

## The Family, Koseki, and the Individual: Japanese and Korean Experiences □ □ 時代遅れの家族制度—日本と韓国の場合

Yuki Miyamoto, Ninomiya Shuhei, Shin Ki-young

### The Family, Koseki, and the Individual: Japanese and Korean Experiences

Miyamoto Yuki, Ninomiya Shuhei and Shin Ki-young offer historical and comparative perspectives on Japan's household registration system (koseki) and the rights of individuals.

Text by Miyamoto Yuki translated by Adam Lebowitz with Chikako Kobayashi. Text by Ninomiya Shuhei Translated by Adam Lebowitz

### The Family and Individual Rights

Miyamoto Yuki

It appeared to be over before it began.

On 14 February, Kayama Emi and Watanabe Tsuguo filed an administrative appeal to have the rejection of their marriage application by Arakawa Ward, Tokyo rescinded.<sup>1</sup> Ms. Kayama wanted to keep her surname after marriage, as did Mr. Watanabe. The court rejected the appeal after only ten days without hearing arguments. "I've never had a gate closed in my face so quickly," said Ms. Kayama.

They are now demanding damages on the basis of sexual discrimination, a case that is expected to take two years in the Tokyo High Court. Their appeal is based on Article 24 of the Constitution, which guarantees gender equality and respect of individual rights in marriage, and Article 13, which guarantees the right to pursue personal happiness. In contrast, current law requiring married couples to have a single surname, either the husband or wife's, is based solely on an "agreement" (goi) between the parties involved.

The couple were legally married in 2000, and initially decided to register their surname as Watanabe. However, they ran into difficulty when Ms. Kayama's work-related credit card had Watanabe on it, as did her passport used for business trips abroad, but her business card said Kayama. The stress of being identified as "Watanabe" in her private life led the couple to file for a "paper divorce" four years later. The following month they re-applied to wed under separate names, but their application was rejected.

In February 2006, they appealed to Tokyo Family

Court which handed down the decision in April: Arakawa Ward's verdict was deemed legal under civil law. Kayama and Watanabe re-submitted their marriage application in January of this year, and it was rejected again.

Through their attorney Uchikoshi Sakura, the couple filed for damages to the High Court on 3 March. This second suit also involves three other women who are already legally married and use their maiden names in their daily lives. Their suit is to legally revert to their maiden names. Tsukamoto Kyoko, a 75-year-old from Toyama, said "I have been waiting 50 years for a response to my appeals ." She was greatly shocked when the law was not revised during last year's regular session of the Diet. Sakamoto Yoko, who runs a website for a support group, says the ruling Democratic Party of Japan has reneged on its promise. "The DPJ has held back from promoting double-surname legislation out of consideration for its ruling coalition ally, the People's New Party, which opposes it. Forcing married couples to take the same surname is a human rights issue, and the DPJ has no excuse for going back on the promise they'd been making for years."

As Sakamoto points out, the Justice Ministry last year was slated to submit to the Diet a bill for revisions to the civil code that, among other things, would allow married couples to have different surnames. While the long-ruling Liberal Democratic Party had resisted such revisions, when the DPJ took over the reins of government

and the DPJ's Chiba Keiko and Social Democratic Party leader Fukushima Mizuho—both double-surname advocates—were appointed to the posts of justice minister and gender equality minister, respectively, many thought that civil code reform was imminent.

In the end, the bill did not even come to a vote in the Diet due to the opposition of New Party leader Kamei Shizuka, despite the fact that Justice Ministry officials have said they are ready to move on it. Opposition to the bill, which would simply provide married couples with the option of keeping their names, is based on the belief that it would weaken the structure of households. In response, Oguni Kaori, who is a civil servant and one of the plaintiffs in Kayama and Watanabe's group, retorts, "That's a mistaken belief. The family bond has nothing to do with having the same surname."

It is not only women in the workplace who are inconvenienced by misunderstandings around names. Ito Reiko, a Tokyo housewife in her 40s, feels condescension from her in-laws. "The moment I changed my surname to that of my husband, I started being treated by my in-laws as belonging to the family, and as someone inferior . . . There were times when I thought of going through a paper divorce, but didn't because it was complicated. Besides, I would not then be recognized as a dependent." Men wanting to adopt their wife's name also run into barriers, whether due to confusion involving names at the

workplace, to opposition from the husband's family if he is the oldest son inheriting property and tasked with carrying on the family name, or to social prejudice and jabs about being "adopted" by the wife's family.

"I just don't understand where this opposition comes from. Our family hasn't collapsed. It's just the way we want to live, and differences in the ways families identify themselves should be recognized," explains Watanabe.

The law itself is contradictory because in case of divorce, whoever changed their name at the time of marriage can choose to keep their married name or revert to their surname before marriage, and international marriages also allow the possibility of using both surnames side by side. DPJ Diet member Ido Masae, who supports changing the law, notes that, "People opposed to the change believe that children should have the same name as their parents. But it's not uncommon for children of divorced parents to have different names. Unfortunately, it's impossible to have a reasonable debate about this (with double surname opponents) because they either evade our questions or get angry."

Yoshii Minako, the Tokyo university lecturer who is a plaintiff, says that the fact that her son has a different surname has not affected their relationship.<sup>2</sup> In nearby Saitama, Ueno Itaru and Chiba Keiko are both attorneys and have three children in wedlock. They decided to name two

of the children using the father's surname and one using the mother's.<sup>3</sup> When she was legally married to Ueno, Chiba was shocked to learn that she could not open a bank account under her own name because she "didn't legally exist." The couple therefore decided upon a paper divorce. Chiba says that her children sometimes asked her why there were two surnames in their family while other families typically had one. "I simply told them that some families are like that, and that we didn't want to change our names. But their parents get along, and we love our children . . . No family ever fell apart due to name differences."

### **Historical Perspective on Koseki and the Japanese Family: an interview with Prof. Ninomiya Shuhei**

- *Could you give us some historical background on the koseki system?*

It began in 1871, three years after the Meiji Restoration. It was a census system in its early form, for example, to track males for conscription at age 20 or older. The eldest son received a deferment, so it was necessary to know the position of male family members. There were also public safety concerns, the state wishing to know who did what where and so on. Now the system encompasses marriage and divorce, but that was not part of it at its inception.

- *Overall, this kind of information was necessary in order to become a "strong modern nation", right?*

That's correct. Original documents state that this

was the primary function. It was connected to the institutionalization of the Emperor system. At the time of the Meiji Restoration, many people did not really understand the position of the Emperor. They were aware of local authority figures, landowners and so on, but not so much the Emperor. The Meiji Government stated clearly that the Emperor was the “father” of the country, and the Empress was the “mother”. In other words, the concept of “Familial Nationhood” (*kazoku kokkakan*) was established. For this, the idea of the “family system” was very important.

A titular head (*koshu*) is required in this kind of systematized family. His word is law. Go against it and you become de-registered (*riseki*) cast out, and lose your rights in society. In this way, the psychological attachment to parents was to be transformed toward the state in the person of the Emperor. This analogizing of the family was key to the success of transforming the Japanese people from citizens in a country (*kuni*) to citizens of a nation (*kokka*)

But Japan was still an undeveloped country economically, and of course there were still people who could not fend for themselves. The family served a function here because there was the duty to care for dependents that extended not only to children: aunts and uncles, great-aunts and -uncles, divorced sisters, mentally and physically infirm relatives, the titular head *koshu* had to support them all. When the

system was developing, there was a debate over whether the basic unit should be the family, or the individual as it was in Europe and the US. The authorities eventually settled on the family because it made the family morally responsible for caring for its less fortunate members.

- *So, it was two birds with one stone for the government: Make social welfare the responsibility of the family, and also institutionalize an authoritarian “family-style” social structure*

Exactly. It was quite logical, really. The “family” became the basis of modernization. Hierarchical order was necessary for an Emperor-centered nation. This order was reinforced in the *koseki* system. Ancestors and descendants, linear and collateral relationships, male and female, an order was provided for all these relationships within the family system. From its initial census-driven function, the *koseki* system evolved into a way of recording the structure of families.

However, the laws concerning *koseki* were separated from the laws concerning the rights and obligations of citizens, which appear in the Civil Code (*minpo*) Next, it was necessary that what was envisioned in the “family system” be guaranteed through Civil Code regulations. Therefore, punishments and so on of the family head for abnegating duties were recorded in the Civil Code. Therefore, *koseki* pre-dates *minpo*.

- *It looked like things would change when the Civil Code was re-written in 1947 after the war, and the*

*basic social unit would become the individual. What happened?*

Initially, that is exactly what happened at the suggestion of GHQ, but this sparked intense debate. In the end, officials in the Justice Ministry held firm. The paperwork was not economically feasible, went the reasoning, for individuals to be registered in lieu of families. Really, this was the argument used. In addition, under the new constitution a “family” was recognized as a couple and children. This was the nuclear family. Sexual equality was also legally recognized, seriously undercutting any chance of resurrecting the former “family system”.

There was a lot of discussion about how to adjust the koseki system in these new circumstances to maintain the family as the basic unit of society. Therefore, it became necessary to have a “head of household” (*hittosha*). Post-war legislators insisted that married couples adopt the husband’s name, but again this was at odds with GHQ, so eventually it was decided that either name could be chosen. However, due to the long history of the husband being the family head, the majority of couples adopt the husband’s name. The family size has shrunk, but the “family system” per se remains basically intact.

Constitutional law specialists recognize that the system has been able to have its cake and eat it too: the “family name” (*shi*) has simply replaced the “family” (*ka*) as an instrument of institutional control. More progressive scholars in the post-

war period advocated maintaining a koseki system with individuals as the basic unit as a means of promoting democracy and respecting individual rights and freedoms. But the counterargument of “convenience” has won out, since it is easier to manage identity documents for families than it is for individuals.

- *Wasn’t the nuclear family model useful overall during Japan’s accelerated economic growth?*

The importance of the nuclear family goes beyond economics. It is a way of separating and maintaining gender roles. Immediately after the war, widowed mothers had to work to support their children, and they were generally employed. During the post-war baby boom period with more males entering the workforce, women in general became less employable. The housewife (*sengyo shufu*) became the normative model for women to follow, and in fact became the norm in the 1960’s and ‘70’s. Naming the wife after the husband only added to this loss of social individualism.

- *Throughout the ‘80’s women gained more rights socially, but the practice of adopting the husband’s name did not change.*

It probably won’t change anytime soon, either. People just choose it as the path of least resistance. It beats having to go to the trouble of explaining to everyone who they are.

- *The argument has been raised that the individual as the basic social unit would lead to the breakdown of*

*the family.*

Hard to see the logic of that. Only Japan and Taiwan use the koseki system. Other countries register individuals. In Western Europe, individual identity documents such as birth, marriage and death certificates are all separate. There are, of course, also systems for registering families, but the “head of household” does not exist. The husband and wife write their names down, along with the names of children. In case of divorce, this document becomes void. It’s as simple as that. There not being a koseki has nothing to do with the health of the marriage.

When the Republic of Korea reformed its koseki laws in 2008, similar fears were voiced, so a “Family Relations Registry” was created. This registered individuals and it includes information about family relations. Therefore, there is no reason to believe that reforming the laws would lead to the collapse of the family as a social institution. The issue is the structure of documentation. Unfortunately the koseki system as it remains in Japan greatly limits the structure and perception of family. This is the problem.

Another issue is that the shape of families is changing. According to the 2005 census, families consisting of parents with pre-adult children accounted for only 29.9 percent of all households. The percentage is reportedly lower for the 2010 census. The number of single person households is growing, due of course in part to the aging of society, but also because the “family model” is

surprisingly diverse. As mentioned before, the koseki system tends to pressure people into believing there is only one model. Divorces tend to be viewed as “black marks” on family registers, and children who are born to people not registered in koseki are considered “nameless” and thus vulnerable to discrimination.

- *It is perhaps easier now than it has ever been to live as a single individual, both economically and socially. It fits with the mantra of “personal responsibility.”*

Well, I think it is time that people began to consider carefully what the function of family has been. I see three main issues: reproduction, sexual attraction, and care. However, these issues are not solely the responsibility of family. The first two are private of course, but the third issue of care is in reality too heavy for families alone to bear. Now we have the social problem of “elderly caring for elderly”. The excuse has always been, “It is family obligation,” but it is a multi-dimensional issue that has to be discussed outside of the usual framework of “love of family” and “family integrity”. Therefore, we now have new insurance policies, legal frameworks that allow for the handicapped to live independently but with assistance, and the child-care system. These are issues society as a whole has to take responsibility for, and there is still much work to do.

There should also be greater opportunity for gay couples to be recognized as “family”, for

although they cannot reproduce sexually they can still fulfill responsibilities for care. We should not be limiting ourselves to the different possible shapes of families. We should also recognize that there are important issues beyond those that can be resolved by “personal responsibility.”

- *We should be looking holistically at family, individual lifestyle, and the different ways individuals can connect with each other in society.*

My point exactly. The intimacy achievable through the family remains attractive and admirable. It is also possible to see these qualities in community and work relationships, and to recognize the richness and variety of human relationships.

### **Abolishing Koseki in Korea**

#### **Shin Ki-young**

In 2005, the Republic of Korea abolished the *koseki* system. It came as a big surprise since Korea has been known for its strong Confucian tradition and rigid family structure in which the position of women was seen as being very low. The discourse of “family ties” was said to be even stronger than that of Japan.

Despite this, reforms were made to the Civil Law to do away with the “head of household” (the male heir) as the central figure of the family. The male-centered household system was replaced by a new registration system which would be based on the individual as a unit of status registration.

The reform also includes other changes: Women are no longer forbidden to re-marry within six months of divorce, and the adoption process was also greatly improved. All these changes reflect the rapidly changing reality of family life in Korea.

However, family law reform had to undergo a long and difficult process. Through the 1990’s, married women were expected to give birth to sons to continue the patrilineage of the family, and abortions to this end were not uncommon. This, among other reasons, created a gender imbalance in the population. Children were registered as dependents of the father and they remained on the father’s family register even when their parents divorced and they lived with the mother. Women’s and other citizens’ groups, which had come to realize such problems of the existing family system in the 90’s, pressed for gender equality and democratic relations within families.

On the other hand, such an effort for family law reform spurred strong resistance from conservatives. Their main argument was that reforming existing laws would weaken traditional family relations and undercut Korea’s “proud tradition of filial piety”. It was also condemned as a plot by self-interested divorcees.

However, groups favoring reform organized successfully and brought a case to the Supreme Court claiming that existing laws were

unconstitutional. They were also successful in bringing the abolition of the koseki system to the platform of candidates in the 2002 Presidential election, including Roh Moo-hyun who was elected president. The National Assembly, with Roh's party in the majority, finally pushed reform legislation in 2004. According to a survey, 197 of 299 congressional representatives (65.9%) approved the revision of the family law, including members of the conservative Hannara Party. Legislation was finally passed the next year, 2005, after the Supreme Court declared existing family law unconstitutional.

As a new system was introduced, conservative resistance flagged. So far the advertised collapse of family life has not occurred. To the contrary, the reform has given impetus to a view of family life that emphasizes respect for individual rights and diversity. If Japan is considering revision of its Civil Code, wouldn't the Korean case be one possibility worth consulting?

*Miyamoto Yuki is a member of the editorial board of Shukan Kin'yobi; Ninomiya Shuhei is Chair, Department of Law, Ritsumeikan University, and author of Family Law 家族法第3版 (新世社 2009 年) (3rd edition); Shin Ki-young is an Associate Professor at Ochanomizu University. This series of articles was published in Shukan Kin'yobi, March 11, 2011.*

*Adam Lebowitz with Chikako Kobayashi provided*

*abbreviated translation of part one. Lebowitz provided a full translation of part two of the series. He teaches at the University of Tsukuba. A contributor to the literary monthly Shi-to-Shisô (Poetry and Thought), he was once long-listed for their New Poet's Award. He is an Asia-Pacific Journal Associate. Chikako Kobayashi is an independent translator.*

*Recommended Citation: Miyamoto Yuki, Ninomiya Shuhei, and Shin Ki-young, "The Family, Koseki, and the Individual: Japanese and Korean Experiences," The Asia-Pacific Journal Vol 9, Issue 36 No 1, September 5, 2011.*

#### Articles on related subjects

David Chapman, Geographies of Self and Other: Mapping Japan through the Koseki (<https://apjjf.org/-David-Chapman/3565>)

Mark Selden and Wu Jieh-min, The Chinese State, Incomplete Proletarianization and Structures of Inequality in Two Epochs ([https://apjjf.org/-Wu-Jieh\\_min/3480](https://apjjf.org/-Wu-Jieh_min/3480))

#### Notes

The original suit involved Kayama, Watanabe and three other women. The court separated the original suit into two.



<sup>2</sup> Yoshii and her son legally have the same surname. But she goes by her maiden name on a day-by-day basis.

<sup>3</sup> Ueno and Chiba were once legally married. They are presently a common-law couple. The first child was born when they were legally married. Every time Chiba became pregnant, the couple filed for legal marriage again so as to

prevent their second and third children from being at a disadvantage in terms of inheritance. According to the current civil code, children born outside a legal marriage have half the inheritance rights of siblings born from a legally married couple—even if the parents are the same and subsequently divorce in order to revert to their own surnames. Because they remarried and gave one or the other of their surnames for each child, their children had different surnames.