

**Marriage from the perspective of the problem of declining birth rates**  
**Atsuko KIMURA (Graduate School of Law, Kyoto University)**

Report written by *Natascha Denk* and *Lisa Ruthner*

The decline in births over the last few decades is a massive problem in Japan. In addition to the measures taken by the Japanese government, which focus on support for raising children and reconciling family and career, an "unconventional" way from a European perspective is being advocated: Measures to promote marriages are intended to combat the decline in birth rates.

A decline in the birth rate in a society occurs, when the number of children is lower than the number of over 65s and the total fertility rate is lower than 2.07, which is necessary to maintain the population. This has been the case in Japan since the mid 1970s. It became especially a problem with the so-called 1.57 shock in 1989. In 2022, the fertility rate was at 1.20.

The decline in the birth rate is accompanied by two problems. Firstly, the decline in the population and secondly the change in population structure, particularly in terms of the age structure. Subsequently, this leads to a flattening of economic growth due to the decline in the number of workers and shrinking of the market. In addition, numerous difficulties are expected within the social security system. The disadvantages mentioned are damaging at the macro level, meaning at a level that affects the society. The Japanese government's measures to combat the declining birth rate focus on support for raising children and reconciling work and family life. Specifically, the aim is to extend eligibility for child benefit, abolish the income threshold by October 2024 and promote paternity leave for fathers. Particularly in the area of reconciling family and career, critics fear that this will interfere with the free choice of the individuals and are calling for a redesign of the system and the market.

The current Kishida cabinet launched some of these measures in January 2023. The main reasons for the decline in the birth rate are the burden of raising children and the difficulty of reconciling work and family life. As most Japanese women work in atypical employment or part-time, which does not represent an opportunity for self-realization, continued employment after childbirth is rather uncommon. In this view, the actual effectiveness of possible economic support, especially those measures designed to support both employed parents, seems questionable.

Furthermore, attitudes towards children have changed from the pre-modern society, where children were seen as laborers in their parents' businesses and as production goods, to a society, where children provide emotional meaning to parents and function as consumer goods. Since the financial crisis of the 1990s, there has been a persistently poor economic situation and weak economic growth. The employment situation appears therefore uncertain for many and starting a new family is associated with a high level of risk. In addition, parents are expected to take responsibility for their children for longer and to provide financial support, which is a major economic burden for parents. However, without a family, there is an extreme individualization and a turning away from the family, a de-familization.

Another reason for the decline in births in Japan is the increase in unmarried couples and later marriages, as marriage is still considered a prerequisite for having children. Measures to promote marriages are therefore seen as an effective measure of combating the decline in the birth rate. However, the associated effects on marriage as an institution must be viewed critically. It must be questioned whether having and raising children can be regarded as the central purpose of marriage.

In the patriarchy, marriage served to produce children in order to inherit the family's assets. Although from the 18th century onwards marriage was seen as a union between two individuals, however the procreation of children was also the purpose of marriage. According to the philosopher Hegel, modern marriage is a unity bound by love, which is incorporated into the community and is recognized. From the perspective of family sociology, modern marriage is understood as a unity of love, sexuality and reproduction. Marriage is based on this idea, but it also fulfils the purpose of reproducing workforce and stabilizing the social order.

In Japanese civil jurisprudence, the presumption of matrimony according to Article 772 of the Civil Code is based on the view that marriage creates a stable environment for the procreation and upbringing of children. The legal effects of marriage, such as the obligation to live together, are intended to ensure a stable and lasting relationship. Forming a stable partnership can be seen as the purpose of marriage, but the procreation and rearing of children not. It should be noted that the motives for entering a marriage are different for each person.

If one follows Adam Smith's theory, marriage as a constant connection between mother and father is required for the joint raising of the child by the parents. This presupposes that procreation in a relationship is taken for granted and that the biological parents raise the child. However, it should not be forgotten that the development of contraception methods has separated sexuality and reproduction and it is now up to the individual to make this decision. It is also possible that other relatives take on the task of raising the child, rather than the mother and father as a couple, as Smith intended.

If marriage is propagated as a measure against the decline in birth rates, procreation would be established as the central purpose of marriage. Although marriage can contribute to the stability of the relationship, it cannot guarantee the stability of the living environment, which requires economic resources. Measures relating to work and economy are therefore essential. A further examination of the question of interference in the individual's freedom of choice also seems necessary.