
“Bad mothers”: Gender, law, and the *mukoseki* phenomenon in Japan

By

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Abstract: In Japan, an 1898 law requires divorced women to register their children as their ex-husband's if they are born within 300 days of the divorce. Under Article 772 of the Japanese Civil Code, these children are presumed to have been conceived in marriage, and therefore the ex-husband is presumed to be their legal father. However, in almost all cases, the ex-husband is not the biological father, and mothers are forced to prove this in court. This article provides an overview of this Japanese phenomenon, largely ignored in the scientific literature both in Japan and abroad, and analyzes the testimonies of mothers who have suffered the effects of this law, collected through semi-structured and in-depth interviews. Their stories, set against the backdrop of the broader sociocultural and political context, reveal how their failure to meet the social expectations of motherhood and wifehood, and the suspicion of adultery that weighs upon them, generate a gendered shame that hinders their attempts to obtain justice. And an examination of the rhetoric of the Japanese Ministry of Justice, author of a reform of the law, reveals the true priorities of the conservative Japanese government, which is using this law to uphold the institution of marriage as the only legitimate locus of reproduction.

The *koseki* and the *mukoseki* problem

The *koseki* is Japan's registration system. Unlike most countries, the basic unit of registration is the family (*ko*) rather than the individual. Scholars of the *koseki* (David Chapman 2011; David Chapman and Karl J. Krogness 2014; Masataka Endo 2019) describe it as a tool that political élites have historically used to control the population by establishing who and which relationships can be registered. This function is particularly evident in two key moments in the history of the *koseki*: the creation of the modern *koseki* system, and its reform during the Allied Occupation. The modern *koseki* was developed during the Meiji era (1868-1912) as part of the effort to modernize and centralize the government through administrative

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restructuring of the former feudal domains and the unification of the people in one nation (*kokumin tōitsu*). The *koseki* played a key part in the reconfiguration of governance and society into a modern nation-state by identifying the Japanese. It was considered necessary to bring order to society over the “chaos” of the previous era (David Chapman 2014). The “chaos” – namely, the regional and social diversity of family models – was replaced by the “order” of one normative notion of family: the *ie*. The *ie* (literally house or household) was the patrilineal stem family common among the warrior class. It was chosen as the fundamental unit of registration (*ko*) in the *koseki* because it was a highly hierarchical and patriarchal family structure which allowed a form of diffused control. The *koseki* sanctioned the authority of a male household head (*koshu*, literally “master of the *ko*”) over his family and made him responsible for registration. The *koshu* served as an intermediary of the state within the family and, in turn, “government-authorized responsibility to keep the *koseki* accurate and updated served to strengthen household hierarchy and patriarchy” (Linda White 2018, p. 15). The modern *koseki* system and the Meiji Civil Code transformed the *ie* into a legal institution and established it nationwide. This allowed the political élite to fuse “in the public mind filial piety and loyalty to the emperor – so much so that legal scholars at the time spoke of Japan as a ‘family-state’ (*kazoku kokka*)” (Sheldon Garon 2010, p. 318) where the emperor was the ultimate father of all Japanese subjects.

The *koseki* system was reformed in 1947 during the Allied Occupation. Its rule focused on democratization and demilitarization, to ensure that Japan would no longer be a threat to Allied Powers (Nick Kapur 2018). The *ie* family of the Meiji era, with its hierarchical structure and asymmetrical gender roles, was seen as a hindrance to democratization and, most importantly, a tool the Japanese government used before and during the war to inspire nationalistic sentiment and loyalty to the emperor. Thus, it was abolished, and the *ko* was redefined as a two-generation nuclear family consisting of a married couple and their unmarried children. The role of the *koshu* was reconfigured to be more suited to the new Constitution, by reducing his power over other family members. The term *koshu* itself, resonant of the modern hierarchical ideology, was changed to the more neutral *hittōsha* (first registrant). However, the contemporary *koseki*, which continues to operate according to the provisions of the 1947 reform, remains hierarchical in many ways. The register is still structured around this one member of the *ko*, the *hittōsha*, who is legally responsible for registration. Even though both spouses can take on this role, 96 percent of first registrants are male (Ministry of Health, Labor and Welfare 2016). All members of the same *ko* must have his surname and, on the *koseki*, they are all defined by their relationship to him. To illustrate the centrality of the *hittōsha* in the *koseki*, consider the case of a woman who marries and enters her new husband’s *koseki* together with her children from a previous relationship. In a *koseki* where the new husband is the first registrant, the woman’s children will be recorded as “adopted children” their status in the register is determined by their relationship to

the *hittōsha* rather than to their mother¹. So, in practice, the *koseki* can still be described as patrilinear and patriarchal (White 2018).

Through the *koseki* the state exercises considerable power: it determines who can be recognized as family. De facto couples (White 2018), international married couples (Lara T. Chen 2014), same-sex couples (Taimie L. Bryant 1991, Claire Maree 2014), transgender parents (Ninomiya 2014), single mothers (Ekaterina Hertog 2011, White 2018) and mothers who have children through surrogacy (Vera Mackie 2014) are all misrepresented by the *koseki* or rendered invisible within it, and may be exposed to prejudice and discrimination. It can be argued that the *koseki* fails as census because its rigidity produces numerous forms of mis-registration (Chapman 2014; White 2018). This failure is merely apparent, as it is explained by the social control function of the *koseki*. This form of control is maintained by the *koseki*'s all-encompassing nature and its effects on registrants when it becomes accessible to others. The *koseki* records all marriages, divorces, births, adoptions, and deaths involving members of the same *ko*. This single document contains a wealth of information extending beyond identity and nationality. In many ways, it tells the story of a *ko*. Although *koseki* records have not been publicly accessible since the late 1990s, one's *koseki* nevertheless becomes visible to others on a number of occasions. This visibility gives rise to what many authors (Shūhei Ninomiya 2006; Karl J. Krogness 2008, 2011, 2013, 2014; Shūhei Ninomiya 2014; Endo 2019) describe as *koseki* consciousness, an awareness of how one's family should appear on the *koseki* for it to be socially acceptable; and the consequent avoidance of acts, or registration of acts, that would sully one's *koseki*.

Koseki consciousness [...] is an internalized notion that the actual household and the administrative household both exist as concurrent mental realities – each infused with their own meaning and each are infused meaning by the other. And *koseki* is not merely a sheet of data. *Koseki* represents the family as an amalgam of what the state desires it to be out of practical and ideological needs, and how the registrants want their family to present itself (Krogness 2008, p. 189).

It emerges from a discrepancy between the registered family and real families, as a desire to bridge this gap to avoid stigma. But there is also another layer to Japanese people's relationship with the *koseki*. According to Shūhei Ninomiya (2014, p. 169), the *koseki* "gives rise to *koseki* feelings (*koseki kanjō*), an affective response among *koseki* registrants where those with whom one shares a *koseki* are perceived to constitute one's family". Sharing a *koseki* has implications which have a deep emotional effect. Linda White (2018) describes how the *koseki* is almost equivalent with family. So, mis-registration or lack of registration also have deep affective effects.

What is perhaps the most dramatic instance of *koseki* misrepresentation is the *mukoseki* problem. It is estimated that every year in Japan there are about 3,000

¹ The example is taken from *Gender and the Koseki in Contemporary Japan: Surname, Power, and Privilege* by Linda White. While on the field, the anthropologist met Sumie Oshino, who was listed in her stepfather's *koseki* as his "adopted daughter" despite being her mother's biological daughter.

children who are, at least temporarily, unregistered in the *koseki* (Masae Ido 2018)². Their parents delay registration because of a discrepancy between who the father is according to the law, and who the biological father is. The children are then *mukoseki*, or *koseki-less*. *Mukoseki* children are undocumented and very vulnerable. Lack of registration hinders all aspects of life and is akin to being invisible to the state. The legal impasse is due to art. 772 of the Civil Code which establishes presumption of legitimacy (*chakushutsu suitei*), according to which all children conceived during marriage are presumed, and must be registered in the *koseki* as, children of the husband. This presumption, however, also extends to children born within 300 days after divorce. They are presumed to be the legitimate children of the ex-husband. When this is not the case, however, it is impossible to register them otherwise without first proving the presumption wrong. This law mostly impacts recently divorced women who have children with a new partner. These cases are inevitably complicated by the need to involve the ex-husband, especially if there is a history of domestic abuse. Art. 772 causes 70 percent of all *mukoseki* cases throughout Japan (Masae Ido 2017).

Academic literature on the *mukoseki* problem is extremely limited and mostly focused on issues of citizenship and nationality (Krogness 2014; Chen 2014; Masataka Endo 2017; Chapman 2018; Hajime Akiyama 2018), with the exception of David Chapman (2019), who argues that art. 772 reproduces a patriarchal power structure and normative notions of family. My research expands the discussion of this phenomenon from a gender perspective and builds on ethnographic data. Previous accounts of the *mukoseki* problem have never relied on first-hand sources, except for journalistic literature in Japanese (Ido 2017, 2018; Chika Akiyama 2015). This article fills this gap in the literature by providing ethnographic data. Drawing on interviews with mothers of *mukoseki* children and participant observation in the National Diet, I will argue that the *koseki* system and art. 772 act in symbiosis to reproduce structural violence through law and bureaucracy, sustained by a patriarchal ideology that upholds legal marriage as the only legitimate locus of reproduction. By justifying this law and presenting it as a measure to ensure children's welfare, the Japanese conservative government punishes divorced mothers on suspicion of adultery, forcing them to delay registration of their children. As I will illustrate, the law itself, the surrounding bureaucracy, and related institutions work together to shift responsibility onto mothers, who are blamed for their children's *mukoseki* status and stigmatized as "bad mothers".

² There is no precise data on how many *mukoseki* people there are in Japan. In 2015, the MOJ has launched a recurring survey on the *mukoseki* problem based on reports made by municipal offices across the country (Azusa Sakurai 2016). However, 80 percent of municipalities do not collect the data (Ido 2017). Therefore, the numbers resulting from these surveys are likely much lower than the real number of cases.

Methods

This article is a reworking of my PhD research, based on fieldwork conducted in Tokyo in 2022. I analyze the *mukoseki* problem from three different perspectives: the institutional, the public, and the personal. The data I gathered through participant observation at the National Diet, during the last stages of a reform of art. 772, shed light on policymakers' motivations for upholding the 300-day rule. While the analysis of media portraying the *mukoseki* problem illustrates how mothers of *mukoseki* children are misrepresented and misunderstood. However, my analysis focuses primarily on direct accounts of the *mukoseki* issue. I conducted semi-structured in-depth interviews with four mothers, two lawyers, two activists, and one employee of the Ministry of Justice, which administers the *koseki*. Interviews were conducted in Japanese and, in some cases, were held online due to distance or privacy concerns. Some interlocutors requested anonymity; therefore, pseudonyms are used throughout the article, and identifying details have been omitted. Interlocutors were contacted mainly through Masae Ido, journalist, politician and activist who helped thousands of people struggling with the *mukoseki* problem in the last twenty years. There are several reasons why the number of interviews is limited. First, there is no collective movement or community of *mukoseki* people and mothers, so there are few channels through which to reach them. Ido herself struggled to find interlocutors for her own research, even though she knew and had helped many of them. Fear of stigma and trauma make it very difficult for people to speak about their experience, even with someone they know and trust. This is likely the reason why there are no other ethnographic accounts of the *mukoseki* problem. Although the sample is small, these stories offer unique insights into this phenomenon. The four cases are all different and therefore capture many of the possible manifestations of the *mukoseki* issue.

How not to solve the *mukoseki* problem

The Ministry of Justice (MOJ) has a website dedicated to people affected by the *mukoseki* issue³. In it, the language used to describe the *mukoseki* issue is particularly indicative of how the MOJ wishes art. 772 to be interpreted. The videos describe the legitimacy presumption as a system designed to promote children's welfare by establishing a legal parent-child relationship immediately at birth⁴. However, this is merely an interpretation of its *raison d'être* that allows the MOJ to present art. 772 as a necessary law. On the website, they describe the *mukoseki* children as "children who are not registered in the *koseki* because the person who should register the birth fails to do so"⁵. There is no mention, however, of the dramatic consequences of registering a child as the ex-husband's. The phrasing explicitly blames mothers for

³ https://www.moj.go.jp/MINJI/minji04_00034.html [Accessed on May 16, 2026]

⁴ Video accessible here: <https://www.youtube.com/watch?v=O5yQF9K0s8U> [Accessed on May 22, 2026]

⁵ See the section about the *mukoseki* problem at this link: <https://www.moj.go.jp/MINJI/faq.html> [Accessed on May 16, 2026]

supposedly “choosing” not to register. In other words, they maintain that there is nothing wrong with the law, and that the *mukoseki* problem results from the mother’s choice. On the website, the words “parents” and “mothers” are used interchangeably, because responsibility for registration rests completely on the mother, as the only legal guardian of the child. Despite the MOJ describing the *mukoseki* problem as a choice, registering a child as the ex-husband’s would have significant negative consequences. The child would be registered in the ex-husband’s *koseki* rather than the mother’s. They would also bear the ex-husband’s surname until they were transferred to the mother’s *koseki*, but even then the ex-husband would remain the legal father. The biological father could become the legal father only through adoption. All of this would require legal proceedings, and all information would be permanently recorded on the *koseki*. After twenty years of experience helping divorced mothers, Ido is confident that no more than one in ten women chooses to register their child in the ex-husband’s *koseki*. She argues that women who do so are misled into believing that they have no other option (Ido, 28 December 2022, Tokyo).

Art. 772 relies on marriage to determine paternity *a priori*, allowing men to claim the wife’s children. Its purpose is not to assign paternity to the biological father, but to assign it to the husband. This is why divorced mothers cannot simply overturn the 300-day rule with a DNA test. It is difficult to see the rationale for this rule, given how unlikely it is that the ex-husband is the biological father, or would wish to be the legal father of a child who is not his. The MOJ maintains that the legitimacy presumption, including the 300-day rule, exists precisely because it is likely that the ex-husband is the biological father. However, there is no data to support this claim. By contrast, Ido, who has met thousands of mothers and *mukoseki* individuals, argues that in the vast majority of cases the child is not the ex-husband’s. The timeline appears to support this argument: to give birth within 300 days after divorce, conception must have occurred during the final months or even weeks of marriage, when the couple is unlikely to be on good terms. Nevertheless, even when art. 772 was amended, the 300-day rule was not abolished, despite its serious consequences. A key objective of the 2022 reform of the Civil Code provisions on parent–child relationships was the elimination (*kaishō*) of the *mukoseki* issue⁶. When I was in the field, the draft of the reform was finalized, but needed to be discussed by the Judicial affairs committee of both House of Representatives and House of Councilors. Through Ido, I was able to audit the debate. The main change introduced by the draft was the addition of an exception to the 300-day rule: if the mother remarries before the child is born, the new husband is presumed to be the father rather than the ex-husband. Regardless of whether the child was conceived during the previous marriage, the most recent marriage prevails for the purposes of determining legitimacy. In Ido’s words, much like in a game of cards, the new husband is the new “winner” (Masae Ido and Ryuichi Yoneyama, 1 November 2022, Tokyo). In the debate, MOJ representatives were confronted with overwhelming evidence that the reform would prevent only a small number of cases, since it is rare for women to

⁶ The text can be accessed here: https://www.moj.go.jp/MINJI/minji07_00315.html

remarry immediately after divorce. They eventually acknowledged that they were aware of this. However, they remained adamant that they would not even consider abolishing the 300-day rule.

There are many apparent contradictions in their arguments. Firstly, they constantly repeated that their priority for the reform was ensuring the welfare of children. However, they reduced “children’s welfare” to the establishment of the legal father-child relationship as soon as children are born. Even faced with the dramatic circumstances of *mukoseki* children, their priority remained the protection of the ex-husband’s claim over the ex-wife’s children. Secondly, the MOJ claims that the legitimacy presumption is a sound system because it reflects expectations of married couples – namely, that they do not engage in extramarital relations – and therefore what is considered most likely: that the ex-husband is the father. However, this is merely an assumption. It also contrasts with the fact that under the reform, if a woman remarries, the law automatically assigns paternity to the current husband. Yet remarriage does not change the timing of conception; by their own logic, the ex-husband should still be presumed to be the father. With a second marriage, what was once of the utmost importance suddenly becomes irrelevant. Thirdly, when asked why the legitimacy presumption extends for 300 days after divorce, they maintained that the rule is based on a standard pregnancy duration. However, a standard pregnancy lasts 280 days, making the 300-day threshold appear arbitrary. Lastly, their views on the use of paternity tests are contradictory. On the one hand, they insist that mothers cannot use DNA testing to bypass art. 772 when submitting a birth certificate. However, this is difficult to reconcile with the fact that, in both litigation and mediation, DNA testing is routinely required to establish paternity. In other words, DNA testing is the decisive factor – but only when sanctioned by a judge or mediator.

It is difficult to see what benefit children derive from a system that makes registration so difficult when paternity is in question. However, the MOJ’s arguments for retaining the 300-day rule are only apparently illogical. Their underlying motivations are not stated explicitly, but are nevertheless clear. The MOJ’s priority is to uphold marriage as the sole legitimate site of reproduction, by penalizing divorced mothers on the suspicion of adultery. After hours of debate, Justice Minister Yasuhiro Hanashi finally acknowledged this.

Unfaithfulness during marriage constitutes unlawful conduct under current civil law. Therefore, the 300-day presumption exists because one is not at liberty to commit adultery [...] Given that another article in the Civil Code prohibits adultery, I believe that, within 300 days of divorce, it is reasonable to presume the child to be the legitimate child of the ex-husband, provided that [the mother] has not remarried. (Yasuhiro Hanashi in House of representatives 2022, pp. 41-42)

MOJ policymakers believe that eliminating the 300-day rule would allow mothers to “decide” who the father is, and that it would be equivalent to condoning adultery. This is what is really at the heart of the MOJ’s defense of this rule. It does not really matter who the father is, as long as the state decides who it is through marriage. Maintaining that their main priority is children’s welfare is merely a way of deflecting from the true purpose of this law and the reform: controlling women via marriage. In the following paragraphs, I examine four cases from the mothers’

perspectives. They were prevented by art. 772 from registering their children as the sons or daughters of their biological fathers, and were instead forced to delay registration and initiate legal proceedings to overturn the legitimacy presumption. These cases clearly show that the 300-day rule is far from beneficial for children, as well as the significant impact it has on mothers and children, and the difficulties of navigating the bureaucracy with little to no assistance from local governments.

Masae Ido

Masae Ido's divorce was finalized in 2002 after four years of negotiation. Some time later, she became pregnant. At the time, women were prohibited from remarrying for 180 days after divorce⁷, so she waited six months before marrying her new partner, who was the father of her child. Her son, Migoto, was born soon afterwards. Ido became pregnant after the divorce and years after separating from her ex-husband, so there was no ambiguity about paternity. However, Migoto's birth certificate was not accepted by the municipal office because it listed her current husband as the father. He was born prematurely, only 265 days after the divorce, and therefore, under the 300-day rule, he was presumed to be the legitimate child of Ido's ex-husband and had to be registered as such. When she sought guidance from the municipal office, no one knew how to help her. According to them, there was no alternative way to register Migoto. They were unhelpful and judgmental. Ido recalls being told that this was her "penalty for divorce" (Ido 2018, p. 47).

Ido was appalled by the lack of support for mothers in her situation. When the office threatened to create a *koseki* for the child ex officio, listing the ex-husband as the father, she began researching the Civil Code and relevant court procedures. At the time, there were only two ways to challenge art. 772. The first one was denial of legitimacy (*chakushutsu hinin*), filed by the ex-husband against the ex-wife. The second was confirmation of absence of parent-child relationship (*oyako kankei fusonzai kakunin*) filed by either the mother or the biological father against the ex-husband. Both inevitably involved the ex. Ido strongly felt it was unfair to be forced to rely on someone she had struggled for so long to divorce and who had no connection to the child. Among the many domestic relations cases she examined, however, she found a procedure that could apply, without involving the ex-husband. She could file a forced acknowledgment (*kyōsei ninchi*) mediation against the biological father. She would still be required to prove that Migoto was not the ex-husband's child, but the ex-husband would not be involved in the proceedings. However, there were no precedents for using this procedure to resolve a *mukoseki* case, so her request was rejected. The matter could not be settled through mediation and instead had to be decided by a judge. She sought a lawyer, but again no one knew how to help her or was willing to do so. In court, Ido's husband, as the respondent, submitted a statement agreeing to her request to acknowledge Migoto.

⁷ The remarriage prohibition, established by art. 773 of the Civil Code, was meant to ensure the unambiguous application of the presumption of paternity after divorce, and it only applied to women. It was declared unconstitutional by the Supreme Court, and was eliminated in 2022.

However, the judge stated that the parties' agreement was not sufficient to reach a conclusion, adding that "the state decides who the father is" (Ido 2018, p. 54). One month later, however, the court surprisingly ruled in Masae Ido's favor. After a year, she could finally give Migoto a *koseki*. Hers was the first court case to overturn the legitimacy presumption of art. 772 without the involvement of the ex-husband. After experiencing the lack of support for women in her situation, Ido established a nonprofit and, over the following twenty years, assisted in thousands of *mukoseki* cases by providing referrals to knowledgeable and sympathetic lawyers, compiling records of legal precedents, offering guidance on procedures, and helping mothers access public services for their children.

Mina Kawamura

Mina Kawamura was one of the first mothers Ido helped. She divorced and remarried shortly after the mandatory 180-day waiting period. During those six months, she became pregnant. In 2006, her son Ko was born prematurely due to complications, 292 days after Kawamura's divorce – barely within the 300-day window. Not only did she have to cope with the stress of her son requiring intensive care for several weeks, but she also had to find a way to register him without assigning paternity to her ex-husband, all while recovering from a traumatic birth. Kawamura had read an article about the 300-day rule and the *mukoseki* problem, so she contacted the journalist who had written it, Akihisa Kudo. He offered to accompany her to the municipal office and intervene on her behalf if officials proved to be dismissive, as they both expected. She first spoke to a civil servant alone. She recalls that "they said 'it's impossible', in a very business-like way" (Mina Kawamura, 1 October 2022, Tokyo). They were quick to inform a concerned mother that registration was impossible. Only when the journalist intervened did they provide any further explanation.

The attitude of the municipal office [staff] changed completely [when Kudo intervened], and someone in a higher position came out and gave us a thorough explanation in a separate room. So, to a journalist they explained properly, but they didn't treat *me* the same way (Kawamura, 1 October 2022, Tokyo).

Kawamura was not alone in this experience. As Ido has witnessed for two decades, mothers are often quickly dismissed by civil servants, who rarely know how to respond to their inquiries and barely give them an explanation. This was especially true before the national newspaper Mainichi Shinbun started reporting extensively on the issue in 2007, because there was no awareness of the *mukoseki* problem, although it remains common today. In Kawamura's case, it was the presence of a journalist to motivate the civil servants to at least provide an explanation. She did not receive further support from the office. It was Ido who told her that Ko could be registered temporarily in the residence register (*jūminhyō*) which would at least allow him to access public services⁸. It was not a long-term solution, but it would be

⁸ As a rule, Japanese nationals must provide a copy of their *koseki* to be registered in the *jūminhyō*, but according to the Basic Residence Registration Law (*jūmin kihon daichō hō*), the head of the office can

useful. Ido knew that there had been precedents and urged her to ask the local office, in Sumida, to issue a residence register for Ko. She was able to obtain it; however, this is not always the case, as the decision is left to each head of office.

I later heard that in the Sumida office it was possible, but in Saitama Prefecture, and Saitama City people were told that it wasn't possible, and couldn't get a *jūminhyō*. I was surprised that the outcome could be so different. It just so happened that the Sumida office was understanding and kind to me (Kawamura, 1 October 2022, Tokyo).

Ido also explained about forced acknowledgement and how she could use it to prove Ko was her current husband's son. Since 2002 there had been many other cases so, unlike Ido, Kawamura was able opt for mediation. In the meantime, while still recovering, she was also being interviewed by the media and advocating for legal reform. In 2007, several members of the National Diet across different parties launched a project team on the *mukoseki* problem, and hers was one of the testimonies Ido brought to their attention. She recalls that: "All kinds of media interviewed me, [...] [Ko] was simply born early. But, even so, just because of that [Ko became] *mukoseki*, so it was an easy-to-understand example of this absurdity. [...] and public sentiment that this was wrong grew stronger" (Kawamura, 1 October 2022, Tokyo). However, the ruling Liberal Democratic Party halted the project, and instead the MOJ issued an official notice allowing mothers to prove post-divorce conception with a certificate signed by their gynecologist. It allowed them to bypass the 300-day rule and immediately register their children without legal action. Although the Kawamuras had already initiated a forced acknowledgment mediation, they decided to use the certificate instead. If they had proceeded with forced acknowledgment, their *koseki* would have included a note indicating that the biological father had been "forced" to acknowledge Ko. They were uncomfortable with this and were relieved to be able to avoid it. After five months, Ko was finally entered into their *koseki* as his father's son.

Yukiko Saito

Some *mukoseki* cases are greatly complicated by domestic violence. When Yukiko Saito (a pseudonym) began discussing divorce with her husband, he became violent. She confided in an acquaintance, a man who offered to give her and her child a temporary accommodation while she arranged a more stable living situation. Soon after, however, he also became abusive. When she was finally able to escape him, she went to the police and was admitted into a shelter with her two children. The youngest was born within 300 days of divorce and was the biological child of the second abuser. Although Saito has endured abuse from both men, her child cannot be registered in her *koseki* but must instead be registered in either the ex-husband's *koseki* or the biological father's *koseki*. In either case, their involvement would be required, meaning Saito would have to face them in court and risk disclosing her new address. Moreover, one of them would have to be the legal father. Saito's priority is the safety of her children, and she is not willing to risk it in a lawsuit that

approve a temporary residence register on a case-by-case basis. This was possible even before an official notice was issued in 2012.

offers no realistic prospect of a positive outcome. As a result, her child remains *mukoseki*, with little hope of being registered in the foreseeable future.

Saito contacted Ido in 2010 because she needed help enrolling her child in school. She was unsure whether it was possible, and the municipal office was unable to provide clear answers. In principle, *mukoseki* children can attend school if the principal permits it, but there are no clear regulations. There is also a widespread belief that children cannot enroll without a *koseki* or other form of identification, which may discourage mothers from even attempting to do so. What most hinders *mukoseki* children's access to education, however, is civil servants' lack of awareness of this possibility, as mothers are likely to accept their statements without question. Ido addresses these gaps through her experience of working alongside mothers and *mukoseki* adults to secure their fundamental rights. Over time, she has learned strategies for navigating or bypassing the various obstacles they may encounter. With Ido's support, Saito was able to enroll her child in both elementary and middle school. At the time of the interview, however, she still did not know whether the child would be able to attend high school. Her case also highlights the difficulties of everyday life for a *mukoseki* teenager.

If they want to go to karaoke or bowling with friends, they'll be asked for an ID [...] It's getting more and more scary to do things. For example, let's say they went to a ski resort. [...] So, they want to rent skis. [...] Then [they will be told] "show me your ID". [So, they realize] 'Oh, I need [an ID] here too'. [...] If you're taking a flight, even a domestic one, you'll need to have ID with you. So even if we have tickets, we can't board if they ask us to show our IDs. [...] So, of course, I'm scared. For many things. (Yukiko Saito, 16 February)

In 2020, however, Saito was able to obtain a temporary residence certificate (*jūminhyō*) for her child, which made a significant difference to their quality of life⁹. It is a form of temporary registration that must be reissued every month. There is no guarantee that it will continue to be granted, as it is issued on the condition that "there is a high probability that a *koseki* will eventually be created through litigation or mediation" (Ministry of Internal Affairs and Communications 2012). As the child grows older, new obstacles are also likely to arise.

Right now, my child can do almost the same things as everyone else, but how can I tell my child that in the future they won't be able to get a driver's license, travel abroad, or get married? [How can I tell them] they'll never be able to do that? (Saito, 16 February 2022)

Mieko Ukai

When Mieko Ukai and her husband decided to divorce, she was unable to move out immediately, so they continued living together and postponed submitting the divorce papers for a few months. During that time, Ukai began a relationship with someone else and became pregnant while still legally married. When her new partner learned of the pregnancy, he ended the relationship. It was only after the divorce that Ukai discovered the child would be presumed to be her ex-husband's. She was

⁹ In 2012, the Ministry of Internal Affairs and Communications issued an official notice to allow *mukoseki* individuals to get a temporary residence register (*jūminhyō*).

terrified of what this would entail. She was able to obtain some assistance at her municipal office, where some staff were familiar with the *mukoseki* problem and could refer her to a lawyer. However, they both could only provide basic information on procedures and were unable to answer her questions about her child's first months or future. After months of fear and uncertainty, she became so desperate that she even contemplated placing the baby for adoption, because under the Koseki Law foundlings must be assigned a *koseki*. The prospect of her child suffering the consequences of the timing of her pregnancy filled her with such regret and shame that she considered making this sacrifice. In November 2022, two months after giving birth, she still had not received further guidance. Eventually, she found Ido's website and reached out to her. She was struck by how much more knowledgeable Ido was compared to her lawyer. Ido recommended filing a forced acknowledgment against the biological father, but Ukai knew he was not willing to acknowledge the child. She therefore chose to file a claim for confirmation of the absence of a parent-child relationship against the ex-husband instead. At the time of the interview, they were awaiting the results of the DNA test he had taken at the request of the Family Court. Ido explained that using this procedure would result in a note being recorded in the *koseki* indicating that the ex-husband had denied paternity. Despite all the time and effort devoted to refuting the father-child relationship, his name would still appear in their *koseki*. The wording would also permanently signal that Ukai conceived the child with another man while still married. Ukai struggled to understand the need to record such information: "The fact that his name and the phrase 'has denied acknowledgement' will be entered [in our *koseki*] is, well, I'm very unhappy about it. I wonder why there is a need to enter such minor details, like the name of my ex-husband. It's painful" (Mieko Ukai, 18 November 2022, Tokyo). Once proven there is no father-child relationship, recording that the ex-husband was originally presumed to be the father has no administrative purpose. What the recording does is merely stating that according to the law the father *should* have been the ex-husband. It emphasizes the irregularity of the circumstances of conception. It signals that Ukai's actions deviated from what is socially expected of a wife and mother.

Good laws and bad mothers

What emerges from the four cases discussed above is that women affected by the 300-day rule are placed in impossible situations in which delaying registration is often the only option. However, their circumstances are frequently misunderstood. When they are represented in the media, for example, they are portrayed as "bad mothers." Most films and novels that feature the *mukoseki* problem depict mothers as abusive, presenting the decision not to register their children as another form of abuse (Hirokazu Kore-eda 2004; Tatsushi Ōmori 2019; Yūsuke Higuchi 2020; Ito Ogawa 2020). Or they are depicted as too cowardly to take the necessary legal action (Keita Kōno 2012; Kazuyoshi Ozawa 2022). The characters are also often portrayed as promiscuous and/or employed in the nighttime entertainment industry (Higuchi 2020; Ogawa 2020; Ozawa 2022). In most of these representations, mothers are always blamed for their children's *mukoseki* status. The cases illustrated above,

however, present a markedly different picture. This discrepancy can be explained by the suspicion of adultery attached to mothers affected by art. 772 and the stigma it carries. What makes Ukai's case significantly different from those of Ido and Kawamura is that she was still married and living with her husband when she met a new partner and became pregnant. According to the Civil Code, both spouses have a legal obligation of fidelity. However, there is a particularly strong stigma attached to women who engage in extramarital relationships (Swee Lin Ho 2015)⁶.

In Japan, since the Meiji era (1868-1912), women's sexuality has been seen as something to be contained and controlled, lest it causes disruption in the family and, by extension, social chaos. When the Meiji restoration centralized administrative power and discursively created the Japanese as imperial subjects, the ideology of the "good wife, wise mother" (*ryōsai kenbo*) imposed a restrictive notion of ideal femininity and strongly conflated women's sexuality with reproduction (Catherine Burns 2005; Sonia Ryang 2006; Swee Lin Ho 2012). As Ryang (2006, p. 67) notes, it was under the American Occupation – defined by her as "legal, but above all moral and educational" – that control over female sexuality became strongly emphasized. In contemporary Japan, women who seek sex for pleasure are portrayed as deviant, dangerous, and selfish (Christine Marran 2005; Ryang 2006; Ho 2012), an image that is incompatible with that of the "good mother." Mothers of *mukoseki* children are thus portrayed as "bad mothers" because they are suspected of adultery and blamed for deviating from social expectations. Cases like Ukai's are never featured in the news and are not used as examples by activists and politicians. Since Ukai became pregnant while married, like most mothers of *mukoseki* children, her situation is different from that of Kawamura or Ido, who were among the very few mothers to speak out against art. 772 precisely because they were beyond reproach.

As for why I was able to [speak out] [...] I was the [kind of] person who would be the least criticized. Because I got pregnant after divorce, and my child was born after my [second] marriage. [...] Nobody can point their fingers at me. I'm in a position where I can call out the injustice of this law. [...] If I had gotten pregnant before the divorce, I too would not be able to say that [the law] is unfair with my head held high. [...] And this is why [...] I felt like I had to speak out, because other people couldn't (Ido, 19 November, Tokyo).

For the same reason, Kawamura was not afraid to share her story with the media. Nobody could blame her because the only reason her son was *mukoseki* was that he was born premature. Both Ido or Kawamura could prove they got pregnant after divorce. When this is not the case, women are too ashamed and afraid of speculation to speak out. Fear of stigma and shame explain why there is no collective movement of women who are affected by the 300-day rule.

Everyone [wants to] remain anonymous because they think they will be frowned upon or attacked if they talk about something like that. They might take action individually to solve their child's situation or their own situation [...] but no one tries to come together or create some sort of group (Ido, 19 November 2022, Tokyo).

In their case, *koseki* consciousness manifests as shame. If *koseki* consciousness is the manifestation of the normalizing gaze internalized by *koseki* registrants, it can be interpreted as a gendered self-technology, in Foucauldian terms as elaborated by feminist theory (Catriona Macleod and Kevin Durrheim 2002): a self-strategy that, on a micro-level, requires "the elaboration of certain techniques for the conduct of

one's relation with oneself" (Nikolas Rose 1996, p. 135) and that, on a macro-level, relies on dominant discourses and assumptions on gender and sexuality. *Koseki* consciousness as a gendered technology of the self produces emotions that are not only psychological and subjective, but socio-cultural and political (Michelle Z. Rosaldo 1984; Catherine Lutz and Lila Abu-Lughod 1990). Shame has been examined in this light by many authors (Jennifer Biddle 1997; Sara Ahmed 2004; Clara Fischer 2016; Susan L. Gabel 2018; Sara Cohen Shabot and Keshet Korem 2018; Julie McBrien 2021). Ahmed (2004, p. 103) defines shame as a relational feeling that cannot exist without the gaze of the other. She adds that "in experiences of shame, the 'bad feeling' is attributed to oneself, rather than to an object or other [...]. The subject, in turning away from another and back into itself, is consumed by a feeling of badness that cannot simply be given away or attributed to another" (Ahmed 2004, p. 104). Because mothers feel shame for deviating from social expectations, they often blame themselves. As a result, they may find it difficult to direct blame toward a law that is widely perceived as neutral or even beneficial – not necessarily on a cognitive level, but certainly on an emotional one.

Bad laws and good mothers

Art. 772 states what is expected of married couples, what is socially acceptable, and what is usually the case – and is presented by the MOJ as beneficial for children. Women affected by the 300-day rule are therefore marked as deviating from social norms. The stigma surrounding mothers of *mukoseki* children, and the shame they consequently experience, are reproduced and reinforced by the supposed "goodness" of art. 772. Responsibility for the *mukoseki* problem is thus shifted away from legal and institutional structures and onto individuals. Women are blamed and, in turn, often come to blame themselves, particularly because they are effectively punished through their children. Even if mothers recognize that art. 772 limits their choices and pressures them into accepting unfair registration rules, they may still feel personally responsible on an emotional level. As lawyer Kazuyuki Minami, who represented several mothers of *mukoseki* children, explains:

The majority of people, when they hear about art. 772 and its system, they all think "well, that's a law which simply states the obvious". And I think that's why, if you deviate from that framework of reference – [from] what is considered natural, the norm – it's easy to [wonder] whether you have done something which isn't normal, whether it's your fault for getting pregnant and giving birth at the wrong time [...]. If, there was something strange with the law to begin with, I think people could see that the laws is to blame. But it's not like art. 772 doesn't make sense. Well, thanks to it, people don't have to trouble the local office [...] with a DNA test [to prove paternity] every time a baby is born. It does make sense, but we have to think of how to help people who deviate from that (Kazuyuki Minami, 17 October 2022, Osaka).

Mothers often regret the timing of their pregnancy and feel ashamed at having to explain the circumstances in court. Because they feel responsible, many delay initiating legal action or abandon it altogether. Minami explains that filing a lawsuit is usually driven by the conviction that one has been wronged in some way, and by the belief that one has suffered harm due to causes beyond one's own actions. Yet mothers must bring a lawsuit or mediation in order to prove that the child is not the

ex-husband's. The guilt and shame they experience make this process even more emotionally difficult.

Even though it's up to the judge to decide that they didn't do anything wrong, [mothers] think it's disrespectful, presumptuous of them to sue someone instead of being sued themselves, [because] they think "I'm to blame, it's my fault, I got pregnant at the wrong time, I submitted the divorce papers too late, and because of that my child doesn't have a *koseki*" (Minami, 17 October 2022, Osaka).

But as he points out to his clients, the law is to blame for not providing the necessary infrastructure to guarantee children and mothers their rights. As illustrated above, civil servants are often unprepared to support mothers affected by the 300-day rule, and the misinformation they spread also reinforces the belief that *mukoseki* individuals simply cannot access public services. The *mukoseki* problem is not caused by "bad mothers", but by flaws in the law and the administration of the *koseki*, which do not allow mothers to carry out their registration duties. By failing to allow greater flexibility in the presumption of legitimacy and to take effective action to address the *mukoseki* problem, the MOJ, and by extension the Japanese state, is acting contrary to the stated purpose of art. 772: the protection of children.

Conclusion

Art. 772 reflects a patriarchal ideology that upholds marriage as the only legitimate locus of reproduction. The rigidity of the legitimacy presumption, and its extension beyond divorce, punishes women who dare to have children when they wish, and with whom they wish, irrespective of their marital status. Through the *koseki*, this law operates a particularly efficient form of structural violence – a form of normalized violence embedded in ordinary social arrangements and operating through everyday institutions (Carolyn Nordstrom and Joann Martin 1992; Nancy Scheper-Hughes 1993). Mothers who face the possibility that their child will remain unregistered unless the legitimacy presumption is overturned experience significant psychological distress. They must find a solution despite the ignorance and dismissiveness of municipal offices and lawyers. Not only are they left on their own in this process, but they are also forced to be dependent on either the ex-husband or the biological father. Without a man to deny or confirm paternity, the *mukoseki* problem cannot be resolved. And, of course, this puts the safety of survivors of domestic violence at risk. Mothers should not have to bear such a high a cost to register their children. The MOJ's pretense that their main concern is the children's welfare is clearly a way of deflecting from their real priority: chastising women. The MOJ, and by extension the state, operates a very effective shift of responsibility onto women by making them choose not to register. This in turn makes women hyper aware of the abnormality of their situation. The fear of stigma and shame, a feeling which is social and political and not merely psychological, prevents them from speaking publicly and forming a collective movement. In a perfect vicious circle, the state enforces a patriarchal law which threatens women who deviate from the imperative of reproduction within marriage, and blames them for the violence they endure because of it. All the while, the general population is hardly aware of the *mukoseki* problem and mostly views mothers of *mukoseki* children as bad parents.

Despite all of this, however, mothers keep delaying registration and challenging art. 772. Their main concern is, of course, to avoid assigning paternity to the ex-husband. But they also have a strong desire to keep their, and their child's, *koseki*, unsullied (*kirei*). They wish for the "irregularity" of the child's conception to be erased. It is precisely because they have a strong *koseki* consciousness that they choose certain procedures over others. Even in their defiance of registration laws and art. 772, mothers are striving to fit the *ko*. In this sense, mothers' actions can be better understood as tactics (De Certeau 2002), as they find ways to achieve their goals within the system, without destabilizing it, because they cannot avoid being inside it. Like Mahmood's (2001) docile agents, mothers do not oppose the *koseki* system, identify it as patriarchal, nor challenge the idea of art. 772 being motivated by an interest in children's welfare. They follow the procedures the MOJ indicates, they go to court and endure violent administrative and legal systems that blame them for the injustice they are facing. And by so doing they create a quiet but relentless friction which sheds light on the merciless rigidity of legitimacy presumption and registration practices.

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