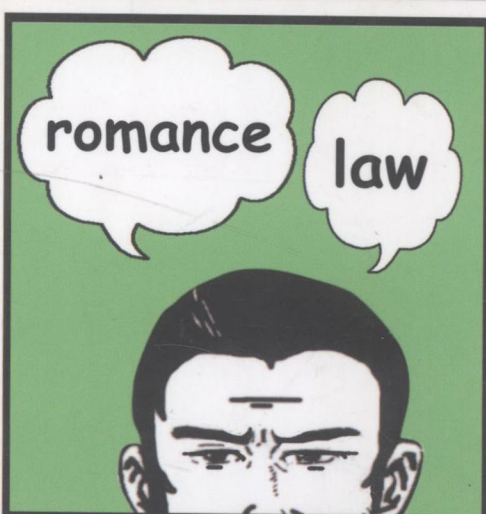
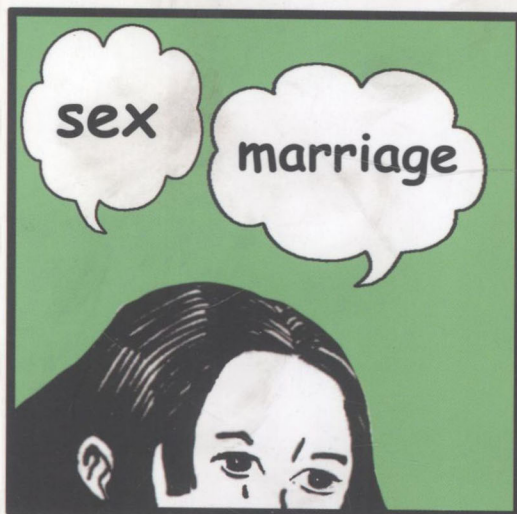


LOVESICK JAPAN



MARK D. WEST

LOVESICK JAPAN

*Sex * Marriage * Romance * Law*



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EXPLANATORY NOTES

Names are given in American order: John Smith, not Smith John.

All yen amounts are converted to dollars at the rate of \$1 = 100 yen. The actual rates were 144.79 in 1990, 107.77 in 2000, and 93.68 in 2009. The differences won't matter.

To protect the privacy of the litigants, courts often use pseudonyms or generic labels like "plaintiff" and "defendant" instead of party names. Unless otherwise stated, if the court or case reporter uses the real name of a party, I use it. If not, to keep the players straight and to preserve some humanity in the opinions, I named the parties.

Court cases in Japan generally begin in one of three places: summary court (438 courts, for civil cases with damages claimed of less than \$14,000 and petty criminal cases), family court (50 courts, with 203 branches and 77 local offices, for domestic relations and personal status cases), or district court (50 courts and 203 branches, for everything else). District courts hear appeals from summary courts. Eight high courts hear appeals from district courts and family courts. The Supreme Court is the highest court.

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INTRODUCTION

In 1999, a man was prosecuted for committing “obscene acts” with two girls, eight and eleven years old.¹ The Shizuoka District Court judge in the case based his written description of the facts in part on the statement of Haruko, the eleven-year-old:

The defendant delivered newspapers in the neighborhood where Haruko lived. He would give snacks to Haruko and her elementary school friends and talk about games with them. He would get close to the girls and touch their backs, or he would touch their breasts and claim that his hand had slipped. These things caused him to be known as a pervert. After he kissed one of the girls, Haruko’s mother warned her not to get too close to him.

The particular words the judge uses to describe the action are important. The judge employs an omniscient voice but uses words that are more befitting an eleven-year-old than a jurist. Instead of calling the defendant a “strange person” or something similar, the court called him a pervert, an *ecchi ojisan*—literally, perverted uncle. *Ecchi* is the Japanese pronunciation

of the English letter *H*, a slang term that is said to have first appeared in the mid-1960s as shorthand for the Roman alphabet spelling of *hentai*, a word that means perverted.² *Ecchi* can mean perverted, but it can also be used as a noun to refer to sex acts. A court normally uses *ecchi* only when it is quoting someone. *Ojisan* (literally, uncle) is a term applied to middle-aged men. The combination of *ecchi* and *ojisan* appears only twice in all of Japanese case law, once in 1988 and once in 2006, both times as quotes of sexually abused seven-year-old girls.³ The court's use of the language here in its own voice places the impending crime squarely within a stereotypical predatory story line by highlighting the childlike innocence of the victims. The court continues:

About two weeks before the crime, Haruko saw the defendant [playing] with a Game Boy. When she said, "I wish I had a Game Boy," the defendant said, "I'll buy you one." They agreed to meet at 12:30 on the last Sunday in April at the parking lot in front of the Citizens' Hall. The defendant wrote his cell phone number on the back of his business card and gave it to her.

Because Haruko knew that the defendant was a pervert and worried a bit that he might take her away in his car, she decided to change their meeting spot to Hamamatsu Station, which was near stores, so she would not have to get into a car. She called his cell phone from a public phone and said, "Let's meet at Hamamatsu Station." She lied, saying, "My mother works near the station, so I'll have her drop me off, and I'll go home with her at 4." The defendant complained, "Just let your mother go off by herself," but in the end, she was able to get him to agree. Because Haruko did not know what might happen to her if she met him alone, a week before the meeting, she invited her friend Natsuko.

Again the court takes the child's perspective. It attributes to Haruko the words "I wish I had a Game Boy" (*ge-mu bo-i iina*). A more literal translation might be a singsong "I suuuuuuuure do like that Game Boy you've got there," a childish and indirect way of asking for a treat. And again the court used the word pervert (*ecchi*) instead of a more proper label.

On the day of the planned meeting, Haruko and Natsuko took the bus to Hamamatsu Station, where they met the defendant:

When the defendant met Haruko and Natsuko, he quickly said, "Let's go," but just as they were about to go buy the Game Boy, he said, "I left my

wallet in the car,” and he tried to get them to go to the car with him. Haruko and Natsuko sat on a bench and said, “We’ll wait here.” The defendant got on the escalator and beckoned for the girls to come. Haruko and Natsuko watched him for a bit, then said, “OK, let’s go.” Because the defendant had said that he had left his wallet in the car, the girls thought that if they didn’t go get it, they wouldn’t receive Game Boys.

As the three of them walked toward Hamamatsu Station, they came upon a store that was selling Pokémon rings. The defendant said, “Oh, they’re really cute. It’s OK, pick one out for yourself.” Haruko and Natsuko each picked one, and the defendant paid three dollars each out of his wallet. [In a separate portion of the opinion, the court said that Haruko noticed then that the defendant had his wallet despite the fact that he had said it was in his car.]

At the crossing signal at the Ito-Yokado [store], Natsuko saw a friend; they had a few words, and then they reached the parking garage. The parking garage was scary, and Haruko and Natsuko said, “It looks like ghosts will come out, and I hate being here.” The defendant said, “I’m going to buy it for you, so come on,” and the girls, thinking they had no choice, boarded the elevator and headed toward the fifth floor, where the defendant’s car was parked. Haruko said, “Hurry up and get what you left.” The defendant opened the passenger side door and said, “It’s OK, so get in” and “If people see us, they’ll think something is strange, so get in,” and the girls had no choice but to get in.

The narrative from the girls’ perspective continues to set the stage. The girls know that something is wrong with the parking garage—it’s scary. But it is scary not in the language of an educated judge; it is spooky because “it looks like ghosts will come out” (*obake ga deshō*). The court attributes that line to both of the girls. Surely they did not say it simultaneously, but it is the mood that matters, not the identity of the speaker. When the defendant opened his car door and convinced the girls to get in because the scene would appear “strange” to passersby, the court conveyed the defendant’s increasing creepiness.

When the three got in the car, the defendant took an unequivocally devious step, which the court’s buildup has made inevitable:

“If you want [the Game Boy], do *it*.” Because Haruko didn’t know what he meant, she said, “What’s *it*?” to which the defendant replied, “*It is it*.” Haruko asked again, “So what is *it*?” to which the defendant replied, “*Ecchi*.”

The meaning of *ecchi* here is imprecise; it might mean intercourse or it might mean some other sexual act short of that. Upon hearing it:

Haruko said, "Why do we have to do such a thing? That's not what we said." She became angry and turned toward the window, facing away from the defendant. The defendant turned to Natsuko, and in such a way that Haruko would hear it, said, "I wonder why she's so angry? It's not such a big deal."

Haruko and Natsuko said they wanted to get out of the car to talk about it, and the defendant opened the door to let them out. They talked for ten to fifteen minutes, saying, "I really want that Game Boy. I wonder how much he'll give us" and so forth. Finally, Haruko turned to the defendant and asked, "How much will you pay us?" The defendant said, "If you let me touch you, I'll give you \$300," to which Haruko and Natsuko said, "We won't let you touch us." The defendant then said, "OK, just photographs. Please." The girls talked to each other, saying, "What should we do? A photo lasts forever." They could not decide, and they asked the defendant again, "How much will you give us?"

The defendant and the girls eventually settled on \$150. The defendant readied his car for the photography session, taping newspaper to the windows so that no one could see inside. The girls took off their clothes, and the defendant took five instant photos of the girls together and ten of each girl separately. The defendant then asked the girls to sit in the *taiikusuwari* pose, a position frequently used in elementary school assemblies but also a favorite of pornographers, in which a seated girl places her knees together and tucked toward her chest, with her feet remaining on the floor.

The girls were embarrassed and would not open their knees. The defendant begged, "Please, spread your legs. If you spread them I'll give you \$200." The girls did so, and the defendant took pictures of them in a pose in which the place where you pee could be seen. The defendant took pictures of the girls in several poses, and Haruko began to feel embarrassed over their nakedness and the pictures. She didn't talk much while the pictures were being taken, and at the end, she thought, "This is dangerous. I shouldn't be doing this."

There are no quotes in that passage other than those that are marked. The court called the genital area "the place where you pee" (*oshikō wo*

suru tokoro). By speaking as a child here, the court seems to be pushing us, and not very gently, to view the situation through the victims' innocent eyes. But using the child's voice as heard by the defendant also encourages us to see the world through the lecherous eyes of a pedophile.⁴ It is not clear which perspective the court is suggesting (consciously or otherwise) that we take, but either view frames the impending acts as frightening, unconscionable, and sick.

The court finalized its narrative by saying that the girls dressed, got out of the car, received their \$200 each, and bought their Game Boys.

The events thus molded into a story, the court turned to analyze the defendant (whose testimony it dismissed as unbelievable). The court changed its tone entirely. After noting that dozens of pornographic magazines, videotapes, CD-ROMs, and photographs of underage girls were found wrapped in cardboard in the defendant's attic (and given to authorities by the defendant's wife), the court began to dissect the defendant's psyche:

These pornographic tapes and books had titles such as "White Paper on Lolitas" and "Dangerous Old Guy and Lolita Part 2" and contained many Lolita Complex images such as girls who appeared to be junior high school students in school uniforms performing sex acts with men, elementary school-age girls urinating outside, and three junior high age girls posing naked indoors.

The court went on to describe the contents of the seized illegal CD-ROMs, which included "pictures of young girls' genitals," "pictures of junior high school girls performing fellatio," and "naked girls whose vaginas were penetrated by sex toys." The court now has abandoned the language of a child; it is explicitly reporting on things that a child would not, and speaking in clinical, definitively adult language.

The court, which apparently had no psychiatric testimony before it, then diagnosed the defendant's illness as if it had expertise in doing so:

The existence of these perverted videotapes and so on shows that the defendant has a Lolita Complex, an unusual sexual perversion. Unsatisfied with virtual reality, the defendant expanded his sexual desires into the real world. He began by taking lurid pictures of girls in their underwear, and then his desires became stronger, to the point at which he took lurid pictures of nude girls.

The court then shifted tone yet again, turning from its pseudoscientific diagnosis to a moralistic sermon that situated the defendant in the decline of society:

The collapse of sexual taboos, the destruction of various attachments of social meaning to the mystery of sex, the removal of the male chauvinism that surrounds sex, and the recognition of the reality of sex for what it actually is can in some sense be said to be a sign of social advancement. However, the pleasure that accompanies sex has led recently to sexual hedonism, the collapse of the family system, and adultery. The lack of moral principles regarding sex is enough to make one cover one's eyes. People have forgotten to think deeply about the fact that every person's actions have meaning in a person's life.

Sex for all living creatures performs the essential function of ensuring survival and prosperity; for humans, it serves the additional function of supporting the foundational group unit of society, the family (the epitome of *Gemeinschaft*, on which humans necessarily depend). In other words, as opposed to one-sided civil society (*Gesellschaft*), in the family, which is typically comprised of a husband, a wife, and young children, people relate to each other with their whole selves in multifaceted ways, and in so doing they hope to maintain a lasting lifestyle based on deep love [*fukai aijō*] and trust. Sex in particular performs the role of cultivating the bond between husband and wife that creates and supports love [*aijō*]; it serves the purpose of providing children with emotionally stable development so that the next generations of mature adults may be sent into the social world. Accordingly, "sex" is a valuable thing that should not be treated lightly [*yasuuri...mono de wa nai*].

A climate in which sex is treated negligently creates a generation that does not consider the overwhelming significance of the family, the basic foundational unit of society, and there is at the very least a risk that this generation will pass on the trait to the next.⁵

The defendant's act, for which he was sentenced to two and a half years in prison, thus was contrasted with a model of sex as a bond that "supports love" in marriage and promotes "emotionally stable development." The defendant's act hurt not only his victims but the whole of society for generations to come. That social collapse was apparently already in process before the defendant acted, as "the pleasure that accompanies sex has led recently to sexual hedonism, the collapse of the family system, and adultery." The judge

hinted at his dismay with another social problem when he spoke of sex as “valuable”; although he was not chastising these girls in particular, he seems to be referring obliquely to the phenomenon of compensated dating (prostitution or paid dates by underage girls) as another sign of social decline.

The summary case note in the *Hanrei Times* law journal that introduced the opinion—almost certainly written by the judge himself⁶—further argued that the defendant’s behavior was symptomatic of broader trends:

Lately it has been estimated that one million young people lock themselves into their rooms. These young people are unable to interact with others; they simply sit in front of their computers and enter their own world. These avoidant personality and social withdrawal disorders have recently become a focus [for society]. It is a part of the “aging society with a declining birth-rate” [*shōshi kōrei shakai*].⁷

With that flourish, the framing of the defendant’s simple, time-limited acts as symptoms of a full-blown social epidemic is complete. To make the necessary links, the court appropriated at least four distinct voices, each for a specific purpose, into its powerful monologue. Its use of a girl’s voice (at times as heard by the defendant) to tell the facts sets up the chilling tale and emphasizes the defendant’s depravity. After the facts comes the analysis, first in a cold, investigator’s voice to describe the pornographic evidence, then in the voice of a medical expert to diagnose a psychological complex. Finally, we hear the voice of a social critic lamenting the ills of society, measured against the idealistic yardstick of marital love and sex: cornerstones, apparently, of Japanese society.

The court has accomplished some essential goals of a judicial opinion: it has shown that the defendant’s conduct was illegal (and despicable) and that he deserved a particular punishment. But the interesting aspect of this particular court opinion is not its seemingly predetermined outcome; rather, it is the way the judge tells the story, the way his words tell us something not just about the defendant but about the judge’s worldview, his morality, and ultimately about Japanese law and society.

In this book, I use a comprehensive body of evidence—2,700 publicly available court opinions—to explore a particular vision of love, sex, and marriage in Japan. The opinions are from diverse areas such as family law, criminal law, torts, contracts, immigration, and trusts and estates.

They reveal an important, official perspective on how real individuals in Japan confront the painfully human issues that surround love, sex, and marriage.

Court opinions usually contain facts, analysis, decisions, and commentary. Sometimes judges' views of love, sex, and marriage emerge from the presentation of the facts. Among the recurring factual elements in the case law are work-induced commuter marriages, abortions forced or at least prompted by men, compensated dating, late-life divorces, termination fees to end affairs, sexless couples, Valentine's Day heartbreak, "soapland" bath-brothels, and home-wrecking hostesses. In many cases, these elements are irrelevant to the judgment, and yet judges choose to include them in the narrative anyway.

Sometimes it is the *nonfactual* elements of the opinions that are most revealing. Especially when combined with the facts, these portions—analysis, decisions, commentary—often suggest broad problems in love, sex, and marriage. Love, for instance, is highly valued in Japan, but in judges' opinions, it usually appears as a tragic, overwhelming emotion associated with jealousy, suffering, heartache, and death. Other less debilitating emotions and conditions, including "feelings," "earnestness," and "mutual affection," appear in unexpected areas of the law such as cases of underage sex and adultery. Sex in the opinions presents a choice among (a) private "normal" sex, which is male-dominated, conservative, dispassionate, or nonexistent; (b) commercial sex, which caters to every fetish but is said to lead to rape, murder, and general social depravity; and (c) a hybrid of the two in which courts commodify private sexual relationships. Marriage usually has neither love nor sex; judges raise the ideal of love in marriage and proclaim its importance, but virtually no one in the cases achieves it. Instead, married life is best conceptualized as the fulfillment of a contract.

Taken as a whole, the judges' opinions describe a Lovesick Japan. By "lovesick," I do not mean languishing with love as a teenager might pine for a sweetheart. Nor do I use lovesick as a substitute for loveless (lacking love) or lovelorn (the pain of unrequited love), though aspects of each apply. In this book, I use the word "lovesick" to describe a society in which a complex set of chronic and evolving problems is revealed in the ways people conceptualize and discuss love and the related components of sex and marriage. In the court opinions, lovesickness most often appears as a presupposed absence of physical and emotional intimacy, affection, and