

Mayumi Yasumasa
December, 20, 2012

The legislation for the right to use separate last names should be passed

Introduction:

In Japan when a couple gets married, one of them must change his/her last name, even if he/she does not want to change it. It is forced by Article 750 of Japanese civil law.

Through my own experience,¹ I have noticed that for some women, including me, her own last name is not a mere sign indicating the family in which she was born but an important and irreplaceable part of herself like her first name. About 30 years ago, Japanese women began to take action to demand the right to choose the last name between her last name and her husband's and the legislation for the right to choose "separate last names by husband and wife." Different from other countries, in Japan this request of women has not been accepted. Thirty years have passed, the law has not changed. To begin with, I will think about why the legislation has not been passed. Next, indicating six points concerning family names in Japan, I will explain why I think that the legislation will be passed in the near future. Finally, saying about children's last names, I will make a proposal in order that the legislation can be passed in an ideal form.

About thirty years ago an increasing number of Japanese women wanted to keep their last names. There were three typical reasons. First, it was inconvenient to change their last names at work. Those days many women had begun to work and were called by their last names, so the change of the last name caused confusions in many cases. Second, it was regrettable for only daughters and their parents to see their last names disappear after the marriage, for in almost all cases at the time of marriage the person who changes the last name is not the husband but the wife. Third, some women loved their last names so much that they did not want to change them. They wondered why they could not keep their last names like men. If a couple chooses the wife's last name for their family, she can keep her last name, but this is a very rare case. A woman who does not want to change her last name may not want her husband to change his, either, because she imagines that he loves his last name as much as she loves hers. For these women, unfortunately there were only two ways to keep their last names: not to get married officially or to use their last names as their by-names. Some of them stood up and took action opposing the Japanese civil law to get the right to keep their last names officially. This movement has been spread rapidly with the name "the right to choose the use of separate last names by husband and wife." If it is legislated, a couple will be able to choose between one of their last names or use separate last names. It seemed the

legislation would be passed in the near future. However it was not easy. Thirty years have already passed. The Japanese civil law concerning last names has not changed yet.ⁱⁱ

In many developed countries in the 1970s and 1980s, similar movements occurred. Unlike in Japan, in many cases women have succeeded in having the right to keep their last names if they want. Their request has been considered to be natural and reasonable.ⁱⁱⁱ In Germany, which was similar to Japan because of strong patriarchic values, it took a long time for women to get the same right as men concerning the usage of their last names. However, in 1993, it was at last legislated. As a leading country of the EU, judging from the fact that other European countries had already approved this women's right, the German government seemed to be obliged to change the civil law. Now, in the international world, at least among developed countries, Japan is the exception. She continues to force married couples to use the same last name by law.

In Japan, why is it difficult to pass the legislation for the right to use separate last names by husband and wife? How do Japanese people think about this problem? According to the opinion polls conducted by Japanese newspapers in 2009, public opinion was split in the middle on the legislation.^{iv} The supporters said that the law

should be changed in order to give the women the same right as the men. The opponents said that Japanese families' custom should be kept and that admitting different last names in a family would lead to the breakdown of the family unit and to the collapse of the beautiful and traditional family customs in Japan. They insisted that because the supporters were only about half the people, it was not necessary to change the law. In addition, all Japanese women do not necessarily have the same opinion about last names. Even now many Japanese women are satisfied with Japanese family customs. They happily change their last names to their beloved husbands'. Some of them have not thought about the right to choose the last names nor to have separate last names. Though about half the Japanese women agree with the legislation, there are also women who oppose it strongly.

According to the report by the Ministry of Health, Labor and Welfare, in Japan 96.2% of the newly married couples in 2008 chose the husband's last name as their family name.^v Legally speaking, they may choose the wife's. However, in reality it is difficult. First of all, Japan keeps customs that is deeply based on strong patriarchy even today. It can be said that Japanese society has consisted of each family where a man is the head of a family. Almost all Japanese husbands do not want to change their last names. Many men may think that to change the family name is to become

subordinate to the wife and this is too humiliating for them to bear. They want to be the head of a family. Until now Japanese customs have allowed them to think so and it can be said that they have been trained by customs to think so, too.^{vi} Because of this tradition deeply ingrained in society, it takes a long time in Japan to pass the legislation of the right to use separate last names by husband and wife.

In spite of difficulties, Japanese civil law should be changed. I will explain indicating six points regarding last names in Japan. First, as I said, Japan is a conservative country, in which strong patriarchy is spread. In Japanese customs of families, the head of family has been important. In almost all the families, the head of family is a man rather than a woman. It is obviously a kind of sexual discrimination. From the viewpoint of equal rights for men and women, this situation should be seriously considered. The legislation for the right to use separate last names may solve the problem. A couple that will choose separate last names will be released from an oppressive framework: who controls whom. Second, in Japan there exists “a family register,” an official document, in which a newly married couple is registered. All the members of the family, the husband, the wife and their children, are registered and at the beginning the name of “the head of the register” is recorded, which is the husband’s

name in almost all the cases. All the members are written with the same last name. The head of register is generally regarded as “the head of the family” and Japanese men want to be the head. Some people ask what will happen to Japanese “precious” family registers if the separate last names are approved. In that case they will only have to write different last names in a family register. Or everyone will have his/her own personal register like in many countries. In the first place, which is more precious, one’s human rights or one’s traditional official document? Third, there exists “the right of personality.” In 1988 the Japanese superior court of justice stated in a judgment that the first name and the last name are a part of the personality and that they are deeply connected with the right of personality. If this right is accepted legally, is it not a human-rights abuse to force anyone to change one’s last name against one’s will? The legislation of separate family names has a legal basis. Fourth, the use of one’s own last name as by-name is now widely spread. These days many public offices, schools, hospitals and companies permit married women to use their own last names as by-name. Nevertheless, the official use of it is not accepted by law. Fifth, if a foreign woman wants to get married with a Japanese man, now, she has the right to choose between her last name and her husband’s. Before, she was forced to use her last name and not permitted to use her husband’s family name nor enter his family register. As a matter of fact, it

was a kind of discrimination between Japanese and foreigners. At any rate the foreign women's request has been permitted to have the right to use their Japanese husbands' last names. Now, they can choose their husbands' last names or keep their own last names. On the contrary, Japanese women's request to have the right to choose the last names has not been permitted. Is it not strange that Japanese women have not been admitted the same right as foreign women? Sixth, now when a Japanese woman divorces, she can choose between her own last name which she had used by the marriage and her husband's which she has used since the marriage. Conversely, at the time of marriage the same right is not permitted. Why?

Knowing all these facts about last names in Japan, do people still insist that the Japanese civil law is right and that it should not be changed? Many foreign countries do not understand Japanese Government's stubbornness concerning family names. In 2009 the UN stated that Japanese civil law which forced people to change their last names against their will was a kind of human-rights abuse and advised the government of Japan to change it in two years.^{vii} Two years have passed. The law is still the same as ever.

I want to say here about last names of children who are born in a family with separate last names. When we think about the legislation for the right to choose

separate last names, we must think also about children's last names. In the bill introduced in 2009, it was written that when a couple gets married, they choose their last names and the last name to give to every child in the future.^{viii} At first, almost all the leaders of supporters for the legislation had insisted that a child's last name should be chosen when he/she is born and that every child in a family does not need the same last name. For many supporters, their last names are not their mere "family" names, but their "personal" names connected with their personality and identity. This is the base of their opinion. Because children's last names are also the personal names of the children, they should be chosen freely and personally from their fathers' last names or their mothers' last names. In addition, some supporters may want to give their beloved last names to at least one of their children if possible. In the beginning, their opinion, that last names are not family names but personal names, was logical and very clear. Nevertheless, in 1996 the leaders were persuaded by some people who insisted strongly that it would be impossible to make their opinion understood and that the legislation would not be passed. After hesitating, they gave in and compromised in order to have the legislation be easily passed. It is certain that in the Liberal-Democratic Party, the political power in those days, there were many opponents against the legislation who insisted that having different family names among children in a family would cause the

children to be bullied and make them unhappy.^{ix} Did they have any substantial evidence to make these claims? Would different last names among the siblings make them really unhappy? If it were right, it would not make sense for so many countries to permit that.^x

What happened, as the result of the fact that the leaders of supporters for the legislation for the right to use separate last names gave in and decided to request nothing regarding children's last names? Has the legislation been passed? As we know, the civil law has not been changed yet. What is worse, the opinion of the supporters has begun to be complicated to understand. Some opponents say that the supporters are egoists, they think only about themselves and they are not interested in their families nor their children at all.^{xi} It may not be strange that the opponents misunderstand the supporters. It might be the most serious mistake for the leaders of supporters for the legislation to have given in about children's last names in 1996.^{xii} This compromise was a kind of contradiction. Those who think that last names are not family names leave children's last names in Japanese family customs! If the legislation is passed, the children's last names will be chosen in many cases from their fathers rather than their mothers. In 2009, many supporters could not believe the content of the bill. They wondered why the leaders had changed their opinion.^{xiii} Some supporters were so

disappointed that they may have stopped supporting the leaders. The leaders of the supporters should return to their base and insist their opinion in a dignified manner.

Sooner or later, the legislation for the right of separate family names may be passed. However, it will be the best to make it passed in their ideal form. Certainly including children's last names it may take a longer time to make the legislation passed. Is there any better way than the legislation in a deficient form? Recently more and more people are persuaded that it is wrong to discriminate children accordingly born in a legal marriage or in a de facto marriage. There is now a big financial difference between these two marriages. In the near future, however, the difference may disappear. If the day comes, in de facto marriages the choice of separate last names will be realized including children's last names. There are some couples that do not get married officially so as to give different last names to their children. For them it may not be a big problem that de facto marriages are not legal marriages strictly speaking. In addition, the opponents may admit separate family names in de facto marriages even including children's last names because they are not legal marriages, which can be preserved for "ordinal families," that respect Japanese family customs. This could be a way to think about.

Conclusion:

As we know now, in Japan there are many factors that raise barriers against the legislation for the right to choose “separate last names by husband and wife.” They are deeply connected with Japanese society characterized by sexual discrimination, the domination of men over women and the tendency of uniformity. Nevertheless, I want to believe that more and more Japanese people will notice the problems about Japanese civil law and think that it should be changed even if the supporters have only attained the majority. In addition, the United Nation has begun to intervene in this Japanese problem, saying that it is a human-rights abuse to oblige people to abandon their beloved last names against their will. Like Germany, which had to change the law recognizing her own international position, Japan may decide to change the family law as one of the leading countries in the world. I hope that the day will come soon and if possible the legislation will be passed in an ideal form.

ⁱ About 25 years ago, I was engaged. My fiancé and I had decided the date of our wedding. He was a little conservative. I was somewhat afraid because I would have to live in his hometown near to his mother. His last name was Miki. After the wedding, I would have to change my last name and be Miki Mayumi. I felt sad. For, I loved my last name, Yasumasa. I had always been Yasumasa Mayumi. Almost everyone had called me Yasumasa-san or more directly Yasumasa instead of Mayumi. In Japan it is not unusual to call a person by his/her last name. I would miss my lost last name. I had nothing to do about that. It did not occur to me to go against customs. One day, all

of a sudden, Mr. Miki asked me to change my first name and told me that as I knew, his sister was Mayumi too and that his mother wanted me to change my first name in order to avoid confusion. He said, “Whatever name is O.K. For example, Miyuki, Sayuri, and so on, except Mayumi. It’s not important for you, is it? For, in the official paper you will be certainly Mayumi. Just commonly we will call you by your by-name, Miyuki, for example. You don’t mind, do you? Such a terrible request made me doubt my ear. I got terrified as I had a feeling that my identity would be completely lost. I, Yasumasa Mayumi, would be Miki Miyuki! I could not accept it. I thought that we would not be able to live a happy life together. That is why I broke our engagement.

After that I started to think more about my first name and last name. I have noticed this; for me, my last name is not a mere sign to indicate the family which I was born in and I have belonged to, but an important and irreplaceable part of myself like my first name. One year after, I had another fiancé and we got married. Neither of us wanted to change our last names. Because one of us had to change the last name, I decided to change mine officially but continue to use it as my by-name. Though I did not want to change my last name, I did not want him to change his, either, knowing that his last name was precious and irreplaceable to him as my last name was to me. Happily my husband understood and respected me, so I could keep using my last name in daily lives, and after we had two sons he agreed that our second son would have my last name, instead of his.

ii In the 1980s, especially in Tokyo and Nagoya, some groups including many lawyers mounted a campaign for a new civil law which would give Japanese wives the right to choose their last names between their husbands’ and their own. The term “the use of separate last names by husband and wife” has spread rapidly. I was living far from these big cities and could not participate in the groups. However, from far away I expected that they would achieve our aim. But it was not easy. The public opinion has been completely divided. The opinion survey conducted by the Cabinet Office in 2006 says that 21.7% of men were for the using different family names between a couple and 39.1% were against it; 27.1% of women were for and 31.7% were against.[9. 民法改正を考える会、2010 : 79] In 2009, Japanese political power changed. In the Democratic Party, the new Government one, there are many supporters of the legislation of the choice of family names. In addition, this legislation was one of the party’s public platforms. All over Japan people watched the outcome of the matter, that is, whether the legislation of the right to use separate last names by husband and wife would be passed. Two ministers, Fukushima Mizuho and Chiba Keiko, especially did their best to change the civil law. They introduced a bill of the legislation. The supporters hoped that the law would be changed this time. Between October and December in 2009, each newspaper did opinion researches as to the legislation of choosing family names. The Asahi newspaper said that 48% of 2,052 electors, chosen at random, were for the legislation and 41% against. The Sankei shimbun said that 46.2% of 1,000 adults were for, 44.2% against. Other papers presented similar percentages as well. [9. 民法改正を考える会 2010 : 80] The Liberal- Democratic Party, the ex-political power, opposed strongly. Even in the Democratic Party, the opinion began to be divided. That is why the bill was not passed.

iii Now, for example, in the U. S. A., the U. K., and in Australia, married women can use their own last names. In these countries now it is free for everyone to use the name he/she likes. In northern and eastern European countries and in the Netherlands, women’s requests were accepted from the viewpoint of equal rights for men and women.

In Korea and in China traditionally it is a principle for everyone to use his/her family name during a lifetime and nobody can change his/her name. It seems to be from the very strong patriarchy rather from individualism or the equality of the sexes. In these countries every child is given his/her father's family name. It is not known very much, however, that in China since 1950 women have been able to use their own last names officially, which was legislated by Article 11 of the law of marriage. In Quebec of Canada, in 1981 the new family-law determined the obligation for the husband and the wife of a married couple to use his and her own last names separately. Before, in Quebec a husband had continued to use his last name and a wife had had a right to change her last name into her husband's. Certainly she had been able to use her own last name. Nevertheless, from the viewpoint of the complete equality of men and women, the government decided to change the law. In France, where individualism has been spread, there is no regulation about last names. But before, a husband's last name had been used traditionally in many cases. Now, people have recognized that men and women have the same right about last names as about the other things. Both a husband and a wife can choose their last names. It is said that parents can even choose the last name of their child freely when he/she is born. In addition to this, in France since 1999 there has been a unique system of union of a couple, "the Pacs," that more and more people has been choosing rather than the marriage. [11. ロラン・ド・ペルサン、2004]

iv [9. 民法改正を考える会、2010 : 80]

v [9. 民法改正を考える会、2010 : 10]

vi A lawyer confessed his experience. [4. 東京弁護士会、1990 : 27] He had thought that he had been a liberal man and respected the equality of the sexes but at the time of his marriage, his fiancée, a woman lawyer, said, "You don't want to change your family name. I don't want to change my family name, either. Since you or I have to change the family name, let's do toss up for it." As a lawyer he understood perfectly that she was right. But personally and as a man he felt that he absolutely did not want to change his family name. If he lost the game, he would have to change it. What would his parents and his friends say? But he had no reason not to toss up for it. He could not sleep at all. In his relief, seeing his agony, his fiancée gave in and decided to change her family name. Through this experience he realized that the Japanese civil law, which forced a couple to choose one between two last names, acted a kind of human-rights abuse and he has become a supporter for the legislation of the right to choose separate family names.

vii [9. 民法改正を考える会、2010 : 62-64]

viii [9. 民法改正を考える会、2010 :7]

ix In my family, eight years ago I divorced officially in order to have my passport with my own family name. By then, I had used my family name as my by-name in daily life. Officially my name had not been Yasumasa Mayumi, but Kataoka Mayumi. Our second son's family name also had been Yasumasa as his by-name, Kataoka officially. Having divorced, I had my own official document, what is called "a family register." I decided not to return to my husband's family register and to move our second son to my family register. Now, I am Yasumasa Mayumi and our second son is Yasumasa Reijiro. My husband is Kataoka Masashi and our first son is Kataoka Yuichiro. Though unfortunately my husband and I are officially not a married couple, we respect each

other. We love our children. Our case is unusual in Japan, but not isolated. There are many cases all over Japan. [4.東京弁護士会、1990 : 7-9], etc.

By the way, because of having different last names, are our sons unhappy? Our second son said one day: “In my friend, Tanaka-kun’s family, his brother is Tanaka, too. It is interesting, isn’t it? In my family, I am Yasumasa and my brother is Kataoka. It depends upon families, doesn’t it?” He was then about 7 years old. Being sociable, he has had a lot of friends. Different from his brother, my first son has been quiet and a little nervous. When he was a high school student, he lost his only one friend, who quit school. My son was so shocked that he would not go to school. He was completely depressed. I was afraid that his problem had been caused by my unusual way of living. I asked him if the different family name from his brother made him unhappy. He said; “What a strange question you are asking, Mom! Since the beginning I am Kataoka, which I like very much. Maybe Reiji also likes his family name, Yasumasa, very much, I think.” It occurred to me that I would take him abroad to release him from depression. I had to prepare my passport, so I divorced then in order to have my own family name written in it.

^x In France, it has not been prohibited. In Denmark, by Clause 2, Article 1 of the law of a person’s name, a couple having chosen separate family names are permitted legally to give each of their last names to each child. In Quebec, Canada, by Cause 1, Article 56 of the civil law, parents have a choice to name their child either with the father’s last name, the mother’s last name or the combined last name of the parents. [4.東京弁護士、1990 : 186] As for in Germany, in 1993 there was considerable disagreement on how to regulate children’s last names. In the end, Germany legislated that every child born in a family should consistently have the same last name from either the father or from the mother. [5. 富田哲、1998 : 245]

^{xi} [13. 八木秀次 宮崎哲也、1996]

^{xii} [12. 日本弁護士連合会、2011 : 35]

^{xiii} To Aasahi Shinbun I contributed my opinion, which appeared in March 21, 2010, under the title of “the change of the civil law; objection against the unity of children’s last names.”

民法改正 子の姓統一に反対

塾講師 安政真弓（兵庫県姫路市 48）

結婚後も夫婦がそれぞれの姓を名乗り続けることができる「選択的夫婦別姓制度」。その導入を目指す民法改正案は今国会の焦点の一つだが、子供の姓は夫か妻のどちらかに統一する、というこの改正案に私は反対だ。

私は「安政」という姓がとても好きだ。結婚した時に戸籍上は夫の姓「片岡」になったが、日常生活では「安政」を通称使用してきた。長男は夫の姓を、次男は通称として私の姓を名乗ってきた。私は息子の一人には「安政」を受け継がせたかったのだ。

次男の通称は学校や病院などで受け入れてもらったが、経緯を説明するのはいつも大変だった。夫婦別姓制度は実現しないし、ついに数年前、私たち夫婦は「ペーパー離婚」し、新しく作った私の戸籍に次男を移した。

ずっと4人暮らしで生活に変化はない。夫婦別姓が法制化されれば、すぐにまた婚姻届を出すつもりだ。ただ改正案通りに成立すれば、長男と次男の姓が異なる我が家は どうしたらいいのだろうか。

子の姓は、出生届を出す時に父母どちらの姓でも選べるようにするのが最善と私は考え

る。

References:

1. 榊原富士子『女性と戸籍 夫婦別姓時代に向けて』（明石書店、1992年）
2. 高橋菊江 折井美耶子 二宮周平『夫婦別姓への招待 個と家族の關係に新しい風を』（有斐閣、1993年）
3. 高橋菊江 折井美耶子 二宮周平『夫婦別姓への招待 いま、民法改正を目前に』（有斐閣、1995年）
4. 東京弁護士会 女性の権利に関する委員会『これからの選択夫婦別姓〈個と姓の尊重〉女と男の自由な關係』（日本評論社、1990年）
5. 富田哲『夫婦別姓の法的変遷 ドイツにおける立法化』（八朔社、1998年）
6. 中村桃子『婚姻改姓・夫婦同姓のおとし穴』（勁草書房、1992年）
7. 久武綾子『夫婦別姓 その歴史と背景』（世界思想社、2003年）
8. 星野澄子『夫婦別姓時代 氏名とわたしの自然な關係』（青木書店、1987年）
9. 民法改正を考える会『よくわかる民法改正 選択的夫婦別姓&婚外子差別撤廃を求めて』（朝陽会、2010年）
10. 山下悦子『フェミニズムはどこへ行ったのか 「主婦」解体論から夫婦別姓まで』（大和書房、1996年）
11. ロランス・ド・ペルサン（齊藤笑美子）『パックス 新しいパートナーシップの形』（緑風出版、2004年）
12. 日本弁護士連合会『今こそ変えよう！家族法 婚外子差別・選択的夫婦別姓を考える』（日本加除出版、2011年）
13. 八木秀次 宮崎哲弥『夫婦別姓大論破！』（洋泉社、1996年）