic Product of a country as a whole.

<sup>148</sup> The Real GDP of a country divided by its population.

<sup>149</sup> At purchasing power parity.

of the second country in order to purchase the same volume of goods and services in both countries.”<sup>150</sup> Thus, PPP takes into account the cost of goods and services in each country. Though PPP is more difficult to calculate than the GDP per capita, it is “arguably more useful when comparing differences in living standards between nations.”<sup>151</sup> The purpose of my clarification of these terms is that I intend to examine the GDP (PPP) per capita when comparing Japan’s status with the rest of the world.

According to Encarnación, a country’s economic status, as well as religious affiliation (which is discussed in the next section), is one of the most debated factors in LGBTQ+ rights discourse.<sup>152</sup> The stronger a country is economically and the more secular it is, the more likely it is to create legislation in favor of the LGBTQ+ community.<sup>153</sup> Economists Berggren and Nilsson reveal in a regression analysis that there is a positive correlation between economic freedom<sup>154</sup> and tolerance of homosexuality.<sup>155</sup> Additionally, Ayoub found a positive correlation of economic wealth and policies in favor of LGBTQ+ while studying states within the European Union.<sup>156</sup> Ayoub states, “domestic affluence is a significant predictor of the extent of policy diffusion<sup>157</sup>”; however, it was only significant in the leading fifteen states of the EU and not quite as

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<sup>150</sup> “GDP (Nominal) vs GDP (PPP).” GDP (Nominal) vs GDP (PPP) - StatisticsTimes.com. Accessed January 16, 2020. <http://statisticstimes.com/economy/gdp-nominal-vs-gdp-ppp.php>.

<sup>151</sup> Ibid.

<sup>152</sup> Encarnación, Omar G. “Gay Rights: Why Democracy Matters.” *Journal of Democracy* 25, no. 3 (July 2014): 90–104. <https://doi.org/10.1353/jod.2014.0044>, 91.

<sup>153</sup> Ibid.

<sup>154</sup> Which several studies have shown a strong correlation between economic freedom and higher GDP (PPP) per capita in a country.

<sup>155</sup> Berggren, Niclas, and Therese Nilsson. “Does Economic Freedom Foster Tolerance?” *Kyklos* 66, no. 2 (May 2013): 177–207. <https://doi.org/10.1111/kykl.12017>, 181.

<sup>156</sup> Ayoub, Phillip M. “Contested Norms in New-Adopter States: International Determinants of LGBT Rights Legislation.” *European Journal of International Relations* 21, no. 2 (2014): 293–322, 308.

<sup>157</sup> In regard to policy diffusion of LGBT legislation.

significant in regard to the twelve EU adopter states (which were influenced more by socialization and policy diffusion as discussed later in the chapter).<sup>158</sup> One reason for a higher GDP (PPP) per capita to lead to higher degrees of social change (e.g., change in minority rights legislation) is that “poor societies whose citizens suffer from scarce resources... tend to be dominated by conformity values that reflect constraints on human autonomy.”<sup>159</sup> In other words, as individuals become more financially independent and do not have to rely on others, they are less likely to conform to the views of others, and a greater potential for human freedom is established.

Japanese Economy. In order to compare the GDP (PPP) per capita, this thesis uses the most recently collected data by the World Bank. On the World Bank’s website, there is a ranked comparison of the GDP (PPP) per capita in 2018 (or the most recent, using the current international dollar (which, according to the World Bank, has the same GDP (PPP) as the “U.S. dollar has in the United States”). In this section, you will encounter three numbers in parentheses next to the name of the attributed country. The number on the left is the total global freedom score of that country according to the “Freedom of the World” report, the middle is the “Civil Liberties” score, and the number on the right is the most recent GDP (PPP) per capita value, according to the World Bank. For countries similar in both regards, I compare LGBTQ+ legislation using the two sources utilized in the previous section.

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<sup>158</sup> Ayoub, Phillip M. “Contested Norms in New-Adopter States: International Determinants of LGBT Rights Legislation.” *European Journal of International Relations* 21, no. 2 (2014): 293–322, 308.

<sup>159</sup> Welzel, Christian, Ronald Inglehart, and Hans-Dieter Klügmann. “The Theory of Human Development: A Cross-Cultural Analysis.” *European Journal of Political Research* 42, no. 3 (2003): 341–79. <https://doi.org/10.1111/1475-6765.00086>, 342.

Out of the 217 countries and territories ranked, Japan is ranked 30<sup>th</sup>, with a GDP (PPP) per capita of 42,798, directly below France and the U.K. and directly above Malta.<sup>160</sup> Qatar, Macao, Luxembourg, Singapore, and Ireland are the top five ranked countries with Ireland having the fifth highest GDP (PPP) per capita at 83,203.4 and Qatar having the highest at 126,898.<sup>161</sup> Qatar having the highest-ranked GDP (PPP) per capita while also banning homosexuality goes against the notion that having a high GDP (PPP) per capita also leads to higher levels of equal rights for the LGBTQ+ community. However, as stated previously, the level of democratization is taken into account as a precursor necessary for increased equal rights. According to Freedom House, Qatar is ranked extremely low in democratization with a score of 7 out of 40 for “political rights” and a score of 18 out of 60 for “civil liberties,” giving a combined total of 25 (out of 100).<sup>162</sup> Therefore, the reason is apparent as to why Qatar has a high-level GDP (PPP) per capita but does not yet have more equal rights for the LGBTQ+ community.

While observing the top economically ranked countries, there is a mix of high-ranked and low-ranked countries in regard to democratization; however, the majority of the countries ranked high on both measures have established many equal rights for the LGBTQ+ community. Out of the top five ranked countries listed above, the only two countries to have an equally high level of democratization are Luxembourg (98; 60; 113,337) and Ireland (97; 58; 83,203). All countries above Japan in the ranking with similarly high levels of GDP (PPP) per capita and democratization have same-sex

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<sup>160</sup> “GDP per Capita, PPP (Current International \$).” The World Bank. Accessed April 29, 2020. [https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD?most\\_recent\\_value\\_desc=true](https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD?most_recent_value_desc=true).

<sup>161</sup> Ibid.

<sup>162</sup> “Countries and Territories.” Freedom House. Accessed April 27, 2020. <https://freedomhouse.org/countries/freedom-world/scores>.

marriage (as well as many other freedoms) except for Switzerland (96; 57; 68,061... which was discussed in the previous section) and San Marino (95; 57; 63,037).

San Marino, according to Equaldex, currently only recognizes foreign same-sex marriage; however, all forms of discrimination are illegal, the donation of blood by LGBT+ individuals is legal, and the participation of LGBTQ+ individuals in the military is legal.<sup>163</sup> Unfortunately, Lee and Ostergard Jr.'s discrimination index was limited on San Marino's status. The first and third sections, "Criminalization and Punishment" and "Intolerance," which both have only zeros, are the only two scores listed on their report; there is no score for discrimination.<sup>164</sup> However, the zeros for the first and third category, along with the information provided by Equaldex, shows higher regard for the LGBTQ+ community than that of Japan.

All other countries above Japan in the World Bank's ranking have total scores of 55 and below in the "Freedom of the World" report. Countries directly below Japan with high rankings in both categories include Malta (90; 55; 42,581), Italy (89; 53; 41,830), New Zealand (97; 57; 41,005), South Korea (83; 50; 40,112), Israel (76; 43; 39,919), the Czech Republic (91; 55; 39,744), and Spain (92; 54; 39,715). Out of these, South Korea, Israel, and the Czech Republic are the only ones without legalized same-sex marriage.

Regarding South Korea, according to Equaldex, changing gender is legal (post-surgery), adoption is for married couples only (which rules out same-sex couples due to South Korea's lack of legalization for same-sex couples), discrimination in all areas are a

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<sup>163</sup> "LGBT Rights in San Marino." Equaldex. Accessed May 01, 2020. <https://www.equaldex.com/region/san-marino>.

<sup>164</sup> Lee, Chelsea, and Robert L. Ostergard. "Measuring Discrimination Against LGBTQ People: A Cross-National Analysis." *Human Rights Quarterly* 39, no. 1 (February 2017): 37–72. <https://doi.org/10.1353/hrq.2017.0001>, 60.

tad ambiguous due to the conflict between legislation that has been proposed (and established in some areas) illegalizing discrimination and conservative lawmakers blocking any new legislation proposed, LGBTQ+ openly serving in the military is illegal, blood donations are banned (with a one-year deferral), and conversion therapy is still legal.<sup>165</sup> According to Lee and Ostergard Jr.'s index, South Korea has a one (out of six) in "Criminalization and Punishment," a ten (out of thirteen) in "Discrimination," and two (out of four) in "Intolerance."<sup>166</sup> In regard to both Equaldex's information and the discrimination index, South Korea and Japan are quite similar. However, it should be noted that South Korea is quite a bit lower on Freedom House's global freedom score with a total freedom score of 83 and a "Civil Liberties" score of 50.<sup>167</sup>

In Israel, only foreign same-sex marriages are recognized; however, changing gender (no surgery required), adoption, and military service are legal.<sup>168</sup> Discrimination is illegal in all areas except for employment discrimination, which is only illegal regarding sexual orientation.<sup>169</sup> According to Lee and Ostergard Jr.'s index, Israel has a zero (out of six) in "Criminalization and Punishment," a three (out of thirteen) in "Discrimination," and a two (out of four) in "Intolerance."<sup>170</sup> These scores and Equaldex's information show that Israel is much less apathetic towards LGBTQ+ legislation than Japan.

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<sup>165</sup> "LGBT Rights in South Korea." Equaldex. Accessed May 01, 2020. <https://www.equaldex.com/region/south-korea>.

<sup>166</sup> Lee, Chelsea, and Robert L. Ostergard. "Measuring Discrimination Against LGBTQ People: A Cross-National Analysis." *Human Rights Quarterly* 39, no. 1 (February 2017): 37–72. <https://doi.org/10.1353/hrq.2017.0001>, 58.

<sup>167</sup> "Countries and Territories." Freedom House. Accessed April 27, 2020. <https://freedomhouse.org/countries/freedom-world/scores>.

<sup>168</sup> "LGBT Rights in Israel." Equaldex. Accessed May 04, 2020. <https://www.equaldex.com/region/israel>.

<sup>169</sup> Ibid.

<sup>170</sup> Lee, Chelsea, and Robert L. Ostergard. "Measuring Discrimination Against LGBTQ People: A Cross-National Analysis." *Human Rights Quarterly* 39, no. 1 (February 2017): 37–72. <https://doi.org/10.1353/hrq.2017.0001>, 57.

In the Czech Republic, nationwide civil unions and military service are legal, adoption is only legal for single LGBTQ+ individuals at this time, and discrimination in all forms is illegal.<sup>171</sup> However, donating blood is banned with a one-year deferral.<sup>172</sup> According to the discrimination index, the Czech Republic has a zero (out of six) in “Criminalization and Punishment,” a nine (out of thirteen) in “Discrimination,” and a four (out of four) in “Intolerance.”<sup>173</sup> The juxtaposition of the “Intolerance” score and the amount of equal legislation is a bit alarming. This difference could be due to the changes that have occurred over the last three years, a difference between legislation and citizen opinion, a reflection of the historical connections the Czech Republic (formerly a part of Czechoslovakia) had with the U.S.S.R., or any number of issues; however, when looking at equal LGBTQ+ legislation, the Czech Republic still seems to be less apathetic than Japan.

Unfortunately, we cannot be certain of how the scores have changed over the last few years for each country; however, other than South Korea, the countries with similar GDP (PPP) per capita to Japan and higher levels of democratization tend to have a much higher level of equal legislation for the LGBTQ+ community. South Korea and Japan sharing similar levels of discrimination in regard to the LGBTQ+ community could be due to a historical connection they have shared, or it could be due to other explanations entirely. A separate study of South Korea in regard to the theories listed in this thesis

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<sup>171</sup> “LGBT Rights in Czech Republic.” Equaldex. Accessed May 07, 2020.  
<https://www.equaldex.com/region/czech-republic>.

<sup>172</sup> Ibid.

<sup>173</sup> Lee, Chelsea, and Robert L. Ostergard. “Measuring Discrimination Against LGBTQ People: A Cross-National Analysis.” *Human Rights Quarterly* 39, no. 1 (February 2017): 37–72.  
<https://doi.org/10.1353/hrq.2017.0001>, 58.

could be an interesting study to coincide with this one; however, the focus of this thesis is to determine if Japan is an outlier and while there is still not enough information to determine if it is an outlier regarding all frequently discussed theories, Japan seems to be more apathetic than countries with similar GDP (PPP) per capita and high democratization levels.

### *Religiosity*

Defining religion, due to its quotidian usage, is unnecessary; however, I would like to clarify the boundaries of my usage of the term in this paper. When discussing religion, I examine the actual belief and practice of religion and not just acts based on tradition without any true belief in the principles of the religion. As stated in the previous section, religious affiliation is one of the most debated factors in LGBTQ+ rights discourse.<sup>174</sup> Depending on the level of influence a religious group has over the legislation in a country, the more or less a country will be in favor of adopting norms in favor of LGBTQ+ rights; this is typically an inverse correlation.<sup>175</sup> Theorists have observed this trend by comparing the religiosity of a country (with the use of data such as found in the United Nations World Population Prospects) with the political and social acceptance of the LGBTQ+ people. The inverse correlation is typically due to the interpretation of religious texts by adherents to these institutions. However, I would like to clarify that not all religions nor all adherents to a particular religion are against LGBTQ+ rights.

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<sup>174</sup> Encarnación, Omar G. "Gay Rights: Why Democracy Matters." *Journal of Democracy* 25, no. 3 (July 2014): 90–104. <https://doi.org/10.1353/jod.2014.0044>, 91.

<sup>175</sup> *Ibid.*

Ayoub examines how the adoption of LGBTQ+ rights norms depends on which institution a country associates with the most.<sup>176</sup> For example, in regard to countries associated with the European Union, Ayoub determined that countries that prominently adhere to Catholic or the “Other” category, which he clarifies by parenthetically referencing Orthodox as the general “Other” in his study, are less likely to pass legislation in favor of the LGBTQ+ community than “Mixed Christian states.”<sup>177</sup> In a survey conducted by the Pew Research Center examining if religiosity determines the acceptance of homosexuality in a country, a strong inverse correlation between religiosity and acceptance of homosexuality was found; the center declared “that acceptance of homosexuality is particularly widespread in countries where religion is less central in people’s lives.”<sup>178</sup> However, in the case of Russia<sup>179</sup>, Brazil, and the Philippines<sup>180</sup>, these countries are exceptions to the key finding that higher levels of religiosity in a country denotes low levels of acceptance of homosexuality.<sup>181</sup>

Ayoub theorized that religion does not facilitate resistance to these norms; he argues, “religion plays a role in moderating the effect of international LGBT norms, but

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<sup>176</sup> Ayoub, Phillip M. “Contested Norms in New-Adopter States: International Determinants of LGBT Rights Legislation.” *European Journal of International Relations* 21, no. 2 (2014): 293–322. <https://doi.org/10.1177/1354066114543335>, 307.

<sup>177</sup> Ibid.

<sup>178</sup> “The Global Divide on Homosexuality.” Pew Research Center’s Global Attitudes Project. Pew Research Center, June 4, 2013. <https://www.pewresearch.org/global/2013/06/04/the-global-divide-on-homosexuality/>.

<sup>179</sup> Which scores low on the religiosity scale.

<sup>180</sup> Both Brazil and the Philippines scoring high on the religiosity scale.

<sup>181</sup> “The Global Divide on Homosexuality.” Pew Research Center’s Global Attitudes Project. Pew Research Center, June 4, 2013. <https://www.pewresearch.org/global/2013/06/04/the-global-divide-on-homosexuality/>.

only in contexts where it has become linked to the popular nation<sup>182</sup>.<sup>183</sup> Ayoub later describes how “degrees of threat” to a norm differ depending on domestic contexts; in regard to LGBTQ+ norms, the perception of threat “depends largely on the degree to which the moral authority of religious institutions is tied to the histories of political transition and national identity.”<sup>184</sup>

Religiosity in Japan. World Population Review, an independent organization, uses polls (typically demographic) conducted by other organizations and creates easy to digest graphs, charts, etc. Even more importantly, it attempts to update these reviews as new data comes out. On the World Population Review website, several polls are discussed that have been conducted in regard to the religiosity of countries around the world by different organizations. In this section, I examine these polls with a focus on the 2020 chart provided by the World Population Review. Similar to the economic section, you will encounter three numbers in parenthesis next to the attributed name. The number on the left is the total global freedom score of that country, the number in the middle is the “Civil Liberties” score, and the number on the right is the percentage of the population that claims that religion is *not important* in their daily life.

While Japan has many regularly practiced traditions relating to religions, a large percentage of the Japanese population do not share beliefs with these religions.

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<sup>182</sup> When ideas or morals are embedded into the structure of a country or when ideas, morals, or institutions become symbolic within a country.

<sup>183</sup> Ayoub, Phillip M. “With Arms Wide Shut: Threat Perception, Norm Reception, and Mobilized Resistance to LGBT Rights.” *Journal of Human Rights* 13, no. 3 (March 2014): 337–62. <https://doi.org/10.1080/14754835.2014.919213>, 339.

<sup>184</sup> *Ibid*, 356.

According to analyzed data acquired by WIN/Gallup International polls, Japan is the second least religious country, with only 13% of the population feeling religious, behind China (with only 7% of the population feeling religious).<sup>185</sup> The remainder of the top ten least religious countries (in order), according to the WIN/ Gallup International polls, are Estonia, Sweden, Norway, the Czech Republic, Hong Kong, Netherlands, Israel, and the United Kingdom.<sup>186</sup> In the 2020 chart, created by World Population Review and the one I use in this section, Japan is ranked as the fifth least religious country with 75% of the population claiming that religion is not an important part of their daily lives and 24% claiming that religion is important to them. For an unknown reason, China is not a part of this ranking; however, it only has a total global freedom score of ten out of one hundred with a “Political Rights” score of negative one out of forty and a “Civil Liberties” score of eleven out of sixty on Freedom House’s democratization index so a comparison of LGBTQ+ equal legislation would be unnecessary for this thesis.

According to the chart, Sweden (100; 60; 82%) is the least religious country in the world with Denmark (97; 57; 80%), Norway (100; 60; 78%), and Estonia (94; 56; 78%) following. In this section, the two rankings above and below Japan with both low levels of religiosity and high levels of democratization are compared with Japan to see if there are any similarities in regard to LGBTQ+ legislation. In this case, Norway, Estonia, the Czech Republic, and the United Kingdom’s LGBTQ+ equal legislation are examined (due to the Czech Republic being examined in the last section, only a brief overview is necessary).

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<sup>185</sup> “Least Religious Countries 2020.” World Population Review. Accessed April 14, 2020. <https://worldpopulationreview.com/countries/least-religious-countries/>.

<sup>186</sup> Ibid.

As for Norway (100; 60; 78%), according to Equaldex, same-sex marriage, changing of gender (post-surgery), adoption, and military service are legalized, discrimination in all forms is illegal.<sup>187</sup> However, donating blood is banned with an indefinite deferral.<sup>188</sup> According to Lee and Ostergard Jr.'s discrimination index, Norway has a zero (out of six) in "Criminalization and Punishment," zero (out of thirteen) in "Discrimination," and two (out of four) in "Intolerance."<sup>189</sup> Other than in "Intolerance," Norway seems to be far less apathetic than Japan regarding LGBTQ+ rights.

Estonia (94; 56; 78%), has legalized changing gender (post-surgery) and military service; it has also made discrimination illegal in the majority of cases.<sup>190</sup> For the last two years, more equal rights have been pending for same-sex couples; however, at the moment, a cohabitation agreement has been legalized nationwide for same-sex couples.<sup>191</sup> Because of a law preventing unmarried couples from adopting (jointly), LGBTQ+ individuals have the option of adopting as single, but not as a couple at this time.<sup>192</sup> Additionally, donating blood is illegal with an indefinite deferral.<sup>193</sup> According to the discrimination index, Estonia has a one (out of six) in "Criminalization and Punishment," an eight (out of thirteen) in "Discrimination," and a three (out of four) in

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<sup>187</sup> "LGBT Rights in Norway." Equaldex. Accessed May 10, 2020.

<https://www.equaldex.com/region/norway>.

<sup>188</sup> Ibid.

<sup>189</sup> Lee, Chelsea, and Robert L. Ostergard. "Measuring Discrimination Against LGBTQ People: A Cross-National Analysis." *Human Rights Quarterly* 39, no. 1 (February 2017): 37–72.

<https://doi.org/10.1353/hrq.2017.0001>, 57.

<sup>190</sup> "LGBT Rights in Estonia." Equaldex. Accessed May 10, 2020.

<https://www.equaldex.com/region/estonia>.

<sup>191</sup> Ibid.

<sup>192</sup> Ibid.

<sup>193</sup> Ibid.

“Intolerance.”<sup>194</sup> Compared to Japan, it has the same score in “Criminalization and Punishment,” a lower score in “Discrimination,” and a higher score in “Intolerance.” This score in “Intolerance” is most likely due to it being a former-Soviet country. However, out of the former-Soviet countries, Estonia seems to have the most same-sex equal legislation. It has more protections and laws in favor of the LGBTQ+ community than Japan and has a lower total democratization score (with the same score in “Civil Liberties”).

As stated in the Economic section, the Czech Republic (91; 55; 75%) has nationwide civil unions and military service is legal, discrimination in all forms is illegal, adoption is only legal for single LGBTQ+ individuals, and donating blood is banned with a one-year deferral.<sup>195</sup> According to the discrimination index, the Czech Republic has a zero (out of six) in “Criminalization and Punishment,” a nine (out of thirteen) in “Discrimination,” and a four (out of four) in “Intolerance.”<sup>196</sup>

The United Kingdom (94; 55; 73%), has legalized same-sex marriage, changing of gender (surgery not required), adoption, and military service.<sup>197</sup> Also, the UK has made discrimination in all forms illegal.<sup>198</sup> Donating blood is banned with a three-month deferral.<sup>199</sup> According to the discrimination index, the UK has zero (out of six) in

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<sup>194</sup> Lee, Chelsea, and Robert L. Ostergard. “Measuring Discrimination Against LGBTQ People: A Cross-National Analysis.” *Human Rights Quarterly* 39, no. 1 (February 2017): 37–72. <https://doi.org/10.1353/hrq.2017.0001>, 58.

<sup>195</sup> “LGBT Rights in Czech Republic.” Equaldex. Accessed May 07, 2020. <https://www.equaldex.com/region/czech-republic>.

<sup>196</sup> Lee, Chelsea, and Robert L. Ostergard. “Measuring Discrimination Against LGBTQ People: A Cross-National Analysis.” *Human Rights Quarterly* 39, no. 1 (February 2017): 37–72. <https://doi.org/10.1353/hrq.2017.0001>, 58.

<sup>197</sup> “LGBT Rights in United Kingdom.” Equaldex. Accessed May 12, 2020. <https://www.equaldex.com/region/united-kingdom>.

<sup>198</sup> Ibid.

<sup>199</sup> Ibid.

“Criminalization and Punishment,” four (out of thirteen) in “Discrimination,” and two (out of four) in “Intolerance.”<sup>200</sup> However, since 2017, all parts of the United Kingdom have legalized same-sex marriage (which was not the case when the discrimination index was released); therefore, some of the numbers most likely changes over the past three years. Even so, the United Kingdom has a lower score in both “Criminalization and Punishment” and “Discrimination.” Both Japan and the UK have a two in “Intolerance.”

Even some countries with high levels of religiosity have legalized same-sex marriage along with many other LGBTQ+ rights (in this case, the number on the far right is the percentage of the population that claims that religion is *important* in their daily life); such as, Malta (90; 55; 86%), Brazil (75; 44; 87%), South Africa (79; 46; 85%), Colombia (66; 37; 83%), Ecuador (65; 38; 82%), and Costa Rica (91; 53; 79%).<sup>201</sup> While that seems to contradict what theorists believe about religiosity playing a factor, more countries on the opposite end of the spectrum, when paired with high democratization, do seem to have more LGBTQ+ rights. This is where observing all theories can help create a better understanding of why some countries have more LGBTQ+ legislation than others. While some countries have high levels of religiosity and still have legalized same-sex marriage, other theories such as socialization, civil society, high GDP (PPP) per capita, rule of law, etc. might explain the levels of LGBTQ+ legislation. However, Japan, even when compared to countries with much higher religiosity, much lower levels of

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<sup>200</sup> Lee, Chelsea, and Robert L. Ostergard. “Measuring Discrimination Against LGBTQ People: A Cross-National Analysis.” *Human Rights Quarterly* 39, no. 1 (February 2017): 37–72. <https://doi.org/10.1353/hrq.2017.0001>, 57.

<sup>201</sup> “Gay Marriage Around the World.” Pew Research Center's Religion & Public Life Project, October 28, 2019. <https://www.pewforum.org/fact-sheet/gay-marriage-around-the-world/>; “Least Religious Countries 2020.” World Population Review. Accessed April 14, 2020. <https://worldpopulationreview.com/countries/least-religious-countries/>.

democratization, and much lower economic statuses, seem to be more apathetic towards LGBTQ+ legislation. Even without comparing Japan to other countries, thus far, Japan does not fit the narrative of what factors lead to more LGBTQ+ equal legislation as frequently discussed by theorists.

### *Civil Society*

The term “civil society” has taken many forms since the first usage of the concept by Aristotle.<sup>202</sup> Currently, several definitions of civil society are in use; however, I intend to use Scholte’s definition: “a political space where associations of citizens seek, from outside political parties, to shape societal rules.”<sup>203</sup> These associations can be advocacy networks, non-governmental organizations, and other groups which work to promote the interests of the citizens. Scholars have often noted how a strong civil society creates an environment more advantageous for minority rights (e.g., LGBTQ+ rights) to take place.<sup>204</sup> In the first paragraph of the United Nations Human Rights’ discussion about civil society, it states that “every day in every part of the world, civil society contributes to the promotion, protection and advancement of human rights.”<sup>205</sup> How does civil society facilitate the creation of equal rights for minorities?

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<sup>202</sup> Cohen, Jean, and Andrew Arato. *Civil Society and Political Theory*. Cambridge, London: MIT Pr., 1994, 84.

<sup>203</sup> Scholte, Jan Aart. *Building Global Democracy?: Civil Society and Accountable Global Governance*. Cambridge: Cambridge University Press, 2011, 34.

<sup>204</sup> Encarnación, Omar G. “Gay Rights: Why Democracy Matters.” *Journal of Democracy* 25, no. 3 (July 2014): 90–104. <https://doi.org/10.1353/jod.2014.0044>, 92.

<sup>205</sup> “Civil Society: UN Human Rights Resources for NGOs, Human Rights Defenders, and Other Actors in Civic Space.” OHCHR. Accessed January 25, 2020. <https://www.ohchr.org/EN/AboutUs/Pages/CivilSociety.aspx>.

An active civil society can facilitate the creation of equal rights for minorities by establishing legitimacy for a cause in various ways. Domestic advocacy networks and non-governmental organizations can work with transnational organizations to “channel” international examples and norms that would otherwise be overlooked by the local government.<sup>206</sup> Even without the help of transnational organizations, a strong civil society can establish the legitimacy of an issue with activism, whether it is a peaceful protest (e.g., the Women’s Suffrage Parade of 1913) or an aggressive riot (e.g., the Stonewall Riots of 1969).

Ayoub points out that, though international presence can be important when creating equal rights for minorities, a strong domestic civil society is necessary for change to occur; otherwise, the international influence could be framed as “external impositions” instead of an internal need.<sup>207</sup> In other words, if the government does not see domestic representation of a need for equal minority rights laws, the influence of international norms and suggestions will generally be lacking.

Civil Society in Japan. For a country to have a healthy civil society, it must have a high level of civic space to flourish. To observe the levels of civic space around the world, this thesis uses data collected by the organization “CIVICUS.” CIVICUS, according to their website, “is a global alliance of civil society organisations and activists dedicated to

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<sup>206</sup> Ayoub, Phillip M. “Contested Norms in New-Adopter States: International Determinants of LGBT Rights Legislation.” *European Journal of International Relations* 21, no. 2 (2014): 293–322. <https://doi.org/10.1177/1354066114543335>, 301.

<sup>207</sup> Ibid.

strengthening citizen action and civil society throughout the world.”<sup>208</sup> Civicus was formed in 1993 and has grown to “more than 9,000 members in more than 175 countries.”<sup>209</sup> Each year, CIVICUS releases a “State of Civil Society Report” examining civil society around the world. Additionally, on their website, there is an interactive map comparing the level of civic space worldwide, providing “close to real-time data and empirical evidence... in 195 countries.”<sup>210</sup> Unfortunately, with this map, there appears to be no linked country ranking for full analysis; however, countries on the map are placed into one of five ratings (open, narrowed, obstructed, repressed, and closed). In this thesis, using the current ratings, a ranked number is assigned to each rating to incorporate into the parenthetical overview of countries. For this thesis, a country with a rating of “closed” is given a zero, “repressed” a one, “obstructed” a two, “narrowed” a three, and a rating of “open” a four. As with the previous sections, the first two numbers in parenthesis next to a country is the country’s total global score (left) and “Civil Liberties” score (middle). In this section, the number on the right is the civic space rating, according to CIVICUS.

According to the map, countries with an open civic space include Canada (98; 58; 4), Suriname (75; 43; 4), Uruguay (98; 58; 4), Costa Rica (91; 53; 4), New Zealand (97; 57; 4), Iceland (94; 57; 4), Norway (100; 60; 4), Sweden (100; 60; 4), Finland (100; 60; 4), Denmark (97; 57; 4), Switzerland (96; 57; 4), Estonia (94; 56; 4), Lithuania (91; 53; 4), Czech Republic (91; 55; 4), Slovenia (94; 55; 4), Ireland (97; 58; 4), Belgium (96; 57;

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<sup>208</sup> “About CIVICUS.” CIVICUS Global Alliance. Accessed May 2, 2020. <https://www.civicus.org/index.php/who-we-are/about-civicus>.

<sup>209</sup> Ibid.

<sup>210</sup> “CIVICUS Monitor.” CIVICUS Global Alliance. Accessed May 31, 2020. <https://www.civicus.org/index.php/what-we-do/innovate/civicus-monitor>.

4), the Netherlands (99; 59; 4), Germany (94; 55; 4), Luxembourg (98; 60; 4), Portugal (96; 57; 4), Cyprus (94; 56; 4), Taiwan (93; 56; 4), New Zealand (97; 57; 4), and Solomon Islands (79; 49; 4).<sup>211</sup> The majority of these countries have high levels of equal legislation for the LGBTQ+ community with only a few not having legalized same-sex marriage. The Solomon Islands is the only country to have no LGBTQ+ rights nor protections out of the countries with “open” civic spaces listed above.

Japan (96; 56; 3), according to CIVICUS, has a “narrowed” civic space due to Japan having had a few violations regarding freedom of speech within the past decade.<sup>212</sup> One might think this is the reason for Japan’s seemingly apathetic regard towards LGBTQ+ legislation; however, the “narrowed” ranking is still a relatively strong ranking to have, and even countries such as the United States (86; 53; 3), the United Kingdom (94; 55; 3), Australia (97; 57; 3), Austria (93; 56; 3), Ecuador (65; 38; 3), France (90; 52; 3), Malta (90; 55; 3), South Africa (79; 46; 3), and Spain (92; 54; 3) are considered “narrowed,” but have same-sex marriage as well as many other LGBTQ+ rights and protections.<sup>213</sup> In addition to the ones that have at least “narrowed” civic space, Brazil (75; 44; 2) and Colombia (66; 37; 1) have “obstructed” and “repressed” respectively while also having legalized same-sex marriage as well as many other rights for the LGBTQ+ community.<sup>214</sup> Other than the ones listed above that have legalized same-sex

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<sup>211</sup> Ibid.

<sup>212</sup> “Japan.” CIVICUS. Accessed May 31, 2020. <https://monitor.civicus.org/country/japan/>.

<sup>213</sup> “CIVICUS Monitor.” CIVICUS Global Alliance. Accessed May 31, 2020. <https://www.civicus.org/index.php/what-we-do/innovate/civicus-monitor>; “Gay Marriage Around the World.” Pew Research Center's Religion & Public Life Project, October 28, 2019. <https://www.pewforum.org/fact-sheet/gay-marriage-around-the-world/>.

<sup>214</sup> Ibid.

marriage, many others with ratings below “open” have higher levels of LGBTQ+ legislation than Japan.

While countries with high ratings in civic spaces are not necessarily going to have high levels of LGBTQ+ legislation, it does seem as though it is helpful in paving the way for it. As stated in the introduction of this chapter, having a combination of these factors appear to increase the likelihood of LGBTQ+ equal legislation. So far, regardless of attempts to compare Japan to other countries, Japan seems to be meeting the levels for each factor but is lacking a lot of LGBTQ+ legislation. However, there is still one factor left, the rule of law, to examine in order to determine if Japan is an outlier regarding these main theories. Additionally, there are minor theories needing to be observed in relation to Japan that could also be keeping Japan apathetic regarding LGBTQ+ legislation.

### *Rule of Law*

According to Encarnación, in addition to the previous factors, “gay rights also depend on a strong judiciary and the rule of law.”<sup>215</sup> These two factors are also deemed important to any “healthy democratic polity.”<sup>216</sup> In general, since rulings in regard to LGBTQ+ rights can go either way, the role of courts in establishing equal rights can be considered uncertain; however, in many parts of the world, the creation of equal rights have been steered by the action of courts (e.g., the unexpected rulings for same-sex marriage in various parts of Latin America).<sup>217</sup>

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<sup>215</sup> Encarnación, Omar G. “Gay Rights: Why Democracy Matters.” *Journal of Democracy* 25, no. 3 (July 2014): 90–104. <https://doi.org/10.1353/jod.2014.0044>, 99.

<sup>216</sup> *Ibid.*, 100.

<sup>217</sup> *Ibid.*

Rule of Law in Japan. The World Justice Project, an independent organization that works to promote rule of law globally with the belief that “effective rule of law reduces corruption, combats poverty and disease, and protects people from injustices large and small”<sup>218</sup>, has been an incredible asset to many organizations and scholars due to its global insight into the rule of law. In this section, an index created by the World Justice Project, WJP Rule of Law Index, is used to examine how strong the rule of law is in Japan and to compare it with other countries. On the spectrum of “Adherence to the Rule of Law,” used in the WJP Rule of Law Index, a score of 0.00 to 1.00 was given to 128 countries.<sup>219</sup> At one end of the spectrum, a score of 0.00 expresses a weak rule of law, and, at the other end, a score of 1.00 expresses a strong rule of law. In this section, I keep the three number system next to the attributed country with the first being the total global freedom score, the second being the “Civil Liberties” score, and the last being the rule of law score.

According to the 2020 WJP Rule of Law index, Japan (96; 56; 0.78) is ranked at fifteen, out of 128, with a score of 0.78.<sup>220</sup> This score is relatively high in the rankings with the highest-ranked being Denmark (97; 57; 0.90) and the lowest-ranked being Venezuela (16; 14; 0.27).<sup>221</sup> Above Japan in the rankings, all countries have legalized same-sex marriage (as well as many other rights) except for Estonia (94; 56; 0.81) and Singapore (50; 31; 0.79).<sup>222</sup> In the religiosity section, I discussed the levels of LGBTQ+

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<sup>218</sup> “About Us.” World Justice Project. Accessed May 13, 2020. <https://worldjusticeproject.org/about-us>.

<sup>219</sup> “WJP Rule of Law Index.” World Justice Project. Accessed May 13, 2020. <https://www.worldjusticeproject.org/rule-of-law-index/global>.

<sup>220</sup> Ibid.

<sup>221</sup> Ibid.

<sup>222</sup> Ibid.; “Gay Marriage Around the World.” Pew Research Center's Religion & Public Life Project, October 28, 2019. <https://www.pewforum.org/fact-sheet/gay-marriage-around-the-world/>;

legislation in Estonia (which was stronger than Japan's even though it was a former-Soviet country). Singapore, however, has a total global freedom score of 50 and a "Civil Liberties" score of 31, which signifies that it has not reached the level of democratization typically needed for increased levels of LGBTQ+ legislation.<sup>223</sup>

The two rankings above and below Japan on the WJP Rule of Law Index with both high scores in rule of law and democratization are the United Kingdom (94; 55; 0.79), Belgium (96; 57; 0.79), South Korea (83; 50; 0.73), and the Czech Republic (91; 55; 0.73).<sup>224</sup> Each of these countries has been observed previously regarding LGBTQ+ legislation with the UK and Belgium having legalized same-sex marriage, the Czech Republic having nationwide civil unions, and South Korea having similar LGBTQ+ legislation as Japan. Additionally, directly under the Czech Republic, Spain (92; 54; 0.73), France (90; 52; 0.73), the United States (86; 53; 0.72), Uruguay (98; 58; 0.71), and Portugal (96; 57; 0.70) all have much higher levels of LGBTQ+ legislation than Japan (including same-sex marriage).<sup>225</sup> The lowest-ranked country on the WJP Rule of Law Index to have legalized same-sex marriage is Ecuador (65; 38; 0.49), which also has the lowest-ranked total global freedom score.<sup>226</sup>

Regarding all five of the main theories frequently discussed by theorists, Japan appears to be at the levels that theorists deem pertinent for increased LGBTQ+ legislation; however, Japan has very little equal legislation at this time. It is at this point

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<sup>223</sup> "Countries and Territories." Freedom House. Accessed April 27, 2020.  
<https://freedomhouse.org/countries/freedom-world/scores>.

<sup>224</sup> "WJP Rule of Law Index." World Justice Project. Accessed May 13, 2020.  
<https://www.worldjusticeproject.org/rule-of-law-index/global>.

<sup>225</sup> Ibid.

<sup>226</sup> Ibid.; "Countries and Territories." Freedom House. Accessed April 27, 2020.  
<https://freedomhouse.org/countries/freedom-world/scores>.

that we could call Japan an outlier. Before doing so, though, there are three lesser-discussed theories that need to be examined (socialization, policy diffusion, and global queering). Unlike the main theories, these theories are unable to be examined by data. Instead, these lesser-discussed theories are observed by examining how Japan interacts with the global community. Therefore, this next portion of the chapter looks at examples of how Japan is involved internationally, if any recent legislation changes have occurred due to outside influence, and if LGBTQ+ media, cultural aspects, etc. have become integrated into Japanese society from outside influence as well. Due to these being lesser-discussed theories and that trying to provide every example of each theory would take away from the main focus, this next portion is only examined briefly with a focus on relatively strong examples.

### *Socialization*

Socialization can be defined as the method through which individuals (i.e., countries in this case) are inducted into the norms (or preferred behaviors) of a society (i.e., the international community).<sup>227</sup> Risse and Sikkink conceptualize the “process of socialization” as “the process by which principled ideas held by individuals become norms in the sense of collective understanding about appropriate behavior which then lead to changes in identities, interests, and behavior.”<sup>228</sup> This process, internationally,

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<sup>227</sup> Risse, Thomas, and Kathryn Sikkink. “The Socialization of International Human Rights Norms into Domestic Practices: Introduction.” *The Power of Human Rights*, 1999, 1–38. <https://doi.org/10.1017/cbo9780511598777.002>, 11.

<sup>228</sup> Ibid.

occurs when working closely with other countries and transnational organizations.<sup>229</sup> When working with and relying on other countries and organizations, the pressure to adjust legislation to coincide with international norms can increase.<sup>230</sup> One of the strongest facilitators of persuading, pressuring, and shaming countries into changing legislation in favor of human rights are “non-state actors” (in the case of LGBTQ+ rights, the International Gay and Lesbian Association is one of the most significant).<sup>231</sup>

Risse and Sikkink describe three processes of socialization that, in order for lasting human rights norms to become established, must take place (either separately or simultaneously):

1. “processes of adaptation and strategic bargaining;
2. processes of moral consciousness-raising, ‘shaming,’ argumentation, dialogue, and persuasion;
3. processes of institutionalization and habitualization”<sup>232</sup>

Even if the actors are not convinced of a norm’s appropriateness, the norm will still become institutionalized due to its “normalcy” in the international arena.<sup>233</sup>

Socialization and Japan. In this section, instead of comparing Japan to other countries using an index, a focus is placed on how interactive Japan is with the global community;

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<sup>229</sup> Encarnación, Omar G. “Gay Rights: Why Democracy Matters.” *Journal of Democracy* 25, no. 3 (July 2014): 90–104. <https://doi.org/10.1353/jod.2014.0044>, 100.

<sup>230</sup> Ayoub, Phillip M. “Contested Norms in New-Adopter States: International Determinants of LGBT Rights Legislation.” *European Journal of International Relations* 21, no. 2 (2014): 293–322, 298.

<sup>231</sup> Encarnación, Omar G. “Gay Rights: Why Democracy Matters.” *Journal of Democracy* 25, no. 3 (July 2014): 90–104. <https://doi.org/10.1353/jod.2014.0044>, 94.

<sup>232</sup> Risse, Thomas, and Kathryn Sikkink. “The Socialization of International Human Rights Norms into Domestic Practices: Introduction.” *The Power of Human Rights*, 1999, 1–38. <https://doi.org/10.1017/cbo9780511598777.002>, 11.

<sup>233</sup> *Ibid*, 17.

this includes intergovernmental organizations (IGOs), non-governmental organizations (NGOs), and international programs/ goals of which Japan is included. More specifically, a focus is placed on those that promote increased LGBTQ+ legislation and equality. Unfortunately, at this time, there appears to be no sufficient way of ranking the socialization of countries. However, the more international organizations a country is a part of (IGOs, NGOs, etc.) the more that country will be involved in global interactions and will feel the need to make adjustments to satisfy the international community (as discussed above); therefore, this section looks at Japan's involvement internationally.

The largest IGO in the world, the United Nations (with the Vatican City and Palestine as the only recognized countries to not be members), has, within the past decade, increased its support for the LGBTQ+ community substantially. It has done so by passing resolutions and creating campaigns to quell crimes against LGBTQ+ people, promoting the understanding of human rights for the community, assisting LGBTQ+ individuals who are refugees and asylum seekers in finding a more LGBTQ+ welcoming country, appointing experts in reducing LGBTQ+ violence and discrimination in all member states, etc.<sup>234</sup> Japan has been an active member of the United Nations since its induction in 1956 and has been a non-permanent member of the Security Council eleven times.<sup>235</sup> Additionally, Japan, along with Brazil, India, and Germany, has been fighting

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<sup>234</sup> "10 Ways the U.N. Has Protected LGBTQ Human Rights." Human Rights Campaign. Accessed May 14, 2020. <https://www.hrc.org/blog/ten-ways-the-united-nations-has-protected-lgbtq-human-rights>.

<sup>235</sup> "Growth in United Nations Membership, 1945-Present." United Nations. United Nations. Accessed May 13, 2020. <https://www.un.org/en/sections/member-states/growth-united-nations-membership-1945-present/index.html>; "Japan to Run for 2023-2024 Seat on UNSC, Continue Reform Push." The Japan Times. Accessed May 15, 2020. <https://www.japantimes.co.jp/news/2017/12/16/national/politics-diplomacy/japan-seek-nonpermanent-u-n-security-council-seat-2023-2024/>.

for a permanent position on the Security Council for many years.<sup>236</sup> The “Permanent Mission of Japan to the United Nations,” which is the official Mission representing the government of Japan in the United Nations, in accordance with standards set by the United Nations, lists eight goals of which it states it “is working towards the realization of... on behalf of the Government of Japan.”<sup>237</sup> The fourth goal includes the “enhancement of the engagement in human rights, humanitarian, women’s and social issues.”<sup>238</sup> Though this goal does not explicitly state more rights for the LGBTQ+ community, an enhanced engagement in these areas (especially in human rights and social issues) would involve working to reduce inequality in all areas.

Additionally, Japan is a current council member of the United Nations Human Rights Council (also known as the OHCHR) and will be a council member until 2022.<sup>239</sup> According to the Human Rights Council, it is “committed to working with States, National Human Rights Institutions and Civil Society worldwide to help repeal laws criminalizing LGBTI persons. OHCHR also works to protect people from violence and discrimination on the grounds of their sexual orientation, gender identity, and sex characteristics.”<sup>240</sup> While being a part of these organizations does not guarantee a change

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<sup>236</sup> “Japan to Run for 2023-2024 Seat on UNSC, Continue Reform Push.” The Japan Times. Accessed May 15, 2020. <https://www.japantimes.co.jp/news/2017/12/16/national/politics-diplomacy/japan-seek-nonpermanent-u-n-security-council-seat-2023-2024/>.

<sup>237</sup> “Organization & Goals.” Permanent Member of Japan to the United Nations. Accessed May 15, 2020. [https://www.un.emb-japan.go.jp/itpr\\_en/organization\\_goals.html](https://www.un.emb-japan.go.jp/itpr_en/organization_goals.html).

<sup>238</sup> Ibid.

<sup>239</sup> “Current Membership of the Human Rights Council for the 14th Cycle, 1 January - 31 December 2020.” OHCHR. Accessed May 17, 2020.

<https://www.ohchr.org/EN/HRBodies/HRC/Pages/CurrentMembers.aspx>.

<sup>240</sup> “OHCHR and the Human Rights of LGBTI People.” OHCHR. Accessed May 17, 2020. <https://www.ohchr.org/en/issues/lgbti/Pages/index.aspx>.

in LGBTQ+ legislation, pressure from the United Nations, and involvement with the Human Rights Council could eventually pave the way for more LGBTQ+ rights.

Another overarching international involvement of which Japan is a part of is the Sustainable Development Goals. These seventeen goals, established by the United Nations, are “an urgent call for action by all countries... they recognize that ending poverty and other deprivations must go hand-in-hand with strategies that improve health and education, reduce inequality, and spur economic growth – all while tackling climate change and working to preserve our oceans and forests.”<sup>241</sup> This set of goals, with the aim of accomplishing as many as possible by the year 2030, contains an additional pledge “to leave no one behind,” which, unlike the Millennium Development Goals, puts a focus on inequality in all aspects (including LGBTQ+) regarding each goal.<sup>242</sup> According to the Ministry of Foreign Affairs of Japan, “Japan makes utmost efforts to implement the 2030 Agenda with international community based on the concept of human security.”<sup>243</sup> Additionally, prior to this quote, a brief description is provided on the Ministry of Foreign Affairs of Japan’s website, which includes the pledge to “Leave no one behind.”

The largest NGO in the world to focus on human rights is Amnesty International (AI). Out of the many focuses of which AI devotes its time, several involve issues the LGBTQ+ community face all around the world (discrimination, gender recognition, etc.). According to their site, AI states, “We are committed to standing up to discrimination

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<sup>241</sup> “Sustainable Development Goals ... Sustainable Development Knowledge Platform.” United Nations. Accessed May 18, 2020. <https://sustainabledevelopment.un.org/?menu=1300>.

<sup>242</sup> “What Does It Mean to Leave No One Behind?: A UNDP Discussion Paper and Framework for Implementation.” Publication. United Nations Development Programme, 2018.

<sup>243</sup> “What is the SDGs? | JAPAN SDGs Action Platform.” Ministry of Foreign Affairs of Japan. Accessed May 20, 2020. <https://www.mofa.go.jp/policy/oda/sdgs/index.html>.

against LGBTI people around the world. We give recommendations to governments and other influential leaders on how to improve laws and protect people's rights regardless of their sexual orientation or gender identity.”<sup>244</sup> As an example of the work they do in promoting LGBTQ+ equality, AI draws attention to their involvement in the legalization of same-sex marriage in Taiwan: “After a global Amnesty campaign, the highest court in Taiwan ruled that banning same-sex marriage was unconstitutional. In May 2019, Taiwan became the first country in Asia to recognize same-sex marriages.”<sup>245</sup> They continue by discussing other examples of influence they have provided, such as having individuals' true gender recognized legally in countries such as Norway, Denmark, and Greece.<sup>246</sup> In Japan, a section of AI, known as AI Japan, exists to stand against human rights violations and to promote the values of Amnesty International within Japan. When discussing Amnesty, AI Japan concludes by stating: “Amnesty International Japan envisions a world in which every person has his/her human rights defended while not suffering from human rights abuses caused by conflicts, poverty, torture, discrimination, etc.”<sup>247</sup> Additionally, within a discussion concerning their activities, AI Japan calls attention to some of Japan's standards and laws that are not in accordance with the international standards: “Unfortunately Japan has yet to prepare the various laws and standards in accordance with the international human rights standards. We encourage the Japanese government to

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<sup>244</sup> “LGBTI Rights and What Amnesty Is Doing to Protect Them.” LGBT rights | Amnesty International. Accessed May 21, 2020. <https://www.amnesty.org/en/what-we-do/discrimination/lgbt-rights/>.

<sup>245</sup> Ibid.

<sup>246</sup> Ibid.

<sup>247</sup> “Amnesty International Japan.” AMNESTY JAPAN. Accessed May 21, 2020. <https://www.amnesty.or.jp/en/>.

introduce the rules and systems to comply with and enforce the international rules of protecting human rights.”<sup>248</sup>

The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World) is a “federation of more than 1,600 organisations from over 150 countries and territories campaigning for lesbian, gay, bisexual, trans and intersex human rights.”<sup>249</sup> This NGO has committed itself to fight for equality around the world and even has a large presence in locations that do not protect the “right to exist.” In Japan, there are officially six organizations under the umbrella federation ILGA which includes: Japan Association for the Lesbian and Gay movement – OCCUR, Japan Alliance for LGBT Legislation, Fruits in Suits Japan, G-Front Kansai, ReBit, and Space allies.<sup>250</sup> While there might be other LGBTQ+ organizations in Japan, these organizations are interconnected with one of the largest LGBTQ+ international non-governmental bodies which help these smaller NGOs by providing conferences, training, research, etc. for more effective strategies to confront inequalities within their borders.<sup>251</sup>

Even though these organizations and goals promote equality for the LGBTQ+ community, the sovereignty of countries must be respected; therefore, equal legislation must be influenced by these organizations and goals rather than imposed. With Japan’s strong connection with the international community and involvement, whether governmental or non-governmental, with organizations and goals which promote LGBTQ+ equality, hope for more equal legislation is sparked. The organizations and

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<sup>248</sup> “About Amnesty.” AMNESTY JAPAN. Accessed May 21, 2020. [https://www.amnesty.or.jp/en/about\\_us/](https://www.amnesty.or.jp/en/about_us/).

<sup>249</sup> “About Us.” ILGA. Accessed May 20, 2020. <https://ilga.org/about-us>.

<sup>250</sup> “ILGA Member Organisations.” ILGA. Accessed May 20, 2020. [https://ilga.org/civi\\_details](https://ilga.org/civi_details).

<sup>251</sup> “What We Do.” ILGA. Accessed May 20, 2020. <https://ilga.org/what-we-do>.

goals discussed in this section are only a small portion of the ones of which Japan is involved, and as LGBTQ+ rights become more of a topic in these various organizations, acts of influence and policy diffusion may occur.

### *Policy Diffusion*

Policy diffusion “contends that policy making is often marked by extraordinary moments when a cluster of similar policies appears within a relatively short period of time in many different states.”<sup>252</sup> Policy diffusion and socialization, in some ways, coincide. In order for policy diffusion to take place in an area, the surrounding countries must be actively interacting and open to persuasion; otherwise, the policy that takes place in one country would not affect the others. Encarnación states that “policy diffusion is promoted by a variety of means, including technocratic exchanges between governments, transnational legalism, international consultants, interstate NGO activism, international think tanks, and multinational organizations.”<sup>253</sup> He also provides several “recent examples of policy diffusion,” such as “democratization, economic reform (privatization in particular), healthcare reform, pension reform, and, of course, same-sex marriage.”<sup>254</sup>

In order to determine how policy diffusion affects a country, Ayoub examines the political porosity of countries.<sup>255</sup> Ayoub states that political porosity “creates channels of influence by embedding states in the international communities within which the LGBT

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<sup>252</sup> Encarnación, Omar G. “Gay Rights: Why Democracy Matters.” *Journal of Democracy* 25, no. 3 (July 2014): 90–104. <https://doi.org/10.1353/jod.2014.0044>, 94.

<sup>253</sup> Ibid.

<sup>254</sup> Ibid.

<sup>255</sup> Ayoub, Phillip M. “Contested Norms in New-Adopter States: International Determinants of LGBT Rights Legislation.” *European Journal of International Relations* 21, no. 2 (2014): 293–322, 298.

issue receives more attention” and that “it also allows both processes of political socialization (based on the logic of appropriateness) and the establishment of political rules (based on the logic of consequences).”<sup>256</sup> When countries become politically porous, they are more likely to incorporate policy changes that have been recently enacted by nearby countries or countries they interact with frequently.

Policy Diffusion and Japan. While relatively strong countries, such as Japan, are not as politically porous as others, interactions and agreements brought by international interaction (as discussed in the “Socialization” section) can lead to the altering of legislation due to policy diffusion. Prior to Japan’s evolution into the strong country that it is today, Japan was influenced in many ways by China and Western countries. As discussed in the history section, even Japan’s transition from a country that held homosexuality in high regard to one that grew intolerant of homosexuality and apathetic to the rights of the LGBTQ+ community was due to Western influence as Japan entered the world system. Even though Japan had been influenced in a lot of areas by outside forces throughout its history, Japan’s place in the world today may reflect a more fortified government of which is less likely to be influenced by the international community; however, examples of policy diffusion can be found in even some of the “strongest” countries.

In the “Socialization” section, while discussing Japan’s interaction with the international community, examples of policy diffusion were already provided (due to the

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<sup>256</sup> Ibid, 310.

strong correlation between “Socialization” and “Policy Diffusion); thus, this section is rather succinct. A brief overview of one of the more major forms of policy diffusion that has taken place in Japan due to international influence is presented. Also, this section touches on how policy diffusion has been inspired by involvement with IGOs, NGOs, etc. in Japan. Each of the examples has been mentioned in the “Socialization” section as well.

One of the major ways policy diffusion has taken place in Japan (as well as the rest of the world) is through IGO initiated programs such as the Sustainable Development Goals and, before that, the Millennium Development Goals. These goals are meant to initiate changes in policies to provide better health, more equality, economic growth, better education, etc. worldwide. In regard to the SDGs, in 2016, “the Government of Japan established a new Cabinet body called the ‘SDGs Promotion Headquarters’, headed by the Prime Minister and composed of all ministers” and has laid out implementation guidelines in their attempt to reach the 2030 deadline.<sup>257</sup> Within these guidelines, eight priority areas were identified (with the first one being the “Empowerment of All People”).<sup>258</sup> Additionally, in 2019, Japan presented “its ‘Expanded SDGs Action Plan 2019’” which addresses “health, education, women’s empowerment, energy, quality infrastructure, disaster risk reduction (DRR) and climate change, and marine plastic debris.”<sup>259</sup> For Japan to achieve the SDGs, it has to make the necessary policy changes of

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<sup>257</sup> “Japan: Sustainable Development Knowledge Platform.” United Nations. United Nations. Accessed May 17, 2020. <https://sustainabledevelopment.un.org/memberstates/japan>.

<sup>258</sup> Ibid.

<sup>259</sup> Wahlen, Catherine Benson. “Japan Presents SDG Action Plan at G20 Meetings: News: SDG Knowledge Hub: IISD.” SDG Knowledge Hub. Accessed May 18, 2020. <https://sdg.iisd.org/news/japan-presents-sdg-action-plan-at-g20-meetings/>.

which would not be prioritized if it were not due to the influence of the international community.

Another way policy diffusion has affected Japan is through simply being involved, or, in the case of Japan, being an active member of IGOs, NGOs, etc. While being in numerous international organizations does not necessarily imply a country will be flexible in policy creation, sometimes it is necessary in order to maintain diplomatic relations with other countries and to be considered a respectable member of an organization. For example, in the discussion of Japan's involvement with the United Nations, the "Permanent Mission of Japan to the United Nations" presented eight goals in accordance with United Nations standards. In order for the goals to be met, policy changes will have to occur in Japan. Furthermore, international NGOs, such as the ILGA, have the ability to influence domestic organizations to promote policy changes by providing the tools necessary for which the domestic organizations may not have had prior to international involvement.

### *Global Queering*

Dennis Altman coined global queering in 1996 in reference to the global change in views on homosexuality and the dissemination of homosexual identities.<sup>260</sup> In Altman's article "Global Gaze/Global Gays," he states:

What strikes me is that within a given country, whether Indonesia or the United States, Thailand or Italy, the range of constructions of homosexuality is growing, and that in the past two decades there has emerged a definable group of self-

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<sup>260</sup> Altman, Dennis. "On Global Queering." AHR, July 1996.  
<http://australianhumanitiesreview.org/1996/07/01/on-global-queering/>.

identified homosexuals... who see themselves as part of a global community, whose commonalities override but do not deny those of race and nationality.<sup>261</sup>

To further explain the idea, I add Encarnación's view that global queering "is the notion that the gay community encapsulates a wide range of identities, cultures, and politics that are being disseminated around the globe by the internationalization of American homosexuality, as driven by U.S. cultural imperialism and U.S. economic hegemony."<sup>262</sup>

Ayoub presents this phenomenon as a social diffusion and discusses the influx of television shows since the 1990s containing homosexual characters.<sup>263</sup> He states that "studies show that exposure to media with gay themes positively influences social attitudes and policymakers' actions regarding LGBT issues."<sup>264</sup> Furthermore, he observes this phenomenon by examining the "social porosity" of countries and comes to the conclusion that "social porosity – particularly the flow of ideas and images – taps into the international awareness of the new-adopter state" (in reference to the countries that more recently entered the EU) "and its exposure to issues and norms that have preceded them in first-mover states."<sup>265</sup> In addition, the influence of "gay-borhoods" (e.g., Castro and Greenwich Village) and even the HIV/Aids epidemic are considered global queering phenomena due to their influence around the world.<sup>266</sup>

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<sup>261</sup> Altman, Dennis. "Global Gaze/Global Gays." *GLQ: A Journal of Lesbian and Gay Studies* 3, no. 4 (1997): 417–36. <https://doi.org/10.1215/10642684-3-4-417>, 424.

<sup>262</sup> Encarnación, Omar G. "Gay Rights: Why Democracy Matters." *Journal of Democracy* 25, no. 3 (July 2014): 90–104. <https://doi.org/10.1353/jod.2014.0044>, 94.

<sup>263</sup> Ayoub, Phillip M. "Contested Norms in New-Adopter States: International Determinants of LGBT Rights Legislation." *European Journal of International Relations* 21, no. 2 (2014): 293–322, 298.

<sup>264</sup> *Ibid.*

<sup>265</sup> *Ibid.*, 310.

<sup>266</sup> Encarnación, Omar G. "Gay Rights: Why Democracy Matters." *Journal of Democracy* 25, no. 3 (July 2014): 90–104. <https://doi.org/10.1353/jod.2014.0044>, 95.

Jackson further discusses global queering and shows how market processes (i.e., capitalism) have “been even more important in the proliferation of queer cultures and identities than proposed by early researchers.”<sup>267</sup> The spread of capitalism has introduced certain queer culture (i.e., Westernized queer culture) to countries while also facilitating a distinguishable local queer culture due to the reaction of LGBTQ+ members to urbanization and capitalist industrialization.<sup>268</sup> Therefore, not only has the spread of media and LGBTQ+ culture influenced the global queering, but also the spread of capitalism.

Global Queering and Japan. There are many ways LGBTQ+ cultures have the potential to disseminate from country to country. For example, the increase of information, media, commerce, etc. flowing in and out of countries around the world can bring with it cultural identities that influence already existing cultures in an area. Japan, as discussed in the history section, held high regard for homosexuality in the past and, though Western influence brought about intolerance for the LGBTQ+ community, the community did not disappear. Though it may be difficult to observe the LGBTQ+ culture that has existed in Japan between the time of “transformation of views” and now (without the outside influence of LGBTQ+ cultures around the world), this unique Japanese LGBTQ+ culture, though hidden from the community, has existed and most likely still exists. Examples of unique LGBTQ+ cultural aspects that exist in Japan today include genres of anime and

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<sup>267</sup> Jackson, Peter A. “CAPITALISM AND GLOBAL QUEERING: National Markets, Parallels among Sexual Cultures, and Multiple Queer Modernities.” *GLQ: A Journal of Lesbian and Gay Studies* 15, no. 3 (2009): 357–95. <https://doi.org/10.1215/10642684-2008-029>, 359.

<sup>268</sup> *Ibid.*, 387.

manga that focus on homosexual romance. This genre of anime and manga are not only consumed by the LGBTQ+ community, but also individuals outside of the community. Even though there are potentially many unique aspects to the community in Japan, some of the main focuses from media, theorists, etc. are commonalities that can be found and are possibly due to global queering such as pride parades, gay clubs, “gay-borhoods,” and even certain sub-cultures (e.g., bears).

As stated previously, the influence of “gay-borhoods” (such as Castro and Greenwich Village) is considered a form of global queering. In Japan, Shinjuku Ni-chōme is considered Tokyo’s gay-borhood, or “gay district,” and consists of hundreds of gay bars, clubs, restaurants, shops, etc. in a five-block area.<sup>269</sup> Shinjuku Ni-chōme is a bustling place with plenty of LGBTQ+-friendly businesses to visit and is considered the highest concentration of gay bars in the world.<sup>270</sup> Unfortunately, these businesses are decreasing due to gentrification and the increasing ways technology is allowing for communication with like-minded people.<sup>271</sup>

Within Shinjuku Ni-chōme, there is another example of global queering. A “genre” of bars, typically devoted to a specific sub-culture that has spread across the world called “The Eagle,” made a debut in Shinjuku Ni-chōme in 2016 known as “The Eagle Tokyo.”<sup>272</sup> The first bar labeled “The Eagle” came about, in New York City, after

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<sup>269</sup> “Changing Colors: Tokyo’s Gay District, Niche: Metropolis Magazine.” Metropolis Japan, May 10, 2018. <https://metropolisjapan.com/changing-colors/>.

<sup>270</sup> Stone, Mo. “Just in Time for Pride Month: A Self-Guided Pub Crawl Through Tokyo’s Shinjuku Ni-Chome.” JAPAN Forward, February 25, 2020. <https://japan-forward.com/just-in-time-for-pride-month-a-self-guided-pub-crawl-through-tokyos-shinjuku-ni-chome/>.

<sup>271</sup> McNeill, David. “Shinjuku Gay Enclave in Decline but Not on the Surface.” The Japan Times, February 24, 2010. <https://www.japantimes.co.jp/news/2010/02/24/national/shinjuku-gay-enclave-in-decline-but-not-on-the-surface/>.

<sup>272</sup> “Eagle Tokyo.” Time Out Tokyo, December 1, 2017. <https://www.timeout.com/tokyo/lgbt/eagle-tokyo>.

the 1969 Stonewall Riots and became a “safe space” for the community.<sup>273</sup> Eventually, bars labeled “The Eagle” began popping up across the United States and around the world.<sup>274</sup> Over the past few years, “The Eagle Tokyo” has grown and become a hub for citizens and travelers to meet and relax with their favorite drinks in a like-minded space.

Another example of global queering that has been seen within the past couple of decades is pride parades. According to The Japan Times, the first parade promoting LGBTQ+ rights in Tokyo was in 1994 and has grown substantially within the last several years.<sup>275</sup> Even though the 2019 parade marked the 25<sup>th</sup> anniversary of the first parade, until recently, “the major media outlets rarely covered the parade, and when they did they obscured the faces of the participants.”<sup>276</sup> However, coverage of the Tokyo Rainbow Pride parade by the Japanese media has grown significantly, and these media outlets are not obscuring the faces of the attendees as they had previously.<sup>277</sup>

Though there are many other types of global queering that have occurred due to increased globalization through media (movies, TV shows, music, etc.) and market processes, a focus on the establishment of safe spaces such as gayborhoods, bars, and pride parades can be viewed as more important, because the connection LGBTQ+ individuals make in these places with like-minded people has a greater potential to bring

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<sup>273</sup> Street, Mikelle. “How 'The Eagle' Became One of the Most Recognized Gay Bar Names.” NBCNews.com. NBCUniversal News Group, October 24, 2017. <https://www.nbcnews.com/feature/nbc-out/how-eagle-became-one-most-recognized-gay-bar-names-n813336>.

<sup>274</sup> Ibid.

<sup>275</sup> Tanaka, Chisato. “With Spirits High, the LGBT Community and Supporters Marks Tokyo's 25th Pride March.” The Japan Times. Accessed May 23, 2020. <https://www.japantimes.co.jp/news/2019/04/28/national/spirits-high-lgbt-community-supporters-marks-tokyos-25th-pride-march/>.

<sup>276</sup> Brasor, Philip. “Japan Baffled by the Intricacies of LGBT Issues.” The Japan Times. Accessed May 22, 2020. <https://www.japantimes.co.jp/news/2016/06/04/national/media-national/japan-baffled-intricacies-lgbt-issues/>.

<sup>277</sup> Ibid.

about change. Additionally, a list of LGBTQ+ media and material items that has made its way into popular culture in Japan from outside influences would not properly express the effects “global queering” can have on contributing to legislation changes the way it can in the form of supportive communities.

### *Conclusion*

Throughout this chapter, frequented theories concerning the establishment of LGBTQ+ legislation were discussed as well as Japan’s status in each of these theories. The main theories discussed (regime type, economic status, religiosity, civil society, and the rule of law) were examined using data collected by organizations and scholars. Additionally, the first theory was examined in conjunction with the other theories due to LGBTQ+ legislation not existing in non-democracies. In each of these theories, Japan fits the levels discussed by theorists as levels in which the creation of legislation can be seen; however, the levels of legislation in Japan do not coincide with the theories. Additionally, a comparison of Japan and countries with similar levels regarding each theory was conducted, and Japan appears to be much more apathetic towards LGBTQ+ legislation than the majority of comparable countries. Regarding the lesser discussed theories (socialization, policy diffusion, and global queering), data does not exist conveying levels of each of these theories in Japan; therefore, examples were provided to show Japan’s interaction with the global community, how policies have been shaped by the global community, and how LGBTQ+ international influences have shaped the LGBTQ+ culture within Japan. After examining Japan in all of these theories, Japan appears to indeed be an outlier. This is not to say that other countries do not lack LGBTQ+

legislation as well in regard to these theories. As discussed in the economic section, South Korea appears to have a similar status to Japan in several of the theories discussed. The main focus of this thesis is to show how Japan is an outlier in regard to the frequented theories, and from the observations that were made, that appears to be the case.

## **CHAPTER IV: COMING OUT IN JAPAN: EXPLAINING THE JAPANESE**

### **ANOMALY**

What we have observed in this thesis reveals limited progress regarding LGBTQ+ legislation in Japan that cannot be explained by commonly discussed theories. This raises the question of “why?” While beyond the scope of the current thesis, the following attempts to identify and systematically lay out factors that may be crucial in understanding the Japanese anomaly. Such analysis not only identifies avenues for future research but also helps build on current theories regarding the progress within countries of LGBTQ+ rights and protections.

I argue that what is missing in these commonly discussed theories, in order to explain the Japanese anomaly, is the role of culture, more specifically the family structure and the strength of heteronormativity. These more traditional views make it difficult to “come out” and “coming out” is crucial in order to chip away at these traditional values and change attitudes. These are preconditions to changing (or advancing) favorable LGBTQ+ legislation. In this chapter, I briefly discuss the role of “coming out” in changing legislation, examine surveys about “coming out” in Japan, and observe how the traditional family structure and heteronormativity affect not only “coming out” in Japan, but also limit LGBTQ+ legislation.

## Coming Out

According to Encarnación, democracy facilitates LGBTQ+ rights by creating an environment of which LGBTQ+ people can “live ‘outside the closet’.”<sup>278</sup> Just as democratization helps the LGBTQ+ community in being able to live openly, “coming out of the closet” has been known to alter views on the LGBTQ+ community simply by personal experience.<sup>279</sup> From a 2009 USA Today/ Gallup poll asking Americans their opinions on a variety of LGBTQ+ issues, it was determined that “those who personally know someone who is gay or lesbian are three times more likely to say this (that legal same-sex marriage would change society for the better) than are those who do not know anyone who is gay or lesbian.”<sup>280</sup> However, even though democracy enables people to live openly, it is important to note that “coming out” is not easy, especially in an environment where existing social attitudes and legal protections make it difficult. In order for individuals to “come out” and provide representation in order to alter views, while doing so safely, there needs to be a supportive community, and legislation against hate crimes need to be enacted and enforced. Yet, this creates a dilemma. For a supportive community to be established, based on the notion of being able to live openly, people need to “come out.” This dilemma has been overcome in the past by the bravery of LGBTQ+ leaders (e.g., Henry Gerber, Stonewall Rioters, Harvey Milk) who, essentially, launched a global LGBTQ+ revolution.<sup>281</sup> Harvey Milk was “one of the first

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<sup>278</sup> Encarnación, Omar G. “Gay Rights: Why Democracy Matters.” *Journal of Democracy* 25, no. 3 (July 2014): 90–104. <https://doi.org/10.1353/jod.2014.0044>, 100.

<sup>279</sup> Ibid.

<sup>280</sup> Morales, Lymari. “Knowing Someone Gay/Lesbian Affects Views of Gay Issues.” Gallup, May 29, 2009. <https://news.gallup.com/poll/118931/knowning-someone-gay-lesbian-affects-views-gay-issues.aspx>.

<sup>281</sup> History.com Editors. “Gay Rights.” History. A&E Television Networks, June 28, 2017. <https://www.history.com/topics/gay-rights/history-of-gay-rights>.

openly gay people elected to public office in the United States,” and “he held that the most politically powerful thing gay people can do is to reveal the truth about their sexuality to relatives, neighbors, friends, and coworkers.”<sup>282</sup> Additionally, LGBTQ+ rights would not be where it is today in the United States, and perhaps around the world, if it were not due to the Stonewall Rioters and their fight back against oppression, which sparked a change in the extreme anti-gay legislation that existed in the 1960s. Governments do not simply hand out rights. As such, representation of a group (i.e., “coming out”) and political activism must be involved for laws to change.

### *Coming Out in Japan*

Tamagawa argues that “invisibility is one of the main problems that hinders the improvement of the lives of GLBT individuals in contemporary Japanese society.”<sup>283</sup> Of course, this “invisibility” describes the lack of “out” individuals in Japan. According to a 2013 online survey conducted by Ipsos, only five percent out of the 1000 plus participants in Japan say they “have a work colleague, close friend or relative who is gay, lesbian, bisexual or transgender.”<sup>284</sup> This small percentage shows that LGBTQ+ people in Japan are practically “invisible” in Japanese society, raising the question of why LGBTQ+ individuals in Japan are not “coming out.” As we have seen in the previous chapter, Japan is strong in democratization, as well as in the other criteria, which should

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<sup>282</sup> Encarnación, Omar G. “Gay Rights: Why Democracy Matters.” *Journal of Democracy* 25, no. 3 (July 2014): 90–104. <https://doi.org/10.1353/jod.2014.0044>, 100.

<sup>283</sup> *Ibid.*, 488.

<sup>284</sup> “Same-sex marriage: Citizens in 16 countries assess their views on same-sex marriage for a total global perspective.” Ipsos, Paris, France, 2013.

provide an environment of which the LGBTQ+ community can live “outside of the closet.” Are there cultural factors for why LGBTQ+ individuals are not “coming out”?

In order to observe the issues with “coming out” in Japan, this thesis examines a survey conducted by Tamagawa.<sup>285</sup> However, it is important to note that the sample size of the survey was small and that there was an overrepresentation of “out” LGBTQ+ individuals due to the approach she took in acquiring participants.<sup>286</sup> According to Tamagawa,

Initially, there were 382 participants of various ages (at least 18 years old), who were recruited through cooperation with a number of Japanese GLBT associations, as well as with social network services, such as Twitter and Facebook. Methods of recruitment varied. For example, upon an e-mail request by the investigator, a Japanese GLBT association replied that it would share an invitation to the online survey among its members; another posted an invitation flyer on its homepage. The tweets to invite participants were retweeted by, and circulated widely among, like-minded GLBT associations, as well as individuals on Twitter...<sup>287</sup>

Since many LGBTQ+ people in Japan, who are not “out,” would be afraid to participate in associations, surveys, etc. out of fear of being “outed,” it is understandable as to why there is an overrepresentation of “out” LGBTQ+ individuals who took the survey.

In Tamagawa’s survey, eighty-six percent of participants claimed that “they had come out to at least one of the following people: a mother, a father, a sibling, a schoolmate, a coworker, a spouse, a close friend other than schoolmate or coworker, or a child. Nearly 60% said that they have come out to a mother, 39% to a father, 88% to a schoolmate, 60% to a coworker, and 86% to a spouse.”<sup>288</sup> As stated previously, there was

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<sup>285</sup> Tamagawa, Masami. “Coming Out of the Closet in Japan: An Exploratory Sociological Study.” *Journal of GLBT Family Studies* 14, no. 5 (2017): 488–518. <https://doi.org/10.1080/1550428x.2017.1338172>

<sup>286</sup> Ibid, 515.

<sup>287</sup> Ibid, 497.

<sup>288</sup> Ibid, 501.

an overrepresentation of “out” participants; however, it is important to note the percentages of the groups to which the participants “came out.” In order from the highest percentage to the lowest, schoolmates, spouses, coworkers, mothers, and then fathers had been “come out” to by the participants. This suggests that it may be more difficult to come out to one’s parents than to others in Japan. “To the question, ‘Think about important people in your life, how many are aware that you are GLBT?’ the majority (more than 60%) answered either ‘nobody,’ ‘most not aware,’ or ‘more unaware.’”<sup>289</sup> This differs from the previous question because the importance of people is subjective and while one may come out to a coworker, schoolmate, etc., it might be due to a lesser concern of their opinion and a disconnect between those people, the “outer circle” (in Japanese “*soto*”), and one’s “inner circle” (“*uchi*”). As we will see, it is more difficult to “come out” to people in your family than friends, acquaintances, coworkers, etc., in Japan.

Coming-out experience analyses suggest that coming out experiences depend on the individual to which they come out. As Tamagawa notes,

The results suggest that the experience of coming out to a mother is, indeed, less favorable than coming out to a schoolmate or coworker and that the experience of coming out to a father is certainly less favorable than that of coming out to a schoolmate or coworker. At the same time, the data suggests that the experience of coming out to a mother is more negative than that of coming out to a father.<sup>290</sup>

As the survey shows, coming out to a mother or a father has provided less favorable experiences than coming out to schoolmates or coworkers. As we will see in the next section, the family is where true opinions and emotions are conveyed. On the other hand,

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<sup>289</sup> Ibid, 499.

<sup>290</sup> Ibid, 504.

coworkers do not express their feelings on the topic when someone in the workplace “comes out” to them, and so it is relatively easy to come out to Japanese coworkers.<sup>291</sup>

Tamagawa’s study shows that the most favorable experience among those surveyed is coming out to schoolmates (especially for transgender individuals).<sup>292</sup> This is most likely due to the growing representation of the LGBTQ+ community in popular media. Regarding the experiences of coming out to a mother versus a father, it is important to note that the study suggests that “more Japanese GLBT children come out to their mothers than to their fathers; and, if they come out to both, Japanese GLBT children come out to their mothers first and then to their fathers.”<sup>293</sup> Even though Japanese LGBTQ+ individuals have a more favorable experience coming out to their father than their mother, it is understandable for these individuals to come out to their mother first due to the family structure and “the phenomenon of absentee fathers,” which is discussed in the following sections.<sup>294</sup>

Before discussing the other perceived factors, it is important to note that the survey conducted by Tamagawa reveals, according to the individuals who participated in the study, that “although there are some Japanese GLBT individuals who consider that ‘coming out is too American,’ a great majority of Japanese GLBT individuals disagree and think that they should come out more.”<sup>295</sup> However, Tamagawa discounts the role of increased exposure to LGBTQ+ media from abroad, concluding that it is “safe to say that

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<sup>291</sup> Ibid, 511.

<sup>292</sup> Ibid, 512.

<sup>293</sup> Ibid, 509.

<sup>294</sup> Ibid, 510.

<sup>295</sup> Ibid, 509.

the cultural censoring of coming out as being too American to suit Japan is not a major factor in explaining the difficulty of coming out in Japan.”<sup>296</sup>

### **Family and Heteronormative Structures**

Rigid family and heteronormative structures appear to be, not only making it difficult for LGBTQ+ individuals to “come out,” but also limiting LGBTQ+ legislation. These two structures seem to be engrained into the culture and are perpetuated by inequalities in gender as well. In this section, I discuss both structures separately; however, there is overlap due to a strong correlation.

The family structure and heteronormativity in Japanese society is complex and deserves more scholarly attention in relation to how it shapes Japan’s contemporary LGBTQ+ community; however, the primary focus of this thesis has already been discussed in Chapter Three; therefore, these topics are only examined briefly. A brief analysis of these subjects should be sufficient in understanding why I believe they are influencing the limited LGBTQ+ legislation in Japan.

#### *Family Structure*

The Meiji Constitution (1889), established a rigid family structure in which the father “was granted great power over all members of the house” and “women were deprived the power to manage property and were subject to the control of the house-

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<sup>296</sup> Ibid.

master, who was usually their father or husband.”<sup>297</sup> While there have been amendments to the overall family structure in Japan since this constitution was created, due to it conflicting with human rights, there is still a shell of this structure in existence today. As discussed earlier in Chapter Three, one of the points deducted from Japan’s “Civil Liberties” score was the family registration system (*koseki*).<sup>298</sup> This system, which considers individuals as part of a “family unit”,

“requires all Japanese households to report various items of private information regarding their family members to their local authority, including each family member’s relationship to the head of the household, for example, ‘second son’”; in addition, everyone in the household must be registered under the same surname, “in other words, the family registration system ideologically maintains Japan’s traditional patriarchal family system.”<sup>299</sup>

The family structure in Japan, today, still places the father at the top of the household hierarchy and devotes the role of the father as the wage-earner/ supporter. This is further discussed in the heteronormative structure section.

The traditional role of the mother in the Japanese family is to stay home to maintain the house and to raise the children while the father works. “Mothers are left alone at home with their children and they are considered solely responsible for childrearing, including their education.”<sup>300</sup> In recent years, as it has in other countries around the world, this role has shifted slightly to introduce more women into the workforce. While women are increasingly entering into the workforce, with “an 11 point

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<sup>297</sup> Matsui, Shigenori. “Fundamental Human Rights and ‘Traditional Japanese Values’: Constitutional Amendment and Vision of the Japanese Society.” *Asian Journal of Comparative Law* 13, no. 1 (2018): 59–86. <https://doi.org/10.1017/asjcl.2017.25>.

<sup>298</sup> “Japan.” Freedom House. Accessed April 27, 2020. <https://freedomhouse.org/country/japan/freedom-world/2020>.

<sup>299</sup> Tamagawa, Masami. “Coming Out of the Closet in Japan: An Exploratory Sociological Study.” *Journal of GLBT Family Studies* 14, no. 5 (2017): 488–518. <https://doi.org/10.1080/1550428x.2017.1338172>, 493.

<sup>300</sup> *Ibid.*, 494.

leap over a decade ago” with approximately seventy-one percent of women employed, there are many factors still keeping Japanese women from being financially independent (a wide gender-wage gap, two-thirds of women employed are only working part-time, etc.).<sup>301</sup> Additionally, there is a lack of daycare, which is keeping women with children from entering, or rejoining, the workforce.<sup>302</sup> These issues (e.g., lack of full-time employment, wage-gap, and lack of daycare) only solidify the family structure.

With this rigid and regularly reaffirmed family structure in place, living as an LGBTQ+ individual can be difficult. For lesbians, finding a place of employment in order to support oneself or a family is difficult. “Part-time women, and many lesbians with children are disadvantaged because they do not rely on a male spouse for the substantial wage.”<sup>303</sup> Additionally, finding decent housing is more difficult for lesbians as well. “The availability of housing for lesbians is very much tied to their socio-economic status as women, since they are often invisible as lesbians. The difference between opportunities for heterosexual women and lesbians, however, is... that lesbians are less likely to overcome socio-economic discrimination at some future date through marriage.”<sup>304</sup> Often, lesbians have to search for inexpensive housing, unlike gay men who have more opportunities to make a livable wage.<sup>305</sup>

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<sup>301</sup> Katanuma, Marika. “Japanese Women Face a Future of Poverty, as Confluence of Factors Conspire against Them.” *The Japan Times*, January 12, 2020. <https://www.japantimes.co.jp/news/2020/01/12/national/social-issues/japan-women-workforce-poverty-aging-birthrate/>.

<sup>302</sup> Terzuolo, Chiara. “The Many Flaws in How Japan Approaches Daycare.” *Japan Today*, February 18, 2018. <https://japantoday.com/category/features/lifestyle/the-many-flaws-in-how-japan-approaches-daycare>.

<sup>303</sup> Chalmers, Sharon. *Emerging Lesbian Voices from Japan*. Abingdon, Oxfordshire: Routledge, 2014, 84.

<sup>304</sup> *Ibid.*, 85.

<sup>305</sup> *Ibid.*

Returning to the issues of “coming out,” one of the reasons LGBTQ+ children “come out” to their mothers before their fathers is because of the stronger connection a child has with their mother due to them being around to raise their children while the father is at work. However, due to the responsibility a mother feels regarding the education and raising of their children, they often react in a hostile manner when their LGBTQ+ children “come out.”<sup>306</sup> “Japanese mothers seem to overreact due to their fear of queering the family home. Moreover, Japanese mothers attempt to confine their GLBT children in the family closet.”<sup>307</sup> Mothers concern themselves with their appearance to others as the matriarch and that their children being LGBTQ+ is a reflection of their raising.<sup>308</sup> Regarding the children, they are more concerned with how the mother feels than how it will look on the household; this sentiment is reflected in their concern of “coming out” to their mother, as seen in Tamagawa’s study. “It is the perception of Japanese parental responsibilities, especially Japanese mothers’, that deter Japanese GLBT individuals from coming out to them, for example, ‘not to hurt mothers’ feelings,’ rather than ‘to protect the family name.’”<sup>309</sup>

Also noted by Tamagawa, in Japanese society, there are topics of which the true stance is only revealed within the family. This is where “familial homophobia” is established and “where negative attitudes and feelings toward homosexuality are most often expressed and internalized.”<sup>310</sup> This “familial homophobia” prevents many

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<sup>306</sup> Tamagawa, Masami. “Coming Out of the Closet in Japan: An Exploratory Sociological Study.” *Journal of GLBT Family Studies* 14, no. 5 (2017): 488–518. <https://doi.org/10.1080/1550428x.2017.1338172>, 509.

<sup>307</sup> Ibid, 510.

<sup>308</sup> Ibid, 514.

<sup>309</sup> Ibid, 511.

<sup>310</sup> Ibid, 495.

LGBTQ+ individuals from “coming out.” When LGBTQ+ individuals do come out to their family, though, many times, they will be asked to “correct their sexual orientation and to marry someone.”<sup>311</sup> In some cases, Japanese parents are tolerable of the life their LGBTQ+ children live privately, as long as that portion of their life is kept private, and they follow the typical family structure of getting married and providing grandchildren.<sup>312</sup>

With the family structure that exists in Japan and the homophobia that is internalized within a family, it is easy to understand why more Japanese LGBTQ+ individuals have not “come out.” However, for “familial homophobia” and the concern of “queering the family home” to be reduced, more LGBTQ+ individuals must come out to reduce stigma and to demonstrate its normalcy.

### *Heteronormative Structure*

Heteronormativity is the reinforcement of rigid gender roles in society, and that heterosexuality is the purest form of sexuality.<sup>313</sup> Similar to those with conservative/traditional views in most societies, in Japan, men are expected to find employment, marry, have children, and support the families they have established. They are able to work for as long as needed to support their family because, as stated previously, the wife is at home, raising the children and maintaining the house.<sup>314</sup> In Tamagawa’s work, she points out that “one of the major characteristics of postwar families in Japan” is the

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<sup>311</sup> Ibid, 507.

<sup>312</sup> Ibid, 494.

<sup>313</sup> Butler, Tijen. “Heteronormativity: Definition, Societal Examples and Why It's Harmful to LGBT+ Community.” PinkNews, April 11, 2019. <https://www.pinknews.co.uk/2019/04/11/heteronormativity-definition-societal-examples-and-why-its-harmful-to-lgbt-community/>.

<sup>314</sup> Tamagawa, Masami. “Coming Out of the Closet in Japan: An Exploratory Sociological Study.” *Journal of GLBT Family Studies* 14, no. 5 (2017): 488–518. <https://doi.org/10.1080/1550428x.2017.1338172>, 494.

absence of fathers both physically and psychologically.<sup>315</sup> Japanese fathers spend a large percentage of their time working to provide for their family, which leaves them almost no time to spend with the family they are supporting. As discussed previously, this is an explanation for why LGBTQ+ children come out to their mothers more than their fathers. When it comes to LGBTQ+ individuals, the heteronormative role for men puts pressure on said individuals to live a heterosexual lifestyle in order to be a “normal” member of society and not an outcast.

When it comes to women, heteronormativity includes marriage, childbirth, and child-rearing.<sup>316</sup> Prior to marriage and after child-rearing, it is acceptable for women to work, but while raising children, it is necessary for them to stay home in order to raise and educate the children.<sup>317</sup> “However, the wife/ mother role is only socially legitimated through the existence of a heterosexual male figure, though he may spend minimal time both emotionally and physically with/in the family.”<sup>318</sup> Due to the heteronormative mindset concerning women staying at home and raising children, this seems to be reinforced with the gender wage-gap and limited child-care facilities, as discussed earlier. Without a decent wage and the option to work while raising children, heteronormative structures are reinforced by making women dependent on men. Due to that, it is easier for lesbians to remain “in the closet” than taking on the difficulties of being an independent woman in Japan.

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<sup>315</sup> Ibid, 493.

<sup>316</sup> Chalmers, Sharon. *Emerging Lesbian Voices from Japan*. Abingdon, Oxfordshire: Routledge, 2014, 80.

<sup>317</sup> Ibid.

<sup>318</sup> Ibid.

In Chalmers's article "Emerging Lesbian Voices From Japan", she presents a quote by an individual named Chiho:

In Japan there is a father and a mother and children, and no one can see family any other way. Anything else isn't really family, but only a distortion, and those families that are different are judged by the degree to which they are different from the standard family.<sup>319</sup>

This sentiment expresses the rigidity of heteronormativity in Japan and how it is reinforced by any type of family outside of the "norm" being judged depending on the "uniqueness" of the family. Due to this, fear of being judged and being an outcast prevents LGBTQ+ individuals from "coming out of the closet", which reinforces the idea that being a part of the community is unnatural and attempting to live a heteronormative lifestyle is the better alternative.

### **History vs. Today**

Though these structures appear to be produced by the doctrines of Confucianism, how can the disapproval within these structures concerning LGBTQ+ sentiments be reconciled with the acceptance and even praise of homosexuality in Japanese history? As stated in the history section in Chapter 2, Confucian scholars regarded *nanshoku* with indifference, and some even participated themselves. Sentiments appear to have changed with the opening of Japan to the world system in 1859.

According to Leupp, "today's Japan is not the bisexual world of the Tokugawa townspeople."<sup>320</sup> Instead, the predominant view is that homosexuality is aberrant, and the

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<sup>319</sup> Ibid, 81.

<sup>320</sup> Leupp, Gary P. *Male Colors: The Construction of Homosexuality in Tokugawa Japan*. Berkeley: Univ. of Calif. Press, 1995, 202.

ones who indulge in such behavior should do it discretely without revealing it to family and coworkers.<sup>321</sup> This attitude toward homosexuality is one that has changed significantly over “the past 125 years.”<sup>322</sup> Leupp states that,

The changes are due in large part to the nature of Japan’s incorporation into the world system since 1859, when the first treaty ports were opened to foreign trade. A consensus developed within the Japanese ruling elite that Japan must absorb Western learning in order to obtain the respect of Western nations and to reverse the terms of the unequal treaties. Such “learning” included the hitherto unknown concept of “illegitimacy”; a new conviction that phallic religious images were shameful and deserving of destruction; and homophobia.<sup>323</sup>

Thus, the Western views on homosexuality were assimilated into Japanese culture, and that assimilation is what has led to the view Japan has concerning the LGBTQ+ community today.

With the increased socialization, which in turn brought about policy diffusion (as well as a diffusion of ideals), Japanese mindsets appear to have changed to conform with the Western ideals of the time. These Western ideals appear to have been integrated into the Japanese principles and combined with Confucianism to establish the rigid structures that appear today. As Japan grew into the “developed” country of today, policy diffusion’s effect weakened (though, it is still fairly strong in some areas as seen in the “Policy Diffusion” section). Even though the Western countries from which Japan originally inherited ideals have established significant LGBTQ+ rights today (e.g., the United States and Germany), Japan has not made the same movements in legislation. It is from here that we need further research into the cause of Japan’s apathetic stance on establishing more LGBTQ+ legislation.

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<sup>321</sup> Ibid.

<sup>322</sup> Ibid.

<sup>323</sup> Ibid.

## **Conclusion**

In this chapter, I briefly discussed a few societal factors and issues that I believe are reinforcing Japan's apathetic stance on LGBTQ+ legislation. The first factor discussed, "coming out", can be an extremely difficult process for LGBTQ+ individuals, especially to family members, because of the structures that exist and how the family might react. Additionally, the family and heteronormative structures that exist in Japan reinforce the idea that being a part of the LGBTQ+ community is not natural and that following the prescribed heteronormative path is the simplest plan and one that will be acceptable to family members as well as society.

The main dilemma that can be drawn from this chapter is that, though democracy can help establish the necessary environment for LGBTQ+ individuals to "come out," it is really these cultural (or structural) changes that are necessary in order to achieve legislative change; yet, this requires people to "come out." Without a large LGBTQ+ community fighting for equal rights, the apathetic regard the government has given LGBTQ+ legislation will persist. However, in order for a large LGBTQ+ community to be established and more LGBTQ+ rights to be created in Japan, people must "come out", and these structures must be modified.

## **CHAPTER V: CONCLUSION**

LGBTQ+ legislation has gained political clout around the world over the past several decades, and, during this time, many countries have shifted their legislation in favor of the LGBTQ+ community. Though Japan's history is rich in homosexuality, Japan has not made the same stride in establishing equal legislation for the LGBTQ+ community. At this time, out of the primary laws, Japan has only legalized the changing of gender and the right to serve in the military nationwide, with the former being criteria-based and the latter somewhat ambiguous.

In order to determine the cause of Japan's apathetic stance regarding LGBTQ+ legislation, in this thesis, we examined Japan's status concerning frequently discussed theories (i.e., regime type, economic, religiosity, civil society, and the rule of law) as well as some lesser-discussed theories (i.e., socialization, policy diffusion, and global queering). As seen in Chapter Three, Japan's status in each of the frequently discussed theories is at the level of which theorists claim that we should see more LGBTQ+ equal legislation; however, Japan has very limited equal rights for the community. When compared to other countries at the same status as Japan in each of these theories, Japan does appear to be an outlier. Also, as seen in the lesser discussed theories, Japan does not lack in socialization, policy diffusion, nor global queering. Therefore, the frequently discussed and lesser discussed theories do not explain Japan's lack of LGBTQ+ legislation.

When looking at potential reasons for Japan's lack of legislation, "Coming Out," the family structure and heteronormativity was addressed. As seen from the surveys

discussed in Chapter Four, it is extremely difficult for LGBTQ+ individuals to “come out” in Japan, especially to family members. With people not “coming out” in Japan, the community goes unseen, and the apathetic attitude towards establishing legislation in favor of the LGBTQ+ community goes unbroken. Additionally, the family structure and heteronormativity in Japan forces individuals to conceal their identity (i.e., sexual orientation and/ or gender identity) so that they are not judged as outcasts and so that they can be treated the same as everyone else.

### **Suggestions for Further Research**

Due to limited cross-national data on LGBTQ+ rights and protections, determining how accurately the theories explain LGBTQ+ progress is challenging. While existing data does provide information on current legislation and a glimpse at discrimination around the world, these remain limited. Frequently updated cross-national data, while expanding upon the discrimination index and establishing a more thorough overview of current rights and protections, is needed in order to conduct cross-national empirical studies that test the theories that potentially explain progress regarding LGBTQ+ legislation. In order to refine theories and identify the various factors that impact LGBTQ+ legislation, more robust data is needed.

Though this thesis determined that Japan is an outlier regarding the frequently and lesser-discussed theories, it merely scratches the surface on other factors that might explain the lack of progress in Japan. In order to determine whether the factors in Chapter Four are affecting the lack of legislation in Japan as well as determining what other factors could be involved, more qualitative studies are needed that look at cultural

factors, the existence and role of pro-LGBTQ+ civil society organizations, and the political dynamic in Japan pertaining to LGBTQ+ issues. Furthermore, additional data is needed in terms of Japanese public opinion regarding LGBTQ+ issues. Also, the interviews and surveys I had intended to conduct are needed to examine what factors individuals within the Japanese LGBTQ+ community believe are maintaining the apathetic view the Japanese government has towards establishing more LGBTQ+ legislation.

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