

Abstracts

Limits of the Gender Dichotomy Theory: Sexual Minorities and the Prohibition of Gender-Based Discrimination

Shozo Yamada (Professor Emeritus, Chuo University)

In the United Kingdom, along with gender-based discrimination, discrimination on the basis of gender reassignment (gender identity), sexual orientation, and same-sex marriage are prohibited by law. What is noteworthy here is that this presupposes a shift from the biological gender dichotomy theory, in which male and female are understood on the basis of reproduction, to a perspective that respects sexual diversity. That is to say, the question is how to protect the sexuality of the minority who differ from the majority whose physical body at birth and gender identity coincide with their own sexuality and who love the opposite sex. In particular, in the United Kingdom, there is a conflict between "God's Law," which states that homosexuality is a sin, and "Human Law," which prohibits discrimination, but a different debate is called for in Japan, where such a premise does not apply. In this regard, it will be essential to discuss what originally constitutes the essence of the prohibition of gender discrimination. Furthermore, in considering this issue, it may be possible to question whether the diversity approach regarding gender is also a useful argument alongside the discrimination approach. As described above, the purpose of this paper is to introduce the debate on gender identity, sexual orientation, and same-sex marriage in the United Kingdom's pioneering anti-discrimination law, and to explore the legal principles with regard to sexual diversity, which will be an unavoidable topic in Japan in the future.

Diversity Promotion in the Workplace and Positive Action: Legal Issues Regarding Proactive Measures for Improvement

Yoko Kuroiwa

Non-discrimination and positive action (PA) are the two wheels that should work together in promoting diversity in the workplace. In addition to regulating discriminatory behavior, it is crucial to make more proactive efforts to change discriminatory structures inherent in the employment system, respecting the diverse identities of workers, and taking into account their unique needs to realize equality in a more positive way. PA is a legal technique that plays a role in this. On the other hand, questions have been raised about the justification and effectiveness of PA, especially concerning special measures involving different treatment like quotas, such as whether these measures violate principles of equality, or leave discriminatory structures unchanged by putting great value on numerical results. In addition, what kinds of PA measures are legally acceptable and effective for improving which situations are also major issues in PA implementation. This paper examines the theoretical justification for PA and studies the acceptable scope of PA and the content of PA measures, as well as the use of various other measures for positive improvement, referring to discussions in the US and EU.

Legal Approaches to Inclusive Rights Protection for Minorities

Miho Mitsunari (Nara Women's University)

The relationship between minorities and majorities is asymmetrical. Society is structured according to the standards of the majority. As a result, the dignity of minorities is easily undermined and they are subject to intersectional discrimination. A comprehensive anti-discrimination law is necessary to prohibit intersectional discrimination. The Japanese government has been asked by the human rights bodies of the United Nations to enact a comprehensive anti-discrimination law, but it has maintained its position that it is not necessary. The Japanese government is proactive internationally in guaranteeing the rights of LGBTQ people. However, domestically, not even the Law for the Promotion of LGBT Understanding has been introduced to the Diet. The Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder (the GID Special Cases Act) stipulates infertility as an essential requirement for legal gender reassignment. This is a requirement that the WHO and others consider a violation of human rights. It is

hoped that the Special Cases Act will be abolished as soon as possible, and a new law enacted to allow people to change their legal gender based on their gender identity. It is desirable for societies and companies to formulate regulations that clearly state the prohibition of comprehensive discrimination, and to set procedures and rules for the use of options that should be provided based on minorities. The majority, which is in charge of establishing norms, should be aware of its own privilege and the intersectionality of discrimination.

Protections for Sexual Minorities and Sex Discrimination Theory: Implications for Japan Based on Legal Arguments in the US

Tamako Hasegawa (Fukushima University)

This article describes the legal arguments regarding the rights of LGBT people in the US in order to provide some implications for Japan, which lags far behind in issues involving sexual orientation and gender identity. Social movements, legislation, and precedents have played important roles in winning civil rights for the LGBT community in the US. For example, Congress has tried to amend the Civil Rights Act to protect LGBT people, and some courts have concluded that employment discrimination based on one's being a sexual minority is illegal, adopting the "sexual stereotype theory" that was established in the Price Waterhouse case. Eventually the US Supreme Court determined that an employer who fires an individual for being gay or transgender violates Title VII of the Civil Rights Act of 1964. This is because, in firing a person for being gay or transgender, the employer has fired that person "for traits or actions it would not have questioned in members of a different sex," which is exactly what Title VII prohibits (*Bostock v. Clayton County*, 140 S Ct. 1731 [2020]). The *Bostock* case provides nationwide protections from employment discrimination to all LGBT persons. However, the case did not answer whether sex-segregated bathrooms, locker rooms, and dress codes are in violation of Title VII. It is probable that this problem will be solved not by the interpretation of statutes but through new legislation.

Rejection of an Insider, Acceptance of an Outsider

Mitsuhiro Ura (Otemon Gakuin University)

Our intuitive understanding that being an insider in a group or organization makes people more likely to be accepted, and being an outsider makes people more likely to be rejected, is not always correct. When people in these respective positions engage in deviant behavior, the opposite of this intuitive understanding may occur. With regard to this paradoxical relationship, this study conducted a survey to test predictions derived from the theoretical framework. The results of the analysis suggest that outsiders who exhibit deviant behavior are more acceptable than insiders who exhibit the same behavior from an insider's point of view, and that behind this is the perception that deviant outsiders can be reformers of an organization's culture.

Treatment and Issues of Sexual Minorities in the Workplace

Michitaka Nako (Kanazawa Professional University of Food Management, Professor Emeritus, Kanazawa University)

Sexual minorities face a variety of difficulties in finding employment. This has been revealed in recent surveys, and measures to deal with them are being sought. Only about 10% of companies have measures for sexual minorities, but the percentage is as high as 43% in large companies. Companies that have progressive measures are making a range of efforts, and these are helpful for improving the working environment for sexual minorities. Three district court decisions concerning transgender people focused on their characteristics and individual circumstances, and considered domestic and international trends. Such judgements are important for appropriate solutions. To create a better work environment for sexual minorities, measures that are not bound by traditional gender norms of male and female and the promotion of understanding are required, as well as corporate practices that place more importance on individuals and individuality than ever before. Furthermore, it is desirable to enact legislation to prohibit discriminatory treatment of sexual minorities.