

# Legal Analysis of Stepparent and Child Relationships in Japan

: From the Perspective of the Standard Nuclear Family Model

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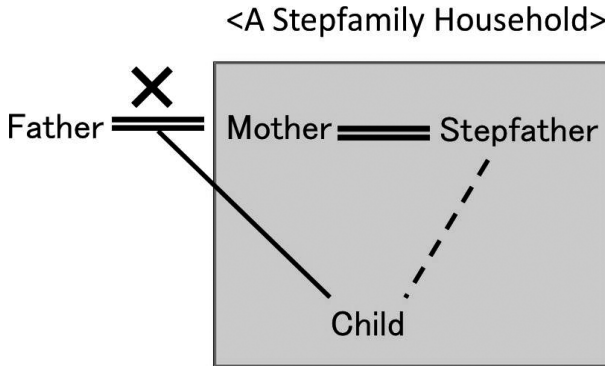
## Abstract

This article explains how the Japanese family law deals with stepfamilies, and in the course of that, argues the following points. First, in Japan, stepparent adoption works practically as the only available means of recognizing step-relationships, especially enabling stepfamilies to project the image of a standard nuclear family. Second, however, the standard nuclear family model, upon which the entire Japanese family law system is structured, and stepparent adoption, as its component, has difficulties in meeting the unique needs of children in some stepfamilies, particularly in adapting to the dynamic changes in family relationships following parental divorce and remarriage. In view of that, an introduction of a new legislative system which supports step-relationships should be considered. We discuss these issues from a socio-legal perspective by referring to the findings of the survey on parenting in stepfamilies carried out by the author in 2010.

## 1. Introduction

The issue of the interests of children in stepfamilies has been attracting much attention of late in the juridic field in Japan. A stepfamily is defined, for example, as a family in which at least one of the adults has a child (or children) from a previous relationship (Ganon & Coleman, 2004). However,

Chart 1 : An example of a stepfamily



this categorization covers hugely diverse family compositions. Therefore, this article mainly discusses the relationship between a minor child and his or her parent's legal spouse, who are living together. We examine, in particular, how to protect and promote the interests of the children from a legal perspective, which brings into view the involvement of the absent parent outside the stepfamily.

Chart 1 provides an example of such a stepfamily. In this case, a father and a mother get divorced, and the mother gets custody of the child. She then may find a new partner, remarry, and bring her child into the new family. This new family and those who are within the shadowed box form a stepfamily.

This article tries to explain how the Japanese family law deals with stepfamilies, and in course of that, we argue the following points.

First, in Japan, stepparent adoption works practically as the only available means of recognizing step-relationships, especially enabling stepfamilies to project the image of a standard nuclear family<sup>1)</sup>. In the backdrop, we observe that the unique Japanese system of surname and family register, called “*Koseki*,” represents a family relationship in a symbolic way and has a powerful influence on our family lives, with its characteristics leading toward the standard nuclear family model.

Second, however, the standard nuclear family model and stepparent adoption, as its component, have difficulties in meeting the unique needs of children in some stepfamilies, particularly in adapting to the dynamic changes in family relationships following parental divorce and remarriage. In view of that, an introduction of a new legislative system which supports step-relationships should be considered.

Before coming into stepfamilies, these children have already spent part of their lives in the previous family. The question now arises: How should stepparents be engaged in parenting, developing the children's attachment to the new family, and at the same time, respecting their attachment to the previous family experience? It seems that each stepfamily has its own way of approaching this complex issue. This article highlights the fact that the current Japanese legal system has limitations in addressing such various ways of practice. These are important issues because they also reveal the limitations of the standard nuclear family model upon which the entire Japanese family law system is structured.

This article discusses the above issues in the following manner. First, we introduce some statistics and characteristics about stepfamilies in Japan, focusing on their growing trend as well as their lack of visibility. Second, we describe the Japanese family law, mainly the Civil Code provisions that are relevant for stepfamilies. We also look at some related systems concerning the surname and parental authority in order to gain a better understanding of the practices involved in stepparent adoption. Third, from a socio-legal perspective, we explore the realities of stepparent adoption, mainly by referring to the findings of the survey the author carried out in 2010 (hereinafter referred to as “the 2010 survey”).<sup>2)</sup>

As part of the 2010 survey, the author conducted semi-structured interviews with parents and stepparents in 43 stepfamily households, on 99 step-relationship cases, and asked various questions about their parenting arrangements, also including contact and support payment by absent parents.

As far as we know, this is the first of its kind qualitative survey that focuses on legal issues concerning Japanese stepfamilies. Although the sample is small in size and somewhat biased,<sup>3)</sup> the contribution of the findings is great to our legal studies, because it is supposedly one of only a few available sources of information on this issue.

## **2. Stepfamilies in Japan: Growing Trend and Lack of visibility<sup>4)</sup>**

It was not until quite recently, around the 2000s, that stepfamilies began to attract the attention of academic worlds as well as the Japanese society. Their growing number was one reason for our interest in stepfamilies, whereas their lack of visibility was attributed to the fact that stepfamilies had not long been a popular research topic.

The fact that they lacked visibility in society has been one of the main reasons cited for stepfamilies facing difficult challenges. Such difficulties, especially those concerning care of children, have posed some troublesome issues to be tackled at the judicial and academic levels.

### **2.1. Growing Trend in the Number of Stepfamily Households in Japan**

Although the trend shows an increase in the number of stepfamilies in Japan, the actual number is not known. There are no official statistical data on the number or the types of stepfamily households in Japan. This fact itself is indicative of the lack of visibility of stepfamilies.

Nevertheless, there are data available on remarriage and divorce statistics, which can help us to some extent.

First, these data show an increase in the number and ratio of remarriages. In 2015, 26.9% of Japanese marriages were remarriages, at least for one spouse.<sup>5)</sup> There is no exact information on how many of those remarriages resulted in stepfamily households. However, the data also indicate that

divorces with minor children under parental authority account for 58.3% of the total number of divorces.<sup>6)</sup> Such parents may bring children into the remarriage, thus forming stepfamily households. Furthermore, some children, whose one of the biological parents may have passed away, would welcome stepparents. It is speculated that there may also be not a few de-facto stepfamilies, which are even more difficult to trace and count.

It is worth mentioning that stepfather families may be the predominant form as is commonly observed in most industrialized countries. Japanese society, as most societies, favors maternal care; therefore, mothers acquire sole parental authority and assume primary care of children in more than 90% of the divorce cases in which minor children are involved.<sup>7)</sup> Such mothers with minor children tend to get married to men, a significant proportion of whom may have had neither previous experience of marriage nor any resident children of their own. As we shall see in the following sections, the nature and needs of a stepfather-child relationship are quite different from those of a stepmother-child relationship. We should bear this fact in mind when we analyze the legal system.

## **2.2. Lack of Visibility of Stepfamilies in Japanese Society: Problems of Terminology and Notion**

The most symbolic fact indicating the lack of visibility of stepfamilies is that for a long time, there has not been a Japanese counterpart to the English word “stepfamily.” Although the word “stepfamily” (pronounced “suteppufamirii” in Japanese) is becoming popular due to its frequent appearance in the media, it will take time for this word to take root in society.

Why are stepfamilies not visible? According to prior studies, it is partially because they are literally “difficult to find.” To sum up, if there is a family comprising a couple and a child (or children), it is not easy to discern, at first glance, a stepfamily from a natural family comprising a married couple, who are both biological parents of the child (or children). Natural families are still

the prevailing norm. Therefore, if one comes across such a family, one may subconsciously consider it a normal natural family.

This social lack of visibility of stepfamilies is quite problematic because it can potentially lead to the marginalization of stepfamilies within society. Lack of a term or notion to describe stepfamilies is attributable to the difficulties in identifying and accepting their unique experience as well as in setting the norms on the role of family members, especially with regard to caring for children. Lack of information on the unique experience of stepfamilies can also cause ignorance about the necessity to support them. This non-recognition may have prevented the Japanese government and academic worlds from attempting to develop support systems, including an appropriate legal system.

### 3. The Japanese Family Law on Stepfamilies

#### 3.1. An Overview of the Japanese Family Law System from the Perspective of the Standard Nuclear Family Model

Before an in-depth study into the Japanese law regarding stepfamilies, we describe the statutory framework of the Japanese family law system. The Japanese family law system comprises several related laws, the main one being the Civil Code. Part 4 of the Civil Code, titled “Relatives,” provides for legal family relationships and rights and duties among family members.

First, we provide an overview of some of the unique systems in Japanese family law, such as the principle of the single surname of a married couple (Civil Code, art. 750), the family register system called *Koseki* (Family Register Act), and the sole parental authority following parental divorce (Civil Code, art. 819). These systems directly bear on how stepfamilies are dealt with in legal terms. They are also notable in that they offer the structure of a standard nuclear model, which many other industrialized countries have already abandoned to one degree or another.

To understand the standard nuclear family model under the current law, we need to look back at the old “*Ie*” System under the old Civil Code (1989–1948, usually called the Meiji Civil Code). *Ie* translates directly to “house” in Japanese. *Ie* System is a Japanese feudalistic pre-modern family system and *Ie* refers to a patriarchal household led by the head of the house. It worked as a unit to be recognized and managed by the state.

This *Ie* System was abolished by the family law reform in 1948 just after World War II. Its patriarchal aspects and its accompanying female subordination were seen as going against the new Constitution of Japan 1946, which promoted the rights and welfare of an individual and the idea of gender equality (See Constitution of Japan 1946, art. 24).

Even though not directly mentioned in the provisions, it is assumed that, as a standard family model, the new family law system under the current Civil Code and Family Register Law replaced *Ie* with the standard nuclear family, which comprised a married couple and their children, with a view to mitigating public resistance against the radical idea of dismantling a family unit. Thus, the Japanese family law system still gives importance to the family unit itself in some ways, rather than to each individual within the family.

### 3.1.1. Single Surname of the Married Couple and the *Koseki* System

In Japan, on getting married, a husband and wife must share the same surname. Article 750 of the Civil Code requires a married couple to adopt either the husband’s or the wife’s surname in accordance with whichever is decided at the time of marriage. The law itself says nothing about which surname to choose, and it is up to the marrying couple.

However, as a matter of social custom, it is usually the wife who changes her surname. According to the statistics, about 96% of wives give up their maiden name after marriage.<sup>8)</sup>

Furthermore, a married couple are to register themselves in the same family book, called *Koseki* (Family Register Law). *Koseki* is a population

registration system. “*Ko*” means “household” in Japanese, and “*Seki*” refers to “register.”

This Japanese Register System is unique in that it is constructed based on the nuclear family model<sup>9)</sup>, not on individual members. The family unit consists of the family head, his or her spouse, and the children of the family head and/or his or her spouse, all of whom take on the family head’s surname as the single family name. In Japan, as mentioned earlier, the overwhelming majority of couples choose to take the husband’s surname and make a registration book in which the head of the family is the husband. It is argued that Japanese citizens are more familiar with and influenced by the *Koseki* System as a family model than the Civil Code.

This *Koseki* system supported the old *Ie* System. The surname originally worked as the name of *Ie* and members belonging to the same *Ie* were required to share the same surname. With the eradication of the *Ie* System, in theory the surname works in identifying the individual. However, the principle of the single surname of a married couple and the structure of the *Koseki* System explained above continues to characterize the surname as the “family name.”

### 3.1.2. Sole Parental Authority Following Divorce

Under the current Japanese Civil Code, only married couples are admitted shared parental authority or shared parenting. When a couple gets divorced, one of them loses parental authority (Civil Code, art. 819). Parental authority is more or less the Japanese counterpart of the concept of parental responsibility in Western jurisdictions. Parental authority means all the rights and responsibilities a parent has in relation to the child. Parents who exercise parental authority are required to care for and educate his or her child to serve the interest of the child (Civil Code, art. 820).

As a covert way of sharing parenting after divorce, parental authority can be given to the absent parent and the physical custody of the child to the



resident parent at the same time, but this bypath poses practical difficulties and is rarely adopted. We also need to mention that we do not have an elaborate system on how disagreement may be resolved between the couple when both are granted parental authority of their child .

If a parent has lost parental authority and lives apart from the child, he or she can still have contact with the child. The Civil Code provides that, upon divorce, parents discuss how the absent parent and the child will have contact and that, in case of parental disagreement, the family court can make a ruling instead (Civil Code, art. 766 ). It is controversial whether the law goes so far as to say that parents and / or children have rights or duties of contact, The courts tend to make a contact order unless it is against the interests of the child.

As parental authority does not cover parents' financial liabilities toward children within its scope, parents continue to bear primary duties to support the child or children even after having lost parental authority.

Parental divorce by itself does not affect a child's surname. Upon divorce, one of the parents, usually the mother, who had given up her maiden name upon marriage, takes up her previous surname, and she has the option to retain the married name (Civil Code, art. 767).<sup>10)</sup> In case the parent who changed the surname gets custody of the child, the child can also change his or her surname, with a view to sharing his or her surname with the resident parent, with the permission of the family court (Civil Code, art. 791).

### **3.2. The Japanese Family Law on Stepfamilies**

#### **3.2.1. Overview of the Law on Step-relationships: Inclusion of Step-Relationships into the Adoption Law**

When we look at the Japanese law system on stepfamilies, we realize that we lack a legal concept describing step-relationships. Like in many other jurisdictions, the stepparent-child relationship is not granted a legal status by itself. We also have to clarify that, as you may be aware, stepparents are not

automatically granted parental status.

This does not mean that stepparents and children do not have a legal relationship at all. Upon marriage to the parent of a child, the stepparent and the child are given the status of first-degree relatives by affinity (Civil Code, art. 725). However, as such, stepparents have neither parental authority nor primary financial responsibilities toward the children. Accordingly, no matter how much stepparents contribute to children's parenting, this is not recognized in official terms.

However, stepparents can become legal parents very easily through adoption. Stepparent adoption is practically the only available but easy means of conferring on stepparents a formal status as the children's carer. Stepparent adoption system usually falls under the category of ordinary adoption (Civil Code, art. 792 to art. 817).

This article includes such adopted families as belonging to the category of stepfamilies. It would be controversial if adopted families were counted as stepfamilies, because stepparents have already become parents as an effect of adoption. However, in Japan, adoption is quite a common practice in the reality of a stepfamily life. It is estimated that quite a few stepparents have adopted children, although there are no official statistics confirming this presumption.<sup>11)</sup>

Whether or not stepparent adoption took place is crucial in determining the existence and degree of stepparents' duties, rights and powers concerning parenting. Therefore, we now scrutinize the legal relationships of stepfamilies with and without stepparent adoption. First, we look at the latter case, because it is the standard form envisaged by law.

### 3.2.2. When There Is No Stepparent Adoption

As mentioned above, the stepparent and the child are considered as first-degree relatives by affinity, which confers on the stepparent only a few rights and duties (Civil Code, art. 725). This status invests stepparents neither

with parental authority nor with primary financial responsibilities toward the child.

The most noteworthy feature here may be that the stepparent does not have parental authority. Some critics argue that daily care by the stepparent, including taking some instant decisions about the child's education and healthcare, can be explained as legal acts of exercising custodial rights delegated by the parent with parental authority. However, of practical importance is that the parenting is not enforceable nor can be it protected from interference by the parent with parental authority.

With respect to financial responsibilities, the stepparent has no legal obligation to support the child, except a less rigid liability to support the child under special circumstances on account of their affined relation (Civil Code, art. 877(2)). These liabilities are imposed by the order of the court, although the degree of liability and the scope of special circumstances are rather unclear. It is also a matter of controversy whether the cost for rearing the stepchild should be included in the expenses of the married life shared by the couple comprising the parent and stepparent (Civil Code, art. 760).

In addition, the stepchild does not qualify as the stepparent's successor and does not have intestate inheritance rights. However, in case the stepparent has no other relative and the property would otherwise revert to the state, the stepchild can be considered eligible for inheritance on account of the special relationship with the stepparent (Civil Code, art. 958-3). The stepparent can make a will in favor of the stepchild, although it is rather difficult to make a legally valid will subject to the strict formalities.

Regarding social security, the recognition of step-relationships is inconsistent among different systems. Although some schemes recognize their de-facto dependency as sufficiently eligible, others, including many private company schemes, do not.

Apart from substantive rights and duties, the child can change his or her surname to that of the stepparent under the permission of the family court, if

the parent has changed his or her surname upon marriage to the stepparent and has acquired a surname different from that of the child's (Civil Code, art. 791). On the contrary, if the couple chooses to take the parent's surname, it often happens that the stepparent and the child automatically share the surname.<sup>12)</sup> In any case, when they come to share the surname, they are registered in the same *Koseki*, even though they are not recognized as a parent and child in legal terms. The *Koseki* System incorporates the children of only one of the married couple into a family unit, when the children take the same surname of the family head.

To our surprise, before World War II, under the old Civil Code, step-relationships were considered parent-child relationships when they belonged to the same *Ie* through the stepparent's marriage to the parent. This legal stepparent-child relationship system granted stepparents parental status, with some limitations on to their parental authority under the control of the *Ie*. However, this legal stepparent-child system was abolished by the law reform just after World War II. It was because this system was seen as a part of *Ie* System, which was to be eradicated under the new Constitution. Thus, adoption became the alternative means to recognize step-relationships in legal terms. The significant difference between adoption and the old system is that the parties concerned can choose whether or not to conclude adoption. This characteristic was favoured because we can respect the individual autonomy more.

### 3.2.3. When There Is Stepparent Adoption

#### 3.2.3.1. Stepparent Adoption as Ordinary Adoption

This section takes a thorough look at the system involved in ordinary adoption by stepparents. The Japanese Civil Code provides for two types of adoption: ordinary adoption (Civil Code, art. 792 to art. 817) and special adoption (Civil Code, art. 817-2 to art. 817-11). Special adoption is complete adoption, which is designed to give a new set of parents to aid-requiring

children. It is probably similar to minor child adoption systems of most jurisdictions in the industrialized world. However, the overwhelming majority of adoptions in Japan, including stepparent adoption, are ordinary adoptions.<sup>13)</sup> Minor child adoption as ordinary adoption is quite different from that in most jurisdictions of the industrialized world, in terms of both its process and effect.

### 3.2.3.2. The Requirements and Process of Stepparent Adoption

In Japan, the process of a stepparent adopting the child of his or her spouse is very easy. It is no exaggeration to say that the Japanese adoption system provides the easiest possible way to acquiring legal status for the stepparent, excluding those jurisdictions that automatically confer parental status, if there are any. Although the ordinary adoption system is sufficiently lax in terms of the requirements and conclusion process, the stepparent can adopt the child more easily than in usual cases where the adoptive parent is a third person. The details are as follows (Civil Code, art. 792 to art. 801).

In principle, adoption takes effect by merely submitting an adoption notification to the municipal office. A mutual consent is required regarding the adoption between the parties when submitting the adoption notification (Civil Code, art. 799). If the child to be adopted is under the age of 15, his or her legal representatives, parents with parental authority in most cases, give consent for adoption on his or her behalf (Civil Code, art. 797(1)).

This ease may be convenient, but it is criticized by some jurists because there is no process of checking the interests of the to-be-adopted child. Indeed, adoption takes effect without the following things.

First, the leave from the family court is not necessary. When a minor child is adopted, the leave from the family court is generally required to safeguard the interests of the to-be-adopted child. However, this rule does not apply to stepparent adoption for the reason that the stepchild is a lineal descendant of the adopter's spouse (Civil Code, art. 798). This exception is considered to be

based on the assumption that adoption between close relatives is much less likely to harm the interests of the child.

Second, lack of involvement by the family court leads to the problem that there is no official occasion to make sure that the child under 15 years, himself or herself, wishes to be adopted. The child is given neither the rights to veto his or her own adoption nor a chance to be informed of the effects of adoption.

Third, we also dispense with the consent to adoption by the absent parent, outside the stepfamily household, if the absent parent neither has parental authority nor shares physical custody of the child (Civil Code, art. 797(2)). Even if the absent parent is opposed to adoption, he or she cannot say anything, and adoption can be concluded. Such a parent needs not so much as to be notified or consulted about his or her own child's adoption.

Last, the eligibility requirement for adoption is quite lenient. There are no conditions regarding the age of the stepparent and the child. Nor is confirmation required that the stepparent has lived with the child for a certain period.

### **3.2.3.3. Effects of Stepparent Adoption**

#### *Status, Rights, and Duties of Stepparents and Children*

In spite of such ease of conclusion, upon adoption, the stepparent and the child can acquire a parent-child relationship for all purposes. The adopted child acquires the status of a legitimate child of the stepparent (Civil Code, art. 809), and thus, the stepfamily is constructed as standard nuclear family, comprising married parents and THEIR children.

Speaking of its specific effects, the “parent” and “child” status bestows a broad set of rights and duties to the status-holder, including parental authority and the primary duty of supporting the child.

The adoptive stepparent exercises parental authority jointly with his or her spouse, who retains the parental status for all purposes even following

adoption, during the course of their marriage as if they were both biological parents (Civil Code, art. 818).

The adoptive stepparent's legal obligations are as rigid as those of biological parents in guaranteeing children the same living standards as their own. Such officially recognized dependency qualifies a stepchild to be sufficiently eligible to benefit from the whole package of social security systems, including those that they would not have otherwise been entitled to.

Even if the stepparent die, the child will qualify as his or her issues and have automatic rights of intestate succession.

What's more, the child necessarily takes the surname of the stepparent (Civil Code, art. 810). Accordingly, they are registered in the same *Koseki*.<sup>14)</sup> As noted at 3.2.2, we have another system for changing the child's surname with the permission of the family court (Civil Code, art. 791). Strangely, adoption with a broader range of effects happens by an easier process.

Such comprehensive status as parent and child, however, does not always last for good. Ordinary adoption, including stepparent adoption, can be dissolved any time under a mutual agreement between the parties. The stepparent can abandon his or her responsibilities toward the child any time he or she wishes to do so. Even if one party is against dissolution, judicial dissolution can be admitted on such a ground as making it difficult to continue the adoptive relation (Civil Code, art. 814).

### *Effects of Adoption on the Relationships between Children and Absent Parents*

The effects of adoption can affect the legal relationship between the adopted child and his or her absent parent. However, of particular importance here is that their legal links shall not be completely terminated by ordinary adoption. Therefore, the child can enjoy dual parenthoods, although, some of the rights and duties of the other parent are affected.

For instance, as the absent parent continue to retain his or her parental

status, his or her obligation to support the child is not extinguished. However, the obligations become inferior to those of the stepparent and the spouse. In a word, the obligations of the absent parent are regarded supplementary, thereby, he or she can claim for reduction in the amounts of support payment.

Another remarkable point is that adoption makes it practically impossible for the absent parent to make a claim for recovery of parental authority. Judicial precedents have denied such a claim. One of the reasons is that we should maintain the shared parental authority by the couple of the adoptive parent (stepparent) and the biological parent, which is the standard form envisaged by law.

On the contrary, the absent parent's contact with the child, which used to be restrained or denied by the family court on account of the children's adoption, becomes increasingly permitted in family mediations and other judicial proceedings these days even after the adoption.

#### 4. The Realities of Stepparent Adoption: The 2010 Survey

We proceed to see what is really going on among Japanese stepfamilies, focusing on how stepparent adoption is actually working. We examine the findings from the author's interview survey, supposedly one of the few available sources of information on this issue in Japan.

As part of the survey, the author conducted semi-structured interviews with 46 parents and stepparents on 99 step-relationship cases in 43 stepfamily households: 46 stepfather cases in 27 households and 53 stepmother cases in 30 households.<sup>15)</sup> In this article, we exclusively feature 82 cases (41 stepfather cases and 41 stepmother cases), where the stepparent and the child (or children) live together.<sup>16)</sup>

The author asked questions on all aspects of parenting in stepfamilies. According to the respondents, most stepparents take part in parenting



children in the same households, although the degree of involvement differs from case to case. As some prior studies indicate, stepfamilies present a far-from uniform figure, partly because different sex and age combinations among family members yield different relationships. However, as explained before, from the legal perspective, we have only two types of stepfamilies: ones with stepparent adoption and ones without.

In this section, we mainly introduce the findings on the issue of stepparent adoption, making occasional references to other issues. These answers provided, especially for the question of why stepparents adopt/do not adopt children, present the vast differences between stepfather cases and stepmother cases.

Speaking of the differences between stepfather cases and stepmother cases, their number is the same in this sample. Nevertheless, we need to remind ourselves that stepfather cases may be the dominant form of step-relationships in Japan, because usually it is the mother who gets custody of the child after divorce.

#### **4.1. Have You Concluded Stepparent Adoption?**

First, the author asked each stepfamily whether they had concluded adoption. According to their answers, there were stepparent adoptions in almost half of the households: 43 cases out of 82 cases, where stepparents and children live together. This result matches the speculation that there are quite a few stepparent adoptions in Japan.

Such prevalence of stepparent adoption appears to have much to do with the ease of conclusion, as well as it being the only available legal means of giving stepparents official parental status. The sole act of submission of adoption notification can bestow a comprehensive status on stepparents and children.

We saw some differences between stepfather cases and stepmother cases. In the stepfather cases, there were 27 adoptions out of 41 cases (18 out of 26

households), whereas in the stepmother cases, there were 16 adoptions out of 43 cases (12 out of 26 households).

#### **4.2. When Did You Conclude Adoption?**

Stepfather cases and stepmother cases greatly differ with respect to the time of concluding adoption. In stepfather cases, they were concluded mostly at the same time as the remarriage notification, whereas it took some months or years after remarriage before stepmother adoptions, except in cases where both the husband and the wife had a child from their previous relationships and, in such cases, stepfather and stepmother adoptions were simultaneously concluded upon parental remarriage. This gap is considered to be closely related to the reasons for concluding adoption, as detailed below.

#### **4.3. Who Decided on Concluding Adoption?**

The author also asked how the interested parties were involved in the decision process of adoption conclusion. According to the answers, in most cases, just the couple, the stepparent and the resident parent with parental authority, determined whether to conclude the adoption. Namely, just as the Civil Code articulates, the young stepchild under 15 years and the absent parent without parental authority were left out of the process.

Indeed, some of the resident parents went so far as to say that there would not have been adoption if they had had to obtain the consent of the absent parent. The few exceptions in which the absent parent participated in the decision process were two cases in which parental authority had been granted to the absent parent, the father, and in both cases, he objected to the adoption.

In contrast, regarding children, almost all the respondents said that they did not intend to ignore their children's wishes and interests in concluding adoption, although, in fact, they did not explain to them about the adoption believing that the children were too young to understand. Especially in

stepfather cases, when parents tried to obtain the children's consent, they made sure that the children would accept the change of surname. There were some cases in which, because of the children's objection, they could not conclude adoption, or it took time before concluding adoption.

Hence, in the majority of the cases, all that was necessary for adoption to be duly concluded was simply the joint wish of the couple: of the stepparent and the resident parent. All they had to do was just sign an adoption notification and submit it to the municipal office.

As mentioned earlier, some critics question the current system for not having any checks by outsiders, including the absent parent, the court, and other welfare authorities on whether the adoption really serves the interests of the child.

This concern may be fueled by the fact that a substantial proportion of stepparent adoptions, especially stepfather adoptions, were concluded simultaneously with the remarriage between the stepparent and the parent. That is to say, they concluded adoption at the very beginning of the development of their relationships. This has much to do not only with the legal effects of adoption but also with the psychological impact associated with those effects, which is discussed in the following sections.

#### **4.4. Why Did You Adopt Stepchildren?: The Practical Benefits of Adoption**

Some children were adopted by stepparents, while others were not. The next question was about the determining factor for adoption. The author asked the reasons for concluding adoption and the most significant effect of adoption on the participants and their family.

As referred above, adoption confers on the stepparent parental status for all purposes. From the legal perspective, to acquire parental authority is of crucial importance, for parental authority represents all the duties and rights concerning parenting children.<sup>17)</sup> However, if we attempt to analyze

stepparent adoption system in detail to check whether it is a desirable form of the legal system on stepfamilies, it would be helpful if we can figure out the effect or benefit associated with adoption, which has actually led stepfamilies to conclude adoption.

The answers provided during the interview revealed that many couples foresaw issues beyond the legal rights and duties and that it had much to do with the standard nuclear family model.

The differences between stepfather cases and stepmother cases were also revealed in this respect. This appears to be closely related to the differences in their approach toward getting involved with children: most children were financially dependent on the stepfathers, whereas stepmothers tended to be mainly engaged in the physical care of children. The strong influence of the classical division of labor by gender role, which is deeply rooted in Japanese society, can be observed in stepfamily households.

#### *For Unifying the Surname and Koseki of the Stepfather Households*

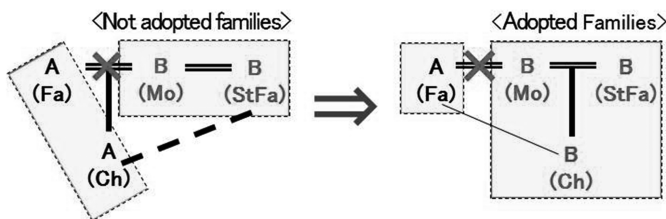
According to the findings of the survey, the effect of changing the surname of the children (Civil Code, art.810) and unifying *Koseki* was significant in almost all the stepfather adoptions concerned. This motive accounts for the tendency of stepfather adoptions mostly concluded simultaneously with the remarriage.

As explained at 3.1.1, when a couple gets married, they must take the same surname and thereby register in the same *Koseki*. Japanese citizens are registered in the *Koseki* based on the family. This family unit consists of one married couple and children, all of whom take the same surname. Upon marriage, it is usually the wife who changes her family name to that of her husband's. In the survey there was only one case in which the married couple took the wife's surname.

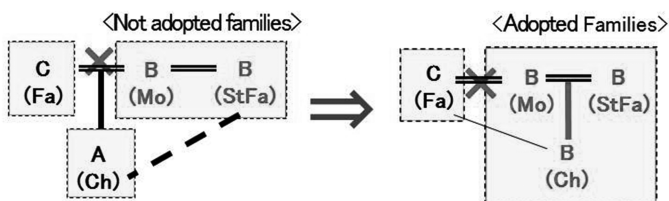
Having reviewed that, we proceed to examine the stepfather cases using pattern 1 of the chart below. The box represents members belonging to the

Chart 2 : Adoption for Unifying the Surname of the Stepfather Household

◇ Pattern 1: Where the child has the same surname and *Koseki* with the absent father



◇ Pattern 2: Where the child has the different surname and *Koseki* from the absent father



same *Koseki*. For example, when a mother with surname A remarries after divorce, she changes her surname to B, which is that of her new husband. As a result, only her child from the previous marriage will have a different surname, A, and will be in the *Koseki* of A. For the child to take the same surname as B, he or she needs to be adopted or acquire the court's permission, whose proceedings are troublesome and not well known among the respondents. In the survey, there was only one stepfather case in which they chose the latter way of changing the children's surname.

We may still wonder why the surname of a family needs to be unified. To unravel this question, we introduce some of the answers from the mothers and stepfathers.

One respondent, a resident mother, answered that she could not stand her family being considered strange and thus was eager to project the image of a standard natural family by unifying the surname. To her, it was done to protect her children and family from the curious eyes of neighbors and people

at school, who cast aspersions on minority families. Another respondent, also a resident mother, said that she did not want to isolate her child by leaving her alone at the old *Koseki*, which she had already left upon remarriage. Last, one stepfather looked back on the then idea that he could create his new “family” by letting the stepchild into his *Koseki*.

In this way, they believed that by adoption and sharing the same surname, they could safeguard and promote the interests of the child and the overall family. The main reason was an underlying powerful norm that a standard family should have a common surname: that IS family.

What struck us is the might of the surname and the *Koseki* System among the respondents. We also saw some stepmothers misunderstanding that if registered in the same *Koseki* with the children, the stepparents automatically acquire legal parental status. This misconception deprived some stepmother cases of a chance to consider concluding adoption.

#### *For Strengthening the Children's Economic Position in Stepfather Households: Responsibilities, an Accessory to Remarriage?*

In respect of the substantive rights and duties following from adoption, not a few couples focused on the financial aspects of adoption, especially in stepfather cases. Resident mothers, many of whom had resigned from their job upon remarriage, counted on stepfathers to secure their children's financial stability.

In some cases, this benefit of adoption seemed like an accessory in the marriage relationship. Some mothers implied that stepfathers proposed to adopt children with a view to winning the mothers' trust by bearing the children's financial responsibilities and admitting their inheritance rights.

#### *Natural Way of Reinforcing Stepfamilies under the Standard Nuclear Family Model*

Quite a few respondents, particularly in stepfather cases, answered that

they took adoption for granted, even if not regarded as far-reaching as to be an accessory to marriage relationships. They regarded adoption as a natural outcome associated with remarriage and as a normal way of reinforcing stepfamilies upon remarriage.

It was partly due to the issue of the surname mentioned above. In addition, one mother expressed a different perspective regarding this issue, as follows:

*In light of the fact that my spouse is living with my children and somehow getting involved in their parenting, my spouse and I felt it unnecessary to draw a line which in effect would consolidate the fact of my spouse not being my children's parents.*

It is imperative to note that the tough realities facing minority families underlie this state of things, namely the fact that they have to confront many difficulties under pressure to conform to the standard family model. The symbolic model of a standard nuclear family is apparently the natural family of one couple, that is, two parents, and “their” children.

#### *Summary of the Stepfather Cases: Under the Standard Nuclear Family Model*

To sum up, it may well be said that the benefit of adoption goes beyond the issue of its legal effects. It can be argued that acquiring the “parent” and “child” status, presumably coupled with unifying the family’s surname and *Koseki*, provides stepfather families with the psychologically important sense of security and belongingness of a family unit.

For those who concluded adoption, it worked as a useful tool for projecting an image of a standard nuclear family. Adoption is taken up as a natural process in the course of remarriage. To project the image of a standard nuclear family consisting of a couple and “their” children was regarded as the

most esteemed benefit bestowed by stepfather adoption, although whether it is appropriate or not is another issue.

#### *Love and Responsibility as a Mother in Stepmother Cases*

In contrast, stepmothers tended to take adoption not as a matter of the family unit as a whole but as a matter of the stepmother–child relationship itself. Quite a few adoptions took place in stepmother households, although the rate of adoption was a little lower than that in stepfather households, and they usually took some time before adoption. Some stepmothers responded that they decided to adopt children only after they had experienced struggles concerning parenting children and finally were prepared to assume the primary responsibility toward the children of their spouse as their “mother.” In charge of the main care of the children and through many struggles (Kikuchi, 2012), stepmothers tended to concentrate on their own one-to-one relationship with children.

However, we also see glimpses of the influence of the standard nuclear family model represented by one couple and “their children” here. That is to say, such mothers considered that the most natural course of things in which they would be able to express and reinforce their love and responsibility toward children is to become their “parent: mother.”

#### **4.5. Why Has Adoption NOT Been Concluded?**

So far, we have seen that stepparent adoptions can be concluded quite easily and that they are considered a natural outcome or a necessary process of reinforcing stepfamilies, especially in stepfather cases. These findings lead us to the impression that it is rather unnatural for stepparents to choose not to adopt children. Keeping this question in mind, we look at the findings of the survey, which explains why some stepparents have NOT adopted the children of their spouses.

What comes first to our mind may be the hypothesis that stepparents do



not assume legal responsibilities as parents simply because they do not love the stepchildren as their own. Surely, we came across such situations, especially among the stepmother cases.

However, on the contrary, some stepparents have chosen not to conclude adoption, even though they said that they had developed an attachment toward the children and felt responsible for them. In such cases, stepparents took a substantial part in children's daily care and support. However, such contributions toward parenting are not recognized in official terms. Some couples were concerned about the insecurity of the step-relationships.

This unfavorable situation turns out to have much to do with shared parenting with the absent parent. In addition, in some cases, the absent parent with parental authority or the children objected to adoption, even when they had no say in concluding adoption. Their oppositions were mainly attributed to the issue of the children's surname, but some of the objections were withdrawn and adoption was concluded in the end.

#### *Because Stepmothers Do Not Love Children*

Such responses as the subtitle above stood out exclusively among stepmothers. Harsh though it may sound, one cannot be hasty in blaming such stepmothers. Some prior studies have indicated that the stepparents have to step in and share parenting from the middle of the child's childhood or teenage. This poses difficulties that stepparents, especially stepmothers, have to confront while parenting stepchildren, who have already lost their mothers once (Kikuchi, 2012). The report by not a few stepmothers at the presenter's survey supported this finding.

However, sometimes it is just a matter of time. Through such struggles, some stepmothers became firmly determined to become mothers, and for a long time until that moment, their relationships were not officially recognized.

*The Presence of the Absent Parent Prevented Adoption*

Some other stepparents, both stepfathers and stepmothers, referred to the presence of the other biological parent when explaining the reason for non-adoption.

According to the findings of the survey, children's relationship with their absent parent was quite limited and distant in most cases. What is more, in many such cases, the situation was observed before adoption or even remarriage. Therefore, it is difficult to decide whether stepparent adoption itself would reduce the involvement of the absent parent in a practical way or vice versa.<sup>18)</sup>

However, some families, though limited in number, made attempts to share parenting with the absent parent. Certainly, adoption does not terminate the legal link with the absent parent; nor does it replace the absent parent with the stepparent. Nevertheless, in such cases, adoption, whereby stepparents assume the primary responsibility toward children as if they were natural parents, was considered incompatible with the idea and practice of shared parenting.

With regard to the substantive effects of adoption, the absent parent can claim for reduction of support payment. Some stepfather cases took this effect seriously and did not adopt children in order to avoid the diminishment of the amount of support payment by the absent father. One stepfather explained to me that it is not because he wanted money, but because he regarded financial liabilities as an essential part of the contributions toward children by the absent father, serving as the proof of his love. Therefore, the stepfather was considering adopting the children after they become mature, although the mother was worried of what would become of the relationship between the children and the stepfather if she accidentally died during their childhood.

In contrast, stepmothers took a more psychological approach to this issue. One stepmother answered that she hesitated to propose adoption because the biological mother lived in the neighborhood, continued to have a

substantial involvement with the stepdaughters, and that they loved their mother very much. The stepmother asserted that, otherwise, she would have adopted the children. She analyzed that the fact that the stepdaughters did not want her to replace their biological mother was crucial to her decision not to become their mother, in spite of the attachment she had developed toward her stepdaughters.

Hence, for some stepparents, who respected the children's relationship with the other parent, it was tough to consider adopting and become another parent.

The decisive influence that the *Koseki* System appears to have among stepfamilies, as indicated above, may help us understand such a gap between the legal effects and the sense of some stepparents. Under the pressure of the standard nuclear family model, with clear family boundaries, the image of a parent may be associated with some exclusiveness and self-containment.

### *Objection by the Absent Parent or the Children: The Issue of the Surname Resurfaces*

Next, we come to the cases in which the absent parent and the children themselves objected to the adoption, including cases where they were not officially qualified to do that.

In two cases, according to the mothers, the absent father with parental authority objected to the adoption, claiming that the father would not be able to see the children as his own if they were adopted and thereby changed their surname and belonged to the stepfathers' *Koseki*.

With respect to children, in some stepfather cases, the teen children objected to adoption because they rejected the idea of changing their surname. In fact, some mothers of the adopted cases admitted that children were reluctant to accept the change in surname. There was more than one reason for this. Some children preferred keeping the same surname as their absent parent, namely, their biological father. Others just wanted to maintain

their “long-used” surname.<sup>19)</sup> Even more remarkable here is that we saw a de-facto remarriage case in which the surname problem affected the couple’s legal relationship. The couple could not remarry legally because they were faced with objections by the relatives. The relatives insisted that the mother should keep the same surname as the child, who did not want to change the surname of his absent father.

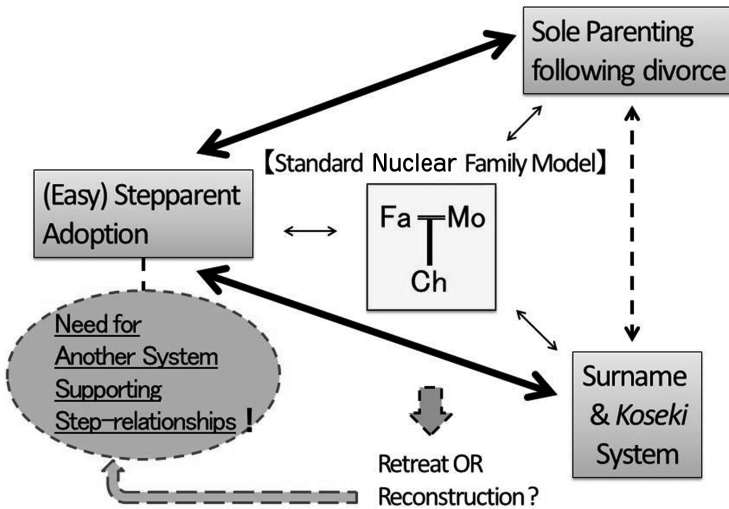
As we have seen, many mothers and stepparents thought that they could protect the interests of the child by projecting the image of a standard nuclear family, but it is not necessarily what the children wanted. What do the interests of the child mean and how can they be protected are some of the most difficult questions in the family law world.

#### **4.6. Dissolving Adoptions: Do Adoptions Help in Reinforcing Stepfamilies?**

We finish this section by checking the cases in which adoption was dissolved. As explained in the previous section, adoption can be dissolved any time. Moreover, as argued above, adoption may be an accessory to, or closely related with, the relationship between the stepparent and the parent. The dissolution of the marriage of the parents may well be considered as the most typical occasion for the dissolution of adoption.

In our survey, there were four participants from ex-stepfamilies who were divorced. Certainly, all of them reported that stepparent adoptions were dissolved, and that no stepparent, except one stepmother, had any contact with the stepchildren; nor did they pay financial support to them since then. Hence, even if they adopted children with the intention of reinforcing stepfamily relationships, it cannot make up for the fragility of the relationship. Adoption cannot necessarily secure the responsibility toward children once assumed by stepparents with firm determination.

Chart 3 : The Triangle Model of the Standard Nuclear Family



## 5. Discussion: Strengths and Limitations of the Standard Nuclear Family Model

This article ends by discussing the issues pointed out so far into one argument. That is to say, the stepparent adoption system, which forms a part of the standard nuclear family model of the Japanese law system, has limitations in addressing the dynamic changes in family relationships following parental divorce and remarriage. Before coming into stepfamilies, children have already spent part of their lives in the previous family, which may mean that stepparents have to appreciate the children's experience in the previous family, such as the previous surname and the other parent. However, stepparent adoption sometimes appears to make it more difficult than it really is. Therefore, we need to consider developing another system which supports step-relationships.

The chart 3 describes the structure of the discussion. Each system,

namely stepparent adoption, the surname and *Koseki* System, and the sole parental authority after divorce, is in a complementary relationship with the other and is integrated by the standard nuclear family model.

Firm as this triangle model may appear, each of the systems and the standard nuclear family model itself are under pressure and reconsideration these days. Such a retreat may affect stepparent adoption and the manner in which step-relationships are dealt with overall. Therefore, we explore methods to address the problems of step-relationships indicated by the findings in the survey, along with reviewing the recent leaven of reform of the standard nuclear family model.

### 5.1. Stepparent Adoption as the Only and Easy Means for Legal Recognition of Parenting

In Japan, if contribution to parenting has to be legally secured, there is no means available to us other than becoming the child's "parent" through adoption. This monopoly of the "parent" status can be somehow made up for by the ease of concluding stepparent adoption. We confirmed that stepparent adoptions are concluded quite easily not only as a matter of the statutory system but also as a matter of practice.

However, this apparent convenience does not necessarily guarantee freedom of adoption, namely individual autonomy, which was to be respected by the stepparent adoption system. Specifically speaking, the determination to conclude adoption or not is deeply related to the following two issues of "the surname" and "shared parenting," which locate themselves far from the core of the step-relationship itself : parenting by the stepparent.

### 5.2. The Surname and *Koseki* System: Referring to Recent Developments

The findings in the survey revealed that adoption is commonly taken as significant in unifying stepfather family's surname and *Koseki* by changing the

child's surname to that of the stepfather. We observed a pressing need for the unification of the surname and *Koseki* among stepfather households. *Koseki* System, including the surname as its component, rather than the legal status itself, has a decisive influence in society as the official status representing family relationships. It paves the way for family life to bring it under the model of the standard nuclear family. We may well argue that stepparent adoption forms one part of this system.

However, under such pressure, some children were reluctantly forced to change their previous surname. In other cases, such reluctance prevented adoption and failed in legally recognizing their parenting relationship. We also saw some absent fathers adhering to the same surname with children in an objection to adoption.

If we are to value the interests of children not to be forced to change their surname, we can think of introducing a system of opting out of the single surname principle for the adoptive parent and child. Not to mention, adoption will still work as a way of changing the child's surname, should they wish to do so.

Another way to address this problem, though a roundabout one, is to call for reform in the single surname system of the married couple. This system has been under criticism as it forces the burden and loss of individual identity caused by giving up the long-used surname, almost exclusively on wives and causes gender discrimination. Another problem is that this coercion to change the surname impinges on the freedom of marriage, because those who want to avoid change of surname cannot legally marry. This is a problem parallel to that of stepparent adoption, although young children are even more dependent on parents and need special care.

In 1996, Legislative Council of the Ministry of Justice proposed that we introduce a system that enables couples to retain their respective surnames after marriage.<sup>20)</sup> Under this proposed system, when the couple choose to retain their each surname and the child of one of the couple is adopted by the

other, the adopted child would have a choice to take the surname of the parent who is the spouse of the adoptive parent and chose to retain the previous surname after marriage.<sup>21)</sup> Along with this, it was suggested that the rule of compilation of *Koseki* be revised so that it covers a couple of different surnames in the same *Koseki*. Nevertheless, this reform proposal is yet to be passed by the National Diet because of objections raised by conservative political leaders in the government.

This issue reached a new phase in December 2015, when, at last, the Supreme Court of Japan examined the constitutionality of the single surname system of married couples (Tsukamoto et al. v. Japan (2015)). The majority of the justices held that this system is constitutionally valid.<sup>22)</sup> Instead, they called on the Diet to discuss introducing a new separate surname system. Moreover, five judges, including three female judges, disagreed in terms of its constitutionality.<sup>23)</sup>

Though the chances are not too good right now, if the separate surname system comes into effect, it will alter greatly the practice of stepfather adoption. In a direct way, some wives among a remarried couple can choose to keep their previous surname and there will be two surnames within a stepfamily household: one of the stepfather and the other of the mother and the child. In an indirect way, the power of the standard nuclear family model can be weakened by this reform. In any case, the practice of adoption by stepfathers will come close to that of adoption by stepmothers, which is free of the surname issue and focuses more on the stepparent-child relationship itself. Namely, the determining factor of whether and when to conclude adoption will change and more number of stepfather-child relationships will lack legal recognition at least for a certain period.

### 5.3. Step-Relationships and Shared Parenting after Divorce

This issue of shared parenting after divorce applies to both stepfather cases and stepmother cases. Upon divorce, one of the parents is deprived of



parental authority. The sole parenting system following divorce under the current law fits the model of the standard nuclear family, because it confers a privileged status on the standard nuclear family containing two “parents,” with clear boundaries from the outside.

With regard to the inconsistencies between this system and shared parenting in stepfamily households, we regret to say that, in this article, we cannot go so far as to argue that stepparent adoption bars the involvement of the absent parent in reality, because of the limitations of the sample of the survey.

However, we saw a few stepparents who tried to respect the involvement of the absent parent and couldn’t have their contribution toward the children recognized by law through adoption. When the absent parent continues to get involved in parenting, stepparents cannot completely replace them, whereas adoption is taken as compelling stepparents to choose between the stepparent and the absent parent, despite it reserving the legal link between the child and the absent parent. We may attribute this to be the influence of the standard nuclear family model in some way or another.

In terms of the adoption process, the findings of the survey also proved that adoptions always take place without the consent of the absent parent, who has lost parental authority. The significance here is that there is no chance of involvement by the absent parent. Whether we should always require the consent of the absent parent for adoption seems to be another issue though.

This shared parenting issue may probably become more significant if we question what will become of stepparent adoption if shared parental authority after divorce is introduced. As the idea and practice of shared parenting following divorce is gradually prevailing in general, the sole parental authority system is criticized, and not a few jurists have proposed introducing the shared parental authority system after divorce.

The fact that among the few absent fathers granted parental authority, all

of them objected to adoption, along with speculation by some mothers that participation in the adoption process by absent fathers would make adoption impossible, leads us to the speculation that we will have much fewer stepfather adoptions. In terms of the effects, under the shared parental authority system, adoption would deprive the absent parent of parental authority, which they have already lost under the current system. This can be crucial in determining not to conclude adoption.

From the viewpoint of shared parenting after divorce, therefore, we must attempt to develop a system that can recognize parenting both by the absent parent and by the stepparent at the same time. In light of diversity being an inherent feature in stepfamilies, it would be extremely difficult to set a uniform norm on stepparents' roles and responsibilities. Hence, this is not just a matter of substantive rights and duties, but rather a matter of process. We have to build up a process and support system so that parents and stepparents resolve their disagreement on important issues and cooperate in parenting. We should begin this attempt by elaborating on the system of involvement by the family court in the issue of parenting.

#### **5.4. The Fragility of Conjugal Relationships and Calls for Stability of Parenting beyond Boundaries and Time**

The effect of conferring the status of “parent” and “child” on step-relationships through adoption is often translated into a matter of the whole stepfamily being bestowed with the image of a standard nuclear family of a couple and “their” children. As long as stepparent adoption is integrated into the standard nuclear family model, it will face difficulties due to the overwhelming fragility of conjugal relationships. The findings of the survey revealed that adoptions tend to be dissolved on the failure of the remarriage. It is estimated that the breakdown rate of the couple is higher in stepfamilies than in natural families because of the inherent difficulties and complexities of stepfamilies, although no official statistics on the rate of breakdown among

remarriages are currently available.

In light of instability of remarriage, we cannot ignore the fact that stepparents themselves can become the member of the previous family for the child. However, the adoption system does not grasp the issue of parenting children after remarriage breakup within its scope. The issue of financial security of the children after the breakup of remarriage and stepparent adoption, especially in stepfather cases, has been scarcely discussed in spite of its importance in the context of the division of role by gender in stepfamily households. Once adoption has taken place and the support payment by the absent father diminished or ceased, it may be unrealistic to rely on him to support the child again.

If we try to construct a new step-relationship system compatible with shared parenting after divorce, we should consider the stability of the parenting responsibilities. Children can have more than one adult, including parents and stepparents, involved in their parenting during the course of their parent's divorce and remarriage. From the perspective of stability of parenting, all such adults should continue to share parenting responsibilities.

In terms of the dynamics of family relationships and calls for stability, the relationship of stepfamilies may change over time even during their remarriage, but the children always need care and protection. Adoption takes place under a one-time agreement and there are difficulties in addressing such dynamics. How one deals with the step-relationship at an early stage, when the stepparent is not ready to love the child and assume the responsibilities, just as some stepmothers who have not adopted the child yet, is a tough question.

### **5.5. What Is “Parent” and “Parenting”? : Along with the Reconstruction of the Standard Nuclear Family Model**

In exploring these issues discussed above, we need to carefully consider the significance of “parent” and “parenting” as a legal concept. This is

because what we are trying to do is nothing else but deconstruct the monopoly on parenting status by parents. We need to review what are the interests of the children to be legally protected, especially in the context of the dynamic process of dissolution and reconstruction of the families. Namely, we have to explore whether and how we can cut the concept of “parent” from the standard nuclear family model. When a child parts with one of his or her biological parents and lives with a stranger on account of the marriage to the child’s resident parent, the family boundaries become quite blurred. In such instances, the standard nuclear family unit may not always perform as a guardian of the child as expected.

Therefore, it would be quite significant for the Japanese juridic world to study the legal systems of Western jurisdictions. They have been addressing this issue, especially in the context of promoting shared parenting following parental divorce.

Although stepchildren are a minority among them, tackling these issues concerning step-relationships will be good for studies on the interests of all children, eventually.

## Acknowledgments

This article is originally based on the author’s presentation titled “Legal Analysis of Stepparent–Child Relationships in Japan: How Many Parents Should a Child Have?” at the Sixth World Congress on Family Law and Children’s Rights in 2013. The author published the outline of the presentation in Koga (2013). The presentation paper was substantially revised by especially expanding on the discussion section and covering the latest developments concerning this issue.

This work was supported by the JSPS KAKENHI Grant Number JP24830091.

※ After submitting this article, the Japan Society for Socio–Legal Studies on Family Issues published their reform proposal of Part 4 of the Civil Code on Nov. 5, 2016. Roughly speaking, this proposal aims to reconstruct the standard nuclear family model in its entirety. With respect to the law on step–relationships, they propose to recognize step–relationships not by adoption but rather by conferring stepparents’ rights for engaging in the daily care of children.

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### Notes

- 1) In this article, we adopt the strict definition of “nuclear family”. “Standard nuclear family (model)” refers only to a family which consists of a married couple and their own children, and does not cover the family which contains other adults than the parents of the child.
- 2) For the details of the methods and findings of this survey, see Komamura 2011a & 2011b. Komamura is the maiden name of the author of this article and these articles were written by the author.
- 3) Some self-help groups of stepfamilies, mainly including Step Family Association of Japan (SAJ), helped the author greatly in finding participants.
- 4) This section is based on the findings of prior studies by Prof. Shinji Nozawa (For details, see Nozawa (2008) and so on). He also helped the author greatly in conducting the 2010 survey.
- 5) In 2015, there were 170,181 remarriages for at least one spouse, whereas there were 464,975 marriages in total. *The vital statistics of Japan 2015*.
- 6) In 2015, there were 132, 166 divorces of parents with minor children, out of all the 226, 215 divorces, *supra* note 5.
- 7) *Annual Report of Judicial Statistics* (2015).
- 8) *The vital statistics of Japan 2014*.
- 9) Strictly speaking, the family unit registered in the same *Koseki* is not necessarily the “standard nuclear family” because it incorporates the child of only one of the married couple when the child take the same surname of the family head. Whether the child gets registered in the same *Koseki* depends on

whether the child is a child of one of the married couple and takes the same surname as the family head, rather than on whether he or she is the child of both of the married couple. However, this awkward system is not well known among the citizens and it appears that not a few people misunderstand that the child who shares the surname and gets registered in the same *Koseki* as the married couple is a child of both of the married couple in legal terms. See 3.2.2. and 4.4.

- 10) Strictly speaking, in the latter option, the parent can use the marriage surname not as a legal name but merely as a de-facto one.
- 11) This speculation is based on the comparison of the number of adoptions under the leave of the family court and the number of the adoptions in total. For instance, in 2015, there were only 728 adoptions under the leave of the family court, most of which were probably adoptions of a minor child according to Civil Code, art. 798. *supra* note 7. In contrast, there were around 82,592 adoptions in all, a substantial part of which were considered stepparent adoptions. *Annual Report of Family Register Statistics 2015*.
- 12) We also come across some cases where the child did not share the parent's surname from the beginning before the remarriage.
- 13) In 2015, there were around 82,000 ordinary adoptions in total, whereas there were only 544 special adoptions in all. *supra* note 7.
- 14) We remind you of some cases where the couple chose to adopt the parent's surname as the couple's surname and the stepparent and the child share the surname from the beginning.
- 15) We come across some stepfamily households where both the husband and the wife take the child or children from their previous relationships.
- 16) In some households, one of the couple, mainly the husband, has a child or children from their previous relationships living apart from the husband, namely outside the household.
- 17) Certainly, according to the responses of the survey, schools and medical services do not dare to question the official status and powers of stepparents because of their parent-like appearance, and thereby stepparents have experienced little or no difficulties on account of the lack of parental authority.

- 18) With regard to the degree of contact with absent parents, there were no more than around 10 cases (out of 37 households, excluding the cases in which the other parent is already deceased) where children maintained substantial contact with absent parent. In the rest, they had no contact or only a sporadic one at best (for example, once or twice a year), although some of such parents continued paying financial support. Some resident mothers said that they do not know even the father's current address. What is more noteworthy is that almost none of the absent parents were involved in the decision of important issues concerning the child's education and life, for instance, choosing high school. In many cases, such distant parent-child relationship can be observed even before the remarriage. The sample is too small to examine whether there is a significant difference from de-facto couple cases, or whether there is a difference between the adopted cases and non-adopted cases. In any event, it is difficult to decide whether re-partnering of the resident parent or stepparent adoption would reduce the involvement of the absent parent or vice versa.
- 19) In cases where the previous marriage was a de-facto one or the father was a foreign citizen, the children's surname from birth is different from that of the absent father from the beginning.
- 20) *Draft Proposal for Outline of the Reform of a Part of the Civil Code* (1996). Not a few jurists agree to this proposal or insist on introducing the separate surname system in another way.
- 21) However, in that case, they need to adopt the surname of the parent as the surname of all the children of the couple. Under the proposed system, all the children of the couple have to share the same surname.
- 22) Specifically, the Court held that section 750 of the Civil Code was consistent with article 13, 14, and 24 of the Constitution.
- 23) Judge Okabe argued that this system is against clause 2 of article 24 of the Constitution, which guarantees individual dignity and gender equality with regard to the matters concerning marriage and the family. *Tsukamoto et al. v. Japan* (2015). pp. 15–21. However, four such judges agreed to the decision of rejecting the plaintiff's claim for damages on account of legislative nonfeasance.

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