

THE DEVELOPMENT OF THE FAMILY LAW IN MODERN JAPAN

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I. INTRODUCTION

The legal system governing family relationships in Japan was characterized by the fact that it involved two conflicting principles; one was the “principle of *ie*” by which it was intended that the individual should serve the cause of the maintenance and prosperity of *ie* by assuming *ie* as something that should be handed down from a forefather to posterity, that is, as the symbol of ancestor-descendant identification, and the other is the “principle of the individual” by which it was intended that every person should be respected as the individual by liberating him or her from the control and restraint of *ie*.

This opposition of these two principles and the confusion caused thereby have been peculiar to the Japanese family law, among those of modern nations. However, when we look back upon the course of the development of the family law since the Meiji period, we may say that it has been a process through which the “principle of the individual” has strengthened increasingly with the years, and the “principle of *ie*” has proportionately weakened.

This article aims at discussing briefly this development in three periods after the Meiji Restoration of 1868: the early Meiji period, the period under the Civil Code of 1898 and the period under the Civil Code of 1948. In these three periods, one can see the gradual change of the relationship between the two conflicting principles or interests in every aspect of domestic relations such as husband and wife, parent and child, maintenance and support, as well as in succession.

II. THE EARLY MEIJI PERIOD

This is a period of approximately thirty years from 1870 or the third year of Meiji, when compilation of provisions governing family relationships was planned for the first time as a part of the Civil Code then under consideration to be codified.

The Restoration of 1868 abolished the feudal "clan" system and "class" system which had enjoyed important roles during the administration of the Tokugawa Shogunate Government. Under the Restoration, establishment of a powerful central government headed by Emperor Meiji was strongly urged. During the feudal period, family relationships such as those of husband and wife, and parent and child, and the problem of succession as well were subject to different rules in respective feudal provinces and according to the difference in status between *samurai* and commoners. Hence, it was quite natural that the Meiji Government attempted to codify uniform rules governing such relationships at the earliest stage of various reforms. As early as March of 1870 or the third year of Meiji, the Government established the *Seido-Torishirabe-Kyoku* (Bureau for the Investigation of Institutions) within the office of *Dajokan* and began drafting such provisions as a part of the scheme to compile a civil code. Thus in 1890, the twenty-third year of Meiji, a civil code consisting of 1,762 articles (called the old Civil Code, as against the Civil Code of 1898) was enacted and the provisions governing family relationships were incorporated in its Book on Persons and Book on Means of Acquiring Property. This old Code was to have been enforced on January 1, 1893. But as its promulgation intensified further the strong conflict of opinions between a group of progressive people who supported individualism derived from Western civilization and a group of conservative people who insisted on maintaining our traditional *ie* system, the Diet of 1892 decided to postpone its enforcement in order to make amendments to the entire Code. Then the Government established *Hoten-Chosa-Kai* (the Committee for the Study of the Code). The Committee, after extensive study and

deliberation, completed an amendment code which was finally enacted and came into force on July 16, 1898.

It may be said, therefore, that the early Meiji period was the period of approximately thirty years after the Restoration in which there was no civil code in force and hence there were no code provisions governing domestic relations. However, Article 3 of *Saiban-Jimu-Kokoroe* (Instructions for the Administration of Justice) issued as *Dajokan* Edict, No. 103 of June, 1875 provided that the primary source of law was statutory laws, and in the absence of them, customary laws, and that, in the absence of both, the judge must decide according to reason. Since there was no civil code in force, major statutory laws were edicts and instructions issued by *Dajokan* from time to time in an unsystematic manner. A group of such statutory provisions could never be said to be an adequate source of law on which judges could rely with full confidence and certainty. Thus, it may easily be surmised that *Dajokan* as well as various officials of central and provincial governments exerted great influence in determining customary laws and reason, and supplementing the aforesaid statutory provisions. It may be adequate to point out some of the edicts and instructions which show the characteristics of the family law of the early Meiji period.

The Meiji Restoration liberated all nationals from the feudal class-distinction and laid down the principle of the equality of individuals regardless of the social standing of their *ie*. One example can be found in the removal of restrictions in marriage and adoption in the early years after the Restoration. Under the reform, marriage and adoption between a man and a woman regardless of the class-distinction among *Kazoku* (peers), *Shizoku* (ex-samurai) and *Heimin* (commoners) were officially approved. However, people did not become completely free from the subjection to their *ie*. According to the *Gotoshin-zu* (Table of the Five Ranks of Relative Status) of *Shinritsu-Koryo*, the new penal code enacted in 1870, uncles and aunts on the father's side belonged to the second rank, while uncles

and aunts on the mother's side to the fourth rank; brothers' children belonged to the second rank, while sisters' children to the fourth rank; to the wife the husband's parents belonged to the second rank, while to the husband the wife's parents belonged to the fifth rank. Thus, as for relatives by blood, different ranks of superiority were given to those on the mother's side and those of the father's side, and to those of the female line and those of the male line; and as for relatives by affinity, different ranks of superiority were given to blood relatives on the wife's side and those on the husband's side. In addition, a concubine was treated as her husband's relative with the same status of a spouse as a wife. In other words, a concubine was a *jun-sai* (quasi-wife) with nearly the same treatment and dignity as a wife. Accordingly, under the *Dajokan* Edict of 1873, a child of a woman who was neither a wife nor a concubine was regarded as a bastard, while a child of a concubine was regarded as a legitimate child equally to a child of the wife.

We can see in these instances a strong element of the patriarchal family system. The same can be said of the ordinance of the Ministry of Internal Affairs of 1877, which limited the capacity to adopt a child to *koshu* (the head of *ie*) and to the heir presumptive to the headship of *ie*, and other members of *ie* were not allowed to adopt a child. The law of adoption at that time was thus made subject to the "principle of *ie*".

However, even in the family law of the early Meiji Period, in which the "principle of *ie*" held a dominant position as indicated above, we can not but find some signs of the "principle of the individual". The old criminal law which came into force in 1882, in defining the scope of relatives, removed the discriminatory treatment shown in the *Gotoshin-zu* illustrated above. Apparently, at least, there was no trace of the discrimination between relatives by blood on the father's side and those on the mother's side and between relatives by blood of the male line and those of the female line, as well as between the husband's relation to the relatives by blood on

the wife's side and the wife's relation to those on the husband's side. All this shows the gradual liberation from the regulations of the patriarchal *ie* principle.

In addition, under the old criminal law, the status of a concubine in terms of the law of marriage was removed from the law and the monogamy system was firmly established. Also, the *Dajokan* Edict of 1873 recognized for the first time the right of a wife to petition for divorce. These reforms are worthy of our notice as the first step forward to the matrimonial law based on the sense of respect of the individual. In this connection, *Shiseiji-ho* (the Law concerning the Bastard) of 1873 must also be mentioned. The significance of the law can be found in the fact that it came suddenly into existence in the patriarchal family law which stipulated only for the distinction between the child who was to inherit *ie* (*i.e.*, *chakushi*) and the child who was not (*i.e.*, *masshi*), and that the law paved the way for the legal parent-child relationship between a bastard and his parents. This was indeed a great revolt against the "principle of *ie*" then prevailing.

III. THE PERIOD UNDER THE CIVIL CODE OF 1898

This is a period of approximately fifty years from the enforcement of Book IV on the Family and Book V on Succession of the Civil Code of 1898 (Law No. 9) until the enforcement of the "Law concerning Temporary Measures for the Civil Code in accordance with the Enforcement of the Constitution of Japan" in 1947.

The revision of the family provisions of the old Civil Code was made under a conservative intent to preserve the traditional system of *ie*, but the revision did not strengthen the principle of *ie*, probably because the then emerging modern idea of the family prevented it. Thus, in the family law provisions of the revised Code, which may be called the old family law, we can see a clear conflict between the "principle of *ie*" and the "principle of the individual". For instance, under the revised Code, it was provided that as a condition

to effect marriage, a person as a member of *ie* must obtain the consent of *koshu* (the head of *ie*) regardless of his or her age, and if such person was a male under thirty years of age or a female under twenty-five years of age, he or she as a child must obtain the consent of his or her parents in the same *ie*. It was provided also that a minor child must reside at a place designated by his or her father or mother who had parental right, and that such child as a member of the *ie* could not select his or her place of residence contrary to the intention of the head of *ie*. Thus under the old Code, marriage and selection of a place of residence were regulated according to the "principle of *ie*", while on the other hand they were regulated by the "principle of the individual".

Under such provisions, there were possibilities of conflict with regard to marriage and selection of the place of residence, between *koshu* who exercised control over his *ie* members and the father or mother who exercised parental right over his or her child under custody and support. The conflict was to be solved of itself, according to which of the two must be regarded to have superior power in view of the idea of *ie* prevalent in each period. When the power of *koshu* was regarded as superior to parental right, "every member of *ie* must select his place of residence according to the instruction of the head of *ie*", as stated in the *Mimpo-Riyusho* (Draftman's Comment on the Civil Code). In later years, when the social structure became more individualistic and the form of living dependent on *ie* began to collapse, the situation was reversed: the power of *koshu* was placed below parental right.

Thus, the "principle of the individual" was gradually replacing the "principle of *ie*", but such a change was hardly admissible to persons who considered that good morals and manners peculiar to our country could only be preserved under the *ie* system.

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In the year of 1919, the Government, according to the recommendation of *Rinji-Kyoiku-Kaigi* (the Temporary Council on Education), established a temporary council for the deliberation on legislation

called *Rinji-Hoseishingi-Kai*. The Government feared the weakening of the *ie* system and asked the council to study and submit a plan for the "revision of various laws and regulations which are contrary to the customs of our country". After careful study and deliberation, the council submitted a report consisting of thirty-four items for the revision of the provisions of the Book on the Family in 1925 and another report consisting of seventeen items for the revision of the provisions of the Book on Succession in 1927. It must be noted, however, that the plan submitted by the council was not in strict accord with the original intention of the Government to preserve and strengthen the *ie* system. In the plan, emphasis was laid on the further promotion of the "principle of the individual" rather than on the strengthening of the "principle of *ie*". It is quite noteworthy that the council recommended that the eldest child's exclusive right of succession should be moderated for the benefit of other children, and the capacity of the wife and the parental right of the mother should be expanded for the benefit of wives and mothers who came from other *ie*.

A plan for the revision of the Civil Code based on the above recommendation was then submitted to *Rinji-Mimpo-Kaisei-Inkai* (the Temporary Committee for the Revision of the Civil Code) that was organized in the Ministry of Justice in 1928. It was said that the committee had completed the draft at the end of 1941, but it remained a draft after all, owing to the aggravation of the war and the rising tide of militarism that followed the China Incident. But on close examination, the proposed items may be said to have formed the basis for the post-war revision of the Civil Code.

IV. THE PERIOD UNDER THE CIVIL CODE OF 1948

This is a period of eighteen years from the enforcement of the Constitution of Japan on May 3, 1947 up to the present.

In April, 1946, when the Government published the draft of the new Constitution, the problem of amending family law provisions

of the Civil Code became urgent and began to be the subject of much discussion in various circles. Since Article 22 of the new Constitution declared that provisions of the family law must be based on the principle of individual dignity and the essential equality of the sexes. Under such principles of the proposed constitution, some of the provisions of the Civil Code were to be amended either because they were contrary to the principle of individual dignity or because they were incompatible with the principle of the essential equality of the sexes. For instance, the following provisions must be entirely revised as clearly against the principle of individual dignity—provisions which prohibited the marriage of the head of *ie* or the legal heir presumptive to the headship of *ie*, which would make such person a member of another *ie*, provisions which placed members of *ie* under the power of the head by requiring the consent of the latter to the marriage or selection of the place of residence of a family member, even after he had come of age, and provisions which required children of the first wife to call their father's second wife their mother. Also, the following provisions could never be maintained, as they were contrary to the principle of the essential equality of the sexes—provisions which distinguished between father and mother in the exercise of parental right, provisions which made a discrimination between a male child and a female child in priority in succeeding their father or mother as the head of *ie*, and provisions which discriminated between the husband and the wife in their obligation of keeping chastity.

Accordingly, the Government established *Rinji-Hosei-Chosakai* (the Temporary Council for the Deliberation on Legislation) and asked the council to conduct investigation and submit "a plan for the enactment of new laws and for the amendment of the existing laws that have become necessary due to the amendment of the Constitution". Preparation of a plan for the revision of the Civil Code was an important task of the council. The council held its first general meeting in July, 1946, and its third session and the second subcom-

mittee of *Shiho-Hosei-Shingikai* (the Council for the Deliberation on Judicial Legislation) that was established in the Justice Ministry, jointly participated in the preparation of the plan. The plan thus made was finally approved by the third general meeting of the council held in October, 1946. The plan consisted of forty-two items which were aimed at eliminating elements that were considered to be obstacles to the enforcement of the principles of individual dignity and essential equality of the sexes in family life.

The final draft —the fruit of eight successive tentative drafts — for the revision of the Civil Code, based on the above plan, formed the “Bill for the Partial Amendment of the Civil Code”, which was submitted to the Diet in July, 1947. It was deemed difficult to revise the Civil Code in time for the enforcement of the new Constitution for several reasons including the dissolution of the Diet and the negotiation with the General Headquarters of the Occupation Forces.

Then the Government, in order to avoid conflict between the provisions of the new Constitution and those of the existent Civil Code, enacted a “Law concerning Provisional Measures for the Civil Code attendant on the Enforcement of the Constitution of Japan” and enforced it on the day of the coming of the Constitution into force. As to the bill, controversies took place in the Diet, and several amendment plans were presented, but the provisions on the family law passed the Diet without any amendment after all. It was published as Law No. 222 in December, 1947 and came into effect on January 1, 1948. The above law for provisional measures was repealed thereby.

Thus, the new family law provisions of the Civil Code freed individuals from the dominance and control of *ie* and parents, and eliminated unequal treatment of men and women in matrimonial and parental relationships as well as in the law of succession. A series of revisions thus accomplished, as the above process indicates, were designed to remove conflict between the new Constitution and the old Civil Code. Hence, even if there were points to be revised in

view of the actual operation of the Civil Code of 1898 after its enforcement, they were left for future amendment, so long as they were free from controversy in relation with the new Constitution. It must be specially noted that, prompted by the coming of the Peace Treaty into force in 1952, there arose a sharp conflict concerning the revision of the new family law, between a movement to revive the system of *ie* and another to promote the establishment of the new family law based on the "principle of the individual".

The Government, in response to such a social situation and the general demand for an overall revision of the Civil Code, asked *Hosei-Shingi-Kai* (the Council for the Deliberation on Legislation) in July, 1954 to submit a plan for the revision of the Civil Code. The Council established a Civil Code Committee and a sub-committee to start examination and deliberation on the problem. In 1955 and 1959, the sub-committee, consulting the Civil Law Committee, published its tentative conclusion concerning the family law, but it was anticipated to take a considerable period of time to complete a draft for the general revision of the Civil Code.

The Committee, therefore, saw the advisability of narrowing the scope of revision to those urgent provisions which had caused practical inconvenience owing to their unreasonableness in reference to the existent regulations and their susceptibility to doubt in interpretation. With this view, the committee started on their investigation in November, 1960. Thus the "Law concerning the Partial Amendment of the Civil Code" was enacted in 1962, and the very important work of revision was carried out concerning the presumption of simultaneous deaths, the dissolution by consent of an adopted child under fifteen years of age, the dismissal of a guardian, *daishu-sozoku* (succession by the lineal descendants of a successor on behalf of the latter), the distribution of inherited property to those specially connected with the deceased, and so forth.

V. PROBLEMS IN THE REVISION OF THE FAMILY LAW

Here the present writer is going to introduce to the learned reader the tentative conclusion for the revision of the family law drafted by the afore-said Subcommittee on the Family Law. This writer will be greatly pleased if the reader is induced hereby to have some interest in, and some understanding of, the problems in the Japanese family law, which are now under consideration, and of the direction in which the Japanese family law will make progress in future.

CHAPTER I. GENERAL PROVISIONS

1. Article 725 should be deleted, and Article 726 and other related provisions should accordingly be arranged properly.

(Reason) Various family relationships and their legal effects should be provided for respectively. There is no justifiable reason to maintain in Article 725 an abstract expression of "relatives" which includes those in spousal relationship, and those in consanguinity and affinity within certain degrees. In addition, Article 725 is misleading since it may be construed that the Article presupposes the special status of "relatives" in addition to spousal relationship, consanguinity and affinity.

2. Article 730 should be deleted.

(Reason) The provision simply has a moral significance. It is desirable to delete it so long as there is no other provision in the Code analogous to this Article.

3. Articles 727 and 729. These provisions should be examined as a part of the whole system of adoption.

4. Article 728, Paragraph 2 should be amended. Further examination is necessary in order to determine which of the following solutions is desirable.

(1) Matrimonial relationship should terminate upon the death of either spouse; or

(2) Matrimonial relationship should be regarded not to terminate upon the death of either spouse, and paragraph 2 should be deleted accordingly.

CHAPTER 2. MARRIAGE

Section 1. Formation of Marriage

Subsection 1. Requisites for Marriage

5. Articles 731 and 732 should be maintained.

6. In connection with Article 732, the following new provision should be added to Article 744.

“Article 744-2. The provisions of the preceding article shall not apply in the case where the spouse of a person against whom a judicial declaration of disappearance has been made remarries after such judicial declaration and prior to its annulment. In this case, the previous marriage shall be deemed, by reason of remarriage, to have been dissolved, and the provisions of Article 728, paragraph 1; Articles 766 to 768 and Article 819, paragraphs 1, 5 and 6 shall apply *mutatis mutandis*”.

(Reason) Where a judicial declaration of disappearance is annulled on the ground that a person against whom the said declaration was made is proved to be still alive after the remarriage of his or her spouse, there is a question of interpretation as to whether dual matrimonial relationship arises. The question must be solved by legislation. The previous marriage should be regarded as having been dissolved by remarriage, irrespective of good or bad faith on the part of the remarried spouse. It is appropriate that the effect of dissolution in this case should be dealt with in the same way as in the case of divorce.

7. Articles 734 to 736 should be amended as follows:

“Article 734. No marriage shall be effected between lineal relatives by blood nor between collateral relatives by blood within the third degree, provided that this shall not apply between an adopted child and any of the collateral relatives by blood of the adoptive parent.

2. No marriage shall be effected between an adopted child or his or her lineal descendant and the adoptive parent or his or her lineal ascendant even after such relationship has ceased.

“Article 735. No marriage shall be effected between lineal relatives by affinity. The same shall apply after the relationship of affinity has ceased.

“Article 736. Deleted.”

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(Reason) The recommended amendment is considered to remove the ambiguity that exists in the present provision. Under the present provision, it is not clear whether marriage can be effected between an adopted child or his or her lineal descendant and the spouse of the adoptive parent or his or her lineal ascendant after the dissolution of adoption.

8. Article 737 should be amended as follows:

“Article 737. A minor who desires to marry shall obtain the consent of his or her legal representative.

2. In the case where the minor has no legal representative or can not obtain consent from his or her legal representative, the Family Court, if it considers appropriate, may give a decree which has the same effect as the consent provided for in the preceding paragraph.”

(Reason) In view of the objective of the Article, it is necessary to harmonize the provision with the provisions concerning parental right and guardianship.

9. Articles 733 and 740. Further examination of these articles is necessary together with that of the provisions relating to the presumption of legitimacy before determining whether Articles 733 and 740 should be amended.

10. No amendment is necessary for Articles 738, 739 and 741.

11. Further examination is necessary in order to determine whether new provisions are needed for a marriage engagement and *de facto* marriage, and if the answer is affirmative, how they should be provided.

The following questions should also be examined:

(1) Whether a new provision is necessary for the breach of a marriage engagement.

(2) If a new provision is to be made for *de facto* marriage

(a) Should the claim for damages be recognized for the failure to keep *de facto* marriage, or should some right equivalent to the claim for the distribution of property be recognized?

(b) Where either of the parties to *de facto* marriage has died, should the other party be given a right equivalent to the surviving spouse's right of succession?

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Subsection 2. Nullity and Annulment of Marriage

12. Articles 742 to 749. The following questions should be examined:

(1) Whether the distinction between nullity and annulment of marriage should be maintained.

(2) Whether marriage which lacks the consent of the parties, bigamy (marriage of a married person), marriage between those within the prohibited degrees and marriage of a person under marriageable age should be considered null and void, and a court decision should be required to produce such effect. And how should the effect of such nullity of marriage be dealt with?

(3) Whether marriage effected under fraud or duress should not be treated as voidable, but be dealt with by divorce.

Section 2. Effects of Marriage

13. Articles 750 and 751. Further examination is necessary as to whether husband and wife should be allowed to assume different surnames.

14. Articles 752 and 753 should be maintained.

15. Article 754 should be deleted.

(Reason) The provision is not necessary where there is no disagreement between the spouses, and it will produce an unjust consequence in the case where there is disagreement between them.

Section 3. Matrimonial Property System

16. Articles 755 to 759 should be deleted.

(Reason) There are certain inadequate provisions in these articles. Moreover, the system of registration of matrimonial property contract is seldom used. Therefore, these provisions are not necessary in this country.

17. Articles 760 to 762 should be maintained and should follow Article 753 as provisions concerning the effects of marriage.

(Reason) Article 760 to 762 should not be regarded as relating to the matrimonial property system but as relating to the effects of marriage.

Section 4. Divorce

18. Article 763 should be maintained.

(Reason) There was an opinion that, before the filing of a notification of divorce by agreement, the Family Court should confirm that there is no

defect in such agreement. In view of the fact that there are more than 70,000 cases of divorce by agreement every year, and if such procedure of confirmation is to be required, there will be a greater number of cases of *de facto* divorce, and also in view of the practical difficulty in such procedure, it will be proper to maintain the present provision.

19. With regard to divorce cases, there are following proposals concerning jurisdiction and procedure, which require further examination:

(1) Proposals to place divorce cases under judicial procedure:

Proposal A. One to place them within the jurisdiction of the District Court (just as in the present provision).

Proposal B. One to place them within the jurisdiction of the Family Court.

(2) Proposals to place the cases under the special procedure of the Family Court:

Proposal C. Either party who is dissatisfied with the ruling, may bring an action in the High Court (or the District Court) against the other party for the cancellation or alteration of the ruling.

Proposal D. The party who is dissatisfied with the ruling may promptly file an appeal against it (in a manner similar to the existing case of the "B class" ruling).

20. Article 770, paragraph 2 should be deleted. However, as to the grounds for divorce, there are following proposals which need further examination:

Proposal A. Article 770, paragraph I should not be changed.

Proposal B. Divorce should be granted only where marriage is found not to be continued on any of the grounds enumerated in items (i) to (iv) of paragraph I or on other grounds.

Proposal C. Divorce should be granted where marriage is found not to be continued after examination of all the relevant facts.

(Reason) Article 770, paragraph 2 should be deleted because there are some difficulties in the operation of this provision.

21. Article 766 needs further examination in relation to the provision on parental right and support.

22. Article 767 needs further examination in order to determine whether a person who has changed his or her surname by marriage should be allowed to resume the old surname as he or she chooses.

23. Article 768 should be amended, and it must be clearly provided that the purpose of the distribution of property is the settlement of property between the parties after divorce. Further examination is necessary as to support after divorce and the payment of consolation money.

24. With regard to Article 769, many of the committee members proposed that succession of the ownership of genealogical records, of utensils of religious rites and of tombs and burial grounds should be left to customs, but further examination is necessary in connection with succession.

CHAPTER 3. PARENT AND CHILD

Section I. Child

25. With regard to conditions for a child to be presumed legitimate, there are following proposals which need further examination:

Proposal A. Article 772 should not be changed.

Proposal B. A child born during marriage, or within three hundred days after dissolution or annulment of marriage should be presumed to be a child of the husband of his or her mother.

26. With regard to presumption of legitimacy, there are following proposals which need further examination:

(1) Proposals that should necessitate special action in order to rebut the presumption:

Proposal A. The scope of persons who are entitled to bring an action for the denial of legitimacy should be expanded, and the period of limitation for such action should be extended or abolished.

Proposal B. Such action should be deemed needless where there is a clear fact that prevented the wife from conceiving her husband's child.

(2) A proposal to consider a specific system unnecessary.

Proposal C. Legitimacy should be determined by the existence or non-existence of *de facto* father-child relationship.

27. With regard to Article 773, there are following proposals which need further examination:

Proposal A. The present provision should not be changed.

Proposal B. The child should be presumed to be a child of his or her mother's second husband, and an action for the confirmation of the non-existence of parent-child relationship should be required in order to rebut such presumption.

Proposal C. Legitimacy should be determined by the existence or non-existence of *de facto* father-child relationship, requiring no particular provision.

28. With regard to Articles 779 to 787, mother-child relationship should be considered to have been created by the fact of birth, but with regard to father-child relationship there are following proposals which need further examination:

Proposal A. Father-child relationship should be created by recognition or by a judgement which determines the paternity. Further examination is necessary to decide whether any amendment is to be made as to the conditions for consent, the period of limitation of action after the death of the father and the nullity or annulment of recognition.

Proposal B. Father-child relationship should be considered to have been created by the existence of natural relationship. A notification of recognition should be considered to have the effect of presuming paternity; and action for recognition and annulment or cancellation of recognition should be abolished.

29. Article 789 should be amended according to the conclusion to be reached under No. 28, and further examination is necessary as to whether retroactive effect should be recognized.

30. Further examination is necessary as to whether the system of declaration of legitimacy, which has the effect of creating the status

of a legitimate child by a notification made by the father or mother, should be adopted.

31. With regard to action for the confirmation of the existence or non-existence of parent-child relationship, the following points should be clarified, and further examination is necessary with reference to the question of amending the provisions concerning various actions provided for under the Law of Procedure in Personal Matters:

(1) Whether such action should be treated as procedure in personal matters, and whether the judgement should be considered to have an effect against the world. In the case where the judgement is considered to have such effect, how the right to become a party in such action is to be provided, and whether a public prosecutor should be made a party where the person who is to be made a party has died.

(2) In order to effect a correction in the family register, whether action for the confirmation of the existence or non-existence of parent-child relationship should be required, or permission of the Family Court should be considered sufficient.

32. With regard to the surname of a child, further examination is necessary on the following points:

(1) Should a child who has been legitimated by marriage of his or her father and mother, assume the parents' surname?

(2) Should a child be allowed to change his or her surname without a ruling of the Family Court if his or her parents give consent to such change?

Section 2. The Adopted Child

33. Further examination is necessary in order to determine whether the following system of "special adoption" should be established in addition to ordinary adoption:

(1) The person to be adopted must be a minor under certain years of age.

(2) An adopted child should be treated as a child by natural birth of the adoptive parents, and must be entered as such in the

Family Register.

(3) The adoptive parents can not dissolve the adoptive relation.

Subsection I. Requisites for Adoption

34. With regard to the age requirement for both a person to be adopted and a person to become an adoptive parent, further examination is necessary on the following points:

(1) Whether a person to be adopted should be a minor.

(2) Whether the minimum age of an adoptive parent (Article 792) should be raised.

(3) Whether a certain age difference should be required between the adoptive parent and the adopted child.

35. Husband and wife should be allowed to contract an adoption jointly, and, in addition, either of the spouses should be able to contract it alone with the consent of the other.

(Reason) It is desirable that either of the spouses should be able to effect adoption individually so long as this is not against the will of the other spouse.

36. With regard to Article 797, there are following proposals which need further examination:

(1) Proposals to maintain the system of allowing another person to consent to an adoption on behalf of the child to be adopted.

Proposal A. Article 797 should not be changed.

(2) Proposals to abolish such system:

Proposal B. A person who intends to adopt a child should be able to effect the adoption alone according to the ruling of the Family Court, and, in the case where a child to be adopted has his or her legal representative, the consent of the latter should be required.

Proposal C. The consent of the legal representative mentioned in Proposal B should be regarded simply as a matter for consideration by the Family Court in ruling.

37. Where a person to be adopted is a minor of more than fifteen years of age, further examination is necessary as to whether consent

of the legal representative of the minor should be necessary.

38. With regard to the effect of a ruling of the Family Court on the adoption of a minor, there are following proposals which need further examination:

Proposal A. Article 798 should not be changed.

Proposal B. Adoption should be effected by a ruling of the Family Court.

Proposal C. To limit Proposal B to adoption of a minor under fifteen years of age.

Subsection 2. Nullity and Annulment of Adoption

39. With regard to the nullity and annulment of adoption, further examination is necessary together with the nullity and annulment of marriage.

Subsection 3. Effects of Adoption

40. With regard to the effects of adoption, there are following proposals which need further examination:

Proposal A. Articles 809 and 810 should not be changed.

Proposal B. The rights and duties including succession between an adopted child and his or her relatives by blood should be considered inferior to those between the adopted child and his or her relatives by adoption.

Proposal C. The legal relationship by blood based on adoption should be limited to the parties to adoption; and between the adopted child and the relatives of the adoptive parent, there should be created adoptive relationship, the effect of which should be considered inferior to that of the legal relationship by blood.

Subsection 4. The Dissolution of Adoption

41. Further examination is necessary as to whether adoption of a child under fifteen years of age should be prescribed to be dissolved by agreement between the adoptive parent and a person who will become the legal representative of the minor after dissolution.

42. With regard to the dissolution of adoption of a minor over fifteen years of age, further examination is necessary in order to de-

termine whether consent of a person who will become the legal representative of the minor after dissolution is necessary.

43. With regard to the dissolution of adoption after the death of the adoptive parent, there are following proposals which need further examination:

Proposal A. Article 811, paragraph 6 should be maintained.

Proposal B. Adoption should not be dissolved after the death of the adoptive parent.

Proposal C. By the death of either party the relationships mentioned in No. 40, Proposal C should be terminated, provided that the problems of support, succession and so forth should be considered separately.

44. With respect to Article 814, further examination is necessary with reference to the problem of judicial divorce. In addition, to protect an adopted minor, it should be examined whether a judicial trial should be granted to the dissolution of adoption without a petition by the parties.

CHAPTER IV. PARENTAL RIGHT

45. There are following proposals as to whether the concept or system of parental right should be maintained :

(1) Proposals that the system of parental right should be maintained :

Proposal A. Articles 818 to 837 should not be changed.

Proposal B. The right of custody under Article 766 should be extended.

Proposal C. Parental right should essentially contain the right of personal custody ; and where necessary, a person other than those with parental right should be enabled to exercise the right to administer property.

(2) Proposals that the concept or system of parental right should be abolished :

Proposal D. The unified concept of parental right should be

abolished, and it should be divided into the right of personal custody and the right to administer property.

Proposal E. The system of parental right should be abolished, and it should be included in the system of guardianship.

Section I. General Provisions

46. Although the principle of the joint parental right of one's parents during their period of matrimony should be maintained, further examination is necessary on the following points :

(1) Where the adoptive parent and the natural parent are in matrimonial relationship, should it be provided that they should exercise parental right jointly ?

(2) Where there is a disagreement between one's father and mother, should a provision be established for its settlement ?

(3) Should a provision be established to the effect that either of the parents alone can meet the requirement as to passive representation and so on ?

47. With regard to Article 819, further examination is necessary on the following points :

(1) Should the parents be enabled to exercise parental right jointly ?

(2) Should the parents be enabled to exercise the rights and duties pertaining to personal custody and the administration of property separately according to a ruling (or a consultation) ? (See No. 45)

(3) After the death of either of the parents who has parental right, should the surviving parent be enabled to have such right ?

Section 2. Effects of Parental Right

48. Further examination should be given as to whether a new provision is necessary in order to establish a right to demand the custody of a child who is under illegal detention, and in the case where the answer is affirmative, as to whether it should be placed under the jurisdiction of the Family Court or the District Court.

49. Article 822 should be deleted. Further examination should be

given as to whether a new provision is necessary in order to enable persons who have parental right to petition the Family Court or another public institution for some measures necessary for the custody of a child.

(Reason) Since there is no "disciplinary institution" as an existing system, it is appropriate to consider the establishment of a general provision in relation to the Child Welfare Law and other laws.

50. With regard to the scope of acts in which there is a conflict of interests between a father or a mother who has parental right and the child under such right, further examination is necessary on the following points :

(1) Should the scope mentioned above be defined clearly by exemplifying those acts with a conflict of interests ?

(2) Should acts in which there is a conflict of interests between the spouse of a person who has parental right as well as the person's "relatives" within certain degrees and the child under the parental right, be included here ?

51. Concerning the conditions for validly performing acts which involve conflicting interests, there are following proposals which need further examination :

Proposal A. Since the person who has parental right should apply to the Family Court for the appointment of a special representative on behalf of the child, Article 826 should not be changed.

Proposal B. A special representative should be appointed and permission of the Family Court should be required for such act.

Proposal C. The provision of a special representative should be abolished and permission of the Family Court should be required for such act. (A special representative should be appointed under certain circumstances.)

52. With regard to Article 828, further examination is necessary in order to determine whether the provision (the setting-off of the expense of the administration of property against the profit from the same property) should be deleted.

53. Further examination is necessary in order to determine wheth-

er the supervisory power of the Family Court over the administration of property of a child under parental right should be extended.

54. With regard to Article 833, a minor who exercises parental right should exercise the rights and duties pertaining to personal custody, but further examination is necessary as to how to provide for the rights and duties pertaining to the administration of property.

(Reason) Although it is considered appropriate that a minor who has parental right should exercise the right of custody for himself or herself, there is some doubt as to the administration of property, since such minor has no capacity to administer his or her own property.

Section 3. Forfeiture of Parental Right

55. Further examination is necessary as to whether, where circumstances make it inappropriate for a person who has parental right to exercise such right, the Family Court should be enabled to declare the forfeiture of parental right or the right of the administration of property, and whether, under certain circumstances, the Family Court should be enabled to take necessary measures for the personal custody of the child or for the administration of his or her property, in addition to, or in lieu of, the ruling.

CHAPTER V. GUARDIANSHIP

Section 1. Commencement of Guardianship

56. Further examination is necessary as to whether, where incompetency has been adjudicated against a minor who has been under parental right or guardianship, the person with parental right or the former guardian should perform the affairs of guardianship, instead of appointing a guardian anew.

57. Further examination is necessary as to whether, where a person who has parental right is in fact unable to exercise such right, because he is missing, or for some similar reasons, guardianship should commence naturally, or it should commence only after the ruling of the forfeiture of parental right. It should also be examined whether legal relationships in such cases should be defined clearly.

Section 1. Organs of Guardianship

58. With regard to the appointment of a guardian, the following points should be examined :

(1) Whether guardians should always be appointed by the Family Court, and designated or legal guardians should be abolished.

(2) Whether the *ex officio* appointment (or dismissal) of a guardian should be recognized.

(3) Whether a ward's own application for the appointment (or dismissal) of a guardian should be recognized.

59. With regard to Article 843, further examination is necessary as to whether more than one guardian can be appointed, and then how the right and duty of such guardian should be provided.

60. With regard to Article 846, further examination is necessary as to whether, in connection with No. 58, grounds mentioned in items (3) to (6) of Article 846 should be maintained.

61. With regard to the supervisor of a guardian, further examination is necessary as to whether such system should be maintained.

Section 3. Affairs of Guardianship

62. With regard to the duty of a guardian concerning the administration of the ward's property, further examination is necessary as to the following points:

(1) Whether the guardian should be required to submit to the Family Court an inventory of the ward's property that he has prepared in accordance with Article 853.

(2) Whether the guardian should be required to submit to the Family Court an annual report of accounts for the administration of the ward's property.

(3) Whether the Family Court should be able to require the guardian to offer a reasonable amount of security.

(4) Whether, in connection with the expansion of the duty of a guardian, the Family Court should be able to exempt the guardian from part of his duty where there is reasonable ground to do so.

63. Further examination is necessary as to whether permission of the Family Court should be required for certain important acts of a guardian concerning the administration of the ward's property.

CHAPTER VI. SUPPORT

64. Further examination is necessary as to whether the duty of a parent to support his or her minor child and the duty of support between husband and wife should be provided for separately from that among other relatives, taking it into consideration that the former are of a different nature from the latter.

65. With regard to a parent's duty to support his or her minor child, further examination is necessary on the following points:

(1) The relation in the occurrence of the duty of support in the case where a minor child has property.

(2) Whether the duty of support should be recognized to vary in priority between the parents who have parental right and those who have not.

66. With regard to the scope of persons who are in duty bound to support, there are following proposals which need further examination:

Proposal A. Article 877 should be maintained.

Proposal B. The duty of support should occur to brothers and sisters only when the Family Court has specifically imposed such duty on them.

Proposal C. The scope of persons on whom the Family Court may impose the duty of support under special circumstances should be limited to brothers, sisters and relatives by affinity within the first degree.

67. With regard to the occurrence of the duty of support, further examination is necessary on the following points:

(1) Should the condition for the occurrence of the duty of support be provided for clearly? (For example, should it be clarified that the duty of support occurs only where the person who

is expected to support has adequate means and the person requiring support can not make a living or obtain reasonable education by his own means or labor?)

(2) How should the relation be prescribed between the occurrence of the duty of support and the demand of the person requiring support or the ruling of the Family Court ordering support?

68. Further examination is necessary as to whether it should be clearly provided for that the allowance for past support can not be claimed; and, in connection with this, whether a regulation should be prescribed concerning the claim for compensation due to the person who has actually supported from the person who is in duty bound to support.

69. Further examination is necessary as to whether a tentative standard should be provided for concerning the order of priority, the extent and the method of support, and if it should, the following points should be examined further:

(1) Which should be given priority, the person who is in duty bound to support in the nature of the law or the person who is charged with the duty of support by the ruling of the Family Court?

(2) How should negligence on the part of a person requiring support be considered?

(3) In addition to money payment, to what extent should payment in kind and support by taking charge be recognized?

(4) Whether the lump-sum payment of the support allowance should be recognized.

(5) Where there are two or more persons who are in duty bound to support, how should the relations among them be dealt with?