

Citizen or not? A conditional love story

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Guam – The most basic difference between citizens and non-citizens is that the former have an unconditional right to be in their country of citizenship while the latter do not. Widespread rejection of identity-based discrimination and acceptance of universal human rights may have contributed to more people thinking that having citizenship in the place you call home is no longer important. But they are wrong, at least when it comes to Japan.

Many people may associate citizenship primarily with voting and other political rights, as well as eligibility for certain government jobs. Arguably these are only secondary benefits of citizenship. Children cannot vote or work, and adult citizens can be ineligible for these benefits due to criminal convictions or other impediments. Go back not too far in history and gender and wealth were preconditions to political participation, and merely being poor or female were absolute impediments, citizenship notwithstanding.

No, the most fundamental aspect of citizenship lies in geography; the physical metes and bounds of the place (or places) on Earth where you have it. As COVID-19 has shown, decades of globalization may have resulted in expats ignoring at their peril this very ancient distinction between citizen or not.

Many countries have tightened or shut their borders in response to the pandemic. Japan has closed itself off to entry from most foreign nationals, even those with permanent residence or other long-term visas who happened to be outside the country when the pathogens hit the fan, or left after the outbreak started. Japan is allowing citizens (and “special permanent residents” of Korean heritage) to enter but stands out among developed nations in broadly barring entry to non-citizens with long-term residency status.

This policy seems nonsensical in that there is no epidemiological evidence to suggest Japanese nationals are somehow less likely to bring the virus into the country than foreigners. Nonetheless, it probably makes perfect sense to the politicians and bureaucrats who made it, and it reflects a fundamental dichotomy in how the nation treats Japanese and non-Japanese. This dichotomy is nothing new and is rooted in a basic reality that the nation’s Constitution is drafted for the people — the Japanese people, with foreigners having a nebulous status from the outset.

Having spent more time than most reading about how Japanese law — the Constitution in particular — treats non-Japanese residents, the COVID-19 shut-out was thus completely unsurprising. It is not some new, virus-related hysteria. It is simply a reflection of a fairly consistent pattern.

In fact, I actually concluded some time ago that investing in Japan entailed significant risks. Though by “invest” I am not referring to business — Japan is a fine place to do

business — but rather personal investments: the time and energy that go into creating a home somewhere, the investment you only get to make a few times over the span of a lifetime. Taking Japanese citizenship might be an option to mitigate that risk, but is Japan the place — the only place — where you want to have an unconditional right to live?

The principal risk of non-citizenship, of course, is losing the right to be in Japan. If you are in Japan then you are probably safe, since they rarely, if ever, seem to deport people who were here legally in the first place. In fact, the government has only recently gotten around to considering imposing criminal penalties on non-Japanese in the country illegally for refusing to cooperate with deportation orders.

The more probable risk is that of Japan becoming a kind of reverse Hotel California, one you can leave any time but never check back into. This could happen because you have become problematic, but not enough to actively deport, or because something that happened to cause Japan to prevent you from re-entering after you leave. That is what is happening to foreign residents trapped outside of the country right now, but it also imposes harsh choices on those in Japan who need to return to their home country for family emergencies or other urgent circumstances.

COVID-19 is an unprecedented set of circumstances, but Japan's Supreme Court confirmed in 1992 that foreign residents — even those married to Japanese people and parents of Japanese children — have no “right of sojourn,” the right to leave the country temporarily and return. This was in a case of an American resident of Japan who had refused to be fingerprinted to protest the imposition of that requirement on the ethnic Korean community (remember that?). So consider that being about where the bar is set for “becoming problematic,” though of course it could change at any time.

Thus, long before COVID-19 a consideration at the back of my mind when considering purchasing a home in Japan was always “what if I suddenly can't return.” At those times it was a risk that seemed extremely small — I have always felt welcome in Japan and think I have a reasonable ability to distinguish between theoretical risk and actual risk. Yet the theoretical risk of geography — of losing the ability to be in or return to Japan — is one that cannot be fully mitigated. The risk that my home will catch fire is also small, but at least I can buy insurance for that. And it turns out the risk was not so small or theoretical after all.

It's not just about homes either. The Supreme Court has repeatedly demonstrated that when push comes to shove the Constitution will never side with non-Japanese of any type in a confrontation against the state. Whether it is eligibility for welfare, public employment or the right to have your visa renewed, there are simply no cases where a non-Japanese has prevailed in the end.

Even the one case that might be held as an exception — a 2008 ruling striking down discriminatory provisions in the Nationality Act — contains multiple reiterations of what apparently all 15 judges on the court seemed to consider an obvious truth, that

citizenship “is an important legal status necessary to enjoy the protection of fundamental human rights and other benefits.” Yes, they said that. Multiple times.

If recent news is any guide, the government seems more interested in letting in low-wage “technical trainee” manual laborers from Vietnam, rather than readmitting someone with a house and permanent residence who has spent 20 years mastering the ancient Japanese art of *seikatsu* or “living in Japan.” Granted, Vietnam seems to have done an exceptional job of containing COVID-19, but more likely it is a sign of what the government of Japan wants out of foreigners, which is for them to come, work, pay taxes, and then ideally leave, or not be a burden if they stay.

Given the state of the nation’s finances, if you are not presently working and paying taxes you are probably a burden. Political leaders like Finance Minister Taro Aso are not shy in complaining about how stubbornly barren and long-lived the Japanese people are, but of course he is stuck with them — they are citizens.

I expect it will only get worse as Japan reconsiders the merits of unfettered globalism, a trend which predates the pandemic and is playing out in other countries as well. Perhaps I am not the only one who feels it getting harder to do things like open and maintain a Japanese bank account or send money abroad.

Some foreign residents currently trapped overseas may be experiencing for the first time how tied to geography Japanese regulatory systems can be; if you are not in Japan they become much harder to use. I’m not sure that it is much better for Japanese people living abroad. They can access various services through Japanese consulates, but they had no right to vote until 1998 and it took a rare unconstitutionality ruling in 2005 for that right to be finally taken seriously.

So do I have any expectations that if I retire elsewhere after a life in Japan that the Japanese government will do anything to help me do things like maintain a bank account or collect my pension outside Japan? No. If anything I expect all these things to become more difficult and the growing fiscal pressures on Japan to make non-Japanese former residents a tempting source of “unclaimed” pension entitlements and funds sitting “dormant” in bank accounts that are too difficult or expensive to access.

Mature adults come to realize that loving other people means accepting them as they are and not expecting them to change when or the way you think they should. Probably it is the same with countries, and much as we of its foreign diaspora may still love Japan, we should set our expectations accordingly. Japan may even love us back, just not unconditionally.

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