

Jus Koseki: Household registration and Japanese citizenship

戸籍主義 戸籍と日本国籍

Karl Jakob Krogness

The anthology *Japan's household registration system and citizenship: Koseki, identification and documentation*, David Chapman and Karl Jakob Krogness, eds. (Routledge 2014) provides a first, extensive, and critical overview of Japan's koseki system. Situated from the seventh century Taika Reforms until today at the center of Japanese governance and society, the koseki opens up for comprehensive and deep exploration the Japanese state, family, and individual, as well as questions relating to citizenship, nationality, and identity. The scope of potential koseki-related research is extensive and is relevant for many disciplines including history, sociology, law, ethnography, anthropology, cultural studies, literature and media studies, gender and queer studies. Given the koseki's origins in the household registration regimes of China and its subsequent influence on the household registration systems of Korea and Taiwan during the colonial period, the koseki also opens the way for comparative studies within and beyond East Asia.

Koseki has implications for normativity, marginalization, exclusion, social order and individual rights. Phenomena examined here include issues such as reproductive technologies, illegitimacy, children of unknown parentage, individuals lacking koseki in Japan today or in Colonial Korea, statelessness, marriage and 'same conjugal surname' (夫婦別姓), same-sex partnerships, legal gender change, and the intertwining of family and citizenship - whether legal, colonial, or sexual. The book also offers an historical perspective

on the development of the koseki system (and the changing household unit it shapes) and the outcaste registers of the early modern period, as well as early Meiji hinin fraternities, international marriage, and ways in which the koseki as an ordering tool inevitably, down to today, creates chaos and 'strangers' and 'undecidables.'

The following revised chapter from the book examines the koseki register as the official ledger of citizens (日本国民登録簿) and interrogates Japanese legal citizenship: to what extent is citizenship actually based on the Japanese Nationality Law's principle of *jus sanguinis* (the principle whereby a child's citizenship follows that of the parent(s), as opposed to *jus soli*, where citizenship follows place of birth) when the koseki register historically and structurally is not centered on bloodlines? The chapter proposes an alternative principle termed *jus koseki*, which strongly influences Japanese citizenship bestowal, but also influences Japanese society more generally at the level of the state, family and individual. DC and KJK

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The koseki system (戸籍制度) has since early Meiji exerted profound influence on the Japanese civil law system. As such, the koseki (戸籍) is highly relevant for understanding modern Japanese society at the level of the state, the family, and the individual (see for example Kawashima 1948; Toshitani 1987b). Earlier Japanese society, too, may fruitfully be analyzed from the vantage point of the koseki system because the history of household-based

registration as an administrative tool for ordering and controlling society began already in the seventh century and became crucial in the Edo era.

This chapter is an initial examination of how household-based registration shapes modern Japanese society through a principle I propose to call *jus koseki* which in Japanese would then be *koseki shugi* (戸籍主義).¹ Here I specifically explore the influence of the *koseki* system in relation to Japanese citizenship, which is based on the nationality law principle of *jus sanguinis* (血統主義), which means ‘the right of blood’ under which the right to citizenship is bestowed according to the citizenship of one’s parent(s).

Jus koseki, then, could translate as ‘the right of registered household membership’, meaning that registration confers certain rights – in this case citizenship. This right, or *jus*, signifies broadly that it is reasonable – in fact, that to the majority of the Japanese it is self-evident – that the identification and ordering of the individual, the family, and the nation is determined through household-based registration.

The authoritative manual for *koseki* officials, specialists and researchers called *Systematic Encyclopaedia of Koseki Terminology* (Kōzuma and Tashiro 2001, hereafter ‘the encyclopaedia’) relates that the *koseki* records and documents the family relations of the citizens of Japan. Also, as non-citizens are not recorded in the *koseki* and every citizen in principle is recorded in the *koseki*, the *koseki* constitutes a ledger of the citizens of Japan. The principle that every citizen shall be *koseki* registered has existed from the first *Koseki Law* of 1871 and continues today (Kōzuma and Tashiro 2001: 598).²

The English literature on Japanese nationality has neglected to examine the significance of the *koseki* register. Kashiwazaki Chikako’s comparative studies of Japan’s *jus sanguinis*

(Kashiwazaki 1998a, 1998b) explore how the *koseki* system informed the eventual selection of the *jus sanguinis* principle. She rightly notes that the 1899 Nationality Law represented a balance between adopting western law and maintaining the internal consistency of the household registration system (Kashiwazaki 1998a: 286). Further, she argues that the western principle of *jus sanguinis* was chosen because it worked well with the *koseki* system, where ‘children’s names are added to the existing registry of their parents. This is conducive to *jus sanguinis* in that one’s inclusion into the membership circle (the aggregate of registries) follows from having a parent who is a member’ (Kashiwazaki 1998a: 296). Kashiwazaki also notes that the Japanese Nationality Law includes elements of *jus soli* (by birth place 出生地主義) and *jus domicilis* (by residence) (Kashiwazaki 1998: 279). The *jus domicilis* principle (住所主義) will be relevant in the later discussion.

Kashiwazaki’s assertion begs the question, however, to what extent the *koseki* is conducive to *jus sanguinis* when the family system that *koseki* represents does not stress bloodline when it comes to continuing the household lineage? As Jane Bachnik’s important study on *ie* (家) recruitment strategies concludes: ‘although “parents” and “children” do exist in the *ie*, its organization is not based on such relationships, nor is their existence necessary for its continuity. Kinship [...] is merely one recruitment option for the group-defined continuity of the *ie*’ (Bachnik 1983: 178).

The main focus of Kashiwazaki’s study is *jus sanguinis* so the implications of the close relationship between the *koseki* and Japanese citizenship are not explored in more detail. What needs to be asked here is: In what ways and to what degree does the *koseki* register influence the Japanese citizenship criteria? Indeed, is it relevant, perhaps, to speak of the existence of a principle of *jus koseki* that influences the stipulated *jus sanguinis*?

A note on terminology is appropriate at this point. In Japanese legal parlance, the term *kokuseki* (国籍) can be translated with the English terms ‘nationality’ and ‘citizenship’, and the term *kokumin* (国民) refers to the English terms ‘national’ and ‘citizen’. For the sake of a focused discussion, I will here narrowly follow Andreas Fahrmeir’s definition of the term citizenship:

“formal citizenship”: the legal definition of a close relationship between individuals and one state, usually documented in passports or other citizenship certificates (Fahrmeir 2007: 2).

Here, then, I use the terms ‘*kokuseki*’ and ‘nationality’ (e.g. *kokusekihō* 国籍法, Nationality Law) to refer to this formal citizenship, and the terms ‘*kokumin*’, ‘nation’ and ‘nationals’ here simply refer to the aggregate group of Japanese citizens.

The *koseki* and Japanese nationality



1. Anonymized photo collage of pages 5-7 from an 1872 *Koseki* Book from a village in Ibaraki Prefecture. The dotted line indicates the *koseki* data pertaining to the family residing in dwelling number 4. The

family class (*zokushō* 族称) of ‘peasant’ (*nō* 農) is noted in the third column from the right.

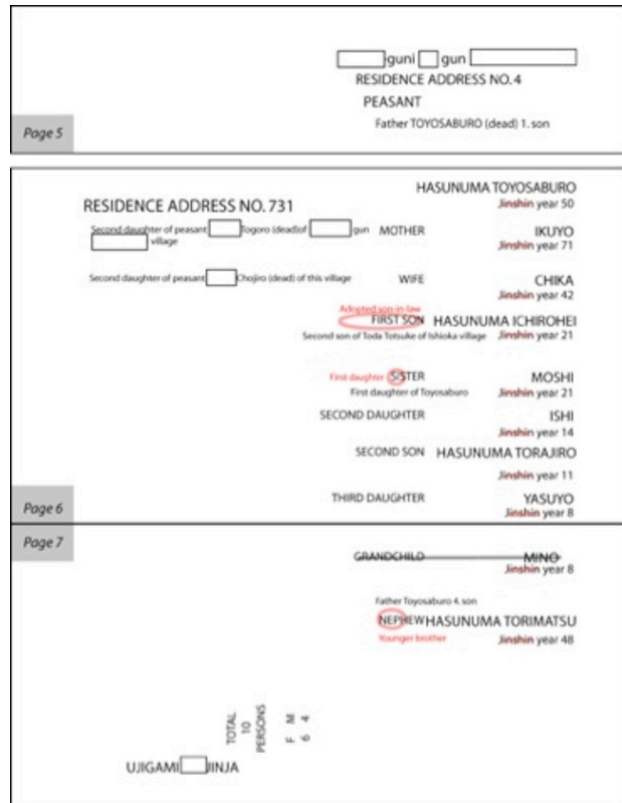
The profound influence of administrative household registration began with the introduction of the Chinese household registration system, which was a central part of the Great Reform (*Taika*) that began in 646. This system was immediately adapted to contemporary Japanese conditions and aims, and one major result was the reorganization of the social order. The Edo period established very early sectarian inspections (*shūmōn aratame chō* 宗門改長) and censuses (*ninbetsu chō* 人別帳) that registered the population by household unit. Work on creating a modern household register had already begun in 1868, and in 1871 the new household registration law emerged in the form of Edict 170. Japanese society was once again reshaped through a household register that fused early modern household registration with western law; a type of civil registration that in the process defined the citizens of the emerging nation-state of Japan.

According to Mukai and the pioneering *koseki* scholar Toshitani Nobuyoshi, this new *koseki* system developed into ‘an indispensable element in the formation of the underlying foundations of the civil law system’ (Mukai and Toshitani 1967: 48). In particular, this was because the *koseki* system and the ‘*ko*’ unit (「戸」単位) that developed during early Meiji constitute the matrix for the ‘*ie*’-type family that was institutionalized in the 1898 Civil Code (Toshitani 1991: 100-101). The *koseki* system and its *ko* unit came to profoundly influence the family law sections in the 1899 Civil Code and, in turn, the Nationality Law.

The promulgation of the 1899 Nationality Law (*kokusekihō*), which adopted patrilineal *jus sanguinis* as the basis for citizenship acquisition, was a central step towards becoming a modern nation-state. Yet for almost

three decades nationality had been determined via the koseki register whose main aim was delineating family relations. Indeed, the administrative koseki household, or 'ko' unit, that took form between 1871 and 1898 was projected into Meiji family law as the 'ie' which was institutionalized with the simultaneous enforcement of the 1898 Civil Code and the 1898 Koseki Law (Toshitani 1991: 101). The Civil Code's stipulated 'ie' family model was, in turn, materialized on the koseki document via household-submitted notifications. In other words, new citizens appeared when they were incorporated as registered members of an 'ie' unit (「家」単位) via notifications of birth, marriage, or adoption.

An examination of the modern koseki register is relevant, then, for three reasons. First, koseki registration and citizenship acquisition were intertwined prior to the 1899 Nationality Law. Second, from 1871 to the present the modern household register has consistently constituted a register of the citizens of Japan (nihon kokumin tōrokubo 日本国民登簿) (Kōzuma and Tashiro 2001: 26, 129).³ Third, the registration of most new citizens occurs at household level via birth notifications (shusshō todokeide 出所届出), which means that this registration may take second place to more urgent family formation strategies such as preventing the registration of an illegitimate child. In short, the koseki register provided the initial basis for citizenship, it became documentation of citizenship, and the koseki system leaves the matter of registering new citizens in the hands of the households.



2. Transliteration of the koseki for the family in dwelling 4 in a village in Ibaraki Prefecture (pages 5-7 of an 1872 Koseki Book).

This investigation of the relationship between the koseki and citizenship therefore needs to consider the administrative as well as the social, family-related dynamics that surround the registration of new citizens.

The koseki system, its functions and its general principles

Any modern nation-state needs a civil registration system that collects, records and documents individual civil status and civil status changes, as well as family relations.⁴ Such systems in most developed states register by the unit of the individual, but Japan uses the unit of the administrative household, the 'ko' unit. The koseki system is also distinguished by constituting a citizens' register. This role is

stipulated in the following representative passages and articles from the koseki laws of 1871, 1899 and 1947:

Edict 170 of 1871, preamble:

Furthermore, it is only under the shelter of the government's protection that each and every one of the people may lead a life in safety. Therefore, those who are not registered or not counted cannot receive this protection and are as if outside the nation.⁵ Because of this, the people must be listed in household registers. [Italics added]

The 1898 Koseki Law, article 170⁶:

A koseki register shall be compiled for each person who establishes a honseki within the jurisdiction of the koseki registrar. A person who does not possess Japanese nationality cannot establish a honseki.

The 1947 Koseki Law:

A new koseki shall be compiled for each husband and wife who establishes a honseki within the district of the city, town or village and for their children bearing the same surname.

However, in the case of a person who is married to a non-Japanese individual (hereafter 'aliens') or a person who does not have a spouse, koseki shall be compiled for such a person and his or her children bearing the same

surname. (art. 6)

A child who takes the surname of its father and mother shall enter the koseki of its father and mother.

2. Except for the preceding case, a child who takes the surname of the father shall enter the koseki of its father, and a child who takes the surname of the mother shall enter the koseki of its mother.

3. An adopted child shall enter the koseki of its adoptive parents. (art. 18) If a new entry in a koseki is to be made for a person who is not registered in a koseki, a new koseki shall be compiled for the person, excepting a person who is to enter the koseki of his father or mother. (art. 22)

The nationwide census that Edict 170 proclaimed produced during 1872 koseki registers (the so-called jinshin koseki) that in aggregate constituted the initial list of the nationals of Japan. The 1899 Nationality Law implied that citizens are those who possess a honseki (permanent register, 本籍). Further, the 1947 Koseki Law stipulated that children could also become listed by 'entering' the koseki of their parents, their father, their mother or a koseki newly compiled for that purpose. It is striking that these koseki laws on nationality do not specify 'Japanese parentage' but rather 'koseki entry' and honseki possession. I will discuss this in more detail later. Let us now look closer at the koseki system.

The koseki operates according to three general principles. First, it is the duty of the household to supply data on civil status, civil status changes and family relations. Second, the unit of registration is the 'ko' unit. Third, the koseki registers are in principle publicly accessible so

as to serve documentation purposes.

In other words, data on birth, marriage, divorce, adoption, dissolution of adoption, death and so on, primarily enter the koseki system via notifications that are submitted by the households in question to the koseki affairs office, which in turn enters these data into the relevant koseki document(s). The koseki clerk only checks whether the notifications are correctly filled out. The underlying facts of the notified matter are not checked and this can open the way for unwitting acceptance of counterfactual notifications. Further, birth notifications are compulsory. Under the Koseki Law, they must be submitted within 14 days from the day of birth and a delay incurs a fine. However, a senior koseki registrar at the Matsuyama City Hall related that delays are not uncommon, and he had never heard of actual fines.⁷ He also noted that there is no system in place to help the koseki office identify unregistered children. The same year, the section chief of the Shinjuku Ward koseki office, provided similar answers, but added that parents would normally be motivated to register their children when it came time to welfare benefits, school entry, issuance of passports, etc.⁸ In sum, the official registration of children as citizens depends on household-level cooperation.

The pre-war ko unit, which documented the multi-generational institutional 'ie', comprised the 'household head' (kosu, 戸主) and his affiliated 'household members' (in koseki-parlance denoted as kazoku, 家族).⁹ The position and the rights of the household head, which was stipulated in the 1898 Civil Code, was not limited to males. Females household heads, also called onna kosu (女戸主) existed. When, for example a female household head married (through the so-called nyūfu, or 'entering husband'-procedure), the husband became a 'household member'. In the following, I use the pronoun 'him' to denote the figure of the household head for no better

reason that the predominance of male kosu.

44 THE JAPAN MAIL. [Jan. 23, 1874.]

CENSUS OF JAPAN FOR THE 6TH YEAR OF MEIJI, THE 2322ND YEAR FROM THE ACCESSION OF JIMMU TENNO. (A.D. 1872)

No. of Colonies, Cities, etc.	HEADS OF HOUSEHOLD.		FAMILY.	TOTAL.	MALES.	FEMALES.
	MALES.	FEMALES.				
Prince and Princesses	7	4	18	29	14	15
Nobles	2,207	459	2,207	2,666	1,200	1,466
Shiaka (nobles, etc., lower grade)	258,939	13	1,023,215	1,282,167	634,701	647,466
States (nobles, etc., lower grade)	166,873	2	492,189	659,074	324,407	334,667
Chishi (nobles, etc., lower grade)	646	—	2,670	3,316	1,715	1,601
Prisons (Buddhists)	75,925	9	211,846	287,770	151,677	136,093
Shinto officials	20,885	43	81,559	102,447	52,141	50,306
Nuns	—	6,068	8,553	9,621	—	9,621
Common People	6,326,571	170,072	24,389,948	30,816,519	15,619,048	15,197,471
Pop. of Seghalin	—	—	—	2,368	1,155	1,213

AGES.

	MALES.	FEMALES.
14 and under	4,590,915	4,465,393
15 to 21	2,080,051	6,638,063
22 to 40	5,035,747	5,091,070
40 to 60	3,655,584	1,890
60 to 80	1,435,507	—
80 and above	75,330	118,248
Age unknown	1,944	1,890
Total	16,796,158	16,814,687

	M.	F.
Total Population, 33,110,855	63,759	37,828
No. of maimed, blind, deaf, dumb, etc.	2,211	119
Criminals in prison	962	26
penal settlements	2,726	320
hard labour	—	—

CENSUS ACCORDING TO FU AND KEN, ETC.

PLAC.	SHINTO SHRINES.	BUDDHIST TEMPLES.	HOUSES.	POPULATION.	MALES.	FEMALES.
I Colony (Yezo & Hakodate)	133	102	30,393	123,668	63,081	60,587
Tōkai (Yezo)	741	2,179	198,001	779,351	392,057	387,294
II Kiu	2,413	3,214	189,239	567,334	283,238	284,096
Osaka	438	1,380	142,186	630,855	324,791	306,064
I Ha (Loochoo)	7	43	27,167	166,789	83,093	83,696
Kanagawa	2,265	2,216	106,538	492,714	245,715	246,999
I Biyo	492	715	54,981	198,559	99,183	99,376
Nagasaki	942	359	185,664	630,487	316,243	314,244
Niigata	3,689	1,140	122,122	635,484	315,306	320,178
Salama	1,358	1,521	77,492	495,969	218,454	277,515
Iruwa	2,333	1,830	83,598	419,522	206,852	212,670
Akiha	1,531	1,457	68,640	399,522	172,668	166,854
Isumi	2,205	2,284	110,538	571,552	291,596	280,056
Ishu	2,559	1,498	83,670	456,689	230,099	226,590
Ishu	2,074	2,338	92,788	470,509	239,773	230,736
Ishu	1,067	376	70,070	386,505	185,774	180,731
Ishu	2,396	1,317	68,305	388,697	194,439	194,258
Ishu	835	1,157	81,709	388,934	194,062	194,872
Ishu	1,064	815	42,054	234,124	119,258	114,866
Ishu	2,207	2,527	105,926	418,335	211,185	207,150
Ishu	1,089	1,554	104,021	446,832	222,586	224,246
Ishu	2,167	1,714	90,929	413,865	206,794	207,071
Ishu	1,318	1,459	77,859	363,732	181,263	182,469
Ishu	2,457	1,899	145,447	604,116	302,736	301,380
Ishu	2,821	3,146	140,705	606,252	300,504	305,748

3. Nationwide tally based on the data collected in connection with the 1872 Koseki compilation. From Japan Weekly Mail 1874.

The household members were listed in the household head's koseki subsequent to him and were identified according to their particular relationship to the household head (e.g. 'grandmother,' 'wife,' 'eldest daughter,' 'second brother,' 'bride' [of second brother, for example], 'uncle,' 'grandchild,' 'nephew'). The household head was responsible for making notifications regarding himself and his household members, but notification of births

had to be made by the child's father. Therefore, the household head notified the birth of his children and each male household member notified the birth of their children. The entry of extra-marital children, or hi-chakushutsushi 非嫡出子, though, required the consent of the household head. Extra-marital children were subcategorized as shoshi 庶民, if acknowledged by their father, and as shiseiji 私生児 if unacknowledged.

Under the present postwar koseki system, the ko unit is a two-generational unit defined as comprising a conjugal couple and their children sharing the same surname (uji, 氏). The duty to make notifications today lies with the relevant individuals. For notifications of marriage, divorce or adoption, for example, the duty is on the parties involved, and for birth notifications it is on the parents.

Legally, the koseki documents marital relations, legitimacy and parent-child relations for example. When submitting notifications that facilitate the formation of such legal relations and statuses, the registrants are mindful of the legal recognition that koseki notifications imply. However, notifications pertaining to family relations and family-related statuses most likely have emotional and/or strategic motives as well. For individuals, couples and families, family formation involves affective and rational concerns, and they may outweigh concerns about citizenship. The registration of a citizen is thus a collateral effect of family-centered decisions pertaining to a new-born. These decisions, in turn, are also informed by a prevailing 'koseki consciousness',¹⁰ which is a concern with how one's family appears to the surrounding social world (seken, 世間) on their koseki document. The three basic koseki principles mentioned earlier are crucial to understanding koseki consciousness (for details, see Krogness 2008: 181-320).

Firstly, the ko unit principle makes the registrants perceive themselves as members of

the larger ko unit, rather than as individuals. The ko unit is felt to represent family even though it is an administrative construct that often does not represent an actual cohabitating family unit. Secondly, under the public access principle, full or partial copies of one's koseki document are issued for documentation purposes. These copies list data on other household members as well, and this principle thus instills a sense that one's background and family history are potentially open for all to see.

Thirdly, the notification principle enables families to shape their ko unit so that it presents itself positively to seken. Data on one member reflects on the entire ko unit, so individual members often make life choices in consideration of all involved; not only fellow ko members but also the present and future surrounding social environment. This includes neighbors, as well as the families or companies that oneself or one's ko unit members interact with or might one day attempt to join as spouses or workers. Notifications that contribute to the project of configuring a koseki that is perceived favorably by seken have generally been pursued, typically avoiding data items such as divorce, fatherlessness and extramarital children. Koseki consciousness is, however, also present among individuals, who, in opposition to the hegemonic family model that the koseki presents, seek to configure alternative family structures within the koseki matrix, for example via the bunseki (separation of register, 分籍) notification to mimic a more individualized registration (Krogness 2011: 85-88).

Koseki and the theory of recognition

The koseki merely records and documents objective data, but given koseki consciousness, the registrants see in the koseki the possibility of improving their standing in their social environment. Consequently, to assess to what degree micro-level koseki-related decisions influence citizenship, we need an approach that

facilitates a comprehensive view of the household register's variegated and multi-level workings, roles and influences. To this end, I will deploy Axel Honneth's theory of recognition. This theory proposes that social interaction is guided by a desire to achieve recognition and avoid the disrespect of others. The full individuation¹¹ of a person requires recognition within three spheres: a struggle for emotional recognition within the private sphere (love in mother-child relations, or between couples or friends), rational recognition within the sphere of law (e.g. legitimacy, legal marriage, citizenship, human rights), and a combined emotional-rational recognition within the organizational sphere (e.g. peers, colleagues, unions, clubs, neighborhoods). The latter struggle is both emotional and rational as solidarity represents inter-human relations that are both affective and regulated (Honneth 1998:153ff.; Willig 2003: 7-23).

The koseki system is a medium for legal recognition, as it records and documents citizenship, civil status and family relations. The koseki document is also highly relevant in the organizational sphere, where full or partial copies of the koseki (the so-called koseki tōhon and koseki shōhon, 戸籍謄本 戸籍抄本) have been used in most of the modern period informally to present one's background (mimoto, 身元), for example when seeking school entry, employment and during marriage negotiations. It is especially in these social settings marked by inclusion and exclusion that the phenomenon of 'koseki consciousness' surfaces.

The koseki's role is more indirect in the private sphere, that is to say, in relation to the affective relations between couples and in a symbiotic mother-child relation, which encompasses emotional and physical expressions. Affective disrespect includes deprivation of love and physical abuse. If inclusion and exclusion in the legal and organizational spheres contribute to our individuation, then the recognition and

disrespect one experiences there is likely to influence to some extent affective recognition and disrespect in the private sphere. A case in point may be the prevalent undesirability of extramarital children which is reflected in the statistics. They account for about 2 per cent of Japanese births annually (Kōseirōdōsho 2006). Specifying and publicising non-legitimacy, the koseki system arguably internalizes and feeds these notions.

The pre-war categories of children born out of wedlock, shoshi and shiseiji, were inscribed in the pre-war koseki to differentiate children's inheritance rights. These categories no longer exist, but the tradition of denoting extra-marital birth has continued. Under the present post-war system, the birth notification form requires the parent(s) to identify their child's legitimacy on the birth notification form by demarcating it as either an intra-marital child (chakushutsuhi) or extra-marital child (chakushutsu de nai ko). The child's legitimacy is thus stated clearly on the birth notification form, but within the koseki register, this status is stated more indirectly. Firstly, when listing the names of the parents of an intra-marital child, the first registrant (筆頭者)¹² is listed with surname and personal name (e.g. Tanaka Eiji), whereas the spouse (usually the mother) is listed with her personal name only (e.g. Mitsuko).¹³ In case of an extra-marital birth, each parent is listed with both surname and personal name (e.g. Endō Kanji and Kawashima Haruko). Second, until 2004 intra-marital children were listed by birth order (e.g. eldest son, second daughter), whereas extra-marital children were listed with the characters for 'man' or 'woman' (男女). Today all children are listed by birth order to mitigate the discriminatory aspect of birth-order listings. Koseki therefore renders illegitimacy legible for life: within the koseki because the names of the parents and the birth order item are basic status identification items that follow a person from koseki to koseki, and within society because koseki is used for formal and informal identification purposes.

With unmarried motherhood highly disapproved of, extra marital children are avoided as it introduces stains of illegitimacy, not only on the register of the mother and the child, but also on the parental register listing her parents and siblings. Usually daughters leave their parental koseki due to a marriage notification, but in case of unmarried motherhood, the koseki of her parents (and siblings) will reveal that she left that register due to a birth notification - another indicator of illegitimacy. The koseki system thus arguably contributes to the low rate of extramarital births.

Pregnant women who are unable to marry tend to resort to abortion, adoption, non-registration or even abandonment. While these may be seen as common-sense dispositions given social context, in Honnethian terms they represent affective disrespect. If viewed as strategies to prevent incurring society's disrespect (upon the mother herself, the child, or her parents and siblings), we see how the general koseki-centered struggle for recognition can result in emotional, organizational, and legal disrespect toward the child itself (e.g. physical confinement to conceal its existence,¹⁴ the ability to marry, or to enjoy the right of citizenship).

On jus sanguinis and jus koseki

Let us examine the term jus sanguinis. The legal scholar George P. Fletcher reminds us that the English term 'law' has two distinct legal meanings. Law signifies the latin term *lex*, which refers to 'statutory law' (law-as-enacted-law or law-as-power). Law can also invoke the latin term *jus*, which is 'law in a broader inclusive sense encompassing principles of justice' (law-as-principle or law-as-reason).¹⁵ Where *lex* is purely local, *jus* is not. The terms *jus soli* and *jus sanguinis*, for example, reflect the notion that citizenship acquired automatically at birth due to descent or place of birth has an intrinsic appeal across states.

While the rationale behind a state's choice of one or the other or both principles may differ, their shared underlying principle, the idea of citizenship as a birthright, remains the same (Fletcher 2001: 5). Indeed, even the terms 'nation' and 'nationality' reflect the Latin word for birth (*nacio*).

Early on, Aristotle, however, questioned the suitability of birth as the basis for being a citizen. Examining the city, the central question was 'whom we ought to call Citizen, and who is one' (Aristotle 1778: 112). Although the contemporary definition of the citizen was 'one who is sprung from Citizens' (Aristotle 1778: 116), Aristotle noted that logically one cannot be born a citizen when the first of the family cannot prove themselves to be a citizen. Consequently, 'as a mortar is made by a mortar-maker, so a Citizen is made by a Citizen-maker' (Aristotle 1778: 116). In other words, citizenship is not innate; politicians create citizens (Stevens 2012: A31).¹⁶ However, given the koseki system, we here need to consider the agency of parents, since the acquisition of Japanese citizenship for most involves a notification of birth.

The simple fact of birth only extends formal membership in principle. The 'Citizen-maker' is the series of administrative processes that such a birth triggers. In any state, the apparatus that facilitates the conferral of individual citizenship is a complex interaction of legislation and actors. In Japan conferral of citizenship involves the interaction of the substantive Nationality Law with the procedural Household Registration Law (*kosekihō*, 戸籍法) and the Koseki Enforcement Regulations (*Koseki shikō kisoku*, 戸籍法施行規則),¹⁷ as well as actors such as parents and registrars. Under the Nationality Law a child with Japanese parents is a Japanese national, but for its registration as such, the 'Citizen-maker' is the child's parents who carry out the birth notification, and the koseki registration procedures, which record the new citizen. At

the core of jus koseki as a nationality principle, then, is the birth notification and the koseki registration. Let us begin elaborating jus koseki by looking at the koseki system that emerged between 1871 and 1898.

In general, the pre-war koshu controlled the positions in his household through the ‘right of the household head’ (koshu-ken 戸主権) which was stipulated in the Civil Code. As mentioned, the koshu had to approve, and could thus deny, an extra-marital child’s entry into his register. Also marriages had to be approved by the household head. The notification of a marriage was therefore not so much a question of a union of two individuals as it was a question of the household head deeming the ‘bride’ eligible to that status position within his ko unit (Fukushima 1959a: 67). The household head could deny and bestow those and other household positions as he saw fit.

With the postwar abolition of the right of the household head, the notification of status changes are today in the hands of the individuals involved. Parents mind the notifications pertaining to themselves and their minor children, and their adult sons and daughters are free to submit notifications of marriage, birth, adoption, etc. The notification of birth is mandatory, but as we will see below, parents appear to have de facto autonomy in terms of the power to deny a child a registered household position by not submitting a birth notification. Whether for personal reasons or for the sake of the household, this non-notification jeopardizes the child’s right to citizenship. Similar to the pre-war koshu, then, koseki registrants today can control the household positions of incoming members.

The bestowal and denial of household positions has thus since early Meiji reflected an on-going, three-tiered struggle for recognition. The ‘principle’ or ‘reason’ of jus koseki is, at this point, the right that derives from registered household membership. For a child, it is the

individual rights it acquires by becoming registered. For existing registrants, who enjoy these individual rights, it is also the ability to control access to their particular register. Under jus koseki, then, the state allows the household to be a de facto gateway to registered citizenship.

To further examine the koseki’s influence on Japanese nationality, I will examine Edict 170 of 1871 which introduced the modern koseki system in 1871, Edict 103 of 1873 which stipulated nationality for foreigners who married into Japanese households, and the Nationality Laws of 1899 and 1950 which adhere to jus sanguinis. Finally, via cases of unregistered children from the late 2000s, I will examine how and why the administrative household can constitute a barrier to registered citizenship.

Edict 170 of 1871: defining the original nationals of Japan

Between 1871 and 1899, legislation on the nationality of the Japanese was attended to in a quick, provisional and piecemeal manner. The entire population of Japan became Japanese nationals simply based on being residents, whereas the nationality of foreigners who joined, married or were adopted into Japanese households was determined by positive law (Tashiro 1974: 54-56). Edict 170 nationalized the former and Edict 103 extended nationality to the latter.

Edict 170¹⁸ was not a nationality law, yet the preamble indicated that those who were registered were nationals (kokumin). This edict and the nationwide koseki compilation process it ordered to take place during 1872 thus constitute Japan’s initial ‘Citizen-maker’. As the object of registration was everyone living within the territories of Japan,¹⁹ the basis for this initial conferral of nationality was therefore essentially residence.

According to Tashiro Aritsugu,²⁰ Edict 170

brought early modern membership criteria into the modern period. Tashiro (1974), entitled *An Article by Article Commentary on the Nationality Law*, is the authoritative volume on Japanese Nationality Law. He explains that membership in early modern Japan was governed by certain unwritten legal principles centered on the idea that residents and nationals were identical (*jūsho*=*kokuseki* (*jūmin*=*kokumin*) *dōitsushisō*, 住所=国籍 (住民=国民) 同一思想). Residence (*jūsho*) was nationality (*kokuseki*), and residents (*jūmin*) were nationals (*kokumin*) (Tashiro 1974:55). In other words, this initial nationality principle appears to be a type of *jus domicilis*.

Echoing Aristotle, Tashiro notes that the *jus sanguinis* of the 1889 Nationality Law cannot specify who the ‘original Japanese nationals’ (*ganso nihonjin* 元祖日本人) were. According to Tashiro, the original Japanese that existed immediately prior to the enforcement of the 1899 Nationality Law were those who were nationals prior to its enforcement and they emerged from the residents-as-nationals idea (Tashiro 1974: 53-54). In other words, the original Japanese prior to 1899 were the *koseki* registrants.

In the Edo period, the smallest unit of registration was the village. Residence constituted membership of a village and this was certified via household registration. This registration differentiated between status groups and, because movement between these groups was all but impossible, group status membership was in effect acquired at birth. Residence was not a birthright, though, given the punishment of deregistration (Mori 2014:65-73). Similarly, nationality has, after Edict 170’s initial nationwide compilation of *koseki* registers, also in effect been acquired at birth, as the birth of every new-born is in principle to be recorded, making them registered household members.

Edict 170 introduced a written notification

system which originated in the Edo period’s system of oral notification (Ishii 1981: 44). Edict 170 also introduced a new official called the *kochō* (household chief, 戸長), who was charged with compiling the *koseki* registers. A *kochō* was to be appointed in each village and ward, and he, in turn, relied on the heads of each village household to prepare and submit the required data.²¹ After the initial compilation of *koseki*, the household heads would submit written notifications (e.g. birth notifications) to the *kochō* so as to update the registers. According to Toshitani, this marks the beginnings of the authority of the household head (*koshuken*, 戸主権) (Toshitani 1987a: 50-51).

By relying on the *koshu* to manage his household and supply accurate information, the state in effect installed an official in every household. These household heads were, however, apt to alter household data to serve the interests of their households (Fukushima 1959a: 49). The *koshu*’s authority to report the conditions of his particular household also enabled him to evade state authority. With Edict 170, marriage and adoption became administrative events and family hierarchies and relations transformed into administrative *koseki* positions. Holders of the administrative positions of ‘household head’ and ‘eldest son’ were exempt from military service in early Meiji and such positions were easily created through notifications – especially if the local *kochō* looked the other way. The aim of the notification system was to facilitate collection of objective data on the actual status relations of the Japanese people, yet this very system also enabled individual households to advance household interests (Toshitani 1987b: 146-47).

Edict 103 of 1873: the family system and nationality

It was also necessary to define Japanese nationality in terms of foreigners who married or were adopted into Japanese families, but the

residence-as-nationality principle was not applied to foreigners who took up residency (Tashiro 1974:55-56, 58). Stipulating acquisition and loss of nationality in terms of marriage and adoption involving a foreigner and a Japanese national, Edict 103 of 1873 is the first example of a preliminary positive law on nationality (Tashiro 1974: 58-59).²² Legislation on the nationality of the Japanese as such did not appear until Japan's 1899 Nationality Law.

Kidana Shōichi (2003) sums up Edict 103's three main points. First, it represented strict control over nationality as marriages between a foreigner and a Japanese national required the state's approval (art. 1), but also a soft approach to nationality as it permitted change of nationality as a result of marriage. Second, like other early Meiji legislation, Edict 103 adopted French law; in this case the French Code Civil's principle of same conjugal citizenship under which female spouses automatically acquire citizenship of the husband. Third, it paid particular attention to the Japanese family system by including stipulations on adoptive sons-in-law, the so-called mukoyōshi (婿養子) (Kidana 2003: 27). Let us first look at the stipulations on marriage.

Edict 103 stipulated that marriages between foreigners and Japanese nationals entailed the acquisition of Japanese citizenship for foreign women marrying Japanese men (art. 3) and the loss of Japanese nationality for Japanese women who married foreign men (art. 2). In this, Edict 103 was consistent with the prevalent principle in contemporary Europe as seen in the Code Civil where spouses share the same nationality (i.e. the nationality of the husband).

Edict 103 did not address the citizenship of children that spring from such marriages, yet Tashiro (1974) argues that since the edict follows the principle of conjugal couples sharing nationality it is implied that the

nationality of the child shall also follow that of the parents. This, in turn, is where Tashiro sees the first stirrings of the later selection of the principle of *jus sanguinis* over *jus soli*. Tashiro also notes that the basis for nationality at this stage is bifurcated: the residence-as-nationality idea underlies the nationality of the general Japanese population, whereas for resident foreigners nationality has become an administrative civil status event. For this reason, Edict 103 can be interpreted as a kind of naturalization policy (Tashiro 1974: 59-60).

In terms of the nationality of women who marry foreign nationals, Edict 103 is clearly in harmony with the prevalent European legislation. Yet, as Kamoto notes, this edict is an anomaly in the context of contemporary western nationality law, as it stipulates the acquisition of citizenship by a foreigner who enters a Japanese household as a mukoyōshi, or adoptive son-in-law (art. 6) (Kamoto 2014:84-85).

Tashiro's discussion of Edict 103 focuses on its Western *jus sanguinis* aspects. I think, however, it is important also to consider Edict 103 in light of the Japanese family system's traditions of mukoyōshi and yome (嫁).

Mukoyōshi refers to the adoption of a male by a household head and his wife who lack a male heir to continue the family or house (ie) line. Upon adoption, the male adoptee will at some point marry a daughter of the house and eventually succeed to the position of household head. As such, the mukoyōshi tradition represents a cornerstone in the Japanese family system. Another entrenched aspect of the family system is that the bride (yome) upon marriage typically enters the household of the husband.

When a mukoyōshi or a yome enters a house, he or she will partake in the collective identifiers of the house. Under Edict 170 these collective administrative data items included the name of the shrine of which they are

parishioners (ujiko, 氏子) and their shared 'family class' (zokushō, 族称), an entry that today is erased in all pre-war registers to protect the privacy of the buraku population.²³ Edict 170 also introduced the collective identifier of 'Japanese nationality' and from this perspective, Edict 103 merely states that foreigners who enter a ko unit as a bride or as an adoptive son-in-law shall, like every existing koseki registrant, share the common signifier of Japanese nationality.

In this sense, Edict 103 appears to have been designed to work with the two nationality schemata that the early Meiji state was primarily concerned with: the koseki register and the French Code Civil. Functional with the Western system of nationality law, Edict 103 satisfies positive law and Japan's existing family system. Edict 103 was able to reflect the European principle that conjugal couples share the same nationality without conflicting with the new koseki-based order laid down by Edict 170, which now administratively structured this family system.

The principles within Edict 103, which essentially regulated changes in nationality status through Japan's existing marriage and adoption practices, were incorporated practically unaltered in the later 1899 Nationality Law, article 5 (Kashiwazaki 1998a: 286). They were, however, abolished with the 1950 Nationality Law.

The Government Section (GS) of the Supreme Commander for the Allied Powers (SCAP) sought through legal reforms to implement the intent of the postwar Constitution in terms of securing the dignity of the individual. The GS's view on the koseki system was as follows: 'Implementation of the new Constitution and Civil Code of Japan necessitated the removal of all objectionable power, influence, obligations, and feudalistic ramifications of the long-established house (Koseki) system' (Government Section 1949: 217). As a result,

the revised Civil Code and Koseki Law of 1947 emerged, replacing the institutional 'ie' with the two-generational conjugal unit,²⁴ and the koshu with the first registrant or hittōsha—the person whose surname is chosen to index the conjugal ko unit (see also footnote 12).

Alfred C. Oppler, who was the SCAP's authority on the postwar legal reforms, found that the 1899 Nationality Law represented the 'attitude engendered by the house system and the resulting superiority of the male' (Oppler 1976: 152). To secure the right to choose one's citizenship, the superior position of the male was abolished and as a result the citizenship of wives and (adoptive) children ceased to follow that of the husband or (adoptive) father (Oppler 1976: 152-53).²⁵ The abolition of the family system element meant, however, that foreign spouses today cannot be listed in the koseki of their Japanese spouse and children unless they go through the process of naturalization.

The principle of naturalization through marriage and adoption also facilitated transfer between the two-tiered naichi (内地) and gaichi (外地) Japanese citizenships that emerged in the colonial period. The colonial koseki thus resembled the Japanese family model, but also represented an expansion of the 'residence as nationality' principle through the two-tiered naichi and gaichi honseki system.

Honseki is today a central koseki index, but from 1871 to 1898, koseki documents were indexed by address (and by the full name of the koshu). With the 1898 Koseki Law the address index changed to the conceptual honseki index which specifies an administrative subdivision of the territories of Japan. Fundamentally indicating the jurisdiction where the koseki document in question is managed and stored, the honseki is not an address,²⁶ as only koseki registrants possess an administrative honseki location.²⁷ Hence the Koseki Laws' nationality-related focus on honseki and koseki entry.

Japanese nationals, then, ‘reside’ within a rarefied, virtual realm of Japanese territory that is only accessible through administrative koseki registration: an administrative territory of Japan that comprises the totality of honseki areas (Krogness 2004: 44; Krogness 2008: 222), and which are accessed through notifications of birth, marriage, and adoption. We might say that the principle of residence-as-nationality became honseki-residence-as-nationality. For example, a honseki on a driver’s license reveals that the holder is a Japanese national.



4. An example of emotional attachment to the honseki location. A photo of Shina Ringo and her band Tokyo Jihen at Shinjuku Tower Records with a dedication to her fans which begins: “Hello, my honseki area” (Hello, 私の本籍地!). By ‘honseki area’, she most likely means where she belongs emotionally (e.g. ‘hometown’), rather than the actual honseki of her koseki, which could well be elsewhere. Born in Saitama and raised in Fukuoka, she calls herself “a descendant of Shinjuku who performs in my own drama.

The honseki residence as nationality principle may thus inform our understanding of the differentiated nationalities along naichi/gaichi lines that emerged in the colonial era (see also Chapman 2014 and Kamoto 2014). Nationality

under colonialism mirrors the principles underlying nationality discussed earlier: The gaichihonseki provided a gaichi Japanese nationality. Simple marriage and adoption facilitated movement between naichi and gaichi registers, producing naichi or gaichi nationalities depending on the honseki of the ko unit one entered. Within this logic, Japan’s post-defeat loss of the gaichi territories would mean the loss of gaichi nationality because its gaichihonseki basis vanished (Krogness 2004: 54-61; Krogness 2008: 225).²⁸ At a stroke, Japan’s colonial citizens lost Japanese citizenship, including those from Korea and Taiwan living in Japan

The nationality law of Japan of 1899: Koseki and Jus Sanguinis

The jus sanguinis principle for nationality bestowal is found in the 1899 Nationality Law, article 1, and the 1950 Nationality Law, article 2, which stipulate that a child is a Japanese citizen if: 1) the father or the mother is a citizen at the time of the birth, or 2) the father of the child died prior to the birth and was a citizen at the time of death. To understand concretely the registration of children who fulfill the jus sanguinis principle, we shall consult the koseki encyclopaedia.

The notification of birth

Kōzuma and Tashiro (2001) specify that the registration of a newborn as a citizen occurs with the notification of its birth as it constitutes the initial record and documentation of individual legal rights, including the right of citizenship. The koseki document constitutes official proof of citizenship and it is generally presumed that individuals whose births have been notified are citizens, but this does not mean that individuals registered in koseki necessarily are citizens and that those individuals who are not registered are not citizens. It can happen that a non-citizen is koseki registered and that a citizen lacks koseki registration (Kōzuma and Tashiro 2001:266).

False koseki registration of non-citizens is possible because koseki registrations are based on notifications and the koseki official only checks the contents of a notification formally in terms of the form being filled out correctly. The examination of the birth notification does not extend to checking whether or not the person in question fulfills the Nationality Law's requirements for citizenship acquisition or loss. Failure to make a birth notification, on the other hand, means that not all citizens are registered in koseki. The koseki system has numerous safeguards to assure that kokuseki and the koseki are congruent, but in reality incongruities do occur (Kōzuma and Tashiro 2001: 132-33). In sum, the koseki is unlikely actually to register all births that fulfill the stipulated jus sanguinis principle, and only such births.

Mere koseki registration, moreover, does not have the effect of conferring citizenship because citizenship is determined by the Nationality Law (Kōzuma and Tashiro 2001: 266), yet the encyclopaedia also stresses the importance of preventing the koseki registration of non-citizens. If such counterfactual koseki registrations remain undiscovered for a long period of time, there will be a point where they have to be considered factual (Kōzuma and Tashiro 2001: 26-27). While the koseki just infers Japanese citizenship, after a certain number of years they become 'old koseki' (古い戸籍) that confirm Japanese citizenship. Old koseki are in principle koseki that are more than three generations old, at which point they must be considered documentation confirming Japanese citizenship. The term 'old koseki', though, does not signify a specific age. Rather, the term signifies 'koseki where the basis for disproof of citizenship has perished' (Tashiro 1974: 13). In general, however, the koseki is nothing more than preliminary documentation of acquisition or loss of Japanese citizenship. Separate individual and concrete proof of the conditions for such acquisition or loss may also be

required (Kidana 2003: 56-58).

In sum, koseki merely records and documents citizenship, yet it can effectively access citizenship, too. The encyclopaedia casts some light on this contradiction by highlighting this interesting dichotomy between the roles of the Nationality Law's jus sanguinis and the koseki system. As a record of citizens, the koseki's role depends on the Nationality Law since the registrations must be based on the principle jus sanguinis. Here kokuseki constitutes the basis (moto 本) and koseki merely the result (sue 末). However, to ascertain the Japanese citizenship of the parent(s) of a newborn, the Nationality Law's principle of jus sanguinis depends on confirmation by way of their koseki registrations. In this case, 'kokuseki' depends on 'koseki'- here koseki is 'primary' and kokuseki is 'secondary.' In terms of substantive law kokuseki is the basis, yet in terms of procedural law the koseki precedes as 'primary' (Kōzuma and Tashiro 2001: 27).

To illustrate how koseki notifications give the koseki a primary role over kokuseki and how the struggle of recognition can lead to non-notification of births, let us look at some cases from 2007 and 2008.

Mukosekisha and nationality

From late 2006, there emerged a spate of news reports on children who had never been koseki registered, despite being citizens under the jus sanguinis principle. These cases of mukosekisha (無戸籍者) shed important light on the koseki system's role vis-à-vis citizenship.

In late 2006 a 16-year-old high school student applied for a passport in preparation for a 2007 school trip. Her application was turned down on 16 January because it did not include a koseki shōhon as proof of citizenship. She was unable to supply the required koseki copy because her mother had never registered her birth. A victim of domestic violence and unable to secure a divorce, the mother had fled her

former husband with the help of a man with whom she thereafter had a child – the high school student in question. The following year, the mother got divorced, but the birth of the daughter fell under Article 722 of the Civil Code, which stipulates that the former husband is the legal father of a child who is born within 300 days of a divorce. As a result, the koseki officials did not accept the birth notification, which specified the surname of the mother’s male partner. When the high school student applied for the passport in late 2006, she, her parents and a support group²⁹ attempted to submit to the passport office the documents necessary to make a koseki registration, including the hospital-issued birth certificate. These documents were not accepted. The representative of the support group stated that it was unreasonable that the circumstances of the mother should limit the daughter’s human rights and her right to go overseas (Mainichi Shinbun 2006; asahi.com 2007a, 2007b).

The leading scholar on koseki and family law Ninomiya Shūhei has pointed out that the central problem in the above case was the koseki’s role as proof of citizenship: ‘The koseki is just a means to document one’s citizenship and family relations, so to make the koseki an absolute requirement [for getting a passport] is to put the cart before the horse’ (Mainichi Shinbun 2006). In other words, this case exemplifies the aforementioned contradictions that exist between the *jus sanguinis* and the koseki in terms of their relative primacy in relation to bestowal of nationality. Not only is the koseki system inadequate for securing the registration of all citizens, but the state administration appears to prioritise the koseki register over the hospital-issued birth certificate which should be the most suitable proof in terms of *jus sanguinis*.

Another case was reported on 20 May 2008 by mainichi.jp. A 27-year-old mukosekisha gave birth to a child who as a consequence became a ‘second-generation un-koseki registered’

(mukoseki nisei, 無戸籍二世). The mother was, as un-koseki registered, unable to submit a birth notification and had, incidentally, for that same reason also been unable to submit a marriage notification the previous summer. This unregistered mother’s lack of koseki registration was also due to the abovementioned ‘300-day rule’ and domestic violence. Her mother (aged 50) had refrained from making a birth notification for fear of alerting her former husband of her whereabouts (mainichi.jp 2008).

Interestingly, on 11 June 2008 the Ministry of Justice allowed the 27-year-old’s child to be registered in the koseki ‘in consideration of his future’. The ministry did not, however, take steps to resolve his mother’s unregistered status (asahi.com 2008a, 2008b).

An administrative change addressing the mukoseki issue occurred with the revision in June 2007 of the Passport Law Enforcement Regulations. This led the Foreign Ministry (Gaimushō, 外務省) to issue for the first time on 2 September 2008 passports to two mukoseki persons: a woman (aged 24) from Osaka Prefecture and a boy (aged 1) from Tokyo. Both were unregistered due to article 722 of the Civil Code. The revision facilitated issuing passports to mukoseki persons if they meet certain conditions, among these that ‘a true parent-child relationship has been or is being established through due procedures in a court of law’ (Daily Yomiuri Online 2008; Yomiuri Online 2008).

In other words, this revision of Passport Law Enforcement Regulations stresses the need to prove that the individuals in question fulfill the nationality principle of *jus sanguinis*. This contrasts greatly with the state’s *laissez-faire* approach to the general koseki-based registration of citizens, which neither actively ensures that all children of Japanese parentage are registered as citizens, nor appears very interested in helping individuals who lack

koseki registration. In short, the state seems fundamentally content with leaving the matter of koseki registration - even citizenship - in the hands of each individual family. The case of the Japanese orphans and women who were left behind in China (zanryū koji/fujin, 残留孤児・婦人), whose reacquisition of Japanese citizenship in the early nineteen eighties was left in the hands of their Japanese families, provides a similar example (see also Tong and Asano 2014). A central proposition of Krogness (2004), which studies the zanryū koji/fujin in relation to the koseki, is that it is but an example of how the Japanese state relies on the koseki system to ensure a family-level integration of citizens, so as to maintain a desired order of mutual surveillance and obligation (Krogness 2004: 70-71), which goes back to the ancient registers of China, Korea and Japan and is the fundamental feature of jus koseki.

These cases illustrate that citizenship is not necessarily among a mother's primary motives for notifying a birth. Here the primary motives are informed by the struggle to achieve recognition and avoid disrespect. These cases reveal state disrespect of individual rights expressed in the denial of passport due to lack of koseki copy, in the refusal to accept birth certificates listing the biological father (due to Article 722), in helping the child but not his mother to achieve koseki registration, in not permitting an un-koseki registered woman to enter into legal marriage, and, surely, in forcing a former husband to have another man's child listed in his koseki as his own (due to Article 722). Further, there is the crucial struggle of the mothers to avoid the physical disrespect that their husbands have inflicted through domestic violence. Fundamentally, these cases show that these mothers' non-registration of their children disrespects these children's individual rights, but their disrespect is a collateral result of their more keenly felt need to evade the disrespect of domestic violence and Article 722.

General and specific aspects of jus koseki

The general aspects of jus koseki - which influences Japanese society beyond the question of legal citizenship - are the following four basic principles of koseki registration:

1. Scope of registration: the citizens of Japan.
2. The unit of registration: the administrative household. Every household member shares the same koseki for individual documentation purposes. The data on one person reflects on each member and the entire household.
3. The registration of data: it is the duty of the administrative household itself to notify the all individual civil status changes and events to koseki office. Each household member submits notifications that pertain to themselves (e.g. the parent notifies the birth of his or her child, the adopting parent notifies the adoption of a child, and the couple in question notifies their marriage or divorce). The koseki office accepts correctly filled-out notification, but does not verify the basis for the status change.
4. Access to registered data: as the koseki serves as Japan's system for documenting the individual, the koseki registers remain in principle publicly accessible. The koseki office provides, for a fee, full or partial copies of koseki upon request. (Access to koseki copies have only very gradually been limited, beginning in the late 1960s. Not until 2008 did it become required for everyone, including the person in question, to show ID when requesting a koseki copy at the municipal koseki offices.)

The koseki is quite different from the individual civil status registers in most Western states, which tend to register all legal residents

regardless of nationality by the unit of the individual, largely collect data via state and public institutions, and in principle treats that private data as inaccessible to third parties.

In general, the above four principles makes koseki registrants identify the unit with the koseki as family and legal citizenship, that one member's data reflects on the entire household unit, that the data is potentially accessible to the surrounding society, and that data that enters one's koseki should be carefully curated.

More specifically in terms of Japanese legal citizenship, jus koseki is not that conducive to jus sanguinis and has more affinity with jus domicilis. Jus koseki utilizes the koseki as documentation for citizenship, which requires the bestowal of a household position. Such a position is fundamentally granted subjectively because parents are mainly concerned with family formation - not citizenship. Further, this subjective allocation of registered household membership is facilitated by the four basic koseki principles. Finally, under jus koseki the right to citizenship is not secured adequately due to the state's principled reluctance to interfere with household dispositions, and the koseki's systemic failure to enforce birth notifications.

Jus koseki's influence extends beyond the question of birth and citizenship to other life events, such as marriage, divorce, adoption, dissolution of adoption, legal gender change, illegitimacy, surname, locale (due to honseki), as well as population groups, such as the unregistered, foreign residents, minorities, gender relations, etc.

Conclusion

As a ledger of the citizens of Japan, the koseki has significantly influenced Japanese nationality from 1872 until today. In this role the koseki system discreetly envelops, as it were, the jus sanguinis principle of the

Nationality Law. The principle of jus koseki is therefore proposed here to account more precisely for the character of Japanese nationality.

One aspect of jus koseki is that the koseki system fundamentally documents nationality after the principle of residence-as-membership, which was also central for determining membership in the Edo period. From the perspective of residence-as-nationality, documentation of nationality was thus in early Meiji centered in the household address designated in the koseki document that one was registered in. From 1898, documentation of nationality became centered on the administrative honseki location that today indexes each koseki document. Jus koseki is thus a type of jus domicilis where residence requires registered membership of the administrative household, or ko unit and is denoted by honseki.

Another aspect of jus koseki is that the state via the koseki system delegates the official registration of citizens to the households. This occurs because a child, who is a citizen under jus sanguinis, is registered as such via its parents' notification of its birth. However, this reliance on birth notifications fails to safeguard the child's right to be registered as a citizen. In part, this is because the primary motive for the parents' notification of a birth is not citizenship registration but rather the establishment of parent-child relations. But more fundamentally, children's rights to citizenship is inadequately protected, partly because of systemic inadequacies in the koseki system and partly because of the state's apparent reluctance to interfere with household-level koseki dispositions.

The Japanese state's disinclination to interfere in koseki registration matters, and the koseki system's de facto reliance on trust in terms of birth notification submissions, can be interpreted as a remnant of the Meiji-era

control of the population through the authority of the household head (whom koseki researchers in the 1950's likened to a family level state bureaucrat). Registration within the koseki system documents fundamental individual rights, but given this system's laissez-faire character, the state appears to prioritize the household unit the koseki produces over securing the rights of its registered individuals.

Looking beyond nationality specifically, I propose that jus koseki is fundamentally an ordering principle wherein a larger social order emanates from a generally accepted administrative micro-level ordering of the population into administrative household units. Largely responsible for their own registrations and with minimal state interference, family groups and individuals engage in a struggle for legal, social, and emotional recognition as they strive to configure the family they envision within the parameters of the given administrative ko unit matrix.

Deeply influential at the level of the state, the family, and the individual, jus koseki should be further articulated so that we can better grapple with 'koseki Japan.'

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Notes

¹ The idea of jus koseki stems from Krogness (2004), which examines the crucial role the koseki and honseki had in relation to the zanryū koji's reacquisition of Japanese citizenship.

² 1871 Koseki Law, preamble, art. 1 (Dajōkan Edict No. 170 of 4 April); 1898 Koseki Law, art. 170.2 (Law No. 12 of 15 June); 1914 Koseki Law, art. 44 (Law No. 26 of 30 March); 1947 (current) Koseki Law, art. 6, 18, 22 (Law No. 224 of 22 December).

³ The koseki serves domestic purposes (see Kamoto 2014), and for this reason the so-called citizen certificate (kokuseki shōmeishō) is issued to document Japanese citizenship outside of Japan. Issuance of this certificate requires, however, a copy of one's koseki as proof of citizenship (Tashiro 1974: 14-15).

⁴ The United Nations Statistical Division defines civil registration in this way: 'Civil registration is a state-run public institution that serves both general and individual interests by gathering, screening, documenting, filing, safekeeping, correcting, updating and certifying with respect to the occurrence of vital events and their characteristics as they relate to the civil status of individuals and as they affect them and their families, and by providing the official, permanent record of their existence, identity, and personal and family circumstances. Its purpose is therefore to store, preserve and retrieve information on vital events whenever

needed for legal, administrative, statistical or any other purposes. Civil registration sometimes plays a role in the creation of certain civil status records, a case in point being civil marriage ceremonies. Aggregate civil registration data produce continuous vital statistics' (United Nations Statistical Division 1998: 9).

⁵ [...] kokumin no soto taru ni chikashi. [...] 国民ノ外タルニ近シ

⁶ The 1914 Koseki Law's corresponding article 44 is practically identical.

⁷ Interview conducted with koseki registrar Satō Ken'ichi of the Matsuyama City Hall's Civil Division (shiminka), 13 September 2005. (Pseudonym used for privacy reasons.)

⁸ Interview conducted with the chief clerk of koseki registration, Nakano Akio, 12 December 2006.

⁹ The majority of household heads were male, but that position was open for females, too. Female household heads are referred to as onna kosu (女戸主).

¹⁰ For more on the phenomenon of koseki consciousness, see Kawashima (1948), Yamanushi (1962), Toshitani (1987b) and Krogness (2013). Ninomiya (2014) also discusses this phenomenon using the term 'koseki feelings'.

¹¹ Individuation refers to the ontogeneric development of becoming an individual.

¹² Marriage notification requires that the couple choose one of their surnames as their shared conjugal surname, which will index their koseki register. The person whose surname is chosen is listed first and hence becomes the 'first registrant'. Couples are free to choose between the surnames of the husband and wife.

¹³ Ninomiya (1999:8-9) suggests that this

administrative convention is most likely why New Year cards similarly present the full name of the husband and just the personal name of the wife.

¹⁴ One example of non-registration of birth and physical disrespect is the Sugamo Incident (for details see Kanematsu, Fukushima et al. 1989: v-vi, 91-151). The case is also presented in more poetic and fictionalized form in Kore-eda Hirokazu's movie *Daremo Shiranai* (English title, *Nobody Knows*).

¹⁵ German and French, for example, make this distinction, using for the former meaning the terms *Gesetz* and *loi*, and for the latter meaning the terms *Recht* and *droit*.

¹⁶ This passage on Aristotle is inspired by a 2012 New York Times opinion piece by the political scientist Jacqueline Stevens.

¹⁷ *Shihōshō* Order No. 94 of 29 December 1947.

¹⁸ For details on the emergence and structure of Edict 170, see Fukushima (1959b), or Krogness (2008: 90-92) for a brief overview.

¹⁹ Kashiwazaki (1998a: 293) reminds us that initial internal inclusiveness regarding citizenship is a rather generic feature of state building.

²⁰ Having served in various capacities at the Ministry of Justice's Civil Affairs Bureau (*Minjikyoku*), which is in charge of the *koseki* system, and at the Ministry of Justice's Regional Legal Affairs Bureau (*Hōmukyoku*), the legal scholar, administrator, professor and lawyer Tashiro Aritsugu (born 1928) is a leading authority on the legal and administrative aspects of the *koseki* system. Kidana Shō ichi acknowledges the importance of Tashiro's 1974 volume in his follow-up volume *Nationality Law: With Item-by-Item Annotations* (Kidana 2003: 1).

²¹ The state intended the *kochō* position to be

held by new government administrators, but it proved difficult to prevent existing village leaders from stepping into this position in most communities. For a detailed case study on the compilation process of the 1872 (*jinshin*) *koseki* and the issue of the *kochō*, see Toshitani (1987a).

²² It should be noted that Edict 103 does not use the term *kokumin*, but rather the phrase *nihonjin-taru no bungen*: 'the status of being Japanese'. (See Kamoto, this volume for more details on Edict 103.) For a German translation of Edict 103 see Tomson (1971: 227-28.)

²³ The 1872 *Koseki* required that each administrative household be identified by family class (*zokusho*). Encompassing categories such as nobility (*kazoku*), samurai (*shizoku*), lower samurai (*sotsu*), peasant (*nō*), artisan (*kō*), and merchant (*shō*), the family class item obviously perpetuated the status pattern of Edo era society. But where the status system of the Edo era divided the population via status-specific registration systems (e.g. *ninbetsuchō*, and separate registers for *shizoku*, *sotsu*, temple and shrine populations (*jishaseki*), and *eta/hinin*), the modern, uniform 1872 *koseki* turned these status divisions into *ko* unit subcategories. Family class categories also included occupational designations, for example such-and-such appointment (*bōyaku*), employment (*bōshoku*), or vocation (*bōtosei*). The family class entry also became a site for perpetuating the discrimination of *eta/hinin*, for example by identifying these population groups by way of specific occupational terms, for example 'miscellaneous work' (*zatsugyō* (雑業)). The family class entry was abolished in 1947. Access is not available to copies of the 1872 *koseki* registers, and the family class entry has been been erased in all subsequent pre-war registers to protect the buraku minority's right to privacy (Krogness 2008:15,28-29, 212-219).

²⁴ The post-war two-generational *ko*-unit is

similar to the nuclear family to the extent that it is defined as “a married couple and their children, who bear the same surname.” Usually couples choose the husband’s surname as their ko-unit index. Their conjugal children will receive that surname, for example Tanaka. This Tanaka ko-unit is a unique administrative entity; koseki parlance the surname that indexes a unit is called an uji (氏). Should this Tanaka family include a child that the female spouse already had from an earlier relationship, then that child’s surname would be different from that of the present husband and therefore not registered in that conjugal ko-unit. Even if the biological father’s surname was Tanaka, too, that child would need to be adopted by the present husband to acquire his uji and thus enter his register.

²⁵ The Government Section of the Supreme Commander for the Allied Powers, which was in charge of the legal reforms of the Civil Code, Koseki Law and Nationality Law, insisted on deleting these provisions, as automatic loss of citizenship due to marriage, acknowledgement or adoptions infringed on individual freedom.

²⁶ Japanese statistics, for instance, account for

the Japanese population both by actual residence and by honseki area (honsekichi). Given the tendency in many families to maintain an ‘ancestral honseki’, the ‘residential population’ and the ‘honseki population’ often differ considerably in a given village or municipal ward. The honseki population of a village tends to be larger than the residential population. Conversely, in a municipal ward the residential population tends to outnumber its honseki population.

²⁷ According to koseki scholar Shinmi Kichiji, the honseki principle may represent a feudal remnant rooted in the notations made in the registers of samurai and lower samurai to indicate particular territorial ties (Shinmi 1959: 297).

²⁸ See Krogness (2008: 221–26) for a general discussion of honseki in relation to the administrative ‘ie’ order, as a signifier of familial or territorial rootedness, and as indicator of minority backgrounds.

²⁹ Minpō to koseki wo kangaeru onnatachi no renrakukai (the women’s council concerned with the Civil Code and the koseki).