

The Aftermath of Japan's Ratification of the Hague Convention on Child Abduction: An Investigation into the State Apparatus of the Modern Japanese Family

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Abstract

The aim of this paper is to discuss the ways in which a recent international dispute has evoked an inquiry about the family ideology of modern Japan. Initially, it explains a recent issue on Japan's ratification to the Hague Convention on child abduction. In April 2014, the Japanese government finally ratified the Hague Convention on child abduction, an international Convention to resolve disputes on international parental child abduction. However, skepticism toward Japan still remains, because, in order to put the international Convention into practice, Japan has not proceed to radical family law reform at this stage. To recognize this incongruent situation, this paper explains that the present Japanese family law is incompatible with the principle of this international Convention. Although the Convention premises shared parenting in the grant of joint child custody even after divorce, Japanese family law keeps the solo-custody approach, which is necessarily preserved in order to maintain Japan's unique family registration system: the *koseki* system. Arguing that the *koseki* system, registering all nationals by family unit, is an ideological state apparatus of Japan as a modern nation state since the nineteenth century, this paper concludes that recent international disputes regarding parental child abduction in Japan inquires about a radical question on the national family norm of Japan.

Keywords: Japan, family, the Hague Convention on the Civil Aspects of International Child Abduction, child custody, *koseki*

Introduction

The number of cross-national marriages between Japanese nationals and foreign citizens (aka international marriages or *kokusai kekkon*) has been on the rise (Hamano, 2011). There is a striking gender imbalance in the composition of these marriages. While male Japanese tend to marry women of Asian origin and remain in Japan, the foreign partners of Japanese women are more diverse (not only of Western origin) and in most cases immigrate to the partner's country of residence (ibid.). The growth of cross-national marriages in Japan is of course related to the growth of cross-national divorces. The Ministry of Health, Labor and Welfare has reported (2009) that the divorce rate tends to be higher for cross-national couples than for their Japanese counterparts. It may be that cultural differences and other social factors such as international migration, isolation, lack of social support for settlement and integration lead to this outcome. Recently, the share of cross-national marriage among all married couples reached 4 percent (25,934 cases) in 2011, while the proportion of cross-national couples in the divorce figures rose to 7 percent (17,832 cases) (Yoshiike, 2013). This situation has led to an increase in child custody disputes between Japanese and non-Japanese nationals. One primary concern is parental child abduction beyond national boundaries; in particular, relocation of the child by the migrant Japanese parent from the country of residence without the consent of the other parent.

The issue has been the subject of significant media coverage in recent years, in particular the debate over whether Japan should become a party to the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention on child abduction) which regulates the resolution of such abductions among member countries. The Hague Convention on child abduction is an international convention concluded in October 25, 1980, after the first proposal for dealing with this issue since January 1976 (Lowe, Everoll, & Nicholls, 2004; Beaumont & McEleavy, 1999). As of March 2017, it has been ratified by 97 countries in the world. Basically, the Convention emphasizes its aim “to protect children internationally from the harmful effects of their wrongful removal or retention and establish procedures to ensure their prompt return to the state of their habitual residence, as well as to source protection for rights of access.” Indeed, it is a jurisdictional Convention that achieves the return of the abducted child to his/her habitual residence promptly between two Central Authorities of the respective countries,¹ while Article 13b amends that a court of child's habitual residence may rule for a non-return of a child, in the consideration of a “grave risk” to the child by return or his/her maturity to express its view. This convention means the difficulty of dealing with child custody issues between two different nationals, as each Civil Code (or family law) evolves different ideas and regulations as to the right of parents and the interests of children in the family.²

Against these circumstances, several governments have started championing the cause of their nationals who were formerly married to Japanese women and whose children were abducted to Japan before visitation or joint custody orders could be made. In practice, in the past few years, the United States frequently mentioned its concern about American citizens (children of Japanese nationals and American citizens) abducted to Japan by Japanese mothers (US Embassy of Japan, 2007). On October 16, 2009, John Roos and seven ambassadors of the

¹ A Central Authority is an office or institution that makes and receives applications, and Central Authorities jointly work with one another to achieve the Convention (Lowe, Everoll, & Nicholls, 2004, p. 225). In Japan, the Ministry of Foreign Affairs (MOFA) is appointed as the Central Authority.

² For further details of the Hague Convention, see the website of the Hague Conference on Private International Law (Hague Conference on Private International Law, 2013).

signatories to the Hague Convention visited the Japanese Ministry of Justice and pressured Japan's ratification (*The Asahi Shinbun*, 2009).

The United States has played a leadership on this issue. For example, *American View*, a bilingual seasonal magazine issued by the US Embassy of Japan, discusses increasing parental child abduction by Japanese spouses.³ Citing demographic data (Figure 1), they show that the reported cases nearly doubled in the United States and other respective countries (e.g. Australia, Canada, France and the United Kingdom) in the past two years. They stress that this is unlawful according to US law. The article also concludes that Japan acceding to the Hague Convention is the only way to solve this international problem between two countries (US Embassy of Japan, 2010). As a result, cases of parental child abduction by Japanese mothers have become diplomatic cases and media in the United States, United Kingdom, Canada, France and Australia have also reported this issue as a social problem.⁴

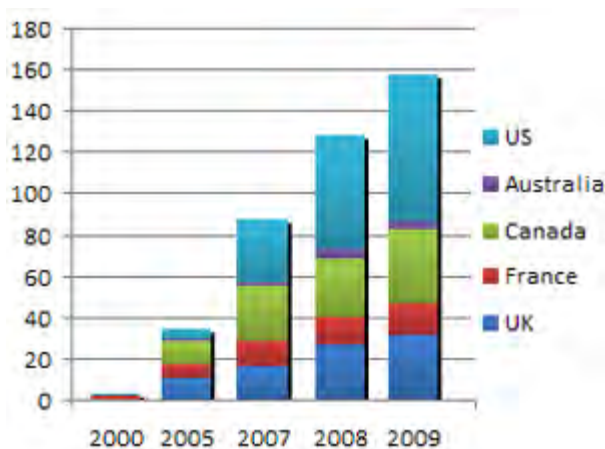


Figure 1: Children abducted by Japanese spouses between 2000 and 2009 (US Embassy of Japan, 2010).

According to my media frame analysis of Japanese national newspapers on the child abduction issue (Hamano, 2013), there are four media frames which form an interdependent structure. Frame 1) emphasizing the issue is a product of external pressure on Japan; 2) arguing for government's quick action to resolve the issue; 3) criticizing Japan's family law system and government policies; 4) suggesting the international abduction problem has commonalities with domestic child custody disputes. Each frame relies upon the others rather than being separate. For example, after arguing the significance of international child custody disputes (e.g. Frame 3), an article would depict a similar case in domestic society. (e.g. Frame 4). In turn, domestic cases are linked with the concerns of a cross-national family.

This type of coverage explains why an issue among the relatively small number of cross-national couples has gained wide public concern in Japan. It is a process in which "unspoken" stories of social minorities are gradually authorized as being of general public interest (Plummer, 1995). This issue initially expressed itself as a niche problem of cross-national families, and then over time developed in the media into a central issue for Japanese society in

³ *American View* is a bilingual magazine by the American Embassy of Tokyo. It is generally issued seasonally online in both English and Japanese. In this article, I refer to the English edition. Since 2007, they have occasionally focused on parental child abduction from the United States by a Japanese parent.

⁴ It is, however, important to note that there are Japanese parents whose children were taken from Japan by their ex-partner. Even though they are taken to a signatory to the Hague Convention on child abduction, both the Japanese authority and that of the respective country have been reluctant to deal with it, pointing out Japan's non-signatory to the Convention.

a global age (*Mainichi Shinbun*, 2011).

As particular child abduction disputes have arisen, various national governments have championed the cause of their nationals, and laid the blame on Japan, accusing the Japanese legal system of aiding in international parental child abduction, contravening the basic human rights of both children and parents. Additionally, a large number of lobby groups in several countries, those of so-called left behind parents (LBP) (including Japanese parents), have blamed Japan for failing to recognize basic human rights, especially in regards to not allowing joint custody. This accusation of not only failure to adhere to basic human rights standards, but also the principle of “the best interests of the child” has succeeded in changing the image of this issue from a private one to public issue in civil society. Through an analysis of media representation by both abducted mothers and LBP fathers, I reveal there are clashing normative family and parental values that sit behind much of the “rights talk”.

In this paper, I attempt a cultural analysis of gender and family norms questioned in the aftermath of Japan’s ratification of the Hague Convention on child abduction. In particular, I examine the ways in which normative gender and family images are institutionally embedded in the legal frameworks of Japan. When Japan decided to become a signatory to the Hague Convention on child abduction, it has fueled further debates on the condition of family, as well as the family law reform in Japan. Even though this international Convention can juridically function regardless of the domestic legal scheme new derivative questions about the family in Japan of this international Convention. My point is that, beyond an issue of international legal implementation, the Hague Convention is calling for further socio-cultural inquiries about contemporary Japanese family. Given that the family today is hardly conceivable within a single culture and society, a conflict between the idea of global human rights and domestic cultural ideas would become at stake. To understand such a tension occurred in a process of Japan’s ratification to the Hague Convention, I will examine a case of the Japanese family registration system – the *koseki* system – prevents Japanese family law from being reformed to allow for joint custody after divorce. Additionally, by pointing out the normative function of this family registration system, as part of the ideological state apparatus (Althusser, 1971) constituting modern Japan since the late nineteenth century, I will conclude by showing the ways in which the latest international controversy throws up questions around the entire national ideology of modern Japan.

Japan’s Steps to Accede to the Hague Convention on Child Abduction

Media outlets both in Japan and elsewhere have recently devoted considerable coverage to parental abduction by Japanese nationals that has on occasion resembled campaigning. For example, a newspaper article refers to Japanese women who have removed their children to Japan as “outlaws” (*Mainichi Daily News*, 2008), stressing that the children have been deprived of having access to both their parents after divorce, and that the rights of the other parent to have access to their children has been violated. A large number of lobby groups in several countries, including non-custodial parents in Japan, have expressed their concern about child abduction or have suggested that Japan fails to recognize it as a human rights issue. One American father, whose Japanese wife took their two children back to Japan in December 2008 in breach of a US court order granting him full custody, was quoted as saying, “As long as your government allows Japan to continue to disregard our children, the number of parental kidnapping will continue to rise” (Oberman, 2011).

It is illustrative to examine a typical case of parental child abduction involving Japan and the United States. In February 2008, a Japanese woman went back to Japan with her nine-year-old

daughter after the breakdown of her relationship with her then husband in the United States. In April 2011, she went to the United States to renew her permanent visa and was arrested. The reason for the arrest was that she had returned to Japan with her daughter before the divorce was legally finalized and the Wisconsin authorities determined that she had violated her ex-husband's custody rights (*Mainichi Daily News*, 2011). However, the Japanese mother argued that she had been granted custody in March 2011 by the Kobe District Court in Japan. Clearly, the woman had violated her husband's custody rights (as well as the interests of her daughter) in the American context, and simultaneously was legally granted custody of her daughter in Japan. Eventually, the Japanese mother plea bargained and was granted a stay of exception to return to Japan and the daughter was returned to her father. While this news was reported widely across the United States as "the Father's Miracle" (Oberman, 2011), the mother's point of view was reported in Japanese media including emotional interviews in which the mother expressed her shock at being arrested.

There are Japanese whose children were taken to another country by an ex-partner (Nishikawa, 2006). Outgoing international parental abduction by foreign parents has been the case in Japan, although it has seldom gained wide concern in public. Contrary to this, incoming cases have been highlighted in recent media coverage, with the perpetrator of the incoming abduction being most often the Japanese mother coming back to Japan from another country. This is because, as noted above, for most women including Japanese, cross-national marriage tends to lead to migration to the partner's country of origin. Child abduction by Japanese women has not been an issue until recently. In fact, the issue came to public prominence due to the international controversy over Japan not being a signatory the Hague Convention on child abduction.

The American Embassy of Japan, in its seasonal magazine *American View*, published an article about the Hague Convention on child abduction by Shinichiro Hayakawa, a Professor of Law at the University of Tokyo. In the article, Hayakawa writes:

To be sure, only one parent is allowed to have parental authority following a divorce in Japan, whereas in the U.S. and Europe divorced couples are allowed to have joint custody. So-called visitation rights hold less weight in Japan than they do in the U.S. and Europe. In addition, some people question whether the government should strongly criticize parental child abduction, citing that it is a reflection of parents' affection for their children. Also in Japan, however, an increasing number of people have begun to think recently that both parents even after divorce should continue to be involved in child-rearing in their respective ways and that the noncustodial parent also should be permitted to see his or her children through visitation rights for the sake of the children's healthy development. (Hayakawa, 2010)

To explain Japan's reluctance to accede to the Hague Convention, he notes that in contrast to Western countries, the Japanese family law system allows only for a solo-custody grant. Not only does this custody system account for Japan's socio-cultural attitude (or ignorance) toward parental child abduction, but, he argues, it is also inadequate because increasing numbers of divorced couples in Japan actually want to jointly engage in child-rearing even after the breakdown of a relationship. It is therefore possible that ratification of the Hague Convention on child abduction could assist in triggering reform of domestic Japanese family law.

On the recent changes to family and gender division of labor, White (2002) observes that young Japanese couples tend to be more enthusiastic about sharing household duties, including child rearing (see also Ochiai, 1996). Accordingly, acceding to the Hague Convention on child

abduction could benefit domestic families. As I describe below, Japan becoming a signatory to the Hague Convention on child abduction is strongly supported by domestic groups campaigning for fair parenting of the separated family in the achievement of joint custody rights in Japanese family law. Regardless of socio-cultural differences regarding gender, family and parenthood, this *glocal* (global-local) concern can be seen as a part of the common process of individualization in late modernity, as Beck and Beck-Gernsheim (2002) have argued.

While commonly held ideas of the family are changing, gender inequity is still dominant in Japan. A recent survey by the Cabinet of Japan (Figure 2) shows that perceptions of gender equity are higher among the younger generation. Among those in their 20s, more than 50 percent of the respondents answered that gender equity is achieved at home. However, regardless of generations, the respondents feel that men are still treated better than women by the family member at home. This perception of being treated unfairly according to one's gender may derive from the fact that a sharp division of labor at home is still common. Naturally, this perception of gender inequity in the domestic space also affects ideas of child rearing within the couple. In order to deal with this gender inequality at home, Muta (2006) argues that re-defining the family in the light of gender equity through reforming family law is necessary to call for wider social debates.⁵

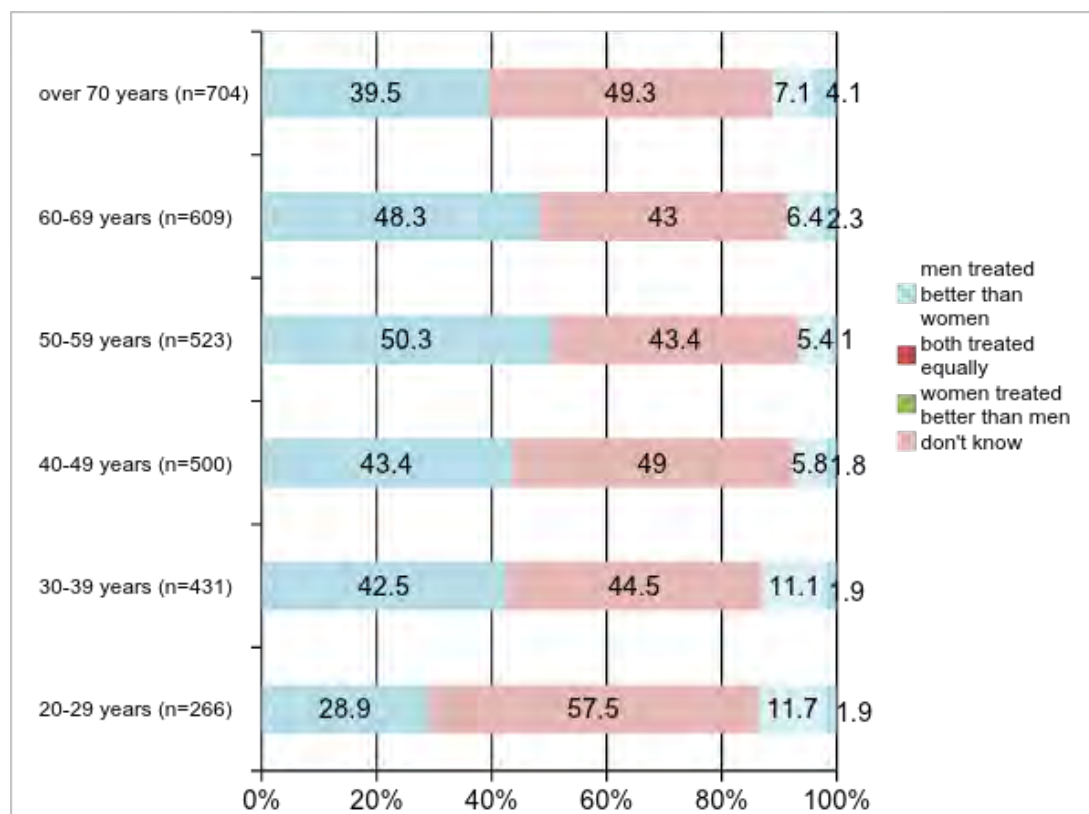


Figure 2. Perception of gender equity at home by age (Gender Equality Bureau Cabinet Office of Japan, 2012).

⁵ For instance, de-facto marriage is not recognized in Japan, socially or legally. Also, same-sex marriage is hardly discussed. In her critical studies of family law in the United States, Fineman criticizes the normative family image of heterosexual couples implemented in the law, by calling it “sexual family” (Fineman, 1995). In this vein, I hope my analysis in this article will lead to further debate on these questions the content of globalized family in the late modernity.

Perceptions of the Hague Convention on Child Abduction in Japan

The Japanese government has not treated international child abduction as a high-priority issue until recently, and for a long time Japan had not ratified the Hague Convention on child abduction, which obliges the signatory to return abducted children to their country of habitual residence, while Japan was one of the initial member States of the Hague Convention at the Fourteenth Session, and voted for the Convention in October 1980 (Pérez-Vera, 1982). This is because Japanese officials, such as the police, are less likely to intervene in private matters, on the principle of nonintervention in civil affairs (*minji fukainyu no gensoku*), although this principle is being reconsidered in many areas (Shipper, 2006).

Dating back to May 2005, the Japanese government declared its support for the Hague Convention on child abduction.⁶ Since then, both the Japanese Parliament and respective ministries (Ministry of Foreign Affairs and Ministry of Justice, in particular) have held regular hearings and round tables with legal scholars and lawmakers on the issue. In particular, the government consulted with several countries such as the Netherlands about particular cases and family law reform. Nevertheless, the government did not take concrete steps to ratify the Convention.

In May 2011, the Kan government finally announced it intended to assent to the Hague Convention on child abduction and domestically implementing laws. The Ministry of Foreign Affairs (MOFA) was nominated to become the Central Authority in Japan. Subsequently, both MOFA and Ministry of Justice began a panel to discuss the law reforms. In November 2012, the submitted bill for accession to the Convention was finally approved on May 21, 2013, after the new Abe government resubmitted the bill in the Diet. The following month, the bill was officially approved. In the meantime, legal reform as to the Part IV of the Civil Code (the Japanese family law) is necessary to implement the convention domestically. Finally, the government ratified the Hague Convention on child abduction in April 2014.

The Ministry of Justice regularly organized a panel for domestic law reform after the government announced its intention to ratify the Hague Convention on child abduction. The panel debated whether domestic family law reform is preferable as to Japan's ratification to the Hague Convention on child abduction, although uniform interpretation of the Convention is compulsory beyond domestic legal differences (Lowe, Everoll, & Nicholls, 2004, p. 247). Meanwhile, ratification of the Hague Convention on child abduction has attracted wide-ranging support. Basically, the Hague Convention on child abduction is aimed to work with adequate family law in domestic society. In this sense, a sense of shared parenting (e.g. joint custody grant) is crucial to achieve the best result resolving parental child abduction across borders. Even though the child stays with one parent, the other parent may have the right to rear the child in some way. But, it would be arguable that there are arguments that single custody grant, such as Japanese family law, would interfere with recognizing a sense of joint-parenting after the dispute.

Some groups and individuals in Japan are opposed to Japan becoming a signatory to the Hague Convention on child abduction, claiming that it would threaten Japanese women (and their children) living overseas, who flee from abuse at the hands of foreign partners. For example, Kazuko Itō, a Japanese lawyer, is an opponent of Japan becoming a signatory to the Hague Convention on child abduction, saying that the Convention is not established enough to

⁶ See Torisawa (2012) and Kaji (2012) for an overview of the Japanese government's actions related to becoming a signatory to the Hague Convention on Child Abduction.

guarantee the best interest of the child (and mother) who suffer from abuse by a father (Itō, 2011). She points out that the Convention only undertakes to send the child back to a country of habitual residence, without concerning itself with more fundamental issues. In reply to such critics, after the bill of the Implementation Act of the Convention was submitted, the Japanese government amended to highly consider those Japanese who fled from the abusive partner or parent. While most abductors were male (father) when the Convention was implemented in 1980 (e.g. Pérez-Vera, 1982), recent statistical analysis indicates almost 69 percent of abductors were mothers in 2008 (Hague Conference on International Private Law, 2011). In the United States, while a report demonstrates that the Hague Convention on child abduction does work to aid these children and mothers at risk (Edleson et al., 2010), there are critics that say the Convention must be scrutinized in the consideration of gender imbalance of parental abductors, as well as protecting the best interest of the child (Silberman, 2000).

Meanwhile, the controversy over the Hague Convention on child abduction has spilled over to those who are dealing with similar cases domestically in Japan. According to my research, in Japan several activist groups have been lobbying for legal reform to allow for joint custody. Some of the advocates for reform are parents suffering from lack of visitation rights post-divorce. In the most extreme cases, there are those who are arrested by the police after they attempt to abduct their child from school or on the street. The domestic movement to reform family law is starting to grow independently from the recent Hague Convention on child abduction campaigns at the international level, but the movement was, rather, welcome to the *gaiatsu* (external pressure in Japanese) of the signatories to the Hague Convention on child abduction.

Even so, inside and outside Japan there is wide skepticism about whether the Japanese government supports the Hague Convention on child abduction, even after the Abe Japanese government quickly agreed with it. An American LBP comments, “the fact that they are not even addressing current cases does not give me much confidence in Japan’s sincerity on this issue” (*The Japan Times*, 2013). Also, Chris Smith, a Republican Member of Congress, one of the American politicians who has been involved with the issue, still argues that more needs to be done against Japan (and other non-signatories to the Hague Convention on child abduction) to get abducted children back and to ensure proper ratification of the Convention (Rulon Herman, 2013).⁷ Colin P. A. Jones (2011), an American professor of law in Japan, argues that the Japanese family law system has not improved any legal amendment that would share common principles with this international Convention about family disputes. A series of voices as such can explain their suspicion against Japan as to how much the Hague Convention on child abduction comes into practice, even though the Convention is doing nothing more than ordering a return of the abducted child. Even after the bill of the Implementing Act passed the Diet in May 2013, Jones still questions whether the Japanese jurisdiction is able to put the Convention into practice. He criticizes that the proposed Japanese Implementing Act is too complex and detailed to resolve the case quickly (it is particularly the case for foreign parents); and Japanese courts could use their own idea of what is best for children (children remaining in Japan), rather than a widely accepted view of what is in the best interests of children (Jones, 2013).

⁷ It is important to note that not all signatories put the Hague Convention on child abduction into force bilaterally. For example, while the United States acknowledges the Philippines (ratified in 2016) as a party to the Convention, it does not recognize the Philippines’ accession (alternatively, it is not a “US Treaty Partner” under the Convention) (Bureau of Consular Affairs, US Department of State, 2017). The American Central Authority, technically, could not request the return of an abducted child from the Philippines, and vice versa. In another case, Australia does not yet admit bilateral enforcement of the Hague Convention on child abduction with several signatories of it, such as Morocco (ratified in 2010) (Attorney-General’s Department, 2017).

Gender and Family in Japanese Family Law

Critics of the Japanese attitude toward international parental child abduction point to Japanese family law, which recognizes only sole (single) parent custody after divorce. According to Japanese family law, Article 819 (1): If parents divorce by agreement, they may agree upon which parent shall have parental authority in relation to a child; and (2) In the case of judicial divorce, the court shall determine which parent shall have parental authority. While many Western countries reformed their laws to allow joint custody in the 1970s and 1980s, Japan remains unreformed in this regard.

Even though, in the Hague Convention, both Central Authorities must deal with a dispute beyond different domestic legal framework. Douglass Berg, an American father whose child was taken to Japan by his ex-wife claims, “[A]t the heart of the Japanese international child abduction problem is Japan’s solo custody law. (...) The sole custody law simply is Cruel and Unusual Punishment to the innocent children caught up in Japan’s archaic legal system” (Berg, 2011). Not only does he emphasize a different Japanese domestic law, which would not be, in reality, concerned about the return of the child to its habitual residence, but he also suspects whether the Japanese authority still may engage with this issue with this different perception of the family idea. The Japanese Central Authority (MOFA) still neglects a uniform interpretation of the Hague Convention in dealing with disputes. Similar feeling to MOFA as the Japanese Central Authority were clear among American LPB fathers who I interviewed in California in 2013, from their personal experiences with MOFA’s reluctance to the dispute before. Among the present signatories of the Hague Convention on child abduction, Japan would be an exceptional country in this regard. Many LBPs insist that the solo custody system may in fact conflict with the Convention ideologically, because it operates on the assumption of shared parenting, embodied joint custody rights after divorce. As a result, overseas LBPs say the Convention may be ineffective until domestic family law reform occurs. It seems to call for a transformation of normative values of Japanese family in parenting, beyond legal reform. In Japan, child custody is granted to the mother in 80 percent of cases (National Institute of Population and Social Security Research, 2005). Under the lack of the concept of visitation rights of the parent, separated parents often suffer from a lack of adequate visitation to the child in distance (Jones, 2007, pp. 228–245). Considering this fact, LBPs living both in Japan and elsewhere do not see it as significant progress (Munakata, 2013).

Recently, Japanese family law has undergone some reform. In the amendments legislated in April 2012, “the interests of the child” was added as a primary matter to be discussed in custody considerations. The amendments also mentioned that both parents should agree with a visitation program. It has been argued that “most of the factors which prevent the return of children taken from other countries also affect cases arising entirely within Japan [...] and even the occasional case where both parents are foreign residents of Japan” (Jones, 2012). Now in a more global society, the discrepancy between international and domestic legal concepts affects families of various citizenships living inside and outside Japan.

Tanase, a family law scholar, has written of “the curse of solo custody” and criticizes the system on a number of grounds (Tanase, 2011, pp. 576–577). The solo custody principle affects how the courts decide cases, resulting in poor visitation rights for non-custodial parents. Judicial practice is a reflection of Japanese society and the way society conceptualizes what divorce is. Tanase (ibid.) emphasizes that it derives from the cultural concept of *enkiri* or the *severing of a relationship* after divorce. By cutting *en* (relationship), members of the couple are supposed to shut out any correspondence permanently. A child of the couple tends to lose the chance of meeting both parents as a result. Tanase recognizes that this concept has been challenged by

feminist critics, but this cultural convention remains strong, even if unconsciously. The normative idea of the separation of the house after divorce has overshadowed concerns about “the best interest of the child”, and has dominated judicial reasoning. Tanase’s analysis of law as a social-cultural construct may well explain the reason why solo custody is still sustained by Japanese family law. Clearly there is a cultural issue, not merely a legal problem. How can one develop a more critical cultural analysis as to the basis of Japanese perception of the family (and gender)?

The *Koseki* System: The Ideological State Apparatus of the Modern Japanese Family

To recognize why Japanese family law has maintained its solo custody-only approach, it is necessary to examine the modern Japanese family identity ideologically endorsed by family law. The modern family system in Japan is patriarchal, and is known as the *ie* system. It was a significant ideological construction of the modern Japanese state in the late nineteenth century, and it sees the Emperor as the chief of the nation, conceived as a single large family unit (Ninomiya, 1996, p. 153). In her historical studies of the Japanese family and the modern nation state, Muta (2006, pp. 166–177) argues that, since the Meiji era, Japan as a state was ideologically constituted as if it was the national family. This family image of the state was authorized by the new Emperor system. In this context, the Emperor was symbolized as the father of the nation.

Apparently, this very strong national ideology was abandoned after 1945, yet Muta (2006) argues that its cultural ideology still remains in contemporary Japanese society. She argues that it is an ideology of gendered family involving certain normative images of family and values in everyday life. In many aspects of society, from conventional perceptions of gender, family and parenthood to political and legal frameworks, basic family norms lie beneath the ongoing process of constituting Japan as a modern nation state.

Institutionally, Japan has a unique national personal registration system, called *koseki*. The earliest *koseki* system was imported from China in the eighth century, but the new Meiji government re-introduced it in 1871 as the basic method of registering the population. By registering the population, the new government aimed to introduce a rational system of taxation and military conscription (Ninomiya, 1996, pp. 146–147). Importantly, the basic unit of *koseki* is not the individual, but the family. The system, regardless of actual residential code, records individual birthplace, gender, date of birth, name, position among siblings, marriage and divorce status.⁸ The Japanese image of family lineage is built on the *koseki* system (Ninomiya, 1996, pp. 148–149; Sugimoto, 2011, p. 156). The essence of the *koseki* system is that no Japanese national can belong to more than one family on the registration system. Generally, an individual leaves the present *koseki* when making a new family through marriage. Also significantly, non-Japanese nationals are not allowed to become the head of a family. Japanese nationals are able to remove themselves from one household and create a new one through marriage.

In Japan, there are arguments that the *koseki* system conflicts with liberal ideas of the family, such as gender equity, family components (e.g. one-parent family), extramarital children, and *de facto* marriage (Sakakibara, Fukushima, & Yoshioka, 1993). From a different viewpoint, Chapman (2011) argues there are problems of *koseki* relating to two general categories. First, access to the *koseki* means disclosure of too much sensitive information about one’s personal

⁸ An actual household by residence is called *setai* in Japanese. Residential code is registered and managed on the *setai* basis.

history such as family relations and marital records. Second, it is about a history of family as the foundational personal registration unit, which prevents an individual from retaining his/her maiden name after marriage. This *koseki* system also leads to difficulties for foreigners in obtaining citizenship in Japan.

Nevertheless, the old ideology of the family still remains strong in Japanese family law today. This *koseki* system can be depicted as a type of ideological state apparatus (ISA) (Althusser, 1971) in contemporary Japan. ISA is a non-repressive apparatus which works to reproduce a national ideology in the interests of the state. In this vein, one can consider that the *koseki* is a legal ISA (Althusser, 1970, p. 143) that supplies the people a normative image of the national family. As Althusser explains, “the State, which is the State of the ruling class, is neither public nor private; on the contrary, *it is the precondition for any distinction between public and private*. The same thing can be said from the starting-point of our State Ideological Apparatuses” (Althusser, 1971, p. 144 – my italics). Given that ISA produces the distinction between the public and private, the *koseki* system is more than a mere registration system; it is a legal ISA that creates the basic conditions of the family (the private) for the sake of the state.

This *koseki* system explains the reason why solo child custody-only remains, no matter how much Japanese society and cultural ideas of family and gender have shifted, and no matter how much international pressure has been exerted on Japan. The *koseki* system is the only national registration system. It is also ideologically linked with Japan’s Emperor System. In this family registration system, no one, including the child, is able to simultaneously belong to plural families. When a Japanese national constitutes a new family through marriage, he or she will be the head of the family, or a member of the family. When a couple divorces, each member of the couple must join a new family unit (or return to his/her household of origin as a member). Insofar as the system sustains contemporary Japan, the child, both legally and normatively, has no choice, but to belong to either one or the other of the parents’ families. Through clashing with the *koseki* system, beyond individual rights or interests, reform of child custody in Japan causes an ideological conflict within the national ideology of Japan as a modern nation-state.⁹

In addition to these problems, solo custody is a primary example of the ways in which gender and family are disciplined in modern Japan. Certainly, it is obvious that the legislating of a series of new family laws with the present Constitution after WWII smashed the pre-war patriarchal family structure. Partly, the new post-war Constitution has played a role in achieving gender equity in the family. Initially, not only did the *koseki* system function as the national registration system in modern Japan, but it also contributed to reproducing a certain image of the family through, stressing the strong ideological linkage with the Emperor system. Even after WWII and the new constitution, as Ninomiya (1996, p. 154) and Muta (2006, p. 167) suggest, it is arguable that the post-war *koseki* system is still the carrier of the old ideology of the normative family.

Conclusion

Even though the Japanese government has agreed to ratify the Hague Convention on child abduction in 2013, skepticism toward Japan’s commitment on resolving the international parental abduction issue continues. Actors such as LBPs and governments recognize that

⁹ General Head Quarters (GHQ), the institutional body of the Allies that controlled post-war Japan, attempted to abolish the *koseki* system because it was seen as being based upon the *ie* ideology that legitimized pre-war Imperialism. But the attempts faced strong opposition from the bureaucracy that was aware of tremendous cost of reforming all past records. They also insisted that the old *ie* ideology was not contained in the new *koseki* system (Ninomiya, 1996, p. 155). But I strongly disagree with the notion of such a value-free *koseki* system.

Japanese family law has a structural problem that conflicts with the idea of joint custody, thought to be as a principle of shared parenting, after marriage breakdown. Facing the normative contradiction about the family between the accession to the Hague Convention on child abduction and domestic family law premised on the *koseki* system has created doubt over whether real progress will be made.

The normative image of family embodied in the *koseki* system has been a part of a national ideology of the “imagined community” (Anderson, 1991) of Japan as a modern nation-state since the nineteenth century. Not only is the *koseki* system a culturally unique family registration system, but also it is a basic element of the legal ideological state apparatus of Japan. Accordingly, I argue that in sum, the present international issue related to human rights, global justice and fairness is leading to a radical reconsideration of some of the basic structures of modern nation state in Japan. Above all, this paper explored the way in which these international legal disputes necessarily have called for a radical re-thinking of the normative ideology of the family in Japan. This approach is crucial in revealing the reasons why one particular idea of parenthood and child rearing (aka solo custody) is preserved in Japanese family law. Instead of conducting a simple comparative cultural analysis of different images of the family between Japan and other (mostly Western) countries, my argument is that this cultural difference represented in the normative mode of family in Japan has been constructed and maintained both institutionally and normatively.

This ideological family identity has been preserved by the Meiji Civil Code since 1898. Meanwhile, family law has experienced major reforms as Japanese society has transformed after WWII. According to Ueno (2009), the history of the post-war Japanese family can be described as the shift from traditional family to non-traditional family. Feudalistic aspects of the traditional family have been dismantled and the nuclear family has become the dominant pattern. In her anthropological analysis, White accounts for recent change of the image of family in Japan (White, 2002). In Japan one can now find literatures that observe how Japanese families became more diverse and flexible, contesting the idealized notion of family linked with the national family norms. Beyond an international legal scheme for the prevention of parental child abduction, Japan’s ratification to the Hague Convention on child abductions will continue to raise further social debates about the family in Japan, considering growing ideas of individuality, achievement of equity, and unity in diversity within it.

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