CONCRETE POLICY OUTCOMES THROUGH

NEW SOCIAL MOVEMENTS?

A comparative study of same-sex partnerships
in Germany and Japan

Master's Thesis

by Daniel Beckurts

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Abbreviation index

BVH	Federal Association of Homosexuals *Bundesverband Homosexualität*
CDU	Christian Democratic Union *Christlich Demokratische Union*
CSU	Christian Social Union *Christlich Soziale Union*
DAH	German AIDS Foundation *Deutsche AIDS Hilfe*
EMA Japan	Equal Marriage Alliance Japan
ECHR	European Court of Human Rights
EP	European Parliament
GDR	German Democratic Republic *Deutsche Demokratische Republik*
GFR	German Federal Republic *Bundesrepublik Deutschland*
GG	German Basic Law *Grundgesetz*
GID	Gender Identity Disorder
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ILGA	International Gay and Lesbian Association
IHD	Community of German Homophiles *Interessensgemeinschaft Homophiler Deutschlands*
IHWO	International Homosexual World Organisation *Internationale Homophile Weltorganisation*
J-ALL	Japan Alliance for LGBT Legislation
LGBT	Lesbian, Gay, Bisexual, Transgender, Intersex
LPartG	German Partnership Law *Gesetz über die Eingetragene Lebenspartnerschaft*
LSVD	Lesbian and Gay Federation in Germany *Lesben- und Schwulenverband Deutschland*

MASH	Men and Sexual Health
NPO	Non-Profit Organization
NSM	New Social Movement
OGC	Osaka Gay Community
OCCUR	Japan Association for the Gay and lesbian Movement *動くゲイとレズビの会*
PACS	Pacte Civil de Solidarité
POS	Political Opportunity Structure
RMT	Resource Mobilisation Theory
SED	Socialist Unity Party of Germany *Sozialistische Einheitspartei Deutschlands*
SPD	Social Democratic Party of Germany *Sozialdemokratische Partei Deutschlands*
SSU	Same-sex Unions
SVD	Gay Men's Federation *Schwulenverband Deutschland*
TL&GP	Tokyo Lesbian & Gay Parade
UN	United Nations
UNICCPR	United Nations International Covenant on Civil and Political Rights
WHO	World Health Organization
WhK	Scientific-Humanitarian Committee *Wissenschaftlich-humanitäres Komitee*

Abstract

Sexual minorities and their supporters are embracing gay and lesbian liberation. In many parts of the world, same-sex couples are fighting for partnership rights. From the 1990's to the early 2000's, Western Democracies experienced a push for gay and lesbian rights, such as the emergence of legally recognized Same-Sex Unions (SSUs). This spread of SSUs resulted from an international diffusion of norms and learnings. By contrasting Germany, considered a western country, with Japan, considered a non-western country, this paper hopes to determine whether a gay and lesbian movement exists in Japan in the "western" sense, and how they influenced policy outcomes with regard to same-sex partnership rights in Japan and Germany. Central to the analysis of this paper are case studies from Germany and Japan. This paper compares these case studies and links them back to the (non-)existence of the gay and lesbian movement in each country.

Stringing together theories of social movements, history, case studies and expert interviews to compare the German and the Japanese gay and lesbian movement, this paper finds that in both cases the gay and lesbian movements did not directly influence concrete policy outcomes. The three cases of this paper show features of top-down policies that were centrally managed and did not incorporate the local gay and lesbian movement. This paper further finds that at the time of the introduction of the respective public policies, a gay and lesbian movement in the "western sense" existed in "the background" in Germany, but in Japan a united movement with common goals did not evolve. Noting that each domestic discourse has its own rationale and set of outcomes, this paper highlights that recent change (such as organizations advocating same-sex partnership) and outlooks taking place in Japan are compelling because they could challenge prevalent assumption in the Western world that identity-driven queer activism reliably achieves concrete policy outcomes. The Japanese case is worth observing in future because gay and lesbian rights here may be achieved without the emergence of a gay and lesbian movement in the Western sense.

Introduction

Across the world same-sex couples are fighting for partnership rights. Sexual minorities and their supporters are embracing gay and lesbian[1] liberation. From the 1990's to the early 2000's, Western Democracies experienced a push for gay and lesbian rights, such as the emergence of legally recognized Same-Sex Unions (SSUs). This spread of SSUs resulted from an international diffusion of norms and learnings, which "represents one of the most stunning cases of convergent policy change in recent times" (Kollman, 2007: 329).

The conventional wisdom would predict that Japan, being a democracy, would have followed this trend. However, Japan currently does not legally acknowledge the unions of same-sex citizens. As the graph below shows, of the top 23 GDP-per-capita OECD member countries, Japan and South Korea are the only member nations that deny both same-sex marriage and de-facto partnership rights.

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[1] In order to answer the research question, this paper will focus on the gay and lesbian movements in Japan and Germany. The author of this paper is aware that gays and lesbians are only two of the categories of the subgroups of the sexual minority community. Other commonly mentioned groups are Bisexual, Transsexual and Intersex people which, all put together, form the acronym LGBTQ. Opinions within social sciences as well as by people concerned go far apart in regards to the applicability of these terms (for details see Epstein, S. (1999). For example, some people argue that any form of categorization creates a cleavage between "the community" and "the other", whereas others argue that this distinction is essential and helpful in community building and necessary in order to be recognized by "mainstream society". This paper, however, takes more of a political science approach by looking at the outcome such movements can create. Thus, this paper intends a less evaluative approach in order to refer to all homoerotic and transgender identities considered ''different'' from heteronormative masculinity and femininity. For methodological reasons this paper chooses only to look at the "G" (gay) and the "L" (lesbian) movements whilst only referring to other subcategories sporadically. The demarcation of these terms is necessary to guarantee a focus on the object of research question.
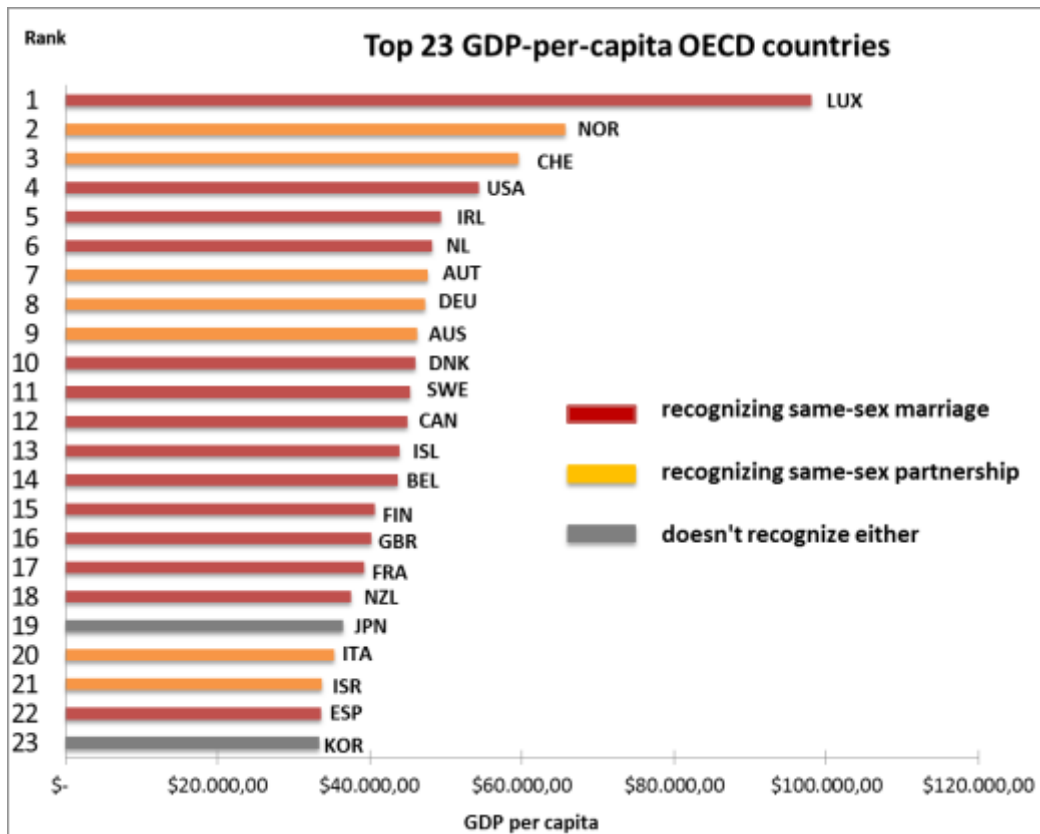
Graph 1: Top 23 OECD GDP-per-capita countries' attitudes towards same-sex marriage[2]

Japan's aberration from the pattern is surprising. Through its academic and media discourses Japan appears relatively tolerant towards same-sex citizens. Pre-modern records of intergenerational same-sex relationships in Japanese culture exist (Ihara 1990; Leupp 1995; Pflugfelder 1999; McLelland 2000; Chalmers 2002) and today Japan does not ban homosexuality or same-sex sexual acts (Taniguchi 2006). Japan is also a signatory to the United Nations International Covenant on Civil and Political Rights (UNICCPR), which has emphasized non-discrimination and equality for sexual minorities. In these regards, Japan is more open toward homosexuality than many so-called western countries.

These international norms (UNICCPR) agreed to by Japan stand in stark contrast to the domestic reality. Japan has yet to implement policies to protect sexual minorities and to guarantee partnership rights within its own borders. Even though homosexuality and transgenderism are not prohibited, the situation of Japanese sexual minorities has been characterized by "invisibility, marginalization, silent prejudice and stigmatization"

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[2] GDP Data as of 2014, source: OECD data; based on EMA Japan (emajapan2013). "OECD 加盟国の 1 人当たり GDP の上位 23 カ国です。日本より豊かな国は全て同性婚か同性パートナーシップ制度を有しています。#同性婚 を認める多様性に寛容で平等を重んじる国ほど経済的に繁栄しているという相関関係が 認 め ら れ ま す 。 " 16 January 2016, 15:35 p.m. Tweet. https://twitter.com/emajapan2013/status/688504910355120128

(Yamashita 2012). This lack of legal protection towards sexual minorities has been interpreted by some as Japan lagging behind "the West"[3].

In spite of the missing legal framework and the overall unpropitious legal environment for sexual minorities, on 12 February 2015, Shibuya ward officials announced that the district[4] would issue partnership licenses for same-sex couples that year. The license is part of an ordinance which only has legal power in the ward (it is a recommendation for companies and public facilities to respect the couple who holds the certificate). The decision, however, is highly symbolic: it is for the first time that a Japanese official body has recognized the partnership by two individuals of the same-sex. Consequently, this decision received wide media coverage within Japan and around the globe.

Reacting to Shibuya-ward's announcement, neighboring Setagaya-ward declared they too would consider a same-sex partnership policy in the same year. The design of the "Setagaya Guideline" referred to the "Hamburg Marriage", a partnership license that came to life in Germany in 1999. It was issued by the city of Hamburg, and as in the case of Shibuya and Setagaya, it did not guarantee any rights. Nevertheless, many claim the "Hamburg Marriage", is considered trailblazing for gay and lesbian rights. This is because two years later the license led to the creation of the Registered Life Partnership law at a national level, which legally defines duties and rights for same-sex couples in Germany.

The same-sex licenses issued by Shibuya and Setagaya ward have drawn attention to sexual minority issues in Japan through mainstream media. This trend is reflected in the two graphs presented below (see graph1 and graph2).

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[3] Keeping in mind the difficulties of an ethnographic approach, the author is aware of the orientalist notion of the term "the West" and the binary thinking such a use enhances. Keeping this in mind, the paper will still employ it for pragmatic reasons.
[4] Shibuya is one of the 23 wards of the city of Tokyo. It is located in the west of the Japanese capital.
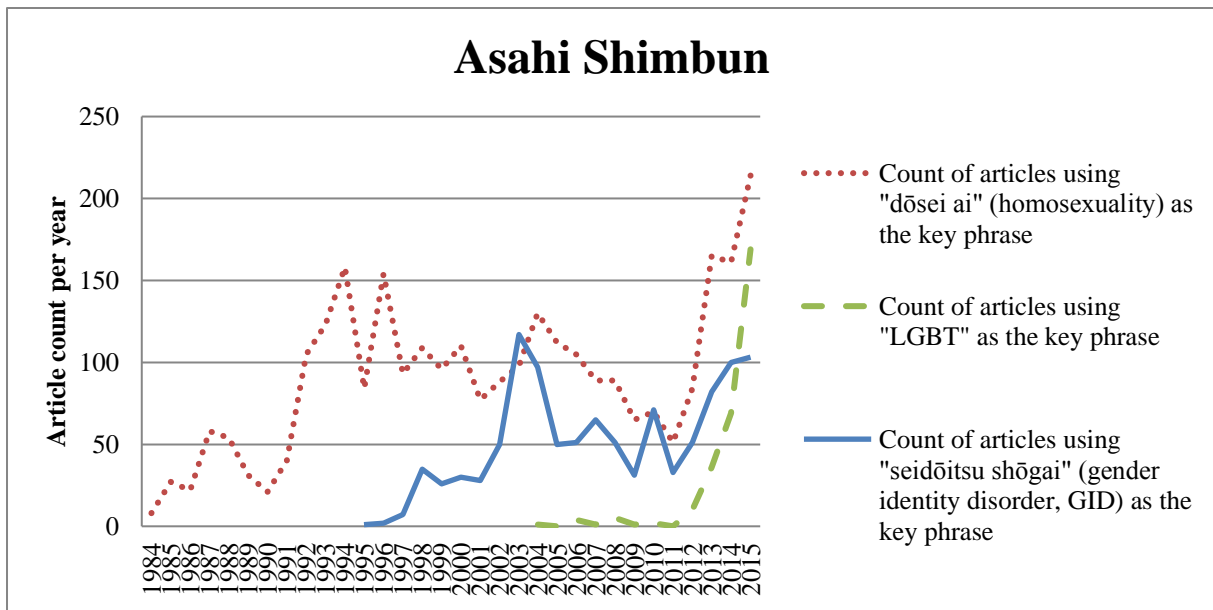
Asahi Shimbun

Graph 2: Database search results of Asahi Shimbun in regards to key phrase[5]
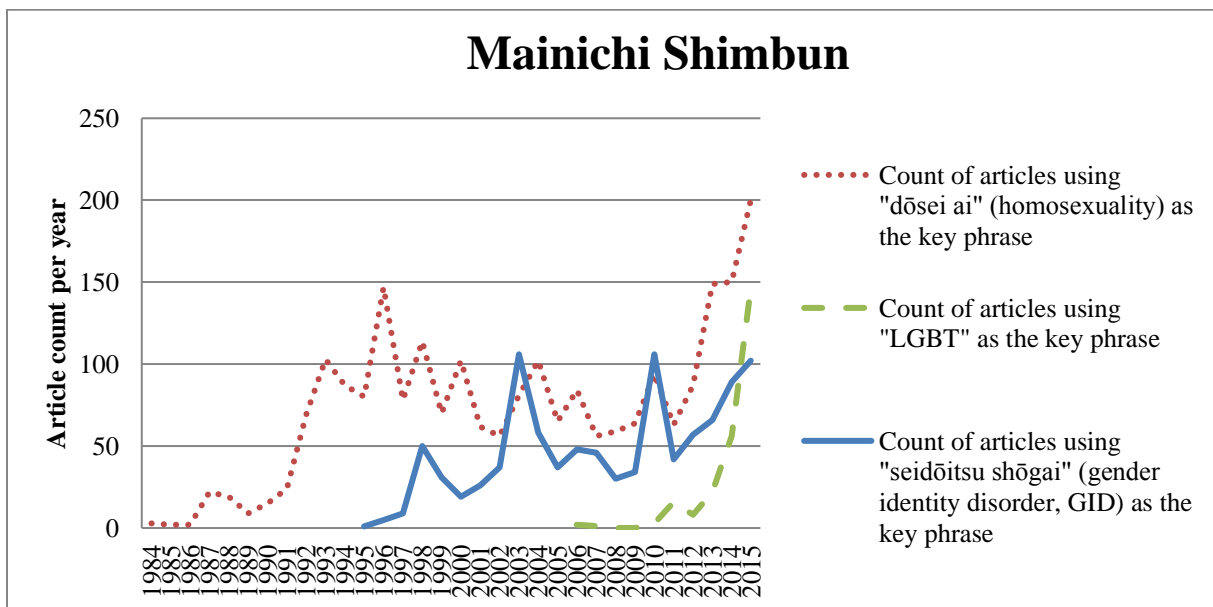
Mainichi Shimbun

Graph 3: Database search results of Mainichi Shimbun in regards to key phrase[6]

The heightened media attention, the birth of NGOs and NPOs promoting sexual minorities and the rise of same-sex couple friendly company policies give the impression that the gay

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[5] Graph 2 shows the database search results covering the following publications of the Asahi Shimbun Company (scope of search 1st January 1984 until 31st December 2015). The database results covered the following publications of the Asahi Shimbun Company: Asahi Shimbun (朝日新聞), Asahi Shimbun Digital (朝日新聞デジタル), Aera (アエラ) and Shūkan Asahi (週刊朝日). The search results by term were as follows: "*dōsei ai*" (homosexuality) 2987 search results, "LGBT" 394 search results, "*seidōitsu shōgai*" (gender identity disorder) 1139 search results.

[6] Graph 3 shows the database search results covering the following publications of the Mainichi Newspapers Company (scope of search 1st January 1984 until 31st December 2015): Mainichi Shimbun (毎日新聞) and Shūkan Economist (週刊エコノミスト). The search results by term were as follows: "*dōsei ai*" (homosexuality) 2368 search results, "LGBT" 259 search results, "*seidōitsu shōgai*" (gender identity disorder) 1018 search results.

and lesbian movement is gaining traction in Japan. However, this impression must be examined from a theoretical perspective.

Comparing Japan and Germany, it appears Japanese same-sex couples are at a disadvantage to their German counterparts, since they lack a legal framework to legitimize their relationship.

Going from this disparity between Germany and Japan, this paper examines in how far gay and lesbian activism, as a New Social Movement, can influence policy outcomes with regard to same-sex partnership rights in both countries. Furthermore, this paper will tackle the following questions:

Why has Japan not followed the pattern of other democracies of a legal framework for same-sex citizens? To what extend was Japan affected by the global gay and lesbian movement as a transnational movement?

This paper will examine concrete political events and use them to make inferences about policy outcomes by social movements. A comparative analysis between the "Hamburg Marriage" against the "Shibuya Partnership license" and "Setagaya Guideline"[7] will give insight into why Japan still lacks a legal framework. Put differently, this paper will compare in how far the gay and lesbian movement played a role in the transformative events of the introduction of the pro same-sex public policies in Germany in 1999 and in Japan in 2015.

The juxtaposition of Japan and Germany is both complex and highly relevant. Historically, Japan has borrowed elements from the German legal system, so it is interesting to see how the two countries have taken divergent approaches in dealing with sexual minorities. By contrasting Germany, considered a western country, with Japan, considered a non-western country, this paper hopes to determine whether a gay and lesbian movement exists in Japan in the "western" sense, and how they are influencing contemporary sexual norms. Although the analytical focus will be public policy, this paper understands that the respective cultures also play an important role in this international comparison, and will not ignore them.

Western scholars have traditionally dominated the study on social movements. When it comes to the discourse of sexual activism, even the term "homosexuality" as an identity is influenced by western thinking.[8] Despite his western cultural background, the author intends to provide conscientious, impartial and neutral analysis throughout this paper.

These prevalent biases and cultural complexities make comparing the gay and lesbian movement in Japan versus western democracies both challenging and interesting. This paper will focus on commonalities: the case studies. Parallels exist, such as local governments in both countries being the first to launch symbolic public policy initiatives, awarding quasi-legal rights to same-sex partnerships. This empirical analysis of case studies provides a degree of comparability. As the author specializes in the study of International Public Policy, this

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[7] This paper would like to mention that these cases are hand-picked examples. The inferences made about the gay and lesbian movements in each country do not have universal meaning and the results shown in the following do not represent the entire "movement" in each country but just a fraction of it. This paper also hopes to clarify that sexual minorities do not have one common goal but each group and subgroups within the LGBT community follow their own cause and have an agenda of their own.

[8] Personal observation by the author

paper will further examine how far the gay and lesbian movement in Japan has influenced the enactment of these policy measures.[9]

Sexual minority activism has received less scientific attention than mainstream social movement literature. There is some literature on the German case, but a distinct dearth of information on the Japanese gay and lesbian movement. The German movement has often been embedded in an inter-European or American comparison, whereas most of the studies on Japan have been viewed in isolation. In neither country have the selected cases been linked to the field of social movements nor have possible interdependencies been examined. Thus, this paper enters unexplored theoretical territory by first writing about the within-Japan comparison (by analysing the two policies in Shibuya and Setagaya), followed by an international comparison (Japan-Germany) with the "Hamburg Marriage". In doing so, this paper proposes two novel questions for the academic debate: how have these gay and lesbian movements influenced local government policy and how have these public policies affected the national development of gay and lesbian rights in each country? Finally, the academic lens will widen and then examine if transnational activism has influenced the diffusion of same-sex values, in each country. This aspect, too, has not yet been researched in a German-Japanese context before.

This paper's methodological approach adheres to the following structure: The first chapter is the theoretical manifestation of this paper. The author has chosen applicable theoretical concepts commonly used for social movements. The chapter then discusses the theoretical framework that will be applied to evaluate the historical trajectory as well as the interviews later in the paper by using theories of structural and constructivist ontological approaches.

Chapter two will place the object of research in a historical context. By contrasting the history of the gay and lesbian movement in Germany versus in Japan, this chapter explains each country's trajectory in dealing with sexual minorities. Besides mentioning key historical events, this chapter highlights the rights of same-sex couples in each country.

Chapter three introduces the case studies of the "Hamburg Marriage", "Shibuya Ordinance" and "Setagaya Guideline". This part classifies and analyzes books, internet pages, tweets, interviews, symposium reports relevant to the cases.

Chapter four describes the conducted structured expert interviews with representatives of the local governments in Germany and Japan who were involved in the making of the public policies in both countries or who had special knowledge on the issue. Here the same questions were asked of each interviewee to provide maximum comparability. The questions narrowed the field of study but still remain open to detailed, qualitative answers. Keeping the research process open is essential, since additions to and revisions of the theoretical structuring, hypotheses and methods are always possible (Mayring, 1999: 17).

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[9] It should also be mentioned that delineating same-sex partnership rights from other sexual minority rights, does not mean that previous attempts for pro sexual minorities policies have not been attempted or successfully implemented in either of the countries, e.g. gender equality plans by local governments or transsexual laws in Japan.

The chapter employs a multi-layered discourse to examine the cases. For the sake of scientific validity, criteria have been selected which create comparability to other methods and evaluate the chosen method on its scientific merits (Lamnek, 2010: 127). Since this broad field of study is vastly unexplored, there has been no scientific work dedicated to the cases of the Shibuya ordinance and Setagaya guideline, alone or in comparison with the "Hamburg Marriage". Therefore, a qualitative interview and content analysis is appropriate.

In comparison to the quantitative method, which focuses on objectivity, validity and reliability through numerical measurement, these are no parameters for the assessment of qualitative studies (Lamnek, 2010: 131). When it comes to qualitative studies it is necessary to apply parameters which fit to the execution and intention of the research (Mayring, 2002: 140).[10]

This paper uses the classification technique when conducting a qualitative content analysis. Mayring defines the classification technique as: "the structuring of data material according to empirical and theoretical features that appear to be appropriate approaches to organization in order to guarantee a structured description of the collected material" (Mayring, 2003: 22).

Chapter five is the conclusion of this paper which summarizes the main findings and points out aspects for possible future research. Here the theories introduced in chapter one are applied to the context explained in chapters two, three and four. That way all the strands of the previous chapters will be brought together in order to answer the overlying question of this paper and give an outlook for possible future research.

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[10] In this case, the argumentative justification of the choice of methodology through the presentation of evidence is a discourse which calls for a high degree of flexibility.

1. Theoretical positioning and localisation of the object of research

To properly contextualize the object of research, one must first understand the Japanese perception of "homosexuality" as a western concept. Since this paper synthesizes social movement studies (political) and sexual minority studies (cultural) in an international comparison, sexual identity[11] must be comprehensively discussed. Theorists have classified gay and lesbian movements as New Social Movements. To understand this theoretical classification of social movements, Tarrow's (2011) "Power in movement: Social movements, collective action and politics" provides a much needed context.

Queer activism research lies at the intersection of social movements and sexual minority studies. These two strands need to be explained before the object of research, the gay and lesbian movement in Japan, can be embedded in a theoretical context.

The strand of social movements discusses theories of social science that can be used to explain and analyse historical events in order to find out whether a certain social movement exists in a country or not. The strand of sexual minority studies, or queer studies, allows the author to compare understandings of homosexuality and community between cultures.

These two strands combined form queer activism, which is a theoretical basis for an international comparison of gay and lesbian social movements in the countries Germany and Japan.

This chapter will define social movements and New Social Movements (NSM) and provide a theoretical background. As previously stated, the debate on movements of gay and lesbian identity has been dominated by the Western world and the applicability of social movement theories to the Japanese case needs to be carefully examined.

In order to examine in how far the aspect of international socialization influenced the development in Germany and Japan, this paper introduces the theoretical concept of "transnational activism".

Formal limitations make it impossible to highlight all of the theoretical aspects of social movements in this paper. The author has decided to bisect the paper into external (structural) and internal (constructivist ontology) approaches.

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[11] While identity here rather means the identification of the individual with the community, the theoretical conceptualization of identity politics in Chapter 1.4 takes a strategic approach and looks at in how far this identity can be translated into political movement strategies.

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                    ┌─────────────────┐
                    │ Social movements│
                    └─────────────────┘
              ↙                           ↘
┌──────────────────────────┐   ┌──────────────────────────┐
│ External Approaches       │   │ Internal Approaches       │
│ (structural)              │   │ (constructivist)          │
│                           │   │                           │
│ Political Opportunity     │   │ Framing Theory            │
│ Structures (POS)          │   │                           │
│                           │   │ New Social Movement Theory│
│ Resource Mobilization     │   │                           │
│ Theory (RMT)              │   │ Collective Identity Theory│
└──────────────────────────┘   └──────────────────────────┘
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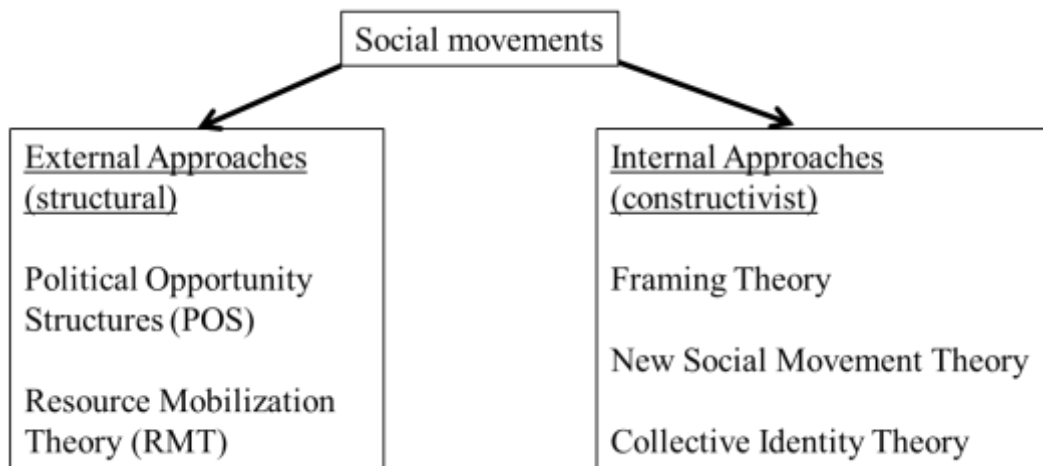
Graph 4: Selected aspects of social movements[12]

Structural means that "the theories focus on conditions that cannot be molded to actors' purposes" (Tarrow, 1998: 18). The structural approach discusses theories that are more "neutral" (by ignoring culture) and might thus be a good option when doing a cross-national comparison. Theories of the structural approach are the Political Opportunity Structures (POS) approach and the Resource Mobilization Theory (RMT).

In contrast to these structural discourses stands the constructivist view which comprises the Framing theory, New Social Movement theory and Collective Identity Theory. This view examines how individuals and groups identify and interpret conditions for collective action by focusing on the role of cognitive, affective, and ideational roots of contention.

1.1. Theoretical conceptualization of homosexuality in modern Japan and Germany

The gay and lesbian movement is at the intersection of the fields of study of culture, politics and identity. Before theorizing on the concept of identity politics (see chapter 1.4.1.), it is important to focus on homosexuality as the starting point. Due to divergences in discourse, Germany and Japan understand gay and lesbian identity differently. This chapter focusses on the contemporary self-perception of homosexuals in each country.

The discussion on gay and lesbian identities originates in the West without giving much space to views on non-western countries. This primarily Western perspective implies a particular way of conceptualizing homosexuality (Foucault, 1990: 152-3) [13], and a particular relationship between sexuality and identity (Bernstein 2005).[14]

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[12] Own representation

[13] Foucault undertakes a binary division of human beings into two sexual types, the homo- and heterosexual, based on the gender of their sexual partner. This division has been accepted and established itself as the primary paradigm for understanding human sexuality in most western societies, its applicability.

[14] The author is well aware that by applying these terms, which have their origin in the Western world, to non-western countries, this approach runs dangers of evoking cultural imperialism, ethnocentrism and orientalism. Therefore, it is essential to state this possible bias for this paper, as it attempts to conduct a cross cultural analysis.

The differences that exist in the understanding of the word "homosexuality" in Germany[15] and Japan have to be mentioned. That way differences regarding identify politics between the two countries, as will happen in the conclusion of this paper can be pointed out.

When highlighting the east/west contrast for the term "homosexuality", it is important to mention Dowsett (1996: 274). He states that "supposedly clear, unambiguous Western 'gay identity' as an example for sexual minorities in Japan is problematic, not least because the content of such an identity is difficult to articulate." "Although often presented mistakenly that way, the 'West' does not, after all, operate with a singular discourse of homosexual identity" (McLelland, 2000b: 469).

Research with a cross-cultural perspective on different understandings of homosexuality and queer culture in Japan was close to non-existent until the 2000s. Since then authors have made attempts to shine light onto yet relatively unexplored territory (Kazuma et al. 1997, Summerhawk et al. 1998, Lunsing 1999, 2001, 2005; McLelland 2000a, 2000b, 2003a, 2003b, 2005; Suganuma 2007, 2012; Tamagawa 2016).

Lunsing (1997, 1999, 2001, 2005) and McLelland (2000a, 2000b) make invaluable contributions to deciphering the notion of 'gay identity'.[16] Both authors interviewed several Japanese informants, taken into consideration the difficulty of the discourse on homosexuality in Japan and the West.[17] Their findings reveal that the Japanese gay community's views on gay identity and gay rights differed from the Western discourse. Lunsing (1999: 314-5) describes how the vague concept of identity is shifting in Japan, as opposed to having a rigid set of identities in the West.

Scholars have rigorously discussed where Japan stands in comparison to the West (Shimizu 2007; McLelland & Suganuma 2009). They conclude that the situation for Japanese homosexuals depends on the expectations an individual has about living a "gay lifestyle". McLelland (McLelland, 2000a: 215) points out that, "Needless to say, […] the acceptance of a homosexual lifestyle in Europe or America is tenuous, provisional and very geographically specific.", and "the extent to which 'Japan' is experienced as a constraining environment and 'America' understood as a liberating one is largely tied up with the expectations that an individual has about living a 'gay lifestyle'. If living with one's same-sex lover is understood as a central and definitive aspect of 'being gay' then, quite clearly, the Japanese social structure disadvantages men who wish to live together, just as it disadvantages unmarried men and women who want to do the same."

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[15] This paper sees Germany, being embedded in western philosophy, as part of the Western system and therefore sees it in line with the Anglo Saxon and other western countries' understanding of homosexuality. Although sexual culture and the gay and lesbian communities in each country have their own discourse on homosexuality, the author, in the following only refers to binary thinking (east/west, oriental/occidental by "lumping" the German case together with other western countries) for practical reasons. As the focus of this paper is on the Japanese case less attention will be given to the German case.

[16] It should be mentioned that their research mainly covers male informants.

[17] For example, McLelland (2000a:3), interviewing 16 informants, concludes that "it is clear that the myriad representations of homosexuality in Japanese culture cannot be judged in terms of a pre-existent, unitary, empirical sexual experience shared by all homosexual men." He further points out the importance not to "oppose the relatively fluid understandings of sexuality held by his Japanese informants with a monolithic 'gay identity' supposedly held by western homosexual men and women".

Berry (2001: 212) contends that Asian queer cultures "should not be understood as setting up a fixed and naturalized Asian gay identity versus a Western gay identity. Instead, a subtle conceptual framework is required to accommodate these multivalent and sometimes contradictory articulations".

There are linguistic challenges to consider too. The Japanese language uses a multitude of loanwords to describe homosexuals but struggles to find an expression in its own vernacular. McLelland (2000b: 460) points out the differing connotations of e.g. the word 'gay' which is also an English loanword in Japanese (*gei*). Unlike the English term which associated political activism with the term, the Japanese term had been associated with cross-dressing and prostitution as in the term 'gay boy' (*geiboi*) in the past which was used for transvestite male prostitutes. McLelland (2000b: 462) points out the difficulty that gender normative gay men in Japan have in finding vocabulary to discuss their same-sex attraction in a neutral way. A similar observation can be made regarding the struggle to find a term to describe same-sex love among women in Japan: "The less politicised stance of same-sex desiring individuals in Japan is made clear by the difficulty of finding a single term in the Japanese language that all same-sex desiring individuals, both men and women, identify with." (McLelland, 2000a: 226-7)

McLelland (2000a: 2) mentions that only recently 'sexuality' has started to connote 'identity' in Japan. This change is slow: sexuality as identity is still not the commonly held opinion, as opposed to the Western world where this concept originates from. An important difference between Japan and the West is that same-sex sexuality is often described as a 'play' (*purei*) or a 'hobby' (*shūmi*) by Japanese. Homosexuality does not have the same moral valency as is in the West, where it has ignited moral debate in the past (McLelland, 2000a: 216).

McLelland (2000a: 19) further argues that the desire for identity does not come from inside the homosexual male community in Japan, which tends to represent their same-sex desire in terms of sexual acts. This form of expression has little impact or significance for their self-image or identity. However, an identity making comes from outside of the community through Japanese mass media which presents homosexual men in terms of a certain identity that is understood differently gendered rather than differently sexed. McLelland criticizes that Japanese mainstream and gay media give a conflated image of homosexuality and gender inversion in Japanese culture that aggravates prejudice rather than reflecting the entire spectrum of forms and expressions of homosexuality.

The media representation of gays is different in America and Europe where the focus is on political activism (McLelland, 2000b: 460). "Unlike gay media in Japan, Euro-American societies support a wide variety of media which target people with non-mainstream sexualities and thereby foster a sense of commonality or community between them." (McLelland, 2000b: 463)

McLelland (2000a) also notices a gap within the gay community in Japan. On the one hand there are well-publicized Japanese gay activists in contemporary Japanese society who use a western agenda of gay identity and gay rights. On the other hand, there are many common Japanese men who remain skeptical about the usefulness of this discourse in a Japanese

context. McLelland summarizes that for the majority of his Japanese interview partners, stating their difference in a society that values homogeneity is not considered necessary or beneficial.

McLelland (2000a: 228) [18], citing his informants states that homosexuality is not often discussed from a 'human rights' (*jinken*) point of view, and if so, it is often done so by Japanese men who live or have lived outside of Japan. Lunsing (2005: 148) describes the situation that while legal improvements are on the way for sexual minorities, human rights have little meaning to the local sexual minority scene. He subsumes that Japan, unlike the US, is not a litigious society.

1.2. Theoretical conceptualization of a social movement

Research on social movements emerged in the West more than fifty years ago. In and through social movements, actors who feel inadequately represented in political everyday life, usually try to gain influence. They want to change the existing imbalance, the power structure with its "inherent" claim for power and privileges (Roth & Rucht, 2008: 15).[19]

Amenta et al. (2010: 288) define political social movements as: "actors and organizations seeking to alter power deficits and to effect social transformations through the state by mobilizing regular citizens for sustained political action." This definition focuses on social movement organizations (SMOs) by McCarthy & Zald (1977) or "challengers" as Gamson (1990) calls them which can be classified into social movement families. The definition includes both non-institutional (protests, civil disobedience) and institutional (lobbying, lawsuits, press conferences) forms of collective action.

Tilly and Tarrow (2015: 23) define a social movement as: "[...] a sustained campaign of claim making, using repeated performances that advertise the claim, based on organizations, networks, traditions, and solidarities that sustain these activities." Contentious politics are not necessarily social movements; in fact, they are in the least of cases. Tilly and Tarrow (2015: 23) further define four factors that combined with each other define social movements: " (1) sustained campaigns of claim making; (2) an array of public performances including marches, rallies, demonstrations, creation of specialized associations, public meetings, public statements, petitions, letter writing, and lobbying; (3) repeated public displays of worthiness, unity, numbers, and commitment by such means as wearing colors, marching in disciplined ranks, sporting badges that advertise the cause, displaying signs, chanting slogans, and picketing public buildings. They draw on (4) the organizations, networks, traditions, and solidarities that sustain these activities- social movement bases."

As this paper is a cross-cultural study, it must address whether social movements and their theories are truly applicable across cultures. Research on social movement in Asia by Asian scientists is a comparatively young but growing field of research (Broadbent et al. 2010). Broadbent (2010: 3) challenges the prejudice towards East Asia "having an acquiescent

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[18] While this source may seem outdated they are highly relevant to this topic. The conclusion of this paper shows that these findings hold true to this day.
[19] Translated by author.

populace and weak civil society, in fact, the region has always been replete with movements." These movements have been classical movements as discussed in this chapter but also new social movements as described in chapter 1.4.4.

1.3. Theoretical conceptualization of transnational movements

In the 21st century states often manage their economies, ecologies and other aspects of social life through international political arenas. Social movements follow a similar trend: they are increasingly transnational in their structure and focus.

For this reason, this paper will analyze the Japanese queer culture in the context of globalization. The author will analyze whether the Japanese gay and lesbian movement is also affected by transnational movements such as the global gay and lesbian movement. This question resounds with the notion of globalizing queer and the internationalization of gay identities which again relates to understandings of homosexuality and identity mentioned in chapter 1.1.

Since the 1990s, several authors have observed the increasing global proliferation of gay, lesbian, and transgender/transsexual (g/l/t) identities (Sullivan & Leong 1995; Miller 1992). This must influence the paper's analysis of Japan. The question of queer cultures in the context of globalization has been raised by social scientists since the 1990s, most prominently by Dennis Altman (1996) in his theory on "global queering".

Peter Jackson researches Asian queer cultures in the context of globalization. Drawing on Arjun Appadurai's critique of homogenization theory, he points out that globalization "needs to be understood as the operation of common processes in diverse locales, inciting semi-independent and parallel developments in these different places. In other words, gay and other new identities may have multiple origins in a globalizing world" (Jackson, 2001: 14).

1.4. Theories of social movements

This section defines the theoretical framework of this paper. There is no one "pass-partout" theory that explains all aspects of a social movements and one can only approximate an analysis of social movements through theories. The theories in this chapter are selected examples of theories relevant to studying the gay and lesbian movement in Japan and Germany. Each theory represents puzzle pieces that, when put together, give the reader an outline of the current situation. This paper will continue to use theories of Western origin and it is necessary to highlight the problems that arise when applying these concepts to non-western cultures. As Broadbent (2010: 10) keenly asks: "[…]are these discrete mechanisms too abstract, or too bound up with Western culture, so as to be devoid of reliable causal efficacy across cultures?"

Theories of social movement have evolved along with the social movements themselves. The author has judiciously selected theories that can be divided into two categories: structural and constructivist approaches. First, the structural approach: since the 1970s, social scientists have developed theories and research on the interrelated concepts of political process. Critical concepts like "political opportunities" and "mobilizing structures" take a macro perspective

on social movements by considering the external political process and internal organizational dynamics.

The constructivist approach is constituted by the "framing theory" and the "collective identity theory" which both originate in social constructivism. Social constructivism, just like the New Social Movement Theory, places culture at the centre of its research. Therefore, the author has decided to cluster these three theories.

1.4.1. Political Opportunity Structure Theory (POS)

One of the most researched approaches on social movements is the Political Opportunity Structure approach (POS) (Tilly 1978; Mc Adam 1982; Kitschelt 1986; Tarrow 1989; Kriesi et al.1992).

Political Opportunity Structure approach (POS) contends that protest movements develop through external influences, especially political framework conditions, rather than internal conditions (collective identity). This approach highlights characteristics of the political system in order to explain social movements. New opportunities and/or the reduction of repression lead to the emergence of social movements and determine their strategy and success. Windows of opportunities in the political environment could be elite allies, cracks in state repression, state crises. The theory follows a structural paradigm because certain characteristics of the political system enable or disable mobilization. This way differences between countries (e.g. Kitschelt 1986) as well as over time can be explained, which is both important for this paper.

The POS can be combined with other theories and thus poses a flexible approach in explaining a wide spectrum of social theories. This is why the author has chosen to use this theory.

1.4.2. Theory streams of Resource Mobilization Theory (RMT)

Another structural approach involves Resource Mobilization (Oberschall 1973; Gamson 1990; McCarthy and Zald 1977; Aya 1990). In contrast to the New Social Movement approach (see 1.4.4), in which psychological or cultural factors play a bigger role, both the POS as well as Resource Mobilization (RM) approaches suppose that social movements are actors that follow rational decision patterns. Accordingly, the research focuses on the behavior among individuals: whether actors support or oppress one another. They do not focus on group grievances but rather emphasize the external political processes and internal organizational dynamics that influence the rise and development of movements.

According to McCarthy and Zald (1977), the Resource Mobilization Theory focuses on the means available to collective actors. The existence of certain key qualities decides the success of a movement: public attention, political coalitions, internal organizational structure and abundance of resources. These resources include expanded personal resources, professionalization, external financial support available and connection to elites. The movement is steered by so-called "protest elites" or "political entrepreneurs". The Resource Mobilization Approach relies heavily on the Rational-Choice theory. This theory stipulates

that collective protest emerges once individuals have weighed the costs and benefits of participation and choose to act based on their personal analysis (Bonacker & Schmitt, 2004: 199). Collective action thus is not so much spontaneous and structurally induced but rather a strategy built on the successful organization of interests. (Bonacker & Schmitt, 2004: 197ff.).

1.4.3. Framing Theory

Framing Theory is a constructivist approach to social movements. Describing and scandalizing problems and grievance are central motives of social movements. Framing Theory was first described by Goffman (1974) and Kahneman & Tversky (1979) and has since then developed to one of the most widely spread concepts in social sciences. McAdam et al. (1996: 6, 8) define framing processes as "the conscious strategic efforts by groups of people to fashion shared understanding of the world and of themselves that legitimate and motivate collective action".

The Framing approach considers problems dependent on the interpretation of the surrounding condition. Aspects of reality fall into in an interrelated framework. Facts and conditions are alterable concepts. They are seen as problems that have causes and perpetrators which need to remove or fight the problem. Furthermore, the frame presents the goals as achievable and explains the (legitimate) competence of the protest actor.

1.4.4. New Social Movement Theory

New Social Movements Theory (NSMT) evolved in Europe in the 1980s to explain the new social movements in advanced capitalist societies which deviated from the conventional social movement pattern. In contrast to the class-based social movements, which focus on industrialism, New Social Movements are interested in post-materialism: quality of life and self-determination through identity politics (Buechler 2007).

NSMT is in sharp contrast to the POS and RMT approach because it places culture at the core of its analysis of social movements. The approach looks at how issues of identity and personal behavior are tied to social movements. By doing so it shares attributes of new social constructivism (Buechler 2007).

The gay rights movement is considered a NSM, making NSMT crucial for examining this paper's object of research. "Empirically seen, the gay and lesbian movement consists of a mix of (sub-) cultural and political goals. Even if the movement first and foremost strives to have its lifestyle accepted by society, its members also push for a legal equality in all areas of life (gay marriage, inheritance law, anti-discrimination laws, etc.)." (Roth & Rucht, 2008: 15). [20]

Stephen Epstein describes a problem for gay and lesbian movements in the United State as follows:

"Each term in the phrase 'the gay and lesbian movements' either dissolves into a fog of ambiguity or congeals into sharp contradictions. The word 'the' suggests unity and coherence, when in fact there have been multiple movements over time- "homophile," "gay liberationist,"

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[20] Translated by author

'lesbian feminist', 'gay rights,' and 'queer,' to name only a few- with widely different self-understandings and political strategies. The term 'gay and lesbian' is also problematic, for part of what is at stake in the context that I describe as the very question of the movement's collective identity: who is the 'we' on behalf of whom activists speak? Do gay men share with lesbians a cohesive identity that can generate a single political vision? If so, does it encompass the demands of bisexuals and transgendered people or of self-styled 'queer' who reject the terms 'gay and lesbian'? […] Finally, the word 'movement' should not go unexamined. Though it typically refers to recognizably political projects that have as their end such tangible goals as gay rights legislation, it can also denote activities directed toward the redefinition of culture and selfhood-movements for 'sexual freedom,' for new family forms, for 'gay spirituality'." (Epstein, 1999: 31).

Although the study of social movements has been extensively researched in recent decades, studies on the gay and lesbian movement have been relatively sparse. The scarcity is especially clear when it comes to comparative surveys and cross-cultural social movement analyses, in particular with a comparison of East and West. Studies of gay and lesbian movements so far have tended to have a strong geographic or historical focus in their respective regions.

1.4.5. Collective Identity approach

Closely related to the framing approach is the Collective Identity approach. Just like the Framing approach, this approach also assumes that movements are constructed in their identity, affiliation and composition, perspective, style and mythos. That way cohesion and the capacity to act can be created. The formal organization is sidelined by the self-steering of decentralized movements, which depends on common communication and identity. Collective Identity is not inborn; instead it is formed by a group's common interests and experiences, through struggle in the interplay of several political actors, including the movement (Whooley 2007).

According to the Collective Identity approach, Collective Identity is the most important mobilisation resource of the movement allowing for action and self-organisation. This approach differs from other social theories which see organisation at the crux of social movements. Following the Collective Identity approach, social movements are regarded as a three-dimensional unit on an objective, social and a chronological level, which constructs a collective actor. Such a movement deliberately differentiates between the "us" and "them". It isolates itself from its environment. The collective-identity of "us-them" is created through a discursive approach (common destiny, history, legend, language etc.) and through common practices (common rituals, symbols, fashion). This approach examines movements primarily from the inside. Like the Framing approach, Collective Identity originates in social constructivism (Whooley 2007).

While there are few studies on processes of collective identities in social movements, a considerable part of these studies actually deal with collective identities in the US American gay and lesbian movement (Bernstein 1997, Gamson 1995, 1997, Slagle 1995, Taylor and Raeburn 1995).

2. A historical positioning of the object of research

This chapter gives a historical overview of gay and lesbian activism in Germany and Japan. Historically positioning the object of research both helps the reader understand the historical trajectory of the gay and lesbian movement and contextualize the case studies that will be introduced in chapter 3 in the overall flow of events.

By taking the long view, this chapter examines key events of each movement that led to a politicised sense of gay and lesbian consciousness in each country.[21] The starting point for both countries will be the latter half of the 19th century when Japan became a "modern state" and a diplomatic exchange between the two countries began. The overview will end in the end in the present day. This analysis will uncover how the gay and lesbian movement in Japan and Germany made differing legal progress, with more emphasis on historically positioning the Japanese gay and lesbian movement. As explained in Chapter 1.1, there is a differing understanding of homosexuality in Japan as compared to the West. This chapter will give a historic perspective that helps to explain differences that exist. The reader should not assume that activism was only focused on the metropolis areas of Tokyo and Osaka. Movements in other Japanese cities such as Hokkaido, Fukuoka, and Naha have evolved and participated in their own events etc.

After showing the history of sexual minorities in each country, the Japanese case will be given further attention. It will be explained how the Japanese gays and lesbians were not able to build a movement to counter their common predicament. Lastly, this paper will show how legal cases were the only way for sexual minorities to start fighting for their rights.

McLelland & Suganuma's (2009) research on queer activism takes a broad historical view and points out the paradigm change that has taken place among sexual minorities since the 1970s linking same-sex sexual activity and human rights which has gained mainstream attention in Japanese society. McLelland's monography "Queer Japan from the Pacific War to the Internet Age" (2005) touches on the discussion of queer theory in a globalized age.

In the German case Roth & Rucht (2008), Dobler & Rimmele (2008), Kollman (2013) and Haunss (2013) were essential contributions to trace the German history of the gay and lesbian movement.

2.1. An overview of the German history of the gay and lesbian movement until today

The German gay and lesbian movement can be roughly divided into the "first", "second" and "third" movement.[22] While initially there were some gay and lesbian groups that interacted together, the majority of lesbian groups were close to the women's movement in Germany. (Dobler & Rimmele, 2008: 542)

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[21] For pragmatic reasons this paper will not write about the trans- and bisexual movement in each country.

[22] The author is aware of the possible constraint such simplistic approach might have on the history of the gay and lesbian movement and a narrowing of the perspective of preceding political aspirations, organisations and movements in which people have fought for the right of sexual self–determination. For example, critiques regarding the second movement have noted that this self-naming reduces its historical antecedents to only the WhK and its demise through the Nazis. However, for the sake of overview the author chooses to use the trisection of the three movements.

The gay and lesbian movement together has supported a variety of political demands and actions since the mid-1990s. Historically seen, however, the two movements need to be analysed separately because a collective identity is only coming into existence at best today.

Another notable aspect is that Germany was a divided country for a considerable time of this historical overview (1949-1990). The focus of the historical outline will be on the democratic western part of Germany, the Federal Republic of Germany (FRG). In the socialist East, called the German Republic of Germany (GRD), attempts were made to establish a gay and lesbian movement mainly due to West German influence. However, due to the entirely different political and societal conditions, as well as prohibition of groups and the media, the GRD did not establish a movement until the mid-1980s. Only under the umbrella of the church could the gay and lesbian movement form in Eastern Germany. Therefore, the gay and lesbian movement of the East, which was a united movement until the Fall of the wall, needs to be examined separately from the one of the FRG because it followed different strategies under different societal conditions (Dobler & Rimmele, 2008: 542; Herrn, 1999: 53).

The fight for the recognition and rights of the homosexual movement in Germany is closely linked to Paragraph 175 of the Penal Code which has existed since the establishment of the German Empire in 1871. This statutory provision followed the paragraph of unnatural intercourse of the penal code of Prussia which was adopted in the unification of the German empire. This law forbade any homosexual sexual act between men. If violated, the state had the right to confer a prison sentence or disenfranchisement. For this reason, the first organization worldwide that fought for the rights of homosexuals, "Scientific-Humanitarian Committee" *(das Wissenschaftlich-humanitäres Komitee,* WhK*)* was founded in 1897 which demanded the deletion of the paragraph. Founder of this organization was a doctor and sexologist Magnus Hirschfeld (Tremblay & Paternotte 2015). The members of the WhK collected signatures and presented a petition regarding the abolition of Paragraph 175 in the Imperial Diet (Reichstag) and the German Parliament (Bundestag). This marks the beginning of the first movement in Germany.

Compared to the relatively unconstrained space of the Weimar Republic which made Berlin a center of the homosexual movement in Europe, the Nazi regime from 1933 to 1945 was a drastic turnaround of events. In May 1933, the Nazis set fire to Magnus Hirschfeld's Institute for Sexual Research in Berlin and two years later forced a tightening of paragraph 175 in 1935. From then on not even the physical contact, a mere desirous glance between men was sufficient to arrest them for until five years. Estimates are that between 50, 000 and 100, 000 homosexuals were arrested and charged with homosexuality. While some men were sentenced to castration, about fifty-thousand men were sent to prison. 5, 000-15, 000 men were interned to concentration camps and had to wear the *pink triangle* (Rosa Winkel), one of the Nazi concentration camp badges indicating homosexual male prisoners. Many of the victims died of hunger, disease or targeted killings under the harsh living conditions in the concentration camps. [23]

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[23] Chan, S. (2016, May 11). Germany Says It Will Rescind Convictions for Homosexuality. Retrieved September 29, 2016, from: http://www.nytimes.com/2016/05/12/world/europe/germany-says-it-will-rescind-convictions-for-homosexuality.html?_r=1

After WWII and the partition of Germany, the eastern German Democratic Republic (GDR) used the pre-Nazi jurisdiction of paragraph 175 and in 1968 removed the entire paragraph from the penal code. In West Germany the German Federal Republic (GFR), however, continued to use the tightened version of paragraph 175 that existed during the Nazi regime. This law excluded homosexual women who were not mentioned in its reading. During the revolution in 1968 which was also a sexual revolution, homosexuals claimed their rights and demanded for the paragraph to be removed from German law. (Dobler & Rimmele, 2008: 543)

The organisation of groups and the development of a collective identity in West Germany, however, were influenced by different factors. After Germany's defeat in WWII, a subculture with association and club activities was at first tolerated in the GFR. The few groups that advocated the liberalisation of paragraph 175 and reparation of former homosexual concentration camp victims, besides a few exceptions, failed to be recognized by the state. The groups offered legal support to their members and provided a subcultural infrastructure through events and magazines. In 1953, however, the "Act on Dissemination of Publications Harmful to Young Persons" was issued which affected the internal publications of these groups. The gatherings were no longer able to draw attention to their cause which forced many of the groups to dissolve at the beginning of the 1960. The movement retracted to private circles and the political opinion making was made mainly through foreign magazines such the Swiss magazine "*der Kreis*". The discussion regarding the liberalisation of paragraph 175 was continued via single personalities of the movement throughout the 1960s. (Dobler & Rimmele, 2008: 543)

The Criminal Justice Reform in 1969, not only lead to a liberalisation of paragraph 175 but also to a liberalisation of pornography in 1973. The legal reform allowed the publication of new magazines for homosexuals. Homosexual associations were again founded such as International Homosexual World Organisation (IHWO) and the Community of German Homophiles[24], which in their goals and strategies held on to those of the groups of the 1950s and 1960s. Single gay activists groups had existed in 1970/1971 already; however the movie by Rosa von Praunheim, "It Is Not the Homosexual Who Is Perverse, But the Society in Which He Lives"[25], released in 1971 led to an impulse that caused the formation of new groups and the new gay movement (Dobler & Rimmele, 2008: 544). The idea behind the movie was for homosexuals to be proud of their homosexuality and it became the initial spark for the second homosexual movement in Germany. The movement formed itself in the early 1970s within the student scene. As a consequence of the student movement the gay movement chose new forms of action and confidently proclaimed a new identity: being "gay".

The movement sought to change their own subcultural lifestyles, and also to contribute to the sexual liberation of society (Dobler & Rimmele, 2008: 542). A new aspect about the gay liberation movement at the beginning of the 1970s was the breach with its own self-image and

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[24] Translated by the author as no official translation exists. German Name *Interessensgemeinschaft Homophiler Deutschlands* (IHD)

[25] German: *Nicht der Homosexuelle ist pervers, sondern die Situation, in der er lebt.*

a breach regarding the strategy towards the "homophile movement"[26] as it existed before 1969. In 1972, the first gay demonstration in the history of the Federal Republic of Germany took place in Münster. In 1969 and 1973, an incremental softening of paragraph 175 was evoked. The legal age for unpunished homosexual intercourse in Germany was lowered to 18 years.

However, there was friction in the movement as how to deal with homosexuality in public. The two opposing groups were radical student groups on the one hand which wanted to display their sexual orientation in an offensive way in public and those groups which disapproved of this behaviour and were in favour of a more moderate approach. Already towards the end of the 1970s a process of institutionalisation and differentiation emerged. New groups in the province, occupational groups as well as groups in societal intuition such as in churches, labour union and parties were founded. Along with this process a change of the goals and strategies took place towards anti-discrimination politics which aimed at integration. This led to radical student groups giving up their anti-institutional and anti-subcultural position and the momentum began to swing towards groups which were more inclined toward integration. (Dobler & Rimmele, 2008: 545).

The movement took another decisive turn with the emergence of the AIDS disease and the horror scenarios which circulated in public. While the majority of active gays now actively got involved in AIDS support and a healthcare network, the movement was able to found a federal association due to the feared repression. This led to the founding of the "Federal Association of Homosexuals" (Bundesverband Homosexualität, BVH) which represented most political directions.

West Germany had active gay and lesbian communities and organizations in its urban areas in the 1980, however, these groups lacked unification on a national level and they did not, as would happen a decade later, organize themselves around a human rights framework (Herzog 2005).

Even though a first rapprochement between gay and lesbian groups could be observed in the early 1980s, the BVH remained a gay umbrella organization because its main goals, the eradication of paragraph 175 and its fight against AIDS were mainly gay concerns. However, in the fight against repressive strategies to combat the AIDS disease, not the BVH, but rather the AIDS groups (*AIDS-Hilfe*) and its umbrella organisations Deutsche AIDS Hilfe (DAH) played a key role. Even though these organisations were no pure gay organisations, they have to be seen as part of the gay movement of the 1980s. They represented a prevention concept that builds on an acceptance of gay sexual behaviour and gay lifestyles. Through the societal discourse regarding various prevention strategies, gay sexual behaviour was discussed as never before. As part of the health care policy a public funding of gay groups took place.

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[26] The word 'homophile' first appeared in a book called 'Hetero and Homophilie' by a German physician and homosexual activist in 1924 (Legg, 1994:23-7). The homophile movement was the name for the homosexual reform movement of the 1950s across North America and Europe. In Germany there was not one unified movement but various groups dispersed across the country. Compared to a more radical stance taken by gay activists in the 1960s, the homophiles movement, which lasted past the 1960s, was marked by the conservatism of the 1950s and chose a more hidden forms of activism, with activists often using pseudonyms when writing in publications. Today the term 'homophile' is no longer in use and has been replaced by terms such as 'gay', 'homosexual' and 'queer' (Jackson, 2015:31-2).

Since a societal consensus on the fight against AIDS was found in the late 1980s the issue does not play a central role in public any longer. (Dobler & Rimmele, 2008: 546).

There were several nationwide campaigns regarding the abolition of paragraph 175 throughout the years. The public understanding that this paragraph was outdated rose-if at all it was actually still taken note of. The preparedness of politicians to become active however was limited. Only with the reunification of East and West Germany and the following legislative alignment in the year 1994 was it that paragraph 175 was unspectacularly deleted. The late 1980s already showed that gays in favour of integration did not want to limit themselves to solely the goal of abolition of paragraph 175. They started propagating the demand for a marriage among homosexuals. However, the structural organisation of the BVH, which was a mix of individual and umbrella organizations, impeded the group to respond to these new demands. This instigated leading figures of the BVH to leave the organisation and to enter the "Gay Federation in Germany" (Schwulenverband in Deutschland, SVD). The SVD was founded in the GDR in 1990. It was not an umbrella organisation and its central claim was the legalization of gay marriage. (Dobler & Rimmele, 2008: 546).

The East German groups integrated themselves almost seamlessly in the structures of the West German gay movement. Their influence can be seen in the pragmatism and not in the ideological rigidity of the West German groups. There is a certain East German reminiscence in the term "*Bürgerrechtsbewegung*" (civil rights movement) as a self-naming of the SVD, in order to promote the claim for equality of homosexual partnerships in public. The personalities of the SVD, who were mainly from western Germany, used the positive connotations of civil rights movements in the GDR that had led to the overthrow of the SED[27] (Socialist Unity Party of Germany) regime.

By focusing on same-sex marriage, the gay movement had found a topic that was met with a positive response from media. With the "registry office campaign" (Aktion Standesamt) which was established by the SVD in 1992, more than 250 gay and lesbian couples participated in many cities throughout Germany, expressing the desire to have equal marriage rights just like heterosexual couples had. This campaign caused such media attention that in some cities more journalists were at the registry's office than those wanting to get married (Dobler & Rimmele, 2008: 555).

As the registry offices refused to conduct the weddings, same-sex couples started suing for their rights in order for courts to order the registry's offices. However, all of the complaints were denied by local courts. One couple lodged for constitutional complaint in 1992 but their request was denied by Germany's highest court in 1993 due to the "difference in sex" as foreseen by the German constitution. [28]

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[27] The Socialist Unity Party of Germany (German: Sozialistische Einheitspartei Deutschlands, SED), established in April 1946, was the ruling party of the German Democratic Republic. The party which was dominated by Marxist–Leninist was in power from the country's foundation in October 1949 until it was dissolved after the Peaceful Revolution in 1989.

[28] Decision by the German Federal Court. For further information please see: Bundesverfassungsgericht Urt. v. 04.10.1993, Az.: 1 BvR 640/93, available at: https://www.jurion.de/urteile/bverfg/1993-10-04/1-bvr-640_93

The SVD quickly formed ties with the European networks of gay and lesbian organizations and became an active member of the regional International Lesbian and Gay Association-Europe (ILGA-Europe) which was created in 1996 in order to promote human rights within the European human rights organization. ILGA-Europe was successful at lobbying LGBT rights towards European institution and especially the European Parliament (EP) (Paternotte & Kollman, 2013: 10).

The late 1990s mark the birth of the third gay movement which are fighting for chartered rights for lesbians and gays in Germany. Unlike the second movement, the third movement proactively has been seeking contact with lesbian and women's groups and the movement is now heavily influenced by feminist and queer theories. The goals of the third movement are the harmonization of rights of homosexual couples with those of heterosexual couples, special protection via the constitution and anti-discriminations laws. This has led to a new form of identity building. The successful launch of the claims for same-sex marriage in the media such as the "registry office campaign" led to an increasing amount of lesbians, who did not feel they received any political asylum in the generally leftist oriented lesbian movement, and requested admission to the SVD. On 19 February 1999, this led to the renaming of the SVD to the "Lesbian and Gay Federation in Germany" (Lesben-und Schwulenverband Deutschland, LSVD).

In 1998, after 16 years of conservative rule a coalition of the Social Democratic Party (SPD) and the Green Party came to power at a national level. The Green Party had supported gay and lesbian rights since its inauguration in 1979 and had closely worked together with the SVD and later LSVD (please see below). It was their goal to introduce partnership rights at a national level.

On 1 April 1999, the "Hamburg Marriage", the first quasi-legal recognition of same-sex relationship by the city of Hamburg was established. Resulting from this, a Parliamentary Bill for a "Law to Terminate the Discrimination against Same-sex Communities: Life Partnerships" supported by the SPD and the Green Party was established in 2001. This new legal institution, the Registered Partnership, was designed as an institution only open to same-sex couples (Thorn, 2003:84). The Registered Partnership Law (Lebenspartnerschaftsgesetz) through which homosexual couples were able to enter civil partnership came into force on 1 August 2001.

Together with the General Act of Equal Treatment (Allgemeines Gleichbehandlungsgesetz, AGG) which was established in 2006, the Registered Partnership Law enabled same-sex couples to create a protection similar to marriage.[29] A registered partnership is exclusively meant for same-sex couples and is not part of the German Civil Code but is regulated by a special law (Lebenspartnerschaftsgesetz or LPartG). Since its introduction it has been reformed progressively to level those of civil marriage in Germany in aspects such as maintenance law, property law, inheritance law, and tax law. Today main differences between marriage and registered partnerships are that men and women in a registered life partnership do not have the right to adopt children together. One of the partners is eligible to do so but he

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[29]The Japan Institute for Labour Policy and Training (2016). 諸外国の LGBT の就労をめぐる状況. Available at: http://www.jil.go.jp/foreign/report/2016/pdf/0531.pdf, p.56-7.

or she needs the consent of his partner. Also a step-child adoption, which is the adoption of the biological child of one partner by the other partner is legal. The Federal Constitutional Court has not enabled equality in this aspect yet but it does not approve of the current situation. [30]

Since the end of the 1970s annual demonstrations have been taking place that remind of the gay and lesbian riots in New York's Christopher Street in 1969. In 1979, the first two Christopher Street Days (CSD) gay parades[31], took place in Berlin and Bremen. They have increasingly grown in size in the course of time. Whereas the initial parades placed central political messages, in recent parades the entertainment factor takes on a central role.

A micro census, based on questionnaires voluntarily completed, was conducted in the year 2013 which reported that over 35, 000 same-sex partnerships had been registered in Germany. In 57% of the cases the partnerships had been signed between men and in 43% of the cases by women.[32]

In 2008, the Memorial to Homosexuals Persecuted under Nazism was unveiled in Berlin which was dedicated to the victims of prosecution of homosexuals under Nazism. In 2016, Germany announced to offer $33 million in reparations to gays prosecuted under paragraph 175 during and after the Nazi era.[33]

2.2. An overview of the Japanese history of the gay and lesbian movement until today

There is ample proof within Japanese culture of a tradition of both male and female homosexuality since pre-modern times. First accounts of male homosexuality date back to the end of the 10th century A.D (Leupp, 1995: 11). First traces of women's homosexuality in the literary world can be found in the middle of the Kamakura Period (1259-1278) and later in the wood-prints (*shunga)* of the Edo period.

Historically seen homosexuality never reached the level of stigmatization in Japan as it has in western hemispheres. In fact, even though there was a twelve year window[34] in the Edo period (1603-1867) during which anti-sodomy laws existed, these were never strictly enforced. It was only during the "modernization" of the *Meji* period, through the influence of western scientists, that homosexuality received a negative connotation in Japan.

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[30] Stern, Der (2016, May 27). Eine Lebenspartnerschaft ist noch keine Homo-Ehe. Retrieved September 19, 2016, from: http://www.stern.de/politik/deutschland/homo-ehe--das-sind-die-unterschiede-zur-eingetragenen-partnerschaft-6204016.html

[31] On 28 June 1969, a police raid was to take place at a gay bar which was a common practice at that time. However, customers at the "Stonewall Inn" in the Christopher Street defended themselves against these arbitrary interference which led to day-long riots against institutionalised oppression.

[32] Federal Statistical Office of Germany , available at: https://www.destatis.de/DE/PresseService/Presse/Pressemitteilungen/zdw/2015/PD15_012_p002pdf.pdf;jsessionid=004911FEAA871C79F3B00632776BF4EB.cae2?__blob=publicationFile

[33] Chan, S. (2016, May 11). Germany Says It Will Rescind Convictions for Homosexuality. Retrieved September 29, 2016, from: http://www.nytimes.com/2016/05/12/world/europe/germany-says-it-will-rescind-convictions-for-homosexuality.html?_r=1

[34] Japan had an anti-homosexual criminal law from 1873 to 1881, which took reference to the Qing and German laws, but this prohibition was lifted in line with the French penal code (Pflugfelder, 1999:161-170).

New influences of medicine, sexology and psychology from Germany percolated to Japanese society and culture at the beginning of the twentieth century after the Meiji government was forced (1867-1912) to open itself towards the West. This period showed a high degree of openness by the new government in Japan to interact with American and European counterparts by sending missions of senior statesmen, academics, scientists and intellectuals abroad. In 1872 a law was established that made sodomy (*keikanzai*) illegal. "This law—in line with mainstream Japanese constructions of homosexuality throughout its history and persistent to this day—regarded homosexuality not so much as something personified in particular individuals, but rather as an activity in which people may or may not engage." (Lunsing, 2005: 144). However, this law was withdrawn in 1880 under the influence of a French lawmaker, cooperating with the Japanese to draw up a new criminal code in accordance with the Napoleonic Code (Pflugfelder, 1999: 168).[35]

At the turn of the century sexology emerged in Germany's medical circles. Richard von Krafft-Ebing an Austrian-German psychiatrist and forensic who specialized on a "scientific" view on homosexuality, declared same-sex activities an "abnormal psychosexual predisposition" in his book "Psychopathia Sexualis" (1886). Homosexuality had traditionally been condoned in Germany through the church and the legal profession at that time. Germany was one of the major references for medical study in Japan and as a consequence of the wave of German influence on medical education in Japan, Krafft-Ebing's work was translated to Japanese and the negative image on homosexuality established itself in Japan (McLelland & Suganuma, 2009: 331; Neary, 2002: 14).

Since this paper focusses on political activity, the further developments of queer culture during the early 20th century until the end of WWII will not be discussed in this paper. For a comprehensive overview please see (McLelland & Suganuma, 2009).

Therefore, unlike the West, Japan did not see the emergence of a national gay and lesbian movement in the 1970s. Politics based on sexual identity became much less of an issue in Japan, but started earlier among lesbians than gay men, due to the politicizing influence of the feminist movement and the fact that women were lacking rights in Japanese society. However, lesbian activism was hardly visible outside specific communities because the mainstream feminist movement refused to take on lesbian issues and due to sparse financial resources of lesbian activists (Mackie et al., 1980: 106; McLelland & Suganuma, 2009: 330).

Influenced by the second-wave feminism at the end of the 1960s, lesbians started to perceive issues concerning themselves as a part of the women's liberation discourse and the early 1970s saw the rise of a range of women's groups and publications around lesbian identity. The first documented social group was the lesbian group "Young Grass Club" (*Wakakusa no Kai*) in Tokyo in 1971 and is said to demark the starting point in lesbian community building in Japan (McLelland et al., 2007: 167). The most enduring lesbian organization has been "Regumi", a group founded in the late 1980s, consisting of a loose alliance of lesbians, from the bar world or involved in feminist activities. The group's name was made up of "re" which stood for *rezubian* and the character *gumi* or "group". The group had a newsletter called

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[35] France had a liberal attitude towards homosexuality due to Napoleonic Law at that time.

Regumi News (*regumi tsūshin*) which was has been published since 1985 and includes information about lesbian literature, various support and discussion groups and a telephone information line. The first lesbian commercial publication, *Phyrne*, was only published in 1995 however.

Separated activism between gays and lesbians can be explained by the difference in gender. Gay men firstly were men and thus less disadvantaged than women in Japanese society. Lesbians belonged to a "double-minority" in Japan and thus had a heightened interested to demand political change. However, this does not mean that the women's movement was welcoming towards lesbians. The women's movement in Japan has been criticized for not incorporating lesbian interests into their agenda.

The earliest traces of gay organizations can be found in the 1950s. The main focus of these groups was on social activities. One of the best documented groups is "Adonis Group" (*Adonisu no Kai*) (Lunsing, 1995: 303). The first activist who attempted to get Japanese people to think more critically about homosexual desire was Tōgō Ken became the prominent gay "activist"[36] of the time (McLelland et al., 2007: 23). His electoral platform Miscellaneous People's Party (*Zatsumin no Kai*), which became the gathering place for people who were socially disenfranchised by not corresponding to the social "norm" regarding notions of family and life and relationships. Since 1971 he partook in the national elections as a gay candidate. Despite being unsuccessful in his campaign to gain a seat he continued this attempt for the next 20 years. However, being a controversial character he did not manage to rally enough people around his idea and to incur sustained change (McLelland & Suganuma, 2009: 335).

In the 1970s several groups of gay men existed whose activities were difficult to categorize. Printed media proved to be the uniting factor for these groups. The first publication of that time, "The Rose Tribe" (*Barazoku)*, helped establish a network of groups through classified ads (McLelland & Suganuma, 2009: 335). The main activities of these groups were mainly of social nature, mainly for meetings over drinks. Besides the *Barazoku* Network other groups existed as well, such as the "Frontrunners" (*Furontoranā*), and "Platonica" (*Puratonika*) (Kazama et al. 1997).

In the late 1970s other gay pioneers such as Ōtsuka Takashi had begun to utilize *gei* as an identity category. He was the host of a weekly segment on homosexuality of a radio program in 1978 and 1979 (Lunsing, 1995: 304). However, Japanese activists were still isolated with relatively few connections to gay and lesbian movements abroad. This is due to *gei* being associated to the professional bar workers and was only starting to undergo a change towards a subject position. This is in contrast to the work *rezubian* which always had always been more politicized. (McLelland & Suganuma, 2009: 335)

It is only since the mid-1980s that a voluble discourse linking same-sex sexual activity and human rights has gained public attention. The 1980s saw the surfacing of the AIDS disease around the globe and after the spread of the HIV infection to Japan, the domestic media's

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[36] Opinions differ if this word is the right term to describe Togo. While Lunsing (1999) agrees, McLelland & Suganuma (2009) do not find this term befitting.

attention started focusing on gay people living Japan. The media together and politicians contributed to Japan's AIDS Panic. This hostile climate towards gay men helped to unite gay men and lesbians to campaign against discriminatory policies (Chalmers 2002). One of these counteractions contained a campaign against the AIDS Prevention Act[37] (*Eizu yoboho*) of 1989 (Iino 2008).

The newly found unity led to the creation some gay and lesbian organizations. As international interest in the situation of Japanese homosexuality grew, Minami Teishirō, editor of the gay magazine *Adon*, was interviewed by a foreign journalist in 1983. This interview led to the International Gay and Lesbian Association (ILGA)[38] contacting Minami and offering him to become the representative of ILGA in Japan. Minami founded the Japanese branch of ILGA called JILGA in 1984. Minami in his capacities also travelled abroad to ILGA conferences and workshops, representing Japanese sexual minorities (McLelland & Suganuma, 2009: 335). Minami also attempted to set up JILGA branches in other parts of Japan than Tokyo-with mixed success. The Osaka branch did not agree with Minami's authoritative style of communication and split off to form the Osaka Gay Community (OGC) in 1987. Minami decided he wanted to become more political in his activities and was able to recruit like-minded people via Adon the magazine he published. However, the younger generation seemed to have too radical ideas for many of the older members of JILGA and a split took place in 1986.

The new group of progressives founded the organization Japan Association for the Gay and lesbian Movement (OCCUR[39]) which came to be the most high-profile Japanese of all gay and lesbian organizations at an international level (McLelland, 2005b: 177). In the 1990s they began adopting the concept of tōjisha (the party concerned), "demanding to be consulted by policymakers where gay issues were concerned" (Lunsing, 2005: 143).

In 1991, OCCUR fought against social discrimination through launching a court case against the Tokyo Metropolitan Government. This case became knowns as the Fuchu Hostel Incident (*Fuchū seinen no ie jiken)*(Taniguchi 2006). Members of OCCUR held a meeting at the hostel in the early 1990s and were derided by other groups using the facilities when they found out it was a sexual minority group. As a result of this incident OCCUR members were refused to use the facility in future by the hostel management. The group responded with a legal case against the owner of the facility, the Tokyo Metropolitan Government. In 1997 the Japanese High Court ruled in favor of the gay group stating that OCCUR was equally entitled to use the facility (Sanders, 2014: 133).

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[37] This law, had it been passed, would have required that doctors register the names and addresses of people living with HIV with local authorities.
[38] The ILGA offers support to developing a gay and lesbian organization network across the globe, also lobbied national governments and international organizations such as the United Nations to ensure protection of rights of sexual minorities.
[39] In the following this paper will focus on the case of OCCUR, however it is important to keep in mind that this organization was one of many organizations that represent the interests of gay men and lesbians in Japan.

In 1994, the first gay and lesbian parade, the Tokyo Lesbian & Gay Parade (TL&GP) was held under the supervision of Teishirō Minami in Tokyo.[40] In 1996, it came to an open verbal exchange between Minami and other groups of participants who felt they were excluded from the decision making process (McLelland & Suganuma, 2009: 336).

In 2007, the TL&GP was renamed Tokyo Pride Parade. Ongoing conflicts led to the parade taking place irregularly[41]. In 2012, Tokyo Rainbow week, held at a different date became a parallel parade next to Tokyo Pride Parade. Since 2012 Tokyo Rainbow Pride has been held every year.

The visibility of the gay rights movement grew into new directions in the mid-1990s. On the one hand there was a geographical shift of the movement away from Tokyo and the founding of two successful and new gay magazines, *Badi* and *G-men*. The two publications remain the most circulated magazines after other publications such as *Adon* had stopped its publications. The two publications openly addressed issues concerning sex and lifting the taboo of speaking about HIV-related matters. This new climate of openness lead to further groups emerging such as MASH (Men and Sexual Health) in 1997, and AKTA in 2003. These groups have built community centers and placed themselves in the heart of the gay in Tokyo (AKTA) and in Osaka (DISTA), which have a strong network with medical facilities (Lunsing, 2005: 145). OCCUR remains more of a fringe group now, its funding threatened by those other groups that are more closely allied to the medical establishment and AIDS prevention foundations funded directly by the department of health.

In 2003, Kanako Otsuji, was elected of the Osaka Prefectural Assembly and made headlines in 2005 when she published her autobiography in which she came out as homosexual becoming Japan's first openly homosexual politician. In 2007, she attempted to become the first homosexual Member of the Diet but her first election campaign was unsuccessful. In 2011, Taiga Ishikawa voted assemblyman of Toshima ward and Wataru Ishizaka was voted assemblyman of Nakano ward. Otsuji was successful in her second campaign in 2013, becoming Japan's first homosexual politician on the national stage.

2.3. Aspects of the current situation in Japan

In 2016, Hakuhodo, a Japanese media conglomerate, indicated that 5,9 percent of the Japanese population identify as part of the LGBT community after having processed roughly 89,000 answers. [42] With this estimate they are in the same ballpark area as Dentsu, Japan's

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[40] Siguenza (April 24, 2014). Tokyo gets double dose of gay pride for 2012. Retrieved June 30, 2016 from http://www.japantimes.co.jp/community/2012/04/24/issues/tokyo-gets-double-dose-of-gay-pride-for-2012/#.WCCegMk2f6
[41] The parade was only held in 2010 and restarted in 2012. The reason the parades took place at irregular intervals was internal discord over accusations made by certain sexual minorities that they were being ignored.
[42] Sasakawa, K.（笹川 かおり）. (2016, June 3). 性的マイノリティは 8%　博報堂 DY グループの LGBT 総合研究所が意識調査. Retrieved September 7, 2016, from: http://www.huffingtonpost.jp/2016/06/02/lgbt-hakuhodo-dy_n_10251944.html

leading advertising and public relations company, which conducted a research of 70, 000 people in 2015 and identified 7,6 percent of the population belonging to the LGBT stratum.[43]

Since the beginning of the new millennium the public debate on partnership rights has increased in Japan. News from other countries granting legal rights for sexual minorities reached Japan through the internet and print media and the scientific circles. First commercial publications on same-sex and de-facto rights reached bookstores and public marriage ceremonies (e.g. former Osaka councilor Otsuji Kanako coming out in 2007 and a lesbian wedding ceremony conducted at Tokyo Disney Resort in 2013) have received coverage by mainstream press outlets. Maree notices "there is a noted disjuncture here between the discussion of rights in an overseas context and the celebration of the ceremony in the domestic context" (Maree, 2014: 197). Since 2010 lobby groups have surfaced, which address the need to focus on a serious political attention of partnership rights in Japan (ibidem, 2014: 197).

Waaldijk (2000: 66) points out that for many Western countries there has been a shared, three-step pattern, detectable in the history for lesbians, gays and bisexuals (hereafter LGB): (1) decriminalization, (2) anti-discrimination, and (3) partnership legislation. At the first stage sodomy laws were abolished. An example of this is the attempt by Magnus Hirschfelt to revoke article 175 of the German criminal code in the 20th century. In 1981 the European Court of Human Rights (ECHR) ruled the criminalization of homosexuality in Northern Ireland illegal. This was a starting point for European societies to gradually begin to understand the discrimination of homosexuals as a human rights issue (Minami, 2015: 156). In 1990 the World Health Organization (WHO) entirely declassified homosexuality from its International Classification of Diseases 10. And in 1993 the WHO announced that homosexuality at any rate is not subject to treatment (Minami, 2015: 156). As mentioned above, the legal debate regarding a repeal of anti-sodomy laws was carried out in the international arena in the Toonen vs. Australia case under the jurisdiction of the ICCPR.[44] In 2003 the Supreme Court of the United States of America ruled that sodomy law was anti-constitutional (Minami, 2015: 156).

The second stage occurs when the debate then shifts to issues of non-discrimination. In the 1990s and 2000s several western democracies for the first time adopted anti-discrimination legislation for the workplace and in the provision of goods and services. Fields affected by non-discrimination laws are for example to prevent divergence in the age-of-consent laws and rights to the succession of property of after separation or death of a partner. These issues are discussed in terms of principles of non-discrimination based on "sex" (which can be interpreted to include "sexual orientation") sometime the legislation includes the terms "sexual orientation" or "sexuality" (Taniguchi, 2006).

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[43] Dentsu (2015). 電通ダイバーシティ・ラボが「LGBT 調査 2015」を実施. Available at: http://www.dentsu.co.jp/news/release/2015/0423-004032.html
[44] Toonen v. Australia, Human Rights Commission on International Covenant on Civil and Political Rights (HRC), Communication No. 488/1992, Views of 4 April 1994, UN Doc. CCPR/C/50/D/488/1992. See also, Dudgeon v. the United Kingdom, European Court of Human Rights (ECHR), Application No. 7525/76, Judgment of 22 October 1981, Ser A 45.

The third stage is the legal acknowledgment of same-sex relationships. In 1989 Denmark became the first country in the world to allow same-sex partnerships. Ten years later, in 1999, France introduced the civil solidarity pact (PACS) and in 2001 the Netherlands were the first country in the world to legalize same-sex marriage. Societies began to understand that homosexuality as part of as LGBT issues was a human right issues and the process of accepting same-sex relationships was beginning to gain momentum (Minami, 2015: 156).

However, Japanese politics is reluctant to recognize the rights of sexual minorities in comparison to many Western democracies and the current situation sexual minorities are facing have been described as legal marginalization.[45] Even though same-sex sexuality is allowed in Japan, there are no legal grounds in terms of heritage, anti-discrimination, health care, public housing etc. for same-sex partnership couples. A further problem related to cohabitation is the right to remain to dwell in a property if the deceased partner was the purchasing party of the realty. Same-sex couples have no right to inherit from their partners unless they take specific legal measures. Japan's legislation also lacks equal protection of civil and political rights of sexual minorities. In fact, legal rights for sexual minorities vary in degree by minority group[46] in Japan.

Yamashita mentions possible difficulties same-sex couples could face in times of a natural disaster like the Great East Japan Disaster. Same-sex partners might not be informed about their partner's death in case of fatality and even cohabitation in a temporary housing as a same-sex couple could be difficult (Yamashita 2012).

Azusa Yamashita, Co-Director of Gay Japan News, LGBT online news source and advocacy group and founder of Iwate Rainbow Network, the first LGBT group in Iwate Prefecture, highlights how sexual minorities were affected by the Great East Japan Disaster on 11 March 2011. She mentions that the Japanese government included "people in a difficult situation because of sexual orientation or living with gender identity disorders" in the most recent Basic Plan for Gender Equality as well as "sexual minorities" in the latest Suicide Prevention Measures; also the government provided financial support for the 24-hour LGBT hotline (please see chapter 4.1). But neither the government nor civil society organizations have adequately incorporated LGBT perspectives or issues into their policies (ibidem 2012).

Long before terms such as "LGBT" and "same-sex marriage" (*Douseikon)* started surfacing in Japan, cross dressing comedians, so called *onē-tarento* such as Matsuko Deluxe, a gay man who became famous by appearing in cross-dress, or Haruna Ai, a show persona who was born a man according to her family registry but who identifies as a woman, appeared on variety shows on television. There are some people in Japanese society who say that this "*onē-boom*" has led to more tolerance toward the diversity of sexuality but skeptics point out that people run danger of lumping together transgender and gay people under the so called "*onē-boom*" (Minami, 2015: 4).

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[45] Hongo, J. (2008, December 23). Gay scene: Tolerance, legal limbo. Retrieved September 3, 2016, from: http://www.japantimes.co.jp/news/2008/12/23/reference/gay-scene-tolerance-legal-limbo/#.WEhC-302f6n
[46] E.g. Transsexuals have achieved considerable more rights in the mid-2000s than gays and lesbians.

Although Japan signed the United Nations Declaration for the protection of sexual minorities in 2014 the lack of domestic laws has not been covered by national media until Shibuya ward and Setagaya ward introduced pro same-sex partnership policies in 2015. Since then media have started to report on LGBT issues in general on a broader scale.

"In marked contrast to other countries, Japanese society has witnessed few public debates or social movements in support of same-sex marriage; as some observers have recently noted, same-sex marriage in Japan has 'not become a topic of conversation' (Kuze, 2014) or seems 'a long way away' (Dvorak & Inada 2013)." (Tamagawa, 2016: 161). An academic discussion of partnership rights only started in the early 1990s in Japan and was sustained in the 2000s (Lunsing, 1999: 314). Discussion about partnership rights were discussed during the Tokyo Gay and Lesbian Parade in 2002 (Kazuma, 2003: 33).

Japanese law does not protect sexual minorities from discrimination and abuse. Japan's constitution mentions human rights in selected provisions in only a general way.[47] In spite of having committed itself to international norms of the protection of human rights by signing the ICCPR[48], reality on a domestic level is a different one: Under the current Japanese law (including the constitution), homosexuals are not recognized as members of Japanese society (Maree, 2014: 187; Nagata, 2009: 92). The government has been criticized by Japanese human rights groups on their lack of non-discrimination legislation. As the current Human Rights Commission is obliged to report to the Ministry of Justice, it lacks an independent institution that guards the protection of human rights.[49]

Under Japan's present legal system equality partnership rights are not guaranteed to sexual minority citizens. As this paper concerns partnership rights of sexual minorities, the lack of basic legal liberties which their fellow heterosexual citizens can enjoy will be highlighted.

On the one hand the Japanese legal system poses a lack of choices for same-sex couples. Because neither same-sex marriage nor any other form of legal partnership for homosexuals is recognized in Japan, they are not entitled to use and choose from the options of partnerships available to heterosexual couples. This affects individuals for example in areas of inheritance, the preferential tax system and protection under domestic violence law (Nagata, 2009:92).

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[47] Article 14 of Japan's Constitution defines its citizen's basic human rights. It states that "there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin".

[48] Japan signed the ICCPR on 21 June 1979. The ICCPR carries weight for sexual minorities because rulings in favor of sexual minorities have been based on the Covenant. In 1994, in the case Toonen vs. Australia, where an activist challenged the provisions of the Tasmanian Criminal Code, "which criminalize various forms of sexual contacts between men, including all forms of sexual contacts between consenting adult homosexual men in private.", was brought before the United Nations Human Rights Committee (UNHRC). This created a novel case because the ruling alluded to discrimination against lesbian, gays and bisexuals. The Human Rights Committee declared the references to "sex" in Articles 2, paragraph 1, (non-discrimination) and 26 (equality before the law) of the ICCPR should be taken to include sexual orientation.

[49] ILGA (2008). A shadow report. The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Japan, p.6; Available at: http://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx

Same-sex partnership is not the only issue facing sexual minorities, but these equally important problems[50] are beyond the scope of this paper.

There are three main categories for partnerships[51] in Japan: man and woman who have entered a civil marriage under the law; a couple (man and a woman) which is not married under the law but which spends every day life together; a same-sex couple that spends its everyday life together (Sugiura et al., 2007:14-5). Of the second category there are couples who might be planning on marrying in future but also those who intentionally decide against a legal marriage. If a man and woman live together in a relationship that can be substantially called consisting of husband and wife but without the couple having registered their marriage one speaks of a so called "defacto marriage" or "common law marriage" (*jijitsukon*).

Regarding the third category, while no laws exist in either Civil Law or Family Registry Law that explicitly forbids same-sex marriage, there is no marriage system for same-sex couples under Japan's current constitution. Even though same-sex couples can hold a marriage ceremony and live together like a married couple, such a relationship is not recognized under Japanese law (Minami, 2015: 13). A same-sex partnership is not even recognized as a common law marriage under Japanese law (please see table 1). In reality same-sex couples are not entitled to use a system that acknowledges them as a married couple (Nagata, 2009: 92).

Legal marriage is relatively uncomplicated in Japan. Two individuals can apply to get married simply by sending the required documents (*konintodoke*) to their city office and their marriage is registered. Marriage in Japan is a societal prerequisite to giving birth. It also symbolizes the transition of becoming a responsible adult in society (Maree, 2004: 542). At the same time marriage entails privileges and protections denied to all single Japanese adults, regardless of sexuality. As table 1 shows below couples receive financial benefits such as a joint spousal medical insurance, joint loans and tax advantages. Maree states that "furthermore, as the rights of the family overrides all else, unmarried single adults experience difficulty exercising their own personal decisions regarding the receipt of medical care, hospital visitation, and property distribution upon death. Current law states that legally registered spouse and children are entitled to half of the deceased family member's estate. If neither spouse nor children survive, estates are divided amongst parents and/or siblings (ibidem, 2004: 542)."

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[50] Problems affecting gay and lesbians in Japan are multi-varied, ranging from lack of teaching on homosexuality in public education, stigmatization within institutions, bullying, involuntary outings, domestic violence . For a comprehensive overview please refer to Nagata (2009:9) and Human Rights Watch (May 6, 2016). The Nail That Sticks Out Gets Hammered Down. Retrieved September 3, 2016, from:
https://www.hrw.org/report/2016/05/06/nail-sticks-out-gets-hammered-down/lgbt-bullying-and-exclusion-japanese-schools.
[51] Naturally these three categories do not reflect the whole spectrum of diversity of contemporary household arrangements in Japan; there are other forms of partnerships (i.e. open relations) which will not be discussed in this paper.

Recognized items		Civil marriage	Common law marriage	Same-sex couples	Comment
Items recognized by law	If in an / while in relationship				
	Duty to live together, cooperate, and provide mutual assistance	○	○	×	
	Partner is exempt of income tax and residence tax for the partner	○	×	×	Only applicable for spouse with income
	Partner included in the third grade of the national pension plan	○	○	×	Only applicable for spouse with income
	Spouse visa	○	×	×	
	Joint custody of children	○	×	×	
	Special adoption	○	×	×	
	In the case of a deceased partner				
	Right of succession/ right to inheritance	○	×	×	× can be altered through means of a will
	Exempt of inheritance tax, Preferential treatment in the	○	×	×	

	tax rate				
	Right to request compensation from the perpetrator	○	○	×	
	Right to receive survivor pension	○	○	×	
	Right to become the chief mourner	○	△	△	△possible, if the name of the spouse is explicitly indicated during lifetime
	Dissolution of the relationship				
	Right to claim consolation money	○	○	×	
	Right to claim a split of assets	○	○	×	
Others	Spouse allowance payed by the company	△	－	－	－left to the discretion of the company
	Inclusion of spouse in the health insurance	△	－	－	－left to the discretion of the company
	Spouse has right to receive of death insurance	○	△	△	△possible, dependent on the insurance company's policies or

				negotiations
Loans from financial institutions	○	—	—	－left to the discretion of the company
Support regarding assisted reproductive technology	○	Δ	×	

Note: As there have been no cases regarding "Duty to Live Together, Cooperate, and Provide Mutual Assistance", "the right to claim consolation money" and "Right to claim the distribution of property" referring same-sex couples, no clear verdict can be made.

Table 1: An overview of rights granted to the same-sex couples in Japan [52]

While the government is slow to recognize universal partnership rights, the private sector has made big strides towards the awarding of rights to its employees or their partners. Of many companies supporting sexual minority rights in Japan, Goldman Sachs is one of the most outspoken advocates. Following a global policy that was declared in their New York headquarters in 2014 Goldman Sachs now grants partnership benefits to same-sex couples in Japan. A year later Deutsche Bank followed. In 2016 domestic firms the likes of Panasonic, Sony and Rakuten – just to name a few – followed suit as well.[53]

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[52] Graph based on Sugiura et al. (2007:55)

[53] Feder, J.L. & Kininmonth-Tsukamoto, N. (May 15, 2016). Can the Olympics Bring Marriage Equality to Japan? Retrieved on September 1, 2016 from https://www.buzzfeed.com/lesterfeder/japans-very-quiet-push-for-marriage-equality?utm_term=.inlwMLgX5#.ryzEbD3vn ; Nakano, A. (中野, 渉). (2016, February 18). パナソニック、同性婚を 4 月から容認 その背景は？. Retrieved June 30, 2016, from: http://www.huffingtonpost.jp/2016/02/17/panasonic-to-introduce-same-sex-marriage_n_9258490.html ; Takeo, Y. & Sano, N. (February 24, 2016). Retrieved September 01, 2016, from: https://www.bloomberg.com/news/articles/2016-02-24/gay-friendly-companies-end-silence-on-lgbt-in-conservative-japan

2.4. Alternatives to marriage for same-sex couples in Japan

In order to circumvent the existing legal void, same-sex couples have resorted to two approaches for creating a rudimentary substitute legal basis for their relationship. These two strategies are not exclusively for same-sex couples and can be employed by an adult within the Japanese legal system. Maree (2004:543) mentions that "both approaches rely on appropriating current laws and have been employed surreptitiously so as not to jeopardize the continuing usefulness of each to protect same-sex partnership rights that are otherwise ignored under current laws."

A first strategy for same-sex couples is to bypass the current legal obstacles by resorting to the "*Youshiengumi*" or adult adoption system[54]. The application for the newly formed parent-child relationship is a simple procedure if both parties have attained the age of majority. They merely need to fill out the necessary adoption forms and place both their seals[55] on the documents. This procedure needs to be witnessed by two adult witnesses and can also be held in municipal office differing to the ones they have been registered in. In such a case the couple needs to produce copies of their family register (Maree, 2004: 544).

The senior partner has to function as parent and the child is obliged to change to his parent's family name and hereditary title. The parent in the relationship automatically is registered as the head of the family in the family registry and the individual getting the child will be noted as "having joined" the registry (Minami, 2015:106). This newly formed parent-child status grants the partners to apply for family allowances and legalizes the now founded family unit to claim rights exclusively for family members such as hospital visitation and inheritance rights (Maree, 2004: 544).

However, as Minami (2015:106) points out, while this option at first glance might seem like a viable option as a same-sex couple hereby, it does not equate to marriage. "*Youshiengumi*" is rooted in the patriarchal authority system and originally had the function to connect an heir to a family (house). Minami continues by writing that the adoption system used by same-sex couples as a means to substitute marriage does not fulfil the actual (historical) purpose of becoming parent and child and thus could be considered as invalid (Minami, 2015:107). This is in line with Ōtsuka Takashi who warns that even though adoption mimics legal marriage processes the creation of a parent/child relationship should be regarded as no more than a bypassing strategy (Ōtsuka 1993).

Taniguchi mentions a further vulnerability of the adoption system as a marriage substitute by saying that even though the procedure is not illegal per se, it may offer relatives or other parties the legal grounds to appeal the adoption if they feel the relationship is based on the non-existence of the intention to 'adopt' on the principles of '*Koujyo Ryouzoku*' (good public order and customs) (Tangiuchi 2006).

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[54] The *Youshiengumi* is covered by Articles 792 and 793 of the Japanese Civil Code, "A person who has attained the age of majority may adopt another as his/her child.", and "Neither an ascendant nor a person of greater age may be adopted" for reference: Japanese Law Translation Database System Copyright © 2016 Ministry of Justice, Japan. Accessed 15 July 2015. Available at:
http://www.japaneselawtranslation.go.jp/law/detail/?id=2252&vm=04&re=02.
[55] In Japan it is customary to place a seal on a document instead of signing it by hand.

The problems do not end here. Paragraph 736 of the Civil Law reads, "Even after the termination of a family relationship pursuant to the provision of Article 729, an adopted child or spouse of an adopted child, or a lineal descendant or spouse of a lineal descendant, may not marry an adoptive parent or his/her lineal ascendant."[56] Minami (2015: 107) highlights that even if a same-sex couple dissolved the adoption in order to possibly get married one day; this would not be possible as the law forbid the marriage between two individuals who had formerly been in an adoptive system. If Article 729 was still upheld after same-sex marriage was allowed in Japan one day, partners who had resorted to the adoption system as a means of substitute for same-sex marriage would be caught in a legal one-way road.

Complications may also occur regarding inheritance in the '*Youshiengumi*' if a deed is not provided. Regarding the inheritance of a deceased younger partner, the "parent" partner has to share the inheritance with the deceased child's biological parents and possible siblings who are also entitled as legal heirs if there is no will stating the opposite. The reason for this is that heirs-at-law (*hoteisōzoku-nin*) are entitled to receive a fixed percentage of a deceased family member's estates (Minami, 2015: 106; Maree, 2004: 545).

The second possibility to circumvent the current legal system for same-sex couples is to use notarized deeds (*kouseishōsho*) which need to be registered at a local notary office. As mentioned by Minami it is recommended for same-sex couples to register their individual will and testament as a notary deed rather than a hand-written will (Minami, 2015: 79). The reason is that the Japanese Civil Law requires a so-called "validation" of the hand written will by a family court before it is carried out. The validation process requires the family court to notify all legal heirs. On the day of the validation the bereaved partner, who was entrusted with the hand-written will, as well as the legal heirs will be summoned to the family court. After the genealogical relations have been cleared, the envelope will be opened by the judge and then circulated among the present individuals. Unless the deceased has lived his sexuality openly this situation is likely to question the relation of the person entrusted with the hand-written will and this might force a coming out on the bereaved partner's side. A coming out which might lead to a hostile attitude of the family towards the partner. This situation can only be avoided by means of a notarized will which has legal clout to override the heir-at-law system. That way the partner will have the right to inherit property and is also able to conduct the name of change of the property as well as the dissolution of bank accounts, etc. without the bereaved family having to know of the partner (Minami, 2015: 80).

A further document that needs to be registered as a notary deed is a "joint living agreement" (*kyōdou seikatsu sengen*) (Maree, 2004: 546). This document stipulates how partners would like to arrange their personal affairs in times of emergency or a partner's death. This system differs from the adoption system because it does not resort to the family registry system and is an option for couples who consciously want to avoid doing so (ibidem: 546).

An advantage of such an agreement is its great flexibility both parties can resort to when drawing up an agreement. That way certain rights could be given to the partner, that otherwise would fall into the decision power of the family. A single unmarried person, who in medical

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[56] Japanese Law Translation Database System Copyright © 2016 Ministry of Justice, Japan. Accessed 26 July 2016, available at: http://www.japaneselawtranslation.go.jp/law/detail/?id=2252&vm=04&re=02.

and other emergencies would be looked after by his direct family member cannot do so unless an agreement exists. By means of a joint living agreement that was registered as notary deed, a same-sex couple can create a framework that meets their wishes. Thereby an exclusion from decision processes by one partner through the family can be prevented (ibidem: 546).

Maree points out that joint-living agreement can function as an alternative to marital rights. However, as the legality of joint-living agreements between same-sex couples has not been put to the test before of a court, its legal power remains questionable (ibidem: 546).

Due to the lack of a partnership or same-sex marriage law in Japan, both options rather have the character of "do-it-yourself" solutions that offer the possibility to serve various purposes for diverse reasons. For some couples these strategies may be a way to loophole the law, for others it may prove a way to outline their relationship with their partners at a personal level. However, for Maree the above mentioned strategies do not substitute same-sex marriage. The fact that same-sex couples resort to such strategies is an indicator for the need of further discussion of the family registry system in its present form in Japan in particular in the context of the Basic Law for a Gender Equal Society which mobilizes gender equality within discourse of aging populations and low birth rates thereby reinforcing conservative discourses of family (Maree, 2004: 543).

3. The case studies

This chapter will introduce the three case studies that have led to the public policies of the "Hamburg Marriage", the "Shibuya Ordinance" and the "Setagaya Guideline".

The chapter investigates the on-the-ground accounts of the German and Japanese cases. The author felt these particular cases are worth investigating in order to understand the international similarities and differences of the gay and lesbian movement.

While Shibuya and Setagaya Ward's decision to issue same-sex partnership licenses have enjoyed the greatest media coverage in Japan so far, there were previous attempts by local governments to introduce LGBT inclusive policies.[57] This paper focusses on the cases of Hamburg, Shibuya and Setagaya because they were the first municipalities, in Germany and Japan respectively, to explicitly recognize same-sex partnerships.

3.1. The "Hamburg Marriage"

This section describes how the city of Hamburg introduced the policy for same-sex couples.

3.1.1. The actors

The "Hamburg Marriage" was based on an initiative by the Green Party (*Die Grüne*n) in Germany.[58] The main actors involved in the "Hamburg Marriage" were the Senator for Equal Rights, Krista Sager and Farid Müller, member of the Green Party in the Parliament in the City of Hamburg. The Social Democratic Party (SPD), coalition partner to the Green Party, was also involved in the decision making.

3.1.2. The starting point

The Green Party has been promoting universal marriage rights since the early 1990s. Politicians of the Green Party had developed close ties to the Gay Men's Federation (SVD) in the 1980s and had brainstormed ways to promote a law for same-sex marriage. In 1997 the city-state of Hamburg voted a coalition of the Social Democratic Party (SPD) and the Green Party (*die Grünen*). Already during the electoral campaign Müller had introduced the idea of a local same-sex partnership license. Inspired by the United States where several cities had introduced local same-sex partnership licenses in the 1990s, Müller wanted a similar policy for the city of Hamburg. When Müller was elected as member of the Hamburg city council, he commissioned an expert opinion regarding what Hamburg could do for its same-sex citizens. Findings of this expert opinion were that same-sex couples desired: visiting rights for

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[57] For example, Miyakonojō City, Miyagi Prefecture, launched the "Plan for Promoting Gender Equality" in 2003. It was highlighted that regardless of sex or sexual orientation the abolition of discrimination and the participation in planning of society should be promoted. However, this provision was revised and removed at a later stage. The argumentation for this measure was that the regulation was against any form of discrimination and therefore also included discrimination against homosexuals. However, due to the lack of correct information regarding homosexuality/homosexuals, the necessity of discrimination based on sexual orientation is hardly recognized and the issue is losing its position as a particular case; Furthermore, in 2013 Yodogawa-ward became the first Japanese government area to pass a resolution officiating support for LGBT inclusion, including mandating LGBT sensitivity training for ward staff.

[58] Struck, K. (1999). Wir wollen zusammenleben. Informationen zur „Hamburger Ehe" und Musterverträge für lesbische und schwule Paare. Available at: http://www.lsvd.de/bund/recht/hamburg/hamburg.pdf, p.9.

partners in hospitals, that a certificate of eligibility should be shared for council houses, that partners who wanted to apply for a study place at the University of Hamburg were considered a spouse[59] (just like heterosexual married couples were able to) and an official document to be issued in case of a ceremony held at a registry office.

3.1.3. The process

The connection between the symbolic marriage and the registry office started causing friction between the Greens and the SPD after the 1997 local elections, despite the SPD promising to execute the "Hamburg Marriage". However, Krista Sager, the second mayor of the city of Hamburg and Müller resisted the attempted SPD revision by insisting that the ceremony at the registry office take place just the way heterosexual people were able to marry at a registry office. The chairman of the association of registrar generals took sides with Müller and Sager and explained the situation at meetings with Hamburg's registrar generals. The chairman won their trust after initial conservative skepticism. After the coalition decided on the "Hamburg Marriage," it took another two years for the local law to become effective.

The "Hamburg Marriage" law was first signed by the City of Hamburg on 1 April 1999. Fifteen couples were married at the registry office in Einsbüttel, Hamburg, on 6 May 1999. [60] The coverage by national and international media was high and the event made it on the cover page of Germany's most read boulevard newspaper, *Die BILD-"Zeitung"*.

3.1.4. Results

The "Hamburg Marriage" would lead to nation-wide legislation in Germany only two years later, known as the "Registered Partnership Law". The "Hamburg Marriage" not granting "full" rights to same-sex couples caused many people to demand them in earnest. Same-sex couples realized in 1997 that the planned law in Hamburg would merely be symbolic and a binding law could only be achieved at a national level. The local Green Party thus alluded to the national elections slated for 1998. For this reason, the Green Party in Hamburg urged same-sex couples to vote in the upcoming elections for the Green party to ensure the law was implemented. The national election results in 1999 allowed the Greens to form a coalition government with the SPD, and three years later the "Registered Partnership Law" was signed into effect.

What became of the original, symbolic ordinance? In 2005 the "Hamburg marriage" was scrapped by the conservative party Christian Democratic Union (CDU). By that time a national law for same-sex partnership already existed and therefore the local government did not feel it was necessary to upkeep the "Hamburg Marriage".

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[59] In Germany, a student's high school GPA as well as a combination of other factors are factored in when considering whether he or she is eligible to receive a study place at his or her desired university.

[60] The law was established by the Hamburg Parliament on 8 April 1999, announced on 14 April 1999 and was printed in the Hamburg Legal and Regulatory Gazette, p. 69 on 21 April 1999. For further information please see: http://www.lsvd.de/bund/recht/hamburg/hamburg.pdf .

3.2. A case study of the Shibuya Ordinance

This section will describe how the policy introduced by Shibuya ward came about.

3.2.1. The actors

The main actors involved in the Shibuya partnership license were the Shibuya ward mayor Toshitake Kuwahara, Shibuya ward council member Ken Hasebe, Shibuya Ward Council Member Mari Okada, members of the investigation council as well as the staff of the Shibuya ward office and entrepreneurs Fumino Sugiyama and entrepreneurs and gay activist Gon Matsunaka.

3.2.2. The starting point

The birth of the Shibuya license is based on the coincidental acquaintance of Ken Hasebe and Fumino Sugiyama in the early 2000s. Hasebe, who formerly worked for a public relations company has been an independent Shibuya Council Ward member since April 2003. He also owns Greenbird, a Non-Profit Organization (NPO), which is involved in clearing up of public spaces. Sugiyama, a female-to-male transgender with a published autobiography about his life experiences, started volunteering for Greenbird in 2006 where he met Hasebe. When Hasebe campaigned for a second term on the Shibuya ward council in 2007, he had Sugiyama's support. Acquainted with Sugiyama's life story and the situation of other sexual minorities, Hasebe wanted to design a LGBT policy and proposed a partnership license in Shibuya Ward to Sugiyama. Sugiyama reacted positively to the proposal. He stated that besides raising awareness in the ward for sexuality minorities, such a proposal would be well received by the LGBT community (Kira & Esmeralda, 2015: 25).

Given these factors, on 8 June 2012, Ken Hasebe, in the second Regular Shibuya Ward Council Meeting, pointed out Shibuya's backwards attitude towards sexual minorities in comparison to other global cities. He concretely mentioned the possibility for the city of Shibuya to introduce a partnership license for same-sex couples. Then ward mayor Kuwahara responded that this proposal should be inspected and proposed further research on this topic.

3.2.3. The process

Mayor Kuwahara, wanting further examination of this case, proceeded to found an investigative commission. After the partnership certificate was mentioned in the ward council in June 2012, a time of stagnation occurred during which Ken Hasebe, who at that time was still a member of the ward council, talked to then ward mayor Toshitake Kuwahara and appealed to the importance of diversity and the positive image such a measure could have for Shibuya ward. The process picked up momentum again in June 2013 when council member Mari Okada, who in the Second Regular Shibuya Ward Council Meeting mentioned the proposal made by Hasebe in the previous year and backed Hasebe's idea. Mayor Kuwahara responded that a further examination of this case was necessary and ordered the founding of an investigation commission (ibidem, 2015: 39).

Okada appealed to the founding of a study group regarding the "Ordinance Promoting Diversity in Society" at the ward meeting in June 2014. In July 2014 the "Investigative

Commission Involved with the Council for the Promotion of the Ordinance for a Diverse Society of Shibuya Ward" [61] was founded (Kira & Esmeralda, 2015: 42). The eight members of the commission were university lecturers, civil servants of the Shibuya ward, lawyers, staff of Shibuya women's center "Iris" and the former head of Board of Education of Shibuya ward. They held regular meetings to discuss the technical details of a possible implementation of a license and challenges sexual minorities faced in Japan. To get a first-hand report of people concerned one of the members met with Fumino Sugiyama and the openly gay entrepreneur Gon Matsunaka [62], inviting them to the official investigative commission meeting at the Shibuya ward office. Sugiyama and Matsunaka attended, responding to questions related to difficulties they had experienced as sexual minorities and their take on a possible license. Based on these first hand reports and previous study group meetings on the issue, the final report by the investigative commission was handed over to Mayor Kuwahara on 20 January 2015.

On 12 February 2015, a press release was issued by the City of Shibuya regarding an ordinance containing a same-sex partnership licenses that would be proposed to the Shibuya ward council in March 2015. Usually such a proposal for an ordinance needs to be reported to the "general ward residence committee" and presented at a regular meeting (Kira & Esmeralda, 2015: 52). However, as the "Ordinance for Promoting Respect of Gender Equality and Diversity in Shibuya Ward" (the same-sex license was an element of the ordinance) did not follow such a process, there were many ward assemblymen who only learned about this decision via news media outlets. When the proposal was introduced at the First Regular Meeting of the ward assembly in March 2015, one part of the ward assemblymen questioned whether the procedure had been rightful and whether establishing the same-sex license as part of the ordinance right away had not been a hastened step. At the same time gays and lesbians discussed the pro and cons of the system and demonstrations of people opposing this plan took place. Matsunaka collected 11, 000 signatures expressing their approval from within Japan and abroad and sent a written statement to the Shibuya ward council (Kira & Esmeralda, 2015: 53). On 31 March 2015, the "Ordinance for Promoting Respect of Gender Equality and Diversity in Shibuya Ward" was approved.

On 2 April 2015, ward council member Ken Hasebe was introduced as the designated successor of Mayor Kuwahara and announced his running for the mayoral elections which were to take place on 26 April that month. This timing of the release of the ordinance that caught the attention of the media attracted criticism towards Mr. Hasebe for strategically coinciding with his announcement to run for the mayoral position (Kira & Esmeralda, 2015: 54-5). Critics also saw Shibuya ward being selective in their protection of vulnerable groups

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[61] Besides dealing with LGBT issues the commission discussed issues regarding citizens holding disabilities, racial discrimination all to be subsumed under gender equality.
[62] Matsunaka, who had formerly worked for Dentsu, one of Japan's biggest PR agencies in Japan is one of the co-founders of the Tokyo Rainbow Week a side event of Tokyo Rainbow Pride which had been reactivated in 2012 as a successor of the Tokyo Gay and Lesbian Parade of the 1990s. He also owns a LGBT community space the "Colorful Station" and runs "Irodori" a community space for the LGBT community NGO (Good Aging Yells). Sugiyama had tried to introduce Matsunaka to Hasebe in 2013 already but Matsunaka was not interested in any form of politicization or assertion of sexual minority rights. For further details please see (Kira & Esmeralda, 2015: 39).

because it had ordered the eviction of homeless people from Miyashita Park.[63] Critics said that while Shibuya ward was highlighting the situation of the LGBT community on the one hand they were conducting human rights violations by evicting homeless people from the park.

In April 2015, a "Council for the Promotion of Gender Equality and a Diverse Society of Shibuya Ward" was founded to examine the concrete execution of the ordinance. The conference consisted of lawyers, researchers and a representative of the LGBT community— Fumino Sugiyama. The council worked out the technical details of the application of the license, conducted hearings with people concerned and discussed the requirements of application (please see chapter. 3.4). The results were presented to the Shibuya ward council in October and were approved in the third regular meeting ward council meeting.

On 23 October a press conference regarding the details of Partnership License was held by the Shibuya Ward. The press conference announced that the beginning for the reception of registrations would be 28 October. On 5 November the handing over began with a female celebrity couple receiving the first license amidst great national and international media attention.

3.2.4. Results

While the ceremony got intense media coverage, the introduction also called forth strong disagreement from civil groups. This anger took the form of online comments, written complaints and faxes directed at the municipality. The Shibuya ward received over one thousand letters of complaint many fearing "the destruction of the traditional family". The conservative political organization "Ganbare Nippon!" held a demonstration on 10 March 2015 in the vicinity of Shibuya ward council to protest against the planned introduction of the same-sex partnership license.[64]

A controversy erupted when "Colorful Station", a LGBT community space in Shibuya-ward, was awarded the "good design award" by Shibuya ward. New community anger arose from those who lamented a private enterprise being awarded the prize rather than the actual people who assisted with the enactment behind the ordinance. As a consequence "Colorful Station" revoked their acceptance of the award effective 9 October 2015. [65]

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[63] In 2009, the ward assembly awarded the naming rights for Miyashita Park to Nike. During a following renovation of the facility it evicted all the homeless people and closed the park at night making access impossible. For further information please see: http://iryou.chunichi.co.jp/article/detail/20150220155521734.

[64] The Sankei Newspaper (2015, March 25). 「同性パートナー条例」案、２６日に委員会採決　根強い反対論、揺れる渋谷区議会. Retrieved November 10, 2016, from: http://www.sankei.com/premium/news/150325/prm1503250008-n1.html

[65] Letibee (2015, October 2). 渋谷同性パートナーシップのグッドデザイン賞受賞に批判殺到・謝罪！なぜ? Retrieved September 1, 2016, from: http://life.letibee.com/criticism-shibuya-partnership/

3.3. A case study of the Setagaya Guideline

On 4 August 2015, a few months after Shibuya Ward had passed the ordinance for same-sex partnership license, Setagaya ward, under the aegis of its Mayor Nobuto Hosaka, held a press conference where it announced the "Guidelines Regarding the Handling of the Setagaya Ward Partnership Oath". The guidelines stated that the ward would hand out a stamped copy of the oath and a receipt in exchange for a signed partnership oath presented by a same-sex couple. Until then no policy had ever existed that targeted same-sex couples in Japanese administration (Kira & Esmeralda, 2015: 68). This section will describe how this policy came about.

The 2015 same-sex partnership license was not Setagaya Ward's first policy initiative undertaken in favor of sexual minorities. For example, Setagaya ward mayor Nobuto Hosaka and Setagaya ward council member Aya Kamikawa gave a talk session after the establishment of the Gender Identity Disorder law[66] (GID) in 2003. In 2007, the "Setagaya Ward Gender equality Plan" mentioned "Promotion of Understanding for Sexual Minorities". Also, a "Division for Human Rights and Gender Equality" was established in the Setagaya Ward in August 2012, whose service was also directed at sexual minorities. This was a one of a kind facility within Tokyo. Kamikawa also hosted a coming of age ceremony[67] for sexual minorities at the city hall each year since 2012. Also, in the Setagaya Ward Basic Plan issued in 2012 one section discussed the "understanding of sexual minorities and the eradication of discrimination." (Kira & Esmeralda, 2015: 75) [68]

3.3.1. The actors

The main actors in the Setagaya case study were Setagaya ward council member Aya Kamikawa and Nobuto Hosaka, the mayor of Setagaya ward.

3.3.2. The starting point

In May 2014, Kamikawa spoke at the joined study group of city employees and city council by the city of Takarazuka, Hyogo Prefecture. She was contacted by Mr. Nakagawa, a former member of the diet who had lobbied for the GID law in 2003. Kamikawa was present that day because the city of Takarazuka was considering the introduction of a same-sex partnership. The city asked Kamikawa to talk about her experience as a transgender council member and she presented on the overall situation of same-sex partnerships in Japan and abroad (Kira &

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[66] Aya Kamikawa was one of the key persons in the establishment of the GID law. Being a transgender herself, in 2001 she and 6 other persons diagnosed with GID went to family courts and demanded the change of sex noted in the family registry. After their demand was denied by the courts Kamikawa ran to become a council member of Setagaya ward in 2003 and got elected. A mere two and a half months later, after proactively pushing for legislation of the "Act on Special Cases in Handling Gender for People with Gender Identity Disorder" by Kamikawa, passed the National Diet.

[67] The coming of age day is a Japanese holiday held annually on the second Monday of January. Municipal governments host special coming-of-age ceremonies for 20-year-olds, since the legal age of an "adult" in Japan is 20 years or older. For further information: http://www.japantimes.co.jp/news/2016/01/17/national/social-issues/coming-age-ceremony-held-lgbt-people-tokyos-setagaya-ward/#.V58ltqKfZlK.

[68] Japan Times, the (2016, January 17) Coming-of-Age ceremony held for LGBT people in Tokyo's Setagaya Ward. Retrieved November 6, 2016, from: http://www.japantimes.co.jp/news/2016/01/17/national/social-issues/coming-age-ceremony-held-lgbt-people-tokyos-setagaya-ward/#.WEg5k302f6n

Esmeralda, 2015: 76). Kamikawa speaking to a foreign municipality about a possible policy not yet present in her own district triggered the idea to introduce a same-sex partnership for Setagaya ward. At that time Kamikawa was already aware of the fact that in Shibuya Hasebe and Okada had posed question regarding the same-sex partnership in the ward council.

3.3.3. The process

Consequently, Kamikawa met Hosaka in August 2014, and conducted a lecture regarding same-sex partnerships in the US and other countries. Kamikawa highlighted the case of the "Hamburg Marriage" (please see 3.1) as a reference for a possible policy design. The "Hamburg Marriage" was an ordinance valid only in the City of Hamburg. It did not entail any duties for the signatories, nor did it grant same-sex couples any proper rights. However, this movement by a local government received such backing that it led to the federal Partnership Law in Germany two years later, which gave lesbians and gays rights in part corresponding to the rights of heterosexual married couples.

In the mid of September 2014, Kamikawa proposed the introduction of a same-sex partnership policy in the Third Regular Ward Council Meeting. Hosaka responded to this that such a proposal should be granted further inspection.

With no previous claims made by same-sex citizens of Setagaya-ward, Kamikawa reached out to the local community. After explaining her policy proposal she invited gay and lesbian residents to form the "Setagaya Domestic Partnership Registry" group in January 2015. Opinions, values and information were exchanged regarding what elements a partnership license should contain. The deadline to formulate the request paper which had to be presented to the ward was at the end of March 2015, before the ward council member elections were to take place in April 2015. The group, represented by Kamikawa, received support from a Setagaya ward NPO "Rainbow community coLLabo".

On 12 February 2015, a newspaper reported that in March 2015, Shibuya Ward would introduce an ordinance that contained a partnership certificate. This is when Kamikawa decided that while protecting the privacy of their group, she would announce via social media that Setagaya would follow as well.

On 5 March 2015, Kamikawa arranged a meeting with the mayor of Setagaya ward, the deputy mayor, the human rights division representative and the general affairs representative and other staff members in charge. They met with 16 members of the 30 head member strong "Setagaya Domestic Partnership Registry" group. The members of the group all presented their income tax, their certificate of residence as proof they were residents of Setagaya ward and then presented their request to receive official partnership recognition to ward mayor Hosaka.

Agreeing to this proposal, Hosaka announced that as of 1 April 2015 a research unit within the Setagaya Ward Office would be commissioned to examine the execution of a same-sex partnership. On 29 July the "Proposed Guidelines Regarding the Setagaya Ward Partnership Oath" were announced at the Setagaya ward council.

Furthermore, on 4 August 2015, Setagaya ward mayor Nobuto Hosaka gave a press conference and announced that the local administration was working on a guideline regarding the handling of the Setagaya partnership oath.

On 23 October Hosaka gave a further press conference in which he announced that the reception of a partnership oath and the exchange for a receipt would start on 5 November.

On 5 November the official ceremony of the same-sex partnership certificates took place at the Setagaya ward office which national and international media attended. Hosaka handed over the sealed oaths by Setagaya ward to five couples.

3.3.4. Results

As a consequence of the introducing a partnership license in Setagaya ward, businesses announced they would include same-sex couples in their partnership offers and family deals if such a license was presented when signing the deal (Kira & Esmeralda, 2015: 90).

4. Evaluation of Interviews and integration into context

This paper aims at finding out whether the gay and lesbian movements in Japan and Germany were able to achieve concrete policy results with regard to the introduction of the three public policies discussed above. To find out more about these concrete policy results, the author interviewed three experts who had designed the policy directly or who had concrete knowledge on the policy in their municipality. By conducting interviews with people familiar with the making of the public policies discussed in chapter 3, the aim of this section is to find out differences between the public policies and the contextual condition of the gay and lesbian movement in both countries at the time the policies were introduced. While the first and second part of this section describes the methodological approach and the findings of the interviews, the latter part of this chapter will compare the three policies.

4.1. Methodological approach of the interviews

The following section deals with an examination of current research methods which aim at detecting the object of research of this paper in an appropriate way. This will lead to a discussion of a) the quality criteria and b) the research approach of this paper/research.

4.1.1. Quality Criteria of qualitative social research

The qualitative content analysis forms the basis of the interviews conducted for this paper. The goal of a content analysis is the analysis of material that was gained through any kind of communication. In order to check the validity of scientific research methods adequately, a certain degree of comparability to other methods needs to be established and the features of the chosen methods need to be examined. Mayring has assigned to six quality criteria for the qualitative approach:

Mayring highlights the importance of a detailed procedural documentation in order to make the approach intersubjectively comprehensible. This means the qualitative approach is understood between separate conscious minds. This includes a detailed description of the approach of the qualitative work because the applied methods are usually specifically tailored to the object of research (Mayring, 2002: 145).

Further, it is important to allow intersubjective understanding. This is guaranteed by means of a thorough documentation of the interpretation to avoid any suggestion of arbitrariness.

Mayring also highlights the rule based approach. This implies an incremental sequential processing of the material according to defined rules in order to avoid an unsystematic approach (ibidem: 146).

Also, Mayring emphasizes the importance of proximity towards the object of research as a fulfilling basic principal of qualitative research (ibidem: 146). It is relevant to capture the "natural habitat" of the interviewee and to include their "interests and relevance system" (Lamnek, 2010: 132). The researcher can create this proximity by "connecting to the everyday world of the interviewee as closely as possible" (Mayring, 2002: 146).

A further criterion Mayring mentions is the communicative validation (ibidem: 147). This criterion validates the researcher's interpretation, who reflects his interpretation towards the interviewee to validate whether he has correctly understood the reference system. According to Mayring it is important for the interviewee to recognize himself in the interpretations and analysis (ibidem: 147).

The final criterion mentioned by Mayring is the so called "triangulation". According to the triangulation technique theories, methods, sources etc. serve as a cross-verification, suggesting different solutions and allowing for a comparison of results (ibidem: 147).

4.1.2. The research participants

The three interviews were conducted by meeting in person (with Japanese counterparts) and via telephone with the German counterpart. [69] All three subjects worked for the local government that had introduced the same-sex partnership. These individuals had either been personally involved in the making of the license or in a division that dealt with the partnership license in the ward.[70] The interview subjects in Shibuya and Hamburg were active politicians and in the case of Setagaya the interview subject was a bureaucrat working for the ward.

Each of the interviews lasted for one hour and the questions asked to all three participants followed the same guideline for contents and pattern.

The subjects were contacted via e-mail and telephone before the interview and after an overview of the project all participants were willing to provide their expertise. The author clarified the form and format of the interview in his e-mails sent out to the informants. In the case of the Japanese informants, the author was asked to submit a sample of questions beforehand. The actual questions posed on the days of the interviews were based on the knowledge the author had gained from the sources used in chapter three[71].

The questions gave the interview the opportunity to answer the questions freely. The goal was to gain insights into the context behind the established facts mentioned in chapter three. As such it was important to gain the experts' view on the official position of each government but also to hear the interview partners reiterate facts that had been stated before to give a new perspective on things and read the existing undertones.

4.1.3. Data collection method

In this section the qualitative method discussion will be theoretically consolidated. This paper interviewed politicians and bureaucrats involved in the formation of the public policies in

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[69] The interview regarding the Hamburg case took place on 20 September 2016. The interview with the interview partner regarding the Shibuya case took place on 18 October 2016. The interview with the interview partner working regarding the Setagaya case took place on 26 October 2016.
[70] Only in the case of Setagaya city council, the contact person had not been in the position during the creation of the license but at the time of the interview he was in the department that dealt with the license.
[71] The main sources were: (Kira&Esmeralda 2015); Murai, S. (2015, November 5). Tokyo's Shibuya and Setagaya wards issue first same-sex partnership papers. Retrieved November 11, 2016, from: http://www.japantimes.co.jp/news/2015/11/05/national/social-issues/shibuya-set-issue-first-certificates-recognizing-sex-couples/#.WLWwh1eMCqB.

their respective wards. Thus it seems logical to apply the expert interviews as described by Meuser and Nagel (1991). The authors define experts as people who are assigned the status as "expert" by the researcher and if they are closely associated with the object of research. Furthermore, the authors expect an expert to "bear responsibility for the design, implementation or control of the problem resolution" and "have access to privileged information on a group of people or the decision making process" (1991: 443). It is the researcher's goal to find structural context in the statements made by the experts and to examine these. (ibidem: 447)

Meuser and Nagel elaborate the role of an expert's knowledge in the research design. Experts are at times used in an explorative way and take on a marginal position within the research project by adding to the "illustration and commentary of the statements made by the researcher" (Meuser & Nagel, 1991: 445). Alternatively, an expert's knowledge may be at the heart of the research interest. This circumstance plays a decisive role for the researcher in regards to the evaluation of expert interviews. In this case the interviewee might represent the target group reporting about their own field of action (ibidem: 447). Alternatively, experts may represent a "complementary unity of action" to the target group. It is then the task of the interviewer to deliver contextual information on the target group's conditions of action. Examples of this can be found particularly in research regarding the parties concerned and in inequality studies (ibidem, 1991: 445-6).

Bogner and Menz make important contributions to the typology of expert interviews. The authors differentiate between expert interviews "depending on their cognition-inducing functions" (2002: 37). There are 3 types of expert interviews which will be described in the following.

If the goal of a research is to give an orientation on a thematically new area, the explorative expert interview is referred to. The main function of this approach is to structure the unexplored topic area and to develop a problem awareness of the researcher. Especially the "context knowledge" by Meuser and Nagel can be applied here in order to use experts as a source of complementary sources of information which gives information about the actual object of research (ibidem: 37).

In case the interview wants to find out about "the exploration and analytical reconstruction of the 'subjective dimension' of expert knowledge" the theory generating method may be useful (ibidem: 38). The goal of this approach is to gain "subjective guidance for action and implicit decision making rules" (ibidem: 38). Here the focus lies on the comparability of the expert opinion based on which a model can be developed that relies on the routines and world view of experts. In comparison to other forms of expert interviews the primary focus is not on the generation of information.

The systematizing expert interview is the third type of expert interview described by Meuser and Nagel. Here, the expert is seen as a "consultant" who from a subjective point of view reports about objective realities. The focus of this approach is to generate "exclusive expert knowledge" which becomes apparent through field reports and verbalised practical

knowledge (ibidem: 37). It is important to gain in-depth information to ensure that invaluable knowledge and explanations do not get lost.

As this field of research is new and unexplored, the author of this paper has decided to apply the explorative expert interview. The interviewed experts being politicians or bureaucrats of the respective wards are "complementary unit of action" to the target group (the gay and lesbian movement in Japan) and gave detailed reports of their "context knowledge".

4.1.4. Data analysis

This paper applies the evaluation method of interviews introduced by Meuser and Nagel which was developed according to their research practice. According to this method the expert is regarded a mere medium that gives the researcher access to the relevant information. The expert as a person is regarded of minor importance (Meuser & Nagel, 1991: 458).

The goal of expert interviews is to bring together similarities among experts and to point out "supra-individual commonalities" (ibidem: 452). Based on the answers of the interviewees a thematic comparison of the structure of the goals/relevance, reality constructions and commonly shared knowledge base is applied.

The analysis of the interviews was conducted in a non-sequential way. Instead, contents that thematically matched was clustered into themes. The "institutional-organisational context", which enables a comparison of different experts, needs to be considered at all times (ibidem: 453).

Meuser and Nagel suggest the following steps for an analysis of expert interview which this paper followed suit. The first step of the evaluation was the transcription of the audio-data of the interviews at hand. (ibidem: 455). As a next step the existing data was concentrated by paraphrasing the chosen experts. During the paraphrasing of the transcripts first narrative patterns, clusters of experience and dividing lines between themes became visible.

As a following step, headings for the paraphrased statements were created. This was done by summarising text excerpts of the interviews which were thematically related according to the terminology and by assigning one or more headings to the clusters. (ibidem: 457). This created yet another concentration of the data (ibidem: 458). Once this process was completed, a sociological conceptualisation was conducted based on an empirical generalisation. (ibidem: 463). The created headings were integrated into sociological concepts and again linked in order to create a space for interpretation and discussion. The final step consisted of an analysis of the interview data. By analysing the underlying sociological theories, a theoretical generalisation was created. The acquired results were interpreted according to sociological conceptualisation (ibidem: 465).

4.2. Themes of the Interviews

This chapter is structured according to themes the author has detected in analysing the three interviews. Here commonalities and differences are pointed out.

4.2.1. The motivation/effects of the policy

Both Japanese interview subjects answered that they wanted to achieve two concrete goals by introducing the public policies. The first was for common people to learn about sexual minorities. Mainstream society gaining an understanding of sexual minorities was a prerequisite in the interviewees' eyes for a nondiscriminatory environment. Both persons described that Japanese society was a difficult environment for sexual minorities due to a lack of understanding. They underscored the vulnerability of adolescents in school who could not come out, and they emphasized the value of an environment that understood their existence. The second goal of the policy was to grant the same opportunities to homosexual and heterosexual couples.

The German subject did not highlight the difficulty for sexual minorities to come out in Germany in 1999. In the case of Hamburg marriage, the main argument for the introduction of the policy was "same love, same right", to act against discrimination and to moving lesbians and gays to the center of society.

There also seemed to be less intention to educate the public about LGBT issues in the German case. While the German interviewee pointed out that the intention by the ward was to meet the needs of same-sex couples, the symbolism of conducting a wedding ceremony just like heterosexual couples was especially important. In comparison to this, the Japanese counterparts rather pointed out the aspect of discrimination and the benefits same-sex couples would gain from the public policies.

Both of the Japanese interview partners answered that they wanted to achieve two concrete goals by introducing the public policies. The first was for common people to learn about sexual minorities. Gaining an understanding of sexual minorities by mainstream society was essential in the interviewees' eyes so that an environment without discrimination could be created. Both persons described that the Japanese society was not an easy environment for sexual minorities due to a lack of understanding in the broad society for their situation. Here, the vulnerability of adolescents in school who could not come out was especially underscored and the necessity for them to grow up in an environment that understood their existence. The second goal of the policy was to enable them a life that grants them the same opportunities as heterosexual couples and therefore furnishes same-sex couples with equal rights as heterosexual couples.

The German interviewee highlighted that the success of the "Hamburg Marriage" was important because it made the SPD lose its concerns regarding gay marriage on a federal

level.[72] The Protestant and Catholic Church were both strongly represented in the SPD and had applied pressure on the party not to support a law for sexual minorities on a national level ahead of the coalition negotiations. Politicians from the SPD in Berlin were initially hesitant towards the "Hamburg Marriage" but after they saw that it was positively received, they agreed to keep the coalition agreement and to vote for the German Partnership Law. The German interviewee highlighted that anything that brought gay and lesbian issues to the surface helped because it would lead to normality.

4.2.2. Genesis of the idea for a public policy

All three counterparts pointed out that there had been no concrete demands by local interest groups or by a gay and lesbian movement for same-sex public policies. As the interview partners revealed, the policies came from personal relations between politicians and members of the LGBT community (Shibuya), or from personally affected politicians (Hamburg and Setagaya).

4.2.3. Human rights

When asked about the role of human rights in their decision to introduce the Shibuya license, the subject answered that this had not been the main objective. Rather, equal treatment for every citizen, and diversity had been the main idea. However, in Setagaya, human rights had been a central motivation for the public policy.

Setagaya ward had a deeper understanding of sexual minority issues and had explicitly mentioned the respect of sexual minorities and human rights in its basic plan. Therefore, the author expected the Setagaya ward to choose a similar policy such as an ordinance (please see chapter 4.3 for details) like Shibuya did. However, Setagaya chose an outline over an ordinance because a majority backing this plan in the ward council was not guaranteed. Therefore, Setagaya ward chose a form of policy with which the ward mayor could circumvent the ward council. Therefore, the safer option of an outline instead of an ordinance was chosen.

Shibuya ward, before introducing partnership license in 2015, had never come up with a pro LGBT policy. However, they received the backing from the ward council.

4.2.4. Further observations

All three interview partners described resistance that built up after the policies had been introduced. In the case of Setagaya and Shibuya several complaints were filed by ward citizens and people who did not live in the ward after the guideline was introduced within the first year. According to the Japanese interview partners, critics feared the destruction of the traditional family and a decline in birth rates through the introduction of the policies.[73]

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[72] After the federal elections in 1998, there was also a coalition of the SPD and the Greens on the national level. The Green Party had strongly pushed for a partnership law.

[73] As learned through the interview with the interview partners from Shibuya and Setagaya ward.

In the case of the "Hamburg Marriage" the opposition party, the Christian Democratic Union, and its national coalition party, the Christian Social Union (CSU), reacted negatively to the "Hamburg Marriage". Also, the two churches in Germany showed resistance as can be seen by the pressure they applied on the SPD during the establishment of the "Registered Partnership Law" on a national level. The German interviewee also mentioned that there was some protest from members of politically left gay and lesbian groups who felt the introduction of a marriage represented a bourgeois lifestyle and a submission to the patriarchal system.

The interviewee from Setagaya pointed out that it was difficult for gay and lesbian people to come out because this was interpreted as overly drawing attention to oneself which was a quality that was not appreciated in Japanese culture. The interview partners added the general difficulty for Japanese people to communicate their worries in fear of bothering their environment.

4.3. A comparison of the three policies

This paper will first compare the cases of Shibuya and Setagaya before comparing them with the German case. Based on an analysis of written sources from chapter three and the interviews, there are three main differences between the Shibuya and the Setagaya same-sex marriage license.

Firstly, the Shibuya license is incorporated in an ordinance, whereas the Setagaya oath is part of an outline. The partnership license in Shibuya ward is part of the "Ordinance for Promoting Respect of Gender Equality and Diversity in Shibuya Ward". Ordinances need to pass the ward council to be enacted and constitute regulations that apply to the entire ward. Despite Shibuya never introducing a pro sexual minority policy before, the ordinance passed the Shibuya ward council. Liberal Democratic Party (LDP) members in the council had initially resisted after they had heard the news of the planned ordinance in March 2015[74], but a majority approved the ordinance and the proposal passed the ward assembly, making it effective.

As the Shibuya interviewee revealed, the aspect of human rights was not explicitly mentioned. This matches online sources which describe Shibuya ward's strategy as focusing on raising diversity. This diversity would ideally attract creative minds and raise the appeal of Shibuya compared to other creative hubs such as London, New York and San Francisco.[75] This strategy circumvented arguments with conservative assembly members.

In the case of Setagaya, the interview subject confirmed the importance of human rights. Due to the many conservative assemblymen in the ward council, the measure's proponents

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[74] This was stated by Mr. Toshitake Kuwahara, Mayor of Shibuya Ward, in a press conference at the Foreign Correspondents' Club of Japan on 23 March 2015: https://www.youtube.com/watch?v=JS59xQShvCs and was confirmed by the Shibuya ward interview partner as well.

[75] Sekiguchi, T. (2015, June 3). Gay Rights Movement Gains Steam in Japan. Retrieved April 18, 2016, from: http://www.wsj.com/articles/gay-rights-debate-gains-steam-in-japan-1433364923?tesla=y ; Sasakawa, K. (笹川かおり(2015, November 20). 「LGBTも、障がい者も、普通の景色にしたい」長谷部健・新区長が語る、新しい渋谷区. Retrieved April 18, 2016, from: http://www.huffingtonpost.jp/2015/05/18/lgbt-hasebe-ken_n_7303354.html.

resorted to a guideline for the Setagaya the license. [76] A guideline is a manual that is required when processing official paperwork, but it has no regulative character. The ward mayor signs and issues the oath directly. [77]

Legal experts have pointed out that the Shibuya license is built on a democratically sounder base as it passed the elected ward council. Also, in terms of validity, the Shibuya license is more forceful as it asks businesses to respect the relationship of the couple and could use *gyōsei shidō* (administrative guidance) to ask companies to comply. In the case of the Setagaya outline these options do not exist.[78]

Secondly, by enacting the ordinance, businesses residing in Shibuya ward and refusing to grant the same employment conditions to same-sex couples, can be publicly disclosed. Those that comply will receive an acknowledgement by the ward. [79] Setagaya cannot compel businesses to respect same-sex relationships. Concretely speaking, a business in Setagaya cannot be reported for refusing housing, visitation rights or life insurance to a same-sex couple. Shibuya ward on the other hand can disclose such business practices.

Should it come to a legal contestation— if a company refused to pay benefits to a same-sex couples— the case might be handed entirely differently under a guideline versus an ordinance (Kira & Esmeralda, 2015: 116).

Thirdly, the requirement for the certification is different. In Shibuya couples must submit two types of notarized documentation: "(1) a voluntary guardianship contract in which each partner appoints the other as a guardian, and (2) a cohabitation agreement that attests to their partnership and financial relationship."(Shimizu 2015). Both documents must be processed at the notary's office. This way, the Shibuya license incorporates the procedure of signing guardianship contracts, which has been used as an alternative to marriage by same-sex couples before (mentioned as alternatives to the marriage system described in chapter 2.5). The Shibuya license makes couples decide on various important parameters of partnership, medical decision-making rights as family members or when dealing with the police. The entire application process of the Shibuya license costs roughly 80, 000 yen. In the case of the Setagaya, the creation of the receipt costs 15, 000 Yen. Couples in Setagaya ward are not required to sign any voluntary guardianship contract and cohabitation agreement. They are merely required to make an oath at the ceremony (Kira & Esmeralda, 2015: 116).

Just as in the case of Setagaya and Shibuya, the "Hamburg Marriage" was mainly symbolic. It did not grant a couple rights or duties like in a heterosexual marriage nor did the marital status

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[76] This information was not mentioned by the counterpart from the Setagaya ward but from the person in Shibuya ward.

[77] Ryan, K. (2015, August 20). Setagaya Ward Becomes Second in Japan to Recognize Same-Sex Couples. Retrieved June 1, 2016, from: http://thediplomat.com/2015/08/setagaya-ward-becomes-second-in-japan-to-recognize-same-sex-couples/ .

[78] 北海道大学大学院文学研究科応用倫理教育センター主催　一般公開フォーラム　「同性パートナーシップ制度導入を考える〜私たちの街づくり〜」資料　2015 年 11 月 22 日開催 (北海道大学学術交流会館)p.6.

[79] Paragaph 3, item 7 of the Shibuya ordinance states "businesses may not discriminate based on gender differences or because a person is a sexual minority". For details see: https://www.city.shibuya.tokyo.jp/kusei/jorei/jorei/pdf/danjo_tayosei.pdf

of signatories change. The "Hamburg Marriage" allowed a same-sex couple to register their names in a "partnership book" at their corresponding registry's office. Unless authorized by the couple, no other person had the right to look into the "partnership book".[80] There was no obligation to report the marriage to authorities nor did partners have to financially support each other and the tax classification remained the same; however, all of the points mentioned in the expert opinion of chapter 3.1.2 were fulfilled.

While the Shibuya and Setagaya policies were based on an ordinance and a guideline respectively, the "Hamburg Marriage" is a federal state law which is only applicable in the city of Hamburg[81]. The three policies were the first public policies issued by an official body in their respective country that recognized a same-sex relationship. As learned through interview, Setagaya ward used the "Hamburg Marriage" as a blueprint, making it similar to the German version (Kira & Esmeralda, 2015: 116). But because the Setagaya policy is a guideline it has limited legal validity as it cannot force businesses in the ward to respect the same-sex relationships. The Shibuya ordinance is closer to the law of the "Hamburg Marriage" in terms of legal power, because like a law, it allows the ward to enforce businesses to comply. The "Hamburg Marriage" law did not expose noncompliant companies. It awarded rights to the couple which public institutions (such as hospital, universities etc.) had to respect.

Even though the three partnership agreements have no legal weight, they have a strong symbolic value. Same-sex couples apply for recognition of their partnership by an official body just like heterosexual couples. While the "Hamburg Marriage" propelled the movement for same-sex partnership rights and led to a federal law two years later, the Japanese licenses have triggered a domino effect that has led to policy introduction in other municipalities across the country.[82] By the end of August 2016, 33 licenses had been completed by Setagaya ward and 9 licenses by Shibuya ward. [83] The initial two policies raised national-level political debates on same-sex partnership and intensified already existing academic discussions[84] on same-sex marriage in Japan.[85] In the case of the "Hamburg License" the total course of its existence 151 licenses had been issued.[86]

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[80] Interview with German interview partner.
[81] Hamburg is a city and federal country at the same time.
[82] The decision by the two wards in Tokyo started a domino effect. In December 2015, Takarazuka City announced the introduction of a partnership license, followed by Mie Prefecture in April 2016 and the City of Naha July 2016.
[83]Nijiro Diversity Research (2016, October 24). Retrieved October 29, 2016, from:
https://www.facebook.com/nijiirodiversity/photos/a.108408885992288.18873.103160669850443/643546325811 872/?type=3&hc_ref=PAGES_TIMELINE.
[84] Hokkaido University (北海道大学大学院文学研究科応用倫理研究教育センター主催一般公開フォーラ ム) (2015).『同性パートナーシップ制度導入を考える～私たちの街づくり～』. 資料 2015 年 11 月 22 日 開催 (北海道大学学術交流会館). Available at: http://eprints.lib.hokudai.ac.jp/dspace/bitstream/2115/61281/1/ethics_forum.pdf
[85] Shortly after the Shibuya license was introduce Prime Minister Shinzo Abe was asked during a Diet debate for his views on same-sex marriage. He responded that the Constitution would make it difficult to realize. This view however, was contested by legal scholars. Though Article 24 of the Japanese Constitution says that marriage is a bond between "both sexes," it also points out that it's a matter of free choice.
[86] Due to the introduction of the federal law of the Registered Partnerships the "Hamburg Marriage" was repealed by the justice senator Roger Kusch (*Christlich Demokratische Union*=CDU, conservative party) in 2005. Until the repeal of the "Hamburg Marriage", 152 couples had contracted a "Hamburg Marriage". For more info please see (Abheiden, n.d)

The table below gives an overview of the main differences and the contents of the three policies:

	Shibuya Ward License	Setagaya Ward Receipt	Hamburg Marriage
Type	Ordinance	Guideline	Federal State Law
Target group	Only same-sex couples	Only same-sex couples	Only same-sex couples
Date	Enforcement of the new regulation in April 2015. Handing over on 5 November 2015.	Made public on 4 August 2015. Handing over on 5 November 2015.	Law was signed 1 April 1999. First ceremony held 6 May 1999.
Necessary documents	Couples need to sign a contract stating that they are each other's guardians.	None	None
Required documents to bring along	Both partners need an extract of their family register confirming identity.	Both partners need to present an identity document with photo	Both partners need to present an identity document, non-marriage certificate and certificate of ancestry.
Procedure	The couple hands in the application together at the ward.	The couple makes an oath in front of the ward's authority.	The couple registers at the registry's office.
Issued document	Partnership license	Receipt of Partnership oath	Copy of the partnership book
Requirements for application to receive the same-sex partnership license	Both partners are registered residents of the ward.	Both partners are registered residents of the ward. Alternatively, one partner resident of the ward and the other partners intends to move to Setagaya.	At least one partner needs to be a resident of the city of Hamburg.
	Partners are not directly related and their marital status is "single" at the time of	Partners are not directly related and their marital status is "single" at the time of the ceremony.	Partners are not directly related and their marital status is "single" at the time of the ceremony.

	the ceremony.		
	Both partners are at least 20 years of age.	Both partners are at least 20 years of age.	Both parties are contractually capable and at least 18 years of age. In exceptional cases this can be lowered to the age of 16, granted the guardian of the under aged person gave their consent and if the other party was of legal age.
Disclosure of businesses which fail to grant the same right to same-sex couples	Businesses can be publicly named	No disclosure requirement	No disclosure requirement
Dissolving the partnership	Notifying the ward administration without need to inform the partner.	Notifying the ward administration. Both partners submit the notification.	Possible but not mandatory. Only a new registration makes voiding the old partnership necessary. A deletion can be filed unilaterally in person or in notarized writing at the registrar's office. The partner must be informed.
Necessary for couples to report the partnership license to authorities	No	No	No
Enables couples to	(1) Rent housing within the ward (co-	(1) Rent housing within the ward (co-	(1) Rent housing within the city (a

signing of tenancy agreements for municipal/public housing), (2) assert hospital visitation and medical decision-making rights as family members), and (3) receive employment benefits, including family benefits, congratulations and condolence leave.	signing of tenancy agreements for municipal/public housing), (2) assert hospital visitation rights as family members, and (3) receive employment benefits, including family benefits, congratulations and condolence leave.	certificate of eligibility can be shared for council houses), (2) assert hospital visitation and medical decision-making rights as family members, and (3) apply as a spouse to study at the University of Hamburg.

Table 2: An overview of the three policies[87]

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[87]Own representation based on: (Kira & Esmeralda, 2015: 60); Shimizu, Y. (2015); Struck, K. (1999); Huffington Post. (2015, October 8). 同性パートナーシップ 世田谷区と渋谷区の 4 つの違い. Retrieved November 10, 2016, from: http://www.huffingtonpost.jp/letibee-life/lgbt-setagaya-shibuya_b_7963536.html.

Conclusion

This chapter will synthesize the previous chapters regarding theories of social movements, the sexual minority history of each country, the cases and the interviews. This cumulative analysis will compare the German and the Japanese gay and lesbian movement.

This paper has posed three crucial questions:

1) Can gay and lesbian activism, as a New Social Movement, influence policy outcomes with regard to same-sex partnership rights?

2) Why has Japan not followed the pattern of other democracies and established a legal framework for same-sex citizens?

3) Can western theories on social movements be applied to the gay and lesbian movement of non-western countries like Japan?

Answering the first and central question of this thesis, whether the German and Japanese gay and lesbian movement achieved concrete policy outcomes, the author negates this for both countries.

The concrete cases of Hamburg, Setagaya and Shibuya produced public policies that were based on top-down decisions by local governments. While the initiators of the policies in Hamburg and Setagaya were part of the LGBT community, the case of the Shibuya policy was initiated mainly by people who did not identify as sexual minorities. As learned through the interviews, there had been no vocal demanding for same-sex rights in any of the local communities by a gay and lesbian movement. In Shibuya, it was a mix of haphazard events and personal relations between assembly man Hasebe and individual entrepreneurs Sugiyama and Matsunaka who helped to raise awareness for sexual minorities and made the case to the ward council that a liberal city image would bring advantages. In Setagaya, assemblywoman Aya Kamikawa created a study group from her acquaintances and presented their findings to the ward mayor and other decision makers afterwards. This shows how personal networks bolstered the internal policy execution. Applying the theory of social movements to the Japanese cases, while the actors took institutional collective action (lobbying, press conferences), collective action was not involved in achieving concrete policy outcomes. Policy implementation was exclusively executed through the municipality. In the case of the "Hamburg Marriage", the Green Party had already campaigned for a same-sex policy in 1997. It kept its word to its voters and negotiated the policy with its coalition partner, the SPD.

To answer the second question, why Japan has not followed the pattern of other democracies of a legal framework for same-sex citizens, one must turn back to the historical trajectories of each country.

The reunited Germany underwent Waaldijk's three-step pattern of (1) decriminalization, (2) anti-discrimination, and (3) partnership legislation, within a time frame of ten years from the early 90s to the early 2000s. Pretzel & Seeck (1998: 358) mention particularities regarding the German gay and lesbian movements. The deletion of paragraph 175 in 1994 and thus the

decriminalization was not the result of successful gay and lesbian mobilization, but was a prerequisite for the movement's development (Pretzel & Seeck, 1998: 358).

The Japanese gay and lesbian movements did not face the institutionalized discrimination as the West German movement did. [88] Strikingly, Japan never needed to fight against the "statutory oppression" (Gould, 1979: 51), rooted in Judeo-Christian ethics and therefore common to many Western legal systems (McLelland & Suganuma, 2009: 330). Neither cross-dressing nor same-sex sexual behaviors were illegal and so the police surveillance and harassment of sexual minorities, which significantly motivated gay and lesbian activism elsewhere, has been largely absent in Japan. Therefore, Waaldijk's pattern cannot be applied to the Japanese case as it skips decriminalization. In Japanese society norms do not allow for homosexuality to become a dominant aspect of a person's life (Lunsing, 1999: 314-5).

Because Japanese sexual minorities had largely been ignored by the state and religious authorities, there was no counter-cultural backlash witnessed like in the US after the Stonewall uprising. The Japanese gay and lesbian movement lacks this uniting moment of shared history. "It has therefore been more difficult for individuals in Japan who experience same-sex desires to imagine that they share a common predicament, let alone an agenda for activism and reform." (McLelland & Suganuma, 2009: 329). The coexistence of a gay and lesbian community without any deep inter-communal ties might explain why a larger movement has not yet formed in Japan.

In contrast, at the time of the "Hamburg Marriage" a united gay and lesbian movement had formed in Germany in the form of the LSVD in 1999. The group shared a Collective Identity and had a common goal: to fight for same-sex partnership rights. Even without unanimous community endorsement, the group received enough support from bilateral groups and represented their demands for same-sex marriage rights on a national level.

No national gay and lesbian movement pushed for the public policies introduced in 2015. As the historical overview on Japan has shown, while a gay and lesbian subculture exists in Japan with strong individual groups and communities, this has not led to a shared network nor has it transformed into a political movement. Groups still tend to be dispersed. To turn to theory, it appears Collective Identity Theory does not apply since Germany and Japan understand homosexuality differently; one understanding leads to identity politics, the other does not.

McLelland observes the Japanese situation (2000a: 226) „[…] In the context of the gay world, there is the tension between some foreign gay men's political construing of sexual identity and indigenous Japanese understanding of sex as purely recreation (expressed in Japanese as *asobi* or "play" and *shūmi* or "hobby"). In other words, western, particularly American identity politics make the personal political and in the case of same-sex desiring individuals accepts the mainstream projection that what is most important, unique and individual about this group is their sexuality, thus making sex speak for the entire person and inadvertently reinforcing the hetero/homo binary. Yet, participation in Japan's gay scene does not

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[88] The author acknowledges that these observations rely on a rather stark and simplistic contrast between Japan and 'the West' and so runs the risk of re-inscribing a simplistic binary. However, in this paper the author hopes to make Japanese sexuality and culture intelligible within a cross-cultural perspective. For an astute analysis of the strategic employment of a binary paradigm, see Kazama et al. (1997:154); Suganuma (2007:485).

automatically result in the adoption a "gay" identify because of the very plurality of sexual types and terms which exist there."

During the 90s, Japan's sexual minority movement was led by OCCUR and its identity politics, human rights driven approach. While OCCUR's failure to unite lesbians and gays into a movement was exacerbated by operational errors, the differing views on homosexuality and identity politics explain why this strategy for activism proved unsuccessful in Japan.

Lunsing (1999: 316) observes that the mainstream gay and lesbian community in Japan does not support political activity: "[…] the idea that sexuality is not thought of so much in terms of what is right or wrong, in terms of all-encompassing morals, as it is in Anglo-American contexts, but rather as play, something people may engage in if they wish to do so. Therefore, sexuality may not be easy to politicize by people who rally opponents of homosexuality in Western contexts." [89]

The above sources by Lunsing and McLelland may seem outdated. However, the following finding shows that they are still pertinent to the case of Japan today.

Recently established organizations fighting for equal marriage share the goals of groups in foreign countries but they do not take an identity politics approach. Japan recently has witnessed the founding of new NPOs such as Equal Marriage Alliance Japan (EMA Japan), Japan Alliance for LGBT Legislation (J-ALL), Partnership Law Japan as well as Legal Network for LGBT rights. These organizations fight for equal marriage LGBT and same-sex rights through petitioning, public speaking and organizing fundraising events and legal cases. They use institutional forms of collective action and do not resort to identity politics. A recently conducted interview with the director of EMA-Japan, an NPO advocating for legal same-sex marriages in Japan, shows that the observations made by Lunsing and McLelland at the beginning of the millennium still apply to present-day Japan. The director of the NPO, speaking about the gay and lesbian movement in Japan, mentioned that it is not necessary to "sacrifice" oneself for the movement. He avoids speaking about why marriage equality is important to him. "I want my personal life quiet, peaceful, not so exposed to everyone," he said. "I don't get why sacrifice is necessary to realize the cause." [90]

While in Germany the common homosexuality was the foundation for building an alliance among groups in which they could build their identity. In Japan, this identify is missing.

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[89] Lunsing (1999:315) also states that a rigid definition does not fit the Japanese case and that shifting identities are more applicable. The legal definition caused by OCCUR's suit (Fuchu Hostel Incident suit against the Tokyo Metropolitan Government see chapter 2.3) is problematic as it limits rather than liberates: "The definition of homosexuality the court now uses is borrowed from U.S. mainstream gay movements, referring to it as a sexual orientation (*seiteki shikō*) inherent to particular individuals, which signifies a departure from existing Japanese constructions. The goal of this definition, as in the United States, is to stress that gay men (OCCUR hardly discusses lesbians, even though their English name is Organization for Gay and Lesbian Movement) identify themselves on intrinsic qualities rather than external actions. The movement's rhetoric combines this definition with a stress on gay men, the *tojisha* in this context, being the victim of discrimination by a homophobic society." (Lunsing, 2005:144). Strict identity categories did not fit with Japanese fluid ideas of homosexuality and thus did not resonate with the majority of gay and lesbians.

[90] Feder, J.L. & Kininmonth-Tsukamoto, N. (May 15, 2016). Can the Olympics Bring Marriage Equality to Japan? Retrieved on September 1, 2016, from: https://www.buzzfeed.com/lesterfeder/japans-very-quiet-push-for-marriage-equality?utm_term=.inlwMLgX5#.ryzEbD3vn

Clearly separated gay and lesbian communities exist and can be called a sub-culture, yet the groups have not united nor have they tied identity and personal behavior to social movements. Even though individual organizations and activists such as Mrs. Kamikawa are slowly beginning to raise awareness of critical LGBT issues, these actors remain disunited.

As chapter two explained in 1999, the German gay and lesbian movement was uniting and pushing for partnership rights. The Hamburg Marriage emerged in the transition from the movement's second phase (abolishing paragraph 195) to the third phase (establishing partnership rights). Even though the movement did not influence the introduction of the "Hamburg Marriage" directly, the group pushing for the license applied pressure on national politics to upgrade the established Partnership Law. Unlike the German movement in 1999, there was no national gay and lesbian organization speaking with a united voice at the time the Shibuya and Setagaya public policies were born.

Consequently, New Social Movement theory does not apply to Japan because the Japanese gay and lesbian movement never truly embraced identity politics.[91] Therefore, it is difficult to speak of "the" gay and lesbian movement in Japan[92]. While Japanese lesbians tended to be more political than gay groups by joining the feminist movement, both groups show a disinclination to make the personal political. Since Japanese gay and lesbian groups often refrain from identity politics, to call these groups a movement in the Western sense is problematic and imprecise.

There are other theoretical lenses to consider. Political Opportunity Structure can explain the German case study. German Reunification fostered a period of inclusion, which influenced the gay and lesbian movement throughout the decade. The Reunification allowed disillusioned western gay activists to enter the SVD, which fought for partnership rights. The newly founded SVD increasingly attracted lesbians who felt their demands were ignored by mainstream lesbian groups. This coming together of gays and lesbians led to the formation of the LSVD in 1999, the same year the "Hamburg Marriage" was introduced.

These developments of the German gay and lesbian movement can also be analyzed from a transnational theory point of view (Paternotte & Kollman, 2013: 10). Kollman (2011:119) detects that international developments had an influence on aspects of the policy process in Germany. One of these developments was the growing European LGBT rights movement during the 1990s. German gay and lesbian rights groups could use a human rights frame and began to emphasize same-sex partnerships as their central goal. The SVD building ties with ILGA-Europe helped to legitimize the organization's new emphasis on human rights on a national level.

As the interview with the German subject revealed, Green Party support of the gay and lesbian movement was key for the achievement of same-sex rights. The foundation of the Green Party in the late 1970s enabled gay activists to demand the eradication of discriminating laws. By the 1990's the Green Party had proclaimed the opening of marriage

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[91] While the lesbian movement on the other hand was far more political because it identified with the women's movement (by which it was never fully accepted).

[92] This paper will continue to use the expression the gay and lesbian movement in the following keeping in mind that it actually consists of two independent movements.

definitions. With the Greens the gay and lesbian organization received a vehicle that transported their ideas to national parliament.

In Japan transnational activism applies as well. The founding of OCCUR traces back to the ILGA reaching out to Japanese activists and setting up a satellite in Japan with their assistance. Minami had interacted with ILGA in 1984, much earlier than activists did in Germany 1996.

As explained previously, the identity politics approach did not find sustained support in Japan because a majority of Japanese gays considered focusing on identity to be a foreign value. This paper did not find any political opportunity structure (POS) in the Japanese case such as the German Reunification through which the newly reunified Germany gained a permanent, national gay rights organization.

Lastly, the third question, whether the Western theories on social movements from chapter 1 can also be applied to the gay and lesbian movement in Japan, a non-western country, will be discussed. Structural approaches (POS theory) are relatively neutral and theoretically can apply to the Japanese case. However, constructivist theories (Framing theory, New Social Movement theory and Collective Identity Theory) including Identity Theory and New Social Movement theory do not work due to differing conceptions of identity in Japan. Therefore, the Western concepts of social movements can only partially be applied to the Japanese case.

Looking forward, the Japanese interview subject revealed that the media started reporting about same-sex couples and sexual minority issues in a less sensationalist view, pointing out aspects such as discrimination and wellbeing of people. Compared to the media coverage in the past which exoticised the gay community it will be interesting to see how such a new form of reporting can influence people's minds. The effects of this change may lead to a better understanding of the gay and lesbian communities by the Japanese public.

The case of Japan challenges the prevalent Western assumption that identity drives queer activism to achieve concrete policy outcomes. The Japanese case demonstrates that gay and lesbian rights may be achieved without a western-style gay and lesbian movement. Knopp (1990: 21) points out: "The gay liberation movement […] is a product to ethnically European culture at a specific point in history. It by no means expresses or defines homosexual identities and experience in non-western or non-contemporary context." The Western-style activism of OCCUR displayed in the 1990s did not resonate with the majority of gays in Japan and gained little credit from its legal success and therefore crumbled in the early 2000s. As Altman (1996: 91) writes about non-western countries "gay identities may emerge in different ways and without the overtly political rhetoric of the West".

A central finding of this paper is that the ILGA initially had subsidies in Japan and Germany but the development in both countries took different turns. While the German movement utilized this connection to strengthen their case with a human rights frame, the Japanese movement's attempt to adopt the frame was unsuccessful. This finding makes the comparison of the two countries a compelling one.

This paper explored new scientific frontiers at various levels. Seen from a domestic dimension, this paper introduced new ideas by analyzing local public policies in order to

ascertain the existence of a gay and lesbian movement in each country. An analysis of the public policies presented in this paper has to date never been attempted. A comparison of the case studies among each other –Shibuya and Setagaya in Japan– and on an international level (Japan-Germany), revealed invaluable information on the creation of the policies.

Besides the technical comparison of the policy analysis, the attempt to link these cases to research on social movements between the two countries is innovative. The expert interviews with representatives of the local governments helped to make inferences about the gay and lesbian movements in each country. This international comparison between the gay and lesbian movement in Japan and Germany is new and was rewarding as it reveals profound findings on cultural differences and historical developments that explain the (non-)existence of the gay and lesbian movement in each country. Also, this paper introduces so far unexplored ideas by widening the academic lens and examining if transnational activism has influenced the diffusion of same-sex values in each country.

With the debate on same-sex marriage having reached mainstream society[93] through Shibuya and Setagaya's public policies, future research awaits. A comparison of strategies of newly founded gay and lesbian organizations and NPOs that fight for same-sex partnership rights with foreign groups and their impact merit deeper study. Keeping an eye on constitutional hurdles such as the registry system in Japan might reveal interesting findings. As Japan wrestles with questions of same-sex partnerships, the reader should not presume a western trajectory. This paper has shown that sexual identity in Japan is not a static but a fluid concept. This raises interesting questions regarding existing definitions of sexual identity concepts. In light of the findings of this paper further research on the universality of the previously held identity concept might be worth examining.

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[93] Brasor, P. (2015, February 28). Shibuya's same-sex move kicks off debate. Retrieved October 3, 2016, from: http://www.japantimes.co.jp/news/2015/02/28/national/media-national/shibuyas-sex-move-kicks-debate/#.WEgER302f6l

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